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

Contents

Federal Register
Vol. 57, No. 157
Thursday, August 13, 1992

Agency for Health Care Policy and Research
NOTICES
Meetings; advisory committees:
August, 36404

Agricultural Marketing Service
RULES
Olives; imported, 36354
Olives grown in California, 36351
PROPOSED RULES
Milk marketing orders:
Ohio Valley et al., 36536

Agricultural Research Service
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Phero Tech Inc., 36382

Agriculture Department
See Agricultural Marketing Service
See Agricultural Research Service
See Rural Electrification Administration

Antitrust Division
NOTICES
National cooperative research notifications:
Bell Communications Research, Inc., 36413

Army Department
NOTICES
Meetings:
Military Traffic Management Symposium, 36388
Senior Executive Service:
Performance Review Board; membership, 36388

Centers for Disease Control
NOTICES
Meetings:
Chronic Disease Prevention and Control National Conference, 36403

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 36383

Commodity Futures Trading Commission
RULES
Foreign exchange-traded options and futures contracts based on foreign stock indexes and foreign government debt; offer and sale to persons outside United States, 36369
NOTICES
Contract market proposals:
Chicago Board of Trade—
CBOT Wilshire Small Cap Index, 36387

Consumer Product Safety Commission
NOTICES
Meetings:
Cigarette Fire Safety Technical Advisory Group, 36387

Defense Department
See Army Department
See Navy Department
NOTICES
Meetings:
Defense Policy Board task forces, 36388
Defense Policy Board task forces and Science Board task forces, 36387
Federal Participation in SEMATECH Advisory Council, 36388

Drug Enforcement Administration
RULES
Schedules of controlled substances:
Exempt chemical preparations, 36371
Veterinary anabolic steroid implant products, 36372
PROPOSED RULES
Manufacturers, distributors, and dispensers of controlled substances; registration, etc.:
Mid-level practitioners; definition and registration
Correction, 36439
NOTICES
Applications, hearings, determinations, etc.:
Anina, Inc., 36413

Education Department
NOTICES
Educational progress, national assessment; policy review, 36389
Grants and cooperative agreements; availability, etc.:
Dwight D. Eisenhower Regional Mathematics and Science Education Consortiums program, 36584
Special education and rehabilitative services:
Private schools serving publicly placed children with disabilities; personnel standards requirements, 36582

Energy Department
See Energy Research Office
See Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
Colorado State University, 36390
Iowa, 36390
Southern California Edison Co., 36391
Grants and cooperative agreements; availability, etc.:
Photovoltaics, building opportunities, 36390
Natural gas exportation and importation:
Allegheny Energy Marketing Co., 36398
ARCO Products Co., 36399
Goetz Energy Corp., 36399
Graham Energy Marketing Corp., 36399
Hadson Power Partners of Rensselaer, 36400
Northern Natural Gas Co., 36400
Panda Resources, Inc., 36401

Energy Research Office
NOTICES
Meetings:
High Energy Physics Advisory Panel, 36398

Environmental Protection Agency
NOTICES
Meetings:
Nonroad engines and vehicles; industry representatives, 36402
Superfund program:
CERCLA reimbursement petitions; submission guidance, 36402

Federal Aviation Administration
RULES
IFR altitudes, 36361
PROPOSED RULES
Airworthiness directives:
McDonnell Douglas
Correction, 36439
Airworthiness standards:
Special conditions—
SAAB 2000 airplane, 36375
Transition areas, 36378
NOTICES
Advisory circulars; availability, etc.:
Airship design criteria, 36429

Federal Communications Commission
RULES
Radio services, special:
Interactive video and data services—
Interaction with all video delivery systems, etc.; reconsideration petitions, 36372
PROPOSED RULES
Radio and television broadcasting:
Experimental, auxiliary, and special broadcast and other program distributional services—
FM and TV translator stations and LPTV stations; license renewal dates, 36378

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Tampa Electric Co. et al., 36392
Natural gas certificate filings:
East Tennessee Natural Gas Co. et al., 36393
Natural Gas Policy Act:
Natural gas data collection system—
Edit-check and print software availability, 36396
Applications, hearings, determinations, etc.:
Columbia Gas Transmission Corp. et al., 36397
New England Power Service Co., 36397
Rattlesnake Hill Development, 36398

Federal Financial Institutions Examination Council
RULES
Privacy Act; implementation, 36356

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Marysville, CA, 36430
Virginia Beach, VA, 36430
Wood County, WI, 36431

Federal Maritime Commission
NOTICES
Agreements filed, 36402

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Boone & Scenic Valley Railroad, 36431, 36432
Crystal City Railroad, Inc., et al., 36432
Maine Coast Railroad et al., 36434

Federal Trade Commission
RULES
Environmental marketing and advertising guides, 36363
NOTICES
Prohibited trade practices:
Honickman, Harold A., et al., 36403
Sandoz Pharmaceuticals Corp., 36403

Federal Transit Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Turnkey system demonstration projects, 36576

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Vernal pool fairy shrimp, etc., 36380
NOTICES
Endangered and threatened species:
Recovery plans—
Northeastern bulrush, 36410
Endangered and threatened species permit applications, 36410

Foreign Claims Settlement Commission
NOTICES
Meetings; Sunshine Act, 36438

Health and Human Services Department
See Agency for Health Care Policy and Research
See Centers for Disease Control

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

International Trade Administration
NOTICES
Meetings:
Automotive Parts Advisory Committee, 36383

International Trade Commission
NOTICES
Import investigations:
Integrated circuit telecommunications chips and products containing same, including dialing apparatus, 36411

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Burns Harbor Shortline Railroad Co., 36411
Clark Shortline Railroad Co., 36411
Indiana Ports Railroad Holding Corp., 36411
Norfolk & Western Railway Co., 36412
Southwind Shortline Railroad Co., 36412

Justice Department
See Antitrust Division
See Drug Enforcement Administration
See Juvenile Justice and Delinquency Prevention Office
NOTICES
Pollution control; consent judgments:

Chevron U.S.A. Inc., 36412
Outrigger Hotels Hawaii et al., 36413

Juvenile Justice and Delinquency Prevention Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Missing Children's Assistance Act—
Discretionary grant programs, etc.; correction, 36439

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Eagle Mountain Landfill, CA, 36404
Meetings:
Dickinson District Advisory Council, 36404
Grand Junction District Grazing Advisory Board, 36404
Lewistown District Grazing Advisory Board, 36405
Rock Springs District Grazing Advisory Board, 36405
Motor vehicle use restrictions:
Idaho, 36405
Oregon, 36406
Realty actions; sales, leases, etc.:
California, 36406
Oregon, 36407
Resource management plans, etc.:
Arcata Resource Area, CA, 36408
Sodium leases, exploration licenses, etc.:
Wyoming; correction, 36439
Survey plat filings:
New Mexico, 36408
Oregon and Washington, 36409
Withdrawal and reservation of lands:
Nevada, 36409

Maritime Administration
NOTICES
Applications, hearings, determinations, etc.:
Ocean Chemical Carriers, Inc., et al., 36435

National Oceanic and Atmospheric Administration
NOTICES
Fishery conservation and management:
Atlantic mackerel, squid, and butterfish fisheries; control date, 36384
Fishery management councils; hearings:
Gulf of Mexico—
Mutton snapper, 36385
Meetings:
Caribbean Fishery Management Council, 36385
North Pacific Fishery Management Council, 36385
South Atlantic Fishery Management Council, 36385
Permits:
Endangered and threatened species, 36386
Marine mammals, 36386

National Science Foundation
NOTICES
Meetings:
Earth Sciences Proposal Review Panel, 36414
Earth Sciences Special Emphasis Panel, 36414
Microelectronic Information Processing Systems Special Emphasis Panel, 36414
Physics Special Emphasis Panel, 36414
Polar Programs Special Emphasis Panel, 36415
Undergraduate Education Special Emphasis Panel, 36415

Navy Department
NOTICES
Environmental statements; availability, etc.:
Optical interferometer facility, Los Padres National Forest, CA, 36389
Meetings:
Chief of Naval Operations Executive Panel, 36389

Nuclear Regulatory Commission
NOTICES
Petitions; Director's decisions:
GPU Nuclear Corp., 36415
Applications, hearings, determinations, etc.:
Indiana Michigan Power Co., 36416
Oakland University, 36416
Umetco Minerals Corp., 36419

Public Health Service
See Agency for Health Care Policy and Research
See Centers for Disease Control

Rural Electrification Administration
NOTICES
Environmental statements; availability, etc.:
Cajun Electric Power Cooperative, Inc., 36382

Securities and Exchange Commission
RULES
Securities:
Small business initiatives; capital raising facilitation and compliance burdens reduction, 36442
PROPOSED RULES
Securities:
Small business initiatives, additional, 36502
NOTICES
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 36421

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Federal Transit Administration
See Maritime Administration

Treasury Department
NOTICES
Agency information collection activities under OMB review, 36436, 36437
Notes, Treasury:
AC-1994 series, 36437
P-1997 series, 36437

Veterans Affairs Department
RULES
Adjudication; pensions, compensation, dependency, etc.:
Mustard gas exposure, chronic effects; death and disability claims
Correction, 36439

Separate Parts In This Issue

Part II
Securities and Exchange Commission, 36442

Part III
Department of Agriculture, Agricultural Marketing Service, 36536

Part IV
Department of Transportation, Federal Transit Administration, 36576

Part V
Department of Education, 36582

Part VI
Department of Education, 36584

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
932.....36351
944.....36354
Proposed Rules:
1033.....36536
1036.....36536
1049.....36536

12 CFR
1102.....36356

14 CFR
95.....36361
Proposed Rules:
21.....36375
25.....36375
39.....36439
71.....36378

16 CFR
260.....36363

17 CFR
30.....36369
32.....36369
200.....36442
228.....36442
229.....36442
230.....36442
239.....36442
240.....36442
249.....36442
260.....36442
Proposed Rules:
228.....36502
230.....36502
239.....36502
240.....36502
249.....36502
260.....36502

21 CFR
1308 (2 documents).....36371, 36372
Proposed Rules:
1301.....36439
1304.....36439

38 CFR
3.....36439

47 CFR
95.....36372
Proposed Rules:
74.....36378

50 CFR
Proposed Rules:
17.....36380

Rules and Regulations

Federal Register
Vol. 57, No. 157
Thursday, August 13, 1992

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.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV-92-047]

Olives Grown in California; Revision of Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule relaxes current size requirements established for California olives to allow "Large" size olives of the Ascolano, Barouni and St. Agostino varieties to be used in the production of canned ripe whole or whole pitted olives. This action also makes adjustments in the Medium, Jumbo, Colossal and Super Colossal size designations established for California olives, and revises the minimum size requirements in effect for California olives. This action is intended to help the California olive industry better meet current market requirements, and make smaller olives of certain varieties available for use in the production of canned olives. The changes were unanimously recommended by the California Olive Committee, which works with the Department of Agriculture in administering the marketing order program for olives grown in California.

DATES: This action becomes effective August 6, 1992. Comments that are received by September 14, 1992 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action to: Docket Clerk, F&V Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Three copies of all written material should be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. Comments should reference the docket number and the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96458, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-8139.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 932 (7 CFR part 932), as amended, regulating the handling of olives grown in California, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities.

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

It is estimated that 6 handlers of California olives will be subject to regulation under the order during the current season, and there are approximately 1,350 olive producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms, which include olive handlers, are defined as those whose annual receipts are less than $3,500,000. Most of the olive producers may be classified as small entities. None of the olive handlers may be classified as small entities.

Nearly all of the olives grown in the United States are produced in California. The growing areas are scattered throughout California, with most of the commercial production coming from inland valleys. In 1990, about 77 percent of the production came from the San Joaquin Valley and 23 percent from the Sacramento Valley. California olives are primarily used for canned ripe whole and whole pitted olives which are eaten out of hand as hors d'oeuvres or used as an ingredient in cooking and in salads. The canned ripe olive market is essentially a domestic market. Very few California olives are exported.

Olive production has fluctuated from a low of 24,200 tons during the 1972-73 crop year to a high of 146,500 tons during the 1982-83 crop year. The California Olive Committee (committee) indicated that 1990-91 production totalled about 126,872 tons. The various varieties of olives produced in California have alternate bearing tendencies with high production one year and low the next.

Preliminary estimates of 1991–92 production total approximately 57,192 tons. It is too early to estimate 1992–93 production.

Section 932.152 of the rules and regulations in effect under the olive marketing order establishes outgoing regulations for packaged olives. Such regulations include the requirement that canned ripe whole and whole pitted olives must conform to seven established size designations, ranging from Small to Super Colossal. These size designations are defined in terms of average count ranges per pound for each of four variety groups. For example, the Small size is currently defined for Variety Group 2, except Obliza, to mean there are from 128 to 140 olives per pound, and the Colossal size for all variety groups is currently defined to mean that there are 41 to 50 olives per pound.

The size designations established in § 932.152 are related to the minimum size requirements for canned ripe whole and whole pitted olives that are established under § 932.52 of the order. These minimum size requirements include tolerances for undersized olives. For example, the minimum canning size for whole or whole pitted olives of the Obliza variety is established at 1/121 pound. Under § 932.152, the smallest size designation authorized for Obliza olives is Medium, with a count range of 106 to 121 olives per pound. Thus, the minimum weight requirement under § 932.52 equals the weight of the smallest Obliza olive authorized for canning uses.

Section 932.52 also provides an allowance for olives that weigh less than the specified minimum weights. For the Obliza variety, up to 35 percent of the olives in lots of Medium size category olives may weigh less than 1/121 pound, including up to 7 percent of the olives in such lots which may weigh less than 1/135 pound. The 1/135 pound represents the mid-point of the Small size designation, which is defined to mean that there are between 128 and 140 olives per pound. The Small size designation is one size smaller than the Medium size designation, which is the smallest size designation authorized for Obliza olives for canning use. For Obliza olives that fall within authorized size designations larger than Medium, not more than 5 percent of the olives may weigh less than 1/121 pound.

The order also provides that olives that are smaller than those authorized for use as whole and whole pitted olives may be authorized for use in the production of limited use styles of olives, such as halved, segmented, sliced or chopped olives. Limited use sizes are specified in terms of minimum weights for individual olives in various size categories by variety groups. This is to recognize the different sizing characteristics of the individual varieties and types of California olives. Olives used in limited use styles are too small to be desirable for use as whole or whole pitted canned olives because their flesh-to-pit ratio is too low. However, they are satisfactory for use in the production of limited use styles. Authorizing the smaller-sized olives to be used for limited use styles makes more olives available for canning.

At a meeting held March 5, 1992, the California Olive Committee (committee), the agency responsible for local administration of the marketing order, recommended changes in the existing size requirements to become effective on or about August 1, 1992, when the 1992–93 season for California olives begins. Section 932.52 of the order provides that the Secretary, on the basis of a recommendation of the committee or other available information, may change the sizes, tolerances or percentages specified in that section. Specifically, the committee recommended that the current size requirements be relaxed to allow "Large" size olives of the Ascolano, Barouni and St. Agostino varieties to be used in the production of canned ripe whole or whole pitted olives. The committee also recommended adjustments in the Medium, Jumbo, Colossal and Super Colossal size designations established for all variety groups of California olives, and revisions in the minimum size requirements established in § 932.52 so that they are consistent with the revised size designations. Finally, the committee recommended changes in the count ranges established for limited use size olives.

Currently, olives of the Ascolano, Barouni and St. Agostino varieties must be at least Extra Large in size to be used in the production of canned ripe whole or whole pitted olives. This action provides that smaller olives of such varieties (those falling in the Large size category) also be authorized for caning uses. This action is designed to increase the availability of Large sized canning olives, consistent with current market requirements.

This action also revises the average count ranges established in § 932.152(f). The Medium size, currently defined as having from 106 to 121 olives per pound, is redefined to mean that there are between 106 and 127 olives per pound. This change in the Medium size range will permit fruit which would otherwise be classified as Small sized fruit to be classified as Medium sized fruit.

Additionally, the Jumbo size designation is being redefined to mean 47 to 60 olives per pound, compared with the currently range of 51 to 60 olives per pound. Likewise, the Colossal size designation is being redefined to mean 33 to 46 olives per pound, compared with 41 to 50 olives per pound, and the Super Colossal size will mean there are 32 or fewer olives per pound rather than 40 or fewer olives per pound.

The committee reports that the industry has an excess of Super Colossal sized fruit which has a more limited demand and is harder to sell than fruit of the Jumbo and Colossal sizes. The committee therefore recommended that the minimum number of fruit per pound established for the Super Colossal size designation be increased so that a greater volume of fruit will be available to be marketed in the more popular size designations. Adjustment of the size ranges will decrease inventories of larger size fruit, by permitting some of this fruit into the size ranges which are more in demand. This will allow growers and handlers to better meet current market requirements.

This rule also adds a new paragraph (h) to § 932.152 to revise the current minimum size requirements, which are now specified in § 932.52 of the order. The current minimum size requirements that appear in § 932.52 of the order and that remain unchanged are also included in the new paragraph (h). These changes in the minimum size requirements are necessary so that they are consistent with the revised size designations discussed previously. For example, the minimum size requirement for olives of the Ascolano, Barouni and St. Agostino varieties is being changed from 1/88 pound to 1/105 pound to reflect the authority to use Large sized fruit of such varieties for canning purposes.

Section 932.152 also contains average count ranges for limited use size olives. This action revises the average count range established for the Ascolano, Barouni and St. Agostino varieties of olives to reflect the previously discussed revision to allow Large sized olives of these varieties to be used in the production of whole and whole pitted styles. The current count range of 91 to 140 olives per pound is being changed to a count range of 106 to 180 olives per pound.

Section 8(e) of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for olives under a domestic marketing order, imported olives must meet the same or comparable requirements as

those in effect for the domestically produced commodity. This action revises the minimum size requirements established under the marketing order. Thus, corresponding changes in the olive import regulation will be addressed in a separate rulemaking proceeding.

Based on the above information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities and that the action set forth herein will benefit producers and handlers of California olives.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This rule relieves handling requirements; (2) the 1992–93 season begins August 1; (3) olive handlers are aware of this action which was unanimously recommended by the committee at a public meeting; (4) there is no special preparation required by affected handlers; and (5) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

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

2. Section 932.152 is amended by revising paragraph (f)(1), Table II of paragraph (g)(1) and Table III of paragraph (g)(2) and adding a new paragraph (h) to read as follows:

§ 932.152 Outgoing regulations.

* * * * *

(f) *Size designations.* (1) In lieu of the size designations specified in § 932.52(a)(2), except as provided in § 932.51(a) (1) and (2), canned whole ripe olives, other than those of the "tree-ripened" type, shall conform to the marketing order size designations listed in Table 1 contained herein, and shall be of a size not smaller than the applicable size requirements, tolerances, and percentages listed in paragraph (h) of this section.

TABLE I—CANNED WHOLE RIPE OLIVE SIZES AVERAGE COUNT RANGES

[Per Pound]

Size designation	Variety group 1		Variety group 2	
	Except Ascolano, Barouni, St. Agostino	Ascolano, Barouni, St. Agostino	Obliza	Except Obliza
Small	N.A.	N.A.	N.A.	128–140
Medium	N.A.	N.A.	106–127	106–127
Large	N.A.	91–105	91–105	91–105
Extra Large	65–75	65–90	65–90	65–90
Jumbo	47–60	47–60	47–60	47–60
Colossal	33–46	33–46	33–46	33–46
Sup. Colossal	(1)	(1)	(1)	(1)

[1] 32 or fewer.
N.A.—Not Applicable.

* * * * *

(g) * * *

(1) * * *

TABLE II.—LIMITED USE SIZE OLIVES

Variety	Average count range (per pound)
Group 1, except Ascolano, Barouni, and St. Agostino	76–90, inclusive.
Group 1, Ascolano, Barouni, and St. Agostino	106–127, inclusive.
Group 2, except Obliza	141–180, inclusive.
Group 2, Obliza	128–140, inclusive.

(2) * * *

TABLE III—CANNED WHOLE RIPE OLIVE SIZES AVERAGE COUNT RANGES

[Per Pound]

Size designation	Variety group 1		Variety group 2	
	Except Ascolano, Barouni, St. Agostino	Ascolano, Barouni, St. Agostino	Obliza	Except Obliza
Small	N.A.	N.A.	N.A.	128–140
Medium	N.A.	N.A.	106–127	106–127

TABLE III—CANNED WHOLE RIPE OLIVE SIZES AVERAGE COUNT RANGES—Continued

[Per Pound]

Size designation	Variety group 1		Variety group 2	
	Except Ascolano, Barouni, St. Agostino	Ascolano, Barouni, St. Agostino	Obliza	Except Obliza
Large	N.A.	91–105	91–105	91–105
Ex. Large	65–75	65–90	65–90	65–90
Jumbo	47–60	47–60	47–60	47–60
Colossal	33–46	33–46	33–46	33–46
Sup. Colossal	(1)	(1)	(1)	(1)

[1] 32 or fewer.
N.A.—Not Applicable.

(h) Canned whole ripe olives, other than those of the "tree-ripened" type, shall be of a size not smaller than the following applicable size requirements, tolerances and percentages:

(1) With respect to variety group 1 olives, except Ascolano, Barouni, and St. Agostino varieties, the individual fruits shall each weigh no less than 1/75 pound, except that

(i) For olives of the extra large size designation, not more than 25 percent, by count, of such olives may weigh less than 1/75 pound each including not more than 10 percent, by count, of such olives that weigh less than 1/82 pound each; and

(ii) For olives of any designation except the extra large size, not more than 5 percent, by count, of such olives may weigh less than 1/75 pound each;

(2) With respect to variety group 1 olives of the Ascolano, Barouni, and St. Agostino varieties, the individual fruits shall each weigh not less than 1/105 pound, except that

(i) For olives of the large size designation, not more than 25 percent, by count, of such olives may weigh less than 1/105 pound each including not more than 10 percent, by count, of such olives that weigh less than 1/116 pound each; and

(ii) For olives of any designation except the large size, not more than 5 percent, by count, of such olives may weigh less than 1/105 pound each;

(3) With respect to variety group 2 olives, except the Obliza variety, the individual fruits shall each weigh not less than 1/140 pound, except that

(i) For olives of the small size designation, not more than 35 percent by count, of such olives may weigh less than 1/140 pound each including not more than 7 percent, by count, of such olives that weigh less than 1/160 pound each; and

(ii) For olives of any designation except the small size, not more than 5 percent, by count, of such olives may weigh less than 1/140 pound each;

(4) With respect to variety group 2 olives of the Obliza variety, the individual fruit shall each weigh not less than 1/127 pound, except that

(i) For olives of the medium size designation, not more than 35 percent, by count, of such olives may weigh less than >1/127 pound each including not more than 7 percent, by count, of such olives that weigh less than 1/135 pound each; and

(ii) For olives of any designation except the medium size, not more than 5 percent, by count, of such olives may weigh less than 1/127 pound each.

Dated: August 6, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–19170 Filed 8–12–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 944

[Docket No. FV–92–067]

Olives Imported Into the United States; Revision of Minimum Size Requirements for Certain Varieties

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule relaxes current minimum size requirements established for imported olives of the Ascalano, Barouni, St. Agostino, and Obliza varieties. This action is intended to make the import requirements comparable to those in effect for domestically produced olives, consistent with section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: This interim final rule is effective on August 6, 1992; comments which are received by September 14, 1992 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action to: Docket Clerk, F&V Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material should be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96458, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–8139.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, which provides that whenever certain specified commodities, including olives, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must

be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities.

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

Import Regulations issued under the Act are based on those established under Federal marketing orders. Thus, this action should also have small entity orientation, and impact on both small and large business entities in a manner comparable to rules issued under such marketing orders.

There are about 25 importers of olives. Small agricultural service firms, which include importers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000. The majority of olive importers may be classified as small entities.

Canned ripe olives, and bulk olives for processing into canned ripe olives, imported into the United States must meet certain minimum grade and size requirements specified in *Olive Regulation 1* (7 CFR 944.401). All canned ripe olives are required to be inspected and certified prior to importation (release from custody of the United States Custom Service), and all bulk olives for processing into canned ripe olives must be inspected and certified prior to canning. "Canned ripe olives" means olives in hermetically sealed containers and heat sterilized under pressure, of two distinct types, "ripe" and "green-ripe", as defined in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR 52.3751–52.3764). The term does not include Spanish-style green olives. Any lot of olives failing to meet the import requirements may be exported or disposed of under the supervision of the Processed Products Branch of the Fruit and Vegetable Division, with the costs of certifying the disposal of the olives borne by the importer. Any person may import up to 100 pounds (drained weight) of canned ripe olives or bulk olives exempt from these grade and size requirements.

This interim final rule modifies paragraphs (b)(3) and (b)(5) of the olive import regulation to relax the minimum size requirements established for imported canned whole ripe olives of the Ascolano, Barouni, St. Agostino and Obliza varieties.

Import regulations issued under the Act are based on regulations established under Federal marketing orders to regulate domestically produced products. The grade and size requirements contained in the olive import regulation are based on those in effect for olives grown in California under Marketing Order No. 932. This action reflects a recommendation by the California Olive Committee (committee) to change the minimum size requirements established for domestically grown olives. The committee works with the Department in administering the marketing order program for California olives.

This action is being initiated by the Department because the Act requires imported olives to meet the same or comparable requirements as those established under a domestic marketing order.

Under the California olive marketing order, minimum size requirements are established, by variety group, for olives to be used for canning. Such requirements are in terms of minimum weights, and include allowances for undersized olives. The committee recently recommended revising the minimum size requirements for olives of the Ascolano, Barouni, St. Agostino and Obliza varieties. For the Ascalano, Barouni and St. Agostino varieties, the minimum size requirement is to be reduced from 1/88 pound to 1/105 pound, and for the Obliza variety, from 1/121 to 1/127 pound.

The minimum size requirements for imported olives, including allowances for undersized olives, are based on those established under the order. For the Obliza variety, for example, up to 35 percent of the olives in a lot offered for importation may weigh less than 1/121 pound, including up to 7 percent of the olives in such lots which may weigh less than 1/135 pound.

This interim final rule revises paragraphs (b)(3) and (b)(5) of the olive import regulation to reduce the minimum size requirements for imported olives of the Ascolano, Barouni, St. Agostino, and Obliza varieties to make those requirements comparable to those in place under the marketing order.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information available it is found that this action, as set forth below, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This relaxation in minimum size requirements provides importers the opportunity to import additional supplies of olives to meet current market requirements; (2) no useful purpose would be served by providing preliminary notice before implementation; and (3) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this action.

In accordance with section 8e of the Act, the USTR has concurred with the issuance of this interim final rule.

List of Subjects in 7 CFR Part 944

Avocados, food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, and Oranges.

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

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

2. Section 944.401 is amended by removing the first paragraph (b)(3) and revising the second paragraph (b)(3) and (b)(5) to read as follows:

§ 944.401 Olive Regulation 1.

* * * * *

(b) * * *

(3) Canned whole ripe Variety Group 1 olives, of the Ascolano, Barouni, and St. Agostino varieties, shall be of such size that not more than 25 percent, by count, of the olives may weigh less than 1/105 pound (4.3 grams) each except that not more than 10 percent, by count, of the olives may weigh less than 1/116 pound (3.9 grams) each;

* * * * *

(5) Canned whole ripe Variety Group 2 olives, of the Obliza variety, shall be of such a size that not more than 35 percent, by count, of the olives may weigh less than 1/127 pound (3.5 grams) each except that not more than 7 percent, by count, of the olives may

weigh less than 1/135 pound (3.3 grams) each;

* * * * *

Dated: August 6, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-19166 Filed 8-12-92; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1102

[Docket No. AS92-3]

Appraisal Subcommittee; Appraisal Regulation; Privacy Act Implementation

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Final rule.

SUMMARY: The Appraisal Subcommittee ("ASC") of the Federal Financial Institutions Examination Council ("FFIEC") adopts procedures pertaining to the privacy of individuals and systems of records maintained by the ASC. These procedures are intended to bring the ASC into full compliance with the Privacy Act of 1974.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Edwin W. Baker, Executive Director, or Marc L. Weinberg, General Counsel, at (202) 634-6520, Appraisal Subcommittee, 2100 Pennsylvania Avenue, NW., Suite 200, Washington, DC 20037.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

On August 9, 1989, Congress adopted Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [1] ("FIRREA"), including section 1102 [2] of Title XI, which established the ASC and placed it within the FFIEC. The ASC consists of representatives appointed by the heads of the Federal financial institutions regulatory agencies ("Regulatory Agencies")[3] and the Department of Housing and Urban Development. Congress intended title XI of FIRREA and the ASC, the Regulatory Agencies and the Resolution Trust Corporation ("RTC") to protect Federal financial and public policy interests [4] in real estate-related financial transactions [5] requiring the services of an appraiser.[6]

The ASC has several statutory duties under title XI. First, it must monitor the appraisal regulations adopted by the Regulatory Agencies and the RTC (collectively, "Agencies"). Those regulations set out appraisal standards for Federally related transactions [7] and define those Federally related transactions requiring the services of a State certified or State licensed appraiser. Second, the ASC must monitor and review the practices, procedures, activities, and organizational structure of the Appraisal Foundation. Third, the ASC must monitor the certification and licensing programs for real estate appraisers in each State, territory, commonwealth, and the District of Columbia ("States") [8] and must review the State's compliance with the requirements of title XI. It also is authorized by title XI to take action against non-complying States.[9]

Under sections 1103(a)(3) and 1109(a) of title XI,[10] each State with an appraiser certifying and licensing agency is responsible for transmitting to the ASC a roster of State certified and licensed appraisers who are eligible to perform appraisals in Federally related transactions, along with an annual registry fee, and the ASC must maintain a national registry of these appraisers. The ASC has implemented this registry.[11] The information in the registry clearly is protected by the Privacy Act because some data elements pertain to individuals, and it can be accessed by individual identifiers.[12]

The ASC published 12 CFR part 1102, subpart C ("subpart C" or "subpart") for public comment at 57 FR 11017 (April 1, 1992). The ASC did not receive any written comments. The ASC, however, received and incorporated into the final version of the subpart oral comments from the Office of Management and Budget ("OMB").[13] Substantive changes resulting from OMB's comments are discussed below.[14]

The ASC has processed subpart C with as little delay as possible to ensure the prompt implementation of the protections provided by the Privacy Act. Subpart C's implementation of these protections is especially important because any State agency that is issuing appraiser certifications and licenses generally must submit its registry data to the ASC (together with the appropriate registry fees) as soon as possible.

II. Statutory Authority

The Privacy Act applies to records kept by a Federal agency on an individual person that are retrievable by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. It protects individuals from an agency's disclosure of information in such "systems of records" without the written permission of the individual in question. The Privacy Act also requires each agency to adopt regulations implementing the provisions of the Act, including those that enable individuals to access and amend agency records pertaining to them.[15]

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[1] Pub. L. 101-73, 103 Stat. 511 (1989), as amended by Pub. L. 102-233, 105 Stat. 1761 (1991) and Pub. L. 102-242, 105 Stat. 2336 (1991).

[2] 12 U.S.C. 3310.

[3] The Regulatory Agencies are the Board of Governors of the Federal Reserve System ("FRS"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of the Comptroller of the Currency ("OCC"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA"). *See* section 1122(6) of title XI, 12 U.S.C. 3350(6).

[4] Title XI's general purpose is to provide that Federal financial and public policy interests will be protected by requiring that certain real estate appraisals are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. *See* section 1101 of title XI, 12 U.S.C. 3331.

[5] *See* section 1121(5) of title XI, 12 U.S.C. 3350(5), for the definition of "real estate-related financial transaction."

[6] The Regulatory Agencies and the RTC have adopted appraisal regulations that, among other things, clarify the phrase, requires the services of an appraiser. *See* 12 CFR part 34 (OCC); part 225, subpart G (FRS); part 323 (FDIC); part 564 (OTS); part 722 (NCUA); and part 1608 (RTC).

[7] *See* section 1121(4) of title XI, 12 U.S.C. 3350(4), which defines a "Federally related transaction."

[8] The ASC is required to monitor State appraiser certifying and licensing agencies ("State agencies") for the purpose of determining whether the agency's policies, practices, and procedures are consistent with title XI. *See* section 1118(a) of title XI, 12 U.S.C. 3347(a). *See also*, section 1103(a)(1) of title XI, 12 U.S.C. 3332(a)(1).

[9] *See* section 1118 of title XI, 12 U.S.C. 3347.

[10] 12 U.S.C. 3332(a)(1) and 3338(a), respectively.

[11] To obtain publicly available registry data, contact the National Technical Information Service, a part of the Department of Commerce, at: NTIS Mail List Service, Room 2000S, National Technical Information Services, 5285 Port Royal Road, Springfield, VA 22162, or call (703) 487-4612.

[12] On April 1, 1992, the ASC published in the Federal Register a notice establishing the registry as a "system of records" under the Privacy Act of 1974, 57 FR 11084.

[13] Telephone conversations of May 4 and 8, 1992, between Maya Bernstein, OMB, and Marc L. Weinberg, General Counsel, ASC.

[14] All of OMB's comments were incorporated. Most of the comments, however, were not substantive. For example, throughout subpart C, "Federal holidays" was substituted for "legal public holidays," and the words, "or correct" were removed from the end of the phrase, "a request to amend or correct."

[15] 5 U.S.C. 552a(f)(1) and (2).

The ASC is subject to the Privacy Act. The definition of an "agency" in the Act incorporates the definition used in the Administrative Procedure Act.[16] In pertinent part, that definition includes "each authority of the Government of the United States, whether or not it is within or subject to review by another agency * * *, includ[ing] any * * * establishment in the executive branch of the Government * * *, or any independent regulatory agency."

III. Substantive Changes

On the advice of OMB, the ASC is deleting two sections of proposed subpart C. First, the ASC is deleting §§ 1102.107(a)(10) and (b)(4). Section 1102.107 enables a person to appeal to the ASC's Executive Director an initial adverse determination of the ASC's Privacy Act Officer regarding access to, or amendment of, a document under § 1102.106 of the subpart. As proposed, subsection (a)(10) would have allowed the Executive Director, in appropriate cases, to shift from him or herself to the ASC the responsibility to review an initial adverse determination. Likewise, subsection (b)(4) provided the Executive Director with the discretion to refer to the ASC for disposition matters concerning statements of disagreements pertaining to the Executive Director's denial of a request to amend a record. The OMB believed that the injection of ASC review of these matters at the discretion of the Executive Director would have been confusing for persons seeking relief under the Privacy Act. As adopted, subpart C clearly lays out a simplified, two-tier review process, with the ASC Privacy Act Officer making initial determinations and the Executive Director reviewing those determinations.

Second, OMB recommended the deletion of the "Exemptions" provision, § 1102.111. OMB noted that exemptions cannot be authorized generally as was proposed by this section. Instead, exemptions must be proposed and adopted relating to specific systems of records. While the ASC may determine that the proposal and adoption of such specific exemptions may become necessary at some future time, the ASC has determined that at this time such exemptions are not needed.

IV. Conclusion

The ASC is adopting subpart C to implement the Privacy Act of 1974. In particular, subpart C sets out the ASC's procedures for providing individuals with access to records pertaining to them and an ability to amend those records.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980,[17] forms, reporting and recordkeeping requirements included in 12 CFR part 1102, subpart C, were submitted to the OMB for review and approval on March 4, 1992.[18] OMB approved subpart C on July 7, 1992, through July 31, 1995, and assigned it OMB control number 3139–0004. Subpart C will fully implement the Privacy Act of 1974 at the ASC.[19] The estimated number of respondents is 325, each submitting one response per year, with an estimated average annual reporting burden of .33 hours per response.

VI. Regulatory Flexibility Act Statement

Pursuant to section 605(b) of the Regulatory Flexibility Act, the ASC certifies that subpart C is not expected to have a significant adverse economic impact on a substantial number of small entities. The subpart implements the Privacy Act, which is concerned with records of an agency containing information on individual persons only. The Privacy Act does not address business or corporate entities. Accordingly, a regulatory flexibility analysis is not required.

VII. Executive Order 12291 Statement

The ASC has determined that subpart C does not constitute a "major rule" within the meaning of Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required on the grounds that this subpart:

(1) Would not have an annual effect on the economy of $100 million or more;

(2) Would not result in a major increase in the cost of financial institution operations or governmental supervision; and

(3) Would not have a significant adverse effect on competition (foreign or domestic), employment, investment, productivity or innovation, within the meaning of the Executive Order.

List of Subjects in 12 CFR Part 1102

Administrative practice and procedure, appraisers, Banks, banking, Mortgages, Privacy, Reporting and recordkeeping requirements.

Text of the Final Rule

Chapter XI, title 12, part 1102 of the Code of Federal Regulations is amended as set forth below:

PART 1102–APPRAISAL REGULATION

1. By adding new subpart C, consisting of §§ 1102.100 through 1102.110, to part 1102, to read as follows:

Subpart C—Rules Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Appraisal Subcommittee

Sec.
1102.100 Authority, purpose and scope.
1102.101 Definitions.
1102.102 Times, places and requirements for requests pertaining to individual records in a record system and for the identification of individuals making requests for access to records pertaining to them.
1102.103 Disclosure of requested records.
1102.104 Special procedure: Medical records.
1102.105 Requests for amendment of records.
1102.106 Review of requests for amendment.
1102.107 Appeal of initial adverse agency determination regarding access or amendment.
1102.108 General provisions.
1102.109 Fees.
1102.110 Penalties.

Subpart C—Rules Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Appraisal Subcommittee

Authority: 12 U.S.C. 552a.

§ 1102.100 Authority, purpose and scope.

(a) This subpart is issued under the Privacy Act of 1974, Public Law 93–579, 88 Stat. 1896; 12 U.S.C. 552a, as amended.

(b) The Privacy Act of 1974 is based, in part, on the finding by Congress that "in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies." To achieve this objective, the Act generally provides that Federal agencies must advise an individual upon request whether records maintained by the agency in a system of records pertain to the individual and must grant the individual access to such records. The Act further provides that individuals may request amendments to records pertaining to them that are maintained by the agency, and that the agency shall either grant the requested amendments or set forth fully its reasons for refusing to do so.

(c) The Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC), pursuant to subsection (f) of the Privacy Act, adopts the following rules and procedures to

[16] 5 U.S.C. 552a(a)(1), *incorp. by ref, id.* at sections 552(e) and 551(1).

[17] 44 U.S.C. 35.

[18] 57 FR 8330 (March 9, 1992).

[19] 12 U.S.C. 3347.

implement the provisions of the Act summarized above and other provisions of the Act. These rules and procedures are applicable to all requests for information and access or amendment to records pertaining to an individual that are contained in any system of records that is maintained by the ASC.

§ 1102.101 Definitions.

The following definitions shall apply for purposes of this subpart:

(a) The terms *individual, maintain, record, system of records,* and *routine use* are defined for purposes of these rules as they are defined in 5 U.S.C. 552a(a)(2), (a)(3), (a)(4), (a)(5) and (a)(7).

(b) *ASC* or *Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(c) *Privacy Act Officer* means the ASC's Associate Director for Administration or such other ASC staff officer, other than the Executive Director, duly designated by the ASC's Executive Director.

§ 1102.102 Times, places and requirements for requests pertaining to individual records in a record system and for the identification of individuals making requests for access to records pertaining to them.

(a) *Place to make request.* Any request by an individual to be advised whether any system of records maintained by the ASC and named by the individual contains a record pertaining to him or her, or any request by an individual for access to a record pertaining to him or her that is contained in a system of records maintained by the ASC, shall be submitted in person at the ASC between 9 a.m. and 4:30 p.m., Monday through Friday, which is located at 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC. 20037, or by mail addressed to: Privacy Act Officer, ASC, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC. 20037. All requests will be required to be put in writing and signed by the individual making the request. In the case of requests for access that are made by mail, the envelope should be clearly marked "Privacy Act Request."

(1) *Information to be included in requests.* Each request by an individual concerning whether the ASC maintains in a system of records a record that pertains to the individual, or for access to any record pertaining to the individual that is maintained by the ASC in a system of records, shall include such information as will assist the ASC in identifying those records as to which the individual is seeking information or access. Where practicable, the individual should identify the system of records that is the subject of his or her request by reference to the ASC's notices of systems of records, which are published in the **Federal Register**, as required by section (e)(4) of the Privacy Act, 5 U.S.C. 552a(e)(4). Where a system of records is compiled on the basis of a specific identification scheme, the individual should include in his or her request the identification number or other identifier assigned to the individual. In the event the individual does not know that number or identifier, the individual shall provide other information, including his or her full name, address, date of birth and subject matter of the record, to aid in processing his or her request. If additional information is required before a request can be processed, the individual shall be so advised.

(2) *Verification of identity.* When the fact of the existence of a record is not required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, as amended, or when a record as to which access has been requested is not required to be disclosed under that Act, the individual seeking the information or requesting access to the record shall be required to verify his or her identity before access will be granted or information given. For this purpose, individuals shall appear at the ASC located at 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC., between 9 a.m. to 4:30 p.m., Monday through Friday. The ASC's Office is not open on Saturdays, Sundays or Federal holidays.

(3) *Methods for verifying identity—appearance in person.* For the purpose of verifying identity, an individual seeking information regarding pertinent records or access to those records shall furnish documentation that may reasonably be relied on to establish the individual's identity. Such documentation might include a valid birth certificate, driver's license, employee or military identification card, and medicare card.

(4) *Method for verifying identity—by mail.* Where an individual cannot appear at the ASC's Office for the purpose of verifying identity, the individual shall submit, along with the request for information or access, a signed and notarized statement attesting to his or her identity. Where access is being sought, the sworn statement shall include a representation that the records being sought pertain to the individual and a stipulation that the individual is aware that knowingly and willfully requesting or obtaining records pertaining to an individual from the ASC under false pretenses is a criminal offense.

(5) *Additional procedures for verifying identity.* When it appears appropriate to the Privacy Act Officer, other arrangements may be made for the verification of identity as are reasonable under the circumstances and appear to be effective to prevent unauthorized disclosure of, or access to, individual records.

(b) *Acknowledgement of requests for information pertaining to individual records in a record system or for access to individual records.* (1) Except where an immediate acknowledgement is given for requests made in person, the receipt of a request for information pertaining to individual records in a record system will be acknowledged within 10 days, excluding Saturdays, Sundays and Federal holidays. Requests will be processed as promptly as possible and a response to such requests will be given within 30 days (excluding Saturdays, Sundays, and Federal holidays) unless, within the 30 day period and for cause shown, the individual making the request is notified in writing that a longer period is necessary.

§ 1102.103 Disclosure of requested records.

(a) *Initial review.* Requests by individuals for access to records pertaining to them will be referred to the ASC's Privacy Act Officer, who initially will determine whether access will be granted.

(b) *Grant of request for access.* (1) If it is determined that a request for access to records pertaining to an individual will be granted, the individual will be advised by mail that access will be given at the ASC or a copy of the requested record will be provided by mail if the individual shall so indicate. Where the individual requests that copies of the record be mailed to or her or requests copies of a record upon reviewing it at the ASC, the individual shall pay the cost of making requested copies, as set forth in § 1102.109 of this subpart.

(2) In granting access to an individual to a record pertaining to him or her, the ASC staff shall take steps to prevent the unauthorized disclosure of information pertaining to other individuals.

(c) *Denial of request for access.* If it is determined that access will not be granted, the individual making the request will be notified of that fact and given the reasons why access is being denied. The individual also will be advised of his or her right to seek review by the Executive Director of the initial decision to deny access, in accordance

with the procedures set forth in § 1102.107 of this subpart.

(d) *Time for acting on requests for access.* Access to a record pertaining to an individual normally will be granted or denied within 30 days (excluding Saturdays, Sundays, and Federal holidays) after the receipt of the request for access, unless the individual making the request is notified in writing within the 30 day period that, for good cause shown, a longer time is required. In such cases, the individual making the request shall be informed in writing of the difficulties encountered and an indication shall be given as to when it is anticipated that access may be granted or denied.

(e) *Authorization to allow designated person to review and discuss records pertaining to another individual.* An individual, who is granted access to records pertaining to him or her and who appears at the ASC Office to review the records, may be accompanied by another person of his or her choosing. Where the records as to which access has been granted are not required to be disclosed under provisions of the Freedom of Information Act, 5 U.S.C. 552, as amended, the individual requesting the records, before being granted access, shall execute a written statement, signed by him or her, specifically authorizing the latter individual to review and discuss the records. If such authorization has not been given as described, the person who has accompanied the individual making the request will be excluded from any review or discussion of the records.

(f) *Exclusion for certain records.* Nothing contained in these rules shall allow an individual access to any information compiled in reasonable anticipation of an administrative judicial or civil action or proceeding.

§ 1102.104 Special procedure: Medical records.

(a) *Statement of physician or mental health professional.* When an individual requests access to records pertaining to the individual that include medical and/or psychological information, the ASC, if it deems it necessary under the particular circumstances, may require the individual to submit with the request a signed statement by the individual's physician or a mental health professional indicating that, in his or her opinion, disclosure of the requested records or information directly to the individual will not have an adverse effect on the individual.

(b) *Designation of physician or mental health professional to receive records.* If the ASC believes, in good faith, that disclosure of medical and/or psychological information, directly to an individual could have an adverse effect on that individual, the individual may be asked to designate in writing a physician or mental health professional to whom the individual would like the records to be disclosed, and disclosure that otherwise would be made to the individual will instead be made to the designated physician or mental health professional.

§ 1102.105 Requests for amendment of records.

(a) *Place to make requests.* A request by an individual to amend records pertaining to him or her may be made in person during normal business hours at the ASC located at 2100 Pennsylvania Avenue, NW., Suite 200, Washington, DC, or by mail addressed to the Privacy Act Officer, ASC, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037.

(1) *Information to be included in requests.* Each request to amend an ASC record shall reasonably describe the record sought to be amended. Such description should include, for example, relevant names, dates and subject matter to permit the record to be located among the records maintained by the ASC. An individual who has requested that a record pertaining to the individual be amended will be advised promptly if the record cannot be located on the basis of the description given and that further identifying information is necessary before the request can be processed. An initial evaluation of a request presented in person will be made immediately to ensure that the request is complete and to indicate what, if any, additional information will be required. Verification of the individual's identity as set forth in § 1102.102(a) (2), (3), (4) and (5) may also be required.

(2) *Basis for amendment.* An individual requesting an amendment to a record pertaining to the individual shall specify the substance of the amendment and set forth facts and provide such materials that would support his or her contention that the record as maintained by the ASC is not accurate, timely or complete, or that the record is not necessary and relevant to accomplish a statutory purpose of the ASC as authorized by law or by Executive Order of the President.

(b) *Acknowledgement of requests for amendment.* Receipt of a request to amend a record pertaining to an individual normally will be acknowledged in writing within 10 days after such request has been received, excluding Saturdays, Sundays and Federal holidays. When a request to amend is made in person, the individual making the request will be given a written acknowledgement when the request is presented. The acknowledgement will describe the request received and indicate when it is anticipated that action will be taken on the request. No acknowledgement will be sent when the request for amendment will be reviewed, and an initial decision made, within the 10 day period after such request has been received.

§ 1102.106 Review of requests for amendment.

(a) *Initial review.* As in the case of requests for access, requests by individuals for amendment to records pertaining to them will be referred to the ASC's Privacy Act Officer for an initial determination.

(b) *Standards to be applied in reviewing requests.* In reviewing requests to amend records, the Privacy Act Officer will be guided by the criteria set forth in 5 U.S.C. 552(e) (1) and (5), *i.e.,* that records maintained by the ASC shall contain only such information as is necessary and relevant to accomplish a statutory purpose of the ASC as required by statute or Executive Order of the President and that such information also be accurate, timely, relevant and complete. These criteria will be applied whether the request is to add material to a record or to delete information from a record.

(c) *Time for acting on requests.* Initial review of a request by an individual to amend a record shall be completed as promptly as is reasonably possible and normally within 30 days (excluding Saturdays, Sundays, and Federal holidays) from the date the request was received, unless unusual circumstances preclude completion of review within that time. If the anticipated completion date indicated in the acknowledgement cannot be met, the individual requesting the amendment will be advised in writing of the delay and the reasons therefor, and also advised when action is expected to be completed.

(d) *Grant of requests to amend records.* If a request to amend a record is granted in whole or in part, the Privacy Act Officer will:

(1) Advise the individual making the request in writing of the extent to which it has been granted;

(2) Amend the record accordingly; and

(3) Where an accounting of disclosures of the record has been kept pursuant to 5 U.S.C. 552a(c), advise all previous recipients of the record of the fact that the record has been amended and the substance of the amendment.

(e) *Denial of requests to amend records.* If an individual's request to amend a record pertaining to him is denied in whole or in part, the Privacy Act Officer will:

(1) Promptly advise the individual making the request in writing of the extent to which the request has been denied;

(2) State the reasons for the denial of the request;

(3) Describe the procedures established by the ASC to obtain further review within the ASC of the request to amend, including the name and address of the person to whom the appeal is to be addressed; and

(4) Inform the individual that the Privacy Act Officer will provide information and assistance to the individual in perfecting an appeal of the initial decision.

§ 1102.107 Appeal of initial adverse agency determination regarding access or amendment.

(a) *Administrative review.* Any person who has been notified pursuant to § 1102.103(c) that a request for access to records pertaining to him or her has been denied in whole or in part, or pursuant to § 1102.106(e) of this subpart that a request for amendment has been denied in whole or in part, or who has received no response to a request for access or to amend within 30 days (excluding Saturdays, Sundays and Federal holidays) after the request was received by the ASC's staff (or within such extended period as may be permitted in accordance with §§ 1102.103(d) and 1102.106(c) of this subpart), may appeal the adverse determination or failure to respond by applying for an order of the Executive Director determining and directing that access to the record be granted or that the record be amended in accordance with his or her request.

(1) The application shall be in writing and shall describe the record in issue and set forth the proposed amendment and the reasons therefor.

(2) The application shall be delivered to the ASC, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC, or by mail addressed to the Privacy Act Officer, ASC, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037.

(3) The applicant may state such facts and cite such legal or other authorities in support of the application.

(4) The Executive Director will make a determination with respect to any appeal within 30 days after the receipt of such appeal (excluding Saturdays, Sundays, and Federal holidays), unless for good cause shown, the Executive Director shall extend that period. If such an extension is made, the individual who is appealing shall be advised in writing of the extension, the reasons therefor, and the anticipated date when the appeal will be decided.

(5) In considering an appeal from a denial of a request to amend a record, the Executive Director shall apply the same standards as set forth in § 1102.106(b).

(6) If the Executive Director concludes that access should be granted, the Executive Director shall issue an order granting access and instructing the Privacy Act Officer to comply with § 1102.103(b).

(7) If the Executive Director concludes that the request to amend the record should be granted in whole or in part, the Executive Director shall issue an order granting the requested amendment in whole or in part and instructing the Privacy Act Officer to comply with the requirements of § 1102.106(d) of this subpart, to the extent applicable.

(8) If the Executive Director affirms the initial decision denying access, the Executive Director shall issue an order denying access and advising the individual seeking access of:

(i) The order;

(ii) The reasons for denying access; and

(iii) The individual's right to obtain judicial review of the decision pursuant to 5 U.S.C. 552a(g)(1)(B).

(9) If the Executive Director determines that the decision of the Privacy Act Officer denying a request to amend a record should be upheld, the Executive Director shall issue an order denying the request and the individual shall be advised of:

(i) The order refusing to amend the record and the reasons therefor;

(ii) The individual's right to file a concise statement setting forth his or her disagreement with the Executive Director's decision not to amend the record;

(iii) The procedures for filing such a statement of disagreement with the Executive Director;

(iv) The fact that any such statement of disagreement will be made available to anyone to whom the record is disclosed, together with, if the Executive Director deems it appropriate, a brief statement setting forth the Executive Director's reasons for refusing to amend;

(v) The fact that prior recipients of the record in issue will be provided with the statement of disagreement and the Executive Director's statement, if any, to the extent that an accounting of such disclosures has been maintained pursuant to 5 U.S.C. 552a(c); and

(vi) The individual's right to seek judicial review of the Executive Director's refusal to amend, pursuant to 5 U.S.C. 552a(g)(1)(A).

(b) *Statement of disagreement.* As noted in paragraph (a)(9)(ii) of this section, an individual may file with the Executive Director a statement setting forth his or her disagreement with the Executive Director's denial of his or her request to amend a record.

(1) Such statement of disagreement shall be delivered to the ASC, 2100 Pennsylvania Avenue, NW., Suite 200, Washington, DC 20037, within 30 days after receipt by the individual of the Executive Director's order denying the amendment, excluding Saturdays, Sundays and Federal holidays. For good cause shown, this period can be extended for a reasonable time.

(2) Such statement of disagreement shall concisely state the basis for the individual's disagreement. Unduly lengthy or irrelevant materials will be returned to the individual by the Executive Director for appropriate revisions before they become a permanent part of the individual's record.

(3) The record about which a statement of disagreement has been filed will clearly note which part of the record is disputed and the Executive Director will provide copies of the statement of disagreement and, if the Executive Director deems it appropriate, provide a concise statement of his or her reasons for refusing to amend the record, to persons or other agencies to whom the record has been or will be disclosed.

§ 1102.108 General provisions.

(a) *Extensions of time.* Pursuant to §§ 1102.103(b), 1102.104(d), 1102.109(c) and 1102.109(a)(4) of this subpart, the time within which a request for information, access or amendment by an individual with respect to records maintained by the ASC that pertain to him or her normally would be processed may be extended for good cause shown or because of unusual circumstances. As used in these rules, *good cause* and *unusual circumstances* shall include, but only to the extent reasonably necessary to the proper processing of a particular request:

(1) The need to search for and collect the requested records from establishments that are separate from the ASC. Some records of the ASC may be stored in Federal Records Centers in accordance with law—including many of the documents that have been on file with the ASC for more than 2 years—and cannot be made available promptly.

Any person who has requested for personal examination a record stored at the Federal Records Center will be notified when the record will be made available.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which may be demanded in a single request. While every reasonable effort will be made to comply fully with each request as promptly as possible on a first-come, first-served basis, work done to search for, collect and appropriately examine records in response to a request for a large number of records will be contingent upon the availability of processing personnel in accordance with an equitable allocation of time to all members of the public who have requested or wish to request records.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components within the ASC having substantial subject-matter interest herein.

(b) *Effective date of action.* Whenever it is provided in this subpart that an acknowledgement or response to a request will be given by specific times, deposit in the mails of such acknowledgement or response by that time, addressed to the person making the request, will be deemed full compliance.

(c) *Records in use by a member of the ASC or its staff.* Although every effort will be made to make a record in use by a member of the ASC or its staff available when requested, it may occasionally be necessary to delay making such a record available when doing so at the time the request is made would seriously interfere with the work of the ASC or its staff.

(d) *Missing or lost records.* Any person who has requested a record or a copy of a record pertaining to him or her will be notified if the record sought cannot be found. If the person so requests, he or she will be notified if the record subsequently is found.

(e) *Oral requests; misdirected written requests—(1) Telephone and other oral requests.* Before responding to any request by an individual for information concerning whether records maintained by the ASC in a system of records pertain to the individual or to any request for access to records by an individual, such request must be in writing and signed by the individual making the request. The Executive Director will not entertain any appeal from an alleged denial of failure to comply with an oral request. Any person who has made an oral request for information or access to records who believes that the request has been improperly denied should resubmit the request in appropriate written form to obtain proper consideration and, if need be, administrative review.

(2) *Misdirected written requests.* The ASC cannot assure that a timely or satisfactory response will be given to written requests for information, access or amendment by an individual with respect to records pertaining to him or her that are directed to the ASC other than in a manner prescribed in §§ 1102.103(a), 1102.106(a), 1102.108(a)(2), and 1102.110 of this subpart. Any staff member who receives a written request for information, access or amendment should promptly forward the request to the Privacy Act Officer. Misdirected requests for records will be considered to have been received by the ASC only when they have been actually received by the Privacy Act Officer in cases under § 1102.108(a)(2). The Executive Director will not entertain any appeal from an alleged denial or failure to comply with a misdirected request, unless it is clearly shown that the request was in fact received by the Privacy Act Officer.

§ 1102.109 Fees.

(a) There will be no charge assessed to the individual for the ASC's expense involved in searching for or reviewing the record. Copies of the ASC's records will be provided by a commercial copier at rates established by a contract between the copier and the ASC or by the ASC at the rates in § 1101.4(b)(5)(ii) of 12 CFR part 1101.

(b) *Waiver or reduction of fees.* Whenever the Executive Director of the ASC determines that good cause exists to grant a request for reduction or waiver of fees for copying documents, he or she may reduce or waive any such fees.

§ 1102.110 Penalties.

Title 18 U.S.C. 1001 makes it a criminal offense, subject to a maximum fine of $10,000, or imprisonment for not more than 5 years or both, to knowingly and willingly make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. 5 U.S.C. 552a(i) makes it a misdemeanor punishable by a fine of not more than $5,000 for any person knowingly and willfully to request or obtain any record concerning an individual from the ASC under false pretenses. 5 U.S.C. 552a(i) (1) and (2) provide criminal penalties for certain violations of the Privacy Act by officers and employees of the ASC.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: August 7, 1992.

Fred D. Finke,

Chairman.

[FR Doc. 92–19233 Filed 8–12–92; 8:45 am]

BILLING CODE 6210–01

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 26941; Amdt. No. 371]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 GMT, August 20, 1992.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create the need for

this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next schedule charting and publication date of the flight information to assure its timely availability of the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on July 30, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 GMT, August 20, 1992:

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS—AMENDMENT 371 EFFECTIVE DATE, AUGUST 20, 1992

From	To	MEA
§ 95.6004 VOR Federal Airway 4 is Amended to Read in Part		
Lambs, IN FIX	*Apalo, IN FIX	**3000
*4500–MRA		
**2400–MOCA		
Apalo, IN FIX	Downs, KY FIX	*3000
*2400–MOCA		
§ 95.6013 VOR Federal Airway 13 is Amended to Read in Part		
McAllen, TX VOR/DME	Harlingen, TX VOR/DME.	2000
Raymo, TX FIX	Ascot, TX FIX	*4000
*1500–MOCA		
Humble, TX VORTAC	Cleep, TX FIX	2000
Cleep, TX FIX	Legge, TX FIX	*5000
*2000–MOCA		
Lufkin, TX VORTAC	Carth, TX FIX	*3800
*2000–MOCA		
§ 95.6017 VOR Federal Airway 17 is Amended to Read in Part		
Harlingen, TX VOR/DME.	McAllen, TX VOR/DME	2000
Laredo, TX VORTAC	*Kahan, TX FIX	2400
*5000–MRA		
Kahan, TX FIX	Cotulla, TX VORTAC	*2400
*1800–MOCA		
Cotulla, TX VORTAC	Milet, TX FIX	2500
§ 95.6020 VOR Federal Airway 20 is Amended to Read in Part		
Boint, TX FIX	Palacios, TX VORTAC	1700
§ 95.6047 VOR Federal Airway 47 is Amended to Read in Part		
Pocket City, IN VORTAC.	*Holan, IN FIX	2500
*2600–MRA		
Sacko, IN FIX	Heals, IN FIX	*3500
*2200–MOCA		
§ 95.6052 VOR Federal Airway 52 is Amended to Read in Part		
Quincy, IL VORTAC	*Rivrs, IL FIX	2600
*6000–MRA		
§ 95.6056 VOR Federal Airway 56 is Amended to Read in Part		
Colliers, SC VORTAC	Columbia, SC VORTAC	*2100
*2100–MOCA		
§ 95.6062 VOR Federal Airway 62 is Amended to Read in Part		
Lubbock, TX VORTAC	*Rotan, TX FIX	**6000
*4500–MRA		
**5000–MOCA		
§ 95.6063 VOR Federal Airway 63 is Amended to Read in Part		
Springfield, MO VORTAC.	*Roach, MO FIX	4000
*4000–MRA		
§ 95.6070 VOR Federal Airway 70 is Amended to Read in Part		
U.S. Mexican Border	Brownsville, TX VORTAC.	*5000
*1500–MOCA		
Raymo, TX FIX	Jimie, TX FIX	*4000
*1500–MOCA		
Jimie, TX FIX	Jetty, TX FIX	*4000
*1300–MOCA		
Boint, TX FIX	Palacios, TX VORTAC	1700
§ 95.6157 VOR Federal Airway 157 is Amended by Adding		
Florence, SC VORTAC	Fayetteville, NC VOR/DME.	2200

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS—AMENDMENT 371 EFFECTIVE DATE, AUGUST 20, 1992—Continued

From	To	MEA
Fayetteville, NC VOR/DME.	Kinston, NC VORTAC	2000
§ 95.6161 VOR Federal Airway 161 is Amended to Read in Part		
Duffa, TX FIX	Polka, TX FIX	*3400
*2500–MOCA		
§ 95.6163 VOR Federal Airway 163 is Amended to Read in Part		
U.S. Mexican Border	Brownsville, TX VORTAC.	*2000
*1400–MOCA		
Manny, TX FIX	Ascot, TX FIX	*4000
*1500–MOCA		
San Antonio, TX VORTAC.	Lampasas, TX VORTAC.	*3500
*2900–MOCA		
Lampasas, TX VORTAC.	Acton, TX VORTAC	*3000
*2000–MOCA		
Acton, TX VORTAC	Bridgeport, TX VORTAC.	3000
§ 95.6171 VOR Federal Airway 171 is Amended to Read in Part		
Lexington, KY VORTAC	McFee, KY FIX	5000
§ 95.6186 VOR Federal Airway 186 is Amended by Adding		
Paradise, CA VORTAC	Tannr, CA FIX	5500
Tannr, CA FIX	Poggi, CA VORTAC	5000
is Amended to Read in Part		
Van Nuys, CA VOR/DME.	Tifni, CA FIX	5000
Tifni, CA FIX	Paradise, CA VORTAC	4000
§ 95.6222 VOR Federal Airway 222 is Amended to Read in Part		
Junction, TX VORTAC	Stonewall, TX VORTAC	*4000
*3300–MOCA		
§ 95.6245 VOR Federal Airway 245 is Amended to Read in Part		
Jackson, MS VORTAC	*Haron, MS FIX	2400 MAA–7000
*2700–MRA		
§ 95.6267 VOR Federal Airway 267 is Amended to Read in Part		
Craig, FL VORTAC	*Baxly, GA FIX	**3000
*3000–MRA		
**2500–MOCA		
§ 95.6269 VOR Federal Airway 269 is Amended to Read in Part		
Cobur, OR FIX	*Eugene, OR VORTAC	
	NE BND	
	SW BND	
*3800–MCA Eugene VORTAC, NE BND		
§ 95.6292 VOR Federal Airway 29 is Amended to Read in Part		
Barnes, MA VORTAC	Glyde, MA FIX	*7000
*3000–MOCA		
Glyde, MA FIX	Boston, MA VORTAC	*4000
*3000–MOCA		
§ 95.6305 VOR Federal Airway 305 is Amended to Read in Part		
Pocket City, IN VORTAC.	*Augus, IN FIX	240000
*2600–MRA		

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS—AMENDMENT 371 EFFECTIVE DATE, AUGUST 20, 1992—Continued

From	To	MEA
§ 95.6330 VOR Federal Airway 330 is Amended to Read in Part		
Osity, ID FIX	*Jackson, WY VOR/DME.	14000
*13100–MCA Jackson VOR/DME, W BND		
DuNoir, WY VOR/DME	*Rowey, WY FIX	**14000
*11000–MCA Rowey FIX, W BND		
**13500–MOCA		
§ 95.6352 VOR Federal Airway 352 is Amended to Read in Part		
Houlton, ME VOR/DME	U.S. Canadian Border	2000
§ 95.6358 VOR Federal Airway 358 is Amended to Read in Part		
San Antonio, TX VORTAC.	Guada, TX FIX	*4000
*2500–MOCA		
§ 95.6359 VOR Federal Airway 359 is Amended to Read in Part		
U.S. Mexican Border	Laredo, TX VORTAC	*3000
*2400–MOCA		
§ 95.6407 VOR Federal Airway 407 is Amended to Read in Part		
Jimie, TX FIX	Jerry, TX FIX	*4000
*1300–MOCA		
Palacios, TX VORTAC	Humble, TX VORTAC	2500
Linen, LA FIX	Shreveport, LA VORTAC.	3000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS—AMENDMENT 371 EFFECTIVE DATE, AUGUST 20, 1992—Continued

From	To	MEA
§ 95.6431 VOR Federal Airway 431 is Amended by Adding		
Sisters Island, AK VORTAC.	*Lyric, AK FIX	**8000
*8000–MRA		
**5800–MOCA		
Lyric, AK FIX	Biorka Island, AK VORTAC.	5000
§ 95.6437 VOR Federal Airway 437 is Amended to Read in Part		
Jetso, FL FIX	*Stary, GA FIX	10000
*5000–MRA		
§ 95.6512 VOR Federal Airway 512 is Amended to Read in Part		
Pocket City, IN VORTAC.	*Holan, IN FIX	2500
*2600–MRA		
§ 95.6526 VOR Federal Airway 526 is Amended to Read in Part		
Dryer, OH VORTAC	Chardon, OH VORTAC	3000
Chardon, OH VORTAC	Youngstown, OH VORTAC.	3000
§ 95.6550 VOR Federal Airway 550 is Amended to Read in Part		
Cotulla, TX VORTAC	Millet, TX FIX	2500
Dents, TX FIX	*Cedil, TX FIX	**3400
*3500–MRA		
**2600–MOCA		

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS—AMENDMENT 371 EFFECTIVE DATE, AUGUST 20, 1992—Continued

From	To	MEA
§ 95.6556 VOR Federal Airway 556 is Amended to Read in Part		
Junction, TX VORTAC	Stonewall, TX VORTAC	*4000
*3300–MOCA		
§ 95.6568 VOR Federal Airway 568 is Amended to Read in Part		
San Antonio, TX VORTAC.	Guada, TX FIX	*4000
*2500–MOCA		
Guada, TX FIX	Stonewall, TX VORTAC	*4000
*3200–MOCA		
Stonewall, TX VORTAC	Llano, TX VORTAC	*4000
*3100–MOCA		

From	To	MEA	MAA
§ 95.7207 Jet Route No. 207 is Amended to Delete:			
MIAMI, FL VORTAC.	Wahaa, FL FIX	18000	45000
WAHAA, FL FIX.	Savannah, GA VORTAC.	24000	45000

§ 95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

Airway Segment		Changeover points	
From	To	Distance	From
V–186 is Amended to Delete:			
Van Nuys, CA VOR/DME	Paradise, CA VORTAC	22	Van Nuys.

[FR Doc. 92–19105 Filed 8–12–92; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 260

Guides for the Use of Environmental Marketing Claims

AGENCY: Federal Trade Commission.

ACTION: Publication of final guides.

SUMMARY: The Federal Trade Commission has adopted guides for the use of environmental claims in marketing and advertising. The guides address the applicability of section 5 of the FTC Act to environmental advertising and labeling claims. Public hearings on these issues were held on July 17–18, 1991, along with a 90–day public comment period. In addition to the guides themselves, the Commission is publishing in this notice a summary of an environmental assessment of the guides, including a finding of no significant impact, concluding that an environmental impact statement is not required under applicable law.

EFFECTIVE DATE: July 28, 1992.

ADDRESSES: Copies of the environmental assessment are available from the Public Reference Branch, room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mary Koelbel Engle (Attorney), (202) 326–3161.

SUPPLEMENTARY INFORMATION: On Friday, May 31, 1991, the Federal Trade Commission published in the **Federal Register** a request for public comment on issues concerning environmental marketing and advertising claims, and a notice that it would hold public hearings. 56 FR 24968, May 31, 1991. Public hearings on these issues were held on July 17–18, 1991, along with a 90-day public comment period. On August 2, 1991, the Commission published in the **Federal Register** a notice extending the comment period. 56 FR 37026, Aug. 2, 1991. The Commission has now adopted guides for the use of environmental claims in marketing and advertising. The guides address the applicability of section 5 of the FTC Act to environmental advertising and labeling claims. In addition to the guides themselves, the Commission is publishing in this notice a summary of an environmental assessment of the guides, including a finding of no significant impact, concluding that an environmental impact statement is not required under applicable law.

List of Subjects in 16 CFR Part 260

Advertising, Environmental claims, Labeling, and Trade practices.

For the reasons set forth in the preamble, 16 CFR ch. I is amended by adding part 260 to read as follows:

PART 260—GUIDES FOR THE USE OF ENVIRONMENTAL MARKETING CLAIMS

Sec.
260.1 Statement of purpose.
260.2 Scope of guides.
260.3 Structure of the guides.
260.4 Review procedure.
260.5 Interpretation and substantiation of environmental marketing claims.
260.6 General principles.

Sec.
260.7 Environmental marketing claims.
260.8 Environmental Assessment.

Authority: 15 U.S.C. §§ 41–58.

§ 260.1 Statement of purpose.

These guides represent administrative interpretations of laws administered by the Federal Trade Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. These guides specifically address the application of section 5 of the FTC Act (15 U.S.C. 45) to environmental advertising and marketing practices. They provide the basis for voluntary compliance with such laws by members of industry. Conduct inconsistent with the positions articulated in these guides may result in corrective action by the Commission under section 5 if, after investigation, the Commission has reason to believe that the behavior falls within the scope of conduct declared unlawful by the statute.

§ 260.2 Scope of Guides.

These guides apply to environmental claims included in labeling, advertising, promotional materials and all other forms of marketing, whether asserted directly or by implication, through words, symbols, emblems, logos, depictions, product brand names, or through any other means. The guides apply to any claim about the environmental attributes of a product or package in connection with the sales, offering for sale, or marketing of such product or package for personal, family or household use, or for commercial, institutional or industrial use. Because the guides are not legislative rules under section 18 of the FTC Act, they are not themselves enforceable regulations, nor do they have the force and effect of law. The guides themselves do not preempt regulation of other federal agencies or of state and local bodies governing the use of environmental marketing claims. Compliance with federal, state or local law and regulations concerning such claims, however, will not necessarily preclude Commission law enforcement action under section 5.

§ 260.3 Structure of the guides.

The guides are composed of general principles and specific guidance on the use of environmental claims. These general principles and specific guidance are followed by examples that generally address a single deception concern. A given claim may raise issues that are addressed under more than one example and in more than one section of the guides. In many of the examples, one or more options are presented for qualifying a claim. These options are intended to provide a "safe harbor" for marketers who want certainty about how to make environmental claims. They do not represent the only permissible approaches to qualifying a claim. The examples do not illustrate all possible acceptable claims or disclosures that would be permissible under section 5. In addition, some of the illustrative disclosures may be appropriate for use on labels but not in print or broadcast advertisements and vice versa. In some instances, the guides indicate within the example in what context or contexts a particular type of disclosure should be considered.

§ 260.4 Review procedure.

Three years after the date of adoption of these guides, the Commission will seek public comment on whether and how the guides need to be modified in light of ensuing developments. Parties may petition the Commission to alter or amend these guides in light of substantial new evidence regarding consumer interpretation of a claim or regarding substantiation of a claim. Following review of such a petition, the Commission will take such action as it deems appropriate.

§ 260.5 Interpretation and substantiation of environmental marketing claims.

Section 5 of the FTC Act makes unlawful deceptive acts and practices in or affecting commerce. The Commission's criteria for determining whether an express or implied claim has been made are enunciated in the Commission's Policy Statement on Deception.[1] In addition, any party making an express or implied claim that presents an objective assertion about the environmental attribute of a product or package must, at the time the claim is made, possess and rely upon a reasonable basis substantiating the claim. A reasonable basis consists of competent and reliable evidence. In the context of environmental marketing claims, such substantiation will often require competent and reliable scientific evidence. For any test, analysis, research, study or other evidence to be "competent and reliable" for purposes of these guides, it must be conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. Further guidance on the reasonable basis standard is set forth in the Commission's 1983 Policy Statement on the Advertising Substantiation Doctrine. 49 FR 30,999 (1984); appended to Thompson Medical Co., 104 F.T.C. 648 (1984). These guides, therefore, attempt to preview Commission policy in a relatively new context—that of environmental claims.

§ 260.6 General principles.

The following general principles apply to all environmental marketing claims, including, but not limited to, those described in § 260.7. In addition, § 260.7 contains specific guidance applicable to certain environmental marketing claims. Claims should comport with all relevant provisions of these guides, not simply the provision that seems most directly applicable.

(a) *Qualifications and Disclosures.* The Commission traditionally has held that in order to be effective, any qualifications or disclosures such as those described in these guides should be sufficiently clear and prominent to prevent deception. Clarity of language, relative type size and proximity to the claim being qualified, and an absence of contrary claims that could undercut effectiveness, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent.

(b) *Distinction Between Benefits of Product and Package.* An environmental marketing claim should be presented in a way that makes clear whether the environmental attribute or benefit being asserted refers to the product, the product's packaging or to a portion or component of the product or packaging. In general, if the environmental attribute or benefit applies to all but minor, incidental components of a product or package, the claim need not be qualified to identify that fact. There may be exceptions to this general principle. For example, if an unqualified "recyclable" claim is made and the presence of the incidental component significantly limits the ability to recycle the product, then the claim would be deceptive.

Example 1: A box of aluminum foil is labeled with the claim "recyclable," without further elaboration. Unless the type of product, surrounding language, or other context of the phrase establishes whether the claim refers to the foil or the box, the claim is deceptive if any part of either the box or the foil, other than minor, incidental components, cannot be recycled.

Example 2: A soft drink bottle is labeled "recycled." The bottle is made entirely from recycled materials, but the bottle cap is not. Because reasonable consumers are likely to consider the bottle cap to be a minor, incidental component of the package, the

[1] *Cliffdale Associates, Inc.*, 103 F.T.C. 110, at 176, 176 n.7, n.8, appendix, reprinting letter dated Oct. 14, 1983, from the Commission to The Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (1984) ("Deception Statement").

claim is not deceptive. Similarly, it would not be deceptive to label a shopping bag "recycled" where the bag is made entirely of recycled material but the easily detachable handle, an incidental component, is not.

(c) *Overstatement of Environmental Attribute.* An environmental marketing claim should not be presented in a manner that overstates the environmental attribute or benefit, expressly or by implication. Marketers should avoid implications of significant environmental benefits if the benefit is in fact negligible.

Example 1: A package is labeled, "50% more recycled content than before." The manufacturer increased the recycled content of its package from 2 percent recycled material to 3 percent recycled material. Although the claim is technically true, it is likely to convey the false impression that the advertiser has increased significantly the use of recycled material.

Example 2: A trash bag is labeled "recyclable" without qualification. Because trash bags will ordinarily not be separated out from other trash at the landfill or incinerator for recycling, they are highly unlikely to be used again for any purpose. Even if the bag is technically capable of being recycled, the claim is deceptive since it asserts an environmental benefit where no significant or meaningful benefit exists.

Example 3: A paper grocery sack is labeled "reusable." The sack can be brought back to the store and reused for carrying groceries but will fall apart after two or three reuses, on average. Because reasonable consumers are unlikely to assume that a paper grocery sack is durable, the unqualified claim does not overstate the environmental benefit conveyed to consumers. The claim is not deceptive and does not need to be qualified to indicate the limited reuse of the sack.

(d) *Comparative Claims.* Environmental marketing claims that include a comparative statement should be presented in a manner that makes the basis for the comparison sufficiently clear to avoid consumer deception. In addition, the advertiser should be able to substantiate the comparison.

Example 1: An advertiser notes that its shampoo bottle contains "20% more recycled content." The claim in its context is ambiguous. Depending on contextual factors, it could be a comparison either to the advertiser's immediately preceding product or to a competitor's product. The advertiser should clarify the claim to make the basis for comparison clear, for example, by saying "20% more recycled content than our previous package." Otherwise, the advertiser should be prepared to substantiate whatever comparison is conveyed to reasonable consumers.

Example 2: An advertiser claims that "our plastic diaper liner has the most recycled content." The advertised diaper does have more recycled content, calculated as a percentage of weight, than any other on the market, although it is still well under 100% recycled. Provided the recycled content and the comparative difference between the product and those of competitors are significant and provided the specific comparison can be substantiated, the claim is not deceptive.

Example 3: An ad claims that the advertiser's packaging creates "less waste than the leading national brand." The advertiser's source reduction was implemented sometime ago and is supported by a calculation comparing the relative solid waste contributions of the two packages. The advertiser should be able to substantiate that the comparison remains accurate.

§ 260.7 Environmental marketing claims.

Guidance about the use of environmental marketing claims is set forth below. Each guide is followed by several examples that illustrate, but do not provide an exhaustive list of, claims that do and do not comport with the guides. In each case, the general principles set forth in § 260.6 should also be followed.[2]

(a) *General Environmental Benefit Claims.* It is deceptive to misrepresent, directly or by implication, that a product or package offers a general environmental benefit. Unqualified general claims of environmental benefit are difficult to interpret, and depending on their context, may convey a wide range of meanings to consumers. In many cases, such claims may convey that the product or package has specific and far-reaching environmental benefits. As explained in the Commission's Ad Substantiation Statement, every express and material, implied claim that the general assertion conveys to reasonable consumers about an objective quality, feature or attribute of a product must be substantiated. Unless this substantiation duty can be met, broad environmental claims should either be avoided or qualified, as necessary, to prevent deception about the specific nature of the environmental benefit being asserted.

Example 1: A brand name like "Eco-Safe" would be deceptive if, in the context of the product so named, it leads consumers to believe that the product has environmental benefits which cannot be substantiated by the manufacturer. The claim would not be deceptive if "Eco-Safe" were followed by clear and prominent qualifying language limiting the safety representation to a particular product attribute for which it could be substantiated, and provided that no other deceptive implications were created by the context.

Example 2: A product wrapper is printed with the claim "Environmentally Friendly." Textual comments on the wrapper explain that the wrapper is "Environmentally Friendly because it was not chlorine bleached, a process that has been shown to create harmful substances." The wrapper was, in fact, not bleached with chlorine. However, the production of the wrapper now creates and releases to the environment significant quantities of other harmful substances. Since consumers are likely to interpret the "Environmentally Friendly" claim, in combination with the textual explanation, to mean that no significant harmful substances are currently released to the environment, the "Environmentally Friendly" claim would be deceptive.

Example 3: A pump spray product is labeled "environmentally safe." Most of the product's active ingredients consist of volatile organic compounds (VOCs) that may cause smog by contributing to ground-level ozone formation. The claim is deceptive because, absent further qualification, it is likely to convey to consumers that use of the product will not result in air pollution or other harm to the environment.

(b) *Degradable/Biodegradable/Photodegradable.* It is deceptive to misrepresent, directly or by implication, that a product or package is degradable, biodegradable or photodegradable. An unqualified claim that a product or package is degradable, biodegradable or photodegradable should be substantiated by competent and reliable scientific evidence that the entire product or package will completely break down and return to nature, *i.e.*, decompose into elements found in nature within reasonable short period of time after customary disposal. Claims of degradability, biodegradability or photodegradability should be qualified to the extent necessary to avoid consumer deception about:

(1) The product or package's ability to degrade in the environment where it is customarily disposed; and

(2) The rate and extent of degradation.

Example 1: A trash bag is marketed as "degradable," which no qualification or other disclosure. The marketer relies on soil burial tests to show that the product will decompose in the presence of water and oxygen. The trash bags are customarily disposed of in incineration facilities or at sanitary landfills that are managed in a way that inhibits degradation by minimizing moisture and oxygen. Degradation will be irrelevant for those trash bags that are incinerated and, for those disposed of in landfills, the marketer does not possess adequate substantiation that the bags will degrade in a reasonably short period of time in a landfill. The claim is therefore deceptive.

Example 2: A commercial agricultural plastic mulch film is advertised as "Photodegradable" and qualified with the phrase, "Will break down into small pieces if left uncovered in sunlight." The claim is supported by competent and reliable scientific evidence that the product will break down in a reasonably short period of time after being exposed to sunlight and into

[2] These guides do not address claims based on a "lifecycle" theory of environmental benefit. Such analyses are still in their infancy and thus the Commission lacks sufficient information on which to base guidance at this time.

sufficiently small pieces to become part of the soil. The qualified claim is not deceptive. Because the claim is qualified to indicate the limited extent of breakdown, the advertiser need not meet the elements for an unqualified photodegradable claim, *i.e.*, that the product will not only break down, but also will decompose into elements found in nature.

Example 3: A soap or shampoo product is advertised as "biodegradeable," with no qualification or other disclosure. The manufacturer has competent and reliable scientific evidence demonstrating that the product, which is customarily disposed of in sewage systems, will break down and decompose into elements found in nature in a short period of time. The claim is not deceptive.

(c) *Compostable.* It is deceptive to misrepresent, directly or by implication, that a product or package is compostable. An unqualified claim that a product or package is compostable should be substantiated by competent and reliable scientific evidence that all the materials in the product or package will break down into, or otherwise become part of, usable compost (*e.g.*, soil-conditioning material, mulch) in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device. Claims of compostability should be qualified to the extent necessary to avoid consumer deception. An unqualified claim may be deceptive.

(1) If municipal composting facilities are not available to a substantial majority of consumers or communities where the package is sold;

(2) If the claim misleads consumers about the environmental benefit provided when the product is disposed of in a landfill; or

(3) If consumers misunderstand the claim to mean that the package can be safely composted in their home compost pile or device, when in fact it cannot.

Example 1: A manufacturer indicates that its unbleached coffee filter is compostable. The unqualified claim is not deceptive provided the manufacturer can substantiate that the filter can be converted safely to usable compost in a timely manner in a home compost pile or device, as well as in an appropriate composting program or facility.

Example 2: A lawn and leaf bag is labeled as "Compostable in California Municipal Yard Waste Composting Facilities." The bag contains toxic ingredients that are released into the compost material as the bag breaks down. The claim is deceptive if the presence of these toxic ingredients prevents the compost from being usable.

Example 3: A manufacturer indicates that its paper plate is suitable for home composting. If the manufacturer possesses substantiation for claiming that the paper plate can be converted safely to usable compost in a home compost pile or device, this claim is not deceptive even if no municipal composting facilities exist.

Example 4: A manufacturer makes an unqualified claim that its package is compostable. Although municipal composting facilities exist where the product is sold, the package will not break down into usable compost in a home compost pile or device. To avoid deception, the manufacturer should disclose that the package is not suitable for home composting.

Example 5: A nationally marketed lawn and leaf bag is labeled "compostable." Also printed on the bag is a disclosure that the bag is not designed for use in home compost piles. The bags are in fact composted in municipal yard waste composting programs in many communities around the country, but such programs are not available to a substantial majority of consumers where the bag is sold. The claim is deceptive since reasonable consumers living in areas not served by municipal yard waste programs may understand the reference to mean that composting facilities accepting the bags are available in their area. To avoid deception, the claim should be qualified to indicate the limited availability of such programs, for example, by stating, "Appropriate facilities may not exist in your area." Other examples of adequate qualification of the claim include providing the approximate percentage of communities or the population for which such programs are available.

Example 6: A manufacturer sells a disposable diaper that bears the legend, "This diaper can be composted where municipal solid waste composting facilities exist. There are currently [X number of] municipal solid waste composting facilities across the country." The claim is not deceptive, assuming that composting facilities are available as claimed and the manufacturer can substantiate that the diaper can be converted safely to usable compost in municipal solid waste composting facilities.

Example 7: A manufacturer markets yard waste bags only to consumers residing in particular geographic areas served by county yard waste composting programs. The bags meet specifications for these programs and are labeled, "Compostable Yard Waste Bag for County Composting Programs." The claim is not deceptive. Because the bags are compostable where they are sold, no qualification is required to indicate the limited availability of composting facilities.

(d) *Recyclable.* It is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. A product or package should not be marketed as recyclable unless it can be collected, separated or otherwise recovered from the solid waste stream for use in the form of raw materials, in the manufacture or assembly of a new package or product. Unqualified claims of recyclability for a product or package may be made if the entire product or package, excluding minor incidental components, is recyclable. For products or packages that are made of both recyclable and non-recyclable components, the recyclable claim should be adequately qualified to avoid consumer deception about which portions or components of the product or package are recyclable. Claims of recyclability should be qualified to the extent necessary to avoid consumer deception about any limited availability of recycling programs and collection sites. If an incidental component significantly limits the ability to recycle the product, the claim would be deceptive. A product or package that is made from recyclable material, but, because of its shape, size or some other attribute, is not accepted in recycling programs for such material, should not be marketed as recyclable.

Example 1: A packaged product is labeled with an unqualified claim, "recyclable." It is unclear from the type of product and other context whether the claim refers to the product or its package. The unqualified claim is likely to convey to reasonable consumers that all of both the product and its packaging that remain after normal use of the product, exempt for minor, incidental components, can be recycled. Unless each such message can be substantiated, the claim should be qualified to indicate what portions are recyclable.

Example 2: A plastic package is labeled on the bottom with the Society of the Plastics Industry (SPI) code, consisting of a design of arrows in a triangular shape containing a number and abbreviation identifying the component plastic resin. Without more, the use of the SPI symbol (or similar industry codes) on the bottom of the package, or in a similarly inconspicuous location, does not constitute a claim of recyclability.

Example 3: A container can be burned in incinerator facilities to produce heat and power. It cannot, however, be recycled into new products or packaging. Any claim that the container is recyclable would be deceptive.

Example 4: A nationally marketed bottle bears the unqualified statement that it is "recyclable." Collection sites for recycling the material in question are not available to a substantial majority of consumers or communities, although collection sites are established in a significant percentage of communities or available to a significant percentage of the population. The unqualified claim is deceptive since, unless evidence shows otherwise, reasonable consumers living in communities not served by programs may conclude that recycling programs for the material are available in their area. To avoid deception, the claim should be qualified to indicate the limited availability of programs, for example, by stating, "Check to see if recycling facilities exist in your area." Other examples of adequate qualifications of the claim include providing the approximate percentage of communities or the population to whom programs are available.

Example 5: A soda bottle is marketed nationally and labeled, "Recyclable where facilities exist." Recycling programs for material of this type and size are available in a significant percentage of communities or to a significant percentage of the population, but are not available to a substantial majority of

consumers. The claim is deceptive since, unless evidence shows otherwise, reasonable consumers living in communities not served by programs may understand this phrase to mean that programs are available in their area. To avoid deception, the claim should be further qualified to indicate the limited availability of programs, for example, by using any of the approaches set forth in Example 4 above.

Example 6: A plastic detergent bottle is marketed as follows: "Recyclable in the few communities with facilities for colored HDPE bottles." Collection sites for recycling the container have been established in a half-dozen major metropolitan areas. This disclosure illustrates one approach to qualifying a claim adequately to prevent deception about the limited availability of recycling programs where collection facilities are not established in a significant percentage of communities or available to a significant percentage of the population. Other examples of adequate qualification of the claim include providing the number of communities with programs, or the percentage of communities or the population to which programs are available.

Example 7: A label claims that the package "includes some recyclable material." The package is composed of four layers of different materials, bonded together. One of the layers is made from the recyclable material, but the others are not. While programs for recycling this type of material are available to a substantial majority of consumers, only a few of those programs have the capability to separate out the recyclable layer. Even though it is technologically possible to separate the layers, the claim is not adequately qualified to avoid consumer deception. An appropriately qualified claim would be, "includes material recyclable in the few communities that collect multi-layer products." Other examples of adequate qualification of the claim include providing the number of communities with programs, or the percentage of communities or the population to which programs are available.

Example 8: A product is marketed as having a "recyclable" container. The product is distributed and advertised only in Missouri. Collection sites for recycling the container are available to a substantial majority of Missouri residents, but are not yet available nationally. Because programs are generally available where the product is marketed, the unqualified claim does not deceive consumers about the limited availability of recycling programs.

(e) *Recycled Content.* A recycled content claim may be made only for materials that have been recovered or otherwise diverted from the solid waste stream, either during the manufacturing process (pre-consumer), or after consumer use (post-consumer). To the extent the source of recycled content includes pre-consumer material, the manufacturer or advertiser must have substantiation for concluding that the pre-consumer material would otherwise have entered the solid waste stream. In asserting a recycled content claim, distinctions may be made between pre-consumer and post-consumer materials. Where such distinctions are asserted, any express or implied claim about the specific pre-consumer or post-consumer content of a product or package must be substantiated. It is deceptive to misrepresent, directly or by implication, that a product or package is made of recycled material. Unqualified claims of recycled content may be made only if the entire product or package, excluding minor, incidental components, is made from recycled material. For products or packages that are only partially made of recycled material, a recycled claim should be adequately qualified to avoid consumer deception about the amount, by weight, of recycled content in the finished product or package.

Example 1: A manufacturer routinely collects spilled raw material and scraps from trimming finished products. After a minimal amount of reprocessing, the manufacturer combines the spills and scraps with virgin material for use in further production of the same product. A claim that the product contains recycled material is deceptive since the spills and scraps to which the claim refers are normally reused by industry within the original manufacturing process, and would not normally have entered the waste stream.

Example 2: A manufacturer purchases material from a firm that collects discarded material from other manufacturers and resells it. All of the material was diverted from the solid waste stream and is not normally reused by industry within the original manufacturing process. The manufacturer includes the weight of this material in its calculations of the recycled content of its products. A claim of recycled content based on this calculation is not deceptive because, absent the purchase and reuse of this material, it would have entered the waste stream.

Example 3: A greeting card is composed 30% by weight of paper collected from consumers after use of a paper product, and 20% by weight of paper that was generated after completion of the paper-making process, diverted from the solid waste stream, and otherwise would not normally have been reused in the original manufacturing process. The marketer of the card may claim either that the product "contains 50% recycled material," or may identify the specific pre-consumer and/or post-consumer content by stating, for example, that the product "contains 50% total recycled material, 30% of which is post-consumer material."

Example 4: A package with 20% recycled content by weight is labeled as containing "20% recycled paper." Some of the recycled content was composed of material collected from consumers after use of the original product. The rest was composed of overrun newspaper stock never sold to customers. The claim is not deceptive.

Example 5: A product in a multi-component package, such as a paperboard box in a shrink-wrapped plastic cover, indicates that it has recycled packaging. The paperboard box is made entirely of recycled material, but the plastic cover is not. The claim is deceptive since, without qualification, it suggests that both components are recycled. A claim limited to the paperboard box would not be deceptive.

Example 6: A package is made from layers of foil, plastic, and paper laminated together, although the layers are indistinguishable to consumers. The label claims that "one of the three layers of this package is made of recycled plastic." The plastic layer is made entirely of recycled plastic. The claim is not deceptive provided the recycled plastic layer constitutes a significant component of the entire package.

Example 7: A paper product is labeled as containing "100% recycled fiber." The claim is not deceptive if the advertiser can substantiate the conclusion that 100% by weight of the fiber in the finished product is recycled.

Example 8: A frozen dinner is marketed in a package composed of a cardboard box over a plastic tray. The package bears the legend, "package made from 30% recycled material." Each packaging component amounts to one-half the weight of the total package. The box is 20% recycled content by weight, while the plastic tray is 40% recycled content by weight. The claim is not deceptive, since the average amount of recycled material is 30%.

Example 9: A paper greeting card is labeled as containing 50% by weight recycled content. The seller purchases paper stock from several sources and the amount of recycled material in the stock provided by each source varies. Because the 50% figure is based on the annual weighted average of recycled material purchased from the sources after accounting for fiber loss during the production process, the claim is permissible.

(f) *Source Reduction.* It is deceptive to misrepresent, directly or by implication, that a product or package has been reduced or is lower in weight, volume or toxicity. Source reduction claims should be qualified to the extent necessary to avoid consumer deception about the amount of the source reduction and about the basis for any comparison asserted.

Example 1: An ad claims that solid waste created by disposal of the advertiser's packaging is "now 10% less than our previous package." The claim is not deceptive if the advertiser has substantiation that shows that disposal of the current package contributes 10% less waste by weight or volume to the solid waste stream when compared with the immediately preceding version of the package.

Example 2: An advertiser notes that disposal of its product generates "10% less waste." The claim is ambiguous. Depending on contextual factors, it could be a comparison either to the immediately preceding product or to a competitor's product. The "10% less waste" reference is deceptive unless the seller clarifies which comparison is intended and substantiates that comparison, or substantiates both possible interpretations of the claim.

(g) *Refillable.* It is deceptive to misrepresent, directly or by implication, that a package is refillable. An unqualified refillable claim should not be asserted unless a system is provided for:

(1) The collection and return of the package for refill; or

(2) The later refill of the package by consumers with product subsequently sold in another package.

A package should not be marketed with an unqualified refillable claim, if it is up to the consumer to find new ways to refill the package.

Example 1: A container is labeled "refillable x times." The manufacturer has the capability to refill returned containers and can show that the container will withstand being refilled at least x times. The manufacturer, however, has established no collection program. The unqualified claim is deceptive because there is no means for collection and return of the container to the manufacturer for refill.

Example 2: A bottle of fabric softener states that it is in a "handy refillable container." The manufacturer also sells a large-sized container that indicates that the consumer is expected to use it to refill the smaller container. The manufacturer sells the large-sized container in the same market areas where it sells the small container. The claim is not deceptive because there is a means for consumers to refill the smaller container from larger containers of the same product.

(h) *Ozone Safe and Ozone Friendly.* It is deceptive to misrepresent, directly or by implication, that a product is safe for or "friendly" to the ozone layer. A claim that a product does not harm the ozone layer is deceptive if the product contains an ozone-depleting substance.

Example 1: A product is labeled "ozone friendly." The claim is deceptive if the product contains any ozone-depleting substance, including those substances listed as Class I or Class II chemicals in title VI of the Clean Air Act Amendments of 1990, Public Law No. 101–549, or others subsequently designated by EPA as ozone-depleting substances. Class I chemicals currently listed in title VI are chlorofluorocarbons (CFCs), halons, carbon tetrachloride and 1,1,1-trichloroethane. Class II chemicals currently listed in title VI are hydrochlorofluorocarbons (HCFCs).

Example 2: The seller of an aerosol product makes an unqualified claim that its product "Contains no CFCs." Although the product does not contain CFCs, it does contain HCFC–22, another ozone depleting ingredient. Because the claim "Contains no CFCs" may imply to reasonable consumers that the product does not harm the ozone layer, the claim is deceptive.

Example 3: A product is labeled "This product is 95% less damaging to the ozone layer than past formulations that contained CFCs." The manufacturer has substituted HCFCs for CFC–12, and can substantiate that this substitution will result in 95% less ozone depletion. The qualified comparative claim is not likely to be deceptive.

§ 260.8 Environmental assessment.

National Environmental Policy Act. In accordance with § 1.83 of the FTC's Procedures and Rules of Practice [3] and § 1501.3 of the Council on Environmental Quality's regulations for implementing the procedural provisions of National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (1969),[4] the Commission has prepared an environmental assessment for purposes of providing sufficient evidence and analysis to determine whether issuing the Guides for the Use of Environmental Marketing Claims requires preparation of an environmental impact statement or a finding of no significant impact. After careful study, the Commission concludes that issuance of the Guides will not have a significant impact on the environment and that any such impact "would be so uncertain that environmental analysis would be based on speculation." [5] An environmental impact statement is therefore not required. This conclusion is based on the findings in the environmental assessment that issuance of the guides would have no quantifiable environmental impact because the guides are voluntary in nature, do not preempt inconsistent state laws, are based on the FTC's deception policy, and, when used in conjunction with the Commission's policy of case-by-case enforcement, are intended to aid compliance with section 5(a) of the FTC Act as that Act applies to environmental marketing claims. Furthermore, the guides are neither motivated by nor intended to influence environmental policy decisions. The guides also do not impose standards on manufacturing or waste disposal methods. Consumer behavior as a result of the issuance of guides may change but any such change cannot be quantified, or even reasonably estimated, since those decisions would be influenced by many other variables, in addition to advertising claims. Industry response to the guides, beyond modification of environmental marketing claims, is also impossible to predict or quantify. The alternatives to Commission guides described in the environmental assessment, both within and without the Commission, would also have, at most, only an indirect and highly speculative impact on the environment.

[3] 16 CFR 1.83 (revised as of January 1, 1991).

[4] 40 CFR 1501.3 (1991).

[5] 16 CFR 1.83(a).

By direction of the Commission, Commissioner Azcuenaga dissenting.

Donald S. Clark,

Secretary.

DISSENTING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA CONCERNING ISSUANCE OF COMMISSION GUIDES ON ENVIRONMENTAL MARKETING CLAIMS

Today, the Commission issues guides on environmental marketing claims. The guides should prove useful to the business and law enforcement communities and to consumers, that is, to all those who make, analyze or rely on environmental claims in the advertising and marketing of goods and services. In an area that seems always to prove more difficult than initial impressions suggest, the Commission should be commended for producing a clear, careful and balanced document.

It has been my pleasure to work with my colleagues and Commission staff in this important and difficult endeavor and with the government agencies and other concerned groups and individuals who have participated so generously and constructively in this process. With regret, I nevertheless find I must dissent.

Basic to the exercise of the responsibility of my office is the obligation to act within the authority conferred on that office and, as I understand that obligation, it is not satisfied by forecasting that a challenge is unlikely or by deferring to the courts to decide on review whether the exercise lies within the bounds of the authority, but rather is my obligation to decide in the first instance and without regard to the prevailing political climate in which that decision will be received. As I read the law, the Commission has no authority to issue these guides, as written, without first employing the rulemaking procedures of section 18(b)(1) of the FTC Act, which it has not done.

Section 18(a)(1) of the FTC Act, 15 U.S.C. 57a(a)(1), provides that the Commission may prescribe:

(A) interpretative rules and general statements of policy with respect to unfair or deceptive acts or practices * * *, and

(B) rules which define with specificity acts or practices which are unfair or deceptive acts or practices * * *.

Section 18(b)(1) directs that "[w]hen prescribing a rule under subsection (a)(1)(B)," the Commission is to proceed in accordance with the notice and comment requirements of section 553 of the Administrative Procedure Act and shall also follow the more extensive procedures set forth in section 18 that often are referred to as "Magnuson-Moss rulemaking."

As the guides expressly state, the majority of the Commission does not view its guides as having the force and effect of law but as explanations of existing statutory terms and obligations. Under the Administrative Procedure Act, 5 U.S.C 553, and under section 18 of the FTC Act, therefore, the Commission apparently would categorize its guides as "interpretive" (or "interpretative") rules or policy statements rather than "legislative" rules or "rules which define with specificity

* * * deceptive acts or practices." I cannot agree.

By stating definitively, for example, that a particular act "is deceptive" or that particular conduct "would be deceptive," or that under specified circumstances, firms "must" or "should" act in a particular way, language that appears throughout the document,[1] I believe that the document has "defined with specificity" a deceptive act or practice as set forth in section 18(a)(1)(B). Since the enactment of the Magnuson-Moss Act in 1975, the Commission has been empowered to take such an action only if it first adheres to Magnuson-Moss rulemaking procedures.

If the Commission in issuing its guides were relying on a body of past precedent, I might be persuaded that my colleagues were correct in their assessment, and that the decisive "guidance" in the document simply explicates existing Commission case law and policy. In issuing its Deception Statement in 1983, for example, the Commission reviewed decided cases to synthesize principles, but that is not the case here. The Commission's case law on environmental claims consists almost entirely of consent agreements and orders issued without adjudicative records or admissions of liability. These agreements and orders may convey to the public some sense of what the Commission is likely to do in other similar situations, but they are not binding precedent.

Were I entirely alone in my concern over the need to distinguish between interpretive and legislative rules in issuing some form of guidance on environmental claims, I might be inclined to accede to the position of the majority. Again, this is not the case. Although the courts, particularly in the District of Columbia Circuit, have not instructed agencies unambiguously on how they should distinguish interpretive and legislative rules, recent decisions suggest that my concern is not without validity. At the least, they reflect judicial concern that agencies attend to this question with care in reaching their regulatory decisions and judicial unwillingness blindly to acquiesce in agencies' characterizations of their actions. In short, saying that these are guides and not rules does not make it so.

Even in the presence of express language disavowing agency intent to bind either itself or the public, courts in this circuit have considered whether allegedly interpretive rules are sufficiently mandatory and definitive to render them legislative in nature. See *Community Nutrition Institute* v. *Young*, 818 F.2d 943, 946 (D.C. Cir. 1987) (noting that it is appropriate to "give some, 'albeit not overwhelming' deference to an agency's characterization of its statement" and refusing to sustain FDA rules because the agency failed to follow the appropriate rulemaking process); *Arrow Air, Inc.* v. *Dole*, 784 F.2d 1118, 1122 (D.C. Cir. 1986) (listing agency intent as only one among other factors differentiating interpretive and legislative rules); *General Motors Corp.* v. *Ruckelshaus*, 742 F.2d 1561, 1565 (D.C. Cir. 1984) (*en banc*), *cert. denied*, 471 U.S. 1074 (1985) (upholding agency's interpretation but finding agency's own label relevant but not dispositive).[2]

The likelihood, in whatever degree, that what the Commission calls guides are in fact rules under section 18(a)(1)(B) could easily have been avoided without diminishing the basic guidance the Commission seeks to offer. The Horizontal Merger Guidelines recently issued by the Commission and the Department of Justice, for example, refrain from definitive conclusions about what does or does not violate the law in various ways, one of which is by using the qualifier "likely." For example, in discussing the significance of post-merger market concentration measured by the Herfindahl-Hirschman Index ("HHI"), the Merger Guidelines say, "Where the post-merger HHI exceeds 1800, it will be presumed that mergers producing an increase in the HHI of more than 100 points are likely to create or enhance market power or facilitate its exercise." 1992 CCH Trade Cas. ¶ 13,104 at 20,573–6 (emphasis added).[3]

A similar approach could be used here. Instead of saying that a particular claim "is" or "is not" deceptive, the environmental guides could have said that a particular claim "is likely" or "is unlikely" to be deceptive. Although adding the qualifiers "likely" or "unlikely" sounds more tentative, if that language were used throughout the document, the basic message of the guides, which is to indicate the Commission's likely response in various hypothetical situations, would remain. If the Commission prefers the more definitive language because indeed it wants to be definitive about what is or is not deceptive, then it seems to me that the Commission runs squarely into the problem that it is in fact issuing rules rather than guides. I confess some puzzlement about whether the Commission intends to be definitive (and issue rules) or to indicate what it is likely to do (and issue guides), but, even more than that, I regret that the Commission has not seen fit to make this single change, which would have enabled me to joint in making this a unanimous document.

Second, I differ from the Commission in its decision not to place the guides on the public record for a short period of time to enable the public to comment on them. Although we have sought to obtain accurate information and to consider the issues thoroughly, it is conceivable, nevertheless, that someone outside the agency might offer useful observations and suggestions for improvement. The Commission has obtained comment on the merits of issuing guidance and on the issues that such guides should address, but it has not provided to those affected by the guides an opportunity to assess the economic benefits and costs of the actual provisions or to call to our attention provisions that may cause unintended effects. A short, appropriately focused comment period on the guides could have coincided with the public comment period on the Environmental Assessment that is required under the National Environmental Policy Act of 1969, 42 U.S.C. 4321, as amended.

[FR Doc. 92–19359 Filed 8–12–92; 8:45 am]

BILLING CODE 6750–01–M

[1] Guides and trade practice rules issued before the enactment of section 18 and before the judicial decisions discussed below contain similarly didactic language.

[2] Although, as already noted, the law of the circuit is not settled, there is a serious possibility, and in my opinion likelihood, that the Court of Appeals for the District of Columbia Circuit, at least, would find that portions, if not all, of the guides just issued are legislative rules rather than interpretive rules or policy statements. Compare the Fertilizer Institute v. EPA, 935 F.2d 1303, 1307–08 (D.C. Cir. 1991), quoting General Motors Corp. v. Ruckelshaus, *supra*, and Citizens To Save Spencer County v. EPA, 600 F.2d 844, 876 and n. 153 (D.C. Cir. 1979) (distinction between interpretive and legislative rules depends on whether document "simply states what the administrative agency thinks the statute means, and only 'reminds' affected parties of existing duties" or demonstrates that "the agency intends to create new law, rights or duties"), with Alaska v. DOT, 868 F.2d 441, 446–47 (D.C. Cir. 1989), and Community Nutrition Institute v. Young, *supra* at 947–49, (distinction depends on several factors including use of mandatory language, inclusion of exception process, practical application and limitations placed on agency discretion).

[3] Magnuson-Moss rulemaking procedures do not apply to antitrust rules, but the notice and comment rulemaking requirements in the Administrative Procedure Act ("APA") apply and presumably would have precluded the Commission and the Department from issuing the merger guidelines had they purported to bind the government or the public by requiring or prescribing particular conduct without first providing for public notice and comment. When it recently issued revisions to the so-called Fred Meyer Guides (Guides for Advertising Allowances and Other Merchandising Payments and Services, 55 FR 33 651 (Aug. 17, 1990)), under the antitrust laws, the Commission employed the appropriate APA rulemaking procedures.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 30 and 32

Offer and Sale of Foreign Exchange-Traded Options, and Foreign Exchange-Traded Futures Contracts Based on Foreign Stock Indexes and Foreign Government Debt, to Persons Located Outside the United States

AGENCY: Commodity Futures Trading Commission.

ACTION: Final order.

SUMMARY: Pursuant to its authority under sections 2(a)(1)(B), 4(b) and 4c(b) [1] of the Commodity Exchange Act ("CEA" or "Act") and rules 32.11 and 30.3(a),[2] and its determination that granting relief would not be inconsistent with the Act or the public interest, the Commodity Futures Trading Commission ("Commission") is providing relief to permit:

(1) Futures commission merchants ("FCMs") to solicit and accept orders and funds for foreign exchange-traded

[1] Sections 2(a)(1)(B), 4(b) and 4c(b), 7 U.S.C. 2a, 6(b) and 6c(b).

[2] 17 CFR 32.11 and 30.3(a)(1992).

options as defined in Commission rule 30.1(b) [3] that have not been approved for trading in the United States from customers located outside the United States,[4] including (subject to conditions specified below) options based on foreign stock index futures and futures on foreign government debt (including government debt which has not been designated as an "exempted security" under Securities and Exchange Commission ("SEC") rule 3a12–8); [5]

(2) FCMs to solicit and accept orders and funds from customers located outside the United States for (subject to conditions specified below) foreign exchange-traded futures contracts based on a foreign stock index which has not been the subject of a staff "no-action" letter, and for foreign exchange-traded futures based on foreign government debt which has not been designated as an exempted security under SEC rule 3a12–8; and

(3) Commodity trading advisors ("CTAs") and introducing brokers ("IBs") to offer, subject to certain conditions, their services with respect to such foreign instruments on behalf of their customers who are located outside the United States.

EFFECTIVE DATE: August 13, 1992.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq. or Robert Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION: On February 7, 1992 the Commission published for comment in the **Federal Register** (57 FR 5239 (February 13, 1992)) a proposed order of relief that would permit FCMs to solicit and accept orders and funds for foreign exchange-traded options as defined in Commission rule 30.1(b) that have not been approved for trading in the United States on behalf of customers located outside the United States. In the absence of such an order, Commission rules 32.11 and 30.3(a) prohibit FCMs from acting as agents for customers located outside the United States in such foreign option transactions.[6]

The Commission proposed such relief because there appeared to be no U.S. customer protection interest advanced by prohibiting registered FCMs from engaging in non-approved foreign option transactions on behalf on customers located outside the U.S., which customers could purchase such products directly from an authorized foreign intermediary. Further, such transactions did not appear to have any unique impact on the financial and operational viability of a registered FCM to contemplated by the regulations or which would be altered by the approval of such transactions as to United States customers.[7] The proposal by its terms excluded from its scope options based on foreign stock index futures and foreign government debt futures, as these products are subject to the "jurisdictional accord" provisions of section 2(a)(1)(B) of the Act.

Comments. The Commission received four comment letters on the proposal: three from FCMs and one from a law firm, all of which strongly supported the Commission's proposal. The commenters strongly agreed that no U.S. customer protection concern exists in offering foreign exchange-traded options to persons located outside the United States otherwise eligible to purchase such options under applicable local law and agreed with the Commission's analysis that the effect on an FCM's capital of permitting such transactions would be the same as that of any option authorized for sale to persons in the United States.

All commenters urged the Commission to expand the scope of relief to permit transactions on foreign exchange-traded futures and options on such futures that are based on foreign stock indexes and on foreign government debt, products that are subject to section 2(a)(1)(B) of the Act. As one commenter noted, the proposal would provide little relief unless all foreign exchange-traded futures and options on such futures contracts were included. The commenters believed that the reasoning underlying the proposal should apply equally to those instruments. In this regard, commenters noted that the staff no-action procedure currently applicable to sales of foreign stock index futures contracts in the United States [8] is unnecessary with respect to foreign persons and suggested that section 2 (a)(1)(B)(v) of the Act should be construed to limit the activities of U.S. FCMs only with respect to customers located in the United States and not outside the United States. In this connection, one commenter noted that permitting such transactions would be consistent with the policy of SEC.

Regulation S, wherein the SEC adopted a territorial approach to the application of the registration requirements of section 5 of the Securities Act of 1933 and which permits a U.S. broker-dealer to carry the account of a foreign person in a foreign security as long as no offer is made to a U.S. person and either the buyer is outside the United States or the transaction is deemed to be an offshore transaction. The commenters believed that the Commission should construe section 2(a)(1)(B)(v) as not prohibiting the offer and sale of foreign exchange-traded futures or options thereon based on foreign government debt products. One

[3] "Foreign option" is defined in Commission rule 30.1(b), 17 CFR 30.1(b)(1992), as:

Any transaction or agreement which is or held out to be of the character of, or is commonly known to the trade as, an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guaranty," or "decline guaranty," made or to be made on or subject to the rules of any foreign board of trade.

Thus, this Order does not address foreign option contracts that are not traded on or subject to the rules of a foreign board of trade. Commission rule 32.4(a), 17 CFR 32.4(a) (1992), (the trade option exemption) also is not affected by this Order.

[4] The term "customer located outside the U.S." most clearly applies to non-resident, non-U.S. customers. It may encompass non-resident U.S. nationals in many circumstances as well. This order, however, may not be used by resident U.S. customers to engage indirectly in transactions which they would be prohibited from participating in while in the U.S. Questions regarding this order's application to non-resident U.S. customers should be directed to the Commission's Division of Trading and Markets.

[5] See 17 CFR 240.3a12–8.

[6] Commission rule 32.11 prohibits any person from soliciting or accepting orders for, or from soliciting or accepting funds in connection with, the purchase or sale of any option until further rule, regulation or order of the Commission. Among other things, rule 30.3(a) of the Commission's Part 30 rules governing foreign futures and option transactions makes it unlawful for any person to engage in the domestic offer or sale of any foreign option contract until the Commission, by order, authorizes the foreign option to be offered or sold in the United States. As a result, until the Commission has issued an Order permitting the offer or sale in the United States of a particular foreign option, rules 32.11 and 30.3(a) operate to prohibit an FCM from engaging in such foreign option transaction even on behalf of a customer located outside the United States. However, notwithstanding rule 30.3, the trade option exemption of rule 32.4(a) continues to permit, among other things, the offer and sale of foreign exchange-traded options to permissible offerees under that exemption.

[7] See 57 FR at 5240. The Commission had noted that the effect on FCM capital under the Commission's capital rules of carrying a non-approved foreign option transaction on behalf of a customer located outside the U.S. would be no different from the effect on such firm's capital of carrying that option for a person located outside the U.S. even if it were authorized for sale in the United States.

[8] The Commission's staff has applied the criteria set forth in section 2(a)(1)(B)(ii) of the Act in determining whether to permit the offer and sale of a foreign stock index futures contract in the United States. See, *e.g.*, Interpretative Letter 90–1, Comm. Fut. L. Rep. (CCH) A 24,582 (January 16, 1990) (offer and sale of the Financial Times-Stock Exchange 100 Index futures contract traded on the London International Financial Futures Exchange Limited). In order to facilitate the process for filing requests for staff "no-action" letters regarding stock index contracts based on foreign securities by a foreign board of trade, the Commission has identified the types of information that would assist the staff's analysis of such requests. See 57 FR 3518, 3523 (January 30, 1992).

commenter urged the Commission to resolve these issues with the SEC.

Upon further consideration, and after Commission staff consultation with the staff of the SEC,[9] the Commission has determined to expand the scope of relief to include transactions in foreign exchange-traded futures contracts on foreign stock indexes and options on such contracts, and on foreign exchange-traded futures contracts on foreign government debt and options on such contracts, provided that the stock index product traded on a foreign exchange is not based on an index of which ten percent (10%) of the weighting of the index is derived from securities whose primary trading market is in the United States, and the debt instrument underlying the futures contract (or option thereon) is not delivered in the United States, its possessions or territories pursuant to the contract.[10]

One commenter similarly proposed that CTAs should be permitted to provide advice on the above-referenced instruments to customers located outside the United States and that IBs should be permitted to introduce a non-U.S. customer account trading in those products to an FCM or to an entity exempted from the FCM registration requirement under rule 30.10. Essentially, the commenter suggested that if the Commission determined that a transaction in a particular foreign futures or option product need not require Commission approval of the product where the contract is executed on behalf of a person located outside the United States, and the transaction would otherwise be permissible under local law, there should be no reason to prohibit a CTA or IB from providing services with respect to such foreign persons and products. The Commission agrees that extending relief to these market professionals is consistent with extending such relief to FCMs and, accordingly, this final order permits registered CTAs and IBs to offer their services to foreign customers with respect to such products.

Finally, one commenter contended that the proposal's condition that "the FCM must maintain transaction-specific records sufficient to document that the option transaction in fact was executed in a foreign market" imposes an obligation on FCMs that they may be unable to fulfill. The commenter noted that FCMs ordinarily would give their foreign customer's order to a foreign broker which is a member of the foreign exchange on which the order is to be executed and that, accordingly, only such foreign executing broker will know whether the order was executed. The commenter was concerned that this condition implied that FCMs must maintain some additional record other than the reports of execution and confirmation of transaction that the FCM would receive in the ordinary course of business from the foreign executing broker.

The Commission notes that the transaction-specific record was not intended to require anything more than the retention of the reports of execution and/or confirmation of transaction that the FCM would receive in the ordinary course of business or to retain anything more than that which would be retained if the FCM executed an approved foreign option or foreign futures transaction.

Accordingly, pursuant to its authority under sections 2(a)(1)(B), 4(b) and 4c(b) of the Act and rules 32.11 and 30.3(a), and its determination that granting relief would not be inconsistent with the Act or the public interest, the Commission hereby orders that:

(1) An FCM may solicit or accept orders and funds from customers located outside the United States for foreign exchange-traded options as defined in Commission rule 30.1(b) that have not been approved for trading in the United States under rule 30.3(a), including, subject to the provisos in paragraph 2 below, options based on foreign stock index futures and foreign government debt futures;

(2) An FCM may solicit or accept orders and funds from customers located outside the United States for foreign exchange-traded futures contracts based on a foreign stock index which has not been the subject of a Commission staff "no-action" letter, and for foreign exchange-traded futures based on foreign government debt which has not been designated as an "exempted security" under SEC rule 3a12–8, *provided* that the foreign stock index product is not based on an index of which ten percent (10%) of the weighting of the index is derived from securities whose primary trading market is in the United States, and the foreign government debt futures or option contract requires delivery of the underlying debt instrument outside the United States, its possessions or territories; and

(3) CTAs and IBs may provide their services with respect to the above-described products solely with respect to customers who are not located in the United States.

This Order assumes that the offer and sale of such products would also be legal under the laws where the customer and/or the market are located and does not relieve an FCM, CTA or IB from compliance with any otherwise applicable Commission rules and regulations. For example, if an FCM were to commingle the funds of such non-U.S. customers trading a product prohibited as to a U.S. customer with the secured amount funds of U.S. customers trading approved foreign futures and options, it must, among other things, comply with the provisions of rule 30.7(b).[11] In addition, rule 30.9 prohibiting fraud in connection with all foreign futures and option contracts will continue to apply to FCMs, IBs and CTAs engaging in transactions notwithstanding that such transactions are undertaken on behalf of customers located outside the U.S.

Issued in Washington, DC, on August 10, 1992.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 92–19295 Filed 8–12–92; 8:45 am]

BILLING CODE 6351–01–M

[9] Commission staff had discussions with staff of the SEC to discuss expanding the scope of relief to include futures (and options thereon) on foreign stock indexes and foreign government debt. Subject to the conditions discussed above, the SEC staff did not object to the expansion of the proposal to include these products.

[10] See SEC rule 240.3a12–8, which designates certain foreign government debt as exempt from the registration requirements of the Securities Act of 1933, in order to permit futures trading based on such debt. The rule conditions the availability of the exemption on the requirement that the futures contract require delivery outside the United States, any of its possessions or territories. (The rule also requires that the futures contract in question trade through a board of trade. The Commission's Order is consistent with both these conditions as the Order of relief extends only to foreign exchange-traded products which permit delivery only outside the U.S.)

[11] 17 CFR 30.7(b) (1992).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Exempt Chemical Preparations

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: The interim rule (57 FR 5818, February 18, 1992) which identified certain products containing controlled substances as being exempt chemical preparations under the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.) is adopted without change.

EFFECTIVE DATE: August 13, 1992.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: The Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), published as an interim rule, a list of products containing controlled substances which he finds to qualify as exempt chemical preparations (57 FR 5818, February 18, 1992). A 30 day comment period was provided. No comments were received, therefore, the interim rule is adopted without change.

The listing of products as exempt chemical preparations in 21 CFR 1308.24 relieves persons who handle them from the registration, recordkeeping, security, and other requirements imposed by the CSA. Accordingly, the Deputy Assistant Administrator certifies that this action will have no negative economic impact upon small entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that this matter does not have sufficient federalism implications to require the preparation of a Federalism Assessment.

It has been determined that drug control matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of E.O. 12291. Accordingly, this action is not subject to those provisions of E.O. 12778 which are contingent upon review by OMB. Nevertheless, the Deputy Assistant Administrator has determined that this is not a "major rule," as that term is used in E.O. 12291, and that it would otherwise meet the applicable standards of sections 2(a) and 2(b)(2) of E.O. 12778.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

PART 1308—[AMENDED]

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

Under the authority vested in the Attorney General by section 201(g)(3)(B) of the CSA (21 U.S.C. 811(g)(3)(B)), as delegated to the Administrator of the DEA pursuant to 21 U.S.C. 871(a) and 28 CFR 0.100, and redelegated to the Deputy Assistant Administrator, Office of Diversion Control in 28 CFR 0.104, appendix to subpart R, section 7(g), the Deputy Assistant Administrator of the Office of Diversion Control hereby adopts as a final rule, without change, the interim rule amending 21 CFR 1308.24 which was published at 57 FR 5818 on February 18, 1992.

Dated: August 5, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–19237 Filed 8–12–92; 8:45 am]

BILLING CODE 4410–09–M

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21 CFR Part 1308

Schedules of Controlled Substances: Excluded Veterinary Anabolic Steroid Implant Products

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: The interim rule (57 FR 19533, May 7, 1992) which identified certain veterinary anabolic steroid implant products as being excluded from the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.) is adopted without change.

EFFECTIVE DATE: August 13, 1992.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: The Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), published in the Federal Register, an interim rule which identified eight veterinary products as being excluded from the CSA (57 FR 19533, May 7, 1992). Comments were requested; none were received. The interim rule is adopted without change.

The listing of products as excluded veterinary anabolic steroid implant products in 21 CFR 1308.26 relieves persons who handle them from the registration, recordkeeping, security, and other requirements imposed by the CSA. Accordingly, the Deputy Assistant Administrator certifies that this action will have no negative economic impact upon small entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that this matter does not have sufficient federalism implications to require the preparation of a Federalism Assessment.

It has been determined that drug control matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of E.O. 12291. Accordingly, this action is not subject to those provisions of E.O. 12778 which are contingent upon review by OMB. Nevertheless, the Deputy Assistant Administrator has determined that this is not a "major rule," as that term is used in E.O. 12291, and that it would otherwise meet the applicable standards of sections 2(a) and 2(b)(2) of E.O. 12778.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

Under authority vested in the Attorney General by title XIX of Public Law 101–647, as delegated to the Administrator of the DEA pursuant to 21 U.S.C. 871(a) and 28 CFR 0.100, redelegated to the Deputy Assistant Administrator, Office of Diversion Control in 28 CFR 0.104, appendix to subpart R, section 7(g), the Deputy Assistant Administrator of the Office of Diversion Control hereby adopts as a final rule, without change, the interim rule amending 21 CFR § 1308.26 which was published at 57 FR 19533 on May 7, 1992.

Dated: August 5, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–19238 Filed 8–12–92; 8:45 am]

BILLING CODE 4410–09–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[Gen Docket No. 91–2; FCC 92–331]

Interactive Video Data Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the rules for the Interactive Video and Data Service by allowing interaction with all video delivery systems including wireless cable and direct broadcast satellite, and allowing cell transmitter station (CTS) antennas to be located on

high structures within a service area on a routine basis provided there is a corresponding reduction in power. It also permits IVDS system licensees to locate a CTS antenna within 200 feet of a residential dwelling when there is a corresponding reduction in power or the licensee can obtain the written agreement of the residences within that distance, deletes the requirement that the RTU antenna be an integral part of the unit, and allows the IVDS licensee the option of dispensing with notification to each household when the TV Channel 13 station licensee agrees. This action addresses six petitions for reconsideration seeking amendment of various sections of part 95, subpart F, of the Commission's Rules, 47 CFR part 95, subpart F. The effect of this action is to provide greater flexibility to system licensees in designing their systems.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Federal Communications Commission, Private Radio Bureau, Personal Radio Branch, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: The Commission's Memorandum Opinion and Order, adopted July 16, 1992, and released August 4, 1992, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239) 1919 M Street, NW., Washington, DC. The complete text of this decision, including the rule amendments, may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Summary of Memorandum Opinion and Order

1. This action amends the rules for the Interactive Video and Data Service. The amended rules are set forth at the end of this document.

2. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

3. Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), see 5 U.S.C. 604, our final analysis is as follows:

a. Need for, and Objectives of, Rules

Our objective is to establish a consumer oriented interactive video and data service. The rules adopted herein will allow flexibility in implementing this new service, while reducing the potential for this service to interfere with existing services.

b. Issues Raised by the Public in Response to the Initial Analysis

The commenters generally agree that revisions to some of the rules for this service are needed. These revisions may eliminate unnecessary and costly administrative burdens on small entities. We note that any impact of this action on entities, some of whom may be small entities, will be to reduce the cost of doing business.

c. Any Significant Alternatives Considered and Rejected

The Commission did not reject any alternative designed to minimize the economic impact of the amended rules on small entities.

4. This Memorandum Opinion and Order and rule amendments are issued under the authority of sections 4(i), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 405, and Section 1.429(i) of the Commission's Rules, 47 CFR 1.429(i).

5. A copy of this Memorandum Opinion and Order will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 95

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Part 95 of chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 95.805 is amended by revising paragraph (d) to read as follows:

§ 95.805 Permissible communications.

* * * * *

(d) The licensee may use the IVDS system to interact with its subscribers concerning products and services offered, polls conducted, educational classes taught, and other activities in conjunction with video and data delivery systems.

* * * * *

3. Section 95.811 is amended by revising paragraph (b) to read as follows:

§ 95.811 License requirements.

* * * * *

(b) Each CTS where the antenna does not exceed 6.1 meters (m) (20 feet) above ground or an existing man-made structure (other than an antenna structure) is authorized under the IVDS system license. All other CTSs must be individually licensed to the system licensee.

* * * * *

4. Section 95.815 is amended by revising paragraph (b) to read as follows:

§ 95.815 License application.

* * * * *

(b) Each application for an IVDS system license and each application for a CTS license where the CTS antenna exceeds 6.1m (20 feet) (see § 95.811(b)) must be made on a separate FCC Form 574. Each application for an IVDS system license must be submitted to the Federal Communications Commission, Interactive Video and Data Service, P.O. Box 358365, Pittsburgh, PA 15251–5365. Each application for the CTS must be submitted to the address set forth in § 1.1102 of the Commission's Rules.

* * * * *

5. Section 95.859 is revised to read as follows:

§ 95.859 Antennas.

(a) The CTS antenna includes the radiating element(s), tower, supports and all appurtenances. No CTS antenna shall be elevated higher than necessary to assure adequate service.

(1) A CTS antenna located within a boundary line 16 km (10 miles) outside the Grade B contour of a TV Channel 13 station may not exceed a maximum Height Above Average Terrain (HAAT), as defined in § 90.309, and maximum ERP as set forth below:

HAAT		Maximum ERP (watts)
(m)	(feet)	
0–36.6	0–120	20.0
36.6–73.2	121–240	5.0
73.3–152.4	241–500	1.2
152.5–304.8	501–1000	0.29
304.9–609.6	1001–2000	0.073

(2) A CTS antenna located beyond a boundary line 16 km (10 miles) outside the Grade B contour of a TV Channel 13 station may not exceed a maximum HAAT, as defined in § 90.309, and maximum ERP as set forth below:

HAAT		Maximum ERP (watts)
(m)	(feet)	
0–152.4	0–500	20.0
152.5–304.8	501–1000	5.0
304.9–609.6	1001–2000	1.2

(b) No CTS antenna shall be located within 61 m (200 feet) of a residential dwelling unless the IVDS system licensee has reduced power such that the field strength of the CTS antenna at the residential dwelling does not increase relative to the field strength of the CTS antenna at 61 m or obtained the written concurrence of the resident(s) within 61 m of the CTS antenna. The written concurrence must be kept as part of the IVDS system authorization.

(c) The RTU may be connected to an external antenna not more than 6.1 m (20 feet) above ground or above an existing man-made structure (other than an antenna structure). Connectors that are used to connect RTUs to an external antenna shall not be of the types generally known as "F-type" or "BNC type." Use of an external antenna is subject to § 95.861.

6. Section 95.861 is amended by revising paragraph (c) to read as follows:

§ 95.861 Interference.

* * * * *

(c) Unless the IVDS system licensee obtains written consent from the TV Channel 13 station licensee to dispense with this notification, each IVDS system licensee must notify all households located both within a TV Channel 13 station Grade B predicted contour and the IVDS system service area of the potential for interference from an IVDS system. The IVDS system licensee must also inform those potentially affected households that it will eliminate any objectionable interference to television reception caused by its IVDS system. This notification shall be made no earlier than two weeks before and no later than two weeks after initiation of IVDS in the TV Channel 13 station Grade B predicted contour. The written consent must be kept as part of the IVDS system authorization.

* * * * *

[FR Doc. 92–19279 Filed 8–12–92; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 57, No. 157
Thursday, August 13, 1992

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-74; Notice No. SC-92-5-NM]

Special Conditions: SAAB 2000 Airplane; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the SAAB Model 2000 airplane. This airplane will utilize electrical and electronic systems which perform critical and essential functions. These systems include electronic displays which present critical and essential flight and engine parameters to the flightcrew, and electronic propulsion and propeller controls. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). This notice proposes additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

DATES: Comments must be received on or before September 28, 1992.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attention: Rules Docket (ANM-7), Docket No. NM-74, 1601 Lind Avenue SW., Renton, Washington 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM-74. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (206) 227-2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action on this proposal is taken. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rule Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-74." The postcard will be date stamped and returned to the commenter.

Background

On April 28, 1989, SAAB SCANIA AB of Sweden applied for an FAA Type Certificate through the Swedish LFV to the FAA, AEU-100, for the SAAB 2000. (The application for FAA Type Certificate was dated June 9, 1989.)

The SAAB 2000 is a twin-engined, low-wing, pressurized turboprop aircraft for approximately 50 passengers, intended for short to medium haul (100 nm to 1,000 nm). The airplane will have two new Allison GMA-2100 engines rated at 3650 shp. The propeller is a new 6 bladed Dowty Rotol swept shaped propeller. A single level controls each prop/engine combination. A new APU installation has been added in the tail. The fuselage cross-section will be the same as the SAAB 340. The fuselage skin will be thicker to handle greater pressures. The wing and empennage are new and larger in all dimensions and the fuselage is longer when compared to the SAAB SF-340B. The new cockpit will be a 5 or 6 screen CRT display with new Collins systems. There will be provisions for a Microwave Landing System, Global Positioning System, SELCAL, EICAS, and TCAS systems. The landing gear system will be new. The rudder system will be powered by two hydraulic systems (no manual reversion). The airplane will have provisions for two pilots, an observer, two flight attendants, overhead bins, a toilet, and provisions for the installation of a galley. There will be forwarded and aft stowage compartment and an aft cargo compartment. The airplane will have a maximum operating altitude of 31,000 feet.

Type Certification Basis

The applicable requirements for U.S. type certification must be established in accordance with §§ 21.16, 21.17, 21.19, 21.29, and 21.101 of the Federal Aviation Regulations (FAR).

The changes discussed above are so extensive that to comply with § 21.19, a new Type Certificate will be required for the SAAB 2000. Accordingly, based on the application date of June 9, 1989, the TC basis for this airplane is as follows:

Part 25, Amendments 25-1 through 25-66.

Section 25.963(e), Amendment 25-69, Design Standards for Fuel Tank Access Covers.

Section 25.1423, Amendment 25-70, Independent Power Sources for the Public Address System.

Part 25, Amendment 25-71.

Part 25, Amendment 25-72 for the following sections:

- § 25.361 Engine torque.
- § 25.365 Pressurized compartment loads.
- § 25.571 Damage tolerance and fatigue evaluation of structure.
- § 25.772 Pilot compartment doors.
- § 25.773 Pilot compartment view.
- § 25.783(g) Doors.
- § 25.905(d) Propellers.
- § 25.933 Reversing systems.

Part 25, Amendment 25-73 for the following sections:

- § 25.903(a) Engines.

§ 25.951(d) Fuel System—General.
Part 34 (As replacement for SFAR 27).
Part 36, Latest amendment at TC.
Lightning and HIRF Protection special conditions.
Any equivalent safety findings.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection: One for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the SAAB 2000 which would require that new technology electrical and electronic systems, such as the electronic flight and engine information displays, electronic propulsion controls, and electronic propeller controls be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with the proposed special conditions, a clarification on the threat definition of lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the proposed lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in AC 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak aptitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And,

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up to 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10 microseconds, the maximum is 50 microseconds. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

Where:

$i(t) = I_o (e^{-at} - e^{-bt})$

t = time in seconds,

i = current in amperes, and

		Severe strike (Component A)	Restrike (Component D)	Multiple stroke (½ Component D)	Multiple burst (Component H)
$_o$, amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

i_{peak}	=	200 KA	100 KA	50 KA	10 KA
and,					
$(di/dt)_{max}$(amp/sec)	=	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec)	=	1.0×10^{11} @t=.5μs	1.0×10^{11} @t=.25μs	0.5×10^{11} @t=.25μs	
Action Integral (amp² sec)	=	2.0×10^{6}	0.25×10^{6}	0.625×10^{6}	

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz—500 KHz	60	60
500 KHz—2 MHz	80	80
2 MHz—30 MHz	200	200
30 MHz—100 MHz	33	33
100 MHz—200 MHz	150	33
200 MHz—400 MHz	56	33
400 MHz—1 GHz	4,020	935
1 GHz—2 GHz	7,850	1,750
2 GHz—4 GHz	6,000	1,150
4 GHz—6 GHz	6,800	310
6 GHz—8 GHz	3,600	666
8 GHz—12 GHz	5,100	1,270
12 GHz—18 GHz	3,500	551
18 GHz—40 GHz	2,400	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Proposed Special Conditions

According, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certificate basis for the SAAB 2000:

1. Lightning Protection

a. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF) Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

3. The following definitions apply with respect to these special conditions:

Critical Functions

Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions

Functions whose failure would contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on August 6, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 92–19349 Filed 8–12–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 92-ASO-8]

Proposed Establishment of Transition Area, Crystal River, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to establish a transition area at Crystal River, FL. A standard instrument approach procedure (SIAP) has been developed to serve the Crystal River-Homosassa Air Terminal Airport. This proposed action would lower the base of controlled airspace from 1200 feet to 700 feet above the surface in vicinity of the airport to provide additional controlled airspace for instrument flight rules (IFR) aeronautical operations. If approved, the operating status of the airport will change from visual flight rules (VFR) only to include IFR operations concurrent with publication of the SIAP.

DATES: Comments must be received on or before: September 25, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 92-ASO-8, Manager, System Management Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ASO-8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Crystal River, FL Transition Area. A SIAP has been developed to serve the Crystal River—Homosassa Air Terminal Airport. This action would lower the base of controlled airspace from 1200 feet to 700 feet above the surface in vicinity of the airport in order to provide additional airspace for IFR aeronautical operations. If approved, the operating status of the airport will change from VFR only to include IFR operations concurrent with publication of the proposed SIAP. Transition Areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in this Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition Areas, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

* * * * *

Section 71.181 Designation

* * * * *

ASO FL TA Crystal River, FL
Crystal River, Crystal River-Homosassa Air Terminal Airport, FL
(lat. 28°52'03"N, long. 82°34'29"W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Crystal River-Homosassa Air Terminal Airport.

* * * * *

Issued in East Point, Georgia, on August 4, 1992.

Don Cass,

Acting Manager, Southern Region, Air Traffic Division.

[FR Doc. 92-19110 Filed 8-12-92; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MM Docket No. 92-168; FCC 92-345]

License Renewal Dates of FM and TV Translator Stations and LPTV Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Through this Notice of Proposed Rule Making, the Commission proposes to change license renewal dates of FM and TV translators stations and low power television ("LPTV") stations to that of full power stations operating in the same state. The Commission also proposes to revise FCC Form 303–S to permit the use of a single renewal application form by licensees of full power broadcast stations, which also seek to renew their commonly owned translator or LPTV stations that have the same renewal dates. The Commission believes these changes will streamline the license renewal process and eliminate unnecessary paperwork and administrative burdens on licensees and the Commission.

DATES: Comments are due on or before September 28, 1992, and reply comments are due on or before October 19, 1992.

ADDRESSES: Federal Communications Commission, 1919 M St. NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David E. Horowitz or Eugenia R. Hull, Policy and Rules Division, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making in MM Docket No. 92–168, adopted July 24, 1992, and released August 4, 1992. The complete text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Synopsis of Notice of Proposed Rule Making

1. By this Notice of Proposed Rule Making ("Notice"), the Commission proposes to change the license renewal dates of FM and TV translator stations and low power television ("LPTV") stations to that of full power stations operating in the same state. The Commission also proposes to revise FCC Form 303–S to permit the use of a single renewal application form by licensees of full power broadcast stations, which also seek to renew their commonly owned translator or LPTV stations that have the same renewal dates. Unlike the license expiration schedule for most of the other services licensed, the schedule for FM and TV translators and LPTV stations is not the same as that for full power broadcast stations in the same state. Translator and LPTV stations are licensed for terms determined by a uniform renewal schedule for the state in which they are located, but this schedule is not concurrent with the similar renewal schedule for full power stations. Under current rules, a single licensee may be required to file, at different times, multiple applications with the Commission. The information called for by these separate application forms (FCC Forms 303–S and 348) is substantially similar in nature.

2. The difference in renewal dates places an unnecessary administrative burden on both licensees and the Commission. Currently, licensees of full power stations that own several translators or LPTV stations must file a separate renewal application for each station. This is true even where the full power station and the secondary station have the same renewal date or are located in the same state. By conforming the expiration dates of broadcast stations located in the same state, and allowing a broadcaster to file a single renewal application to cover all of its broadcast stations having the same renewal date, the Commission could decrease the administrative burden to full power station licensees that also own translators or LPTV stations. The proposed rule change should also ameliorate two other aspects of the current system. First, it has been the Commission's experience that translator licensees often mistakenly base the filing of their renewal applications on the expiration date of the primary station being rebroadcast, which increases the administrative burden on the Commission and may jeopardize the licenses in question. Second, the Commission believes that under the current system, it may be more difficult than necessary for the public to follow the licensing process because different stations in the same area may have different renewal dates. The Commission's proposal would result in fewer filing errors and should maximize public awareness of the renewal process.

3. The Commission is cognizant that the transition to a revised renewal schedule may implicate certain statutory considerations. Specifically, the Communications Act prohibits lengthening television and radio broadcast license terms beyond five and seven years, respectively. The Commission also believes shortening the terms of existing licenses in these circumstances could result in confusion or unfairness. In order to comply with the Communications Act, the Commission proposes to leave the terms of existing licenses unchanged and would continue to grant authorizations for new stations in accordance with the schedule set forth in § 74.15 of the Commission's Rules. This will enable the Commission to effectuate the proposed change in an efficient, comprehensive manner. For existing LPTV or translator stations, the Commission would renew licenses, when the occasion arises, for a shorter term to expire in accordance with the schedule for full power broadcast stations as set forth in § 73.1020 of the Commission's Rules.

4. The Commission tentatively concludes that such a transition would serve the public interest, convenience and necessity by establishing greater consistency in the licensing process. The process of changing to the new schedule may require the filing of two applications for some LPTV or translator stations within a short period of time, but the Commission believes this will ultimately result in greater efficiency. The Commission invites comment on this proposal. Would adoption of the Commission's proposal, including one-time short-term renewals for some licensees, on balance reduce this burden? Are there merits to the current licensing structure that would be lost if the proposed change in renewal dates were adopted?

Initial Regulatory Flexibility Analysis

5. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981)).

I. Reason for Action

The purpose of this Notice is to consider changes to the Commission's Rules governing the timing for renewal of TV auxiliary broadcast, FM and TV translator and low power TV station licenses.

II. Objectives

This action is intended to reduce unnecessary administrative and paperwork burdens on the Commission and on licensees of stations licensed under Part 74 of the Commission's Rules by simplifying the renewal process. In addition, this action is intended to clarify the renewal process for interested members of the public.

III. Legal Basis

Authority for the actions proposed in this Notice may be found in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303.

IV. Reporting, Recordkeeping, and Other Compliance Requirements

None.

V. Federal Rules which Overlap, Duplicate, or Conflict with the Proposed Rule

None.

VI. Description, Potential Impact and Number of Small Entities Involved

Approximately 8,000 licensees of all sizes may be affected by the proposals contained in this Notice.

VII. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives

If adopted, the proposals contained in this Notice would reduce administrative burdens on small entities.

Ex Parte Rules

6. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Information

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before September 28, 1992, and reply comments on or before October 19, 1992. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

8. Authority for this action is contained in 47 U.S.C. 154 and 303.

List of Subjects in 47 CFR Part 74

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92–19280 Filed 8–12–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN: 1018–AB75

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Public Comment Period on Proposed Endangered Status for Four Fairy Shrimp and the Vernal Pool Tadpole Shrimp in California

AGENCY: Proposed rule; notice of public hearing and reopening of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (Act), gives notice that a public hearing will be held on the proposed endangered species status for the vernal pool fairy shrimp (*Branchinecta lynchi*), Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), California linderiella (*Linderiella occidentalis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*). The hearing will allow all interested parties to submit oral or written comments on the proposal. In addition, the Service reopens the public comment period from August 31, 1992, to September 18, 1992. A proposed rule to list these five species as endangered was published on May 8, 1992 (57 FR 19856).

DATES: The public hearing will be held from 6 p.m. to 8 p.m. on Monday, August 31, 1992, in Sacramento, California. Comments from all interested parties must be received by September 18, 1992. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the Radisson Hotel, 500 Leisure Lane, Sacramento, California. Written comments and materials should be sent directly to the Field Supervisor, Sacramento Field Office, 2800 Cottage Way, room E–1823, Sacramento, California 95825. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Nagano, Sacramento Field Office (see **ADDRESSES** section) at 916/978–4866.

SUPPLEMENTARY INFORMATION:

Background

The four fairy shrimp and the vernal pool tadpole shrimp are restricted to vernal pools and swales in California. It has been estimated that 90 percent of these habitats have been destroyed by human activities and the rate of loss continues at a rate of 2 or 3 percent annually. The four fairy shrimp and the vernal pool tadpole shrimp are sporadic in their distribution and they also may only inhabit one or a few pools in vernal pool or swale complexes. The vernal pool tadpole shrimp is found in the Sacramento Valley. The Conservancy fairy shrimp is known from the Vina Plains north of Chico in Tehama County, the Jepson Prairie in Solano County, and the Haystack Mountain area northeast of Merced in Merced County. The longhorn fairy shrimp is known from the Kellogg Creek watershed in Contra Costa County, the Altamont Pass area in Alameda County, and the Soda Lake area in San luis Obispo County. The vernal pool fairy shrimp is found at scattered localities ranging from the Vina Plains in Tehama Country through most of the length of the Central Valley and the eastern margin of the Central Coast Range to the mountain grasslands of northern Santa Barbara County. There are disjunct populations located on the Santa Rosa Plateau and near Rancho Santa California in Riverside County. The California linderiella is found at scattered localities in the Central Valley from east Red Bluff in Tehama County to east of Madera in Madera County and across the valley in the Sacramento area to the San Francisco Bay area; disjunct populations are located in the Monterey Bay area and southern California.

The four fairy shrimp and the vernal pool tadpole shrimp proposed for listing are imperiled by commercial, residential, and agricultural development; changes in the

hydrological patterns of their vernal pool and swale habitat; off-road vehicle use; inadequate regulatory mechanisms that protect sites inhabited by these species; and perhaps stochastic (i.e. random) extinction by virtue of the small isolated nature of the remaining populations. A proposed rule to list the vernal pool fairy shrimp. Conservancy fairy shrimp, longhorn fairy shrimp, California linderiella, and the vernal pool tadpole shrimp as endangered species was published in the **Federal Register** on May 8, 1992 (57 FR 19856).

Subsection 4(b)(5)(E) of the Act, as amended (16 U.S.C. 1531 *et seq.*) requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. On June 4, 1992, the Service received a written request for a public hearing from Mr. George Robson of the Tehama County Planning Department. Several other requests for a public hearing were received as well. As a result the Service has scheduled a public hearing for August 31, 1992, from 6 p.m. to 8 p.m. in the Radisson Hotel, 500 Leisure Lane, Sacramento, California.

Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation.There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments carry the same weight as oral comments. The comment period closes on September 18, 1992. Written comments should be submitted to the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

Author

The primary author of this notice is Mr. Chris Nagano, Sacramento Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 State. 3500, unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: July 31, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–19313 Filed 8–12–92; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 57, No. 157
Thursday, August 13, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Phero Tech Inc.; Notice of Intent to Grant an Exclusive Patent License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive patent license to Phero Tech Inc., British Columbia, Canada, on U.S. Patent Application Serial No. 07/662,601, "Green Leaf Volatiles as Inhibitors of Bark Beetle Aggregation Pheromones," filed March 1, 1991. Notice of Availability was given in the Federal Register on May 22, 1991.

DATES: Comments must be received within 60 calendar days of the date of publication of this Notice in the Federal Register.

ADDRESSES: Send comments to: USDA–ARS–Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, room 403, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/504–6786.

SUPPLEMENTARY INFORMATION: The USDA–ARS intends to grant an exclusive license to practice the aforementioned invention. Patent rights to this invention are assigned to the United States of America as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as said company has submitted a complete and sufficient application for a license, promising therein to bring the benefits of said invention to the U.S. public.

The prospective exclusive patent license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive patent license may be granted unless, within sixty days from the date of this published Notice, Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

W.H. Tallent,
Assistant Administrator.

[FR Doc. 92–19312 Filed 8–12–92; 8:45 am]

BILLING CODE 3410–03–M

Rural Electrification Administration

Cajun Electric Power Cooperative, Inc.; Intent to Prepare an Environmental Assessment and/or Environmental Impact Statement and Hold Scoping Meetings

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of intent to hold scoping meetings and prepare an environmental assessment and/or environmental impact statement.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) intends to prepare an environmental assessment (EA) and/or environmental impact statement (EIS) for its action related to a proposal by Cajun Electric Power Cooperative, Inc., to construct a 230— transmission line. REA's environmental review of the transmission line will be conducted in accordance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the National Environmental Policy Act (40 CFR Parts 1550–1508), and REA Environmental Policies and Procedures (7 CFR Part 1794).

Notice is also given of public scoping meetings to be held in conjunction with the review of the possible environmental consequences and the determination of potentially significant environmental issues associated with the proposed project.

FOR INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: Cajun Electric Power Cooperative, Inc., proposes to construct a 230 kV transmission line from its Big Cajun II power plant in Pointe Coupee Parish east of New Roads, Louisiana, to the Coughlin Substation in St. Landry Parish south of St. Landry, Louisiana.

Alternatives to be considered by REA and Cajun Electric Power Cooperative, Inc., include no action, various transmission line corridors, alternative voltages, alternative design and materials, alternative interconnection points, load management, conservation, interruptible load, power purchases, construction of new generation facilities, and wheeling power via another utility system.

Public scoping meetings related to REA's environmental review of the project will be held at the following locations at the dates and times indicated:

American Legion Post 305
Highway 107
Morrow, Louisiana
6:30 p.m.
September 15, 1992

Morganza Fire Station
Sansonne Road and Highway 1
Morganza, Louisiana
6:30 p.m.
September 16, 1992

Issues to be discussed at the public scoping meeting may include, but are not limited to, determination of the project scope, the nature and extent of reasonable alternatives, identification of environmental issues and the scope of those issues, and other reviews or studies that REA or other Federal, State of Louisiana, or local agencies may conduct. Government agencies, other organizations, and the public are invited to participate in these meetings.

Comments regarding the proposed project may be submitted orally or in writing at the scoping meeting or in writing within 30 days after the September 16, 1992, meeting to REA at the address provided in this notice.

To be presented at the meeting will be an alternative evaluation and macro-corridor study submitted to REA by Cajun Electric Power Cooperative, Inc.

The alternative evaluation and macro-corridor study are available for public review at REA at the address provided in this notice or at Cajun Electric Power Cooperative, Inc., at 112 Telly Street, New Roads, Louisiana 70760. They can also be reviewed at the Pointe Coupee Parish Library, 201 Claiborne Street, New Roads, Louisiana, and the Avoyelles Parish Library, 107 West Oak Street, Bunkie, Louisiana.

Based on the alternative evaluation, the macro-corridor study, input from interested local, State of Louisiana, and Federal agencies and the public, Cajun Electric Power Cooperative, Inc., will prepare an environmental analysis to be submitted to REA for review. If significant effects are not evident based on a review of the environmental analysis and other relevant information, REA will prepare an environmental assessment to determine if the preparation of an EIS is warranted.

Should REA determine that the preparation of an EIS is not warranted, it will prepare a finding of no significant impact (FONSI). The FONSI will be made available for public review and comment for 30 days. REA will not take its final action related to the project prior to the expiration of the 30-day period.

Any final action by REA related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the Council on Environmental Quality and REA environmental policies and procedures.

Dated: August 7, 1992.

George E. Pratt,

Deputy Administrator—Program Operations.

[FR Doc 92–19311 Filed 8–12–92; 8:45 am]

BILLING CODE 3410–15–F

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Procedures for Initiation of Downstream Product Monitoring.

Form Number: Agency – None.

OMB Approval Number: 0625–0200.

Type of Request: Extension of the expiration date.

Burden: 30 hours.

Number of Respondents: 2.

Avg Hours Per Response: 15 hours.

Needs and Uses: Under Section 1320 of the Omnibus Trade and Competitiveness Act of 1988, a domestic producer of an article that is like a component part or a downstream product may petition the Department of Commerce to designate the downstream product for monitoring. Section 1320, and ITA's interim–final rule, requires that the petition identify the downstream product to be monitored, the relevant component part, and the reasons for suspecting the likely diversion of foreign exports of the component part, and the reasons for suspecting the likely diversion of foreign exports of the component part into increased exports of the downstream product to the United States. ITA will evaluate the petition and will issue either an affirmative of negative monitoring determination.

Affected Public: Businesses or other for–profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395–7340, Room 3208, New Executive Office Building, Washington, D.C. 20230.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Albacore Fishing Operation Information.

Form Number: Agency – 88–197.

OMB Approval Number: 0648–0223.

Type of Request: Revision.

Burden: 100 hours.

Number of Respondents: 50 (2 responses per respondent).

Avg Hours Per Response: 1 hour.

Needs and Uses: Vessel captains voluntarily supply information on catch, fishing effort, the size of fish caught, and other operational and environmental information. The logbook system supplies data for monitoring the status of Pacific albacore fished by the U.S. Summaries of the fleet's performance are supplied to the fishermen.

Affected Public: Small businesses or organizations.

Frequency: On occasion, annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ron Minsk, (202) 395–3084, Room 3019, New Executive Office Building, Washington, D.C. 20503.

Agency: Patent and Trademark Office (PTO).

Title: Rules for Patent Maintenance Fees.

Form Number: Agency – PTO–1536.

OMB Approval Number: 0651–0016.

Type of Request: Extension of the expiration date.

Burden: 8,714 hours.

Number of Respondents: 104,569.

Avg Hours Per Response: .08 hours.

Needs and Uses: The patent number and serial number of the patent on which maintenance fees are paid are required in order to insure proper crediting of such payments. Such payments are required to maintain a patent in effect.

Affected Public: Individuals; businesses or other for–profit institutions; Federal agencies or employees.

Frequency: Once every four years.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D. C. 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer listed above.

Dated: August 7, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR DOC. 92–19276 Filed 8–12–92; 8:45 am]

Billing Code 3510–CW–F

International Trade Administration

U.S. Automotive Parts Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Closed meeting of U.S. Automotive Parts Advisory Committee.

SUMMARY: The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Auto Parts Act of 1988. The Committee: (1) Reports annually to the Secretary of Commerce on barriers to sales of U.S.-made auto parts and accessories in Japanese markets; (2) assists the Secretary in reporting to the Congress on the progress of sales of U.S.-made auto parts in Japanese markets, including the formation of long-term supplier relationships; (3) reviews and considers

data collected on sales of U.S.-made auto parts to Japanese markets; (4) advises the Secretary during consultations with the Government of Japan on these issues; and (5) assists in establishing priorities for the Department's initiatives to increase U.S.-made auto parts sales to Japanese markets, and otherwise provide assistance and direction to the Secretary in carrying out these initiatives. At the meeting, committee members will receive briefings on the status of ongoing consultations with the Government of Japan and will discuss specific trade and sales expansion programs related to U.S.-Japan automotive parts policy.

DATE AND LOCATION: The meeting will be held on Thursday, September 17, 1992 from 10 a.m. to 5 p.m. in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Stuart Keitz, Office of Automotive Industry Affairs, Trade Development, Main Commerce, room 4036, Washington, DC 20230, telephone: (202) 377-0669.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on June 24, 1991, pursuant to Section 10(d) of the Federal Advisory Act, as amended, that the series of meetings or portions of meetings of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b(c) (4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: August 4, 1992.

Henry P. Misisco,

Director, Office of Automotive Industry Affairs.

[FR Doc. 92-19342 Filed 8-12-92; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

[Docket No. 920600-2200]

Atlantic Mackerel, Squid, and Butterfish Fisheries

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

ACTION: Notice of control date for entry into the Atlantic mackerel, *Loligo* and *Illex* squid, and butterfish fisheries.

SUMMARY: This notice announces that owners of commercial vessels, including party and charter vessels, entering the Atlantic mackerel, *Loligo* and *Illex* squid, and butterfish fisheries (fisheries) after August 13, 1992 (control date) will not be assured of future access to or an allocation of the Atlantic mackerel, *Loligo* and *Illex* squid, and butterfish resources if a management regime is developed and implemented under the Magnuson Fishery Conservation and Management Act (Magnuson Act) that limits the number of participants in the fishery. This announcement is intended to promote awareness of a potential eligibility criterion for access to the Atlantic mackerel, *Loligo* and *Illex* squid, and butterfish resources and to discourage new entries into these fisheries based on economic speculation while the Mid-Atlantic Fishery Management Council (Council) contemplates whether and how access to the fisheries should be controlled. This announcement does not prevent any other date for eligibility in the fisheries or another method of controlling fishing effort from being proposed and implemented.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, 302-674-2331; or Richard Seamans, National Marine Fisheries Service, 508-281-9244.

SUPPLEMENTARY INFORMATION: Since the inception of management of these species under the Magnuson Act, the catch by the U.S. fishery has increased substantially. The capacity of the domestic fleet to harvest the annual quotas of *Loligo* and *Illex* squid and butterfish has eliminated the foreign directed fishery for these species of fish. A combination of resource abundance and an expansion of current markets, as well as the existing capacity of the fleet, will result in constraints being imposed on these fisheries as levels of harvest, particularly for *Loligo* squid, are approaching allowable biological levels. Thus, there is a need to discourage additional entry into these fisheries.

While the domestic catch of mackerel has fallen far short of allowable levels of harvest, this is due to a number of factors that cannot be controlled by the Council, principally the lack of markets and the availability of mackerel in commercial quantities. The Council believes that there currently exists the capacity in the fleet of vessels permitted to fish for mackerel to harvest the allowable biological catch of mackerel if the market and availability factors align themselves beneficially.

Since many of the fisheries on both coasts are overfished and facing significant reductions in effort to rebuild the fish stocks affected, the Council intends for the control date to preclude speculative entry into the mackerel fishery should market conditions permit an increase in the harvest of mackerel. The control date will promote an orderly development of the fishery and allow those who have invested substantially in harvesting and processing capital equipment to realize a return on their investments.

The Council intends to address whether and how to limit entry of commercial vessels, including party and charter vessels, into these fisheries in Amendment 5 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. As noted above, the Council's intent in making this announcement is to discourage speculative entry into the fisheries while potential management regimes to control access into the fishery are discussed and possibly developed by the Council. The control date will help to distinguish *bona fide* established fishermen from the speculative entrants to the fishery. Although fishermen are notified that entering the fishery after the control date will not assure them of future access to the fisheries on the grounds of previous participation, other qualifying criteria also may be applied.

This announcement hereby establishes a control date of August 13, 1992 for potential use in determining historical or traditional participation in the Atlantic mackerel, *Loligo* and *Illex* squid, and butterfish fisheries. This action does not commit the Council to develop any particular management regime or any specific criteria for determining entry to the Atlantic mackerel, *Loligo* and *Illex* squid, and/or butterfish fisheries. The Council may choose a different control date, or it may choose a management regime that does not make use of such a date. The Council may choose to give variably weighted consideration to fishermen in these fisheries before and after the control date. The Council may choose also to take no further action to control entry or access to the fisheries. Any action by the Council will be taken pursuant to the requirements for fishery management plans established under the Magnuson Act.

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

Dated: August 7, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92–19343 Filed 8–12–92; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Hearing

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

ACTION: Notice of public hearing and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public hearing on Tuesday, August 25, 1992, to discuss proposals for a Gulf-wide closed season on mutton snapper during May and June, and restriction on all fishing activities in the area of Riley's Hump during that period. The hearing will be held at the American Legion Hall, 5610 College Road, Key West, Florida (telephone: (305) 294–7117).

DATES: Written public comments on the proposed actions must be received in the Council office by September 8, 1992.

ADDRESSES: Send written comments to Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, Florida 33609–2486.

FOR FURTHER INFORMATION CONTACT: Steven M. Atran, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, Florida, (813) 228–2815.

Dated: August 7, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–19242 Filed 8–12–92; 8:45 am]

BILLING CODE 3510–22–M

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council's (Council) Queen Conch Committee (QCC), Scientific and Statistical Committee (SSC), and Advisory Panel (AP) will hold public meetings on August 27–28, 1992, at the Antibes Hotel, Road 102 Km 14.6, Barrio Joyuda, Cabo Rojo, Puerto Rico.

The QCC, the SSC, and the AP will meet jointly on August 27, 1992, from 10 a.m. to 12 noon, to hear presentations on the Regulatory Impact Review (RIR) and the Social Impact Assessment (SIA) for the queen conch fishery. On the same date (August 27), from 1 p.m. to approximately 5 p.m., the SSC and the AP will meet separately to discuss the issues brought up at the RIR and the SIA presentations. Both groups are expected to submit their respective suggested actions to the QCC. The QCC will meet on August 28, from 9 a.m. to 12 noon, to review the suggested actions and develop it's recommendations to the Council.

Fishermen and other interested persons are invited to attend. Members of the public will be allowed to submit oral or written statements regarding agenda issues. Simultaneous interpretation services (Spanish-English) will be offered at the joint meeting and at the QCC meeting.

For more information contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918–2577; telephone: (809) 766–5926.

Dated: August 7, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–19272 Filed 8–12–92; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Change in Public Meeting Date and Location

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The date and location of a public meeting of the North Pacific Fishery Management Council's Gulf of Alaska Rockfish Committee originally published in the **Federal Register** at 57 FR 33173, on July 27, 1992, has been rescheduled. The changes are noted below; all other information originally published on July 27, 1992, remains unchanged,

Change: August 20–21, 1992, meeting in Juneau, Alaska.

To: September 14–15, 1992, meeting in Juneau, Alaska, beginning at 1:00 p.m. on September 14.

Change Location of Meeting To: Bureau of Indian Affairs Conference Room (Suite 5), Federal Building Annex, 9109 Mendenhall Mall Road, Juneau, Alaska.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: August 7, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–19274 Filed 8–12–92; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council (Council) and its Committees will hold public meetings on August 24–28, 1992, at the Town & Country Inn, 2008 Savannah Highway, Charleston, SC, telephone: (803) 571–1000. A detailed agenda with specific meeting times is available to the public. The agenda items are as follows.

The Council's Controlled Access Committee (CAC) will review information on the number of fishermen and dealers actively participating in the deep-water snapper-grouper complex and in the amberjack fishery to help determine if individual transferable quota (ITQ) limited entry programs are appropriate for the management of these fisheries.

An ITQ program could allow fishermen who qualify under a control date and minimum catch requirements to receive percentage shares for the fishery. These percentage shares translate into ITQs that are transferable among fishermen.

The Council is studying variations of existing ITQ programs for possible use in managing the following groupings: golden tilefish; blueline (gray) tilefish and snowy and yellowedge grouper; and possibly the speckled hind, red porgy and silk and vermilion snapper fisheries in deeper water.

The Committee also will review the North Pacific Council's halibut and sablefish ITQ tracking program and the status of the South Atlantic wreckfish ITQ program, which was implemented in April.

The Council's CAC and the Mackerel Committees from the Gulf of Mexico and the South Atlantic Councils will meet jointly to discuss possible limited entry systems, including individual transferable quotas, as management options for King and Spanish mackerel.

The Council has set a July 30, 1991, control date for the snapper-grouper and amberjack fisheries and a January 1, 1992, control date for the King and Spanish mackerel fisheries. There would be no guarantee of inclusion for individuals entering these fisheries after

these dates if the Council decides to implement ITQ programs or other controlled access systems.

Next, the National Marine Fisheries Service (NMFS) officials will update the Shrimp Committee on the status of the biological opinion being drafted by NMFS to comply with the requirements of the National Environmental Policy Act and the Endangered Species Act and for inclusion in the proposed shrimp fishery management plan developed by the Council. The NMFS had informed the Council in February that this opinion had to be included in the shrimp plan before it is submitted to the Secretary of Commerce for formal review. The Council deferred submitting the plan until it received the opinion which is to be available at the August Council meeting. According to NMFS officials, the biological opinion is necessary to evaluate the fishery's impact on endangered sea turtles.

The draft shrimp plan would allow states to request concurrent closures in adjacent Federal waters to shrimping following severe winter mortality of white shrimp.

The Committee will decide whether the closures would apply only to Federal waters adjacent to the states requesting the closure (Georgia and/or South Carolina) or whether some northeastern Florida counties should also be included in the closures. To aid enforcement, the Council will consider the possibility of defining a "buffer zone" inside of which trawling for rock shrimp would be prohibited during a closure. Details of permit requirements will be discussed also.

A meeting of the Law Enforcement Committee has also been scheduled during which a U.S. Coast Guard representative will give a presentation on vessel safety, and a representative from the National Oceanic and Atmospheric Administration will review the new penalty schedule for violations of fisheries regulations. Committee members will discuss the legal off-loading hours for wreckfish and the required display of vessel numbers on boats.

The Council will hold a closed (not open to the public) session of the Advisory Panel Selection Committee on August 26, from 1:30 p.m. until 2:30 p.m.

For more information contact Carrie Knight, Public Information Officer; South Atlantic Fishery Management Council; One Southpark Circle, Suite 306; Charleston, SC 29407–4699; telephone: (803) 571–4366.

Dated: August 7, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–19273 Filed 8–12–92; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Permits

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

ACTION: Request for modification of Permit No. 747 (P45H).

Notice is hereby given that the U.S. Fish and Wildlife Service, Fisheries and Federal Aid, 911 NE. 11th Avenue, Portland, Oregon 97232–4181, requested a modification to Permit No. 747, issued on August 8, 1991, (56 FR 40312), under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531–1407) and the regulations governing endangered fish and wildlife (50 CFR parts 217–222).

Permit No. 747 currently authorizes scientific research and captive propagation of Sacramento River winter-run chinook (*Onchorynchus tshawytscha),* including the capture of up to 20 adults per year for broodstock purposes, the incubation of up to 35,000 of their eggs and the rearing of the resulting juveniles for eventual release into the upper Sacramento River.

The applicant now requests authorization to transfer up to a total of 1000 of the above juveniles each year to Steinhart Aquarium (California Academy of Sciences) and Bodega Marine Laboratory (University of California at Davis) for extended captive rearing to near sexual maturity with subsequent transfer back to Coleman National Fish Hatchery for use as broodstock. It is also requested that an additional 65,000 eggs from this broodstock be authorized for incubation and rearing. The applicant proposes to PIT tag and eventually release these fish into the Sacramento River.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification request are available for review by interested persons in the following offices by appointment:

Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310/980–4016).

Dated: August 7, 1992.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 92–19268 Filed 8–12–92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits

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

ACTION: Amendment of Scientific Research Permit No. 707 (P77#40).

Notice is hereby given that pursuant to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (16 U.S.C. 1531–1543) and the regulations governing endangered fish and wildlife (50 CFR parts 217–222), and the Conditions hereinafter set out, Scientific Research Permit No. 707, issued to The Southwest Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, CA 92038, on May 31, 1990 (55 FR 23268), is amended to authorize the capture, treatment, and release of emaciated monk seals (*Monachus schauinslandi)* from French Frigate Shoals to Midway Atoll for the purpose of enhancement of the species. This amendment became effective July 31, 1992.

Documents pertaining to this Amendment and Permit are available for review in the following offices by appointment.

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

Marine Mammal Coordinator, Pacific Area Office, National Marine Fisheries Service, 2570 Dole Street, room 106, Honolulu, HI 96822 (808/955–8831).

Dated: August 7, 1992.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 92–19267 Filed 8–12–92; 8:45 am]

BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Futures and Futures Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and futures option contracts.

SUMMARY: The Chicago Board of Trade (CBOT) has applied for designation as a contract market in CBOT Wilshire Small Cap Index futures and options on that futures contract. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before September 14, 1992.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CBOT Wilshire Small Cap Index futures contract or the options on that futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Steve Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CBOT in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act 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 terms and conditions of the proposed contracts, or with respect to other materials submitted by the CBOT in support of the applications, should send such comments to Jean A.Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on August 7, 1992.

Gerald Gay,

Director.

[FR Doc. 92–19241 Filed 8–12–92; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Technical Advisory Group for Cigarette Fire Safety; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Technical Advisory Group for Cigarette Fire Safety will meet on September 1, 1992, in Gaithersburg, Maryland. The purpose of the meeting is to discuss current research to develop a test method to measure cigarette ignition propensity and matters related to implementation of the Fire Safe Cigarette Act.

DATES: The meeting will be from 9 a.m. to 4 p.m. on September 1, 1992.

ADDRESSES: The meeting will be in Room B–119, Building 224, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR A RECORDED MESSAGE CONTAINING THE LATEST INFORMATION ABOUT THE TIME AND LOCATION OF THE MEETING CALL: (301) 504–0709.

FOR FURTHER INFORMATION CONTACT: Beatrice M. Harwood, Directorate for Epidemiology, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0470.

SUPPLEMENTARY INFORMATION: The Fire Safe Cigarette Act of 1990 (FSCA) (Pub. L. 101–352, 104 Stat. 405) directs the Commission, with assistance from the National Institute of Standards and Technology (NIST) and the Department of Health and Human Services, to conduct research concerning the feasibility of a performance standard to address the propensity of cigarettes to act as an ignition source. The FSCA also establishes an advisory committee, the Technical Advisory Group for Cigarette Fire Safety, to advise and work with the Commission and NIST in the implementation of that act.

The Technical Advisory Group for Cigarette Fire Safety will meet on September 1, 1992, to discuss current research to develop a test method to measure cigarette ignition propensity; the status of a cigarette fire incident study; plans to evaluate the possible health effect of cigarettes with reduced ignition propensity; and other administrative and operational plans to implement the FSCA.

The meeting will be open to observation by members of the public, but only members of the Technical Advisory Group for Cigarette Fire Safety may participate in the discussion. Persons who desire to submit written statements or questions for consideration by the Technical Advisory Group, before or after the meeting, should address them to the Technical Advisory Group for Cigarette Fire Safety, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

Dated: August 7, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92–19260 Filed 8–12–92; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Defense Science Board/Defense Policy Board Task Force on Chemical Weapons and Biological Defense Policy; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Joint Defense Science Board/Defense Policy Board Task Force on Chemical Weapons and Biological Defense Policy will meet in closed

session on 22 September, 1992, at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. The mission of the Defense Policy Board is to advise the Secretary of Defense and the Under Secretary of Defense for Policy on security policy matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will receive briefings on current capabilities and deficiencies of U.S. forces in the area of biological defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: August 10, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–19303 Filed 8–12–92; 8:45 am]

BILLING CODE 3810–01–M

Defense Policy Board Task Force on the Future of American Nuclear Forces

ACTION: Notice of Task Force Meeting.

SUMMARY: The Defense Policy Board Task Force on The Future of American Nuclear Forces will meet in closed session on 15–16 September 1992 from 0800 to 1700 at the RDA Logicon Facility located at Sequoia Plaza, 2100 Washington Boulevard, Arlington, VA. The mission of the Task Force is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning matters relating to U.S. nuclear force policy. At the meeting the Task Force will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1982), it has been determined that this Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: August 10, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–19304 Filed 8–12–92; 8:45 am]

BILLING CODE 3810–01–M

Meeting of the Advisory Council on Federal Participation in SEMATECH

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the Advisory Council on Federal Participation in SEMATECH will meet on September 1, 1992 to establish a methodology to advise the Secretary of Defense and SEMATECH on appropriate technology goals for the research and development activities of SEMATECH and provide a plan to achieve these goals. The meeting will be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act, and pursuant to the appropriate provisions of section 552b(c), title 5, U.S.C.

The address of the meeting will be at The Seismic Center, 1300 N. 17th Street, suite 1450, Arlington, VA.

For additional information contact Dr. Nicholas J. Maclerio, Program Manager, DARPA/ESTO, 3701 N. Fairfax Drive, Arlington, VA, 22203–1714, telephone: 703–696–2216.

Dated: August 6, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–19302 Filed 8–12–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Military Personnel Property Symposium

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of open meeting.

Announcement is made of meeting of the Military Personnel Property Symposium. This meeting will be held on 17 September 1992 at the Best Western Old Colony Inn, Alexandria, Virginia, and will convene at 0830 hours and adjourn at approximately 1500 hours.

PROPOSED AGENDA: The purpose of the symposium is to prove an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPP–M, (703) 756–1600 between 0800–1530 hours. Topics to be discussed should be received on or before 21 August 1992.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–19246 Filed 8–12–92; 8:45 am]

BILLING CODE 3710–08–M

Performance Review Boards; Membership

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Boards for the Department of the Army.

EFFECTIVE DATE: August 14, 1992.

FOR FURTHER INFORMATION CONTACT: Jeanne Raymos, Senior Executive Service Office, Directorate of Civilian Personnel, Headquarters, Department of the Army, the Pentagon, room 2C670, Washington, DC 20310–0300.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives

The members of the Performance Review Board for the U.S. Army Materiel Command are:

1. Mr. Thomas E. Davidson, Technical Director for Armaments, U.S. Army Armament, Munitions and Chemical Command
2. Mr. Lester A. Griffin, Director of Product Assurance, U.S. Army Armament, Munitions and Chemical Command
3. Mr. Donald R. Lathrop, Deputy for Resources and Management, U.S. Army Armament, Munitions and Chemical Command
4. Mr. Jimmy C. Morgan, Deputy for Procurement and Production, U.S. Army Armament, Munitions and Chemical Command

. Mr. Perry C. Stewart, Deputy for

Logistics Readiness, U.S. Army Armament, Munitions and Chemical Command.

The members of the Performance Review Board for the U.S. Army Corps of Engineers (USACE) are: 1. MG Peter J. Offringa, Deputy Commander, USACE.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-19249 Filed 8-12-92; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Public Hearings for the Draft Environmental Impact Statement for Proposed Construction and Operation of an Optical Interferometer Facility in the Los Padres National Forest, California

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500-1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for proposed construction and operation of an optical interferometer facility in the Los Padres National Forest, California.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice.

Public hearings to inform the public of the DEIS findings and to solicit comments will be held on September 22, 1992, beginning at 7 p.m., in the Sunset Center Scout House, 8th Avenue and Mission Street, Carmel, California; and September 23, 1992, beginning at 7 p.m., in the City of Flagstaff Council Chambers, 211 West Aspen Avenue, Flagstaff, Arizona.

The public hearing will be conducted by the Navy, the U.S. Forest Service is a cooperating agency in the preparation of the DEIS. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by October 13, 1992, to become part of the official record.

The DEIS discusses the impacts of constructing and operating the proposed facility at three alternative sites: Chews Peak, Los Padres National Forest, Monterey County, California; Anderson Peak, Los Padres National Forest, Monterey County, California; and the Naval Observatory Flagstaff, Arizona.

Additional information concerning this notice may be obtained by contacting Ms. Patricia Duff (Code 203), Western Division, Naval Facilities Engineering Command, P.O. Box 727, San Bruno, California 94066, telephone (415) 244-3715.

Dated: August 7, 1992.

Patrick W. Kelley,

Captain, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 92-19265 Filed 8-12-92; 8:45 am]

BILLING CODE 3810-AE-M

CNO Executive Panel; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet September 15, 1992, from 9 a.m. to 5 p.m., in Alexandria, Virginia.

The purpose of this meeting is to review maritime environment issues as they impact naval vessel construction and operation and shore establishment environmental protection. The agenda of the meeting will consist of discussions of key issues related to international environmental implications for the Navy and acquisition requirements.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: August 4, 1992.

Wayne T. Baucino

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-19286 Filed 8-12-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

National Assessment Governing Board; National Assessment of Educational Progress

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice.

SUMMARY: The National Assessment Governing Board (the Governing Board) is inviting comment on policy issues related to the National Assessment of Educational Progress (NAEP). Interested parties should review the discussion paper on NAEP policy issues described under Supplementary Information below. Copies of the discussion paper may be requested by contacting Ray Fields, Assistant Director, Policy and Research, National Assessment Governing Board, 800 North Capitol Street, NW., suite 825, Washington, DC 20002, 202-357-0395.

DATES: Comments must be received by October 9, 1992.

ADDRESSES: Comments should be sent to Assistant Director, Policy and Research, National Assessment Governing Board, 800 North Capitol Street, NW., suite 825, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Ray Fields, Assistant Director, Policy and Research, National Assessment Governing Board, 800 North Capitol Street, NW., suite 825, Washington, DC 20002, 202-357-0395.

SUPPLEMENTARY INFORMATION: The Governing Board and NAEP are authorized under the General Education Provisions Act. The purpose of NAEP is to assess the academic performance of students in grades 4, 8 and 12 in various subjects. First conducted in 1969, NAEP is the nation's only regular and continuing nationally representative measure of student performance. Beginning in 1990 on a trial basis, NAEP also collects and reports state-representative data on student performance. The Governing Board is responsible for formulating the policy guidelines for NAEP.

Many of the conditions that were present at NAEP's inception, and which influenced its design, may have changed. For example, today there are six national education goals, national conduct standards for important areas of the elementary and secondary school curriculum are being developed, and the possibility of a national system of education assessments is being discussed. Such developments as these, if implemented, raise a number of issues

that could have a significant impact on NAEP's design and use.

An Ad Hoc Committee of the Governing Board has prepared a discussion paper that describes these issues. The purpose of the discussion paper is to prompt consideration of these issues and to elicit comment from interested parties. Included among the issues addressed in the paper are: The role and purpose of NAEP, the alignment of NAEP with national education standards, the use of international data in designing NAEP and reporting results, and the use of NAEP for comparing different state and local assessment results, among others.

The Governing Board plans to consider initial positions on these issues at its November 19–21 Board meeting. The Governing Board will use the comments it receives in developing its positions on these issues. The Governing Board invites comment on these issues from all interested parties.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 92–19287 Filed 8–12–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Colorado State University; Notice of Grant Renewal Award

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to Colorado State University (CSU) for continuing research efforts in support of the DOE Office for Building Technologies programs. The CSU project seeks to develop and improve solar heating and cooling systems.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, NREL Area Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John W. Meeker, Contract Specialist. The Contract Officer is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: Colorado State University (CSU) has been performing research in the area of solar heating and cooling for a number of years. The result of this research has been numerous reports documenting system design, methods of performance prediction, and actual performance testing of different experimental systems. The CSU solar program focuses on the design and evaluation of solar heating and cooling systems that are assembled from commercially available components. The principal objective of the instant research is to develop and improve practical solar heating and cooling systems that could be used in residential and small office buildings.

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the activity to be funded is necessary to satisfactorily complete the current research. DOE funding for the Grant renewal is estimated at $305,000 and the anticipated period of performance is twelve (12) months.

Issued in Chicago, Illinois on August 6, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92–19334 Filed 8–12–92; 8:45 am]

BILLING CODE 6450–01–M

State of Iowa, Division of Community Action Agencies, Noncompetitive Financial Assistance Award

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy, Kansas City Support Office announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2), DOE intends to make a noncompetitive financial assistance award to the Division of Community Action Agencies, State of Iowa, for an evaluation of residential weatherization in Iowa. The evaluation is jointly funded by DOE, the state and seven participating utilities.

SUPPLEMENTARY INFORMATION: The Division of Community Action Agencies (DCAA) administers the weatherization assistance program for the State of Iowa. DCAA has entered into agreements with seven electric and gas utilities in Iowa that will result in about $1,500,000 in utility DSM funds flowing into the state low income weatherization program. The expenditure of these leveraged funds can only continue if the cost effectiveness of the measures installed can be documented for utility rate hearings.

In recognition of that need, DOE, the state and the participating utilities are planning a comprehensive evaluation of the cooperative weatherization program that is estimated to cost $278,400. The results of the evaluation will not only help perpetuate utility participation in the low-income programs of Iowa, but will yield results of value to other states and utilities considering such cooperative programs. Therefore, the grant application is being accepted because DOE knows of no other opportunity to conduct such an evaluation involving large percentages of outside funding.

The project period for the grant award is 36 months, expected to begin in August 1992. DOE plans to provide funding in the amount of $15,000 for this project.

FOR FURTHER INFORMATION CONTACT: John Stacy, Manager, Technology Assistance Section, U.S. Department of Energy, Kansas City Support Office, 911 Walnut St., Kansas City, MO 64106. (816) 426–5182.

Issued in Chicago, Illinois on July 31, 1992.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 92–19336 Filed 8–12–92; 8:45 am]

BILLING CODE 6450–01–M

Building Opportunities in the U.S. for Photovoltaics (PV:BONUS); Notice of Program Interest

AGENCY: . Department of Energy.

ACTION: Notice of Program Interest (NOPI) for cooperative agreement applications.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.15, announces the availability of a Notice of Program Interest (NOPI) No. DE–NP02–92CH10515 for Building Opportunities in the U.S. for Photovoltaics.

DATES: The NOPI will be issued on or about August 15, 1992 and will include complete information on funding, eligibility, application preparation, selection criteria and proposal evaluation. It is anticipated that the NOPI will expire on November 15, 1992. The expiration date is not a common cut-off date for applications submitted under the NOPI, but merely the last day that applications will be accepted. Applications should be submitted prior to the expiration date of the NOPI because applications will be considered unsolicited proposals and be evaluated upon receipt.

ADDRESSES: To obtain a copy of the NOPI write to the U.S. Department of Energy, NREL Area Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John W. Meeker, Contract Specialist. The Contracting Officer for this action is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy's (DOE), Office of

Solar Energy Conversion (DOE–OSEC), is launching a new initiative called, "Building Opportunities in the U.S. for Photovoltaics" (PV:BONUS) to fund research and development directed at accelerating the development and adoption of new photovoltaics (PV) products and systems in the residential, commercial, and institutional building sectors. The use of PV systems in and on buildings is seen as a key intermediate market for the PV industry.

The objective of PV:BONUS is to support the development of cost-effective PV products and product-supply/product-user relationships that provide a sustainable market for PV in the building sector. The ultimate goal is commercially viable products and market niche demonstrations that lead to manufacturer commitments to pursue production and sales.

The development of this infrastructure requires the participation of many U.S. industry sectors, each of whom have the opportunity to benefit from the development. These include the PV industry, building equipment suppliers, utilities, states, builders/developers, construction firms, and building owners. The NOPI will ask for proposals from industry teams. The teams should include representatives from each major industry stakeholder, as appropriate. The development of business partnerships designed to commercialize the product is encouraged.

PV:BONUS is envisioned as a 5–year, $50 million government (DOE)/industry cost-shared initiative ($25 million DOE/ $25 million industry). Government support will be provided through a phased financial assistance program on a funds available basis.

The three phases of the initiative are (1) concept development, (2) product development and testing, and (3) field demonstration and performance verification. This program will be supported by technology validation (testing) activities at the National Renewable Energy Laboratory (NREL) and a cooperative government/industry education and training program.

The following are examples of areas of research and development which might serve as a basis for an application:

1. Architectural products, where the PV array does double duty as a roof, a wall, or a window.

2. Demand-side management (DSM) products, where the PV system is designed to provide power to partially offset a building's contribution to peak utility loads.

3. Building heating, ventilation and control products, where the PV system provides the primary energy for air movement (fans), fluid movement (pumps), or power for "active" windows and walls (as in PV-powered electrochromic windows or PV-powered variable insulation systems).

4. Hybrid products, where the PV system supplies all or a portion of the energy in conjunction with "conventional" equipment such as heat pumps, air conditioners, or lights.

Cost sharing of at least 50% is required for the overall program, however, only 30% participant cost sharing will be required for phase 1. DOE strongly desires that participants contribute more than 50% of the costs to the program. DOE desires its involvement to be as a minority partner supporting groups that have a serious interest in developing products and pursuing the projects through to commercialization. Participation and/or support by the affected product supply and end-use industries is required.

Subject to the availability of funds, it is anticipated that several Fiscal Year 1993 awards totaling approximately one million dollars of DOE funding will be made for initial activities. While it is possible for teams to apply directly for Phase 2 funding, teams so applying must be able to demonstrate, to DOE satisfaction, that the team has essentially performed the Phase 1 Statement of Work and deliver, as part of the application, the essence of a Phase 1 final report. It is expected that five (5) to ten (10) awards will be made from the NOPI.

Awards will be made to technically acceptable applicants as applications are evaluated, not as in a competitive solicitation where all applications are received, evaluated and awards are made. DOE reserves the right to fund as many of the applications as have technical merit or none. If sufficient acceptable applications are received, funding may determine the number of awards.

If you are interested in receiving a copy of the NOPI, write to Mr. John W. Meeker at the address listed above. All responsible sources may submit an application and all timely submitted applications will be considered.

Issued in Chicago, Illinois on August 6, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92–19335 Filed 8–12–92; 8:45 am]

BILLING CODE 6450–01–M

Southern California Edison Co., Notice of Award of an Unsolicited Financial Assistance Application

AGENCY: Department of Energy.

ACTION: Notice of award of an unsolicited financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE), National Renewable Energy Laboratory Area Office (NAO) pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14, is announcing its intention to award a Cooperative Agreement to The Southern California Edison Company as the representative of a consortium of utilities, governmental bodies, and other concerns to convert the Solar One facility, near Barstow, California, to a molten salt technology based facility (known as the "Solar Two Project").

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, NREL Area Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John W. Meeker, Contract Specialist. The Contracting Officer for this action is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: DOE is planning to enter into a Cooperative Agreement to allow for the conversion of the Solar One Pilot Plant's water/ steam central receiver system to a second generation central receiver pilot plant using nitrite molten salt for the heat transfer fluid and thermal storage medium. Solar One is a 10 megawatt plant that is a unique facility not existing anywhere else in the world. Solar Two represents a unique opportunity to accomplish the critical development step required for commercialization of the molten nitrite salt technology by the late 1990s.

The Southern California Edison Company (SCE), as the representative of a consortium of utilities, companies and other interested parties, submitted the Solar Two work under an unsolicited proposal. Participants represented by SCE in the program include: Department of Water and Power of the City of Los Angeles, Sacramento Municipal Utility District, Pacific Gas and Electric Company, Idaho Power Company, Pacific Corporation, California Energy Commission, Arizona Public Service Company, and the Salt River Project. The program was reviewed in accordance with DOE Financial Assistance Rules, 10 CFR 600.14, and it was determined that the program was worthy of funding. The application was uniquely innovative in terms of both the proposed conversion and obtaining participant funding.

The unsolicited proposal was submitted as an application for 50/50 cost-sharing financial assistance. The proposal value is $39,000,000 for design,

construction, startup and checkup of the facility. Test and evaluation and operation of the facility are considered as second and third phases for the project and were proposed at $9,500,000. Total agreement value will be $48,500,000 with a 66 month period for performance.

Issued in Chicago, Illinois on August 6, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-19333 Filed 8-12-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-487-000, et al.]

Tampa Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 6, 1992.

Take notice that the following filings have been made with the Commission:

Tampa Electric Co.

[Docket No. ER92-487-000]

Take notice that on July 30, 1992, Tampa Electric Company (Tampa Electric) amended its filing in this docket by withdrawing from consideration the tendered transmission service rates as they apply under Tampa Electric's transmission service agreement with Seminole Fertilizer Corporation (Seminole Fertilizer). Tampa Electric states that the withdrawn rates will be resubmitted in another pending docket relating to its agreement with Seminole Fertilizer.

Tampa Electric continues to propose that the transmission service rates tendered in this docket, as they relate to service under Tampa Electric's transmission service agreement with Mulberry Phosphates, Inc. (Mulberry Phosphates), be made effective as of May 1, 1992. Tampa Electric therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Seminole Fertilizer, Mulberry Phosphates, and the Florida Public Service Commission.

Comment date: August 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

Old Dominion Electric Cooperative

[Docket No. ES92-49-000

Take notice that on July 27, 1992, Old Dominion Electric Cooperative (Old Dominion) filed an application with the Federal Energy Regulatory Commission under § 204 of the Federal Power Act requesting authorization to issue not more than $11,930,334 of Debt Securities. Also, Old Dominion requests exemption from the Commission's competitive bidding regulations.

Comment date: August 26, 1992, in accordance with Standard Paragraph E at the end of this notice.

Interstate Power Co.

[Docket No. ER91-687-000]

Take notice that on July 30, 1992, Interstate Power Company Tendered for filing an amended Negotiated Capacity Agreement between Interstate and Wisconsin Power and Light Company. Under this Agreement Interstate will make capacity and energy available to Wisconsin Power and Light Company with negotiated degrees of firmness, variable capacity charges, and variable time duration. The Agreement shall continue until December 31, 1992, with subsequent one-year renewal terms.

Comment date: August 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

Tampa Electric Co.

[Docket No. ER92-756-000]

Take notice that on July 30, 1992, Tampa Electric Company (Tampa Electric) filed a notice of cancellation of Tampa Electric's Rate Schedule FERC No. 34, which is a contract for the sale to the Florida Municipal Power Agency (FMPA) of capacity and energy from Tampa Electric's James H. Phillips generating plant.

Tampa Electric states that it has executed an agreement with FMPA providing for termination of the contract. In keeping with that agreement, Tampa Electric proposes that the cancellation become effective as of April 1, 1992.

Copies of the filing have been served on FMPA and the Florida Public Service Commission.

Comment date: August 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

Chicago Energy Exchange of Chicago, Inc.

[Docket No. ER90-225-009]

Take notice that on July 27, 1992, Chicago Energy Exchange of Chicago, Inc. (Energy Exchange) filed certain information as required by Ordering Paragraph (L) of the Commission's April 19, 1990 order in this proceeding, 51 FERC ¶ 61,054 (1990). Copies of Energy Exchange's informational filing are on file with the Commission and are available for public inspection.

Madison Gas and Electric Co.

[Docket No. ER92-244-000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on July 30, 1992, tendered for filing a revised Service Schedule A to the Interchange Agreement between itself and Madison Gas and Electric Company (MGE). The revision provides for the unilateral provision of Limited Term Power and Energy from MGE to Wisconsin Electric.

Wisconsin Electric and MGE respectfully request an effective date of August 1, 1992.

Copies of the filing have been served on MGE and the Public Service Commission of Wisconsin.

Comment date: August 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

Florida Power Corp.

[Docket No. ER92-183-002]

Take notice that on July 30, 1992 Florida Power Corporation tendered for filing its compliance filing in this docket pursuant to the commission's order issued on February 13, 1992.

Comment date: August 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

Niagara Mohawk Power Corp.

[Docket No. ER92-759-000]

Take notice that on July 31, 1992, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 172, an agreement between Niagara Mohawk and Lockport Energy Associates, L.P. (Lockport).

Rate Schedule No. 172 provides for the wheeling of certain loads by Niagara Mohawk to New York State Electric and Gas Corporation generated by Lockport. The proposed change revises the rates for the wheeling of power and energy by Niagara Mohawk. Niagara Mohawk proposes an effective date of October 1, 1992. In support thereof, Niagara Mohawk states that Lockport has consented to this proposed effective date.

Copies of this filing were served upon the following:

Public Service Commission, State of New York, Three Empire State Plaza, Albany, NY 12223

and

CU Energy Lockport G.P. Inc., 5706 Upper Mountain Road, Lockport, NY 14094.

Comment date: August 20, 1992, in accordance with Standard Paragraph E end of this notice.

Alabama Power Co.

[Docket No. ER92-758-000]

Take notice that on July 31, 1992, Alabama Power Company (APCO) tendered for filing two (2) Delivery Point Specification Sheets which reflect the addition of a delivery point for the City of Lafayette and for the City of Piedmont. Both of these delivery points are served under the terms and conditions of the Agreement for Partial Requirements Service and Complementary Services between Alabama Power Company and the Alabama Municipal Electric Authority dated February 24, 1986, as amended (designated FERC Rate Schedule No. 165). The parties request an effective date for each of these Delivery Point Specification Sheets of September 19, 1991.

Comment date: August 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

Florida Power & Light Co.

[Docket Nos. ER92-555-000, ER92-571-000, ER92-605-000, ER92-633-000 and ER92-648-000]

Take notice that on July 29, 1992 Florida Power & Light Company (FPL) submitted supplemental information regarding its filings in the above-captioned dockets. FPL submitted the information in response to a request from the Commission's staff.

Comment date: August 20, 1992, in accordance with Standard Paragraph E end of this notice.

Consumers Power Co.

[Docket No. ER92-753-000]

Take notice that on July 29, 1992, Consumers Power Company tendered for filing a Notice of Termination of FERC Rate Schedule Nos. 49 and 53.

Comment date: August 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

PacifiCorp

[Docket No. ER92-757-000]

Take notice that on July 31, 1992, PacifiCorp, tendered for filing, in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations a request to extend the term of Service Agreement No. 50 between PacifiCorp and Bonneville Power Administration (Bonneville) dated February 14, 1992 under PacifiCorp's FERC Electric Tariff, Original Volume No. 3 Service Schedule PPL-3.

PacifiCorp respectfully requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that an effective date of August 1, 1992 be assigned. The waiver will have no effect upon purchasers under other rate schedules.

Copies of this filing were supplied to the Public Utility Commission of Oregon.

Comment date: August 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

National Electric Associates Limited Partnership

[Docket No. ER90-168-009]

Take notice that on July 27, 1992, National Electric Associates Limited Partnership (NEA) filed certain information as required by Ordering paragraph (L) of the Commission's March 20, 1990 order in this proceeding. 50 FERC ¶ 61,378 (1990). Copies of NEA's informational filing are on file with the Commission and are available for public inspection.

Boston Edison Co.

[Docket No. ER91-679-000]

Take notice that on July 31, 1992, Boston Edison Company tendered for filing supplemental information in this docket in response to a request from Commission staff.

Comment date: August 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19251 Filed 8-12-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1739-001, et al.]

East Tennessee Natural Gas Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. East Tennessee Natural Gas Company

[Docket No. CP89-1739-001]

August 4, 1992.

Take notice that on July 27, 1992, East Tennessee Natural Gas Company (East Tennessee), 8200 Kingston Pike, Knoxville, Tennessee 37919, filed in Docket No. CP89-1739-001 a petition to vacate that portion of the Commission order issued May 9, 1990, which authorized East Tennessee to construct and operate the Hiwassee River crossing loop pipeline, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

East Tennessee states that the order issued May 9, 1990, in CP89-1739-000 authorized it to, *inter alia*, construct and operate a loop pipeline on its Hiwassee River crossing in Bradly and McMinn Counties, Tennessee. East Tennessee further states that the purpose of the loop pipeline was to serve as a back up pipeline in case of damage to the existing pipeline. East Tennessee asserts that it deemed the construction advisable in light of the age and location of the existing pipeline. East Tennessee states that it has re-evaluated the existing line and had determined that it has adequate cover, shows no sign of deterioration and does not pose a safety threat at this time. Therefore, the proposed loop pipeline is no longer necessary and would be needlessly duplicative, it is stated.

Comment date: August 25, 1992, in accordance with Standard Paragraph F at the end of this notice.

Transcontinental Gas Pipe Line Corporation

[Docket No. CP92-619-000]

August 4, 1992.

Take notice that on July 29, 1992, Transcontinental Gas Pipe Line Company (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP92-619-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations for authorization to construct and operate a new delivery point to Public Service Electric & Gas Company (PSE&G), under Transco's blanket certificate issued in Docket No. CP82-426-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco proposes to construct, own, and operate a new delivery point to PSE&G in Camden County, New Jersey. It is stated that up to 31,000 Mcf/d would be received on a firm and interruptible basis from Transco at this

point. PSE&G would thus be enabled to serve Cogen Technologies, an existing customer. The total transportation and sales volume to this customer would not be altered, it is asserted. It is further asserted that no peak and annual deliveries would be impacted.

Comment date: September 18, 1992, in accordance with Standard Paragraph G at the end of this notice.

Kern River Gas Transmission Company

[Docket No. CP92-609-000]

August 4, 1992.

Take notice that on July 23, 1992, Kern River Gas Transmission Company (Kern River), P.O. Box 2511, Houston, TX 77252, filed in Docket No. CP92-609-000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations for authorization to operate interconnecting facilities constructed under Kern River's blanket certificate issued in Docket No. CP89-2048-000 by relocating an interconnection as more fully set forth in the request that is on file with the Commission and open to public inspection.

It is stated that Kern River seeks authorization to operate the tap, metering and appurtenant facilities required to deliver gas for the accounts of Mobil Natural Gas, Inc., Nevada Cogeneration Associates #1, Southwest Gas Corporation and Chevron USA, Inc. to a point on the transmission facilities of Pacific Gas and Electric Company (PG&E) near Daggett, California in the Southwest 1/4 of Section 24, Township 9 North, Range 1 East in San Bernardino County. It is further stated that Kern River plans to build such facilities pursuant to section 311 of the Natural Gas Policy Act and § 284.11 of the Commission's Regulations, and seeks authority in the present filing under section 7 of the Natural Gas Act and Kern River's blanket certificate.

Comment date: September 18, 1992, in accordance with Standard Paragraph G at the end of this notice.

Northern Natural Gas Company

[Docket No. CP92-624-000]

August 4, 1992.

Take notice that on July 31, 1992, Northern Natural Gas Company (Northern), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP92-624-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to upgrade an existing delivery point to accommodate increased natural gas deliveries to Western Gas Utilities Company (Western Gas), under the authorization issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that it requests authority to upgrade the Delano TBS #1 delivery point located in Section 12, T118N, R25W, Wright County, Minnesota to accommodate increased deliveries to Western Gas under Northern's Rate Schedule CD-1, SS-1, FT-1 and IT-1. It is stated that Western Gas has requested service at this delivery point starting with the 1992-93 heating season, due to the increased requirements within Western Gas' existing service area.

Northern states that the estimated volume of natural gas to be delivered to Western Gas at the Delano TBS is expected to result in an increase in Northern's peak day deliveries of 373 Mcf per day and 34,000 Mcf per year on an annual basis. Further, it is estimated that the cost to upgrade the delivery point is $35,000.

Northern advises that the total volumes to be delivered to Western Gas after the request do not exceed the total volumes authorized prior to the request. Northern further states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the changes proposed herein without detriment or disadvantage to Northern's other customers.

Comment date: September 18, 1992, in accordance with Standard Paragraph G at the end of this notice.

Northern Natural Gas Company

[Docket No. CP92-626-000]

August 6, 1992.

Take notice that on August 3, 1992, Northern Natural Gas Company (Northern), 1111 South 103d Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP92-626-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate 4 new delivery points, to upgrade 3 existing delivery points, and to reassign certain volumes of natural gas, to accommodate increased deliveries to Wisconsin Gas Company (Wisconsin Gas), under Northern's blanket certificate issued in Docket No. CP82-401-000, all as more fully described in the request which is on file with the Commission and open to public inspection.

It is stated that 7 delivery points would be constructed or upgraded for deliveries to Wisconsin Gas as detailed below.

Delivery point	Upgrade or new	Quantity (Mcf/day)			
		Present		Proposed	
		Peak day	Annual	Peak day	Annual
Arkansaw	Upgrade	130	11,000	420	48,400
Avoca	New	0	0	740	74,500
Dickeyville	New	0	0	570	76,000
Fennimore	Upgrade	315	128,000	1,860	192,000
Montfort	New	0	0	2,700	164,000
Spring Valley	New	0	0	350	115,000
Star Parairie	Upgrade	104	11,000	416	41,300
Total		549	150,000	7,056	711,200

Northern states that Wisconsin Gas has requested the changes as a result of the expansion of its distribution system to new areas. It is estimated that the cost of construction would be $229,000. It is asserted that the total volumes delivered after the reassignment would be within Wisconsin Gas' existing entitlement from Northern. It is explained that the end uses of the gas would be residential, commercial, and industrial.

Comment date: September 21, 1992, in accordance with Standard Paragraph G at the end of this notice.

Questar Pipeline Company

[Docket No. CP92-627-000]

August 6, 1992.

Take notice that on August 3, 1992, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP92-627-000, an application pursuant to section 7(b) of the Natural Gas Act requesting authority to abandon certain minor metering facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Questar proposes to abandon its existing Gulf Energy M & R Station, comprising one three-inch orifice meter run, one 4-foot by 6-foot skid-mounted meter building, various valving and minor appurtenant facilities, located in Duchesne County, Utah. Questar explains that the facilities proposed to be abandoned were constructed and subsequently placed in service on March 1, 1983. The original cost of the subject facilities, it is stayed, was approximately $10,200.

Questar further states that the facilities proposed to be abandoned were operated to provide system supply requirements to Questar's predecessor, Mountain Fuel Supply Company, for the period March 1, 1983, through July 31, 1986, and utilized to provide open-access transportation service under section 311 of the Natural Gas Policy Act and 18 CFR 284.102 and 284.222 for the period August 1, 1986, through the present. It is explained that no service is proposed to be abandoned because adjacent metering facilities are being utilized to measure the volumes that previously flowed through the Gulf Energy M & R Station.

Comment date: August 27, 1992, in accordance with Standard Paragraph F at the end of the notice.

Dartmouth Power Associates Limited Partnership

[Docket No. CI92-68-000]

August 6, 1992.

Take notice that on July 31, 1992, Dartmouth Power Associates Limited Partnership filed an application under section 7 of the Natural Gas Act (NGA) for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of all categories of natural gas subject to the Commission's NGA jurisdiction, without rate restrictions. Dartmouth's application is on file with the Commission and open for public inspection.

Comment date: August 21, 1992, in accordance with Standard Paragraph J at the end of this notice.

Questar Pipeline Company

[Docket No. CP92-628-000]

August 6, 1992.

Take notice that an August 3, 1992, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP92-628-000 a request pursuant to §§ 158.205(b) and 157.212 for authority to construct and operate delivery point facilities for Washington Energy Resource's (Washington Energy) Henry's Fork pressure maintenance project located in southwestern Wyoming. Such request was made under the blanket certificate authorization issued in Questar's Docket No. CP82-491-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request, which is on file with the Commission and open to public inspection.

Questar proposes to construct and operate delivery point facilities to accommodate the transportation of natural gas in support of a pressure maintenance program being initiated by Washington Energy to enhance the recovery of oil and natural-gas liquid. Specifically, Questar proposes to establish a new delivery point at the Henry's Fork field in Uinta County, Wyoming. In addition, Questar states it will (1) relocate its previously abandoned Northwest Exchange compressor to an existing Questar meter site immediately adjacent to the Emigrant Trail Gas Processing Plant (E.T. Plant) and (2) reclassify as jurisdictional laterals all or a portion of Gathering Lateral Nos. 703, 722 and 829, which extend from the E.T. Plant to the Henry's Fork field. Questar further states that the establishment of the delivery point will be performed pursuant to Section 157.212 and under Questar's blanket certificate and that the compressor relocation and the reclassification of all or a portion of the three gathering laterals will be performed pursuant to § 157.208(a) as eligible activities under Questar's blanket certificate.

Questar explains that the Henry's Fork delivery point will consist of a 4-inch meter run with associated valves and piping and will be installed at an estimated cost of $40,000. Questar estimates that average and peak-day deliveries through the proposed delivery point will approximate 6,000 Dth and 12,000 Dth, respectively.

It is stated that the Northwest Exchange compressor to be relocated consists of a 245 brake horsepower compressor and appurtenances. Questar further states that the estimated cost to relocate the Northwest Exchange compressor is $230,000 and that the relocated compressor will be installed as a jurisdictional compressor to compress up to 12 MMcf per day of natural gas and satisfy suction pressure requirements for four Washington Energy injection compressors located within the Henry's Fork field.

Questar further explains that even though Washington Energy's pressure maintenance project will be temporary and some gathering service will still be performed through the lateral systems extending from the Butherknife field to the Henry's Unit, Questar concluded that, because transportation service will also be performed through Gathering lateral Nos. 703 and 722 and a portion of Gathering Lateral No. 829, all or a portion of these three laterals should be converted to transmission facilities.

Pending Commission authorization, Questar anticipates deliveries will commence for pressure maintenance on October 1, 1992.

Comment date: September 21, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is

required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19263 Filed 8-12-92; 8:45 am]

BILLING CODE 6717-01-M

[FERC Form No. 542-PGA (Revised); (Docket No. RM86-14-000)]

Availability of PGA Edit-Check and Print Software

Issued August 6, 1992.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of availability of PGA edit-check and print software.

SUMMARY: New PC and mainframe versions of the software for edit-checking and printing of the structured PGA data files are now available. This software has been developed for Commission use and to assist pipelines in complying with the electronic submission requirement for filing the FERC Form No. 542-PGA (revised) in accordance with Order Nos. 483 (52 FR 43854 (Nov. 17, 1987)) and 483-A (53 FR 7495 (Mar. 9, 1988)). The PC executable code, the mainframe source code and related system documentation are available on diskettes. A paper copy of the documentation is provided with each version of the software.

DATES: The software and related system documentation are available on August 6, 1992.

ADDRESSES: Requests for the software and system documentation should be directed to the Commission's copy contractor: LaDorn Energy Information Services, Federal Energy Regulatory Commission, 941 North Capitol Street, NE., room 3106, Washington, DC 20426, (202) 898-1151 or (800) 676-FERC.

FOR FURTHER INFORMATION CONTACT: For general information contact: Beth Taylor, Federal Energy Regulatory Commission, 825 N. Capitol St. NE., room 5410, Washington, DC 20426, (202) 208-0382.

SUPPLEMENTARY INFORMATION:

PC (executable code) and mainframe (source code) versions of the software are now available for edit-checking and printing the structured data files of the FERC Form No. 542-PGA (Revised) when filed in accordance with the instructions and recorded formats issued on March 2, 1988. The PC and mainframe versions of the software are available as separate package on 3.5" (1.44MB) or 5.25" (1.2MB) double-sided, high density diskettes. A directory of files for each package is included in this notice as Appendix A. The system documentation for each version is also provided on diskette in WordPerfect 5.1 format.

The edit-check and print software were written in IBM COBOL. The mainframe version was installed on an IBM 3084XA mainframe which uses the Multiple Virtual Storage (MVS) operating system. The PC version can be run on an IBM compatible PC with DOS 3.3 (or later version) and 512K RAM.

The software has been tested by staff. However, if problems occur relating to the software, the Commission staff encourages users to submit written comments as to the exact nature of the problem to Beth Taylor, room 5410, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

This notice is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem. Your communications software should be set at full duplex, no parity, eight data bits and one stop bit. To access CIPS at 300, 1200, or 2400 baud dial (202) 208-1397. For access at 9600 baud, dial (202) 208-1781. FERC is using U.S. Robotics HST Dual Standard modems. If you have any problems in obtaining a copy of this notice through CIPS, please call (202) 208-2474. This notice will be available on CIPS for 30 days from the date of issuance.

In addition to publishing the text of this notice in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice during normal business hours in the Reference and Information Center (room 3308) at the Commission's headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

The software and supporting documentation are available from the Commission's copy contractor, LaDorn Energy Information Services ((202) 898-1151 or (800) 676-FERC), located in room 3106, 941 North Capitol Street, NE., Washington, DC 20426. There is no charge for the software, however, the Commission's copy contractor has a copy fee of $7.00 per diskette plus a service charge. A paper copy of the system documentation is provided with each version of the software at no additional charge.

Lois D. Cashell,

Secretary.

APPENDIX A—DIRECTORY OF FILES

Diskette #1:	Edit Software Sources Code and System Documentation	
	Package A: Mainframe Source Code	
MANUAL.W51	154,877 bytes	System documentation in WP5.1.
PGAEDIT.JCL	13,242 bytes	JCL—Sample run stream.
PGAM1000.COB	34,605 bytes	Copy data from tape to disk.
PGAM1001.COB	296,349 bytes	Perform initial acceptance tests.
PGAM1002.COB	660,284 bytes	Perform edit tests.
Diskette #2:	Print Software Source Code	
PGAPRINT.JCL	22,917 bytes	JCL—Sample run stream.
PGAA3002.COB	32,637 bytes	Generate Schedule G1.
PGAA3003.COB	28,127 bytes	Generate Schedule G2.
PGAA3004.COB	122,099 bytes	Generate Schedule A1.
PGAA3005.COB	72,893 bytes	Generate Schedule B1.
PGAA3006.COB	100,970 bytes	Generate Schedule B2.
PGAA3007.COB	85,729 bytes	Generate Schedule C1.
PGAA3008.COB	77,409 bytes	Generate Schedule C2.
PGAA3009.COB	47,889 bytes	Generate Schedule D1.
PGAA3010.COB	38,623 bytes	Generate Schedule Q1—Projected cost record.
PGAA3011.COB	42,477 bytes	Generate Schedule G1—Special supply record.
PGAM1000.COB	34,605 bytes	Copy data from tape to disk.
PGAM1HC1.COB	136,850 bytes	Perform initial acceptance tests.
PGAM1HC3.COB	89,864 bytes	Construct file.
	Package B: PC Executable Code and System Documentation	
Diskette #1:	Edit-Check and Print Software	
PGAFERC.W51	126,257 bytes	System documentation in WP5.1.
PGAEDIT.BAT	11,197 bytes	Edit report driver.
PGA542.BAT	15,508 bytes	Hardcopy report driver.
ENVUSED.BAT	68 bytes	Determines environment in use.
SIZE.BAT	122 bytes	Environment size display.
ACTION.COM	16 bytes	Prompt action processor.
BROWSE.COM	1,113 bytes	Displays report on monitor.
COBLIB.DLE	122,640 bytes	Runtime library.
PGAA3P10.EXE	22,448 bytes	Generates Schedule Q1.
PGAA3P11.EXE	22,976 bytes	Generates Schedule Q1—Special supply report.
PGAA3PC2.EXE	12,880 bytes	Generates Schedule G1.
PGAA3PC3.EXE	11,520 bytes	Generates Schedule G2.
PGAA3PC4.EXE	48,784 bytes	Generates Schedule A1.
PGAA3PC5.EXE	32,480 bytes	Generates Schedule B1.
PGAA3PC6.EXE	45,232 bytes	Generates Schedule B2.
PGAA3PC7.EXE	48,480 bytes	Generates Schedule C1.
PGAA3PC8.EXE	38,064 bytes	Generates Schedule C2.
PGAA3PC9.EXE	23,904 bytes	Generates Schedule D1.
PGAM1LS1.EXE	41,296 bytes	Reformats & sorts filing data.
PGAM1PC2.EXE	175,310 bytes	Generates edit report.
PGAM1PC3.EXE	36,656 bytes	Creates hardcopy working files.

[FR Doc. 92–19234 Filed 8–12–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RS92–5–000, RS92–6–000 et al.]

Columbia Gas Transmission Corp., Columbia Gulf Transmission Co.; Prefiling Conference

August 6, 1992.

Take notice that a prefiling conference will be convened in these proceedings on August 19, 1992, at 10 a.m., in Washington, DC at a location to be announced. The conference will address proposals of Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company to comply with Order Nos. 636 and 636–A. All parties and Commission staff are invited to attend.

For additional information contact Donald A. Heydt at (202) 208–0740.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19232 Filed 8–12–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER92–723–000]

New England Power Service Co.; Filing

August 7, 1992.

Take notice that on July 14, 1992, New England Power Service company tendered for filing on behalf of Massachusetts Electric Company, (MECO) FERC Electric Service Tariff, Original Volume No. 1. According to MECO, the proposed rate schedule would govern MECO's borderline sales to other utilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protest should be filed on or before August 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19264 Filed 8–12–92; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11119-000 New Hampshire]

Rattlesnake Hill Development; Surrender of Preliminary Permit

August 6, 1992.

Take notice that the Rattlesnake Hill Development, permittee for the Rattlesnake Hill Pumped Storage Project No. 11119, located on an unnamed quarry and the Merrimack River, near Concord, Merrimack County, New Hampshire, has requested that its preliminary permit be terminated. The preliminary permit was issued on June 28, 1991, and would have expired on May 31, 1994. The permittee states that analysis of the Rattlesnake Hill Pumped Storage Project did not indicate feasibility for development.

The permittee filed the request on June 29, 1992, and the preliminary permit for Project No. 11119 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19231 Filed 8-12-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Friday, September 11, 1992, 9 a.m.-5 p.m., Saturday, September 12, 1992, 9 a.m.-3 p.m.

Place: Superconducting Super Collider Laboratory, Central Facility, 2275 Highway 77 N., Waxahachie, Texas 75165.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER-221, GTN, Washington, DC 20585. Telephone: (301) 903-4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Friday, September 11, 1992, and Saturday, September 12, 1992

—Discussion of National Science Foundation (NSF) Elementary Particle Physics Programs
—Discussion of Department of Energy (DOE) High Energy Physics Programs
—Discussion of Department of Energy Superconducting Super Collider (SSC) Project Activities
—Presentation and Discussion of the Superconducting Super Collider Laboratory's Current Program
—Reports on the Discussions of Topics of General Interest in High Energy Physics
—Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on August 7, 1992.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92-19345 Filed 8-12-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 92-84-NG]

Allegheny Energy Marketing Co.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 30, 1992, of an application filed by Allegheny Energy Marketing Company (Allegheny) for blanket authorization to import up to 183 Bcf of Canadian natural gas over a two-year term beginning on the date of first delivery. Allegheny intends to utilize existing pipeline facilities for the transportation of the volumes to be imported and submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, September 14, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9394.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Allegheny is a Delaware general partnership whose general partners are GEMCO Ventures Inc. and Endevco Taft Company, both Delaware corporations. Allegheny proposes to import Canadian natural gas, on its own behalf as well as on behalf of suppliers and purchasers, for sale on a spot or short-term basis to various customers in the United States, including, but not limited to, industrial customers, local distribution companies and municipalities.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import authority. The applicant asserts that imports made under this arrangement would be competitive. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable,

and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Allegheny's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 6, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–19337 Filed 8–12–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–57–NG]

ARCO Products Co., Division of Atlantic Richfield Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting ARCO Products Company, Division of Atlantic Richfield Company, blanket authorization to import up to 25 Bcf of natural gas from Canada over a two-year term beginning on the date of the first import after September 19, 1992.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 6, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–193338 Filed 8–12–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No 92–63–NG]

Goetz Energy Corp.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Goetz Energy Corporation (Goetz), authorization to import up to 140 Bcf of Canadian natural gas beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 6, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–19339 Filed 8–12–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–83–NG]

Graham Energy Marketing Corp.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 25, 1992, as amended July 31, 1992, of an application filed by Graham Energy Marketing Corporation (GEMC) requesting blanket authorization to import up to 183 Bcf of natural gas from Canada over a two-year period beginning with the date of first delivery. GEMC intends to use existing pipeline facilities, and would submit quarterly reports of its transactions.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, September 14, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–9478.

FOR FURTHER INFORMATION:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–070, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–9590

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–6667.

SUPPLEMENTARY INFORMATION: GEMC, a Delaware corporation with its principal offices in Covington, Louisiana, is a wholly-owned subsidiary of Braeloch

Holding Inc. GEMC proposes to import gas for sale to a variety of U.S. customers for whom GEMC may act as agent. The gas will be purchased under short-term, market-responsive contracts, and will be imported at existing points along the international border.

The decision on the request for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties should comment on the issue of competitiveness as set forth in those guidelines. GEMC asserts its proposed import will be competitive. Parties opposing GEMC's request for import authorization bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comments Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action taken on the application. All protests, motions to intervene, notices of intervention and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding and demonstrate why an oral presentation is needed. Any request for a trial-type hearing must show that they are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of GEMC's application is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 6, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–19346 Filed 8–12–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–20–NG]

Hadson Power Partners of Rensselaer; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossel Energy of the Department of Energy gives notice that it has issued an order granting Hadson Power Partners of Rensselaer authorization to import up to 18,000 Mcf of Canadian natural gas per day over a 20-year period beginning on the date of commercial operation of its 79-megawatt cogeneration plant to be constructed at Rensselaer, New York. The facility is expect to be in service by February 1994.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 6, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–19344 Filed 8–12–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–68–NG]

Northern Natural Gas Co., Application for Long-Term Authorization To Export and Import Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 8, 1992, of an application filed by Northern Natural Gas Company (Northern) for authorization to export and import up to 60,000 Mcf per day of natural gas to and from Canada beginning on the effective date of the requested authority through December 31, 1997. Northern intends to utilize existing pipeline facilities for the transportation of the volumes to be exported and imported and would submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, September 14, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson, C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–9394

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–6667.

SUPPLEMENTARY INFORMATION: Northern, a Delaware corporation with its principal place of business in Omaha, Nebraska, is engaged in the purchase, transmission, and sale of natural gas. Northern was authorized by the Federal Power Commission in 1972 (47 FPC 1202) to export to Canada at the Montana-Saskatchewan border near Willow Creek, Saskatchewan, up to 150,000 Mcf per day of natural gas produced in the Tiger Ridge area of Montana. The exported natural gas is transported across Canada to the Manitoba-Minnesota border near Emerson, Manitoba where it is imported by Northern to serve its U.S. markets. The Montana natural gas is neither consumed nor stored in Canada. This authority, according to Northern's application, expires October 31, 1992.

By its application in this docket, Northern seeks authority to export up to 60,000 Mcf per day of gas to Many Islands Pipe Lines (Canada) Limited (MIP), a natural gas pipeline in Saskatchewan. Northern would purchase the natural gas from U.S. producers in the Tiger Ridge and Sherard Montana areas and transport the natural gas to Willow Creek. From this point, MIP would transport the gas to an interconnection with TransCanada PipeLines Limited (TransCanada) at Herbert, Saskatchewan, where the gas would be delivered to TransCanada for the account of Many Island Natural Gas (Canada) Limited (MING). MING would ship Northern's Montana volumes on TransCanada from Herbert, Saskatchewan to an interconnection with Great Lakes Gas Transmission Limited Partnership (Great Lakes) at Emerson, Manitoba. At this point Northern proposes to reimport the 60,000 Mcf per day as system supply for resale to its U.S. customers. Northern states this transportation arrangement is the only economic and most operationally efficient way natural gas from the Montana producing areas can reach Northern's north-end market.

The decision on the application for export/import authority will be made consistent with the DOE's gas policy guidelines (49 FR 6684, February 22, 1984). According to the application, natural gas would be exported and imported solely as part of Northern's system supply, and would not be sold or stored in Canada. Consequently, DOE believes the only relevant issue in this case is the potential impact, if any, of Northern's transportation arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested export and import authority.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Northern's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 6, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-19341 Filed 8-12-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-53-NG]

Panda Resources, Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Panda Resources, Inc. blanket authorization to import up to 100 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

Issued in Washington, DC, August 6, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-19340 Filed 8-12-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4195-2]

Nonroad Engines and Vehicles; Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: On August 26, 1992, the Environmental Protection Agency (EPA) will meet with representatives of the Outdoor Power Equipment Institute (OPEI) and the Engine Manufacturers Association (EMA) to discuss the technical characteristics, emissions, and general regulatory issues related to nonroad engines under 50 horsepower. EPA is planning to attend this meeting at the request of industry representatives.

DATES: The meeting will be held on August 26, 1992.

ADDRESSES: The meeting will be held at 9 a.m. at the Best Western Domino's Farm Hotel, 3600 Plymouth Rd., Ann Arbor, MI 48105.

FOR FURTHER INFORMATION CONTACT: Ms. Betsy McCabe, Certification Division, U.S. EPA National Vehicle and Fuel Emissions Laboratory, 2656 Plymouth Rd., Ann Arbor, MI 48105. Telephone: (313) 668-4344.

SUPPLEMENTARY INFORMATION: A public workshop was held on March 11, 1992 (57 FR 5448) to solicit information on technical characteristics, emissions, potential regulatory strategies, and general regulatory issues related to nonroad engines under 50 horsepower. As a result of that public workshop, OPEI and EMA have approached EPA and expressed an interest in working cooperatively with EPA as EPA explores the possibility of developing regulations for nonroad engines under 50 horsepower. EPA recognizes that continuing involvement by the manufacturing and environmental communities is essential as EPA explores the need for and feasibility of regulatory strategies for nonroad engines. EPA is publishing this notice in order to ensure that other interested parties have the opportunity to attend this and any subsequent meetings if they wish.

Dated: August 6, 1992.

Michael Shapiro,

Acting Assistant Administrator, Air and Radiation.

[FR Doc. 92-19327 Filed 8-12-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4194-6]

Superfund Program; Procedures for CERCLA Section 106(b) Reimbursement Petitions

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Agency is announcing today the availability of its "Guidance on Procedures for Submitting CERCLA section 106(b) Reimbursement Petitions and on EPA Review of Those Petitions,"OSWER Directive #9833.5 (June 29, 1992), in order to inform the public on this important aspect of the Superfund Program. This document provides guidance to EPA's regional offices and respondents who received an Administrative Order. This guidance provides procedures for submitting petitions for reimbursement under CERCLA section 106(b) and EPA's review of those petitions. The Agency believes this guidance will clarify the reimbursement process.

ADDRESSES: To obtain a copy of this guidance contact the National Technical Information Service at (703) 487-4650 or 1-800-553-NTIS. The NTIS order number is PB 92-963610.

FOR FURTHER INFORMATION CONTACT: Fred Zimmerman, U.S. Environmental Protection Agency, Office of Waste Programs Enforcement, OS-510, 401 M Street SW., Washington, DC 20460, (202) 260-2034.

Dated: July 28, 1992.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 92-19180 Filed 8-12-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Port Authority of New York and New Jersey/Maher Terminals, Inc., Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200630-003.

Title: Port Authority of New York & New Jersey/ Maher Terminals, Inc. Terminal Agreement.

Parties: The Port Authority of New York and New Jersey Maher Terminals, Inc. ("Maher").

Synopsis: The subject modification permits Maher the continued use of the open area adjacent to its Tripoli Street Container Terminal through September 30, 1992.

Agreement No.: 203-010099-010.

Title: International Council of Containership Operators.

Parties: American President Lines, Ltd.,
A.P. Moller (Maersk Line),
Blue Star Line Ltd.,
Ben Line Containers Ltd.,
Compagnie Generale Maritime,
Compagnie Maritime Belge S.A.,
Crowley Maritime Corporation,
Hamburg-Sudamerikanische Dampfschiffahrt-Gesellschaft Eggert & Amsinck (Columbus Line),
Hapag-Lloyd AG, Kawasaki Kisen Kaisha, Ltd.,
Koninklijke Nedlloyd Group N.V.,
Lykes Bros. Steamship Co., Inc.,
Mitsui OSK Lines, Ltd.,
Neptune Orient Lines Ltd.,
Nippon Yusen Kaisha,
Orient Overseas Container Line Ltd.,
P & O Containers Ltd.,
Land Service, Inc.,
Societa Finaziari Marittima (Finmare),
South African Marine Corp. Ltd.,
The Australian National Line,
Transatlantic Shipping Co., Ltd.,
Transportacion Maritima Mexicana, S.A. de C.V.,
United Arab Shipping Company (S.A.G.),
Wilh. Wilhelmsen,
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment will delete Ben Line Containers Ltd. as a party to the Agreement.

Agreement No.: 203-011383.

Title: Venezuelan Discussion Agreement.

Parties: Compania Anonima Venezolana de Navegacion
King Ocean Services de Venezuela, S.A.
Venezuela Transport Line, Inc.

Synopsis: The proposed Agreement will authorize the parties to discuss, exchange information, and agree upon all aspects of transportation and service, including rates, service items, rules, service contracts, brokerage, and

policing and cargo inspection systems in the trade between United States ports (including Puerto Rico), and ports in Venezuela, and inland and coastal points via such ports. The parties have no obligation under this Agreement, other than voluntarily, to adhere to any consensus or agreement reached. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: August 7, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-19230 Filed 8-12-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[Docket No. 9233]

Harold A. Honickman, et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Amending order.

SUMMARY: This order reopens the proceeding and amends the consent order issued in 1991 by deleting the ninety-day reporting requirement in the first clause of paragraph V(A), and by correcting the syntax of paragraph II(A)(2).

DATES: Consent Order issued July 25, 1991. Amending Order issued July 20, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Constance Salemi, FTC/S-3302, Washington, DC 20580. (202) 326-2643.

SUPPLEMENTARY INFORMATION: In the Matter of Harold A. Honickman, et al. The prohibited trade practices and/or corrective actions as set forth at 56 FR 38446, are amended, in part, as indicated in the summary.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 92-19330 Filed 8-12-92; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Amending Order are available from the Commission's Public Reference Branch, H-130, 6th & Pa. Ave., NW., Washington, DC 20580.

[Dkt. C-3385]

Sandoz Pharmaceuticals Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New Jersey-based company from requiring any purchaser of clozapine, a schizophrenia drug, or a patient taking clozapine sold by Sandoz, to buy other goods or services from the respondent or anyone designated by the respondent. In addition, the consent order requires that, if any company needs information about patients who have had adverse reactions to clozapine, the respondent must provide that information on reasonable terms.

DATES: Complaint and Order issued July 28, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Karen Berg, FTC/S-3308, Washington, DC 20580. (202) 326-2960.

SUPPLEMENTARY INFORMATION: On Wednesday, July 3, 1991, there was published in the **Federal Register**, 56 FR 30577, a proposed consent agreement with analysis In the Matter of Sandoz Pharmaceuticals Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 92-19331 Filed 8-12-92; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint, the Decision and Order, and the concurring statement of Commissioner Azcuenaga are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Seventh National Conference on Chronic Disease Prevention and Control

The Centers for Disease Control (CDC), the Association of State and Territorial Health Officials, and the Association of State and Territorial Chronic Disease Program Directors (ASTCDPD) will cosponsor the following meeting.

Name: Seventh National Conference on Chronic Disease Prevention and Control: *Prevention: Can It Be Marketed, Managed, and Make a Difference?*

Times and Dates: Registration—12 noon–6 p.m., October 20, 1992, and throughout the conference.

8:30 a.m.–5 p.m., October 21–22, 1992
8:30 a.m.–11 a.m., October 23, 1992.

The preregistration deadline is September 17, 1992.

Preregistration fee is $40; on-site registration fee is $45. Make checks payable to ASTCDPD and mail to Chronic Disease Conference, Pace Enterprises, Inc., 17 Executive Park Drive, suite 200, Atlanta, Georgia 30329.

Place: Salt Lake Hilton, 150 West 5th Street, Salt Lake City, Utah 84101, telephone 800/421-7602 or 801/532-3344. Conference attendees receive special room rates of $70 for single or double occupancy. Reservations should be made directly with the hotel.

Status: Open to the public, limited only by available space.

Purpose: Attendees from around the nation and the world will have both structured and informal opportunities to exchange information, skills, knowledge, and experiences related to chronic disease prevention and control.

Matters to be Discussed: Topics to be presented will include future implications for prevention and public health; behavioral research; chronic disease prevention and control in the work site; cancer prevention and control; reaching children, adolescents, and the underserved; smoking and health; and minority health in chronic disease prevention and control.

Contact Person For More Information: Mr. Jack Friel, Chief, Conference Management Operations, National Center for Chronic Disease Prevention and Health Promotion, CDC, 1600 Clifton Road, NE., Mailstop K-43, Atlanta, Georgia 30333, telephone 404/488-5390.

Dated: August 6, 1992.

Robert L. Foster,

Assistant Director for Special Programs, Office of Program Support, Centers for Disease Control.

[FR Doc. 92-19332 Filed 8-12-92; 8:45 am]

BILLING CODE 4160-18-M

Agency for Health Care Policy and Research

Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), announcement is made of the following advisory subcommittee scheduled to meet during the month of August 1992:

Name: Feasibility Study: Overcoming Barriers to Integration and Implementation of Clinical Information Management Systems.

Dates and Times: August 11, 1992, 9 a.m.

Place: Executive Office Center, 2101 East Jefferson Street, Suite 502, Rockville, Maryland 20852.

This meeting will be closed to the public.

Purpose: The Subcommittee's charge is to provide, on behalf of the Health Care Policy and Research Contracts Review Committee, advice and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR) regarding the scientific and technical merit of contract proposals submitted in response to a specific Request for Proposals. AHCPR has a strong interest in understanding the sociological, organizational, technological, and financial barriers that impede progress toward implementation and utilization of integrated clinical information management systems to improve the delivery of health services. The purpose of this contract is to determine the feasibility of studying the implementation of integrated clinical information management systems (used for patient care, administrative management and financial control) in a representative variety of health care delivery settings.

Agenda: The session of this Subcommittee will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to a specific Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This is necessary to protect the free exchange of views and avoid undue interference with Committee and Department operations, and safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during the sessions. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. appendix 2, Department regulations, 45 CFR 11.5(a)(6), and procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Karen Harris, Office of Management, Management Systems and Services Branch, Agency for Health Care Policy and Research, Executive Office Center, 2101 E. Jefferson Street, suite 601, Rockville, Maryland 20852, (301) 227-8441.

Dated: August 6, 1992.

J. Jarrett Clinton,

Administrator.

[FR Doc. 92-19229 Filed 8-12-92; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-025440-10-ZBBB]

Amended Notice of Availability of Final Environmental Impact statement and Report for the proposed Eagle Mountain Landfill, Riverside County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Amended notice of availability.

SUMMARY: The original Notice of Availability as cited in the **Federal Register**/Vol. 57, No. 140, Page 32229, Tuesday, July 21, 1992 is hereby amended to announce a revision of the date the document will be available for public review. The Final Environmental Impact Statement and Report for the Proposed Eagle Mountain Landfill in Riverside County, California will be available on August 7, 1992.

Comments on the environmental documents of the project will be accepted by the BLM for a 30 day period ending September 7, 1992. Your comments will be considered in arriving at BLM's decision on the land exchange and right of way actions. Please send your comments to Bureau of Land Management, Palm Springs-South Coast Resources Area, Attn: Steve Nagle 63-500 Garnet Ave., P.O. Box 2000, N. Palm Springs, CA 92258-2000.

Dated: August 6, 1992.

Thomas Gey,

Asst. Area Manager.

[FR Doc. 92-19297 Filed 8-12-92; 8:45 am]

BILLING CODE 4310-40-M

[MT-030-02-4350-01]

Dickinson District Advisory Council Meeting

AGENCY: Bureau of Land Management, Dickinson District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Dickinson District Advisory Council will be held Wednesday, September 16, 1992. The meeting will begin at 8 a.m. in the Dickinson District Conference Room, 2933 Third Avenue West, Dickinson, North Dakota. The agenda will include: (1) Land ownership adjustment program; (2) Wild horse and burro adoptions; (3) Oil and gas program update; and (4) Weed update.

The meeting is open to the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make oral statements should make prior arrangements with the District Manager. Summary minutes of the 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.

FOR FURTHER INFORMATION CONTACT: Doug Burger, District Manager, Bureau of Land Management, 2933 Third Avenue West, Dickinson, North Dakota 58601.

Dated: August 3, 1992.

Douglas J. Burger,

District Manager.

[FR Doc. 92-19298 Filed 8-12-92; 8:45 am]

BILLING CODE 4310-DN-M

[Co-070-4320-12-241A]

Grand Junction District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Meeting of Grand Junction District Advisory Board.

SUMMARY: Notice is hereby given that a meeting of the Grand Junction District Grazing Advisory Board will be held on Thursday, September 10, 1992. The meeting will convene in the conference room at the Bureau of Land Management, Glenwood Springs Resource Area Office, 50629 Highway 6 & 24, Glenwood Springs, Colorado at 9 a.m.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include: (1) Introduction; (2) Election of Officers (3) Minutes of the previous meeting; (4)

Colorado Range Update; (5) AMP Status; (6) Inter-action with Advisory Council; (7) HRM Training; (8) Domestic Sheep/Bighorn Sheep Policy; (9) Resource Area Issue Briefing; (10) Status of Current Range Projects; (11) Advisory Board Project Proposals; (12) Public Presentations; (13) Arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3 p.m. and 3:30 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 81506 by September 10, 1992. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the Board Meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) after thirty (30) days following the meeting.

Further information on the meeting may be obtained at the above address, or by calling (303) 244-3076.

Tim Hartzell,

District Manager.

[FR Doc. 92-19289 Filed 8-12-92; 8:45 am]

BILLING CODE 4310-JB-M

[MT-060-92-4320-02-ADVB]

Lewistown District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Lewistown District Office.

ACTION: Notice of Grazing Advisory Board Meeting.

SUMMARY: The Lewistown District Grazing Advisory Board will meet September 15, 1992. The agenda will be:

10 a.m.—Fiscal Year 1992 Range Improvement Accomplishments.
10:30 a.m.—Fiscal Year 1993 Planned Range Improvement Projects.
11:30 a.m.—Weed Control.
12 Noon—Lunch
1 p.m.—Prairie Dog Surveys/Ferret Reintroduction.
1:30 p.m.—Allotment Management Plans.
2:30 p.m.—Grazing Administration.

Public comment will be sought at the end of each agenda item.

LOCATION: Public Library, Malta, Montana.

FOR FURTHER INFORMATION CONTACT: David L. Mari, District Manager, Bureau of Land Management, P.O. Box 1160, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The Lewistown District Grazing Advisory Board is authorized under the Federal Advisory Committee Act, 5 U.S.C., Appendix 1. The board advises the Lewistown District Manager concerning the development of allotment management plans and the utilization of range betterment funds.

Dated: July 31, 1992.

B. Gene Miller,

Associate District Manager.

[FR Doc. 92-18982 Filed 8-12-92; 8:45 am]

BILLING CODE 4310-DN-M

[WY-040-02-4320-12]

Rock Springs District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Rock Springs District Grazing Advisory Board.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Rock Springs District Grazing Advisory Board. Notice of this meeting is required under Public Law 92-463.

DATES: September 10, 1992, 9 a.m. until 4 p.m. and September 11, 1992, 9 a.m. until 3 p.m.

ADDRESSES: The new Pinedale Resource Area Office, Bureau of Land Management, 432 Mill Street, Pinedale, Wyoming 82941.

FOR FURTHER INFORMATION CONTACT: Marlowe E. Kinch, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming, 82902-1869, (307) 382-5350.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include a tour of South LaBarge Common Allotment on September 10, 1992. On September 11, 1992, the agenda will include:

1. Introductions and opening remarks
2. Election of a Chairman and Vice-Chairman
3. Slate Creek AMP development
4. Pine Mountain AMP operation/monitoring
5. Improvements proposed for completion in FY93 with range betterment (8100) funds
6. Riparian/wetland inventory
7. District wildlife program
8. Update on wild horse gathering
9. BLM 2015
10. Public comment period

The meeting is open to the public. Tour participants will meet at the Chevron Country Store in LaBarge, Wyoming, at 9 a.m. Transportation is required for the tour part of the meeting. Four wheel drive vehicles will be needed. Interested persons may make oral statements to the Board between 2:30 and 3 p.m., September 11, 1992, or file written statements for the Board's consideration. Anyone wishing to make an oral presentation should notify the District Manager, Bureau of Land Management, Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming, 82902-1869, by September 9, 1992. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the 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.

Marlowe E. Kinch,

District Manager.

[FR Doc. 92-19294 Filed 8-12-92; 8:45 am]

BILLING CODE 4310-22-M

[ID-030-02-4332-10]

Motor Vehicle Use Restrictions; Idaho

AGENCY: Bureau of Land Management, DOI.

ACTION: Restricted vehicle use, closure order.

SUMMARY: Notice is hereby given in accordance with title 43 Group 8000-Recreation Programs, and in accordance with the principles established by the Federal Land Policy and Management Act of 1976 and the National Environmental Policy Act of 1969, that certain lands located in the Sand Mountain Wilderness Study Area (WSA) which includes the area known as the St. Anthony Sand Dunes in Fremont and Jefferson County, Idaho are restricted to unlicensed off-road vehicles. This would include ATV's (3 & 4 wheelers), dual purpose and off-road motorcycles, and dune buggies or dune rails. All licensed vehicles (with the exception of dual purpose motorcycles), including passenger automobiles, trucks, pickup campers, camp trailers, self-contained campers and similar vehicles are prohibited. All permitted ORV use must occur on the open sand areas, or on roads and trails specifically signed open. ORV use is prohibited on roads

and trails not signed open. Glass containers for food and beverage are prohibited within the boundaries of the WSA. Safety equipment such as helmets, boots, protective clothing are strongly recommended. Each vehicle is required to have a "whip flag" not less than six (6) feet in length with brightly colored material on the end of the flag.

Studies, observations, and WSA surveillance have shown that vehicles specifically designed for sand dunes and all terrain use (such as dune buggies, ATV's, motor cycles) do not impair the wilderness values as long as the use occurs on open sand areas. However, any damage to surrounding vegetation and creation of new trails, ways, or roads violates the Interim Management Policy and impairs wilderness values.

Studies and observations have also shown that Four wheel drive vehicles, Four wheel drive vehicles with camper or pulling travel trailers, and self contained motorized campers contribute to litter problems, damage to wetland area, and damage to vegetated areas in the WSA. Motorized camping around the Dry Lakes area in the south central portion of the WSA in particular has or is very likely to impair the area's wilderness values. Overnight camping where tents are used has not been impairing nor has a significant potential for impairment of wilderness values.

Part of the Sand Mountain WSA is affected by a seasonal closure of all vehicles from December 1 to March 31 of each year. The Nine Mile Knoll Area of Critical Environmental Concern was established to protect wintering wildlife and this 35,026 acre area is closed to all motorized vehicles (**Federal Register** Vol. 52, No. 228, Friday, November 27, 1989).

This restricted vehicle use and closure order applies to about 21,100 acres of public land west of St. Anthony, Idaho and includes all of the Sand Mountain WSA. The Sand Mountain WSA begins about 7 miles west of the town of St. Anthony, Fremont County, Idaho. The area is bounded on the east by a paved county road ("Red Road"), farmland on the south and west, with native rangeland on the north. Maps showing the San Mountain WSA were published in the Medicine Lodge Wilderness Study and Final Environmental Impact Statement in 1988. An information handout has been developed for the public with a map showing the Sand Mountain WSA and open sand areas. Both of these maps are available at the Bureau of Land Management Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho. The official map of the Sand Mountain WSA is on file at the Idaho Falls District Office. Signs have been placed to identify boundaries of the WSA at access points to the area.

The official map of the above described area is on file at the Bureau of Land Management District Office, 940 Lincoln Rd., Idaho Falls, ID.

EFFECTIVE DATE: This restricted vehicle use and closure order becomes effective upon publication in the **Federal Register** and shall remain in effect until modified or canceled.

For further information contact: Lloyd H. Ferguson, District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401, (208) 524-7500.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 92-19245 Filed 8-12-92; 8:45 am]

BILLING CODE 4310-GG-M

[OR-110-6334-11-G2-360]

Closures and Restrictions; Oregon

AGENCY: Bureau of Land Management (BLM), Interior, Medford District Office.

ACTION: Notice of closure and restrictions, in the Glendale Resource Area, Mule Creek Area.

SUMMARY: Pursuant to 43 CFR part 8364, the BLM will close designated areas of the Glendale Resource Area to motorized vehicles. Subject to valid existing rights use of 42.9 miles of the Mule Creek Area by motorized vehicles is prohibited. This restriction will apply year round. Any Bureau of Land Management employee, agent, contractor and cooperator, while in the performance of official duties is exempt from this closure. The Bureau of Land Management may authorize volunteers or other parties to enter the area for administrative, maintenance or other authorized purposes. With the exception of law enforcement officials, individuals who are authorized to use motor vehicles within the restricted area shall not carry firearms in vehicles while in the restricted area.

The Mule Creek area supports a herd of Roosevelt elk which has been reduced from historic levels due in part to a high open road density and poaching. Research has shown that high open road densities strongly reduce the habitat effectiveness of the forage and cover conditions found in an area. By restricting motor vehicle use on these roads the carrying capacity of the drainage is expected to increased. The purpose of this closure and restriction notice is to provide a means by which the Secretary of Interior through the Bureau of Land Management, may control and manage public use of the area to effectively carry out management objectives and provide wildlife habitat that is relatively free from disturbance and poaching from motor vehicles.

Maps of the closed area are available from the Medford District Office, 3040 Biddle Road, Medford, Oregon, 97504. This closure and restriction order are effective immediately and shall remain in effect until revised, revoked or amended by the authorized officer pursuant to 43 CFR 8360.0-7.

Any person who violates this closure and restriction notice may be subject to a fine of $1,000 and/or imprisonment not to exceed 12 months under authority 43-CFR-8360.0-7.

Restricted Area

Mule Creek is located approximately 18 miles west of Glendale, Oregon and is further described as follows:

Township 32 South, Range 9 West, Willamette Meridian.
Secs. 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33;
Township 33 South, Range 9 West, Willamette Meridian.
Secs. 4, 5, 6.
Township 32 South, Range 10 West, Willamette Meridian.
Secs. 23, 24, 25, 26, 35, 36.

Within this area the following roads will be closed to public motor vehicle use: 32-9-14.1, 32-9-14.3, 32-9-15.2 (the unsurfaced portion in section 30), 32-9-16 (the portion in sections 23, 24 and 25 behind the gate), 32-9-18, 32-9-18.1, 32-9-19, 32-9-19.1, 32-9-20, 32-9-20.1, 32-9-20.2, 32-9-20.3, 32-9-20.4, 32-9-20.5, 32-9-21, 32-9-21.2, 32-9-27, 32-9-28 (the unsurfaced portion in section 36, 32-9-28.1, 32-9-28.2, 32-9-29, 32-9-32, 32-9-32.1, 32-9-32.2, 32-9-33, 33-9-5, 32-10-24, 32-10-26, 32-10-26.1, 32-10-26.

In addition, several jeep roads will be barricaded and closed to pubic motor vehicle use.

Roads which will remain open to all public motor vehicle use will include: 32-8-31, 32-9-14.2, 32-9-15.1, 32-9-15.2, 32-9-16, 32-9-30, 32-9-31, 32-9-28.

FOR FURTHER INFORMATION, CONTACT: Roger Schnoes, Wildlife Biologist, Glendale Resource Area, Medford District, Bureau of Land Management, 3040 Biddle Road, Medford, OR 97504 (telephone 503770/2200).

Robert Korfhage,

Glendale Resource Area Manager.

[FR Doc. 92-19296 Filed 8-12-92; 8:45 am]

BILLING CODE 4310-33-M

[CA-060-02-5440-10-ZBBB; CACA 30070]

Realty Action, Land Exchange; Riverside County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The following described public land in Riverside County is being considered for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Selected Public Lands

All remaining public lands or interest in lands located in:

San Bernardino Meridian, Riverside County, California

T. 3 S., R. 14 E.
Sec. 25: Lots 5 and 6, SW¼, W½SE¼
Sec. 26: SW¼, SW¼SE¼, E½SE¼
Sec. 27: Lots 1 and 2, SE¼, N½SW¼
Sec. 28: Lot 2
Sec. 33: Lots 1, 2, 4 and 5, S½NE¼, E½NW¼, E½SW¼, SE¼
Sec. 34: Lots 1–7, SE¼SE¼, W½SE¼, SW¼
Sec. 35: Lots 1–4 and 9, NE¼NW¼, N½NE¼
Sec. 36: Lot 12
T. 3 S., R. 15 E.
Sec. 31: Lots 5, 10–14, 17–19
T. 4 S., R. 14 E.,
Sec. 1: Lots 8–11, SW¼SE¼, E½SE¼SW¼, E½NW¼SE¼
Sec. 2: Lots 7–9, S½SW¼, SW¼SE¼, W½SE¼SE¼
Sec. 11: Lots 1–4
Sec. 12: Lots 1–4
T. 4 S., R. 15 E.,
Sec. 6: Lots 4, 5, 8–11
Sec. 7: Lots 4–10, 12 and 13

These selected lands total 3,550.50 acres, more or less.

In exchange for these lands, the United States will acquire from Kaiser Steel Resources, Inc. the following described non-Federal lands in Riverside County, California:

Offered Private Lands

San Bernardino Meridian, Riverside County, California

T. 5S., R. 14 E.
Sec. 27: N½, N½S½
T. 6 S., R. 14 E.
Sec. 16: W½W½
Sec. 21: W½
T. 7 S., R. 12 E.
Sec. 35: Descr. by metes and bounds (*)
Sec. 36: N½SW¼, SE¼NW¼, S½NE¼
T. 7 S., R. 13 E.
Sec. 31: Descr. by metes and bounds (*)
T. 7., R. 14 E.
Sec. 5: All
T. 8 S., R. 11 E.
Sec. 13: NE¼
Sec. 21: E½E½SE¼
Sec. 23: Descr. by metes and bounds

(*) Only those lands owned by Kaiser Steel Resources within these legal descriptions.

These offered private lands total 2,849.20 acres, more or less.

SUPPLEMENTARY INFORMATION: In the proposed exchange, the offered non-Federal lands are located within and adjacent to the Chuckwalla Bench and Dos Palmas Areas of Critical Environmental Concern designated in the California Desert Conservation Plan. Respectively, these areas contain habitat for the Desert Tortoise, a Federally listed threatened species, and riparian habitat supporting two Federally listed endangered species, the Yuma Clapper Rail and Desert Pupfish

Full equalization of values of the lands will be achieved through acreage adjustment or cash payment in an amount not to exceed 25% of the value of the lands being transferred out of Federal ownership.

Public lands to be transferred from the United States are subject to the following:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, under the act of August 30, 1890 (43 U.S.C. 945).

2. Reservations, if any, for authorized pipelines, powerlines, roads, highway, telephone lines, mineral leases and other authorized land uses identified as prior existing rights. A specific listing of these valid existing rights is available at the Palm Springs-South Coast Resource Area Office.

DATES: September 28, 1992. Interested parties may submit comments to the District Manager, California Desert District Office, 6221 Box Springs Boulevard, Riverside, California 92507. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action.

Effective August 13, 1992, the public lands shall be segregated from entry under the public land laws and the general mining laws. The segregative effect will end upon issuance of patent or two years from the date of first publication, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Verla Harle, Realty Specialist, (619) 251–0812. Information relating to this exchange is available for review at the Palm Springs-South Coast Resource Office, 63–500 Garnet Avenue, North Palm Springs, California 92258.

Dated: July 30, 1992.

Alan Stein,

Acting District Manager.

[FR Doc. 92–18983 Filed 8–12–92; 8:45 am]

BILLING CODE 4310–40–M

[OR 48519; OR–080–02–4212–14: GP2–377]

Realty Action; Proposed Direct Sale; Oregon

August 5, 1992.

The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by direct sale under the authority of sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value:

Willamette Meridian, Oregon,

T. 3 S., R. 3 E.,
Sec. 25, Lot 12.

The above-described parcel contains 3.34 acres in Clackamas County.

The parcel will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**. The fair market value of the parcel has not yet been determined. Anyone interested in knowing the amount may request this information from the address shown below.

The above-described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above-cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The parcel is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. No significant resource values will be affected by this transfer. Because of the parcel's relative small size, its best use is to merge it with the adjoining ownership. Use of direct sale procedures will avoid an inappropriate land ownership pattern. The sale is consistent with the Eastside Management Framework Plan and the public interest will be served by offering this land for sale.

The parcel is being offered only to Port Blakley Tree Farms Limited Partnership (PBTF) (owner of Tax Lot 700, Map 3 3E 26) using direct sale procedures authorized under 43 CFR 2711.3–3.

The terms, conditions, and reservations applicable to the sale are as follows:

1. PBTF will be required to submit a deposit of either cash, bank draft, money order, or any combination thereof for not less than 20 percent of the appraised value. The remainder of the full appraised price must be

submitted prior to the expiration of 180 days from the date of the sale. Failure to submit the remainder of the full appraised price shall result in the cancellation of the sale and the forfeiture of the deposit.

2. The mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estate, in accordance with Section 209 of the Federal Land Policy and Management Act. PBTF must include with its bid deposit a nonrefundable $50.00 filing fee for the conveyance of the mineral estate.

3. The deed will be subject to:

a. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945.

b. All valid existing rights and reservations of record.

If the land identified in this notice is not sold, it will be offered competitively on a continuing basis until sold or until November 25, 1992. Sealed bids will be accepted at the Salem District Office during regular business hours. All bids received will be opened on Wednesday of each week, beginning on September 30, 1992. To be considered, bids must be received by 11 a.m. on the day of the bid opening.

Detailed information concerning the sale is available for review at the Salem District Office, address above.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Clackamas Area Manager, Salem District Office, at the above address. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Elena C. Daly,

Clackamas Area Manager.

[FR Doc. 92–19293 Filed 8–12–92; 8:45 am]

BILLING CODE 4310–33–M

[CA–050–02–4410–09]

Notice of Intent; Arcata Resource Management Plan Amendment Arcata, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: Pursuant to 43 CFR 1601.0–3 and 40 CFR 1502.7, notice is hereby given that the Arcata Resource Area will prepare an amendment to the Arcata Resource Management Plan (RMP) and associated Environmental Impact Statement (RMP/EIS) for four of the seven management areas treated in the RMP. Management areas affected by the amendment include: Lacks Creek, Red Mountain, Covelo, and Scattered Tracts.

SUPPLEMENTARY INFORMATION: The Arcata Resource Area Management Plan is divided for planning purposes into seven management areas totalling approximately 125,000 acres of public land in northwestern California. The RMP does not include the King Range National Conservation Area. Six of these management areas contain forested tracts providing various amount of habitat for the federally threatened northern spotted owl (*Strix occidentalis caurina*). Two of these will retain land use allocations from the RMP which are consistent with habitat management for the owl. The record of Decision for the existing land-use plan for the Arcata Resource Area was completed in April, 1992 and included a decision to preserve management options on forested lands pending the U.S. Fish and Wildlife Service designation of critical habitat and recovery plan for the owl, and the California Board of Forestry Habitat Conservation Plan. Based on the information provided in these plans, the Arcata plan amendment will make land use allocations which are consistent with the intent of these plans to provide recovery for the northern spotted owl on the four identified management areas.

Anticipated issues are the effects of owl habitat management on timber supply and land tenure. The amendment will reevaluate 67,120 acres of public lands in the Red Mountain, Covelo Vicinity, and Scattered Tracts Management Areas initially identified for disposal in the final RMP/EIS. These lands include 13,000 acres of commercial forest land. Lands to be retained and managed for the northern spotted owl and old growth values, as well as lands to be made available for disposal will be identified.

In total, the amendment will identify management strategies for the northern spotted owl on 29,740 acres of commercial forest lands in the four management areas. The Record of Decision identified these lands as available for forest management with all timber harvest deferred pending completion of the HCP and critical habitat.

The amendment will address two alternatives (1) No Action or present management as described in the 1992 Record of Decision, and (2) Proposed Action which carries forward land use allocations consistent with the State of California Habitat Conservation Plan and the USFWS Recovery Plan for the Northern Spotted Owl.

The amendment will be incorporated into the California Board of Forestry HCP draft EIR/EIS cumulative assessment, with the relationship between the HCP and BLM plans described. Public land-use prescriptions will be incorporated into the statewide HCP alternatives.

DATES: A draft of the EIR/EIS is scheduled for March, 1993 and the final EIR/EIS for November, 1993.

PUBLIC PARTICIPATION: Opportunities for public input and comment will be announced through the media, a mailing list and personal contacts. Comments on this notice will be accepted for 30 days after date of publication.

FOR FURTHER INFORMATION CONTACT: Lynda Roush, Area Manager, Bureau of Land Management, Arcata Resource Area, 1125 16th Street, room 219, Arcata, California 95521. Telephone: (707) 822–7648.

Dated: July 29, 1992.

Lynda Roush,

Arcata Area Manager.

[FR Doc. 92–19288 Filed 8–12–92; 8:45 am]

BILLING CODE 4310–40–M

[NM–940–02–4730–12]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below will be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico on September 7, 1992.

New Mexico Principal Meridian, New Mexico

T. 21 N., R. 11 W., Accepted July 7, 1992, for Group 872 NM.

T. 21 N., R. 10 W., Accepted July 6, 1992, for Group 872 NM.

T. 11 N., R. 5 E., Accepted July 2, 1992, for Group 903 NM.

Indian Meridian Oklahoma

T. 7 N., R. 12 W., Accepted July 1, 1992, for group 62 OK.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–7115. Copies may be obtained from this office upon payment of $2.50 per sheet.

Dated: August 4, 1992.

John P. Bennett,

Chief, Cadastral Survey.

[FR Doc. 92-19291 Filed 8-12-92; 8:45 am]

BILLING CODE 4310-FB-M

[OR-942-00-4730-12: GP2-358]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 22 S., R. 1 W., accepted June 5, 1992
T. 4 N., R. 2 W., accepted May 22, 1992
T. 14 S., R. 2 W., accepted June 23, 1992
T. 3 S., R. 8 W., accepted May 11, 1992
T. 19 S., R. 9 W., accepted June 3, 1992
T. 19 S., R. 10 W., accepted June 3, 1992
T. 7 S., R. 12 E., accepted July 20, 1992
T. 11 S., R. 21 E., accepted June 9, 1992
T. 12 S., R. 21 E., accepted June 9, 1992
T. 24 S., R. 32½ E., accepted July 14, 1992

Washington

T. 35 N., R. 3 W., accepted July 2, 1992

If protests against a survey, as shown on any of the about plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE., 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: August 3, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-19290 Filed 8-12-92; 8:45 am]

BILLING CODE 4310-33-M

[NV-930-4214-10; N-56170; N-56171]

Proposed Withdrawals and Opportunity for Public Meeting; Nevada

Dated: August 3, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 464.93 acres of public land in White Pine County for the Sacramento Pass Recreation Area and 9.61 acres of public land in Lincoln County for the Pony Springs Fire Station. This notice closes the lands for up to 2 years from settlement, sale, location and entry under the general land laws, including the United States mineral laws. The lands will remain open to leasing under the mineral leasing laws.

DATES: Comments and requests for a public meting should be received on or before November 12, 1992.

ADDRESSES: Comments and meeting requests should be sent to the Nevada State Director, BLM, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 702-785-6526.

SUPPLEMENTARY INFORMATION: On July 20, 1992, petitions were approved allowing the Bureau of Land Management to file applications to withdraw the following described public lands from settlement, sale, location and entry under the public land laws, including the mining laws, subject to valid existing rights:

Sacramento Pass Recreation Area (N-56170)

Mount Diablo Meridian

T. 14 N., R. 68 E.,
Sec. 1, Lots 3 and 4;
Sec. 2, Lots 1 and 2.
T. 15 N., R. 68E.,
Sec. 35, SE¼;
Sec. 36, W½SW¼, SE¼SW¼.

The area contains 464.93 acres in White Pine County.

The purpose of the proposed withdrawal is to protect the Sacramento Pass Recreation Area. This particular location was selected based upon its attractive rock formations, vegetation, favorable construction terrain, accessibility to major travel routes, availability of water and attractive scenic vistas.

Pony Springs Fire Station (N-56171)

Mount Diablo Meridian

T. 5N., R. 66 E.,

A portion of section 6, more particularly described as follows: Beginning at the section corner common to the northwest corner of section 5 and the northeast corner of section 6, thence South 73°51'01", a distance of 369.24 feet, to the true point of beginning, which is corner No. 1. From corner No. 1, the true point of beginning: Thence North 78°40'13" East, 522.77 feet to Corner No. 2; Thence South 11°34'39" East, 800.00 feet, to Corner No. 3; Thence South 78°28'21" West, 522.48 feet to Corner No. 4; Thence North 11°32'52" West, 801.80 feet to Corner No. 1, the true point of beginning. The area contains 9.61 acres in Lincoln County.

The purpose of the proposed withdrawal is to protect the Pony Springs Station site. This location was selected based upon access for fire response to different locations, as well as for ease of fire reporting by the public.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawals. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawals must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The applications will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the applications are denied or canceled or

the withdrawals are approved prior to that date. The temporary uses which may be permitted during this segregative period by the BLM authorized officer are any temporary uses which will not interfere with the purpose of the withdrawals.

The temporary segregation of the lands in connection with these withdrawal applications shall not affect the administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands.

Marla B. Bohl,

Acting Deputy State Director, Operations.

[FR Doc. 92-19239 Filed 8-12-92; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Paul M. Beegel Auburn, ME, PRT-770683

The applicant requests a permit to the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. L. Tonks, "Sondagsrivierhoek", Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: James M. Greaves Santa Barbara, CA, PRT-769931

The applicant requests a permit to live-trap Least Bell's vireo (*Vireo bellii pusillus*) from the counties of Ventura, Santa Barbara, San Luis Obispo, Monterey, and San Benito, California, for banding and biological observations for the purpose of enhancement of survival of the species. All vireo's will be released at their capture sites after collection of data.

Applicant: James W. Hardin Stevens Point, WI, PRT-769288

The applicant requests a permit to import four pairs of captive-hatched red siskins (*Carduelis cucullata*) from Russell Kingston, Bonza Birdz Pty. Ltd., Australia, for enhancement of propagation and survival of the species through research, breeding and eventual reintroduction of the progeny into the wild.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice; U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: August 7, 1992.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92-19270 Filed 8-12-92; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Recovery Plan for the Northeastern Bulrush for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Recovery Plan for the Northeastern bulrush. Small, isolated populations of this species are currently found in Maryland, Massachusetts, Pennsylvania, Vermont, Virginia, and West Virginia. The Service solicits review and comment from the public on this draft Plan.

DATES: Comments on the draft Recovery Plan must be received on or before October 13, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan can obtain a copy from the Pennsylvania Field Office, U.S. Fish and Wildlife Service, 315 South Allen Street, Suite 322, State College, Pennsylvania 16801, telephone (814) 234-4090.

FOR FURTHER INFORMATION CONTACT: Carole K. Copeyon (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft Northeastern Bulrush (*Scirpus ancistrochaetus*) Recovery Plan. Sixteen extant populations of this wetland plant are currently known from six eastern states; 11 historical populations are presumed extirpated. The Northeastern bulrush is found at the edge of ponds, wet depressions, or shallow sinkholes within small (generally less than one acre) wetland complexes. These wetlands are characterized by seasonally variable water levels. Several of the extant populations are small, and most are subject to threats such as habitat degradation or loss, succession, or herbivory. The Northeastern bulrush was listed as federally endangered in June of 1991.

The primary objectives of this draft Recovery Plan are to ensure the long-term viability of the species in the wild and to restore its rangewide distribution. Conditions that must be met to meet these objectives include permanent protection of 20 extant or established populations, evidence showing that 15 representative populations are stable or increasing, and sufficient knowledge of the species' life history and ecological requirements to provide for effective protection and management.

These conditions will be accomplished by (1) protecting existing populations and their habitat, (2) searching for and/or establishing additional populations, (3) monitoring population trends and habitat conditions, (4) investigating life history and ecological requirements, and (5) storing or propagating genetic material to ensure long-term genetic viability.

This draft Recovery Plan is being submitted for agency review. After

consideration of comments received during the review period, the Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 5, 1992.

Nancy M. Kaufman,

Regional Director.

[FR Doc. 92-19284 Filed 8-12-92; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-337]

Designation of Additional Commission Investigative Attorney

In the matter of Certain Integrated Circuit Telecommunications Chips and Products Containing Same, Including Dialing Apparatus.

Notice is hereby given that, as of this date, Juan S. Cockburn, Esq. and Sarah C. Middleton, Esq. of the Office of Unfair Import Investigations are designated as the Commission investigative attorneys in the above-cited investigation instead of Juan S. Cockburn, Esq.

The Secretary is requested to publish this notice in the **Federal Register**.

Dated: August 7, 1992.

Lynn I. Levine,

Director, Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436.

[FR Doc. 92-19282 Filed 8-12-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32104]

Burns Harbor Shortline Railroad Co.; Acquisition and Operation Exemption; Indiana Port Commission

Burns Harbor Shortline Railroad Company (BHSL), a noncarrier, has filed a notice of exemption to purchase and operate certain rail lines of the Indiana Port Commission (IPC). The lines total approximately 5.27 miles and extend between various coordinates in Burns International Harbor, Porter County, IN. The proposed transaction was expected to be consummated on or after August 1, 1992.

This proceeding is related to Finance Docket No. 32114, Indiana Ports Railroad Holding Corporation—Continuance in Control Exemption—Burns Harbor Shortline Railroad Company, Clark Shortline Railroad Company, and Southwind Shortline Railroad Company, wherein Indiana Ports Railroad Holding Corporation (IPRHC) has concurrently filed a notice to exempt its continuance in control of BHSL upon the latter's becoming a carrier.[1]

Any comments must be filed with the Commission and served on: Fritz R. Kahn, Verner, Liipfert, Bernhard, McPherson and Hand, suite 700, The McPherson Building, 901 15th Street, NW., Washington, DC 20005-2301.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 7, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-19316 Filed 8-12-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32112]

Clark Shortline Railroad Company; Acquisition and Operation Exemption; Indiana Port Commission

Clark Shortline Railroad Company (CLSL), a noncarrier, has filed a notice of exemption to purchase and operate a rail line of the Indiana Port Commission (IPC). The line is located in Clark Maritime Centre, Clark County, IN, and extends approximately 32,110 feet from a point 250 feet south of CSX Transportation's milepost 1.0. The proposed transaction was expected to be consummated on or after August 1, 1992.

This proceeding is related to Finance Docket No. 32114, Indiana Ports Railroad Holding Corporation—Continuance in Control Exemption—Burns Harbor Shortline Railroad Company, Clark Shortline Railroad Company, and Southwind Shortline Railroad Company, wherein Indiana Ports Railroad Holding Corporation (IPRHC) has concurrently filed a notice to exempt its continuance in control of CLSL upon the latter's becoming a carrier.[1]

Any comments must be filed with the Commission and served on: Fritz R. Kahn, Verner, Liipfert, Bernhard, McPherson and Hand, suite 700, The McPherson Building, 901 15th Street, NW., Washington, DC 20005-2301.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 7, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-19314 Filed 8-12-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32114]

Indiana Ports Railroad Holding Corporation—Continuance in Control Exemption—Burns Harbor Shortline Railroad Company, Clark Shortline Railroad Company, and Southwind Shortline Railroad Company

Indiana Ports Railroad Holding Corporation (IPRHC) has filed a notice of exemption to continue to control Burns Harbor Shortline Railroad Company (BHSL), Clark Shortline Railroad Company (CLSL), and Southwind Shortline Railroad Company (SWSL), upon the last three named companies becoming carriers.

BHSL, CLSL, and SWSL, noncarriers, have concurrently filed notices of exemption in the following proceedings: Finance Docket No. 32104, Burns Harbor Shortline Railroad Company—Acquisition and Operation Exemption—Indiana Port Commission, Finance Docket No. 32112, Clark Shortline Railroad Company—Acquisition and Operation Exemption—Indiana Port Commission, and Finance Docket No. 32113, Southwind Shortline Railroad Company—Acquisition and Operation Exemption—Indiana Port Commission, each involving acquisition and operation of different rail lines of the Indiana Port

[1] These notices also relate to acquisition and operation notices of exemption in Finance Dockets Nos. 32112 and 32113. These proceedings involve other subsidiaries of IPRHC and other lines of IPC.

[1] These notices also relate to acquisition and operation notices of exemption in Finance Docket Nos. 32104 and 32113. These proceedings involve other subsidiaries of IPRHC and other lines of IPC.

Commission. The transactions involved there were expected to be consummated on or after August 1, 1992.

IPRHC indicates that: (1) The rail lines to be acquired and operated by the affiliated railroads will not connect with each other; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Fritz R. Kahn, Verner, Liipfert, Bernhard, McPherson and Hand, suite 700, The McPherson Building, 901 15th Street, NW., Washington, DC 20005–2301.

Decided: August 7, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–19318 Filed 8–12–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32118]

Norfolk and Western Railway Company—Trackage Rights Exemption—Burlington Northern Railroad Company

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR 1180.2(d)(7) for overhead trackage rights over Burlington Northern Railway Company (BN) lines between: (1) BN Milepost 7.2 at St. Louis, MO, and NW Milepost SD–334.6 at Des Moines, IA, in St. Louis, St. Charles, Lincoln, Pike, Ralls, Marion, Lewis, and Clark Counties, MO, and Lee, Des Moines, Henry, Jefferson, Wapello, Monroe, Marion, Warren, and Polk counties, IA; (2) BN Milepost 116.6 at Illasco and BN Milepost 125.9, at Helton in Ralls County, MO; and (3) BN Milepost 263.4 at West Quincy in Marion County, MO, and BN Milepost 269.6 at Marblehead in Adams County, IL. The trackage rights will afford NW a more efficient means of routing its overhead traffic to and from the Des Moines-Runnells, IA, area and will replace its existing trackage rights over BN between Hannibal, MO, and Marblehead, IL. The exemption became effective on August 6, 1992, and the parties intend to consummate the transaction on August 24, 1992.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert J. Cooney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Dated: August 6, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–19317 Filed 8–12–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32113]

Southwind Shortline Railroad Co.; Acquisition and Operation Exemption; Indiana Port Commission

Southwind Shortline Railroad Company (SWSL), a noncarrier, has filed a notice of exemption to purchase and operate a rail line of the Indiana Port Commission (IPC). The line is located in Southwind Maritime Centre, Posey County, IN, and extends approximately 33,012 feet from a point 190 feet east of CSX Transportation's milepost 340.0. The proposed transaction was expected to be consummated on or after August 1, 1992.

This proceeding is related to Finance Docket No. 32114, Indiana Ports Railroad Holding Corporation—Continuance in Control Exemption—Burns Harbor Shortline Railroad Company, Clark Shortline Railroad Company, and Southwind Shortline Railroad Company, wherein Indiana Ports Railroad Holding Corporation (IPRHC), has concurrently filed a notice to exempt its continuance in control of SWSL upon the latter's becoming a carrier.[1]

[1] These notices also relate to acquisition and operation notices of exemption in Finance Docket Nos. 32104 and 32112. These proceedings involve other subsidiaries of IPRHC and other lines of IPC.

Any comments must be filed with the Commission and served on: Fritz R. Kahn, Verner, Liipfert, Bernhard, McPherson and Hand, suite 700, The McPherson Building, 901 15th Street NW., Washington, DC 20005–2301.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be fled at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 7, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–19315 Filed 8–12–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Chevron U.S.A., Inc.; Lodging of Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Chevron U.S.A. Inc.,* Civil Action No. 88–6681, was lodged on August 5, 1992, with the United States District Court for the Eastern District of Pennsylvania. The action was brought pursuant to sections 112 and 114 of the Clean Air Act, 42 U.S.C. 7412 and 7414. The action sought civil penalties for the defendant's violation of the National Emission Standard for Hazardous Air Pollutants (NESHAP) for benzene, 40 CFR part 61, subparts A, J, and V, as well as injunctive relief against violation of the benzene NESHAP. In addition to providing for payment of civil penalties in the sum of $1,000,000, the consent decree requires the defendant to take steps to ensure future compliance with the benzene NESHAP, including undertaking a benzene NESHAP compliance audit.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Chevron U.S.A. Inc.* (E.D. Pa.), DOJ Ref. No. 90–5–2–1–1124.

The proposed consent decree may be examined at the office of the United States Attorney, Philadelphia Life Building, 13th Floor, Suite 1300, 615

Chestnut Street, Philadelphia, Pennsylvania 19106; or at the Consent Decree Library, 601 Pennsylvania Avenue Building NW., Washington, DC 20044, 202–347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20044. In requesting a copy, please enclose a check in the amount of $19.00 (25 cents per page reproduction costs) payable to "Consent Decree Library".

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92–19299 Filed 8–12–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 23, 1992, a proposed Consent Decree in *United States of America* v. *Outrigger Hotels Hawaii, et al.* was lodged with the United States District Court for the District of Hawaii.

The proposed Consent Decree resolves the United States' claims against Outrigger Hotels Hawaii, Hotel Operating Co. of Hawaii, Ltd., and Outrigger Services, Inc. under section 112(b) of the Clean Air Act, 42 U.S.C. 7412(b), as alleged in a complaint filed simultaneously with the Consent Decree. The Complaint alleged the defendants' violations of three different regulatory provisions of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, which is published at 40 CFR part 61 subpart M (1990). Under the proposed Consent Decree, defendants Outrigger Hotels Hawaii, Hotel Operating Co. of Hawaii, Ltd., and Outrigger Services, Inc. will pay a civil penalty to the United States of thirty thousand dollars ($30,000) and agree to comply with the NESHAP for asbestos in the future.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States of America* v. *Outrigger Hotels Hawaii, et al.*, DOJ Ref. No. 90–5–2–1–1604.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of Hawaii, room C–242, U.S. Courthouse, 300 Ala Moana Blvd., Honolulu, Hawaii 96850 or at the Office of the Regional Counsel, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94103. The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (Tel.: (202) 347–2072). A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097. Washington, DC 20004. In requesting a copy, please enclose a check in the amount of nine dollars and seventy-five cents ($9.75) (25 cents per page reproduction costs) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92–19300 Filed 8–12–92; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on July 8, 1992 filed a written notification on behalf of Bellcore and Royal PTT Nederland NV ("PTT Research") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objective of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture, and its general area of planned activities are given below.

Bellcore is a Delaware corporation with its principal place of business in Livingston, New Jersey.

PTT Research is a corporation of the Netherlands with its principle place of business in Leidschendam, The Netherlands.

Effective on May 18, 1992, Bellcore and PTT Research entered into an agreement to engage in cooperative research of future telecommunication network architectures and services, including experimental hardware and software technologies on which some networks and services may be created, to better understand fundamental technical issues and performance characteristics of these networks and services for exchange and exchange access services.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–19244 Filed 8–12–92; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Anina, Inc.; Denial of Application

On May 18, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Anina, Incorporated, (Anina) of 943 NE. 125th Street, North Miami, Florida 33161, proposing to deny its application, executed on July 25, 1990, for registration as a distributor under 21 U.S.C. 823(b) and 823(e). The Order to Show Cause alleged that Anina's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(b) and 823(e).

The Order to Show Cause was sent to Anina by registered mail. More than thirty days have passed since the Order to Show Cause was received and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Anina is deemed to have waived its opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that between October 1990 and March 1991, Anina ordered and received controlled substances using a DEA registration number issued to another person. Anina was not registered with the Drug Enforcement Administration to handle such substances.

On June 20, 1991, the Drug Enforcement Administration was informed by a pharmaceutical company that Anina was attempting to purchase 1000 dosage units of Tenuate Dospan, a Schedule IV controlled substance. Pursuant to this information, a controlled delivery of controlled substances was made to Anina on June 21, 1991. Following the controlled delivery, Anina's president Louis Banatty and another employee were arrested and charged with the unlawful use of a DEA registration number issued to another person, for the purpose of acquiring controlled substances, in violation of 21 U.S.C. 843(a)(2) and 21

U.S.C. 846. On January 8, 1992, in the United States District Court for the Southern District of Florida, and pursuant to an entry of a plea of guilty to one count of a two-count indictment, Louis Banatty, was convicted of conspiracy to unlawfully use a Drug Enforcement Administration number issued to another person, for the purpose of acquiring a controlled substance, in violation of 21 U.S.C. 846.

The Administrator also finds that Anina has failed to implement adequate security controls as required for distributors by 21 CFR 1301.72. Anina was informed by DEA personnel of the security requirements applicable to distributors, and on February 8, April 10, May 14, and May 24, 1991, Anina communicated to DEA that it would acquire and install the necessary security for controlled substances. However, the security requirements have not been met.

Based on the controlled substance related felony conviction of Anina's president, Louis Banatty, and its failure to implement adequate security controls as required for distributors, the Administrator concludes that Anina's registration with the Drug Enforcement Administration would be inconsistent with the public interest. No evidence of explanation or mitigating circumstances has been offered by Anina. Therefore, the Administrator concludes that Anina's application for registration must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.1000(b), hereby orders that the application of Anina, Incorporated, executed on July 25, 1990, for registration under the Controlled Substances Act, be, and it hereby is, denied. This order is effective August 13, 1992.

Dated: August 5, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-19236 Filed 8-12-92; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Earth Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 10, 1992; 10 a.m.-5 p.m.

Place: Conference Room #500-C, 1110 Vermont Avenue NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Marvin E. Kauffman, Program Director, Education and Human Resources Program, Division of Earth Sciences, room 602, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357-7958.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate SBIR-PHASE I PANEL proposals as part of the selection process for awards.

Reason for Closing: 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 exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 10, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-19308 Filed 8-12-92; 8:45 am]

BILLING CODE 7555-01-M

Earth Sciences Proposal Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 16, 17, and 18, 1992; 8 a.m. to 6 p.m. each day.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Ian D. MacGregor, Section Head, Division of Earth Sciences, room 602, National Science Foundation, Washington, DC (202) 357-9591.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate earth sciences proposals as part of the selection process for awards.

Reason for Closing: 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 proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 10, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-19310 Filed 8-12-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Microelectronic Information Processing Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 3, 1992; 8 a.m. to 5 p.m.

Place: Room 500D, 1110 Vermont Avenue NW., Washington, DC

Type of Meeting: Closed.

Contact Person: Dr. Robert B. Grafton, Program Director, MIPS Division, rm. 414, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357-7853.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate SBIR Phase I proposals as part of the selection process for awards.

Reason for Closing: 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 exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 10, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-19307 Filed 8-12-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Physics; Meeting

Name: Special Emphasis Panel in Physics.

Dates: September 10-11, 1992.

Times: 11 a.m.-6 p.m., September 10, 1992, 8:30 a.m.-3:00 p.m., September 11, 1992.

Place: Seminar Room, Nuclear Structure Research Laboratory, University of Rochester, Rochester, New York.

Type of Meeting: Closed

Contact: Dr. H.C. Britt, Program Director, Nuclear Physics Program, National Science Foundation, room 341, 1800 G Street, NW., Washington, DC 20550; Telephone (202) 357-7993.

Purpose of Meeting: To provide advice and recommendations concerning a proposal submitted to the National Science Foundation for financial support.

Agenda: Review and evaluate a research proposal by University of Rochester.

Reason for closing: The proposal being reviewed includes information of

a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552 b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 10, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-19305 Filed 8-12-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Polar Programs; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meetings.

Date and Time: September 10-11, 1992; 8:30 a.m. to 5 p.m.

Place: Room 540-B, 1800 G Street, NW., Washington, DC

Contact Person: Dr. Julie Palais, Program Director, Division of Polar Programs, room 620, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357-7894.

Agenda: To review and evaluate Polar Earth Sciences proposals as part of the selection process for awards.

Date and Time: September 17, 1992; 8:30 a.m. to 5 p.m.

Place: Room 500-A, 1100 Vermont Avenue, NW., Washington, DC.

Contact Person: Dr. Julie Palais, Program Director, Division of Polar Programs, Room 620, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357-7894.

Agenda: To review and evaluate Polar Glaciology proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: 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 exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 10, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-19306 Filed 8-12-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Undergraduate Education; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meetings.

Date and Time: September 9, 1992; 7:30 p.m. to 9 p.m.; September 10, 1992; 8 a.m. to 5 p.m.; September 11, 1992; 8 a.m. to 3 p.m.

Place: Doubletree National Airport Hotel, 300 Army/Navy Drive, Arlington, VA.

Contact Person: Dr. Terry Woodin, Program Director, Division of Undergraduate Education, rm. 1210, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7051.

Agenda: To review and evaluate Teacher Preparation Collaboratives proposals as part of the selection process for awards.

Date and Time: September 9, 1992; 7:30 p.m. to 9 p.m.; September 10, 1992; 8 a.m. to 5 p.m.; September 11, 1992; 8 a.m. to 3 p.m.

Place: Holiday Inn Crowne Plaza, 300 Army/Navy Drive, Arlington, VA.

Contact Person: Dr. William Kelly, Program Director, Division of Undergraduate Education, Rm. 1210, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7051.

Agenda: To review and evaluate Undergraduate Course and Curriculum Development (Phase II) proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: 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 exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 10, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-19309 Filed 8-12-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-289; License No. DPR-50]

GPU Nuclear Corporation; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated July 10, 1992, Mr. Robert Gary, on behalf of the Pennsylvania Institute for Clean Air (Petitioner), requested that the U.S. Nuclear Regulatory Commission (NRC) take action regarding the GPU Nuclear Corporation, licensee of the Three Mile Island Nuclear Station, Unit 1. Petitioner requests that as soon as possible (preferably within 5 working days) (1) the Federal Emergency Management Agency (FEMA) examine certain transportation-related discrepancies alleged by Mr. Gary in the Dauphin County Emergency Evacuation Plan and (2) the NRC order the licensee to "power down" the plant and not permit the plant to generate power until the discrepancies are corrected, and until a valid, workable, operational emergency evacuation plan is produced.

Petitioner asserts, as bases for these requests that, in the event of a radiological emergency, the Dauphin County Emergency Evacuation Plan could not operate because:

(1) Letters of intent from private transportation companies were not on file at Pennsylvania Emergency Management Agency (PEMA) headquarters or the Emergency Operations Center of Dauphin County, in Harrisburg, as represented by Chief Counsel, except for a single letter of 1985 from Capital Area Transit, which cited as the sole source of payment a statute since repealed and superseded;

(2) The Radiological Emergency Response Plan (RERP) maintained at the Dauphin County Emergency Operations Center accounted for 450 buses, 70 with Capital Area Transit, and 320 with Capital Trailways Penn Central Station and executives at Capital Area Transit and Trailways Penn Central listed by the RERP has left the companies in 1984 and 1987, respectively;

(3) No "after hours" telephone numbers were listed in the RERP for use in the event of a radiological emergency;

(4) The Dauphin County Emergency Operations Center staff states that they have no authority to request military vehicles from the National Guard, Mechanicsburg, or Indiantown Gap, although PEMA does;

(5) PEMA states that its responsibility lies only in communications and coordination and not in the use of military vehicles, and PEMA has no plan to call for the use of military vehicles;

(6) The Dauphin County Plan contains no reference to the use of military vehicles because the county believes that the State has exclusive jurisdiction in that area;

(7) Despite acres of trucks within 15 miles of Harrisburg, neither the State nor the County written plans refer to any use of such vehicles; and

(8) Permission to operate nuclear reactors at Three Mile Island is premised on the existence and continued maintenance of an operational radiological emergency evacuation plan for Dauphin County.

The Petition has been referred to the Director of the Office of Nuclear Reactor Regulation pursuant to 10 CFR 2.206. As provided by § 2.206, appropriate action will be taken on the specific issues raised by the petition in a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room for the Three Mile Island facility located at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 5th day of August 1992.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92-19324 Filed 8-12-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-315 and 50-316]

Indiana Michigan Power Co., Donald C. Cook Nuclear Plant; Notice of Withdrawal of Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by Indiana Michigan Power Company (the licensee) to withdraw its June 29, 1989, application for amendments to Facility Operating License Nos. DPR-58 and DPR-74 issued to the licensee for operation of the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, located in Berrien County, Michigan. Notice of Consideration of Issuance of the amendments was published in the **Federal Register** on April 18, 1990 (55 FR 14507).

The purpose of the licensee's amendment requests was to revise the Technical Specifications (TS) related to the control room emergency ventilation system.

Subsequently, the licensee informed the staff that the amendments are no longer requested. Thus, the amendments application is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) the application for amendments dated June 29, 1989, and (2) the staff's letters dated July 7, 1992 and August 6, 1992.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, 6th day of August 1992.

For the Nuclear Regulatory Commission.

John Stang,

Project Directorate III-1, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-19325 Filed 8-12-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-00823; License No. 21-10725-03; EA 92-042]

Oakland University, Rochester, MI; Order Imposing Civil Monetary Penalty

I

Oakland University (Licensee) is the holder of Byproduct Material License No. 21-10725-03 issued by the Nuclear Regulatory Commission (NRC or Commission) on May 22, 1968. The license was amended in its entirety on March 17, 1988, most recently amended on July 30, 1990, and is due to expire on May 31, 1993. The license authorizes the Licensee to possess and use a limited number of radioisotopes in millicurie quantities for in-vitro laboratory research studies, animal studies, and student instruction in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on February 18 through 25, 1992. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon Licensee by letter dated April 7, 1992. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by two letters dated May 4, 1992. In its response, the Licensee admitted the violations that resulted in the proposed civil penalty, but requested mitigation of the penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff had determined, as set forth in the Appendix to this Order, that the violations, with the exception of Violation I.C., occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed. With respect to Violation I.C., the violation is amended as described in the Appendix to this Order.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $5,000 within 30 days of the date of the Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

Whether on the basis of the violations set forth in the Notice of Violation and as modified in the appendix, which were admitted by the licensee, this Order should be sustained.

Dated at Rockville, Maryland, this 6th day of August 1992.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluations and Conclusions

On April 7, 1992, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for

violations identified during an NRC inspection on February 18 through 25, 1992. Oakland University (Licensee) responded to the Notice on May 4, 1992. The Licensee questioned the accuracy and denied Violation I.C., in part; and admitted the remaining violations, but requested mitigation of the penalty. The NRC's evaluation and conclusions regarding the licensee's partial denial and contention of an inaccurate violation, and request for mitigation of the civil penalty are as follows:

Restatement of Violations (Parts I and II of Notice)

I. License Condition 16 requires that the licensee conduct its program in accordance with the statements, representations, and procedures contained in applications dated April 23, 1982, and February 19, 1988; and a letter dated October 22, 1982.

A. Item 11.a of the application dated April 23, 1982, and Item 10 of the application dated February 19, 1988, require annual calibration of the radiation detection instruments listed in the applications.

Contrary to the above, as of February 18, 1992, the licensee failed to calibrate a Victoreen 493 Geiger counter since September 21, 1984, an Eberline E–120 counter since March 17, 1988, and a Series 900 minimonitor since December 19, 1989, which are radiation detection instruments listed in the applications.

This is a repeat violation.

B. The letter dated October 22, 1982, states that the Radiation Safety Committee meets four times a year.

Contrary to the above, the Radiation Safety Committee had not met from December 7, 1989 until the February 18–25, 1992 inspection.

C. Item 15 of the application dated April 23, 1982, "Rules for Laboratory Personnel," states, do not eat or drink in any area where radioactive material is stored or used, and do not store food or drink with radioactive material.

Contrary to the above, on February 19, 1992, drinking and storage of food occurred in three labs where radioactive material is stored and used. Specifically, a box of crackers was found and a coffee maker was brewing in room 347 of Dodge Hall; a student was warming coffee and drinking coffee in room 332 of Dodge Hall; and beverages and food were stored in room 320 of Hannah Hall.

D. Item 15 of the application dated April 23, 1992, "Area Survey Procedures," requires that waste storage areas and all other laboratory areas will be surveyed weekly. Laboratory areas where only small quantities of radioactive material are used (less than 200 microcuries) will be surveyed monthly. The weekly and monthly surveys will consist of a measurement of radiation levels with a survey instrument and a series of wipe tests.

Contrary to the above, from November 1990 until the February 18–25, 1992 inspection, the licensee failed to perform wipe tests of rooms 348 and 418 of Dodge Hall, which are laboratory areas where radioisotopes are used or stored. Additionally, since November 1990, wipe tests of all other areas have only been performed on November 19, 1990, December 13, 1990, February 1, 1991, March 22, 1991, July 12, 1991, and February 14, 1992.

E. Item 7.c of the letter dated October 22, 1982 requires the use of finger type extremity monitors for procedures that involve one millicurie or more.

Contrary to the above, the licensee failed to use finger type extremity monitors including the following dates of November 21, 1989, January 16, 1990, January 10, 1991, February 4, 1991, May 5, 16, and 21, 1991, July 31, 1991, October 17, 1991, and January 27, 1992, when greater than one millicurie of radioactive material was received and used.

F. Item 15 of the application dated April 23, 1982, requires the RSO inspect each radiation area quarterly. Inspection will include a survey of all areas in which radioactive material is used, and determination of compliance with rules and regulations, and license conditions.

Contrary to the above, during the second and fourth quarters of 1991, the RSO failed to inspect any radiation area quarterly. Additionally, from November 1990 to February 18, 1992, the quarterly inspections which were performed only included a series of wipe tests and did not include a determination of compliance with rules and regulations, and license conditions.

G. Item 15 of the application dated April 23, 1982, "Procurement of Radiation Sources," requires that a copy of all purchase order requests for radiation sources be submitted to the RSO.

Contrary to the above, from June 1989 until the February 18–25, 1992 inspection, the authorized users of this license failed to submit a copy of purchase order requests for radioactive sources to the RSO.

H. Item 15 of the application dated April 23, 1982, requires the licensee to dispose of radioactive waste only in specially designated and properly shielded receptacles.

Contrary to the above, on February 19, 1992, the licensee failed to dispose of radioactive waste in specially designated and properly shielded receptacles in rooms 315 and 430 of Dodge Hall. Specifically, bags containing radioactive waste were stored under a sink in room 315, and the surface of the general trash can in room 430 had survey readings of three to four millirem per hour.

I. Item 15 of the application dated April 23, 1982, "Area Survey Procedures," requires that a permanent record be kept of all survey results, including negative results.

Contrary to the above, from December 10, 1986, which was the date of the last NRC inspection, until the February 18–25, 1992 inspection, the licensee failed to document results of daily surveys performed with a survey instrument.

II. License Condition 8.C limits the maximum amount of calcium-45 byproduct material that the licensee may possess at any one time to 5 millicuries.

Contrary to the above, from October 18, 1990 to approximately February 8, 1991, the licensee exceeded the 5 millicurie possession limit for calcium-45. Specifically, on October 18, 1990, the licensee received a 5 millicurie shipment of calcium-45 while a 3.1 millicurie inventory of calcium-45 was already in its possession. The maximum amount possessed decayed below the possession limit on approximately February 8, 1991.

Summary of Licensee's Response to Violation I.C.

The licensee admits that drinking and storage of food occurred in room 347 of Dodge Hall. However, the violation incorrectly referenced room 320 instead of room 325 in Hannah Hall.

Additionally, no radioactive material was used or stored in room 332 of Dodge Hall at the time of the NRC inspection.

NRC Evaluation of Licensee's Response

The NRC agrees that the incorrect room was cited in the violation and accepts that argument that no radioactive material was used or stored in room 332 of Dodge Hall. The violation is amended to reflect the correct room numbers and locations. However, this does not change the overall validity of Violation I.C. since two examples of the occurrence remain.

Therefore, the NRC concludes that the violation occurred and the violation is amended to reflect the correction.

Summary of Licensee's Request for Mitigation

The Licensee admitted the violations which resulted in the proposed civil penalty but requested mitigation of the penalty based on the following arguments:

1. The Licensee states that the NRC's stated purpose for imposing civil penalties is to "emphasize the need for lasting remedial action and deter future violations." (10 CFR part 2, appendix C, section V.B (1991)). The Licensee believes that its replay with accompanying appendices establishes that adequate remedial action has been taken. Furthermore, these documents establish that adequate audit and review processes are now in place to insure that no further violations occur; corrective actions taken thus far have demonstrated involvement and support from the highest levels of the administration, including the President; and the University administration has committed time and attention necessary to insure that the radiation safety program is in compliance with all NRC and license requirements.

The Licensee takes exception to the NRC's characterization of corrective action taken as being only minimally acceptable. Consideration should be given to "the timeliness of the corrective action, the degree of licensee initiative, and the comprehensiveness of the corrective action-such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern" (10 CFR part 2, appendix C, section V.B.2). It is the Licensee's position that the corrective action taken in this case meets all three criteria.

The Licensee states that corrective action was timely, in that within 24 hours of the NRC's inspection, the Radiation Safety Officer sent memoranda to the isotope users whose laboratories were cited. In addition the Radiation Safety Officer directed a memorandum on February 20, 1992, to all approved isotope users reminding the users of proper radiation safety procedures. On March 9, 1992, the Radiation Safety Committee met to review the apparent violations, to review the corrective actions taken and to plan for further compliance.

The Licensee states that the corrective action also shows a considerable degree of initiative and comprehensiveness. Rather than focusing exclusively on the specific violations, the Director of Research and Academic Development and the Radiation Safety Officer met and immediately began a process to revise the entire Radiation Safety Manual in an attempt to address the concern about management control of the radiation safety program. Additionally, the decision to appoint the Director of Research and Academic Development, rather than the Radiation Safety Officer, as Chair of the Radiation Safety Committee also reflects initiative and comprehensiveness of corrective actions.

The Licensee states that with respect to the violations regarding failure of the Radiation Safety Committee to meet on a quarterly basis, failure to comply with weekly and monthly survey requirements, failure of the Radiation Safety Officer to survey and inspect on a quarterly basis, failure to dispose of radioactive waste in special containers, and failure of users to document survey results, it was impossible for the University to be in complete compliance by the date of the Enforcement Conference. Other corrective actions took longer to complete because problems of waste storage were discovered subsequent to the Enforcement Conference. In addition, the University demonstrated further good faith compliance with the NRC's requirement for corrective action immediately after the March 19, 1992, Enforcement Conference. Additional corrective measures were taken on March 20, 1992, which addressed alleged violations concerning the failure to use extremity monitors, the failure of authorized users to submit copies of purchase order requests to the Radiation Safety Officer, failure to properly dispose of radioactive waste, and possession of an excessive quantity of calcium-45.

2. The Licensee also requests mitigation of the civil penalty based on the ability of the Licensee to pay and the Licensee's ability to conduct licensed activities safely. The State of Michigan has reduced financial support, and as a result, the University has instituted a series of cost-reduction efforts and tuition increases. In addition, the University will change its recognition of State appropriations from a modified accrual to a cash basis methodology. Compliance with license requirements for operation of the radiation safety program has resulted in a significant increase in costs. The University will be spending up to $15,000 to finance repairs and restorations to the University's licensed storage facility. The Licensee urges the NRC to consider the University's budgetary problems, including the significant cost required to maintain compliance with the radiation safety program. Funds paid as part of the civil penalty could be better spent in correcting radiation safety problems and preventing their recurrence.

3. Furthermore, the Licensee believes that the deterrent effect intended by the NRC has already been accomplished by the notice of violation and the adverse publicity as a result of the press release.

NRC Evaluation of Licensee's Request for Mitigation

1. Corrective Action

When considering the corrective action factor, the NRC considers those corrective actions which are completed or fully formulated by the Licensee from the time the violations are identified during the inspection through the Enforcement Conference. As stated in the NRC's letter dated April 7, 1992, full 50 percent escalation was warranted for the corrective action factor in that the Licensee's corrective actions presented at the Enforcement Conference were minimally acceptable. The Licensee's corrective actions did not satisfactorily outline a plan to ensure that the Radiation Safety Officer and his assistant would dedicate sufficient time to the Radiation Safety Program. At the Enforcement Conference, the Licensee had not given sufficient attention to resources it needed to implement a plan. In fact, the NRC Staff had to encourage the Licensee to address this issue. In addition, the Licensee had not fully evaluated the responsibilities and duties of the Radiation Safety Officer prior to the Enforcement Conference. Consequently, at the time of the Enforcement Conference, the Licensee had not determined the quantity of work and effort required of the Radiation Safety Officer to effectively ensure compliance with NRC requirements and the institution's license. Although the Licensee had spent a significant effort in revising the Radiation Safety Manual, at the time of the Enforcement Conference it was unclear how the Licensee would ensure that the Manual and NRC requirements would be fully complied with in the future. Finally, the Licensee's corrective actions regarding radioactive waste disposal were not timely, in that they were not implemented until after the Enforcement Conference.

The NRC's conclusion regarding the escalation for the corrective action factor is also supported by the Licensee's Reply to a Notice of Violation dated May 4, 1992. The reply indicates that the Licensee had not finalized its commitments regarding their plans to ensure that the Radiation Safety Officer and his assistant dedicated sufficient time to the Radiation Safety Program, until May 1, 1992, which was seven weeks after the March 19, 1992, Enforcement Conference. (These commitments included funds being made available to provide one-quarter time services for a Radiation Safety Officer; additional funds being made available for a one-quarter time doctoral-level graduate assistant to the

Radiation Safety Officer; and additional funds for staffing if warranted.)

The NRC stated in its April 7, 1992, letter that it was unclear at the Enforcement Conference how the Licensee would ensure that the Radiation Safety Manual and NRC requirements would be fully complied with in the future. In particular, no explanation was provided as to how the Licensee's revised Radiation Safety Program would be audited and enforced. Although the four steps that the Licensee provided on pages 10–11 of the Reply to a Notice of Violation, dated May 4, 1992, are acceptable methods for ensuring future compliance with license conditions and NRC requirements, these steps were not outlined at the Enforcement Conference. These steps include:

(a) The Radiation Safety Officer will meet with the Director, Office of Research and Academic Development, on at least a monthly basis to review the Radiation Safety Program and compliance with monitoring requirements. Written reporting of the results of compliance surveys will also be performed.

(b) The Director, Office of Research and Academic Development, will report the results of his oversight activities to the Vice Provost of the University during standing bi-weekly meetings.

(c) The Radiation Safety Officer currently has authority to suspend the use of radioisotopes in laboratories in violation of license conditions or NRC regulations. The Annual Permitting Process now in effect at Oakland University should reinforce safety requirements and procedures among all principal investigators and workers at the University. Furthermore, serious or repeat violations, as determined through the monitoring activities of the Radiation Safety Officer will not require review and re-authorization in a meeting of the Radiation Safety Committee before work can recommence.

(d) The University's Director of Internal Audit will conduct at least annual reviews of the Radiation Safety Program to provide for an independent review. A memorandum from the Provost to the Director, Internal Audit, requesting such services was attached to the Licensee's response. The NRC Staff notes that this memorandum is dated April 22, 1992, and only suggests that third-party audits of all records and regular monitoring procedures should be assigned to the Director, Internal Audit. The Licensee did not submit to the NRC any subsequent formal commitment to perform the suggested audits by the Director, Internal Audit.

In addition, the NRC Staff notes that the Licensee's corrective actions for waste disposal were not timely, in that the Radiation Safety Officer's March 20, 1992, memorandum was issued the day after the Enforcement Conference and stated that the removal of radioactive waste would commence beginning the week of March 23, 1992. The Radiation Safety Officer's April 7, 1992, memorandum to the Director, Risk Management & Contracting, indicated that the Radiation Safety Officer had obtained a key to the radioactive waste storage implement shed behind Hannah Hall and was preparing to transport the first 5 or 6 barrels during the week of April 7, 1992.

Based on the above, the NRC Staff does not find that the Licensee's arguments warrants mitigation of the civil penalty.

2. Ability to Pay and Conduct Licensed Activities Safely

NRC's Enforcement Policy, 10 CFR part 2, appendix C, provides that "it is not the NRC's intention that the economic impact of a civil penalty be such that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities." The licensee has not provided any evidence to demonstrate that the $5,000 civil penalty will put it out of business or will adversely affect its ability to safely conduct licensed activities. The Licensee should also be aware that the NRC will accept payment of the civil penalty over time. Thus, the NRC Staff does not find that the Licensee's argument warrants mitigation of the civil penalty.

3. Deterrent Effect

The Licensee argues that the civil penalty should be mitigated since the deterrent effect intended by the NRC has already been accomplished. Civil penalties are assessed to deter future noncompliance by all licensees and to emphasize the need for timely, effective, and lasting corrective action. The deterrent effect is achieved when licensees, in order to avoid civil penalties, take prompt and effective action in advance of any potential violation so that the violation does not occur and the NRC does not have to become involved. Thus, the NRC Staff does not find that the Licensee's argument warrants mitigation of the civil penalty.

NRC Conclusion

The NRC Staff concludes that the Licensee did not provide an adequate basis for mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of $5,000 is imposed.

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BILLING CODE 7590-01-M

Docket No. 40-08681-MLA and ASLBP No. 92-666-01-MLA]

UMETCO Minerals Corp. (Source Materials License No. SUA-1358); Order and Memorandum, Request for Hearing and Stay of License Amendment

Before Administrative Judge James P. Gleason, Presiding Officer.
August 5, 1992.

I. Request for Hearing

On July 2, 1992, the State of Utah filed a request for hearing on the issuance by the Nuclear Regulatory Commission of Amendment 30 to License No. SUA–1358. The State also requests a stay of the amendment pending completion of the proposed adjudication.[1] Licensee, the Umetco Minerals Corporation (UMC), opposes the hearing request [2] and the Staff also filed a response in opposition to both the hearing request and the request for a stay.[3] The Staff indicates it intends to participate as a party if a hearing is granted.

The UMC application for Amendment 30, filed on January 18, 1989, is to perform plant processing tests on 600 wet tons of feed containing source material received from the Teledyne Wah Chang Company in Albany, Oregon. The material for the processing test is not natural ore mined for its uranium content but rather comes from the processing of ore to recover zirconium. It contains greater than 0.05% recoverable uranium and UMC intends to process the material for its uranium content at its White Mesa Mill, a licensed facility in Blanding, Utah. After processing, UMC intends to dispose of the resulting tailings at the mill's impoundment. The State asserts that the NRC is taking licensing action without first adequately determining whether UMC is actually engaged in waste disposal of material from the Wah

[1] Request for Hearing and Stay, Utah Department of Environmental Quality and Assistant Attorney General, July 2, 1992.

[2] Letter from R.A. Van Horn, Director of Operations, UMC, to NRC Executive Director of Operations James Taylor, July 16, 1992.

[3] NRC Staff's Response to Request for Hearing by State of Utah, July 30, 1992.

Chang Company instead of uranium reprocessing as alleged. As an Agreement State, Utah asserts that it, rather than the NRC, may have jurisdiction over the materials if they are either low level waste or source material. Further, the State asserts that the NRC's amendment action may hinder the Department of Energy's (DOE) responsibility to assume long-term custodial care of the processed materials. Finally, the State also expresses a concern over the lack of NRC oversight of UMC's tests and the characteristics of the materials to be processed. The State contends, *inter alia*, that a hearing is necessary in order to resolve the nature of the materials being processed, the licensee's intention in processing the material, and questions concerning title to the material.

In opposing the hearing, UMC cites NRC's regulations, 10 CFR 2.1205(c)(2) (i) and (ii), requiring that a hearing request must be filed within thirty (30) days after the requestor receives actual notice of a pending application or agency action granting the application, or one hundred and eighty (180) days after agency action granting the application, whichever is earlier. The Licensee contends that here the State had much more than thirty days knowledge of the license amendment application prior to filing its hearing request. In support of its position, UMC references specific meetings it had with State environmental officials to discuss the application.[4] In its response, the Staff alleges that the State had actual notice of the pending application as early as April 1989.[5] Because the Presiding Officer is required under the Commission's regulations to determine that requests for hearings are timely filed, we address that issue first.

The applicable regulation, 10 CFR 2.1205(c)(2), states in its pertinent part that:

(c) A person other than an applicant shall file a request for a hearing * * *.

(2) If a Federal Register notice is not published in accordance with paragraph (c)(i), the earlier of

(i) Thirty (30) days after the requestor receives actual notice of a pending application or an agency action granting an application; or

(ii) One hundred and eighty (180) days after agency action granting an application.

Both UMC and the Staff argue that since the State had actual notice of the then pending license application months before the NRC approved and issued the amendment, a request for hearing was required to be filed within thirty days of such notice. The state rejoins that it was entitled to file, as it did, within thirty days of the agency action granting the license amendment. As the State does not appear to be seriously objecting to the assertion that it had prior notice of the pending application, the question here is whether 10 CFR 2.1205(c)(2)(i) provides for two windows of opportunity rather than one for filing a request for hearing.[6] Nothing in either the plain language of the regulation or the underlying Statement of Consideration militates against an interpretation providing two such windows of opportunity. There is nothing in the plain language of the regulation to support an opposite conclusion. Indeed, to subscribe to the position advanced by UMC and the Staff, one must conclude, without more, that the word "earlier" modifies both a notice of a pending application and notice of an agency action granting the application as well as the 180-day period set forth in 10 CFR 2.1205(2)(ii). Neither party has suggested any basis for such an interpretation nor can it be supplied here. As physically structured and grammatically written, the words "earlier of" refer to and modify the whole of subsection (i) and the whole of subsection (ii). The modifier "earlier" can neither structurally nor grammatically properly modify both components of subsection (i) as well as subsection (ii). To obtain that result, the regulation would have to be written with three subsections so that the current first subsection would be split into two separately numbered subsections and the current second subsection would become a third subsection. Accordingly, the plain language of § 2.1205(c)(2)(i) provides two windows of opportunity for filing a hearing request. As the U.S. Court of Appeals has suggested, an agency's interpretation of its own rules cannot fly in the face of the language of the rules themselves. See *Union of Concerned Scientists* v. *NRC*, 711 F.2d 370, 381 (1983).

In support of this conclusion, the commentary in the Commission's Statement of Consideration refers to the fact that the proposed rule, in § 2.1205(c), provides that a hearing petition will be considered timely if filed within thirty days after the petitioner receives actual notice of a licensing action.[7] No rationale is apparent as to why the Commission would wish to require a person to file a hearing request at a time, such as is evident here, when ongoing communications may prevent the necessity for a hearing at all. That expectation would be extinguished only when the NRC approved the action being opposed by the State. It is a more reasonable procedure and, in any event, what the plain language of the regulation requires, that when an effort toward resolution fails, a thirty-day period would then ensue for requesting a hearing. Here, the State acted within this time frame. Thus the State's request for a hearing was timely filed.

Alternatively, even if the State's petition is found untimely, its lateness is excusable under the provisions of 10 CFR 2.1205(k). In the circumstances, the fact that the State was engaged in discussions with the Staff, as well as the Licensee, on the requested license amendment makes the delay in filing an earlier request for hearing excusable. Also, the current request by the Staff, agreed to by Licensee, to delay processing the material tends to buttress a finding that a grant of the hearing petition would not result in undue prejudice or injury to the other participants in the proceeding.[8] The fact that the proposed license amendment request was filed over three and a half years ago, and no action has ensued to the present time, also supports a finding that no undue prejudice would result from the grant of the hearing petition alone.

The applicable regulations also require that the Presiding Officer determine that the specified areas of concern are germane to the subject matter of the proceeding and that the requestor meets the judicial standards for standing.[9] Neither the Licensee nor the Staff addresses the standing or areas of concern submitted in the State's petition.[10] No serious question can be raised on the State's standing in this proceeding. Its petition cites issues of jurisdiction over the materials involved, the proper characteristics of such material, the purpose for which the materials have been received, the failure to place proper conditions on the license amendment, and questions concerning governmental responsibility for the ultimate custody of the materials. These

[4] Umetco Minerals Corporation, July 16, 1992 at 2.

[5] Staff response at 6–7.

[6] State of Utah's supplemental request for hearing at 1. August 31, 1992.

[7] See 54 FR 8271.

[8] Presiding Officer Telephone Conference, pp. 6–7, July 30, 1992.

[9] 10 CFR 2.1205(g).

[10] The Staff does allege, with supporting attachments, that substantially identical Utah State concerns have been addressed and resolved with notice and consent of the Commission prior to the issuance of the license amendment. NRC Staff Response at 8, n.14.

matters setting forth possible injuries in fact are within the zone of interest protected by statute and meet the standards for standing in Commission proceedings.[11] I find the State has standing to participate and has set forth areas of concern germane to this proceeding.

II. Request for Stay

In its petition, the State also requests a stay of the license amendment pending the completion of a hearing. In the subpart L proceedings, an application for a stay is governed by the provisions of 10 CFR 2.1263 which incorporates the traditional four-stay criteria of 10 CFR 2.788:

1. Whether the movant has made a strong showing that it is likely to prevail on the merits;
2. Whether the movant has shown that it will be irreparably injured unless a stay is granted;
3. Whether a stay would harm other parties; and
4. Where the public interest lies.

Under the Commission's regulations, 10 CFR 2.1237(b), the State has the burden of persuasion on these factors. Here, however, the State's petition fails even to address the criteria for a stay set forth in the regulation. Although arguably the third- and fourth-stay criteria might be satisfied by the State's recital of its concerns, the failure to address the first two criteria is fatal to its request. Obviously, the Public interest would be served in having the question of jurisdiction finally established. Similarly, the Licensee would not be harmed by a stay because it has agreed to the Staff's request to delay any materials' processing until an effort is made to resolve the State's concerns, *supra*. But since the State has made no showing that it is likely to prevail on the merits or that it will be irreparably injured, a stay cannot be granted. The request for a stay is therefore denied.

Order

For the reasons stated, it is, this 5th day of August 1992, *Ordered:*

1. The request for hearing by the State of Utah is granted and the request for a stay of Amendment 30 to License No. SUA-1358 is denied.
2. A hearing on the License Amendment will be held and the time and other details concerning the hearing will be published at a future date.
3. Petitions to intervene in this proceeding must be filed within thirty (30) days of this Order appearing in the **Federal Register**. The Licensee and Staff will have ten (10) days to respond after service of any petition.
4. An appeal from this Order, by parties other than the petitioner, may be filed with the Commission within ten (10) days of the service of the Order. 10 CFR 2.1205(n).

Bethesda, Maryland, August 5, 1992.

James P. Gleason,

Presiding Officer, Administrative Judge.

[FR Doc. 92-19323 Filed 8-12-92; 8:45 am]

BILLING CODE 7590-01-M

[11] *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 612-13 (1976).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31003; File No. SR-NASD-92-12]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Short Sale Rule for Nasdaq National Market System Securities and Qualification Criteria for Primary Market Makers in the Nasdaq System

August 6, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 22, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change and amendments as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The proposed language of the rule change, as amended, is included below as exhibit A. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] The original proposed rule change providing a short sale rule for Nasdaq/NMS securities was filed with the Commission on April 9, 1992. The NASD filed Amendment No. 1 to the proposal on July 1, 1992. Amendment No. 1 proposes a 20 day registration requirement in order for market makers to qualify for "primary" market maker status for a one year period after Commission approval of the proposal. In addition, Amendment No. 1 adds two Interpretations of the Board of Governors: the first regarding "bona fide" market making activity; the second regarding the prices at which "legal" short sales may be effected. On July 22, 1992, the NASD filed Amendment No. 2 to the original proposed rule change. Amendment No. 2 adds an additional Interpretation of the Board of Governors regarding activity that may be considered in violation of the short sale rule and amends the Interpretation proposed in Amendment No. 1 regarding the prices at which "legal" short sales may be effected. The Notice of Proposed Rule Change that follows incorporates Amendment Nos. 1 and 2 into the original proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing a short sale rule or "bid test" for Nasdaq National Market System ("Nasdaq/NMS") Securities that would prohibit short sales at or below the current inside bid as shown on the Nasdaq screen when that bid is lower than the previous inside bid. The rule includes certain exemptions, including an exemption for qualified market makers that comply with criteria establishing them as primary market makers in the Nasdaq system. The NASD is amending he proposed sections and requesting that the date of effectiveness of the primary market maker qualifications be one year from the effective date of the short rule. In the interim year, a standard of twenty days "time in grade" will be used to designate a qualified Nasdaq market maker. In addition, the NASD is proposing three Interpretations of the Board of Governors regarding "bona fide" market making activity, the prices at which "legal" short sales may be effected, and examples of conduct that may be considered in violation of the rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association is proposing a new Section 46 in Article III of the Rules of Fair Practice regarding a short-sale rule or "bid test" for Nasdaq/NMS securities. The proposed short sale rule will prohibit members from effecting short sales at or below the bid for themselves or their customers when the current inside or test bid is below the previous inside bid. The rule will be in effect during normal, domestic market hours (9:30 a.m. to 4 p.m. Eastern Time) and includes an exemption for transactions by qualified Nasdaq market makers. Qualified or "primary" Nasdaq

market makers will be designated as such if they comply with the criteria set forth in new Section 47 of Article III of the Rules of Fair Practice. The three primary criteria relate to dealer spread, time at the inside quotation, and quote changes in relation to trades. A supplemental criterion relates to the share of trading volume accounted for by the market maker.

1. Background

Since 1986, the NASD has adopted a number of regulatory initiatives regarding short selling. Prompted by recommendations for short sale regulation contained in the *Pollack* report,[2] the NASD now requires members to mark all sale transactions either "long" or "short;" [3] requires a member, prior to accepting a short sale from a customer, to make an affirmative determination that it will receive delivery of the security from the customer or that it can borrow the security on behalf of the customer;[4] requires a member to make an affirmative determination that it can borrow the security before effecting a short sale for its own account, (exempting transactions in corporate debt securities, in bona fide market making activities and in fully hedged or arbitraged positions);[5] imposes mandatory buy-in requirements for cash or guaranteed delivery for Nasdaq securities where the buyer is a customer other than another NASD member, upon failure of a clearing corporation to effect delivery pursuant to a buy-in notice;[6] and requires members to report, as of the 15th of each month, aggregate short positions in all customer and proprietary accounts in securities listed on Nasdaq.[7] The NASD also encouraged adoption of SEC Rule 10b–21 that prohibits a person who effects a short sale of an equity security between the filing of a registration statement and the time at which sales of such equity security may be commenced, from covering the short sale with offered securities purchased from an underwriter or other broker or dealer participating in the offering.[8]

In January 1991, the NASD solicited comments from the membership on the concept of a short sale rule for Nasdaq/NMS securities.[9] Approximately 60 comment letters supporting and opposing the concept from members and issuers were submitted, along with hundreds of short form responses from issuers in support of the rule. Following a year of comment and discussion among members, issuers, institutional participants, and positive recommendations from NASD committees,[10] the NASD Board of Governors approved adoption of the short sales rule in November 1991 and approved the primary market maker qualifications in January 1992. The NASD solicited membership approval and the short sale proposals were approved by a 4 to 1 membership vote.

2. Original Proposal—Operation of the NASD Short Sale Rule

The short sale rule for the Nasdaq market is generally comparable to the short sale rule for exchange-listed securities. The SEC short sale rule, Rule 10a–1, was adopted to prevent speculative short selling in exchange-listed securities from rapidly accelerating a decline in the price of a security and to prevent a form of manipulation known as "bear raiding" or "piling on."[11] Piling on occurs when short sellers exert substantial selling pressure on a stock with the intent to dominate and demoralize the market for that stock, forcing the price to drop precipitously, frequently within a single trading day. The SEC rule applies to exchange-listed securities but does not apply to Nasdaq securities.

The SEC short sale rule prohibits short sales of exchange-listed securities at prices below the previous reported last sale price (minus tick) or at the last sale price if that price is below the previous different last sale price (zero-minus tick). Since the substantial majority of trade reports in most exchange-listed securities occur on a single exchange floor, generally ensuring sequential trade reporting, broker/dealers are able to monitor and comply with the tick test readily.

Trade reporting in Nasdaq/NMS securities, on the other hand, may involve as many as 50 different market makers in a given stock, reporting trades from different locations to the NASD. Although trades are required to be reported within 90 seconds after execution, they do not necessarily appear on the Nasdaq tape in sequential order because members report at different speeds, via computer interface or through Nasdaq Workstation™ terminals. For that reason, imposition of an exchange "tick test" might restrict market participants from short selling based on an out of sequence trade report. Accordingly, the short sale rule for the Nasdaq market has been developed as a "bid test" rather than the exchange "tick test." The NASD short sale rule will operate to prohibit short sales at or below the bid when the current inside bid for a Nasdaq/NMS security is below the previous inside bid in the security. The Nasdaq system calculates the inside bid as the best bid from all market makers in the security, and the Nasdaq system will be configured to indicate on the Nasdaq Level 3 screen whether the current bid is an "up bid" or a "down bid" so that market makers will have information to facilitate execution of orders. In addition, the indicator regarding the "up bid" or "down bid" will be available to other market participants through Nasdaq services such as Level 1 (the inside calculation) and Level 2/National Quotation Data Service ("NQDS") so that subscribers to these services will have information to facilitate their receipt and placement of short sale orders in Nasdaq/NMS securities.

Under the rule proposal, a sale is considered "short" if the seller does not own the stock, or if the seller owns the stock but intends to deliver borrowed

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[2] Irving M. Pollack, Short-Sale Regulation of Nasdaq Securities (July 1986).

[3] Rules of Fair Practice, Article 3, Section 21; Release No. 34–23572, File No. SR–NASD–88–17 (August 1986).

[4] Prompt Receipt and Delivery Interpretation; Release No. 34–23572, File No. SR–NASD–88–17, (August 1986).

[5] Prompt Receipt and Delivery Interpretation; Release No. 34–28186, File No. SR–NASD–89–5 (July 1990).

[6] Uniform Practice Code, Section 59; Release No. 26894, File No. SR–NASD–87–19 (April 1989).

[7] Rules of Fair Practice, Article III, Section 41.

[8] SEC Rule 10b–21(T); 17 CFR 240.10b–21(T), Release No. 34–26028, (August 1988). In addition, the NASD has proposed other short sale regulations, currently pending SEC action: a mandatory buy-in rule that requires a short seller's broker to buy-in securities for cash or guaranteed delivery when delivery has not occurred within 10 business days after normal settlement date (Release No. 34–28192, File No. 90–30, July 1990); and a requirement for members to annotate affirmative determinations made prior to effecting short sales for customers and a requirement for members to ascertain the source of securities that are the subject of long sales made by customers immediately following the effectiveness of a registration to comply with SEC Rule 10b–21(T) (Release No. 34–28769, File No. SR–NASD–90–63, November 1990).

[9] *See* Notice to Members 91–2 (January 1991).

[10] The NASD's Corporate Advisory board and the Issuer Affairs, Institutional Investors, Corporate Financing, Marketing, and Trading Committees discussed and voted to approve the short sale rule proposal.

[11] *See* Securities Exchange Act Release No. 1548 (January 24, 1938). The objectives of Rule 10a–1 were discussed in the Special Study of Securities Markets, which stated that short sale regulation should:

(1) allow relatively unrestricted short selling in an advancing market;

(2) prevent short selling at successively lower prices, thus eliminating short selling as tool for driving the market down; and

(3) prevent short sellers from accelerating a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers.

Report of the Special Study of Securities Markets of the Securities and Exchange Commission (1963), reprinted in H.R. Doc. No. 95, 88th Cong., 1st. Sess. 251.

stock to the buyer at settlement. To determine whether the seller is long or short overall, the seller must net all positions in the security just as is required in short sales for listed securities.[12]

The NASD short sale rule is applicable only during normal domestic market hours (9:30 a.m. to 4 p.m. Eastern Time), includes exemptions from the rule's provisions for qualified Nasdaq market makers, with clearly delineated standards or criteria establishing qualifications for exemption (discussed below), and prohibits market makers from using their exemption to by-pass the rule or to do indirectly what is prohibited directly by the rule.[13]

3. Comparison With SEC Short Sale Rule

In order to reduce compliance burdens for members, the NASD rule incorporates the exemptions in SEC Rule 10a–1 that are relevant to trading in the Nasdaq market. Specifically, the rule exempts:

(1) A broker/dealer from a sale that is for an account in which it has no interest and that is marked long;

(2) Any sale by a market maker to offset odd-lot orders of customers;

(3) Any sale by a market maker to liquidate a long position, which is less than a round lot, provided the sale does not change the dealer's position by more than one unit of trading (100 shares);

(4) Certain short sale arbitrage transactions, in special arbitrage accounts, by a person who owns another security or presently will be entitled to acquire an equivalent number of securities of the same class as the securities sold (provided the sale, or purchase which the sale offsets, is made for the bona fide purpose of profiting from a current price difference between the security sold and the security owned) and that the right of acquisition was originally attached to the security or was issued to all holders of any class of securities of the issuer;

(5) Transactions made as part of an international arbitrage opportunity, whereby the seller must have a bona fide purpose to profit from the price difference between a security on an international market outside the jurisdiction of the U.S. and a security listed as a Nasdaq/NMS security. For the purposes of this section, a depository receipt (e.g., ADR) for a security shall be deemed the same as the security represented by the receipt;

(6) Short sales by an underwriter or any member of the distribution syndicate in connection with the over-allotment of securities, or any lay-off sale by a person with a distribution of securities pursuant to a rights offering (SEC Rule 10b–8) or a standby underwriting commitment;

(7) Liquidations of blocks by a market maker acting in the capacity of a block positioner even if the block positioner does not have a net long position in the security if and to the extent that its net short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

The liquidation of index arbitrage positions was not covered by the language of Rule 10a–1, and to alleviate this problem, in 1986 the SEC staff took a "no action" position that allows broker/dealers and/or market participants to liquidate long index arbitrage positions without aggregating such positions with fully-hedged short positions in other accounts under certain conditions.[14] The no-action position applies when the firm has a net short position in any of the index arbitrage stocks that is attributable to unrelated arbitrage, risk arbitrage, or hedge activities. In 1990, the SEC clarified the application of the 1986 no-action position.[15] Relief is available only when unwinding index arbitrage positions that were established in compliance with Rule 3b–3 (the SEC rule defining short sales that requires netting) and Rule 10a–1, and where action is taken to reverse both sides of the position as nearly simultaneously as practicable.[16] The NASD would recognize this interpretation as applicable to the proposed rule. The proposed rule also contains a provision that allows the NASD to adopt SEC amendments to Rule 10a–1 that are applicable to the Nasdaq market without recourse to membership vote.

4. Exemption For Qualified Nasdaq Market Makers

The short sale proposal contains an exemption for qualified market makers so that dealer activities that provide liquidity and continuity to the Nasdaq market will continue uninterrupted. The NASD received substantial comment from its members that application of a short sale rule to market makers would dramatically reduce their ability to quickly adjust inventory positions thereby lessening liquidity throughout the marketplace. At the same time, the NASD believes that any market maker exemption must be strictly limited to firms regularly performing an effective market making function or the exemption might eviscerate the effectiveness of the rule. Accordingly, the proposed rule sets forth certain requirements that a market maker must satisfy in order to qualify for the exemption. Since the exemption is provided to protect market liquidity, the criteria are based on elements related to the liquidity that a market maker offers in each security in question.

The NASD developed objective, quantitative criteria that could be applied equitably to all market makers regardless of size and, most importantly, that would be within the market maker's ability and control to satisfy. The primary criteria include amount of time at the inside bid or offer quotation, comparison of an individual market maker's spread to the average dealer spread in each stock, and frequency of dealer quotation updates without a corresponding execution in the security.

Using these components, in order to be considered a primary market maker in the Nasdaq system, market makers must satisfy two out of these three specific threshold standards:

(1) A market maker must maintain the best bid or best offer as shown in the Nasdaq system no less than 35 percent of the time;

(2) A market maker must maintain a spread no greater than 102 percent of the average dealer spread; or

(3) No more than 50% of a market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading.

In addition, recognizing that overall volume is also indicative of quality market making, a supplemental test has been added, based on proportionate volume, which may be satisfied if a market maker account for 1½ times its proportionate share of volume in the stock. That is, if there are 10 market makers in a stock, each dealer's proportionate share would be 10 percent; therefore, 1½ times proportionate share would mean 15 percent of the overall volume.

Where a market maker meets the proportionate volume test, it may be

[12] See SEC Rule 3b–3, adopted pursuant to the Securities Exchange Act of 1934.

[13] The NASD also intends to submit a petition to the SEC to amend its short sale rule, Rule 10a–1, to include Nasdaq/NMS securities so that short sale restrictions will apply to all market participants.

[14] See Letter to Andrew M. Klein, Es., Schiff Hardin & Waite from Larry E. Bergmann, Assistant Director, Securities and Exchange Commission re Merrill Lynch, Pierce, Fenner & Smith Inc., File No. TP 87–19 (December 17, 1986).

[15] See Release No. 34–27938 re: Liquidation of Index Arbitrage Positions (April 23, 1990).

[16] The Commission recently proposed an amendment to Rule 10a–1 to codify the no-action position, subject to certain modifications. See Release No. 34–30772 (June 3, 1992).

designated as a primary Nasdaq market maker if it also satisfies one of the three criteria set forth above. For example, if a market maker kept its bid or offer at the inside quote at least 35 percent of the time, but maintained a 1 point spread in the stock when the other dealers averaged a ¾ point spread and changed its quote three times on average for every trade, then the market maker would have to meet the proportionate volume test in order to qualify as a primary market maker. A market maker satisfying these criteria will be designated as a primary market maker in the Nasdaq system, and that "primary" or "P" designation will be displayed on the Nasdaq Workstation™ screen and also available through vendor services to assist market participants in complying with the proposed rule. Compliance with the criteria will be tracked through the Nasdaq system, which will enable market makers to review their status in each criterion in each stock, and will also provide members with notice of their compliance with the standards at set intervals. The NASD will monitor market makers for compliance with the primary market maker standards on a monthly review period.

Separate criteria have been developed for registration situations. When market makers wish to register in an existing security, these special criteria permit market makers with a proven track record (i.e., they have primary market maker status in 80 percent of the stocks in which they have registered) to be afforded the primary designation upon initiation of quotations in exiting securities. If a dealer cannot meet the 80 percent test, then it may register in the stock but not enter quotations for five days and enter quotations on the next day as a primary market maker, or it may register in the stock, begin quoting as a regular Nasdaq market maker, and be awarded primary status after satisfying the qualification criteria for one review period.

With regard to initial public offerings ("IPOs"), market makers may register as primary market makers if they meet the 80 percent test, but if at the end of the first review period a market maker has failed to satisfy the qualification criteria or has withdrawn on an unexcused basis from the security, that market maker is prohibited from becoming a primary market maker in any other IPO for the next 10 business days.

For secondary offerings, the NASD believes that the time period after the offerings have been announced is so sensitive to short selling pressure that special time frames and eligibility criteria for primary market makers are warranted. In these situations, the stock of the issuer is currently being traded and the "overhang" on the market of the new stock coming into the market from the offering makes the security particularly susceptible to manipulative and demoralizing short selling. The result of such short selling can adversely impact the capitalization of the issuer, particularly of smaller issuers, whose securities often have less liquid secondary markets. Accordingly, the NASD is concerned with dealers entering the market after deals have been announced in order to take advantage of the market maker exemption from the short sale rule. The criteria set forth by the NASD therefore requires registration in the security prior to announcement of the secondary offering, or the market maker must wait 40 calendar days to gain primary status.[17] These heightened requirements should substantially address the concerns about short selling by newly registered market makers in secondary offerings.

Finally, in merger and acquisition situations, if a market maker is a primary maker in one stock and wishes to register in the other security as a primary market maker, it may do so regardless of the 80 percent requirement.

If a Nasdaq market maker does not satisfy the qualification criteria, then it remains a market maker in the Nasdaq system, but it is not a primary market maker in the stock, and it cannot take advantage of the exemption from the short sale rule. The NASD will provide a forum for review if market makers wish to request reconsideration of their failure to satisfy the primary market maker standards. Because the standards are objective rather than subjective, however, requests for reconsideration will be limited to consideration of system failures, excused withdrawals, or related activity in derivative or convertible securities or derivative pricing mechanisms, as seen with foreign securities or ADRs, that may affect a market maker's compliance with the criteria.

The NASD has analyzed the effect of the proposed criteria and threshold standards on Nasdaq market makers and found that for a one-month period in 1991, over 70% of all market making positions in Nasdaq/NMS securities for the entire month would have earned the primary market maker designation. In addition, the NASD measured individual market maker performance against each of the threshold standards and made that information available to market makers at their request.[18] The NASD believes that becoming a primary market maker in Nasdaq/NMS securities is well within the capacity of large and small market makers, regardless of size.

Finally, the NASD is sensitive to the fact that there may be unforeseen consequences or unfavorable treatment to a class of members or investors that may necessitate modifications to the qualification proposals. To ensure that the NASD maintains the ability to make adjustments on a expeditious basis, the rule permits the NASD to modify the threshold levels of the criteria if necessary.

5. System Modifications

To implement the proposed rule change effectively, the NASD must perform numerous modifications to the Nasdaq system to enable market participants to comply with the rule and to have notice of their performance for the primary market maker qualifications. Additionally, members must modify their internal and proprietary execution systems to achieve compliance with the short sale rule. The modifications to the Nasdaq system include the following:

1. Calculate and display the bid as above or below the previous bid on Level 1, Level 2/3, and NQDS data services made available to vendors and subscribers;

2. Calculate and display primary market maker status on Level ⅔ and NQDS data services made available to vendors and subscribers;

3. Develop new Workstation™ query functions that permit members to ascertain their primary market maker qualification status;

4. Develop specialized tracking processes for market making activity for new registrations, secondary offerings, IPOs, and merger and acquisition situations;

5. Modify order routing and execution services (SelectNet and SOES) to recognize short sale orders as they are entered and to inhibit execution if that would cause a violation of the short sale rule;

6. Implement market surveillance systems using appropriate trade report data from the ACT service to monitor for member compliance with the rule; and

[17] In 1991, the average time between filing and effective dates for secondary offerings reviewed by the NASD's Corporate Financing department was 34 business (48 calendar) days.

[18] *See* Notice to Members 92-8 (January 29, 1992).

7. Develop off-line reports to capture detailed short sale data for historical and analytical purposes.

6. Discussion

Substantial comment and debate have been sparked by the NASD's short sale proposals. Commentators in favor of the proposed rules state that the steps already taken to eliminate short sale abuses in the Nasdaq market are at times ineffective in controlling predatory short selling by professionals that harms issuers and the market as a whole. Additionally, these commentators believe that the credibility and stature of the Nasdaq market will be enhanced if the NASD adopts an SEC-style short sale rule. Issuers report that, as a marketing point for listing, the exchanges place heavy emphasis on the existence of a short sale rule as an essential marketplace component missing from the Nasdaq market. Moreover, commentators believe that the rule proposal would also help reduce volatility and increase direct public participation in trading Nasdaq/NMS securities. Others comment that a short sale rule would add to the confidence of investors and prevent manipulation of the markets. Finally, broker/dealers commenting in support of the rule state that regulations governing the markets should be uniform and argue that enactment of the proposals will enhance fair competition among markets by removing a regulatory difference between exchange and Nasdaq markets.

Those commentators opposed to a short sale rule maintain that short sellers provide valuable liquidity to the markets both in their selling activities and in subsequent covering purchases. They argue that short sellers "police" the price of securities and preserve market integrity be weeding out over-valued companies, whereas a short sale rule leads to pricing inefficiencies in the market. Since these commentators believe that there has been no demonstrable proof that short selling abuses cannot be controlled with NASD regulations already in place, they believe that additional short sale regulation is unnecessary. Commentators also state that short selling is a legitimate trading strategy and "tick test" short sale regulation impedes trading decisions. Other commentators argue that if short selling is a perception problem, the appropriate response should be education of issuers and the public, not a new regulatory scheme. The NASD believes that short sale abuse is not merely a perceptual problem for issuers or investors. While research and studies may show no difference in long-term short interest positions between exchange listed or Nasdaq stocks, the NASD is concerned that instances of extreme intra-day volatility may inhibit existing shareholders' ability to sell their stock if professional short sellers are in the market before them, exacerbating downward pressure on stocks, reducing overall liquidity in the marketplace. While education regarding short sales is important, it is not a sufficient or meaningful response to the problems issuers face with their shareholders. The NASD believes that adoption of the short sale rule will curb abusive short selling, reducing the exposure of the Nasdaq market to manipulation and excessive intra-day volatility. For this and other reasons, the NASD's Corporate Advisory Board and Trading, Institutional Investor, Issuers Affairs, and Corporate Financing Committees all endorsed the rule proposal.

Issuers may also be disadvantaged in secondary offerings on Nasdaq because the increased potential for short selling may artificially affect the price at which offerings are conducted. In this regard, members report that their investment banking departments may recommend exchange listings because of the lack of adequate short sale regulation in the Nasdaq market at the time of registration. Accordingly, the NASD believes that adoption of the proposed short sale will assure both issuers and investors that they are subject to at least equivalent protection from predatory short selling in the Nasdaq market as they are on an exchange.

The NASD recognizes that a short sale rule must be formulated in a manner to promote member compliance with the rule and to avoid artificial restrictions on trading—hence the rule is structured as a bid test, with appropriate modifications to the Nasdaq screen to reflect the current state of the bid. The NASD also recognizes that the rule must operate in a manner designed to preserve market maker depth and liquidity in the competitive dealer environment of Nasdaq. The Nasdaq market provides an efficient and liquid trading environment through quote competition. Crucial to maintenance of that market structure is the requirement for market makers to display firm two-sided quotations. Moreover, the very nature of the competitive market maker system requires dealers to take substantial inventory positions. The application of a short sale rule without exemptions for qualified market makers would result in degradation of the accuracy and reliability of quotations and would increase the risks of those firms accommodating buying interest through short sales.

Qualified market makers must have the unimpeded ability to effect short sales to balance their positions or to anticipate customer buying interest at any time during the trading day, and therefore the proposed rule includes an exemption that does not frustrate a dealer's ability to buy and sell stock. The NASD is also committed to implementing a short sale rule that does not adversely affect a market maker's ability to manage risk. Dealers must be permitted the flexibility to sell short when necessary so that they will be able to adjust quickly to market movements and control the risks associated with market making while continuing to provide the maximum possible liquidity. The ability to manage risk with short positions is fundamental to market maker performance. Market makers need the constant ability to effect short sales to "reliquify" their positions throughout the trading day. If a short sale rule were to impact adversely their ability to manage risk, dealers may be forced to reduce their dealer support to the stocks in which they currently make markets.

The NASD, through its member committees, developed qualification standards that could be applied equitably to all market makers, regardless of size. Adoption of standards regarding time at the inside quotation, market maker spread, frequency of quotation updates in relation to executions, and overall volume is appropriate because these standards are indicative of quality market making and are not overly burdensome for market makers to satisfy.

Finally, the NASD believes that adoption of the proposed rule will enhance the Nasdaq Stock Market's ability to compete with exchange markets for listings. From a competitive standpoint, some exchanges regularly use the lack of a short sale rule as an argument to try to persuade companies to list. Adoption of a short sale rule will further emphasize to shareholders that Nasdaq provides equivalent short sale protection to the investing public through rules that are fair, equitable, and consistent with the operation of a quality marketplace.

7. Amended Proposal

The Association is amending its proposal for Article III of the Rules of Fair Practice regarding a short sale rule or "bid test" for Nasdaq/NMS securities. The proposed short sale rule includes an exemption for short sale

transactions by qualified Nasdaq market makers, and the original proposal defines qualified market makers or "primary Nasdaq market makers" as members that satisfy certain threshold standards of market making performance. In order to facilitate technical implementation of the short sale rule and in acknowledgement of the concerns certain market making members have raised regarding the primary market maker qualification standards, the NASD is delaying the effective date of the primary Nasdaq market qualifications for a twelve month period after the effective date of the short sale rule proposal. In addition, the NASD will continue to consider throughout this period any comments from members or interested parties regarding suggested revisions to the qualification criteria. The NASD believes that this one year deferral period will also afford market makers additional time to monitor their compliance with the standards and implement any necessary operational or personnel responses necessary to comply with the standards. Accordingly, the NASD is amending its proposal to define "qualified Nasdaq market maker" for a one year period as market makers that have been registered and entering quotations in individual securities in the Nasdaq system on an uninterrupted basis for the preceding twenty business days. The NASD is amending its original proposal and substituting the twenty day "time in grade" standard for the proposed "primary Nasdaq market maker" criteria for the one year period in order to expedite approval of the short sale rule proposal,[19] and as noted above, to afford members more time to give input to and consider compliance with the primary market maker performance standards.

The NASD is proposing a twenty day period because it is consistent with the underlying intent of allowing an exemption from the short sale rule only to market makers that qualify with bona fide market making activity in the security. Requiring a twenty day registration and quotation period to becoming qualified for the exemption from the short sale rule should ensure that market makers perform their traditional functions without immediate registration and exemption that is granted to a qualified market maker. A twenty day commitment in each security will demonstrate that the market maker is not entering the market merely to use the exemption to the rule to engage in aggressive short selling designed to drive down the price of a security. The NASD believes that twenty days is a reasonable time frame that will not discourage market makers from registering in new securities but that will preserve the intent of the qualification critiera.

Functionally, the short sale rule remains unchanged. In effect during normal, domestic market hours (9:30 a.m. to 4 p.m. Eastern Time), the rule prohibits members from effecting short sales at or below the bid for themselves or their customers when the current inside or best bid is below the previous inside bid. If a Nasdaq market maker does not satisfy the 20-day threshold for qualification for the short sale exemption, it remains a market maker in the Nasdaq system, but it cannot take advantage of the exemption from the short sale rule.

The amendments also include conforming changes within the short sale rule itself regarding specific requirements for qualified market makers to satisfy in registration situations. For example, for initial public offerings ("IPOs") market makers may be deemed qualified market makers immediately upon registration, however, if the market maker withdraws on an unexcused basis from the security prior to twenty business days, that market maker will not be considered a qualified market maker in any other IPO for the next ten business days.

8. Interpretations Accompanying the Proposal

In addition, the NASD is proposing to add three new Interpretations of the Board of Governors of the NASD related to the short sale rule. The first Interpretation clarifies that certain types of trading activity, such as risk arbitrage or index arbitrage, will not be deemed "bona fide" market making activity for purposes of exemption from the short sale rule because such activity is unrelated to traditional market making functions. Further, the Interpretation states that "bona fide" market making activity would exclude activity that is related to speculative strategies of the member or investment decisions of the firm and that is disproportionate to the normal market making patterns or practices of the member in that security. The Interpretation makes clear that a member would not be entitled under such circumstances to take advantage of its market making exemption to effectuate such speculative or investment short selling decisions.

The second Interpretation clarifies the price at which a "legal" short sale may be made when short sale restrictions apply. The rule specifies that short sales may not be made at or below the current best inside bid when that bid is lower than the preceding best inside bid. The interpretation addresses the concern that without the establishment of a minimum execution price increment above the bid, the policy underlying the proposed short sale rule could be averted by members effecting transactions only one or two cents above the bid. Therefore, the Interpretation states that "legal" short sales must be effected at least 1/16 point higher than the current bid. The third Interpretation clarifies some of the circumstances under which a member would be deemed to be in violation of the rule. The proposed short sale rule includes a prohibition against a member effecting short sales for the account of a customer, or for its own account, directly or through the offices of a third party for the purpose of avoiding the application of the rule. Additionally, the rule prohibits a member from knowingly or with reason to know effecting sales for the account of a customer or for its own account to avoid application of the rule. The proposed Interpretation sets out examples of what the NASD would consider conduct in violation of these prohibitions.

For example, if a market maker agrees to an arrangement proposed by a member or a customer whereby the market maker raises its bid in the Nasdaq system in order to effect a short sale for the other party and is protected against any loss on the trade or on any other executions effected at its new bid price, the market maker would be deemed to be in violation of the rule. Similarly, a market maker would be deemed in violation of the rule if it entered into an arrangement with a member or a customer whereby it used its exemption from the rule to sell short at the bid at successively lower prices, accumulating a short position, and subsequently offsetting those sales through a transaction at a prearranged price, for the purpose of avoiding compliance with this section, and with the understanding that the market maker would be guaranteed by the member or customer against losses on the trades.

The NASD believes that members' activities to circumvent the rule through indirect actions such as executions with other members or through facilitation of customer orders while being protected from loss are antithetical to the purposes of the rule. Accordingly, the

[19] The NASD is also willing to separate the two proposals to the extent that the Commission believes that this step would expedite consideration of the proposed short sale rule.

Association will consider any such activity as a violation of the short sale rule.

The NASD believes the proposed rule change is consistent with sections 15A(b)(6) and 11A(c)(1)(F) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to "prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market * * *." Section 11A(c)(1)(F) assures "equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities." Approval of the proposed short sale rule would result in equivalent regulation in the exchange and Nasdaq markets. Moreover, the NASD believes that the primary market maker qualifications are critical to ensuring that the proposed rule operates effectively and should have the additional benefit of providing incentives for improved performance of market makers in Nasdaq/NMS securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act. Presently, the absence of a short sale rule for the Nasdaq market adversely impacts the NASD in its competition for listings with exchange markets. Further, the NASD believes the proposed primary market maker qualifications are designed in a manner to permit market makers of all sizes to meet the standards. Moreover, it is important to note that market makers that do not meet the standards will still be permitted to remain registered market makers in the Nasdaq system and the NASD is hopeful that the proposed criteria will raise the overall quality of market maker participation in Nasdaq/NMS securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The NASD has responded to comments made by members and others above. The NASD's Corporate Advisory Board and the Issuer Affairs, Institutional Investors, Corporate Financing, Marketing, and Trading Committees discussed and voted to approve the short sale rule proposals.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings, to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 3, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

Exhibit A—Text of Proposed Rules

Rules of Fair Practice

Article III, Section 46—Short Sales

(a) No member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market System security at or below the current best (inside) bid when the current best (inside) bid as displayed by the Nasdaq system is below the preceding best (inside) bid in the security.

(b) In determining the price at which a short sale may be effected after a security goes exdividend, ex-right, or ex-any other distribution, all quotation prices prior to the "ex" date may be reduced by the value of such distribution.

(c) The provisions of subsection (a) shall not apply to:

(1) Sales by a qualified market maker registered in the security in the Nasdaq system in connection with bona fide market making activity. For purposes of this subsection, risk arbitrage, index arbitrage, and other transactions unrelated to normal market making activity will not be considered bona fide market-making activity.

(2) Sales by a member, for an account in which the member has no interest, pursuant to an order to sell which is marked "long" in which the member does not know, or have reason to know, that the beneficial owners of the account have a short position in the security.

(3) Sales by a member of offset odd-lot orders of customers.

(4) Sales by a member to liquidate a long position which is less than a round lot, provided that such sale does not change the position of the member by more than one unit of trading.

(5) Sales by a member of a security for a special arbitrage account if the member then owns another security by virtue of which the member is, or presently will be, entitled to acquire an equivalent number of securities of the same class of securities sold; provided such a sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer.

(6) Sales by a member of a security effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on such a securities market subject to the jurisdiction of the United States; provided the member at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling the member to cover such sale is then available to the member in such foreign securities market and intends to accept such offer immediately.

(7) Sales by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights pursuant to SEC Rule 10b–8 or a standby underwriting commitment.

(d) No member shall effect a short sale for the account of a customer or for its own account indirectly or through the offices of a third party for the purpose of avoiding the application of this section.

(e) No member shall knowingly, or with reason to know, effect sales for the account of a customer or for its own account for in order to avoid the application of this section.

(f) A member that is not currently registered as a Nasdaq marker maker in a

security and that has acquired a security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of this rule notwithstanding that such member may not have a net long position in such security if and to the extent that such member's short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

(g) For purposes of this section, a depositary receipt of a security shall be deemed to be the same security as the security represented by such receipt.

(h) Upon application or on its own motion, the Association may exempt either unconditionally, or on specified terms and conditions, any transaction or class of transactions from the provisions of this section.

(i) From time to time, the Securities and Exchange Commission may amend Rule 10a–1, Rule 3b–3, or Rule 3b–8 under the Securities Exchange Act of 1934. The Board of Governors reserves the authority to alter, amend, modify, or supplement this section in accordance with amendments to Rule 10a–1, Rule 3b–3, or Rule 3b–8 or as otherwise deemed appropriate or necessary for Nasdaq/NMS securities without recourse to membership for approval as required by Article XII to the By-Laws.

(j) Definitions:

(1) The term "short sale" shall have the same meaning as contained in SEC Rule 3b–3, adopted pursuant to the Securities Exchange Act of 1934, reprinted as follows: The term "short sale" means any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. A person shall be deemed to own a security if: (1) he or his agent has title to it; or (2) he has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it but has not yet received it; or (3) he owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; or (4) he has an option to purchase or acquire it and has exercised such option; or (5) he has rights or warrants to subscribe to it and has exercised such rights or warrants; provided, however, that a person shall be deemed to own securities only to the extent that he has a net long position in such securities.

(2) The term "block positioner" shall have the same meaning as contained in SEC Rule 3b–8(c) for "Qualified Block Positioner" adopted pursuant to the Securities Exchange Act of 1934, reprinted as follows: The term "Qualified Block Positioner" means a dealer who: (1) is a broker or dealer registered pursuant to Section 15 of the Act, (2) is subject to and in compliance with Rule 15c3–1, (3) has and maintains minimum net capital, as defined in Rule 15c3–1 of $1,000,000 and (4) except when such activity is unlawful, meets all of the following conditions: (i) he engages in the activity of purchasing long or selling short, from time to time, from or to a customer (other than a partner or a joint venture or other entity in which a partner, the dealer, or a person associated with such a dealer, as defined in Section 3(a)(18) of the Act, participates) a block of stock with a current market value of $200,000 or more in a single transaction, or in several transactions at approximately the same time from a single source to facilitate a sale or purchase by such customer, (ii) he has determined in the exercise of reasonable diligence that the block could not be sold to or purchased from others on equivalent or better terms, and (iii) he sells the shares comprising the block as rapidly as possible commensurate with the circumstances.

(3) The term "qualified market maker," for a period of one year after the effective date of this section, shall mean a registered Nasdaq market maker that has maintained, without interruption, quotations in the subject security for the preceding 20 business days. Notwithstanding the 20-day period specified in this subsection, after an offering in a stock has been publicly announced or a registration statement has been filed, no market maker may register in the stock as a qualified market maker unless it meets the requirements set forth below:

(i) For secondary offerings, the offering has become effective and the market maker has been registered in and maintained quotations without interruption in the subject security for 40 calendar days.

(ii) For initial public offerings, the market maker may register in the offering and immediately become a qualified market maker; provided however, that if the market maker withdraws on an unexcused basis from the security within the first 20 days of the offering, it shall not be designated as a qualified market maker on any subsequent initial public offerings for the next 10 business days;

(iii) After a merger or acquisition has been publicly announced, a qualified market maker in one of the two affected securities may immediately register as a qualified market maker in the other merger or acquisition security pursuant to the same-day registration procedures in Part VI, Schedule D to the By-Laws.

For purposes of this subsection, a market maker will be deemed to have maintained quotations without interruption if the market maker is registered in the security and has continued publication of quotations in the security through the Nasdaq system on a continuous basis; provided however, that if a market maker is granted an excused withdrawal pursuant to the requirements of Part VI, Schedule D to the By-Laws, the 20 business day standard will be considered uninterrupted and will be calculated without regard to the period of the excused withdrawal. One year after effectiveness of this section, the term "qualified market maker" shall mean a registered Nasdaq market maker that meets the criteria for a Primary Nasdaq Market Maker as set forth in Article III, Section 47 of the Rules of Fair Practice.

Interpretation A

In developing a short sale rule for Nasdaq/NMS securities, the Association adopted an exemption to the rule for certain market making activity. This exemption was deemed an essential component of the rule because bona fide market making activity is necessary and appropriate to maintain continuous, liquid markets in Nasdaq/NMS securities. Subsection (c)(1) of this section states that short selling prohibitions shall not apply to sales by qualified Nasdaq market makers in connection with bona fide market making activity and specifies that risk arbitrage, index arbitrage, and other transactions unrelated to normal market making activity will not be considered as bona fide market making. Thus two standards are to be applied: one must be a "qualified" Nasdaq market maker and one must engage in "bona fide" market making activity to take advantage of this exemption. With this Interpretation, the Association wishes to clarify for members some of the factors that will be taken into consideration when reviewing market making activity that may not be deemed to be bona fide market making activity and therefore would not be exempted from the rule's application.

First, as the rule indicates, bona fide market making activity does not include activity such as risk arbitrage or index arbitrage that is unrelated to market making functions. While these types of arbitrage activity appear to be suitable for the firm's overall hedging or risk management concerns, they do not warrant an exemption from the rule.

Similarly, bona fide market making would exclude activity that is related to speculative selling strategies of the member or investment decisions of the firm and is disproportionate to the usual market making patterns or practices of the member in that security. The NASD does not anticipate that a firm could properly take advantage of its market maker exemption to effectuate such speculative or investment short selling decisions. Disproportionate short selling in a market making account to effectuate such strategies will be viewed by the NASD as inappropriate activity that does not represent bona fide market making and would therefore be in violation of the rule.

Interpretation B

Section 46 requires that no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market System security at or below the current best (inside) bid when the current best (inside) bid as displayed by the Nasdaq System is below the preceding best (inside) bid in the security. The Association has determined that in order to effect a "legal" short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least 1/16th point above the current inside bid. Such a trade would, therefore, reflect a change from the bid on the last sale reporting tape.

Moreover, the Association believes that requiring short sales to be a minimum increment of 1/16th point above the bid ensures that transactions are not effected at prices inconsistent with the underlying purpose of the rule.

Interpretation C

Section 46 prohibits members from effecting a short sale for the account of a customer or for its own account directly or

through the offices of a third party for the purpose of avoiding the application of the short sale rule. Further, the section prohibits members from knowingly, or with reason to know, effecting sales for the account of a customer or for its own account for the purpose of avoiding the rule. With this Interpretation, the Association wishes to clarify some of the circumstances under which a member would be deemed to be in violation of this section.

For example, if a market maker agrees to an arrangement proposed by a member or a customer whereby the market maker raises its bid in the Nasdaq system in order to effect a short sale for the other party and is protected against any loss on the trade or on any other executions effected at its new bid price, the market maker would be deemed to be in violation of this section. Similarly, a market maker would be deemed in violation of the rule if it entered into an arrangement with a member or a customer whereby it used its exemption from the rule to sell short at the bid at successively lower prices, accumulating a short position, and subsequently offsetting those sales through a transaction at a prearranged price, for the purpose of avoiding compliance with this section, and with the understanding that the market maker would be guaranteed by the member or customer against losses on the trades.

The NASD believes that members' activities to circumvent the rule through indirect actions such as executions with other members or through facilitation of customer orders while being protected from loss are antithetical to the purposes of the rule. Accordingly, the Association will consider any such activity as a violation of this section.

Section 47—Primary Nasdaq Market Maker

(To be effective one year after the effective date of Section 46)

(a) A member registered as a Nasdaq market maker pursuant to Part VI, Schedule D of the NASD By-Laws may be deemed to be a Primary Nasdaq Market Maker in Nasdaq National Market System securities if the market maker complies with threshold standards (as established and published by the Association from time to time) in the following qualification criteria:

(1) amount of time a dealer maintains a quotation that represents the best bid or best offer as shown in the Nasdaq system:

(2) relation of individual dealer spread to average dealer spread; and

(3) frequency of dealer quotation updates without a corresponding execution in the security occurring within three minutes before or after a quotation update.[1]

(b) A market maker for a Nasdaq/NMS security must satisfy the threshold standards in at least two of the criteria in section (a) in order to be designated a Primary Nasdaq Market Maker in that security; provided however, that if a market maker satisfies only one of the criteria, it may qualify as a Primary Nasdaq Market Maker if it also accounts for a threshold level of proportionate volume in the security (as established and published by the Association from time to time).[2]

(c) The review period for review of market maker performance in each of the qualification criteria in section (a) shall be one calendar month.

(d) If, after the review period, a market maker does not satisfy the threshold standards for the criteria in section (a), the Primary Nasdaq Market Maker designation shall be withheld commencing on the next business day following notice of failure to comply with the standards.

(e) Market makers may requalify for designation as a Primary Nasdaq Market Maker by satisfying the threshold standards for the next review period.

(f) A market maker may request reconsideration of the notice to withhold the Primary Nasdaq Market Maker designation.

(1) Grounds for requests for reconsideration shall be limited to:

(i) System failure;

(ii) Excused market maker withdrawal status; or

(iii) Where a market maker failed to qualify under the criteria set forth in subsection (a)(3) because of activity in a related derivative or convertible security, or activity in a security subject to derivative pricing mechanisms, such as currency differentials with foreign stocks.

(2) Requests for reconsideration must be sent in writing to Nasdaq Operations within 24 hours of the determination to withhold the Primary Nasdaq Market Maker designation.

(3) Requests for reconsideration will be reviewed by the Market Operations Review Committee, whose decisions are final and binding on the members.

(g) In registration situations:

(1) To register and immediately become a Primary Nasdag Market Maker in a Nasdaq/NMS security, a member must be a Primary Nasdaq Market Maker in 80% of the securities in which it has registered. If the market maker is not a Primary Nasdaq Market Maker in 80% of its stocks, it may quality as a Primary Nasdaq Market Maker in that stock if;

(i) The market maker registers in the stock but does not enter quotes for five days; or

(ii) The market maker registers in the stock as a regular Nasdaq marker maker and satisfies the qualification criteria for the next review period.

(2) Notwithstanding subsection (g)(1) above, after an offering in a stock has been publicly announced or a registration statement has been filed, no market maker may register in the stock as a Primary Nasdaq Market Maker unless it meets the requirements set forth below:

(a) For secondary offerings:

(i) The secondary offering has become effective and the market maker has satisfied the qualification criteria in the time period between registering in the security and the offering becoming effective; or

(ii) The market maker has satisfied the qualification criteria for 40 calendar days.

(b) For initial public offerings:

(i) The market maker may register in the offering and immediately become a Primary Nasdaq Market Maker if it is a Primary Nasdaq Market Maker in 80% of the securities in which it has registered; provided however, that if, at the end of the first review period, the Primary Nasdaq Market Maker has withdrawn on an unexcused basis from the security or has not satisfied the qualification criteria, it shall not be afforded a Primary Nasdaq Market Maker designation on any subsequent initial public offerings for the next 10 business days; or

(ii) The market maker registers in the stock as a regular Nasdaq market maker and satisfies the qualification criteria for the next review period.

(3) Notwithstanding subsection (g)(1) or (g)(2) above, after a merger or acquisition has been publicly announced, a Primary Nasdaq Market Maker in one of the two affected securities may immediately register as a Primary Nasdaq Market Maker in the other merger or acquisition security pursuant to the same-day registration procedures in Part VI, Schedule D to the By-Laws.

(h) The Board of Governors reserves the authority to modify the threshold standards set forth in sections (a) and (b) above if it finds that maintenance of such standards would result in an adverse impact on a class of investors or on the Nasdaq marketplace.

(i) The Board of Governors reserves the authority to alter, amend, modify, or supplement this section as deemed appropriate or necessary for Nasdaq/NMS securities without recourse to membership for approval as required by Article XII to the By-Laws.

[FR Doc. 92-19243 Filed 8-12-92; 8:45 am]

BILLING CODE 8010-01-M

[1] The threshold standards initially shall be established as:

(a) A market maker must maintain the best bid or best offer as shown in the Nasdaq system no less than 35% of the time;

(b) A market maker must maintain a spread no greater than 102% of the average dealer spread;

(c) No more than 50% of a market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading.

The NASD Board of Governors reserves the authority to rescind or modify one or more of the threshold standards immediately upon a finding that the standard is operating in a manner that is unfair to a class of investors or members, or that continued imposition of the standard results in a substantial adverse impact on the liquidity or market quality of the Nasdaq market.

[2] The threshold proportionate volume standard initially shall require a market maker to account for volume of at least 1½ times its proportionate share of overall volume in the stock for the review period.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Change #1 to FAA P-8110-2; Airship Design Criteria (ADC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Change #1 (dated July 24, 1992) to FAA P-8110-2, Airship Design Criteria (ADC) dated November 2, 1987.

This change updates design criteria for type certification of airships.

ADDRESSES: Copies of Change #1 can be obtained from the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Julea Bell, Standards Staff (ACE–110), Telephone No. 816–426–6941.

Issued in Kansas City, Missouri, August 3, 1992.

John E. Tigue,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–19350 Filed 8–12–92; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Marysville, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Nevada County, California.

FOR FURTHER INFORMATION CONTACT: Leonard E. Brown, Chief District Operations, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812–1915, Telephone: (916) 551–1307.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, District 3, will prepare an Environmental Impact Statement (EIS) on a proposal to improve Route 49 from 0.2 mile north of Lime Kiln Road (PM 7.3) to 0.2 mile north to the freeway in Grass Valley at McKnight Way (PM 13.8). The improvement is needed to increase the capacity of the transportation system in order to accommodate an approximate four-fold increase in vehicle use of the alignment over the last 20 years. Two approximately 6.5-mile corridors (A and C) and a No Project Alternative are being studied. Corridor A follows the existing alignment. Corridor A alternative include a four-lane divided expressway and a four-lane conventional highway with a continuous left-turn lane. Corridor C, beginning at the south end of the project, initially follows an alignment westerly of old Auburn Road. It crosses Old Auburn Road just north of the Wolf Creek Bridge, and gradually merges with the existing alignment just south of the South Grass Bridge, and gradually merges with the existing alignment just south of the South Grass Valley Interchange (McKnight Way). A four-lane divided expressway is being considered in this corridor.

The proposed scoping process includes the publication of the Notice of Intent in the **Federal Register**, distribution of the Notice of Preparation to each responsible agency, and public and agency scoping meetings. A public informational meeting and a public drop-in workshop were held in Grass Valley, California, on June 7, 1989 and July 19, 1990. The official public scoping meeting was held on February 20, 1992, from 2–8 pm at the Nevada County Fairground in Grass Valley, California.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Views of agencies which may have knowledge about historic resources potentially affected by the proposal or interested in the effects of the project on historic properties are hereby solicited.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: July 31, 1992.

Leonard E. Brown,

Chief District Operations Sacramento, California.

[FR Doc. 92–19292 Filed 8–12–92; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; Virginia Beach, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project to be located in Virginia Beach, Virginia.

FOR FURTHER INFORMATION CONTACT: Allen Masuda, District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240–0045, Telephone 804/771–2360.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), will prepare an Environmental Impact Statement (EIS) on a proposal to construct Ferrell Parkway in Virginia Beach. The proposed project would involve construction of a multi-lane, controlled access, urban arterial in the eastern portion of Virginia Beach, Virginia. The proposed western terminus is near the intersection of General Booth Boulevard and Princess Anne Road. The eastern terminus is the intersection of Sandfiddler and Sandbridge Roads at Sandbridge. The length for the proposed project ranges from 4.0 to 6.0 miles, depending on the alternative. Development of the proposed project is considered necessary to provide for efficient movement of existing and projected traffic and provide relief to safety problems experience along Sandbridge Road. The proposed project will also provide an adequate hurricane evacuation route from the Sandbridge resort area.

Alternatives under consideration include: (1) Taking no action (no build); (2) transportation system management (improvement to existing roadway network); (3) mass transit; (4) various build alternatives (new and existing location). The build alternatives will incorporate variations of vertical and horizontal grade alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, private organizations and citizens who have previously expressed or are known to have interest in this proposal. The scoping process is anticipated to begin in the late Summer or early Fall of 1992. A series of public information meetings and a public hearing will be held in the future. Public notice will be given indicating the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Draft EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this project)

Issued on : August 6, 1992.

Donald J. West,

Assistant Division Administrator, Richmond, Virginia.

[FR Doc. 92-19301 Filed 8-12-92; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Wood County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Wood County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Jacki Lawton, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin, 53705-4905, Telephone: (608) 264-5967.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation and SEC Donohue Inc., will prepare an environmental impact statement (EIS) on proposed improvement alternatives to Wisconsin State Highway 13 (STH 13) through the City of Marshfield. The southern terminus of the project is U.S. Highway 10 East (USH 10 East) just south of the City. The northern terminus is the intersection of STH 13 and McMillan Street on the north side of the City.

Traffic congestion and a high accident rate have seriously hampered STH 13's ability to function as a local arterial or as a through route. The primary goals of the project are to alleviate the congestion and reduce the accident rate. Alternatives under consideration include (1) taking no action; (2) improving the existing alignment; (3) building a bypass east or west of the City; and (4) building a new route through the City.

FHWA will communicate and coordinate with the appropriate Federal, State, and local agencies, and with private organizations and citizens who have an interest in the project. A public hearing is expected to be held in early 1993. Public notice will be given of the time and place of the hearing. The draft EIS will be made available for public and agency review and comment before the public hearing.

Comments and suggestions on the proposed project and EIS are invited from all interested parties. They should be directed to the FHWA at the address above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on August 4, 1992.

Robert W. Cooper,

District Engineer, Madison, WI.

[FR Doc. 92-19283 Filed 8-12-92; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for waivers of compliance with certain requirements of the federal safety laws and regulations. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Boone and Scenic Valley Railroad

[Docket Number SA-91-7]

The Boone and Scenic Valley Railroad (BSV) requests a waiver of compliance with certain provisions of the Railroad Safety Appliance Standards, (49 CFR part 231) for three locomotives, BSV 1103, 1858 and 702.

The BSV 1103 was built by the Electro Motive Division of the General Motors Corporation and purchased from the Chicago and Northwestern Transportation Company (CNW) in 1986. It is a 1,000 horsepower switcher locomotive which was modified by the CNW as an auxiliary power unit without a control cab or controls. The rear stairways were removed and the openings blanked off with heavy steel plates. The uncoupling levers were also removed. When used by the CNW, the 1103 was permanently connected to the 1003, a similar locomotive with a control cab, with a solid drawbar. The BSV has removed the drawbar and replaced it with a standard automatic coupler without coupling levers. The BSV states that the 1003 is normally used to operate a passenger train, but several times a year the 1103 is used in tandem when a long passenger train is operated or if mechanical problems were to arise in the 1003. The BSV seeks a waiver of compliance from § 231.29, Road locomotives with corner stairways, and § 231.30, Locomotives used in switching service for locomotive BSV 1103.

The BSV 1858 is a 45 ton industrial switcher type locomotive built by the General Electric Company in 1944. It does not have corner steps or stairways but is equipped with a sill step and an additional tread at each corner to allow individuals to get on and off the locomotive walkway.

The railroad states that due to the physical design of locomotives BSV 1103 and 1858, it is not possible to modify them by the installation of corner steps because it would adversely restrict truck swing and, at the same time, destroy the structural integrity of the locomotive frames. Further, crew safety would not adversely be affected because of the 10 mph slow operating speed of the locomotives. This speed is less than that found in typical passenger car switching service at passenger stations which are already exempt.

Electric locomotive 702 was purchased new by the Kennicott Copper Corporation from the General Electric Company in 1928 for ore haulage service. It was donated to the BSV in 1984. As this locomotive served on a railroad whose entire operation was wholly within an industrial facility, or a "plant railroad", it was never subject to FRA regulations. The BSV states that locomotive 702 is of interest to the Historical Society as an historical exhibit. It is typical of many small steeple cab electric locomotives used by most of the Iowa interurban and street railways during the first half of this century. The 702 has the ability to operate under electrical overhead wire or by means of self contained storage batteries. The railroad says the locomotive will be used for the construction and repair of the overhead electrical wire and for an occasional movement of passenger cars on the BSV. It will also occasionally be used to handle a coach on the six block shuttle service between the depot and town in the event of a failure of one of the MU electric interurban cars. In this service it is never operated at speeds exceeding 10 mph.

The BSV states that because of (1) the historical nature of this unit, (2) its original service as a plant railroad locomotive, (3) the limited speed at which it is operated and (4) the high cost of the changes required in order to effect total compliance with all FRA regulations, it is requesting a waiver of § 231.30.

[Docket Number LI-91-2]

The BSV requests a waiver of compliance with certain provisions of the Locomotive Safety standards (49 CFR part 229) for its electric locomotive number 702.

The railroad is seeking a waiver of § 229.115, Slip/slide alarms, and § 229.123, Pilots, snow plows and end plates. The BSV states that because of (1) the historical nature of this unit, (2) its original service as a plant railroad locomotive, (3) the limited speed at which it is operated and (4) the high cost of the changes required in order to effect total compliance with all FRA regulations, it is requesting waivers of §§ 229.115 and 123.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding should identify the appropriate docket number (e.g., Waiver Petition Docket Number SA-91-7) and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before September 25, 1992 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.-5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on August 7, 1992.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92-19257 Filed 8-12-92; 8:45 am]

BILLING CODE 4910-06-M

Petition for Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from the Boone and Scenic Valley Railroad (BSV) a request for a waiver of compliance with a requirement of Federal rail safety standards. The petition is described below, including the regulatory provisions involved and the nature of the relief being requested.

Boone and Scenic Valley Railroad

[Waiver Petition Docket Number LI-92-3]

The BSV seeks a waiver of compliance with certain provisions of the Steam Locomotive Rules (49 CFR part 230). BSV is requesting a waiver of compliance with § 230.108(b), (main reservoir hammer testing), for their steam locomotive number JS 8419. The locomotive was built in China in May 1989 and is used in excursion service on the seasonal tourist railroad.

BSV desires to have the main air reservoirs made subject to the provisions of the Locomotive Safety Standards: 49 CFR 229.31(c), (drilling of telltale holes in the exterior surface of all welded main reservoirs).

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number LI-92-3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before September 25, 1992, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on August 7, 1992.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92-19256 Filed 8-12-92; 8:45 am]

BILLING CODE 4910-06-M

Petitions for Waivers of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the following 11 railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with provisions of the Hours of Service Act, (45 U.S.C. 64(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty in excess of 12 hours. However, the Hours of Service Act contains a provision permitting a railroad which employs not more than 15 employees subject to the statute, to seek an exemption from the 12 hour limitation.

Crystal City Railroad, Incorporated (CYCY)

[FRA Waiver Petition Docket No. HS-91-6]

The CYCY seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The CYCY states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The CYCY provides service over 55 miles of trackage between Gardendale, Texas and Crystal City, Texas.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Fort Smith Railroad Company (FSR)

[FRA Waiver Petition Docket No. HS-91-7]

The FSR seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The FSR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The FSR provides service over 49 miles of trackage between Fort Smith, Arkansas and Paris, Arkansas.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

R. J. Corman Railroad Company/ Cleveland Line (RJCM)

[FRA Waiver Petition Docket No. HS-91-8]

The RJCM seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The RJCM states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its

operation if unusual operating conditions are encountered. The RJCM provides service over 49 miles of trackage between Warwick, Ohio and Uhrichsville, Ohio.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Central Montana Rail, Inc. (CM)

[FRA Waiver Petition Docket No. HS–92–01]

The CM seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The CM states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The CM provides service over 87 miles of trackage between Moccasin Jct. and Geraldine, Montana.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Carolina Rail Services Co. (CRIJ)

[FRA Waiver Petition Docket No. HS–92–02]

The CRIJ seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24–hour period. The CRIJ states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The CRIJ provides switching service within the North Carolina Sate Ports Authority terminal at Morehead City, North Carolina, a distance of one mile.

The petitioner indicates that granting the exemption is in the public interest and will not affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Natchez Trace Railroad (NTR)

[FRA Waiver Petition Docket No. HS–92–03]

The NTR seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24–hour period. The NTR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The NTR provides service over 54 miles of trackage between Grand Junction, Tennessee and Oxford, Mississippi.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

The YS seeks a continuation of a previously issued exemption so it may permit certain employees to remain second duty not more than 16 hours in any 24–hour period. The YS states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The YS provides service over 34 miles of trackage between Youngstown, Ohio and Cannelton, Pennsylvania.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Maryland and Pennsylvania Railroad Company (MPA)

[FRA Waiver Petition Docket No. HS–92–05]

The MPA seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24–hour period. The MPA states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual oepratin conditions are encountered. The MPA provides service over 26 miles of trackage in York County, Pennsylvania.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Iowa Traction Railroad (IATR)

[FRA Waiver Petition Docket No. HS–92–06]

The IATR seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24–hour period. The IATR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The IATR provides service over 10 miles of trackage between Mason City and Clear Lake, Iowa.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Louisiana and delta Railroad (LDRR)

[FRA Waiver petition Docket No. HS–92–07]

The LDRR seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24–hour period. The LDRR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The LDRR provides service over 111 miles of trackage between Houma and Schriever, Louisiana.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Manitou and Pike's Peak Railway Company (MPP)

[FRA Waiver Petition Docket No. HS–92–08]

The MPP seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24–hour period. The MPP states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The MPP provides service over 9 miles of trackage between Manitou Springs, Colorado and the summit of Pike's peak.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled a public hearing since facts do not appear to so warrant. If any interested party desires a public hearing, he or she should notify FRA, in

writing, before the end of the comment period and specify the basis for his or her request. Any communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number HS–90–XX) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before September 25, 1992 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC. 20590.

Issued in Washington, DC on August 7, 1992.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92–19258 Filed 8–12–92; 8:45 a.m.]

Billing Code 4910–06–M

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSGM–91–36) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before September 25, 1992 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Maine Coast Railroad

[Waiver Petition Docket Number RSGM–91–36]

The Maine Coast Railroad (MC) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The MC was previously granted a waiver of compliance for two locomotives. They have now requested a waiver for an additional locomotive to be operated on the same 58 miles of track between Brunswick and Rockland, Maine.

North Shore Scenic Railroad

[Waiver Petition Docket Number RSGM 92–9]

The North Shore Scenic Railroad (NSSX) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for six passenger cars. The cars are used in excursion service and may be operated in northern Minnesota and the northern one-half of Wisconsin on the NSSX, Burlington Northern Railroad, Duluth, Missabe and Iron Range Railway and Duluth, Winnipeg and Pacific Railway. Maximum speed on the NSSX is 30 MPH. The railroad states that to their knowledge, all trackage is in the low incident category.

Quincy Railroad Company

[Waiver Petition Docket Number RSGM–92–10]

The Quincy Railroad Company (QRR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The QRR operates 26 miles of track to switch lumber from a sawmill to a connection with the Southern Pacific Transportation Company (SP). The area is in a rural section of northeast California. Maximum train speed is 15–18 MPH. The railroad states there has been no incident involving glazing in the 28 years of their operation.

Red Bank Railroad

[Waiver Petition Docket Number RSGM–92–11]

Mountain Laurel Railroad

[Waiver Petition Docket Number RSGM–92–12]

The Pittsburgh and Shawmut Railroad Company (PS) was previously granted a waiver of compliance with certain provisions of the Safety Glazing Standards (48 CFR part 223) for twelve locomotives and eight cabooses on Docket Number RSGM–80–32. The PS recently began operation of the Red Bank Railroad (RBKR) and the Mountain Laurel Railroad (MNL) and has petitioned to extend their waiver to these two railroads. Separate docket numbers have been assigned to each railroad.

The RBKR operates ten miles of track between Sligo and Lawsonham, Pennsylvania.

The MNL operates 128 miles of track between Lawsonham and Driftwood and between Piney and Brookeville, all in Pennsylvania. The area is sparsely populated with DuBois being the largest city with a population of 10,000. The PS states there have been no accidents involving glazing on the locomotives in the over ten years they have operated with a waiver.

Ouachita Railroad Company

[Waiver Petition Docket Number RSGM–92–13]

The Ouachita Railroad Company (OUCH) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for three locomotives. The OUCH operates 25 miles of track through a rural area between El Dorado, Arkansas and Lillie Louisiana. An average of eight cars are handled per day.

Chatooga and Chickamauga Railway Company

[Waiver Petition Docket Number RSGM 92–14]

The Chatooga and Chickamauga Railway Company (CCKY) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one caboose. The CCKY operates two former Norfolk Southern lines between Chattanooga, Tennessee and Hedges, Georgia, a distance of 19.4 miles, and between Chattanooga and Lyerly, Georgia, a distance of 48.2 miles. The caboose, which was built in 1953, is owned by the city of Lafayette, Georgia and will be restored to its original

condition. It will only be used in special excursion service and not in regular freight service. The railroad states the cost of glazing would not be cost effective since it is already equipped with plexiglass.

Beaufort East Coast Railroad

[Waiver Petition Docket Number RSGM 92–7]

The Beaufort East Coast Railroad (BECX) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive.

[Waiver Petition Docket Number LI–92–7]

The BECX seeks a permanent waiver of compliance with § 229.41, which requires an auxiliary generator cover, for one locomotive. The railroad does not believe the locomotive was designed with such a cover.

[Waiver Petition Docket Number SA–92–1]

The BECX seeks a permanent waiver of compliance with § 231.30(c), requiring switching steps, on one locomotive. The locomotive was built prior to this requirement.

Waccamaw Coast Line Railroad Company

[Waiver Petition Docket Number RSGM–91–8]

The Waccamaw Coast Line Railroad Company (WCLR) was granted a waiver of compliance with the Safety Glazing Standards (49 CFR part 223) for one locomotive under Docket Number RSGM–91–8. They recently acquired another locomotive and have petitioned for a waiver of compliance for it also. The locomotive will be used primarily on an excursion/dinner train between Myrtle Beach and Conway, South Carolina, a distance of 13 miles. The railroad states there has never been a problem with glazing due to vandalism.

Mohawk, Adirondack and Northern Railroad Corporation

[Waiver Petition Docket Number RSGM–91–20]

The Mohawk, Adirondack and Northern Railroad Corporation (MHWA) was granted a temporary waiver of compliance from certain provisions of the Safety Glazing Standards (49 CFR part 223) for three locomotives under Docket Number RSGM–91–20. The MHWA and the Lowville and Beaver River Railroad (LBR) are owned by Genesee Valley Transportation Company. The MHWA is requesting a waiver of compliance from the Safety Glazing Standards for two 44-ton GE locomotives owned by the LBR (operated under waiver RSGM–81–50) in order to operate the locomotives on MHWA tracks.

[Waiver Petition Docket Number SA–92–2]

The Mohawk, Adirondack and Northern Railroad Corporation requests a waiver of compliance with certain provisions of the Railroad Safety Appliance Standards (49 CFR part 231) for two 44-ton GE locomotives. The locomotives are owned by the Lowville and Beaver River Railroad and operated under Waiver SA–78–5. The MHWA seeks relief from the provisions of § 231.30(c), which requires switching steps, since it would be nearly impossible to modify the steps due to the original design.

Issued in Washington, DC on August 7, 1992.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92–19259 Filed 8–12–92; 8:45 am]

BILLING CODE 4910–06–M

Maritime Administration

[Docket S–893]

Ocean Chemical Carriers, Inc. and Ocean Chemical Transport, Inc; Application for Permission Under Section 805(a) of the Merchant Marine Act 1936, as Amended, for Subsidized Tanker Companies To Affiliate With Ocean Duchess, Inc.

By letter dated July 31, 1992, Ocean Chemical Carriers, Inc. and Ocean Chemical Transport, Inc. (Applicants) requested written permission pursuant to section 805(a) of the Merchant Marine Act 1936, as amended (Act) to affiliate with Ocean Duchess, Inc. (Ocean Duchess).

The Applicants are currently receiving subsidy for the operation of the M/V JULIUS HAMMER and the M/V FRANCES HAMMER pursuant to Operating-Differential Subsidy Agreements (ODSA), Contracts MA/MSB–440 and MA/MSB–442, respectively. The Applicants are wholly owned by Joe Vaughan. Both companies are Delaware corporations. The Applicants have bareboat chartered the vessels from Suwannee River Lines, Inc. and Suwannee River Chartering, Inc. The vessels in turn are time chartered to Suwannee River Chartering, Inc.

Ocean Duchess, is a corporation organized under the laws of Delaware, and is wholly owned by Lawrence Rubenstein. The Connecticut National Bank is Shipowner Trustee of the Vessel. Ocean Duchess is acting solely as the vessel manager for the M/V DUCHESS (Vessel). Ocean Duchess is not the bareboat charterer of the Vessel, nor does it have an equity position in the Vessel itself. The Shipowner has retained the duty to arrange for the Vessel's charters. The Vessel is currently under time charter arranged by the Shipowner between itself and British Petroleum for operation in the domestic trade.

Mr. Vaughan desires to purchase controlling interest in Ocean Duchess. The Applicants state section 805 approval is necessary because of the affiliation between Mr. Vaughan and the Applicants. The Applicants contend that affiliation between the Applicants and Ocean Duchess through Mr. Vaughan would not result in unfair competition to coastwise or intercoastal operators, nor would it cause prejudice to the purposes and policies of the Act. Ocean Duchess would continue to act solely as the vessel manager, compensable under the existing ship management agreement entered into between itself and the Shipowner. The Shipowner would independently charter the Vessel in the domestic trade, an activity which would occur irrespective of this request for section 805 approval.

The Maritime Administrator has already granted a similar Section 805 waiver after the Applicant demonstrated that the corporate structures of the Applicant and its affiliated companies are established in a manner which prevents any subsidy diversion to the domestic trades (Docket S–850). Applicants state that as the beneficiaries of ODSA Nos. MA/MSB–440 and MA/MSB–442 are not related to the Shipowner Trustee of the Vessel or its the beneficial owners, the benefits of the Applicants' subsidy contracts cannot spill over into the domestic operation of the Vessel. Applicants aver that the distinct nature of the Applicants' operations, on the one hand, and Ocean Duchess' management agreement with the Shipowner to operate the vessel, on the other, guarantees no unfair competition with existing coastwise tanker operators through subsidy diversion.

The Applicant states that approval of this request would promote the purposes and policies of the Act. As an affiliated company, Ocean Duchess would have direct access to all the services and personnel employed by OSI and Ocean Ship Management, Inc., a specialized management company also owned by Joe Vaughan. The Applicants believe that the affiliation may serve to reduce Ocean Duchess' overhead and administrative expenses, and make it less dependent on outside resources during periods of unanticipated emergency or workload. The Applicants contend that the purposes and policies of the Act are served by the

strengthening of an existing U.S.-flag company which, in turn, stabilizes employment opportunities for the company's management staff and crew. The Applicants therefore request section 805(a) approval to affiliate with Ocean Duchess, Inc. on an expedited basis.

Any person, firm, or corporation having any interest in the application for section 805(a) permission and desiring to submit comments concerning the application must file written comments in triplicate, to the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590, by the close of business 5 p.m. on August 18, 1992. If such comments deal with section 805(a) issues, they should be accompanied by a petition for leave to intervene. The petition should state clearly and concisely the grounds of interest and the alleged facts relied on for relief. If no petitions for leave to intervene on section 805(a) issues are received within the specified time, or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate. In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or international service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic operations.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies (ODS))

Dated: August 7, 1992.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 92-19255 Filed 8-12-92; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 6, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS Form 2555-EZ.
Type of Review: New collection.
Title: Foreign Earned Income Exclusion.
Description: This form is used by U.S. citizens and resident aliens who qualify for the foreign earned income exclusion. This information is used by the Service to determine if a taxpayer qualifies for the exclusion. Form 2555-EZ is a less burdensome form that will be used where foreign earned income is $70,000 or less.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 35,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—26 minutes
Learning about the law or the form—17 minutes
Preparing the form—1 hour, 40 minutes
Copying, assembling, and sending the form to the IRS—35 minutes
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 68,950 hours.

OMB Number: 1545-0067.
Form Number: IRS Form 2555.
Type of Review: Extension.
Title: Foreign Earned Income.
Description: This form is used by U.S. citizens and resident aliens who qualify for the foreign earned income exclusion and/or the foreign housing exclusion or deduction. This information is used by the Service to determine if a taxpayer qualifies for the exclusion(s) or deduction.
Respondents: Individuals or households.
Estimated Burden Hours Per Respondent/Recordkeepers: 165,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hours, 10 minutes
Learning about the law or the form—26 minutes
Preparing the form—1 hour, 50 minutes
Copying, assembling, and sending the form to the IRS—49 minutes
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 867,900 hours.

OMB Number: 1545-0128.
Form Number: IRS Form 1120-L.
Type of Review: Revision.
Title: U.S. Life insurance Company Income Tax Return.
Description: Life insurance companies are required to file an annual return of income and compute and pay the tax due. The data is used to insure that companies have correctly reported taxable income and paid the correct tax.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 2,440.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—76 hours, 17 minutes
Learning about the law or the form—24 hours, 37 minutes
Preparing the form—39 hours, 59 minutes
Copying, assembling, and sending the form to the IRS—3 hours, 45 minutes
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 352,946 hours.

OMB Number: 1545-0137.
Form Number: IRS Form 2032.
Type of Review: Extension.
Title: Contract Coverage Under Title II of the Social Security Act.
Description: American employers can enter into an agreement to extend social security coverage to U.S. citizens and resident aliens employed by foreign affiliates.
Respondents: Individuals or households, Businesses or other for-profit, Federal agencies or employees, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 160.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hours, 9 minutes
Learning about the law or the form—18 minutes
Preparing and sending the form to the IRS—20 minutes
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 448 hours.

OMB Number: 1545-0203.
Form Number: IRS Form 5329.
Type of Review: Revision.
Title: Return for Additional Taxes Attributable to Qualified Retirement Plans (including IRAs), Annuities, and Modified Endowment Contracts.
Description: This form is used to compute and collect taxes related to distributions from individual retirement arrangements (IRAs) and other qualified plans. These taxes for

excess contributions to an IRA, premature distributions from an IRA and other qualified retirement plans, excess accumulations in an IRA and excess distributions from qualified retirement plans. The data is used to help verify that the correct amount of tax has been paid.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 1,000,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—2 hours, 24 minutes

Learning about the law or the form—43 minutes

Preparing the form—1 hour, 41 minutes

Copying, assembling, and sending the form to the IRS—35 minutes

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 5,380,000 hours.

OMB Number: 1545–0687.

Form Number: IRS Form 990–T.

Type of Review: Revision.

Title: Exempt Organization Business Income Tax Return.

Description: Form 990–T is needed to compute the section 511 tax unrelated business income of a charitable organization. IRS uses the information to enforce the tax.

Respondents: Non-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 35,531.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—60 hours, 59 minutes

Learning about the law or the form—20 hours, 20 minutes

Preparing the form—32 hours, 28 minutes

Copying, assembling, and sending the form to the IRS—2 hours, 57 minutes

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 4,147,889 hours.

OMB Number: 1545–0715.

Form Number: IRS Form 1099–B.

Type of Review: Extension.

Title: Proceeds From Broker and Barter Exchange Transactions.

Description: Form 1099–B is used by brokers and barter exchanges to report proceeds from transactions to the Internal Revenue Service.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 50,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 12,925,000 hours.

OMB Number: 1545–0901.

Form Number: IRS Form 1098.

Type of Review: Revision.

Title: Mortgage Interest Statement.

Description: Form 1098 is used to report $600 or more of mortgage interest received from an individual in the course of the mortgager's trade or business.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents: 171,000.

Estimated Burden Hours Per Respondent: 7 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 6,840,000 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland

Departmental Reports Management Officer.

[FR Doc. 92–19247 Filed 8–12–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 6, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0056.

Form Number: CF–19.

Type of Review: Extension.

Title: Protest.

Description: The CF–19 is filed by the importer, consignee, or the person paying any charge or exaction or seeking entry or delivery with respect to merchandise which is the subject of the decision protested.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 3,700.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 23,432 hours.

Clearance Officer: Ralph Meyer (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–19248 Filed 8–12–92; 8:45 am]

BILLING CODE 4820–02–M

Office of the Secretary

[Supplement to Dep. Circular—Public Debt Series—No. 23–92]

Treasury Notes, Series AC–1994

Washington, July 29, 1992.

The Secretary announced on July 28, 1992, that the interest rate on the notes designated Series AC–1994, described in Department Circular—Public Debt Series—No. 23–92 dated July 22, 1992, will be 4¼ percent. Interest on the notes will be payable at the rate of 4¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92–19253 Filed 8–12–92; 8:45 am]

BILLING CODE 4810–40–M

[Supplement to Dept. Circular—Public Debt Series—No. 24–92]

Treasury Notes, Series P–1997

Washington, July 30, 1992.

The Secretary announced on July 29, 1992, that the interest rate on the notes designated Series P–1997, described in Department Circular—Public Debt Series—No. 24–92 dated July 22, 1992, will be 5½ percent. Interest on the notes will by payable at the rate of 5½ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92–19252 Filed 8–12–92; 8:45 am]

BILLING CODE 4810–40–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 157
Thursday, August 13, 1992

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).

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 11–92

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Wed., August 26, 1992 at 10:30 a.m.—Consideration of Proposed Decisions on claims against Iran

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 1000, Washington, DC 20579. Telephone: (202) 208–7727.

Dated at Washington, D.C. on August 11, 1992.

Judith H. Lock,

Administrative Officer.

[FR Doc. 92–19464 Filed 8–11–92; 3:31 pm]

BILLING CODE 4410-01-M

Corrections

Federal Register
Vol. 57, No. 157
Thursday, August 13, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-02-4143-11]

Sodium; Wyoming

Correction

In notice document 92-16714 appearing on page 32024 in the issue of Monday, July 20, 1992, make the following correction in the second column, in the heading "Coal Leases; WY" should read "Sodium; Wyoming".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1304

Definition and Registration of Mid-Level Practitioners

Correction

In proposed rule document 92-17873 beginning on page 33465 in the issue of Wednesday, July 29, 1992, make the following correction:

On page 33466, in the first column, in the last line, the second "the" should read "of".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act: Fiscal Year 1992 Competitive Discretionary Grant Programs Announcement and Notice of the Availability of Application Kit

Correction

In notice document 92-17851 beginning on page 33826 in the issue of Thursday, July 30, 1992, make the following correction:

On page 33832, in the third column, under *Due Date*, in the third line "August 28, 1992" should read "September 28, 1992".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-92-AD]

Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

Correction

In proposed rule document 92-16210 beginning on page 30697 in the issue of Friday, July 10, 1992, make the following correction:

§ 39.13 [Corrected]

On page 30698, in the second column, in § 39.13, in the first paragraph, in the second line, "ll-passenger" should read "all-passenger".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF46

Claims Based on Chronic Effects of Exposure to Mustard Gas

Correction

In rule document 92-18107 beginning on page 33875 in the issue of Friday, July 31, 1992, make the following correction:

On page 33877, in the first column, the **List of Subjects** should read "Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans."

BILLING CODE 1505-01-D

federal register

Thursday
August 13, 1992

Part II

Securities and Exchange Commission

17 CFR Parts 200 et al.

Small Business Initiatives; Capital Raising Facilitation and Compliance Burdens Reductions; Rule and Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 228, 229, 230, 239, 240, 249, and 260

[Release Nos. 33-6949, 34-30968, 39-2287; FR-39]

RIN 3235-AD88

Small Business Initiatives

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today adopted rules and forms under the Securities Act of 1933 ("Securities Act"), the Securities Exchange Act of 1934 ("Exchange Act") and the Trust Indenture Act of 1939 ("Trust Indenture Act") to facilitate capital raising by small businesses and reduce the costs of compliance with the federal securities laws. Specifically, the Commission has revised its general small issues exemption from the Securities Act registration requirements, Regulation A, as well as the rule 504 exemption, and has adopted simplified registration and reporting disclosure requirements for "small business issuers," as defined. The Commission also is soliciting further public comment on rule 504 with respect to excluding blank check companies from the exemption as adopted.

EFFECTIVE DATE: August 13, 1992. Although Form S-18 is hereby rescinded, filings on that form will be accepted for filing through December 31, 1992. Amendments to pending registration statements on Form S-18 or S-1 may be made on Form SB-2 by small business issuers eligible to use that Form.

FOR FURTHER INFORMATION CONTACT: The Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549: (1) Regulation A and rule 504, Richard K. Wulff (202-272-2644); (2) Regulation S-B, Securities Act Rules and Forms, Exchange Act Rules and Forms and Trust Indenture Act Rules, Amy S. Bowerman and Martin P. Dunn (202-272-2573); and (3) Financial statement requirements, Teresa E. Iannaconi (202-272-2553).

SUPPLEMENTARY INFORMATION: The Commission today adopted revisions to the Regulation A [1] exemption from the registration requirements of the Securities Act [2] and Forms 1-A [3] and 2-A [4] used for such offerings and repealed Forms 3-A,[5] 4-A,[6] 5-A,[7] 6-A [8] and 7-A.[9] Form F-X [10] has been amended to permit its use by Canadian issuers engaged in a Regulation A offering or a registered offering on Form SB-2. In connection with these revisions to Regulation A, Securities Act Rule 175 [11] and Exchange Act Rule 3b-6,[12] the Commission's "safe harbor" provisions for forward looking statements, have been revised to apply to statements made in a Regulation A offering statement and any written material submitted to the Commission pursuant to new Securities Act Rule 254. Proposed revisions to Rule 504 [13] of Regulation D have been adopted with an exclusion for offerings by "blank check" companies.

The Commission today also adopted an integrated disclosure system for "small business issuers." The simplified disclosure requirements for small business issuers are contained in Regulation S-B.[14] Amendments to Rules 405 [15] and 481 [16] under the Securities Act and Rule 12b-2 [17] under the Exchange Act [18] define the small business issuers that are eligible to use the simplified disclosure forms. Form S-18 [19] has been repealed and replaced with Form SB-2.[20] Forms S-2,[21] S-3,[22] S-8 [23] and S-4 [24] have been amended to reflect the new disclosure requirements of Regulation S-B. New Forms 10-SB [25], 10-KSB [26] and 10-QSB [27] have been created to satisfy registration, annual and quarterly reporting obligations under the Exchange Act. Further, Item 7 of Form 8-K [28] has been amended to provide consistent financial statement instructions regarding small business acquisitions. Parallel changes have been made to Schedule 14A,[29] Schedule 14C,[30] and Rule 14a-3 [31] under the Exchange Act.

Rule 4a-1 [32] under the Trust Indenture Act,[33] which provides an exemption from the requirement to issue securities pursuant to an indenture, has been revised to increase the dollar ceiling of that exemption. Trust Indenture Act Rule 4a-2 [34] has been redesignated Rule 4a-3 [35] and amended to increase the dollar ceiling included in the exemption from the requirement that the securities be issued pursuant to a qualified indenture. The Commission also adopted new Rule 4a-2 [36] which permits an exemption from the Trust Indenture Act for issuances of securities under Regulation A. Finally, the Commission amended Rule 4d-9 [37] and Rule 10a-5 [38] under the Trust Indenture Act to reflect the availability of Form SB-2 to Canadian issuers.

I. Executive Summary

Today, with the adoption of major revisions to Securities Act registration exemptions under Rule 504 and Regulation A and the inauguration of an integrated registration and reporting system for small business issuers, the Commission has completed the first of its Small Business Initiatives announced in March of this year.[39] The remaining regulatory initiatives have been proposed for public comment,[40] and the Commission's proposed Small Business Incentive Act of 1992 has been introduced in both the House of Representatives [41] and Senate of the U.S. Congress.[42]

The March proposals were enthusiastically received by the small business commenters as a significant step to facilitating access to the public market for start-up and developing companies, and reducing the costs for small businesses to undertake to have their securities traded in the public

[1] 17 CFR 230.251-230.262.
[2] 15 U.S.C. § 77a *et seq.*
[3] 17 CFR 239.90.
[4] 17 CFR 239.91.
[5] 17 CFR 239.92.
[6] 17 CFR 239.93.
[7] 17 CFR 239.94.
[8] 17 CFR 239.95.
[9] 17 CFR 239.96.
[10] 17 CFR 239.42.
[11] 17 CFR 230.175.
[12] 17 CFR 240.3b-6.
[13] 17 CFR 230.504.
[14] 17 CFR 228.10-228.702.
[15] 17 CFR 230.405.
[16] 17 CFR 230.481.
[17] 17 CFR 240.12b-2.
[18] 15 U.S.C. § 78a *et seq.*
[19] 17 CFR 239.28.
[20] 17 CFR 239.10.
[21] 17 CFR 239.12.
[22] 17 CFR 239.13.
[23] 17 CFR 239.16b.
[24] 17 CFR 239.25.
[25] 17 CFR 249.210b.
[26] 17 CFR 249.310b.
[27] 17 CFR 249.308b.
[28] 17 CFR 249.308.
[29] 17 CFR 240.14a-101.
[30] 17 CFR 240.14c-101.
[31] 17 CFR 240.14a-3.
[32] 17 CFR 260.4a-1.
[33] 15 U.S.C. § 77aaa *et seq.*
[34] 17 CFR 260.4a-2.
[35] 17 CFR 260.4a-3.
[36] 17 CFR 260.4a-2.
[37] 17 CFR 260.4d-9.
[38] 17 CFR 260.10a-5.
[39] *See* Securities Act Release No. 6924 (March 11, 1992) ("March Release").
[40] *See* Securities Act Release No. 6943 (July 16, 1992) and Investment Company Act Release No. 18736 (June 5, 1992).
[41] H.R. 4938, 102d Cong., 2d Sess. (April 9, 1992).
[42] S. 2518, 102d Cong., 2d Sess. (April 2, 1992).

markets. The exemptions and small business integrated registration and reporting system adopted today are substantially in the form proposed in the March Release. Regulation A has been revised to exempt public offerings of non-reporting companies of up to $5 million in a 12-month period and to permit the use of a simplified question-and-answer disclosure document. Companies conducting a Regulation A offering will be able to "test the waters" for potential interest in the company before having to prepare the mandated offering circular. In response to comment, Regulation A will continue to be available to qualifying Canadian issuers.

The revisions to Rule 504 are adopted with one change—Rule 504 will not be available to "blank check" companies. Under New Rule 504, as adopted, non-reporting companies will be permitted to sell up to $1 million of securities in a 12-month period, subject to anti-fraud prohibitions. No specific disclosure document is prescribed, and there is no proscription on general solicitation. Investors purchasing Rule 504 securities will receive freely transferable securities.

The small business integrated registration and reporting system, modeled after Form S–18, is adopted with some refinements in response to public comment. The definition of small business issuer has been revised to include companies with annual revenues of less than $25 million whose voting stock does not have a public float of $25 million or more. As with Regulation A, Canadian issuers will be eligible to use the small business registration and reporting forms. Form numbers and other rules have been changed in anticipation of adoption of additional small business registration and reporting forms, as set forth in the accompanying release proposing further regulatory simplification for small business issuers.[43]

Finally, the proposed changes to the rules under the Trust Indenture Act to increase the levels of debt that may be offered without full compliance with that Act are adopted as proposed.

II. Small Business Initiatives

A. Regulation A

As adopted, the dollar ceiling for a Regulation A offering is now $5 million in any 12-month period,[44] including no more than $1.5 million in non-issuer resales.[45] In response to comment, the rule has been revised to make clear that the dollar amount is determined with reference to the dollar amount sold in the 12 months preceding the offering. Use of other "small issues" exemptions do not reduce the Regulation A dollar ceiling.[46]

1. Scope of the Exemption

The categories of companies eligible to use the Regulation A exemption has been expanded from that proposed to include qualifying Canadian issuers as well as those non-operating entities proposed to be excluded for the first time (other than blank check offerings). Although, as noted in the Proposing Release, in recent years Canadians have not relied on the exemption, the changes in Regulation A may make the exemption more attractive not only to domestic but also Canadian companies.[47] Partnerships or certain other entities organized primarily for the purpose of investing in properties, commodities or other investment vehicles have long been eligible to use Regulation A, and their proposed exclusion has not been adopted. After consideration of public comment, the Commission believes it appropriate to reduce the costs for these small non-reporting issuers, particularly in view of the direct oversight by the Commission of the disclosures made under Regulation A.

The current exclusions of issuers of fractional undivided interests in certain oil, gas or mineral rights [48], and investment companies [49] are continued and the exclusion for "blank check" companies [50] is adopted. As under current Regulation A, an issuer's securities may not be sold in reliance on the exemption if the company, or a controlling person or underwriter, is subject to one of a series of enumerated legal remedies and sanctions.[51]

Although several commenters suggested the inclusion of reporting small business issuers in the list of eligible companies, the Commission is of the view that particularly in view of the small business integrated registration and reporting system adopted today the availability of Regulation A for reporting companies is not necessary.

A number of commenters addressed the Commission inquiry as to whether offerings of "penny stocks" should be prohibited under the Regulation A exemption. Most were of the view that lower priced offerings by legitimate small business issuers would be the main beneficiaries of the revised exemption and that there are now adequate safeguards governing the penny stock market to counter marketing abuses which have arisen in this market in the past. The Commission is persuaded that exclusion of legitimate small business operating companies from the exemption because of the trading price of their securities is not necessary for investor protection and would foreclose significant financing options to small developing companies.

2. Disclosure and Procedural Requirements

Regulation A requires the qualification of a prescribed offering statement which has been filed with the Commission, and delivery of a required offering circular, the form and content of which has been adopted as proposed. Corporate issuers now have the option to use a question-and-answer format, in

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[43] *See* Securities Act Release No. 6950 (hereinafter referred to as the "Proposing Release".)

[44] Regulation A has been adopted pursuant to the authority granted to the Commission under section 3(b) of the Securities Act [15 U.S.C. § 77c(b)] to provide exemptions from the registration requirements for issues of securities which do not exceed $5 million under conditions which further the public interest and protection of investors.

[45] Secondary offerings by affiliates are ineligible for a Regulation A exemption where the issuer has had no net income for each of the two most recent fiscal years. The escrow rule, as well as the recommended format for escrow (Form 7–A), and the companion ceiling reduction provisions in old Rule 253 have been eliminated, just as proposed.

[46] *E.g.*, Securities Act Rules 236, 504, and 505 [17 CFR 230.236, 504 and 505] and Regulations B [17 CFR 230.300–230.346], E [17 CFR 230.601–230.610a] and F [17 CFR 230.651–230.656].

[47] Canadian persons had been required to consent to service of process on forms established by the Commission (Forms 3–A, 4–A, 5–A and 6–A), which are now rescinded. Form F–X has been amended to permit its use for this purpose by Canadian issuers engaged in a Regulation A offering.

[48] Regulation B provides exemptive relief for such issuers.

[49] These include companies registered or required to be registered under the Investment Company Act of 1940, 15 U.S.C. § 80a–1 *et seq.*

[50] A "blank check" company is one that has no specific business or plan except to locate and acquire a presently unknown business or opportunity. In response to public comment, the Commission has determined to use a definition which precludes the use of Regulation A by any blank check issuer regardless of whether or not it is issuing a penny stock. *See* Section 7(b) of the Securities Act, 15 U.S.C. § 77g(b).

[51] The disqualification provisions describe specific sanctions against the issuer, its controlling persons and any underwriter in its employ which preclude reliance upon Regulation A. The Commission may, in appropriate circumstances, waive such disqualifications upon a showing of good cause. Because of the renumbering of the rules in Regulation A, a technical revision to the reference in Rule 505 of Regulation D, 17 CFR 230.505 which picks up the same disqualification provisions has been made.

addition to the more traditional disclosure formats.[52]

The Commission's safe harbor provisions relating to forward looking information have been specifically made applicable to Regulation A. Therefore, good faith projections, with a reasonable basis, of revenues, income, earnings per share, capital expenditures, dividends, capital structure and other financial items may be made in Regulation A filings and the "test the water" submissions and fall within the protection of the Commission's safe harbor rules, under the same conditions as for other Commission filings.[53]

Procedural and timing requirements for commencement of a Regulation A offering have been revised as proposed to conform to those used for registered offerings. Requirements as to form, legibility and signatures for the required offering statement have been adopted as proposed. The Commission has delegated to the staff the authority to grant requests to qualify offering statements under Regulation A.[54] The Commission retains the authority to deny such requests. The authority to act with respect to requests for withdrawals and abandonments of offering statements continues to be delegated to the staff.[55]

As in the registration context, issuers may begin to offer the securities to be sold in a Regulation A offering as soon as the offering statement is filed. Once an offering statement is filed, a written offer can be made only through the use of a preliminary or final offering circular. As under the current Regulation, advertisements and radio and television broadcasts containing information specified by rule concerning the issuer and the securities being offered may be used, so long as they indicate from whom an offering circular may be obtained.[56]

Sales may not be made under Regulation A until the offering statement is qualified. The timing of qualification of the offering statement has been conformed to that in registered offerings. Absent the use of a delaying notation procedure, an offering statement would be deemed qualified 20 calendar days after being first filed with the Commission.[57]

Delivery of a preliminary or final offering circular at least 48 hours prior to the confirmation of sale is required.[58] Offering circulars must be updated annually during the term of a continuous offering, as well as revised whenever the information presented has become false and misleading, material developments have occurred, or there has been a fundamental change in the information initially presented.

Periodic information regarding the course of the distribution, as well as information about the application of the proceeds from the offering, must be filed with the Commission. Form 2–A has been amended to require data similar to that sought in connection with registered offerings.

In response to comment, the provisions governing the filing of the Form 2–A to report sales and the use of proceeds, have been amended to clarify that the failure to file the Form 2–A does not cause the exemption to be lost. The failure continues to be a ground for suspension of the exemption by the Commission. A similar change has been made to the provisions regarding the filing of additional sales material.

The bases for administratively suspending a Regulation A exemption have been adopted as proposed. Questions have been raised with respect to the impact of an administrative suspension upon prior offers and sales made in reliance upon Regulation A. The entry of a suspension in and of itself does not affect the exempt status of prior offers and sales under Regulation A. Of course, where the suspension is based on action or inaction that rendered the exemption unavailable, unregistered offers and sales would have to qualify for another exemption or would violate section 5 of the Securities Act.

3. Substantial and Good Faith Compliance

The Commission has adopted the rule governing substantial and good faith compliance with the terms, conditions and requirements of Regulation A. Under this provision, an issuer will not necessarily lose the exemption with respect to a particular investor if the issuer failed to comply with a requirement under Regulation A, provided that the failure did not pertain to a provision of the rule directly intended to protect that person. The failure would, however, violate a Commission rule. Thus, for example, failure to deliver the mandated offering circular to a single investor, would preclude reliance on the exemption for that particular sale as a violation of Rule 251(d)(2), but would not, in and of itself, preclude reliance on the exemption for other offers and sales made in compliance with the Regulation.

The exemption will not be lost if the issuer shows that the requirement was not intended to protect the particular investor, the violation was not material to the offering as a whole and the issuer had made a good faith attempt to comply with all of the requirements of Regulation A. The provisions regarding issuer qualification, as well as the requirements to file an offering statement and to stay within specified dollar limitations, are not subject to the substantial good faith compliance standard.

B. "Testing the Waters"

As discussed in the March Release, one of the major impediments to a Regulation A financing for a small start-up or developing company with no established market for its securities, is the cost of preparing the mandated offering statement. The full costs of compliance would be incurred without knowing whether there will be any investor interest in the company.

To remedy this situation, the Commission proposed for the first time to permit companies relying on the Regulation A exemption to "test the waters" for potential interest in the company prior to filing and delivery of the mandated offering statement. All test the water documents are required to be submitted to the Commission at the time of first use.[59] The proposal was

[52] The reintroduction of Canadian issuers into the list of Regulation A eligible companies necessitates a change to the instructions in Part F/S of the Form 1–A Offering Statement to require that Canadian financial statements be reconciled to U.S. generally accepted accounting principles. This position is consistent with a long-standing requirement in Regulation A.

[53] In addition, the type of information called for by Items 4, 47, 48 and 49, relating to milestones and other forward looking information in the question-and-answer format would also be covered.

[54] The authority has been delegated to the Director of the Division of Corporation Finance and the Regional Administrators. 17 CFR 200.30–1(c)(2); 17 CFR 200.30–6(b).

[55] 17 CFR 200.30–1(c)(3); 17 CFR 200.30–6(b).

[56] A note has been added to Rule 256 [17 CFR 230.256] to make clear that additional advertisements and scripts do not have to be filed if they are substantially the same as that previously filed.

[57] Interim amendments to the offering statement would restart the 20 calendar day period.

The cover page of Form 1–A now contains the legend available under Rule 252(g)(2) which would have to be deliberately omitted by an issuer that wishes to be qualified 20 days after filing. Other Commission forms utilize this technique, which avoids unnecessary expense for issuers that inadvertently omit the legend.

[58] This process is the same as that available with registered offerings. The preliminary offering circular must be substantially complete in order to satisfy this 48 hour rule. Pricing information, as defined in Rule 430A, 17 CFR 230.430A, is not required to be included.

[59] The test the waters material submitted to the Commission will be a public document, placed in the Commission's files and subject to public inspection. The submission of subsequent soliciting

Continued

enthusiastically endorsed by private sector commenters as a necessary and appropriate solution to a significant regulatory impediment to small business financing, and, as drafted, is consistent with investor protection interests.

A number of refinements have been included in the test the water provisions in response to public comment. First, while the Regulation continues to require that the "testing of the waters" begin with a written solicitation of interest submitted to the Commission at the time of first use, the rules have been revised to make clear that submission of the document is not a condition to the exemption. Failure to comply with the requirement is a grounds for Commission suspension of the exemption.

As proposed, the written test the water document was a free writing subject to the inclusion of two mandated statements—first, that no funds were being solicited or would be accepted, and secondly that a detailed offering document would follow. Some commenters suggested that even these few items should be deleted, while others suggested additional requirements or specific prescription of the content.

The rule as adopted continues to provide for free writing with the inclusion of the following items:

1. A statement that no money is being solicited, or will be accepted; that no sales can be made until delivery and qualification of the offering circular, and that indications of interest involve no obligation or commitment of any kind; and

2. A brief, general identification of the company's business, products and chief executive officer.

The rule has been revised to make clear that inclusion of these statements in the soliciting document is not a condition to the exemption, but failure to include the statements is a basis for Commission suspension of the exemption.

An issuer may deliver the solicitation material to prospective investors, or publish it in a newspaper or other print media. In a change from the proposal and in response to public comments, the use of broadcast media for this purpose, whether on radio or television, is also permitted.

At the time of submission to the Commission, the issuer must provide the name and telephone number of a person who can respond to questions regarding the document. The submission should be made at the Commission office (whether a Regional Office or Headquarters) where the issuer intends to file its Regulation A offering statement. In the case of a broadcast, any script should be submitted. Oral communications between the issuer and prospective investors are permitted but only after a solicitation of interest document has been submitted to the Commission.

Once the offering statement required by Regulation A is filed with the Commission, the issuer may not continue to use its written "test the waters" solicitation materials. The rule requires that at least 20 calendar days elapse between the last use of the solicitation of interest document or broadcast and any sale of securities in the Regulation A offering. Compliance with the rules limiting the use of the test the water documents after filing of the offering statement is not a condition to the exemption, but is a violation of the rule and is a basis for Commission suspension of the exemption.

Questions have been raised as to the application of the Commission's integration doctrine to the situation where an issuer relies upon the test the water process, determines not to go forward with a Regulation A offering, but later decides to offer and sell securities either on some exempt basis or through registration under the Securities Act. The Commission does not believe it to be in either the investors' or the issuer's interest to deter resort to a registered offering because of a good faith change of plans. Thus, where an issuer decides to forego the Regulation A exempt offering and does not file a Regulation A offering statement with the Commission, but instead proceeds with a registered offering after testing the waters, the rules would treat the solicitations of interest made in reliance upon Rule 254 as exempt, provided that at least 30 days had elapsed between the issuer's last use of a written testing of the waters document and the filing of the registration statement, and that all written solicitation material had been submitted to the Commission. If the offering statement is filed, Rule 251(c) would apply. With respect to all other offerings, the provisions of Rule 251(c) would govern, whether or not test the water materials have been used pursuant to Rule 254.

C. Rule 504 Under Regulation D

A significant number of commenters, particularly small businesses, favored the Commission's proposal to eliminate all restrictions on the Rule 504 exemption, and the revisions to Rule 504 are adopted as proposed, with one exception. Based upon its own experience and the views of certain commenters, the Commission has excluded blank check companies from Rule 504. While former Rule 504 now Rule 504a is still available to blank check companies,[60] The Commission is issuing a proposal that would revoke entirely their eligibility to conduct such offerings.

Under new Rule 504, a public offering of up to $1 million in a 12-month period by a non-Exchange Act reporting company [61] is subject only to the anti-fraud and other civil liability provisions of the federal securities laws. While the filing of a Form D with the Commission continues to be required, the availability of the exemption is not contingent on that filing.[62]

In light of the revisions to Rule 504, the special $100,000 exemption under Regulation A,[63] which permits offerings of that size to be made without the use of an offering circular [64] is being eliminated. Commenters generally agreed that the changes to Rule 504 made Rule 257 unnecessary.

D. Integrated Disclosure System for Registration and Reporting for Small Business Issuers

1. Introduction

The Commission is adopting an integrated registration, reporting and qualification system for small business issuers under the Securities Act, Exchange Act and Trust Indenture Act. Issuers that meet the definition of a small business issuer, are eligible to use this new small business integrated disclosure system. The system consists of specialized forms under the Securities Act and the Exchange Act that reference disclosure requirements located in one central depository—Regulation S-B. In addition, rules have been adopted to permit offerings of debt securities up to $10 million without full compliance with the Trust Indenture Act.

material which is substantially the same as that already submitted to the Commission is not required.

[60] Rule 504a [17 CFR 230.504a] is a redesignated Rule 504. New Rule 504 reflects the changes made hereby.

[61] Rule 504 is not available to investment companies.

[62] *See* Securities Act Rules 504(b)(1), 505(a)(1) and 506(a)(1) [17 CFR 230.504(b)(1), 17 CFR 230.505(a)(1), and 17 CFR 230.506(a)(1)].

[63] In the past three years, only 6 of the 177 Regulation A filings made with the Commission were pursuant to the terms of Rule 257.

[64] Current Rule 257 is not available for issues of assessable stock or by those within the descriptions of Rule 253(a), i.e., an entity incorporated or organized within one year prior to filing without a net income from operations, or if a longer existence but no net income from operations in at least one of the prior two fiscal years.

The disclosure system adopted today is part of a two tiered system for small business issuers. In the Proposing Release, the Commission is proposing entry level, transitional disclosure for small business issuers entering the disclosure system and undertaking small offerings of securities.

2. Definition of Small Business Issuer

As proposed, the Commission is adopting a revenue-based definition of small business issuer. This definition was favored by a majority of commenters. Generally, those that favored a revenue-based definition of small business issuer requested that the threshold be higher than the proposed $15 million. Others favored a market capitalization-based definition. Several commenters suggested that a combination of tests be used.

In response to these comments, a small business issuer is defined as a company with revenues of less than $25 million. However, if the aggregate market value of the issuer's voting stock held by non-affiliates (referred to as the "public float") equals or exceeds $25 million, the issuer does not qualify as a small business issuer. An estimated 3,000 reporting public companies fall within the definition of small business issuer.[65]

The definition of small business issuer has been revised to include Canadian issuers. This revision was made in response to comment that Canadian issuers are eligible to use Form S–18 and should therefore be eligible to use Form SB–2. Accordingly, the definition of small business issuer was revised to include Canadian registrants that otherwise meet the definition of small business issuer. A general instruction has been added to Regulation S–B directing Canadian small business issuers to the applicable foreign issuer disclosure requirements of Regulation S–K. Technical amendments have been made to rules under the Trust Indenture Act so as to permit the use of a Canadian trustee in connection with the offering of debt securities on Form SB–2.[66]

Accordingly, as adopted, a small business issuer is defined as a U.S. or Canadian entity with revenues of less than $25,000,000 unless the issuer's public float (the aggregate market value of voting stock held by non-affiliates) is $25 million or more. Investment companies are excluded from the definition. Further, if the small business issuer is a majority owned subsidiary of another company, its parent must also meet the definition of small business issuer.

3. Registration Requirements of the Securities Act

Form SB–2 [67] is the designated Securities Act registration form for small business issuers. As proposed, there is no dollar limit for offerings on Form SB–2 and the Form may be used for both initial and repeat offerings, and for both primary and secondary offerings. Small business issuers may file initial public offerings on Form SB–2 with the regional office closest to the issuer's principal place of business or at the Commission's headquarters.[68] All subsequent filings will be made at the Commission's headquarters.

4. Registration and Reporting Under the Exchange Act

The Commission has adopted a new series of forms and amendments to forms under the Exchange Act for small business issuers. Specifically, the Commission has adopted an Exchange Act registration statement form for small business issuers—Form 10–SB. Form 10–KSB and Form 10–QSB are the designated annual and quarterly reports for small business issuers. An instruction was added to Item 7 of Form 8–K relating to small business acquisitions and general instructions were added to Schedules 14A and 14C, and Rule 14a–3, relating to their use by small business issuers.

a. Financial Information Required by Regulation S–B. The financial information required by Regulation S–B is substantially the same as the financial statement requirements of Form S–18 but has a component to address interim financial statement requirements. Item 310 of Regulation S–B is being adopted with several modifications. First, additional requirements are added as necessary in order to accommodate the inclusion of Canadian issuers in the SB series. Second, at the suggestion of several commenters, the definition of a significant business found in Rule 405 of Regulation C is being incorporated into Item 310 of Regulation S–B in lieu of cross-referencing. Finally, the ability to use pro forma financial statements filed on Form 8–K as the basis for testing significance of acquired businesses is imported from Regulation S–X.

One commenter requested clarification of whether filings by a registrant which no longer qualifies as a small business issuer would be required to contain all information and schedules required by Regulation S–X for those periods during which the issuer qualified and reported as a small business. Consistent with the approach for annual reports following a Form S–18, if a registrant was permitted to and filed financial statements which did not comply with Regulation S–X and the issuer later elects or is required to provide financial statements on forms which require compliance with Regulation S–X, such compliance will not apply to periods in which the registrant was not required to and did not present such information.

A further clarification in response to a comment letter involves interim financial information of development stage companies. Consistent with staff administrative policy, if a development stage company is not readily able to provide financial information for comparative interim periods before filing its initial public offering, the requirement to provide such information is waived.

In a separate release, the Commission is proposing two revisions to these financial statement requirements for small business issuers. First, the Commission is proposing an automatic waiver of financial statement requirements relating to specified significant acquisitions when audited financial statements are not readily available. Second, the Commission is proposing to extend to initial public offerings of small business issuers the ability to conduct a registered offering within 90 days of year end without audited financial statements for the latest fiscal year.

b. Narrative Disclosure in SB Series of Forms. The narrative disclosure requirements in Regulation S–B are applicable to all registration and reporting obligations of small business issuers. The disclosure requirements in Regulation S–B generally parallel those of Regulation S–K. However, where such requirements were simplified or not required by Form S–18.

Regulation S–B generally tracks the substantive disclosure requirements of Form S–18. Regulation S–B is adopted in substantially the same form as proposed. The significant changes

[65] This figure is derived from publicly available data sources which do not include all reporting companies in their data bases. Accordingly, the actual number of publicly held companies that meet definitional tests may be higher.

[66] Revisions were made to Rules 4d–9 and 10a–5 under the Trust Indenture Act. 17 CFR 260.4d–9, 17 CFR 260.10a–5.

[67] As proposed, this registration statement form was designated Form SB–1. It has been redesignated Form SB–2 in light of the Commission's concurrent proposal of new Form SB–1, as a transitional Securities Act registration form for small business issuers registering small offerings.

[68] Post-effective amendments to initial public offerings on Form SB–2 would be filed with the Commission office in which the initial registration statement was filed.

between Regulation S–B as adopted and as proposed are outlined below.[69]

Item 10(b) was added to specify the circumstances under which issuers may enter and exit from the small business registration and reporting system.

Item 101(a) was revised in response to comment to reduce from five to three years the period for which disclosure of the small business issuer's business development is required. This marks a departure from Regulation S–K which requires disclosure of an issuer's business development over the course of the past five years.

Item 102 was revised to specifically include, rather than cross reference, the Items of Form S–11 to which issuers that are engaged in real estate activity are required to respond.

In response to comment, Item 201(a)(2) was revised to require disclosure of the amount of securities that may be resold pursuant to Rule 144. As adopted, Item 201(a)(2) conforms to the disclosure requirement of Form S–18. Item 201(b) was revised in response to comment and requires disclosure only of record holders.

Item 303 has been revised to require Management's Discussion and Analysis ("MD&A"), rather than business plan disclosure, where the issuer has had revenues in each of the last two years (or the last full year and latest interim period). In addition, amendments were made to MD&A in response to comments that proposed Item 303 of Regulation S–B could have been interpreted to require more disclosure than its Regulation S–K counterpart. Specifically, the proposed instruction to proposed Item 303, restating language from the Commission's interpretive release on MD&A, was deleted in response to the comment that incorporating the release into the text of the Item raised questions about the scope of the Item. As the interpretive guidance in the MD&A release applies equally to both small and large issuers, the SB Item was revised to avoid suggesting otherwise. In addition, language from Item 303 of Regulation S–K was added to clarify that the discussion and analysis shall focus specifically on material events, trends and uncertainties known to management that could cause reported financial information not to be necessarily indicative of future operating results or financial condition. The statement from Regulation S–K Item 303 that issuers are encouraged but not required to discuss forward looking information has also been included in response to comment.

As proposed, Item 402 of Regulation S–B, which calls for disclosure of executive compensation, was modeled after Form S–18, rather than Item 402 of Regulation S–K. After the small business initiatives were issued in the March Release, the Commission issued proposals to amend executive compensation disclosure requirements, to require a clear and concise tabular presentation of compensation paid or awarded to executive officers, and the directors' bases for making their compensation decisions.[70] The Commission proposed to exclude small business issuers from certain of the proposed executive compensation amendments—those requiring additional information concerning the relationships between compensation committee or board members and the registrant where the company either does not have a compensation committee composed entirely of outside directors or has cross-compensation committee memberships with another registrant.[71] Comment was requested as to whether the exclusion for small business issuers was appropriate [72] and whether small business issuers should also be excluded from the proposed table providing disclosure about option value under various rates of stock appreciation.[73]

The Commission will consider comment on, and reach a determination concerning, the scope of small business issuer executive compensation disclosure in connection with its compensation initiative.[74] In that connection, commenters may wish to address whether small business issuers should be excluded from additional aspects of the proposed executive compensation proposals, including the proposed performance chart [75] and compensation committee report.[76] Should small business compensation disclosure be limited to the proposed summary table? [77]

Item 501 was revised in response to comment that inclusion of a separate column in the offering proceeds table is more burdensome on small business issuers. Accordingly, footnote disclosure of offering expenses, now required under Item 501, has been continued.

As suggested by one commenter, the exhibits required by Items 601(b) (20) and (23) of Regulation S–K will also be required under Regulation S–B. These exhibits are required to be filed only if a small business issuer incorporates into its annual report on Form 10–KSB or quarterly report on Form 10–QSB a report submitted to shareholders.

The Commission also adopted the redesignation of Item 17A of Form S–18 as Guide 7 under the Securities Act and Exchange Act. Accordingly, all issuers engaged in mining operations, including small business issuers, should refer to Guide 7 for industry specific disclosure requirements.[78] Small business issuers engaged in real estate operations, banking activities and oil and gas should also refer to the applicable industry guide.

c. Operation of SB Reporting System. For a company entering the

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[69] In response to comments, the following revisions were also made to Regulation S–B:

- "Common stock" in Item 10(c)(2) was replaced with the term "common equity";
- "Market value" in Item 10(c)(3) was replaced with the term "public market" and the definition thereof has been expanded;
- "Small business issuer" was revised to state simply that the term refers to the issuer and its consolidated subsidiaries;
- The last sentence of Item 10(d)(1) requiring disclosure of only material information was deleted;
- Item 101(a)(4) (number of employees) was redesignated as Item 101(b)(12) so as not to require three years of employment disclosure;
- Item 101(b) was revised so as not to require disclosure of backlog data or disclosure of the names of material customers;
- Item 101(b)(11) was revised in order to distinguish between company sponsored and customer sponsored research and development expenses to parallel Regulation S–K;
- Item 103(a)(5) of Regulation S–B was revised so as to not mandate disclosure of the amount of damages;
- Instruction 2 to Item 103 was revised so as to require disclosure of bankruptcy and receivership proceedings only with respect to the registrant;
- "Disclose" was added to instruction 4 to Item 103;
- "Material" was added to Item 202(b);
- The parenthetical in Item 401(a)(1) was deleted;
- Item 401(a)(5) was revised so as to only require disclosure of directorships in other publicly held companies;
- Item 501(a)(8) was revised to not require red-ink;
- "More" replaced the word "less" in Item 506(a);
- Item 506(b) was revised to add the phrase "or since its inception, whichever period is shorter";
- An instruction was added to Item 507 to state that selling securityholder information may be combined with disclosure under Item 403;
- Item 510 was revised to delete the undertaking therein and to cross reference the identical undertaking in Item 512;
- Item 511 was revised to specifically reference listing fees; and
- Item 601(b)(13) was revised to reference the SB forms.

[70] *See* Securities Act Release No. 6940 (June 23, 1992).

[71] Proposed Item 402(j)(2)(i)(A), (B); *see* Securities Act Release No. 6940, 57 FR at 29596, 29605.

[72] *Id.* at 29597.

[73] *Id.* at 29588; *see* proposed Item 402(c), 57 FR at 29600.

[74] Comment letters should refer to File No. S7–16–92.

[75] Proposed Item 402(k), 57 FR at 29607.

[76] Proposed Item 402(j)(1), 57 FR at 29605.

[77] *See* proposed Item 402(b), 57 FR at 29599–600.

[78] See proposed Items 801(g) and 802(g) of Regulation S–K [17 CFR 229.801(g) and 802(g)].

Commission's disclosure system, either through a Securities Act or an Exchange Act registration statement, its eligibility to use the optional SB system will depend on the level of its revenues in its last full fiscal year, and its capitalization as of a date within 60 days prior to the offering in a Securities Act registration statement or the filing of the registration statement under the Exchange Act. Continued eligibility to use the system will be made at the commencement of each fiscal year.

Once reporting, a company may continue to report under the small business integrated disclosure system until it exceeds the $25 million revenues for two consecutive years or public float test for two consecutive years, based on its annual report on Form 10-KSB. The two-year test is adopted to avoid the possibility that temporary changes in the level of revenues or public float, may force a small business to exit prematurely the small business disclosure system. Accordingly, a small business issuer must exceed one of the two tests, for two consecutive years, in order to become eligible for the small business disclosure system.

In order for a reporting company to enter the small business disclosure system, it must meet the definition of small business issuer for two consecutive years. In entering the disclosure system, the issuer must meet both prongs of the test, revenues *and* public float, for two consecutive years.

d. Use of Forms S-2, S-3, S-4 and S-8 by Small Business Issuers. The Commission's proposal to add instructions to Forms S-2, S-3 and S-8 to enable small business issuers to use those forms while maintaining the SB level of disclosure has been adopted. Under these amendments, small business issuers are permitted to register securities on Forms S-2, S-3 and S-8 if they otherwise meet the eligibility requirements for use of those forms.[79] References in those forms to the disclosure requirements of Regulation S-K will be deemed to be references to Regulation S-B for small business issuers. With respect to the continuous reporting eligibility requirements of Forms S-2 and S-3, the SB series of periodic reports filed by small business issuers are deemed to satisfy those requirements.

Form S-4, the Securities Act registration form for business combinations, has been amended as proposed to permit its use by small business issuers through satisfaction of the Regulation S-B requirements.[80] Form S-4 is available to Form S-2 eligible small business issuers which are registering securities or are being acquired in the business combination transaction.

e. Form 8-K Revisions. As proposed, an instruction has been added to Item 7 of Form 8-K, which requires the filing of historical and pro forma financial statements for significant business acquisitions. Item 7 refers to Regulation S-X for the determination of the periods for which the financial statements are required. A parallel instruction is included in Form SB-2 but the criteria for significance and the periods for which financial statements are required differ from Regulation S-X. The amendments incorporate an instruction in Form 8-K cross referencing financial statement requirements in Regulation S-B, which track the standard of significance which is found in Form SB-2, and derived from Form S-18.

E. Amendments to Rules Under Trust Indenture Act

The Commission has adopted the proposed amendments to rules under the Trust Indenture Act that parallel the limited offering exemptions discussed above. Specifically, Rule 4a-1 has been amended to increase to $5 million the aggregate principal amount of securities that may be issued without an indenture.[81] The Commission also has adopted new Rule 4a-2 to exempt from compliance with the Trust Indenture Act any offering of debt securities that is exempt from registration under Regulation A. Former Rule 4a-2 has been redesignated as Rule 4a-3 and amended to increase to $10 million the aggregate principal amount of debt securities that may be issued under an indenture which need not be qualified under the Act.[82] Technical amendments also were made in order to permit Canadian issuers of debt securities to use a Canadian trustee in connection with a qualified indenture.[83] Small business issuers are reminded that an indenture, pursuant to which registered debt securities are offered, should be filed as an exhibit to the registration statement.[84]

F. Other Amendments

The Commission has adopted an amendment to Rule 481(b)(2) which requires a red-inked legend to be placed on a preliminary prospectus and a prospectus used in connection with Rule 430A to delete the reference to red ink. Thus the information required by Rule 481(b)(2) may be in any color ink.

G. Availability of the Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis, pursuant to the requirements of the Regulatory Flexibility Act,[85] regarding the rules adopted today. This analysis indicates that the revisions should aid small businesses in their efforts to raise capital while being consonant with the needs of and the protection of investors. The amendments are designed to minimize costs but do not sacrifice the important concerns of investors. A copy of the Final Regulatory Flexibility Analysis may be obtained from Twanna

[79] The proposed inclusion of a small business issuer in Form S-3 is intended to recognize the potential use of that Form by small business issuers for offerings which do not require the non-affiliated public float specified in General Instruction B.1. to Form S-3; primary offerings of debt and non-convertible preferred securities, secondary offerings, rights offerings, dividend or interest reinvestment plans, and conversions or warrants.

[80] Form SB-2 will be available only in "for cash" offerings of securities. Accordingly, small business issuers wishing to enter business combination transactions which involve the offer and sale of securities will continue to be required to register those transactions on Form S-4 or Form S-1. Small business issuers using Form S-1 are subject to the disclosure requirements of Regulation S-K. Small business issuers engaged in roll-up transactions on Form S-4 are also required to furnish the disclosure required by Item 901 et seq. of Regulation S-K. See Securities Act Release No. 6922, n.15 (October 30, 1991).

[81] See Rule 4a-1 [17 CFR 260.4a-1] promulgated under section 304(a)(8) of the Trust Indenture Act. Section 304(a)(8) exempts from the provisions of the Trust Indenture Act any security issued otherwise than under an indenture. This exemption is limited within a 12-month period to the $5 million amount of securities specified in section 3(b) of the Securities Act, or such lesser amount as the Commission shall establish by rule. Rule 4a-1 currently limits the section 304(a)(8) exemption to $2,000,000.

[82] See Rule 4a-2 [17 CFR 260.4a-2] promulgated under section 304(a)(9) of the Trust Indenture Act. The rights of the holders of the securities issued would be evidenced by the instrument sold to the holder and contract (indenture) under which that instrument was issued. See Division of Corporation Finance interpretive letter to Allied-Carson Corporation (February 12, 1976) with respect to debt securities issued without qualification of an indenture in reliance upon Section 304(a)(9) of the Trust Indenture Act:

Among the provisions which we believe should be included in the indenture are the usual covenants, events of default, and the procedures by which the collective rights of security holders may be enforced. Although it is possible that a provision for the enforcement of collective rights might be effected without providing an indenture trustee, as a practical matter such collective rights are best enforced by a trustee who is accorded specific powers for this purpose. Such trustee need not meet the qualification and conflict requirements of section 310 of the 1939 Act.

[83] Specifically, Trust Indenture Act Rules 4d-9 and 10a-5 were amended to add Form SB-2 to the list of forms pursuant to which offerings of debt securities with a Canadian trustee may be made.

[84] The indenture, which is an "[i]nstrument affecting the rights of security holders," is required to be filed as an exhibit to the registration statement by Item 601(b)(4) of Regulation S-K [17 CFR 229.601(b)(4)].

[85] 5 U.S.C. 604.

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H. Cost-Benefit Analysis

No specific empirical data was submitted in response to the Commission's invitation to provide information on the costs and benefits of the proposed revisions. However, the vast majority of the public commenters were of the view that the proposals if adopted would work some cost savings to issuers that chose to use the new procedures; further that investors would have adequate safeguards in the new system.

I. Certain Other Findings

As required by section 23(a) of the Exchange Act, the Commission has specifically considered the impact that these rulemaking actions would have on competition and has concluded that they would not impose a significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission finds, in accordance with section 553(b) of the Administrative Procedure Act [86] that the action taken with respect to certain delegations of authority to the Director of the Division of Corporation Finance and the Regional Administrators relate solely to agency organization, procedure or practice, and that such section makes unnecessary the notice and prior publication ordinarily required by the Act.[87]

J. Effective Date

The rules and forms relating to the integrated registration and reporting system for small business issuers as well as the revisions to Rule 504 of Regulation D and Regulation A are effective August 13, 1992. Pursuant to 5 U.S.C 553(d)(1), immediate effectiveness is appropriate because the rules being adopted grant new exemptions and relieve restrictions for small business issuers and certain securities offerings. The benefits of this system to both persons subject to the federal securities laws as well as potential investors should be available at the earliest possible time.

III. Statutory Basis, Text of Proposals and Authority

The amendments to the Commission's rules and forms are being adopted pursuant to sections 3(b), 6, 7, 8, 10, and 19(a) of the Securities Act, Sections 12, 13, 15(d) and 23(a) of the Exchange Act, and Sections 304(a)(8), 304(a)(9), 304(d) and 319 of the Trust Indenture Act.

List of Subjects

17 CFR Parts 200, 228, 229, 230, 239, 240 and 249

Organization and program management, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 260

Trusts and trustees.

For the reasons set out in the preamble, 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. The authority citation for part 200 continues to read as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

2. By revising paragraph (c) of § 200.30–1 to read as follows:

§ 200–30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(c) With respect to the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*) and Regulation A thereunder (§ 230.251, *et seq.* of this chapter):

(1) to authorize the granting of applications under Rule 262 (§ 230.262 of this chapter) upon a showing of good cause that it is not necessary under the circumstances that an exemption under Regulation A be denied;

(2) to authorize the issuance of orders qualifying offering statements pursuant to Rule 252(g) (§ 230.252(g) of this chapter); and

(3) to issue orders declaring offering statements withdrawn or abandoned pursuant to Rule 259 (§ 230.259 of this chapter).

* * * * *

3. By revising paragraph (b) of § 200.30–6 to read as follows:

§ 200.30–6 Delegation of authority to Regional Administrators.

* * * * *

(b) With respect to the Securities Act of 1933, 15 U.S.C. 77a *et seq.* and Regulation A thereunder, § 230.251 *et seq.* of this chapter, the same authority as that delegated to the Director of the Division of Corporation Finance in paragraphs (c)(2) and (c)(3) of § 200.30–1.

* * * * *

4. Part 228 is added to read as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

Subpart A—Regulation S–B

§ 228.10 (Item 10) General.
§ 228.101 (Item 101) Description of Business.
§ 228.102 (Item 102) Description of Property.
§ 228.103 (Item 103) Legal Proceedings.
§ 228.201 (Item 201) Market for Common Equity and Related Stockholder Matters.
§ 228.202 (Item 202) Description of Securities.
§ 228.303 (Item 303) Management's Discussion and Analysis or Plan of Operation.
§ 228.304 (Item 304) Changes In and Disagreements With Accountants on Accounting and Financial Disclosure.
§ 228.310 (Item 310) Financial Statements.
§ 228.401 (Item 401) Directors, Executive Officers, Promoters and Control Persons.
§ 228.402 (Item 402) Executive Compensation.
§ 228.403 (Item 403) Security Ownership of Certain Beneficial Owners and Management.
§ 228.404 (Item 404) Certain Relationships and Related Transactions.
§ 228.405 (Item 405) Compliance With Section 16(a) of the Exchange Act.
§ 228.501 (Item 501) Front of Registration Statement and Outside Front Cover of Prospectus.
§ 228.502 (Item 502) Inside Front and Outside Back Cover Pages of Prospectus.
§ 228.503 (Item 503) Summary Information and Risk Factors.
§ 228.504 (Item 504) Use of Proceeds.
§ 228.505 (Item 505) Determination of Offering Price.
§ 228.506 (Item 506) Dilution.
§ 228.507 (Item 507) Selling Security Holders.
§ 228.508 (Item 508) Plan of Distribution.
§ 228.509 (Item 509) Interest of Named Experts and Counsel.
§ 228.510 (Item 510) Disclosure of Commission Position on Indemnification for Securities Act Liabilities.
§ 228.511 (Item 511) Other Expenses of Issuance and Distribution.
§ 228.512 (Item 512) Undertakings.
§ 228.601 (Item 601) Exhibits.
§ 228.701 (Item 701) Recent Sales of Unregistered Securities.
§ 228.702 (Item 702) Indemnification of Directors and Officers.

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa[25], 77aa[26], 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

§§ 228.10 (Item 10) General.

(a) *Application of Regulation S–B.* Regulation S–B is the source of disclosure requirements for "small business issuer" filings under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act").

(1) *Definition of small business issuer.* A small business issuer is defined as a

[86] 5 U.S.C. 553(b).

[87] 5 U.S.C. 553.

company that meets all of the following criteria:

(i) has revenues of less than $25,000,000;

(ii) is a U.S. or Canadian issuer;

(iii) is not an investment company; and

(iv) if a majority owned subsidiary, the parent corporation is also a small business issuer.

Provided however, that an entity is not a small business issuer if it has a public float (the aggregate market value of the issuer's outstanding securities held by non-affiliates) of $25,000,000 or more.

Note: The public float of a reporting company 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, on a date within 60 days prior to the end of its most recent fiscal year. The public float of a company filing an initial registration statement under the Exchange Act shall be determined as of a date within 60 days of the date the registration statement is filed. In the case of an initial public offering of securities, public float shall be computed on the basis of the number of shares outstanding prior to the offering and the estimated public offering price of the securities.

(2) *Entering and Exiting the Small Business Disclosure System.* (i) A company that meets the definition of small business issuer may use Form SB–2 for registration of its securities under the Securities Act; Form 10–SB for registration of its securities under the Exchange Act; and Forms 10–KSB and 10–QSB for its annual and quarterly reports.

(ii) For a non-reporting company entering the disclosure system for the first time either by filing a registration statement under the Securities Act on Form SB–2 or a registration statement under the Exchange Act on Form 10–SB, the determination as to whether a company is a small business issuer is made with reference to its revenues during its last fiscal year and public float as of a date within 60 days of the date the registration statement is filed. *See* Note to paragraph (a) of this Item.

(iii) Once a small business issuer becomes a reporting company it will remain a small business issuer until it exceeds the revenue limit or the public float limit at the end of two consecutive years. For example, if a company exceeds the revenue limit for two consecutive years, it will no longer be considered a small business. However, if it exceeds the revenue limit in one year and the next year exceeds the public float limit, but not the revenue limit, it will still be considered a small business. *See* Note to paragraph (a) of this Item.

(iv) A reporting company that is not a small business company must meet the definition of a small business issuer at the end of two consecutive fiscal years before it will be considered a small business issuer for purposes of using Form SB–2, Form 10–SB, Form 10–KSB and Form 10–QSB. *See* Note to paragraph (a) of this Item.

(v) The determination as to the reporting category (small business issuer or other issuer) made for a non-reporting company at the time it enters the disclosure system governs all reports relating to the remainder of the fiscal year. The determination made for a reporting company at the end of its fiscal year governs all reports relating to the next fiscal year. An issuer may not change from one category to another with respect to its reports under the Exchange Act for a single fiscal year. A company may, however, choose not to use a Form SB–2 for a registration under the Securities Act.

(b) *Definitions of terms.*

(1) *Common Equity*—means the small business issuer's common stock. If the small business issuer is a limited partnership, the term refers to the equity interests in the partnership.

(2) *Public market*—no public market shall be deemed to exist unless, within the past 60 business days, both bid and asked quotations at fixed prices (excluding "bid wanted" or "offer wanted" quotations) have appeared regularly in any established quotation system on at least half of such business days. Transactions arranged without the participation of a broker or dealer functioning as such are not indicative of a "public market."

(3) *Reporting company*—means a company that is obligated to file periodic reports with the Securities and Exchange Commission under section 15(d) or 13(a) of the Exchange Act.

(4) *Small business issuer*—refers to the issuer and all of its consolidated subsidiaries.

(c) *Preparing the disclosure document.* (1) The purpose of a disclosure document is to inform investors. Hence, information should be presented in a clear, concise and understandable fashion. Avoid unnecessary details, repetition or the use of technical language. The responses to the items of this Regulation should be brief and to the point.

(2) Small business issuers should consult the General Rules and Regulations under the Securities Act and Exchange Act for requirements concerning the preparation and filing of documents. Small business issuers should be aware that there are special rules concerning such matters as the kind and size of paper that is allowed and how filings should be bound. These special rules are located in Regulation C of the Securities Act (17 CFR 230.400 *et seq.*) and in Regulation 12B of the Exchange Act (17 CFR 240.12b–1 *et seq.*).

(d) *Commission policy on projections.* The Commission encourages the use of management's projections of future economic performance that have a reasonable basis and are presented in an appropriate format. The guidelines below set forth the Commission's views on important factors to be considered in preparing and disclosing such projections. (*See also* 17 CFR 230.175 and 240.3b–6).

(1) *Basis for projections.* Management has the option to present in Commission filings its good faith assessment of a small business issuer's future performance. Management, however, must have a reasonable basis for such an assessment. An outside review of management's projections may furnish additional support in this regard. If management decides to include a report of such a review in a Commission filing, it should also disclose 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.* 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 to misleading inferences through selective projection of only favorable items. 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.

(3) *Investor understanding.* Disclosures accompanying the

projections should facilitate investor understanding of the basis for and limitations of projections. The Commission 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 frame-work for analysis of the projection. 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.

(e) *Commission policy on security ratings.* In view of the importance of security ratings ("ratings") to investors and the marketplace, the Commission permits small business issuers to disclose 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, disclosure of ratings assigned by any nationally recognized statistical rating organizations ("NRSROs") in certain communications deemed not to be a prospectus ("tombstone advertisements"). Below are the Commission's views on important matters to be considered in disclosing security ratings.

(1)(i) If a small business issuer includes in a filing any rating(s) assigned to a class of securities, it should consider including any other rating assigned by a different NRSRO that is materially different. A statement that a security rating is not a recommendation to buy, sell or hold securities and that it may be subject to revision or withdrawal at any time by the assigning rating organization should also be included.

(ii)(A) If the rating is included in a filing under the Securities Act, the written consent of any rating organization that is not a NRSRO whose rating is included should be filed. The consent of any NRSRO is not required. (See Rule 436(g) under the Securities Act (§ 230.436(g) of this chapter.)

(B) If a change in a rating already included is available before effectiveness of the registration statement, the small business issuer should consider including such rating change in the prospectus. If the rating change is material, consideration should be given to recirculating the preliminary prospectus.

(C) 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 small business issuer should consider disclosing this information in a sticker to the prospectus.

(iii) If there is a material change in the rating(s) assigned by any NRSRO(s) to any outstanding class(es) of securities of a reporting company, 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.

§ 228.101 (Item 101) Description of Business.

(a) *Business Development.* Describe the development of the small business issuer during the last three years. If the small business issuer has not been in business for three years, give the same information for predecessor(s) of the small business issuer if there are any. This business development description should include:

(1) Form and year of organization;

(2) Any bankruptcy, receivership or similar proceeding; and

(3) Any material reclassification, merger, consolidation, or purchase or sale of a significant amount of assets not in the ordinary course of business.

(b) *Business of Issuer.* Briefly describe the business and include, to the extent material to an understanding of the issuer:

(1) Principal products or services and their markets;

(2) Distribution methods of the products or services;

(3) Status of any publicly announced new product or service;

(4) Competitive business conditions and the small business issuer's competitive position in the industry and methods of competition;

(5) Sources and availability of raw materials and the names of principal suppliers;

(6) Dependence on one or a few major customers;

(7) Patents, trademarks, licenses, franchises, concessions, royalty agreements or labor contracts, including duration;

(8) Need for any government approval of principal products or services. If government approval is necessary and the small business issuer has not yet received that approval, discuss the status of the approval within the government approval process;

(9) Effect of existing or probable governmental regulations on the business;

(10) Estimate of the amount spent during each of the last two fiscal years on research and development activities, and if applicable the extent to which the cost of such activities are borne directly by customers;

(11) Costs and effects of compliance with environmental laws (federal, state and local); and

(12) Number of total employees and number of full time employees.

§ 228.102 (Item 102) Description of Property.

(a) Give the location of the principal plants and other property of the small business issuer and describe the condition of the property. If the small business issuer does not have complete ownership of the property, for example, others also own the property or there is a mortgage or lien on the property, describe the limitations on the ownership.

Instructions to Item 102(a)

1. Small business issuers engaged in significant mining operations also should provide the information in Guide 7 (§ 229.801(g) and § 229.802(g) of this chapter).

2. Small business issuers engaged in oil and gas producing activities also should provide the information in Guide 2 (§ 229.801(b) and § 229.802(b) of this chapter).

3. Small business issuers engaged in real estate activities should, in addition to Guide 5 (§ 229.801(e) of this chapter) provide responses to the following Items:

(b) Investment Policies

Describe the policy of the small business issuer with respect to each of the following types of investments. State whether there are any limitations on the percentage of assets which may be invested in any one investment, or type of investment, and indicate whether such policy may be changed without a vote of security holders. State whether it is the small business issuer's policy to acquire assets primarily for possible capital gain or primarily for income.

(1) *Investments in real estate or interests in real estate.* Indicate the types of real estate in which the small business issuer may invest, for example, office or apartment buildings, shopping centers, industrial or commercial properties, special purpose buildings and undeveloped acreage, and the geographic area(s) of these properties. Briefly describe the method, or proposed method, of operating and financing these properties. Indicate any limitations on the number or amount of mortgages

which may be placed on any one piece of property.

(2) *Investments in real estate mortgages.* Indicate the types of mortgages, for example, first or second mortgages, and the types of properties subject to mortgages in which the small business issuer intends to invest, for example, single family dwellings, apartment buildings, office buildings, unimproved land, and the nature of any guarantees or insurance. Describe each type of mortgage activity in which the small business issuer intends to engage such as originating, servicing and warehousing, and the portfolio turnover policy.

(3) *Securities of or interests in persons primarily engaged in real estate activities.* Indicate the types of securities in which the small business issuer may invest, for example, common stock, interest in real estate investment trusts, partnership interests. Indicate the primary activities of persons in which the small business issuer will invest, such as mortgage sales, investments in developed or undeveloped properties and state the investment policies of such persons.

(c) Description of Real Estate and Operating Data

This information shall be furnished separately for each property the book value of which amounts to ten percent or more of the total assets of the small business issuer and its consolidated subsidiaries for the last fiscal year. With respect to other properties, the information shall be given by such classes or groups and in such detail as will reasonably convey the information required.

(1) Describe the general character and location of all materially important properties held or intended to be acquired by or leased to the small business issuer and describe the present or proposed use of such properties and their suitability and adequacy for such use. Properties not yet acquired shall be identified as such.

(2) State the nature of the small business issuer's title to, or other interest in such properties and the nature and amount of all material mortgages, liens or encumbrances against such properties. Disclose the current principal amount of each material encumbrance, interest and amortization provisions, prepayment provisions, maturity date and the balance due at maturity assuming no prepayments.

(3) Outline briefly the principal terms of any lease of any of such properties or any option or contract to purchase or sell any of such properties.

(4) Outline briefly any proposed program for the renovation, improvement or development of such properties, including the estimated cost thereof and the method of financing to be used. If there are no present plans for the improvement or development of any unimproved or undeveloped property, so state and indicate the purpose for which the property is to be held or acquired.

(5) Describe the general competitive conditions to which the properties are or may be subject.

(6) Include a statement as to whether, in the opinion of the management of the small business issuer, the properties are adequately covered by insurance.

(7) With respect to each improved property which is separately described, provide the following in addition to the above:

(i) Occupancy rate;
(ii) Number of tenants occupying ten percent or more of the rentable square footage and principal nature of business of each such tenant and the principal provisions of each of their leases;
(iii) Principal business, occupations and professions carried on in, or from the building;
(iv) The average effective annual rental per square foot or unit;
(v) Schedule of the lease expirations for each of the ten years starting with the year in which the registration statement is filed, stating:
  (A) the number of tenants whose leases will expire,
  (B) the total area in square feet covered by such leases,
  (C) the annual rental represented by such leases, and
  (D) the percentage of gross annual rental represented by such leases;
(vi) Each of the properties and components thereof upon which depreciation is taken, setting forth the:
  (A) federal tax basis,
  (B) rate,
  (C) method, and
  (D) life claimed with respect to such property or component thereof for purposes of depreciation;
(vii) The realty tax rate, annual realty taxes and estimated taxes on any proposed improvements.

Instruction

If the small business issuer has a number of properties, the information may be given in tabular form.

§ 228.103 (Item 103) Legal Proceedings.

(a) If a small business issuer is a party to any pending legal proceeding (or its property is the subject of a pending legal proceeding), give the following information (no information is necessary as to routine litigation that is incidental to the business):

(1) name of court or agency where proceeding is pending;

(2) date proceeding began;

(3) principal parties;

(4) description of facts underlying the proceedings; and

(5) relief sought.

(b) Include the information called for by paragraphs (a) (1) through (5) of this Item for any proceeding that a governmental authority is contemplating (if the small business issuer is aware of the proceeding).

Instructions to Item 103

1. A proceeding that primarily involves a claim for damages does not need to be described if the amount involved, exclusive of interest and costs, does not exceed 10% of the current assets of the small business issuer. If any proceeding presents 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.

2. The following types of proceedings with respect to the registrant are not "routine litigation incidental to the business" and, notwithstanding instruction 1 of this Item, must be described: bankruptcy, receivership, or similar proceeding.

3. Any proceeding that involves federal, state or local environmental laws must be described if it is material; involves a damages claim for more than 10% of the current assets of the issuer; or potentially involves more than $100,000 in sanctions and a governmental authority is a party.

4. Disclose any material proceeding to which any director, officer or affiliate of the issuer, any owner of record or beneficially of more than 5% of any class of voting securities of the small business issuer, or security holder is a party adverse to the small business issuer or has a material interest adverse to the small business issuer.

§ 228.201 (Item 201) Market for Common Equity and Related Stockholder Matters.

(a) *Market information.* (1) Identify the principal market or markets where the small business issuer's common equity is traded. If there is no public trading market, so state.

(i) If the principal market for the small business issuer's common equity is an exchange, give the high and low sales prices for each quarter within the last two fiscal years and any subsequent

interim period for which financial statements are required by Item 310(b).

(ii) If the principal market is not an exchange, give the range of high and low bid information for the small business issuer's common equity for each quarter within the last two fiscal years and any subsequent interim period for which financial statements are required by Item 310(b). Show the source of the high and low bid information. If over-the-counter market quotations are provided, also state that the quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not represent actual transactions.

(2) If the information called for by paragraph (a) of this Item is being presented in a registration statement relating to a class of common equity for which at the time of filing there is no established 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 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 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.* Give the approximate number of holders of record of each class of common equity.

(c) *Dividends.* (1) Discuss any cash dividends declared on each class of common equity for the last two fiscal years and in any subsequent period for which financial information is required.

(2) Describe any restrictions that limit the ability to pay dividends on common equity or that are likely to do so in the future.

Instruction

Canadian issuers should, in addition to the information called for by this Item, provide the information in Item 201(a)(1)(iv) of Regulation S–K and Instruction 4 thereto.

§ 228.202 (Item 202) Description of Securities.

(a) *Common or Preferred Stock.*

(1) If the small business issuer is offering common equity, describe any dividend, voting and preemption rights.

(2) If the small business issuer is offering preferred stock, describe the dividend, voting, conversion and liquidation rights as well as redemption or sinking fund provisions.

(3) Describe any other material rights of common or preferred stockholders.

(4) Describe any provision in the charter or by-laws that would delay, defer or prevent a change in control of the small business issuer.

(b) *Debt Securities.*

(1) If the small business issuer is offering debt securities, describe the maturity date, interest rate, conversion or redemption features and sinking fund requirements.

(2) Describe all other material provisions giving or limiting the rights of debtholders. For example, describe subordination provisions, limitations on the declaration of dividends, restrictions on the issuance of additional debt, maintenance of asset ratios, etc.

(3) Give the name of any trustee(s) designated by the indenture and describe the circumstances under which the trustee must act on behalf of the debtholders.

(4) Discuss the tax effects of any securities offered at an "original issue discount."

(c) *Other Securities To Be Registered.* If the small business issuer is registering other securities, provide similar information concerning the material provisions of those securities.

§ 228.303 (Item 303) Management's Discussion and Analysis or Plan of Operation.

Small business issuers that have not had revenues from operations in each of the last two fiscal years, or the last fiscal year and any interim period in the current fiscal year for which financial statements are furnished in the disclosure document, shall provide the information in paragraph (a) of this Item. All other issuers shall provide the information in paragraph (b) of this Item.

(a) *Plan of Operation.*

(1) Describe the small business issuer's plan of operation for the next twelve months. This description should include such matters as:

(i) a discussion of how long the small business issuer can satisfy its cash requirements and whether it will have to raise additional funds in the next twelve months;

(ii) a summary of any product research and development that the small business issuer will perform for the term of the plan;

(iii) any expected purchase or sale of plant and significant equipment; and

(iv) any expected significant changes in the number of employees.

(b) *Management's Discussion and Analysis of Financial Condition and Results of Operations.*

(1) *Full fiscal years.* Discuss the small business issuer's financial condition, changes in financial condition and results of operations for each of the last two fiscal years. This discussion should address the past and future financial condition and results of operation of the small business issuer, with particular emphasis on the prospects for the future. The discussion should also address those key variable and other qualitative and quantitative factors which are necessary to an understanding and evaluation of the small business issuer. If material, the small business issuer should disclose the following:

(i) Any known trends, events or uncertainties that have or are reasonably likely to have a material impact on the small business issuer's short-term or long-term liquidity;

(ii) Internal and external sources of liquidity;

(iii) Any material commitments for capital expenditures and the expected sources of funds for such expenditures;

(iv) Any known trends, events or uncertainties that have had or that are reasonably expected to have a material impact on the net sales or revenues or income from continuing operations;

(v) Any significant elements of income or loss that do not arise from the small business issuer's continuing operations;

(vi) The causes for any material changes from period to period in one or more line items of the small business issuer's financial statements; and

(vii) Any seasonal aspects that had a material effect on the financial condition or results of operation.

(2) *Interim Periods.* If the small business issuer must include interim financial statements in the registration statement or report, provide a comparable discussion that will enable the reader to assess material changes in financial condition and results of operations since the end of the last fiscal year and for the comparable interim period in the preceding year.

Instructions to Item 303

1. 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.

2. Small business issuers are encouraged, but not required, to supply forward looking information. This is 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.

§ 228.304 (Item 304) Changes In and Disagreements With Accountants on Accounting and Financial Disclosure.

(a)(1) If, during the small business issuer's two most recent fiscal years or any later interim period, the principal independent accountant or a significant subsidiary's independent accountant on whom the principal accountant expressed reliance in its report, resigned (or declined to stand for re-election) or was dismissed, then the small business issuer shall state:

(i) Whether the former accountant resigned, declined to stand for re-election or was dismissed and the date;

(ii) Whether the principal accountant's report on the financial statements for either of the past two years contained an adverse opinion or disclaimer of opinion, or was modified as to uncertainty, audit scope, or accounting principles, and also describe the nature of each such adverse opinion, disclaimer of opinion or modification;

(iii) Whether the decision to change accountants was recommended or approved by the board of directors or an audit or similar committee of the board of directors; and

(iv)(A) Whether there were any disagreements with the former accountant, whether or not resolved, on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved to the former accountant's satisfaction, would have caused it to make reference to the subject matter of the disagreement(s) in connection with its report; or

(B) The following information only if applicable. Indicate whether the former accountant advised the small business issuer that:

(*1*) internal controls necessary to develop reliable financial statements did not exist; or

(*2*) information has come to the attention of the former accountant which made the accountant unwilling to rely on management's representations, or unwilling to be associated with the financial statements prepared by management; or

(*3*) the scope of the audit should be expanded significantly, or information has come to the accountant's attention that the accountant has concluded will, or if further investigated might, materially impact the fairness or reliability of a previously issued audit report or the underlying financial statements, or the financial statements issued or to be issued covering the fiscal period(s) subsequent to the date of the most recent audited financial statements (including information that might preclude the issuance of an unqualified audit report), and the issue was not resolved to the accountant's satisfaction prior to its resignation or dismissal; and

(C) The subject matter of each such disagreement or event identified in response to paragraph (a)(1)(iv) of this Item;

(D) Whether any committee of the board of directors, or the board of directors, discussed the subject matter of the disagreement with the former accountant; and

(E) Whether the small business issuer has authorized the former accountant to respond fully to the inquiries of the successor accountant concerning the subject matter of each of such disagreements or events and, if not, describe the nature of and reason for any limitation.

(2) If during the period specified in paragraph (a)(1) of this Item, a new accountant has been engaged as either the principal accountant to audit the issuer's financial statements or as the auditor of a significant subsidiary and on whom the principal accountant is expected to express reliance in its report, identify the new accountant and the engagement date. Additionally, if the issuer (or someone on its behalf) consulted the new accountant regarding:

(i) The application of accounting principles to a specific completed or contemplated transaction, or the type of audit opinion that might be rendered on the small business issuer's financial statements and either written or oral advice was provided that was an important factor considered by the small business issuer in reaching a decision as to the accounting, auditing or financial reporting issue; or

(ii) Any matter that was the subject of a disagreement or event identified in response to paragraph (a)(1)(iv) of this Item, then the small business issuer shall:

(A) Identify the issues that were the subjects of those consultations;

(B) Briefly describe the views of the new accountant given to the small business issuer and, if written views were received by the small business issuer, file them as an exhibit to the report or registration statement;

(C) State whether the former accountant was consulted by the small business issuer regarding any such issues, and if so, describe the former accountant's views; and

(D) Request the new accountant to review the disclosure required by this Item before it is filed with the Commission and provide the new accountant the opportunity to furnish the small business issuer with a letter addressed to the Commission containing any new information, clarification of the small business issuer's expression of its views, or the respects in which it does not agree with the statements made in response to this Item. Any such letter shall be filed as an exhibit to the report or registration statement containing the disclosure required by this Item.

(3) The small business issuer shall provide the former accountant with a copy of the disclosures it is making in response to this Item no later than the day that the disclosures are filed with the Commission. The small business issuer shall request the former accountant to furnish a letter addressed to the Commission stating whether it agrees with the statements made by the issuer and, if not, stating the respects in which it does not agree. The small business issuer shall file the letter as an exhibit to the report or registration statement containing this disclosure. If the letter is unavailable at the time of filing, the small business issuer shall request the former accountant to provide the letter so that it can be filed with the Commission within ten business days after the filing of the report or registration statement. Notwithstanding the ten business day period, the letter shall be filed within two business days of receipt. The former accountant may provide an interim letter highlighting specific areas of concern and indicating that a more detailed letter will be forthcoming within the ten business day period noted above. The interim letter, if any, shall be filed with the report or registration statement or by amendment within two business days of receipt.

(b) If the conditions in paragraphs (b)(1) through (b)(3) of this Item exist, the small business issuer shall describe the nature of the disagreement or event and the effect on the financial statements if the method had been followed which the former accountants apparently would have concluded was required (unless that method ceases to be generally accepted because of authoritative standards or interpretations issued after the disagreement or event):

(1) In connection with a change in accountants subject to paragraph (a) of this Item, there was any disagreement or event as described in paragraph (a)(1)(iv) of this Item;

(2) During the fiscal year in which the change in accountants took place or during the later fiscal year, there have been any transactions or events similar

to those involved in such disagreement or event; and

(3) 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.

Instructions to Item 304

1. The disclosure called for by paragraph (a) of this Item need not be provided if it has been previously reported as that term is defined in Rule 12b–2 under the Exchange Act (§ 240.12b–2); the disclosure called for by paragraph (a) of this Item must be provided, however, notwithstanding prior disclosure, if required pursuant to Item 9 of Schedule 14A (§ 249.14a–101 *et seq.*). The disclosure called for by paragraph (b) of this Item must be furnished, where required, notwithstanding any prior disclosure about accountant changes or disagreements.

2. When disclosure is required by paragraph (a) of this Item in an annual report to security holders pursuant to Rule 14a–3 or Rule 14c–3 (§ 240.14a–3 or 240.14c–3 of this chapter), or in a proxy or information statement filed pursuant to the requirements of Schedule 14A (§ 240.14a–101 *et seq.*) or 14C (§ 240.14c–101 *et seq.*), in lieu of a letter pursuant to paragraph (a)(2)(ii)(D) or (a)(3) of this Item, before filing such materials with or furnishing such materials to the Commission, the small business issuer shall furnish the disclosure required by paragraph (a) of this Item to each accountant who was engaged during the period set forth in paragraph (a) of this Item. If any such accountant believes that the statements made in response to paragraph (a) of this Item are incorrect or incomplete, it may present its views in a brief statement, ordinarily expected not to exceed 200 words, to be included in the annual report or proxy or information statement. This statement shall be submitted to the small business issuer within ten business days of the date the accountant receives the small business issuer's disclosure. Further, unless the written views of the newly engaged accountant required to be filed as an exhibit by paragraph (a)(2)(ii)(D) of this Item have been previously filed with the Commission, the small business issuer shall file a Form 8–K (17 CFR 249.308 of this chapter) along with the annual report or proxy or information statement for the purpose of filing the written views as exhibits.

3. The information required by this Item need not be provided for a company being acquired by the small business issuer if such acquiree has not been subject to the filing requirements of either section 13(a) or 15(d) of the Exchange Act, or, because of section 12(i) of the Exchange Act, has not furnished an annual report to security holders pursuant to Rule 14a–3 or Rule 14c–3 (§ 240.14a–3 or 240.14c–3 of this chapter) for its latest fiscal year.

4. In determining whether any disagreement or reportable event has occurred, an oral communication from the engagement partner or another person responsible for rendering the accounting firm's opinion (or their designee) will generally suffice as the accountant advising the small business issuer of a reportable event or as a statement of a disagreement at the "decision-making level" within the accounting firm and require disclosure under this Item.

§ 228.310 (Item 310) Financial Statements.

Notes—1. Financial statements of a small business issuer, its predecessors or any businesses to which the small business issuer is a successor shall be prepared in accordance with generally accepted accounting principles in the United States.

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 [17 CFR 210.2], Articles 3–19 and 3–20 shall apply to financial statements of foreign private issuers and small business issuers engaged in oil and gas producing activities shall follow the financial accounting and reporting standards specified in Article 4–10 of Regulation S–X [17 CFR 210.4–10] with respect to such activities. To the extent that Article 11–01 [17 CFR 210.11–01] (Pro Forma Presentation Requirements) offers enhanced guidelines for the preparation, presentation and disclosure of pro forma financial information, small business issuers may wish to consider these items. Financial statements of foreign private issuers shall be prepared and presented in accordance with the requirements of Item 18 of Form 20–F except that Item 17 may be followed for financial statements included in filings other than registration statements for offerings of securities unless the only securities being offered are: (a) upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted by the issuer of the securities to be offered, if such rights are granted on a pro rata basis to all existing securities holders of the class of securities to which the rights attach and there is no standby underwriting in the United States or similar arrangement; 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 transferrable warrants issued by the issuer of the securities being offered, or by an affiliate of such issuer.

3. The Commission, where consistent with the protection of investors, may permit the omission of one or more of the financial statements or the substitution of appropriate statements of comparable character. The Commission by informal written notice may require the filing of other financial statements where necessary or appropriate.

(a) *Annual Financial Statements.* Small business issuers shall file an audited balance sheet as of the end of the most recent fiscal year, or as of a date within 135 days if the issuers existed for a period less than one fiscal year, and audited statements of income, cash flows and changes in stockholders' equity for each of the two fiscal years preceding the date of such audited balance sheet (or such shorter period as the registrant has been in business).

(b) *Interim Financial Statements.* Interim financial statements, which may be unaudited, shall include a balance sheet as of the end of the issuer's most recent fiscal quarter and income statements and statements of cash flows for the interim period up to the date of such balance sheet and the comparable period of the preceding fiscal year.

Instructions to Item 310(b)

1. Where Item 310 is applicable to a Form 10–QSB (§ 249.308b) and the interim period is more than one quarter, income statements must also be provided for the most recent interim quarter and the comparable quarter of the preceding fiscal year.

2. Interim financial statements must include all adjustments which in the opinion of management are necessary in order to make the financial statements not misleading. An affirmative statement that the financial statements have been so adjusted must be included with the interim financial statements.

(1) *Condensed Format.* Interim financial statements may be condensed as follows:

(i) Balance sheets should include separate captions for each balance sheet component presented in the annual financial statements which represents 10% or more of total assets. Cash and retained earnings should be presented regardless of relative significance to total assets. Registrants which present a

classified balance sheet in their annual financial statements should present totals for current assets and current liabilities.

(ii) Income statements should include net sales or gross revenue, each cost and expense category presented in the annual financial statements which exceeds 20% of sales or gross revenues, provision for income taxes, discontinued operations, extraordinary items and cumulative effects of changes in accounting principles or practices. (Financial institutions should substitute net interest income for sales for purposes of determining items to be disclosed.) Dividends per share should be presented.

(iii) Cash flow statements should include cash flows from operating, investing and financing activities as well as cash at the beginning and end of each period and the increase or decrease in such balance.

(iv) Additional line items may be presented to facilitate the usefulness of the interim financial statements including their comparability with annual financial statements.

(2) *Disclosure required and additional instructions as to Content.* (i) *Footnotes.* Footnote and other disclosures should be provided as needed for fair presentation and to ensure that the financial statements are not misleading.

(ii) *Material Subsequent Events and Contingencies.* Disclosure must be provided of material subsequent events and material contingencies notwithstanding disclosure in the annual financial statements.

(iii) *Significant Equity Investees.* Sales, gross profit, net income (loss) from continuing operations and net income must be disclosed for equity investees which constitute 20% or more of a registrant's consolidated assets, equity or income from continuing operations.

(iv) *Significant Dispositions and Purchase Business Combinations.* If a significant disposition or purchase business combination has occurred during the most recent interim period and the transaction required the filing of a Form 8–K (§ 249.308 of this chapter), pro forma data must be presented which reflects revenue, income from continuing operations, net income and income per share for the current interim period and the corresponding interim period of the preceding fiscal year as though the transaction occurred at the beginning of the periods.

(v) *Material Accounting Changes.* Disclosure must be provided of the date and reasons for any material accounting change. The registrant's independent accountant must provide a letter in the first Form 10–QSB (§ 249.308b of this chapter) filed subsequent to the change indicating whether or not the change is to a preferable method. Disclosure must be provided of any retroactive change to prior period financial statements, including the effect of any such change on income and income per share.

(vi) *Development Stage Companies.* A registrant in the development stage must provide cumulative from inception financial information.

(c) *Financial Statements of Businesses Acquired or to be Acquired.* (1) Financial statements for the periods specified in paragraph (c)(3) of this Item should be furnished if any of the following conditions exist:

(i) Consummation of a significant business combination accounted for as a purchase has occurred or is probable (the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method); or

(ii) Consummation of a significant business combination to be accounted for as a pooling is probable.

(2) A business combination is considered significant if a comparison of the most recent annual financial statements of the business acquired or to be acquired and the small business issuer's most recent annual financial statements filed at or prior to the date of acquisition indicates that the business acquired or to be acquired meets any of the following conditions:

(i) The small business issuer's and its other subsidiaries' investments in and advances to the acquiree exceeds 10 percent of the total assets of the small business issuer and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for a proposed business combination to be accounted for as a pooling of interests, this condition is also met when the number of common shares exchanged or to be exchanged by the small business issuer exceeds 10 percent of its total common shares outstanding at the date the combination is initiated) or

(ii) The small business issuer's and its other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the acquiree 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

(iii) The small business issuer's equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the acquiree exceeds 10 percent of such income of the small business issuer 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: If income of the small business issuer 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.

(3)(i) Financial statements shall be furnished for the periods prior to the date of acquisition, for those periods for which the small business issuer is required to furnish financial statements.

(ii) The financial statements covering fiscal years shall be audited.

(iii) The separate audited balance sheet of the acquired business is not required when the small business issuer's most recent audited balance sheet filed is for a date after the acquisition was consummated.

(iv) If none of the conditions in the definitions of significant subsidiary in paragraph (c)(2) of this Item exceeds 20%, income statements of the acquired business for only the most recent fiscal year and any interim period need be filed.

(4) If consummation of more than one transaction has occurred or is probable, the significance tests shall be made using the aggregate impact of the businesses and the financial statements may be presented on a combined basis, if appropriate.

(5) If the small business issuer made a significant business acquisition subsequent to the latest fiscal year end and filed a report on Form 8–K which included audited financial statements of such acquired business for the periods required by paragraph (c)(3) and the pro forma financial information required by paragraph (d) of this Item, the determination of significance may be made by using the pro forma amounts for the latest fiscal year in the report on Form 8–K rather than by using the historical amounts for the latest fiscal year of the registrant. The tests may not be made by "annualizing" data.

(d) *Pro Forma Financial Information.*

(1) Pro forma information shall be furnished if any of the following conditions exist (for purposes of this Item, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method):

(i) During the most recent fiscal year or subsequent interim period for which a balance sheet is required by paragraph (b) of this Item, a significant business

combination accounted for as a purchase has occurred;

(ii) After the date of the most recent balance sheet filed pursuant to paragraph (a) or (b) of this Item, consummation of a significant business combination accounted for as a purchase or a pooling has occurred or is probable.

(2) The provisions of paragraphs (c)(2) and (4) of this Item apply to paragraph (d) of this Item.

(3) Pro forma statements should be condensed, in columnar form showing pro forma adjustments and results and should include the following:

(i) If the transaction was consummated during the most recent fiscal year or subsequent interim period, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, or;

(ii) If consummation of the transaction has occurred or is probable after the date of the most recent balance sheet required by paragraph (a) or (b) of this Item, a pro forma balance sheet giving effect to the combination as of the date of the most recent balance sheet. For a purchase, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, and for a pooling of interests, pro forma statements of income for all periods for which income statements of the small business issuer are required.

(e) *Real Estate Operations Acquired or to be Acquired.* If, during the period for which income statements are required, the small business issuer has acquired one or more properties which in the aggregate are significant, or since the date of the latest balance sheet required by paragraph (a) or (b) of this Item, 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 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 small business issuer in assessing the property are described with specificity in the registration statement with regard to the property, including source of revenue (including, but not limited to, competition in the rental market, comparative rents, occupancy rates) and expenses (including but not limited to, utilities, *ad valorem* tax rates, maintenance expenses, capital improvements anticipated); and

(iii) the small business issuer indicates that, after reasonable inquiry, it is not aware of any material factors relating to the specific property other than those discussed in response to paragraph (e)(1)(ii) of this Item that would cause the reported financial information not to be necessarily indicative of future operating results.

(2) If the property will be operated by the small business issuer, a statement shall be furnished showing the estimated taxable operating results of the small business issuer based on the most recent twelve-month period including such adjustments as can be factually supported. If the property will 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. Disclosure must be provided of 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, a table should be provided which shows, for a limited number of years, the estimated cash distribution per unit indicating the portion reportable as taxable income and the portion representing a return of capital with an explanation of annual variations, if any. If taxable net income per unit will be greater than the cash available for distribution per unit, that fact and approximate year of occurrence shall be stated, if significant.

(f) *Limited Partnerships.* (1) Small business issuers which are limited partnerships must provide the balance sheets of the general partners as described in paragraphs (f)(2) through (f)(4) of this Item.

(2) Where a general partner is a corporation, the audited balance sheet of the corporation as of the end of its most recently completed fiscal year must be filed. Receivables, other than trade receivables, from affiliates of the general partner should be deducted from shareholders' equity of the general partner. Where an affiliate has committed itself to increase or maintain the general partner's capital, the audited balance sheet of such affiliate must also be presented.

(3) Where a general partner 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 the general partner 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 and liabilities 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), based on such balance sheet(s), singly or in the aggregate, shall be disclosed in the registration statement.

(g) *Age of Financial Statements.* At the date of filing, financial statements included in filings other than filings on Form 10–KSB must be not less current than financial statements which would be required in Forms 10–KSB and 10–QSB if such reports were required to be filed. If required financial statements are as of a date 135 days or more prior to the date a registration statement becomes effective or proxy material is expected to be mailed, the financial statements shall be updated to include financial statements for an interim period ending within 135 days of the effective or expected mailing date. Interim financial statements should be prepared and presented in accordance with paragraph (b) of this Item:

(1) When the anticipated effective or mailing date falls within 45 days after the end of the fiscal year, the filing may include financial statements only as current as the end of the third fiscal quarter; *Provided, however,* That if the audited financial statements for the recently completed fiscal year are available or become available prior to effectiveness or mailing, they must be included in the filing;

(2) If the effective date or anticipated mailing date falls after 45 days but within 90 days of the end of the small business issuer's fiscal year, the small business issuer is not required to provide the audited financial statements for such year end provided that the following conditions are met:

(i) The small business issuer is a reporting company and all reports due have been filed;

(ii) For the most recent fiscal year for which audited financial statements are not yet available, the small business issuer reasonably and in good faith expects to report income from continuing operations before taxes; and

(iii) For at least one of the two fiscal years immediately preceding the most

recent fiscal year the small business issuer reported income from continuing operations before taxes.

§ 228.401 (Item 401) Directors, Executive Officers, Promoters and Control Persons.

(a) *Identify directors and executive officers.* (1) List the names and ages of all directors and executive officers and all persons nominated or chosen to become such;

(2) List the positions and offices that each such person held with the small business issuer;

(3) Give the person's term of office as a director and the period during which the person has served;

(4) Briefly describe the person's business experience during the past five years; and

(5) If a director, identify other directorships held in reporting companies naming each company.

(b) *Identify Significant Employees.* Give the information specified in paragraph (a) of this Item for each person who is not an executive officer but who is expected by the small business issuer to make a significant contribution to the business.

(c) *Family relationships.* Describe any family relationships among directors, executive officers, or persons nominated or chosen by the small business issuer to become directors or executive officers.

(d) *Involvement in certain legal proceedings.* Describe any of the following events that occurred during the past five years that are material to an evaluation of the ability or integrity of any director, person nominated to become a director, executive officer, promoter or control person of the small business issuer:

(1) Any bankruptcy petition filed by or against any business of which such person was a general partner or executive officer either at the time of the bankruptcy or within two years prior to that time;

(2) Any conviction in a criminal proceeding or being subject to a pending criminal proceeding (excluding traffic violations and other minor offenses);

(3) Being subject to any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining, barring, suspending or otherwise limiting his involvement in any type of business, securities or banking activities; and

(4) Being found by a court of competent jurisdiction (in a civil action), the Commission or the Commodity Futures Trading Commission to have violated a federal or state securities or commodities law, and the judgment has not been reversed, suspended, or vacated.

§ 228.402 (Item 402) Executive Compensation.

(a) *Cash compensation.* Complete the following table and include all cash compensation paid or to be paid to the following persons for services rendered in all capacities to the small business issuer during the last fiscal year:

(1) each of the small business issuer's five most highly paid executive officers whose cash compensation exceeds $60,000, giving their names; and

(2) All executive officers as a group, stating the number of persons in the group without naming them.

CASH COMPENSATION TABLE

A	B	C
Name of individual or number in group	Capacities in which served	Cash compensation

Instructions to Item 402(a)

1. This table shall include:

(a) all cash bonuses paid or to be paid for all services rendered during the last fiscal year unless the amounts have not been allocated at the time of filing the registration statement or report and

(b) all compensation that would have been paid in cash but was deferred.

2. Paragraph (a) of this Item applies to any person who was an executive officer at any time in the most recent fiscal year. However, information need not be given for any part of that year during which a person was not an executive officer of the small business issuer, if it so states.

(b)(1) *Compensation under plans.* Describe briefly all plans under which the small business issuer paid or distributed cash or non-cash compensation during the most recent fiscal year and all plans under which the small business issuer proposes to pay or distribute cash or non-cash compensation in the future to the individuals and group named in paragraph (a) of this Item. State the amounts provided. No information need be given for:

(i) Any plans that do not discriminate in favor of officers or directors and that are available to all salaried employees; or

(ii) Any pension or retirement benefits where amounts to be paid are computed on an actuarial basis under any plan that provides for fixed benefits for retirement at a specified age or after a specified number of years of service.

(2) *Stock option plans.* (i) For stock options granted during the last fiscal year, indicate:

(A) the title and amount of securities subject to options;

(B) the average per share exercise price; and

(C) if the exercise price was less than 100 percent of the market value of the security on the date of grant, so state and give the market price on such date.

(ii) For stock options exercised during the last fiscal year, regardless of the year that the small business issuer granted the options, give the net value realized upon the exercise, calculated by subtracting the exercise price from the market value.

(c) *Other compensation.* Give the amount and a description of any other compensation paid or distributed during the last fiscal year to the named individuals and group specified in paragraph (a) of this Item. The compensation shall be valued on the basis of the issuers' aggregate incremental cost. No information need be provided if:

(1) For any individual, the total amount of such other compensation is less than $25,000 or 10% of the compensation reported in the Cash Compensation Table for that person; or

(2) For the group, the total amount of such other compensation is the lessor of $25,000 times the number of persons in the group or 10% of the compensation reported in the Cash Compensation Table for the group under paragraph (a) of this Item and a statement to that effect is made.

(d) *Compensation of directors.* Describe and give the amounts of all compensation received by directors of the small business issuer for all services as a director.

§ 228.403 (Item 403) Security Ownership of Certain Beneficial Owners and Management.

(a) *Security ownership of certain beneficial owners.* Complete the table below for any person (including any "group") who is known to the small business issuer to be the beneficial owner of more than five percent of any class of the small business issuer's voting securities.

(1)	(2)	(3)	(4)
Title of class	Name and address of beneficial owner	Amount and nature of beneficial owner	Percent of class

(b) *Security ownership of management.* Complete the following

table for each class of equity securities of the small business issuer or its parent beneficially owned by all directors and nominees, naming them, and directors and officers of the small business issuer as a group, without naming them.

(1) Title of class	(2) Name and address of beneficial owner	(3) Amount and nature of beneficial owner	(4) Percent of class

(c) *Changes in control.* Describe any arrangements which may result in a change in control of the small business issuer.

Instructions to Item 403

1. Of the number of shares shown in column (3) of paragraphs (a) and (b) of this Item, state in a footnote the amount which the listed beneficial owner has the right to acquire within sixty days, from options, warrants, rights, conversion privilege or similar obligations.

2. Where persons hold more than 5% of a class under a voting trust or similar agreement, provide the following:

(a) the title of such securities;
(b) the amount that they hold under the trust or agreement (if not clear from the table);
(c) the duration of the agreement;
(d) the names and addresses of the voting trustees; and
(e) a brief outline of the voting rights and other powers of the voting trustees under the trust or agreement.

3. Calculate the percentages on the basis of the amount of outstanding securities plus, for each person or group, any securities that person or group has the right to acquire within 60 days pursuant to options, warrants, conversion privileges or other rights.

4. In this Item, a *beneficial owner* of a security means:

(a) Any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares:

(1) Voting power, which includes the power to vote, or to direct the voting of, such security; or
(2) Investment power, which includes the power to dispose, or to direct the disposition of, such security.

(b) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership.

5. All securities of the same class beneficially owned by a person, regardless of the form that such beneficial ownership takes, shall be totaled in calculating the number of shares beneficially owned by such person.

6. The small business issuer is responsible for knowing the contents of any statements filed with the Commission under section 13(d) or 13(g) of the Exchange Act concerning the beneficial ownership of securities and may rely upon the information in such statements unless it knows or has reason to believe that the information is not complete or accurate.

7. The term "group" means two or more persons acting as a partnership, syndicate, or other group for the purpose of acquiring, holding or disposing of securities of an issuer.

8. Where the small business issuer lists more than one beneficial owner for the same securities, adequate disclosure should be included to avoid confusion.

§ 228.404 (Item 404) Certain Relationships and Related Transactions.

(a) Describe any transaction during the last two years, or proposed transactions, to which the small business issuer 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. Give the name of the person, the relationship to the issuer, nature of the person's interest in the transaction and, the amount of such interest:

(1) Any director or executive officer of the small business issuer;

(2) Any nominee for election as a director;

(3) Any security holder named in response to Item 403 (§ 228.403); and

(4) Any member of the immediate family (including spouse, parents, children, siblings, and in-laws) of any of the persons in paragraphs (a) (1), (2) or (3) of this Item.

(b) No information need be included for any transaction where:

(1) Competitive bids determine the rates or charges involved in the transaction;

(2) The transaction involves services at rates or charges fixed by law or governmental authority;

(3) The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(4) The amount involved in the transaction or a series of similar transactions does not exceed $60,000; or

(5) The interest of the person arises solely from the ownership of securities of the small business issuer and the person receives no extra or special benefit that was not shared equally (pro rata) by all holders of securities of the class.

(c) List all parents of the small business issuer showing the basis of control and as to each parent, the percentage of voting securities owned or other basis of control by its immediate parent if any.

(d) *Transactions with promoters.* Issuers 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 issuer and the nature and amount of any assets, services or other consideration therefore received or to be received by the registrant; and

(2) As to any assets acquired or to be acquired 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 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 issuer, also state the cost thereof to the promoter.

Instructions to Item 404

1. A person does not have a material indirect interest in a transaction within the meaning of this Item where:

(a) The interest arises only:

(1) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction and/or
(2) from the total ownership (direct or indirect) by all specified persons of less than a 10% equity interest in another person (other than a partnership) which is a party to the transaction;

(b) The interest arises only from such person's position as a limited partner in a partnership in which he and all other specified persons had an interest of less than 10 percent; or

(c) The interest of such person arises solely from holding an equity interest (but not a general partnership interest) or a creditor interest in another person that is a party to the transaction and the

transaction is not material to such other person.

2. Include information for any material underwriting discounts and commissions upon the sale of securities by the small business issuer where any of the specified persons was or is to be a principal underwriter or is a controlling person or member of a firm that was or is to be a principle underwriter.

3. As to any transaction involving the purchase or sale of assets by or to the small business issuer otherwise than in the ordinary course of business, state the cost of the assets to the purchase and if acquired by the seller within two years before the transaction, the cost thereof to the seller.

§ 228.405 (Item 405) Compliance With Section 16(a) of the Exchange Act.

Every small business issuer that has a class of equity securities registered pursuant to Section 12 of the Exchange Act (15 U.S.C. 78*l*) shall:

(a) Based solely upon a review of Forms 3 and 4 (17 CFR 249.103 and 249.104 of this chapter) and amendments thereto furnished to the registrant under Rule 16a–3(d) (17 CFR 240.16a–3(e) of this chapter) during its most recent fiscal year and Forms 5 and amendments thereto (§ 249.105 of this chapter) furnished to the registrant with respect to its most recent fiscal year, and any written representation referred to in paragraph (b)(2)(i) of this Item:

(1) Identify each person who, at any time during the fiscal year, was a director, officer, beneficial owner of more than ten percent of any class of equity securities of the registrant registered pursuant to section 12 ("reporting person") that failed to file on a timely basis, as disclosed in the above Forms, reports required by section 16(a) during the most recent fiscal year or prior years.

(2) For each such person, set forth the number of late reports, the number of transactions that were not reported on a timely basis, and any known failure to file a required Form.

Note: The disclosure requirement is based on a review of the forms submitted to the registrant during and with respect to its most recent fiscal year, as specified above. Accordingly, a failure to file timely need only be disclosed once. For example, if in the most recently concluded fiscal year a reporting person filed a Form 4 disclosing a transaction that took place in the prior fiscal year, and should have been reported in that year, the registrant should disclose that late filing and transaction pursuant to this Item for the most recent fiscal year, but not in material filed with respect to subsequent years.

(b) With respect to the disclosure required by paragraph (a) of this Item:

(1) A form received by the registrant within three calendar days of the required filing date may be presumed to have been filed with the Commission by the required filing date.

(2) If the registrant:

(i) receives a written representation from the reporting person that no Form 5 is required; and

(ii) maintains the representation for two years, making a copy available to the Commission or its staff upon request, the registrant need not identify such reporting person pursuant to paragraph (a) of this Item as having failed to file a Form 5 with respect to that fiscal year.

§ 228.501 (Item 501) Front of Registration Statement and Outside Front Cover of Prospectus.

(a) On the outside front cover page of the prospectus, give the following information:

(1) Name of the small business issuer;

(2) Title, amount and description of securities offered;

(3) If there are selling security holders, a statement to that effect;

(4) Cross reference to the risk factors section of the prospectus;

(5) The following statement in capital letters:

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) If the small business issuer is not a reporting company and a preliminary prospectus will be circulated, 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) The following table as to all securities to be registered (estimated, if necessary):

Per unit total, total minimum, total maximum	Price to public	Underwriting discounts and commissions	Proceeds to issuer or other persons

The "total minimum" and "total maximum" items are required (in lieu of the "Total" item) only if the offering is made on a best efforts basis. If so, disclose in the summary section (or on the cover page if material): the date the offering will end; any minimum purchase requirement and any arrangements to place funds in an escrow, trust, or similar account. If there is an over-allotment option, the maximum-minimum information must be based on the purchase of all or none of the shares subject to that option in addition to any other minimum/maximum information;

(8) If a prospectus will be used before the effective date of the registration statement (or, prior to the determination of the initial public offering price in the case of a prospectus that omits information as permitted by Rule 430A under the Securities Act [§ 230.430A of this chapter]), include the caption "Subject to Completion," the date of its issuance, and the following statement printed in type as large as that generally used in the body of the prospectus:

Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State.

(9) Any legend or information required by the law of any State in which the securities are to be offered;

(10) The date of the prospectus; and

(11) In a footnote to the table, disclose the other expenses of the offering specified in Item 511 of this Regulation S–B.

(b) [Reserved].

§ 228.502 (Item 502) Inside Front and Outside Back Cover Pages of Prospectus.

On the inside front cover page of the prospectus (or on the outside back cover page for paragraphs (e) and (f) of this Item) disclose the following:

(a)(1) *Available information.* State whether or not the small business issuer is a reporting company.

(2) If the small business issuer is a reporting company, state that the reports and other information filed by the small business issuer may be inspected and copied at the public reference facilities of the Commission in Washington, DC, and at some of its Regional Offices (include addresses), and that copies of such material can be obtained from the Public Reference Section of the Commission, Washington, DC 20549 at prescribed rates; and

(3) Name any national securities exchange on which the small business issuer's securities are listed and state that reports and other information concerning the small business issuer can be inspected at such exchanges.

(b) *Reports to security holders.* Where a small business issuer is not required to deliver an annual report to security holders, indicate whether voluntary reports will be sent and, if so, the frequency of such reports and whether they will include audited financial statements.

(c) *Incorporation by reference.* State that small business issuer will provide without charge to each person who receives a prospectus, upon written or oral request of such person, a copy of any of the information that was incorporated by reference in the prospectus (not including exhibits to the information that is incorporated by reference unless the exhibits are themselves specifically incorporated by reference) and the address (including title or department) and telephone number to which such a request is to be directed.

(d) *Stabilization.* (1) Include the following statement, if true:

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 before the effective date of the registration statement, state the amount of securities bought, the prices at which they were bought and the period within which they were bought. In the event that Rule 430A under the Securities Act [§ 230.430A of this chapter] is used, the final prospectus must include information as to stabilizing transactions before the public offering price was set.

(3) If the securities 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, state in the prospectus used to reoffer the securities:

(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 following legend shall be printed in bold-face or italic type:

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.

The date to be inserted should be determined by reference to Section 4(3) of the Securities Act and Rule 174 (§ 230.174 of this chapter).

(f) *Table of contents.* Include a detailed table of contents showing the various sections or subdivisions of the prospectus and the page number on which each such section or subdivision begins.

Introduction

Canadian issuers should, in addition to the disclosure required by this Item, provide the information required by Item 502(f) of Regulation S–K.

§ 228.503 (Item 503) Summary Information and Risk Factors.

(a) *Summary.* A summary of the information contained in the prospectus where the length and complexity of the prospectus make a summary useful.

(b) *Address and telephone number.* In the beginning of the prospectus the complete mailing address and the telephone number of their principal executive offices.

(c) *Risk factors.* Immediately following the cover page of the prospectus or the summary section, discuss any factors that make the offering speculative or risky. These factors may include no operating history, no recent profit from operations, poor financial position, the kind of business in which the small business issuer is engaged or proposes to engage, or no market for the small business issuer's securities.

§ 228.504 (Item 504) Use of Proceeds.

State how the net proceeds of the offering will be used, indicating the amount to be used for each purpose and the priority of each purpose, if all of the securities are not sold. If all or a substantial part of the proceeds are not allocated for a specific purpose, so state and discuss the principal reasons for the offering.

Instructions to Item 504

1. If a material amount of proceeds will discharge debt, state the interest rate and maturity. If that debt was incurred within one year, describe the use of the proceeds of that debt other than short-term borrowings used for working capital.

2. If any material amount of the proceeds is to be used to acquire assets or finance the acquisitions of other businesses, describe the assets or businesses and identify the persons from whom they will be bought. State the cost of the assets and, where such assets are to be acquired from affiliates of the small business issuer 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 small business issuer.

§ 228.505 (Item 505) Determination of Offering Price.

(a) If there is no established public market for the common equity being registered or if there is a significant difference between the offering price and the market price of the stock, give the factors that were considered in determining the offering price.

(b) If warrants, rights and convertible securities are being registered and there is no public market for the underlying securities, describe the factors considered in determining the exercise or conversion price.

§ 228.506 (Item 506) Dilution.

(a) If the small business issuer is not a reporting company and is selling common equity at a price significantly more than the price paid by officers, directors, promoters and affiliated persons for common equity purchased by them during the past five years (or which they have rights to purchase), compare these prices.

(b) If paragraph (a) of this Item applies and the issuer had losses in each of its last three fiscal years, or since its inception, whichever period is shorter, and there is a material dilution of the purchasers' equity interest, disclose the following:

(1) The net tangible book value per share before and after the distribution;

(2) 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

(3) The amount of the immediate dilution from the public offering price which will be absorbed by such purchasers.

§ 228.507 (Item 507) Selling Security Holders.

If security holders of a small business issuer is offering securities, name each selling security holder, state any position, office, or other material relationship which the selling security holder has had within the past three years with the small business issuer or any of its predecessors or affiliates, and state the amount of securities of the class owned by such security holder before 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 the offering is complete.

Instruction

Responses to this item may be combined with disclosure in response to Item 403.

§ 228.508 (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 small business issuer and state the nature of the relationship. State the nature of the obligation of the underwriter(s) to take the securities, *i.e.*, firm commitment, best efforts.

(b) *New underwriters.* Describe the business experience of managing or principal underwriters that have been in business less than three years, state their principal business function and identify any material relationships between the promoters of the issuer and the underwriter(s). This information need not be given if:

(1) the issuer is a reporting company; and

(2) an offering has no material risks.

(c) *Other distributions.* Outline briefly the plan of distribution of any securities to be registered that are to be offered otherwise than through underwriters.

(d) *Underwriter's representative on the 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 small business issuer. Identify any director so designated or nominated and indicate any relationship with the small business issuer.

(e) *Indemnification of underwriters.* If the underwriting agreement provides for indemnification by the small business issuer of the underwriters or their controlling persons against any liability arising under the Securities Act, furnish a brief description of such indemnification provisions.

(f) *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.

(g) *Finders.* Identify any finder and describe the nature of any material relationship between such finder and the small business issuer or associates or affiliates of the small business issuer.

(h) *Discretionary accounts.* If the small business issuer is not a reporting company, identify any principal underwriter that intends to sell to any discretionary accounts 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.

§ 228.509 (Item 509) Interest of Named Experts and Counsel.

If an "expert" or "counsel" was hired on a contingent basis, will receive a direct or indirect interest in the small business issuer or was a promoter, underwriter, voting trustee, director, officer, or employee, of the small business issuer, describe the contingent basis, interest, or connection.

(a) *Expert*—is a person who is named as preparing or certifying all or part of the small business issuer's registration statement or a report or valuation for use in connection with the registration statement.

(b) *Counsel*—is counsel named in the prospectus as having given an opinion on the validity of the securities being registered or upon other legal matters concerning the registration or offering of the securities.

Instruction to Item 509

1. The small business issuer does not need to disclose the interest of an expert (other than an accountant) or counsel if their interest (including the fair market value of all securities of the small business issuer received and to be received, or subject to options, warrants or rights received or to be received) does not exceed $50,000.

§ 228.510 (Item 510) Disclosure of Commission Position on Indemnification for Securities Act Liabilities.

Describe the indemnification provisions for directors, officers and controlling persons of the small business issuer against liability under the Securities Act. This includes any provision in the underwriting agreement which indemnifies the underwriter or its controlling persons against such liabilities where a director, officer or controlling person of the small business issuer is such an underwriter or controlling person or a member of any firm which is such an underwriter. In addition, provide the undertaking in the first sentence of Item 512(e).

§ 228.511 (Item 511) Other Expenses of Issuance and Distribution.

(a) Give an itemized statement of all expenses of the offering, other than underwriting discounts and commissions. If any of the securities are registered for sale by security holders, state how much of the expenses the security holders will pay.

(1) The itemized list should generally include registration fees, federal taxes, state taxes and fees, trustees' and transfer agents' fees, costs of printing and engraving, legal, accounting, and engineering fees and any listing fees.

(2) Include as a separate item any premium paid by the small business issuer or any selling security holder on any policy to insure or indemnify directors or officers against any liabilities they may incur in the registration, offering, or sale of these securities.

(b) [Reserved.]

Instruction to Item 511

1. If the amounts of any items are not known, give estimates but identify them as such.

§ 228.512 (Item 512) Undertakings.

Include each of the following undertakings that apply to the offering.

(a) *Rule 415 Offering.* If the small business issuer is registering securities under Rule 415 of the Securities Act (§ 230.415 of this chapter), that the small business issuer will:

(1) File, during any period in which it offers or sells securities, a post-effective amendment to this registration statement to:

(i) Include any prospectus required by section 10(a)(3) of the Securities Act;

(ii) Reflect in the prospectus any facts or events which, individually or together, represent a fundamental change in the information in the registration statement; and

(iii) Include any additional or changed material information on the plan of distribution.

Note: Small business issuers do not need to give the statements in paragraphs (a)(1)(i) and (a)(1)(ii) of this Item if the registration statement is on Form S-3 or S-8 (§§ 239.13 or 239.16b of this chapter), and the information required in a post-effective amendment is incorporated by reference from periodic reports filed by the small business issuer under the Exchange Act.

(2) For determining liability under the Securities Act, treat each post-effective amendment as a new registration statement of the securities offered, and the offering of the securities at that time to be the initial bona fide offering.

(3) File a post-effective amendment to remove from registration any of the securities that remain unsold at the end of the offering.

(b) *Warrants and rights offerings.* If the small business issuer will offer the securities to existing security holders under warrants or rights and the small business issuer will reoffer to the public any securities not taken by security holders, with any modifications that suit the particular case—The small business issuer will supplement the prospectus, after the end of the subscription period, to include the results of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities that the underwriters will purchase and the terms of any later reoffering. If the underwriters make any public offering of the securities on terms different from those on the cover page of the prospectus, the small business issuer will file a post-effective amendment to state the terms of such offering.

(c) *Competitive bids.* If the small business issuer is offering securities at competitive bidding, with modifications to suit the particular case, the small business issuer will:

(1) use its best efforts to distribute before the opening of bids, to prospective bidders, underwriters, and dealers, a reasonable number of copies of a prospectus that meet the requirements of section 10(a) of the Securities Act, and relating to the securities offered at competitive bidding, as contained in the registration statement, together with any supplements; and

(2) file an amendment to the registration statement reflecting the results of bidding, the terms of the reoffering and related matters where 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 the issuer proposes no further public offering of such securities by the issuer or by the purchasers.

(d) *Equity offerings of nonreporting small business issuers.* If a small business issuer that before the offering had no duty to file reports with the Commission under section 13(a) or 15(d) of the Exchange Act is registering equity securities for sale in an underwritten offering—The small business issuer will provide to the underwriter at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

(e) *Request for acceleration of effective date.* If the small business issuer will request acceleration of the effective date of the registration statement under Rule 461 under the Securities Act, include the following:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 (the "Act") may be permitted to directors, officers and controlling persons of the small business issuer pursuant to the foregoing provisions, or otherwise, the small business issuer 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 small business issuer of expenses incurred or paid by a director, officer or controlling person of the small business issuer 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 small business issuer 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 Securities Act and will be governed by the final adjudication of such issue.

(f) If the issuer relies on Rule 430A under the Securities Act [§ 230.430A of this chapter], that the small business issuer will:

(1) For determining any liability under the Securities Act, treat the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the small business issuer under Rule 424(b)(1), or (4) or 497(h) under the Securities Act (§§ 230.424(b)(1), (4) or 230.497(h)) as part of this registration statement as of the time the Commission declared it effective.

(2) For determining any liability under the Securities Act, treat each post-effective amendment that contains a form of prospectus as a new registration statement for the securities offered in the registration statement, and that offering of the securities at that time as the initial bona fide offering of those securities.

§ 228.601 (Item 601) Exhibits.

(a) *Exhibits and index of exhibits.* (1) The exhibits required by the exhibit table must be filed or incorporated by reference.

(2) Each filing must have an index of exhibits. The exhibit index must list exhibits in the same order as the exhibit table. If the exhibits are incorporated by reference, this fact should be noted in the exhibit index. In the manually signed registration statement or report, the exhibit index should give the page number of each exhibit.

Instructions to Item 601(a)

1. If an exhibit (other than an opinion or consent) is filed in preliminary form and is later changed to include only interest, dividend or conversion rates, redemption or conversion prices, purchase or offering prices, underwriters' or dealers' commissions, names, addresses or participation of underwriters or similar matters and the information appears elsewhere in the registration statement or a prospectus, no amendment need be filed.

2. Small business issuers may file copies of each exhibit, rather than originals, except as otherwise specifically noted.

EXHIBIT TABLE

	Securities Act forms					Exchange Act forms			
	SB-2	S-2	S-3	S-4***	S-8	10SB	8-K	10-QSB	10-KSB
(1) Underwriting agreement	X	X	X	X			X		
(2) Plan of acquisition, reorg., arrgmnt, liquid, or succession.	X	X	X	X		X	X	X	
(3) Articles of Incorporation and by-laws.	X			X		X			X
(4) Instruments defining the rights of holders, incl. indentures.	X	X	X	X	X	X	X	X	X
(5) Opinion re: legality	X	X	X	X	X				
(6) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) Opinion re: liquidation preference	X	X		X		X			
(8) Opinion re: tax matters	X	X	X	X					
(9) Voting trust agreement	X			X		X			X
(10) Material contracts	X	X		X		X			X
(11) Statement re: computation of per share earnings.	X	X		X		X		X	X
(12) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(13) Annual or quarterly reports, Form 10-Q *.	X	X		X					X
(14) Material foreign patents	X			X		X			
(15) Letter on unaudited interim financial information.	X	X	X	X	X			X	
(16) Letter on change in certifying accountant ****.	X	X		X		X	X		X
(17) Letter on director resignation							X		
(18) Letter on change in accounting principles.								X	X
(19) Previously unfiled documents								X	X
(20) Reports furnished to securityholders.								X	
(21) Other documents or statements to securityholders.							X		
(22) Subsidiaries of the registrant	X			X		X			X
(23) Published report regarding matters submitted to vote.								X	X
(24) Consent of experts and counsel	X	X	X	X	X		X **	X **	X **
(25) Power of attorney	X	X	X	X	X	X	X	X	X
(26) Statement of eligibility of trustee	X	X	X	X					
(27) Invitations for competitive bids	X	X	X	X					
(28) Additional exhibits	X	X	X	X	X	X	X	X	X
(29) Info. from reports furnished to State insurance authorities.	X	X	X	X	X	X			X

* Only if incorporated by reference into a prospectus and delivered to holders along with the prospectus as permitted by the registration statement; or in the case of a Form 10-KSB, where the annual report is incorporated by reference into the text of the Form 10-KSB.

** Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.

*** An issuer need not provide an exhibit if: (1) an election was made under Form S-4 to provide S-2 or S-3 disclosure; and (2) the form selected (S-2 or S-3) would not require the company to provide the exhibit.

**** If required under item 304 of Regulation S-B.

(b) *Description of exhibits.* Below is a description of each document listed in the exhibit table.

(1) *Underwriting agreement.* Each agreement with a principal underwriter for the distribution of the securities. If the terms have been determined and the securities are to be registered on Form S-3 (§ 239.13), the agreement may be filed on Form 8-K (§ 249.308) after the effectiveness of the registration statement.

(2) *Plan of purchase, sale, reorganization, arrangement, liquidation or succession.* Any such plan described in the filing. Schedules or attachments may be omitted if they are listed in the index and provided to the Commission upon request.

(3) *Articles of incorporation and by-laws.* The complete copies of articles of incorporation and by-laws or comparable instruments, as amended.

(4) *Instruments defining the rights of security holders, including indentures.* (i) All instruments that define the rights of holders of the equity or debt securities that the issuer is registering, including the pages from the articles of incorporation or by-laws that define those rights.

(ii) All instruments defining the rights of holders of long term debt unless the total amount of debt covered by the instrument does not exceed 10% of the total assets of the small business issuer.

(iii) Copies of indentures to be qualified under the Trust Indenture Act of 1939 shall include an itemized table of contents and a cross reference sheet showing the location of the provisions inserted in accordance with Sections 310 through 318(a) of that Act.

(5) *Opinion on legality.* (i) An opinion of counsel on the legality of the securities being registered stating 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 small business issuer.

(ii) If the securities being registered are issued under a plan that is subject to the requirements of ERISA furnish either:

(A) An opinion of counsel which confirms compliance with ERISA; or

(B) A copy of the Internal Revenue Service determination letter that the plan is qualified under section 401 of the Internal Revenue Code.

If the plan is later amended, the small business issuer must have the opinion of counsel and the IRS determination letter updated to confirm compliance and qualification.

(6) No Exhibit Required.

(7) *Opinion on liquidation preference.* If the liquidation preference of shares

exceeds their par or stated value, an opinion of counsel as to whether there are any resulting restrictions on surplus. The opinion should also state 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 cite to applicable constitutional and statutory provisions and controlling case law.

(8) *Opinion on tax matters.* If tax consequences of the transaction are material to an investor, an opinion of counsel, an independent public or certified public accountant or, a revenue ruling from the Internal Revenue Service, supporting the tax matters and consequences to the shareholders. The exhibit is required for filings to which Securities Act Industry Guide 5 applies.

(9) *Voting trust agreement and amendments.*

(10) *Material contracts.* (i) Every material contract, not made in the ordinary course of business, that will be performed after the filing of the registration statement or report or was entered into not more than two years before such filing. Also include the following contracts:

(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 small business issuer's business is substantially dependent, such as contracts with principal customers, principal suppliers, franchise agreements, etc.;

(C) Any contract for the purchase or sale of any property, plant or equipment for a consideration exceeding 15 percent of such assets of the small business issuer; or

(D) Any material lease under which a part of the property described in the registration statement or report is held by the small business issuer.

(ii)(A) Any management contract or any compensatory plan, contract or arrangement in which any director or any of the five most highly compensated executive officers of the small business issuer participates and any other management contract or any compensatory plan in which any other executive officer of the small business issuer participates shall be filed unless immaterial in amount or significance.

(B) The following management contracts or compensatory plans 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 compensatory plan which is available to employees, officers or directors generally and provides for the same method of allocation of benefits between management and nonmanagement participants; and

(*5*) Any compensatory plan if the issuer is a wholly owned subsidiary of a reporting company and is filing a report on Form 10–KSB (§ 249.310b), or registering debt or non-voting preferred stock on Form S–2 (§ 239.12).

Instruction to Item 601(b)(10)

Only copies of the various remunerative plans need be filed. Each individual director's or executive officer's personal agreement under the plans need not be filed, unless they contain material provisions.

(11) *Statement re computation of per share earnings.* An explanation of the computation of per share earnings on both a primary and fully diluted basis unless the computation can be clearly determined from the registration statement or report.

(12) No exhibit required.

(13) Annual report to security holders for the last fiscal year, Form 10–Q or 10–QSB or quarterly report to security holders, if incorporated by reference in the filing. Such reports, except for the parts which are expressly incorporated by reference in the filing are not 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.

(15) *Letter on 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. The letter 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 the Securities Act. Such letter may be filed with the registration statement, an amendment thereto, or a report on Form 10–QSB (§ 249.308b) which is incorporated by reference into the registration statement.

(16) *Letter on change in certifying accountant.* File the letter required by Item 304(a)(3).

(17) *Letter on director resignation.* Any letter from a former director which describes a disagreement with the small business issuer that led to the director's resignation or refusal to stand for re-election and which requests that the matter be disclosed.

(18) *Letter on change in accounting principles.* Unless previously filed, a letter from the issuer's accountant stating whether any change in accounting principles or practices followed by the issuer, 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 expected 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, if such document would have been required to be filed as an exhibit to a registration statement on Form 10–SB (§ 249.210b).

(ii) Any amendment or change to a document which was previously filed.

(20) *Report furnished to security holders.* If the issuer 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 or 10–QSB, 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 or 10–QSB report.

(21) Other documents or statements to security holders or any document incorporated by reference.

(22) *Subsidiaries of the small business issuer.* A list of all subsidiaries, the state or other jurisdiction of incorporation or organization of each, and the names under which such subsidiaries do business.

(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 10–QSB) or Item 4 of Part I of Form 10–K or 10–KSB which is referred to therein in lieu of providing disclosure in Form 10–Q (10–QSB) or 10–K (10–KSB), which are required to be filed as exhibits by Rule 12b–23(a)(3) under the Exchange Act.

(24) *Consents of experts and counsel.* (i) Securities Act filings—Dated and manually signed written consents or a reference in the index to the location of the consent.

(ii) Exchange Act reports. If required to file a consent for material incorporated by reference in a previously filed registration statement under the Securities Act, the dated and manually signed consent to the material incorporated by reference. The consents shall be dated and manually signed.

(25) *Power of attorney.* If a person signs a registration statement or report under a power of attorney, a manually signed copy of such power of attorney or if located elsewhere in the registration statement, a reference in the index to where it is located. In addition, if an officer signs a registration statement for the small business issuer by a power of attorney, a certified copy of a resolution of the board of directors authorizing such signature.

(26) *Statement of eligibility of trustee.* Form T–1 (§ 269.1 of this chapter) if an indenture is being qualified under the Trust Indenture Act, bound separately from the other exhibits.

(27) *Invitations for competitive bids.* If the registration statement covers securities that the small business issuer is offering at competitive bidding, any invitation for competitive bid that the small business issuer will send or give to any person shall be filed.

(28) *Additional exhibits.* Any additional exhibits if listed and described in the exhibit index.

(29) *Information from reports furnished to state insurance regulatory authorities.* (i) If reserves for unpaid property-casualty ("P/C") claims and claim adjustment expenses of the small business issuer, its unconsolidated subsidiaries and the proportionate share of the small business issuer and the other subsidiaries in the unpaid P/C claims and claim adjustment expenses of its 50%-or-less-owned equity investees, taken in the aggregate after small business issuer eliminations, exceed one-half of the common stockholders' equity of the small business issuer as of the beginning of the latest fiscal year the following information should be supplied.

(ii) the information included in Schedules O and P of Annual Statements provided to state regulatory authorities by the small business issuer or its P/C insurance small business issuer affiliates for the latest year on a combined or consolidated basis as appropriate, separately for each of the following:

(A) the small business issuer;

(B) its unconsolidated subsidiaries; and

(C) fifty percent-or-less-owned equity investees of the small business issuer and its subsidiaries.

(iii) Small business issuers may omit the combined or consolidated Schedules O and P of fifty percent-or-less-owned equity investees, if they file the same information with the Commission as companies in their own right, and if they state that fact and the name and ownership percentage of such companies.

(iv) If ending reserves in paragraphs (b)(29)(ii)(A) and (b)(29)(ii)(B) of this Item or the proportionate share of the small business issuer and its other subsidiaries in paragraph (b)(29)(ii)(C) of this Item are less than 5% of the total ending reserves in paragraphs (b)(29)(ii)(A) and (b)(29)(ii)(B) of this Item, and the proportionate share of (b)(29)(ii)(C) of this Item, small business issuers may omit that category and note that fact. If the amount of the reserves attributable to fifty percent-or-less-owned equity investees that file this information as companies in their own right exceeds 95% of the total paragraph (b)(29)(ii)(C) of this Item small business issuers do not need to provide reserves, information for the other fifty percent-or-less-owned equity investees.

(v) Small business issuers do not need to include Schedules O and P information if they are not required to file Schedules O and P with insurance regulatory authorities. However, clearly note the nature and extent of any such exclusions in the Exhibit.

(vi) Companies whose fiscal year differs from the calendar year should present Schedules O and P as of the end of the calendar year that falls within their fiscal year.

(vii) The nature and amount of the difference between reserves for claims and claim adjustment expenses reflected on Schedules O and P and the total P/C statutory reserves for claims and disclose claim adjustment expenses as of the latest calendar year in a note to those Schedules.

§ 228.701 (Item 701) Recent Sales of Unregistered Securities.

Give the following information for all securities that the small business issuer sold within the past three years without registering the securities under the Securities Act.

(a) The date, title and amount of securities sold.

(b) Give the names of the principal underwriters, if any. If the small business issuer did not publicly offer any securities, identify the persons or class of persons to whom the small business issuer sold the securities.

(c) For securities sold for cash, the total offering price and the total underwriting discounts or commissions. For securities sold other than for cash, describe the transaction and the type and amount of consideration received by the small business issuer.

(d) The section of the Securities Act or the rule of the Commission under which the small business issuer claimed exemption from registration and the facts relied upon to make the exemption available.

§ 228.702 (Item 702) Indemnification of Directors and Officers.

State whether any statute, charter provisions, by-laws, contract or other arrangements that insures or indemnifies a controlling person, director or officer of the small business issuer affects his or her liability in that capacity.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

5. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa[25], 77aa[26], 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

6. In Section 229.801, paragraph (g) is added to read as follows:

§ 229.801 Securities Act industry guides.

* * * * *

(g) *Guide 7.* Description of Property by Issuers Engaged or To Be Engaged in Significant Mining Operations.

Note: The text of Guide 7 will not appear in the CFR.

Guide 7

Description of Property by Issuers Engaged or To Be Engaged in Significant Mining Operations

(a) *Definitions.* The following definitions apply to registrants engaged or to be engaged in significant mining operations:

(1) *Reserve.* That part of a mineral deposit which could be economically and legally extracted or produced at the time of the reserve determination. Note. Reserves are customarily stated in terms of "ore" when dealing with metalliferous minerals; when other materials such as coal, oil, shale, tar, sands, limestone, etc. are involved, an appropriate term such as "recoverable coal" may be substituted.

(2) *Proven (Measured) Reserves.* Reserves for which (a) quantity is computed from dimensions revealed in outcrops, trenches, workings or drill holes; grade and/or quality are computed from the results of detailed sampling and (b) the sites for inspection, sampling and measurement are spaced so closely and the geologic character is so well defined that size, shape, depth and mineral content of reserves are well-established.

(3) *Probable (Indicated) Reserves.* Reserves for which quantity and grade and/or quality are computed from information similar to that used for proven (measure) reserves, but the sites for inspection, sampling, and measurement are farther apart or are otherwise less adequately spaced. The degree of assurance, although lower than that for proven (measured) reserves, is high enough to assume continuity between points of observation.

(4)(i) *Exploration Stage*—includes all issuers engaged in the search for mineral deposits (reserves) which are not in either the development or production stage.

(ii) *Development Stage*—includes all issuers engaged in the preparation of an established commercially minable deposit (reserves) for its extraction which are not in the production stage.

(iii) *Production Stage*—includes all issuers engaged in the exploitation of a mineral deposit (reserve).

Instruction to Paragraph (a)

1. Mining companies in the exploration stage should not refer to themselves as development stage companies in the financial statements, even though such companies should comply with FASB Statement No. 7, if applicable.

(b) *Mining Operations Disclosure.* Furnish the following information as to each of the mines, plants and other significant properties owned or operated, or presently intended to be owned or operated, by the registrant:

(1) The location and means of access to the property;

(2) A brief description of the title, claim, lease or option under which the registrant and its subsidiaries have or will have the right to hold or operate the property, indicating any conditions which the registrant must meet in order to obtain or retain the property. If held by leases or options, the expiration dates of such leases or options should be stated. Appropriate maps may be used to portray the locations of significant properties;

(3) A brief history of previous operations, including the names of previous operators, insofar as known;

(4)(i) A brief description of the present condition of the property, the work completed by the registrant on the property, the registrant's proposed program of exploration and development, and the current state of exploration and/or development of the property. Mines should be identified as either open-pit or underground. If the property is without known reserves and the proposed program is exploratory in nature, a statement to that effect shall be made;

(ii) The age, details as to modernization and physical condition of the plant and equipment, including subsurface improvements and equipment. Further, the total cost for each property and its associated plant and equipment should be stated. The source of power utilized with respect to each property should also be disclosed.

(5) A brief description of the rock formations and mineralization of existing or potential economic significance on the property, including the identity of the principal metallic or other constituents insofar as known. If proven (measured) or probable (indicated) reserves have been established, state (i) the estimated tonnages and grades (or quality, where appropriate) of such classes of reserves, and (ii) the name of the person making the estimates and the nature of his relationship to the registrant.

Instructions to Paragraph (b)(5)

1. It should be stated whether the reserve estimate is of in-place material or of recoverable material. Any in-place estimate should be qualified to show the anticipated losses resulting from mining methods and beneficiation or preparation.

2. The summation of proven (measured) and probable (indicated) ore reserves is acceptable if the difference in degree of assurance between the two classes of reserves cannot be readily defined.

3. Estimates other than proved (measured) or probable (indicated) 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.

(6) If technical terms relating to geology, mining or related matters whose definition cannot readily be found in conventional dictionaries (as opposed to technical dictionaries or glossaries) are used, an appropriate glossary should be included in this report.

(7) Detailed geographic maps and reports, feasibility studies and other highly technical data should not be included in the report but should be, to the degree appropriate and necessary for the Commission's understanding of the registrant's presentation of business and property matters, furnished as supplemental information.

(c) *Supplemental Information.*

(1) If an estimate of proven (measured) or probable (indicated) reserves is set forth in the report, furnish:

(i) maps drawn to scale showing any mine workings and the outlines of the reserve blocks involved together with the pertinent sample-assay thereon.

(ii) all pertinent drill data and related maps.

(iii) the calculations whereby the basic sample-assay or drill data were translated into the estimates made of the grade and tonnage of reserves in each block and in the complete reserve estimate.

Instructions to Paragraph (c)(1)

1. Maps and drawings submitted to the staff should include:

(a) A legend or explanation showing, by means of pattern or symbol, every pattern or symbol used on the map or drawing; the use of the symbols used by the U.S. Geological Survey is encouraged;

(b) A graphical bar scale should be included; additional representations of scale such as "one inch equals one mile" may be utilized provided the original scale of the map has not been altered;

(c) A north arrow on the maps;

(d) An index map showing where the property is situated in relationship to the state or province, etc., in which it was located;

(e) A title of the map or drawing and the date on which it was drawn;

(f) In the event interpretive data is submitted in conjunction with any map, the identity of the geologist or engineer that prepared such data; and

(g) Any drawing should be simple enough or of sufficiently large scale to clearly show all features on the drawing.

(2) Furnish a complete copy of every material engineering, geological or metallurgical report concerning the registrant's property, including governmental reports, which are known and available to the registrant. Every such report should include the name of its author and the date of its preparation, if known to the registrant.

Instructions to Paragraph (c)(2)

1. Any of the above-required reports as to which the staff has access need not be submitted. In this regard, issuers should consult with the staff prior to filing the report. Any reports not submitted should be identified in a list furnished to the staff. This list should also identify any known governmental reports concerning the registrant's property.

(3) Furnish copies of all documents such as title documents, operating permits and easements needed to support representations made in the report.

7. In Section 229.802, paragraphs (e) and (f) are reserved and paragraph (g) is added to read as follows:

§ 229.802 Exchange Act industry guides.

* * * * *

(e) [Reserved].

(f) [Reserved].

(g) *Guide 7.* Description of Property by Issuers Engaged or To Be Engaged in Significant Mining Operations. Note: The text of Guide 7 will not appear in the CFR. The text of Guide 7 is identical to § 229.801(g) of this chapter and is not reprinted here.

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

7. The authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78*o*, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

8. By amending paragraph (b)(1)(i) of § 230.175 after the words "filed under the Act" add the words ", offering statement or solicitation of interest written document or broadcast script under Regulation A" and in paragraph (b)(2)(i) after the parenthetical "(§ 229.303 of this chapter)" add the words "or Regulation S–B (§ 228.303 of this chapter)".

9. By revising Regulation A—Conditional Small Issues Exemption, §§ 230.251–230.263, to read as follows:

Sec.
230.251 Scope of Exemption.
230.252 Offering Statement.
230.253 Offering Circular.
230.254 Solicitation of Interest Document for Use Prior to an Offering Statement.
230.255 Preliminary Offering Circulars.
230.256 Filing of Sales Material.
230.257 Reports of Sales and Use of Proceeds.
230.258 Suspension of the Exemption.
230.259 Withdrawal or Abandonment of Offering Statements.
230.260 Insignificant Deviations from a Term, Condition or Requirement of Regulation A.
230.261 Definitions.
230.262 Disqualification Provisions.
230.263 Consent to Service of Process.

Regulation A—Conditional Small Issues Exemption

Authority: Secs. 230.251 to 230.263 issued under 15 U.S.C. 77c, 77s.

§ 230.251 Scope of exemption.

A public offer or sale of securities that meets the following terms and conditions shall be exempt under section 3(b) from the registration requirements of the Securities Act of 1933 (the "Securities Act"):

(a) *Issuer.* The issuer of the securities:

(1) is an entity organized under the laws of the United States or Canada, or any State, Province, Territory or possession thereof, or the District of Columbia, with its principal place of business in the United States or Canada;

(2) is not subject to section 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a *et seq.*) immediately before the offering;

(3) is not a development stage company that either has no specific business plan or purpose, or has indicated that its business plan is to merge with an unidentified company or companies;

(4) is not an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*);

(5) is not issuing fractional undivided interests in oil or gas rights as defined in § 230.300, or a similar interest in other mineral rights; and

(6) is not disqualified because of § 230.262.

(b) *Aggregate Offering Price.* The sum of all cash and other consideration to be received for the securities ("aggregate offering price") shall not exceed $5,000,000, including no more than $1,500,000 offered by all selling security holders, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities in reliance upon Regulation A. No affiliate resales are permitted if the issuer has not had net income from continuing operations in at least one of its last two fiscal years.

Note: Where a mixture of cash and non-cash consideration is to be received, the aggregate offering price shall be based on the price at which the securities are offered for cash. Any portion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at a currency exchange rate in effect on or at a reasonable time prior to the date of the sale of the securities. 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. Valuations of non-cash consideration must be reasonable at the time made.

(c) *Integration with Other Offerings.* Offers and sales made in reliance on this Regulation A will not be integrated with:

(1) prior offers or sales of securities; or

(2) subsequent offers or sales of securities that are:

(i) registered under the Securities Act, except as provided in § 230.254(d);

(ii) made in reliance on § 230.701;

(iii) made pursuant to an employee benefit plan;

(iv) made in reliance on Regulation S (§ 230.901–904); or

(v) made more than six months after the completion of the Regulation A offering.

Note: If the issuer offers or sells securities for which the safe harbor rules are unavailable, such offers and sales still may not be integrated with the Regulation A offering, depending on the particular facts and circumstances. See Securities Act Release No. 4552 (November 6, 1962) [27 FR 11316].

(d) *Offering Conditions.*

(1) *Offers.*

(i) Except as allowed by § 230.254, no offer of securities shall be made unless a Form 1–A offering statement has been filed with the Commission.

(ii) After the Form 1–A offering statement has been filed:

(A) oral offers may be made;

(B) written offers under § 230.255 may be made;

(C) printed advertisements may be published or radio or television broadcasts made, if they state from whom a Preliminary Offering Circular or Final Offering Circular may be obtained, and contain no more than the following information:

(*1*) the name of the issuer of the security;

(*2*) the title of the security, the amount being offered and the per unit offering price to the public;

(3) the general type of the issuer's business; and

(4) a brief statement as to the general character and location of its property.

(iii) after the Form 1–A offering statement has been qualified, other written offers may be made, but only if accompanied with or preceded by a Final Offering Circular.

(2) *Sales.*

(i) No sale of securities shall be made until:

(A) the Form 1–A offering statement has been qualified;

(B) A Preliminary Offering Circular or Final Offering Circular is furnished to the prospective purchaser at least 48 hours prior to the mailing of the confirmation of sale to that person; and

(C) A Final Offering Circular is delivered to the purchaser with the confirmation of sale, unless it has been delivered to that person at an earlier time.

(ii) Sales by a dealer (including an underwriter no longer acting in that capacity for the security involved in such transaction) that take place within 90 days after the qualification of the Regulation A offering statement may be made only if the dealer delivers a copy of the current offering circular to the purchaser before or with the confirmation of sale. The issuer or underwriter of the offering shall provide requesting dealers with reasonable quantities of the offering circular for this purpose.

(3) *Continuous or delayed offerings.* Continuous or delayed offerings may be made under this Regulation A if permitted by § 230.415.

§ 230.252 Offering Statement.

(a) *Documents to be included.* The offering statement consists of the facing sheet of Form 1–A [§ 239.90 of this chapter], the contents required by the form and any other material information necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

(b) *Paper, printing, language and pagination.* The requirements for offering statements are the same as those specified in § 230.403 for registration statements under the Act.

(c) *Confidential treatment.* A request for confidential treatment may be made under § 230.406 for information required to be filed, and § 200.83 of this chapter for information not required to be filed.

(d) *Signatures.* The issuer, its Chief Executive Officer, Chief Financial Officer, a majority of the members of its board of directors or other governing body, and each selling security holder shall sign the offering statement. If a signature is by a person on behalf of any other person, evidence of authority to sign shall be filed, except where an executive officer signs for the issuer. If the issuer is Canadian, its authorized representative in the United States shall sign. If the issuer is a limited partnership, a majority of the board of directors of any corporate general partner also shall sign.

(e) *Number of copies and where to file.* Seven copies of the offering statement, at least one of which is manually signed, shall be filed either with the Commission's Office for the region in which the issuer's principal business operations are conducted or are proposed to be conducted or with the Commission's main office in Washington, DC. An issuer which has or proposes to have its principal business operations in Canada shall file with the Regional Office nearest the place where the issuer's principal business operations are conducted or proposed to be conducted or with the Commission's main office in Washington, DC., unless the offering is to be made through a principal underwriter located in the United States, in which case the appropriate Regional Office is the office for the region in which such underwriter has its principal office. Since no filing may be made with the Philadelphia Regional Office, filings within the jurisdiction of that office may be made either at the Atlanta or New York Regional Office or in Washington, DC.

(f) *Fee.* There is a filing fee of $500 which shall accompany the initial filing of the offering statement. There is no fee for amendments.

(g) *Qualification.* (1) If there is no delaying notation as permitted by paragraph (g)(2) of this section or suspension proceeding under § 230.258, an offering statement is qualified without Commission action on the 20th calendar day after its filing.

(2) An offering statement containing the following notation can be qualified only by order of the Commission, unless such notation is removed prior to Commission action as described in paragraph (g)(3) of this section:

This offering statement shall only be qualified upon order of the Commission, unless a subsequent amendment is filed indicating the intention to become qualified by operation of the terms of Regulation A.

(3) The delaying notation specified in paragraph (g)(2) of this section can be removed only by an amendment to the offering statement that contains the following language:

This offering statement shall become qualified on the 20th calendar day following the filing of this amendment.

(h) Amendments.

(1) If any information in the offering statement is amended, an amendment, signed in the same manner as the initial filing, shall be filed. Seven copies of every amendment shall be filed with the Commission's Office that accepted the initial filing. Subsequent amendments to an offering shall recommence the time period for qualification.

(2) An amendment to include a delaying notation pursuant to paragraph (g)(2) or to remove one pursuant to paragraph (g)(3) of this section after the initial filing of an offering statement may be made by telegram or letter. Each such telegraphic amendment shall be confirmed in writing within a reasonable time by filing a signed copy. Such confirmation shall not be deemed an amendment.

§ 230.253 Offering Circular.

(a) *Contents.* An offering circular shall include the narrative and financial information required by Form 1–A.

(b) *Presentation of information.* Information in the offering circular shall be presented in a clear, concise and understandable manner and in a type size that is easily readable. Repetition of information should be avoided; cross-referencing of information within the document is permitted.

(c) *Date.* An offering circular shall be dated approximately as of the date of the qualification of the offering statement of which it is a part.

(d) *Cover page legend.* The cover page of every offering circular shall display the following statement in capital letters printed in boldfaced type at least as large as that used generally in the body of such offering circular:

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

(e) *Revisions.* (1) An offering circular shall be revised during the course of an offering whenever the information it contains has become false or misleading in light of existing circumstances,

material developments have occurred, or there has been a fundamental change in the information initially presented.

(2) An offering circular for a continuous offering shall be updated to include, among other things, updated financial statements, 12 months after the date the offering statement was qualified.

(3) Every revised or updated offering circular shall be filed as an amendment to the offering statement and requalified in accordance with § 230.252.

§ 230.254 Solicitation of Interest Document for Use Prior to an Offering Statement.

(a) An issuer may publish or deliver to prospective purchasers a written document or make scripted radio or television broadcasts to determine whether there is any interest in a contemplated securities offering. Following submission of the written document or script of the broadcast to the Commission, as required by paragraph (b) of this section, oral communications with prospective investors and other broadcasts are permitted. The written documents, broadcasts and oral communications are each subject to the antifraud provisions of the federal securities laws. No solicitation or acceptance of money or other consideration, nor of any commitment, binding or otherwise, from any prospective investor is permitted. No sale may be made until qualification of the offering statement.

(b) While not a condition to any exemption pursuant to this section:

(1) On or before the date of its first use, the issuer shall submit a copy of any written document or the script of any broadcast with the Commission's Regional Office for the region in which the issuer's principal business operations are conducted or are proposed to be conducted (*Attention:* Small Issues Branch) or with the Commission's main office in Washington, D.C. (*Attention:* Office of Small Business Policy). The document or broadcast script shall either contain or be accompanied by the name and telephone number of a person able to answer questions about the document or the broadcast.

Note: Only solicitation of interest material that contains substantive changes from or additions to previously submitted material needs to be submitted.

(2) The written document or script of the broadcast shall:

(i) state that no money or other consideration is being solicited, and if sent in response, will not be accepted;

(ii) state that no sales of the securities will be made or commitment to purchase accepted until delivery of an offering circular that includes complete information about the issuer and the offering;

(iii) state that an indication of interest made by a prospective investor involves no obligation or commitment of any kind; and

(iv) identify the chief executive officer of the issuer and briefly and in general its business and products.

(3) Solicitations of interest pursuant to this provision may not be made after the filing of an offering statement.

(4) Sales may not be made until 20 calendar days after the last publication or delivery of the document or radio or television broadcast.

(c) Any written document under this section may include a coupon, returnable to the issuer indicating interest in a potential offering, revealing the name, address and telephone number of the prospective investor.

(d) Where an issuer has a bona fide change of intention and decides to register an offering after using the process permitted by this section without having filed the offering statement prescribed by § 230.252, the Regulation A exemption for offers made in reliance upon this section will not be subject to integration with the registered offering, if at least 30 calendar days have elapsed between the last solicitation of interest and the filing of the registration statement with the Commission, and all solicitation of interest documents have been submitted to the Commission. With respect to integration with other offerings, see § 230.251(c).

§ 230.255 Preliminary Offering Circulars.

(a) Prior to qualification of the required offering statement, but after its filing, a written offer of securities may be made if it meets the following requirements:

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

An offering statement pursuant to Regulation A relating to these securities has been filed with the _____ Office of the Securities and Exchange Commission.

Information contained in this Preliminary Offering Circular is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time an offering circular which is not designated as a Preliminary Offering Circular is delivered and the offering statement filed with the Commission becomes qualified. This Preliminary Offering Circular shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sales of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the laws of any such state.

(2) The Preliminary Offering Circular contains substantially the information required in an offering circular by Form 1–A (§ 239.90 of this chapter), except that information with respect to 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 may be omitted. The outside front cover page of the Preliminary Offering Circular shall include a bona fide estimate of the range of the maximum offering price and maximum number of shares or other units of securities to be offered or a bona fide estimate of the principal amount of debt securities to be offered.

(3) The material is filed as a part of the offering statement.

(b) If a Preliminary Offering Circular is inaccurate or inadequate in any material respect, a revised Preliminary Offering Circular or a complete Offering Circular shall be furnished to all persons to whom securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons, or shall be sent to such persons under such circumstances that it would normally be received by them 48 hours prior to receipt of confirmation of the sale.

§ 230.256 Filing of Sales Material.

While not a condition to an exemption pursuant to this provision, seven copies of any advertisement or written communication, or the script of any radio or television broadcast, shall be filed with the Office of the Commission where the offering statement was qualified when the material is first published or delivered.

Note: Only sales material that contains substantive changes from or additions from previously filed material needs to be filed.

§ 230.257 Reports of Sales and Use of Proceeds.

While not a condition to an exemption pursuant to this provision, the issuer and/or each selling security holder shall file seven copies of a report concerning sales and use of proceeds on Form 2–A [§ 239.91 of this chapter], or other form prescribed by the Commission, with the Office of the Commission where the offering statement was qualified. This report shall be filed at the following times:

(a) Every six months after the qualification of the offering statement or any amendment until substantially all the proceeds have been applied; and

(b) within 30 calendar days after the termination, completion or final sale of securities in the offering, or the application of the proceeds from the offering, whichever is the latest event. This report should be labelled the final report. For purposes of this section, the temporary investment of proceeds pending final application shall not constitute application of the proceeds.

§ 230.258 Suspension of the Exemption.

(a) The Commission may at any time enter an order temporarily suspending a Regulation A exemption if it has reason to believe that:

(1) no exemption is available or any of the terms, conditions or requirements of the Regulation have not been complied with, including failures to provide the Commission a copy of the document or broadcast script under § 230.254, to file any sales material as required by § 230.256 or report as required by § 230.257;

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

(3) the offering is being made or would be made in violation of section 17 of the Securities Act;

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

(5) any person specified in paragraph (a) of § 230.262 has been indicted for any crime or offense of the character specified in paragraph (a)(3) of 230.262, or any proceeding has been initiated for the purpose of enjoining any such person from engaging in or continuing any conduct or practice of the character specified in paragraph (a)(4) of § 230.262;

(6) any person specified in paragraph (b) of § 230.262 has been indicted for any crime or offense of the character specified in paragraph (b)(1) of § 230.262, or any proceeding has been initiated for the purpose of enjoining any such person from engaging in or continuing any conduct or practice of the character specified in paragraph (b)(2) of § 230.262; or

(7) the issuer or any promoter, officer, director or underwriter has failed to cooperate, or has obstructed or refused to permit the making of an investigation by the Commission in connection with any offering made or proposed to be made in reliance on Regulation A.

(b) Upon the entry of an order under paragraph (a) of this section, the Commission will promptly give notice to the issuer, any underwriter and any selling security holder:

(1) that such order has been entered, together with a brief statement of the reasons for the entry of the order; and

(2) that the Commission, upon receipt of a written request within 30 calendar days after the entry of the order, will within 20 calendar days after receiving the request, order a hearing at a place to be designated by the Commission.

(c) If no hearing is requested and none is ordered by the Commission, an order entered under paragraph (a) of this section shall become permanent on the 30th calendar day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission. Where a hearing is requested or is ordered by the Commission, the Commission will, after notice of and opportunity for such hearing, either vacate the order or enter an order permanently suspending the exemption.

(d) The Commission may, at any time after notice of and opportunity for hearing, enter an order permanently suspending the exemption for any reason upon which it could have entered a temporary suspension order under paragraph (a) of this section. Any such order shall remain in effect until vacated by the Commission.

(e) All notices required by this section shall be given by personal service, registered or certified mail to the addresses given by the issuer, any underwriter and any selling security holder in the offering statement.

§ 230.259 Withdrawal or Abandonment of Offering Statements.

(a) If none of the securities which are the subject of an offering statement have been sold and such offering statement is not the subject of a proceeding under § 230.258, the offering statement may be withdrawn with the Commission's consent. The application for withdrawal shall state the reason the offering statement is to be withdrawn, shall be signed by an authorized representative of the issuer and shall be directed to the Commission's Office where the offering statement was filed.

(b) When an offering statement has been on file with the Commission for nine months without amendment and has not become qualified, the Commission may, in its discretion, proceed in the following manner to determine whether such offering statement has been abandoned by the issuer. If the offering statement has been amended, the 9-month period shall be computed from the date of the latest amendment.

(1) Notice will be sent to the issuer, and to any counsel for the issuer named in the offering statement, by registered or certified mail, return receipt requested, addressed to the most recent addresses for the issuer and issuer's counsel as reflected in the offering statement. Such notice will inform the issuer and issuer's counsel that the offering statement or amendments thereto is out of date and must be either amended to comply with applicable requirements of Regulation A or be withdrawn within 30 calendar days after the notice.

(2) If the issuer or issuer's counsel fail to respond to such notice by filing a substantive amendment or withdrawing the offering statement or does not furnish a satisfactory explanation as to why the issuer has not done so within 30 calendar days, the Commission may declare the offering statement abandoned.

§ 230.260 Insignificant Deviations from a Term, Condition or Requirement of Regulation A.

(a) A failure to comply with a term, condition or requirement of Regulation A will not result in the loss of the exemption from the requirements of section 5 of the Securities Act for any offer or sale to a particular individual or entity, if the person relying on the exemption establishes:

(1) the failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity;

(2) the failure to comply was insignificant with respect to the offering as a whole, provided that any failure to comply with paragraphs (a), (b), (d) (1) and (3) of § 230.251 shall be deemed to be significant to the offering as a whole; and

(3) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Regulation A.

(b) A transaction made in reliance upon Regulation A shall comply with all applicable terms, conditions and requirements of the regulation. Where an exemption is established only through reliance upon paragraph (a) of this section, the failure to comply shall nonetheless be actionable by the Commission under section 20 of the Act.

(c) This provision provides no relief or protection from a proceeding under § 230.258.

§ 230.261 Definitions.

As used in this Regulation A, all terms have the same meanings as in § 230.405, except that all references to "registrant" in those definitions shall refer to the issuer of the securities to be offered and sold under Regulation A. In addition, these terms have the following meanings:

(a) *Final Offering Circular*—The current offering circular contained in a qualified offering statement;

(b) *Preliminary Offering Circular*—The offering circular described in § 230.255(a).

§ 230.262 Disqualification provisions.

Unless, upon a showing of good cause and without prejudice to any other action by the Commission, the Commission determines that it is not necessary under the circumstances that the exemption provided by this Regulation A be denied, the exemption shall not be available for the offer or sale of securities, if:

(a) the issuer, any of its predecessors or any affiliated issuer:

(1) has filed a registration statement which is the subject of any pending proceeding or examination under section 8 of the Act, or has been the subject of any refusal order or stop order thereunder within 5 years prior to the filing of the offering statement required by § 230.252;

(2) is subject to any pending proceeding under § 230.258 or any similar section adopted under section 3(b) of the Securities Act, or to an order entered thereunder within 5 years prior to the filing of such offering statement;

(3) has been convicted within 5 years prior to the filing of such offering statement of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission;

(4) is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within 5 years prior to the filing of such offering statement, permanently restraining or enjoining, such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the Commission; or

(5) is subject to a United States Postal Service false representation order entered under 39 U.S.C. § 3005 within 5 years prior to the filing of the offering statement, or is subject to a temporary restraining order or preliminary injunction entered under 39 U.S.C. § 3007 with respect to conduct alleged to have violated 39 U.S.C. § 3005. The entry of an order, judgment or decree against any affiliated entity before the affiliation with the issuer arose, if the affiliated entity is not in control of the issuer and if the affiliated entity and the issuer are not under the common control of a third party who was in control of the affiliated entity at the time of such entry does not come within the purview of this paragraph (a) of this section.

(b) any director, officer or general partner of the issuer, beneficial owner of 10 percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter:

(1) has been convicted within 10 years prior to the filing of the offering statement required by § 230.252 of any felony or misdemeanor in connection with the purchase or sale of any security, involving the making of a false filing with the Commission, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;

(2) is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily enjoining or restraining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, entered within 5 years prior to the filing of such offering statement, permanently enjoining or restraining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, involving the making of a false filing with the Commission, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;

(3) is subject to an order of the Commission entered pursuant to section 15(b), 15B(a), or 15B(c) of the Exchange Act, or section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*);

(4) is suspended or expelled from membership in, or suspended or barred from association with a member of, a national securities exchange registered under section 6 of the Exchange Act or a national securities association registered under section 15A of the Exchange Act for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade; or

(5) is subject to a United States Postal Service false representation order entered under 39 U.S.C. § 3005 within 5 years prior to the filing of the offering statement required by § 230.252, or is subject to a restraining order or preliminary injunction entered under 39 U.S.C. § 3007 with respect to conduct alleged to have violated 39 U.S.C. § 3005.

(c) any underwriter of such securities was an underwriter or was named as an underwriter of any securities:

(1) covered by any registration statement which is the subject of any pending proceeding or examination under section 8 of the Act, or is the subject of any refusal order or stop order entered thereunder within 5 years prior to the filing of the offering statement required by § 230.252; or

(2) covered by any filing which is subject to any pending proceeding under § 230.258 or any similar rule adopted under section 3(b) of the Securities Act, or to an order entered thereunder within 5 years prior to the filing of such offering statement.

§ 230.263 Consent to Service of Process.

(a) If the issuer is not organized under the laws of any of the states of or the United States of America, it shall at the time of filing the offering statement required by § 230.252, furnish to the Commission a written irrevocable consent and power of attorney on Form F–X [§ 239.42 of this chapter].

(b) Any change to the name or address of the agent for service of the issuer shall be communicated promptly to the Commission through amendment of the requisite form and referencing the file number of the relevant offering statement.

10. § 230.405 is amended by adding the following definition of "small business issuer" in the appropriate alphabetical order to read as follows:

§ 230.405 Definitions of terms.

* * * * *

Small Business Issuer. The term "small business issuer" means an entity that meets the following criteria:

(1) has revenues of less than $25,000,000;

(2) is a U.S. or Canadian issuer;

(3) is not an investment company; and

(4) if a majority owned subsidiary, the parent corporation is also a small business issuer.

Provided however, that an entity is not a small business issuer if it has a public float (the aggregate market value of the outstanding securities held by non-affiliates) of $25,000,000 or more.

Note: The public float of a reporting company 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, on a date within 60 days prior to the

end of its most recent fiscal year. The public float of a company filing an initial registration statement under the Exchange Act shall be determined as of a date within 60 days of the date the registration statement is filed.

In the case of an initial public offering of securities, public float shall be computed on the basis of the number of shares outstanding prior to the offering and the estimated public offering price of the securities.

* * * * *

§ 230.481 [Amended]

11. By removing the words "in red ink," from paragraph (b)(2) of § 230.481.

§ 230.502 [Amended]

12. In § 230.502 by amending paragraph (b)(1) by removing the words "§ 230.504" and adding "§ 230.504a" and in the note to paragraph (b) by removing the words "§ 230.504(b)(2)(ii)" and adding the word "§ 230.504a(b)(2)(ii)" and in paragraph (c) by removing the words "§ 230.504(b)(1)" and adding the words "§ 230.504a(b)(1)" and in paragraph (d) by removing the words "230.504(b)(1)" and adding the words "§ 230.504a(b)(1)" and in the flush-text of paragraph (d) by removing the words "§ 230.504(b)(2)(ii)" and adding the words "§ 230.504a(b)(2)(ii)".

§ 230.504a [Redesignated from § 230.504]

13. By redesignating § 230.504 as § 230.504a and in newly redesignated § 230.504a revise the section heading to read as follows:

§ 230.504 Exemption for limited offerings and sales of securities not exceeding $1,000,000.

14. By adding § 230.504 to read as follows:

§ 230.504 Exemption for limited offerings and sales of securities not exceeding $1,000,000.

(a) *Exemption.* Offers and sales of securities that satisfy the conditions in paragraph (b) of this § 230.504 by an issuer that is not:

(1) subject to the reporting requirements of section 13 or 15(d) of the Exchange Act,;

(2) an investment company; or

(3) a development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person, shall be exempt from the provision of section 5 of the Act under section 3(b) of the Act.

(b) *Conditions to be met*—(1) To qualify for exemption under this § 230.504, offers and sales must satisfy the terms and conditions of §§ 230.501 and 230.502, except that the provisions of § 230.502(c) and (d) shall not apply to offers and sales made under this § 230.504.

(2) The aggregate offering price for an offering of securities under this § 230.504, as defined in § 230.501(c), shall not exceed $1,000,000, 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 § 230.504, in reliance on any exemption under section 3(b), or in violation of section 5(a) of the Securities Act.

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

If an issuer sold $900,000 on June 1, 1987 under this § 230.504 and an additional $4,100,000 on December 1, 1987 under § 230.505, the issuer could not sell any of its securities under this § 230.504 until December 1, 1988. Until then the issuer must count the December 1, 1987 sale towards the $1,000,000 limit within the preceding twelve months.

Note 2: If a transaction under § 230.504 fails to meet the limitation on the aggregate offering price, it does not affect the availability of this § 230.504 for the other transactions considered in applying such limitation. For example, if an issuer sold $1,000,000 worth of its securities on January 1, 1988 under this § 230.504 and an additional $500,000 worth on July 1, 1988, this § 230.504 would not be available for the later sale, but would still be applicable to the January 1, 1988 sale.

15. By revising paragraph (b)(2)(iii) introductory text and (b)(2)(iii) (A) and (B) of § 230.505 to read as follows:

§ 230.505 Exemption for limited offers and sales of securities not exceeding $5,000,000.

* * * * *

(b) * * *

(2) * * *

(iii) *Disqualifications.* No exemption under this section shall be available for the securities of any issuer described in § 230.262 of Regulation A, except that for purposes of this section only:

(A) The term "filing of the offering statement required by § 230.252" as used in § 230.262(a), (b) and (c) shall mean the first sale of securities under this section;

(B) The term "underwriter" as used in § 230.262 (b) and (c) 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 section; and

* * * * *

16. By revising paragraph (a)(2) of § 230.508 to read as follows:

§ 230.508. Insignificant deviations from a term, condition or requirement of Regulation D.

(a) * * *

(2) The failure to comply was insignificant with respect to the offering as a whole, provided that any failure to comply with paragraph (c) of § 230.502, paragraph (b)(2) of § 230.504, paragraphs (b)(2)(i) and (ii) of § 230.505 and paragraph (b)(2)(i) of § 230.506 shall be deemed to be significant to the offering as a whole; and

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

17. The authority citation for Part 239 continues to read as follows:

Authority: 15 U.S.C. 77a, et seq., unless otherwise noted.

18. By removing §§ 239.28, 239.92, 239.93, 239.94, 239.95, and 239.96.

19. § 239.10 is added to read as follows:

§ 239.10 Form SB–2, optional form for the registration of securities to be sold to the public by small business issuers.

Small business issuers defined in Rule 405 (17 CFR 230.405 of this chapter) may use this form to register securities to be sold for cash. For further information concerning eligibility toward this form see Item 10(a) of Regulation S–B (17 CFR 228.10 et seq.)

Note: The Text and Instructions of Form SB–2 will not appear in the Code of Federal Regulations.

Form SB–2

U.S. Securities and Exchange Commission,
Washington, D.C. 20549
OMB Approval
OMB Number: xxxx–xxxx
Expires: Approval Pending Estimated average burden hours per response.—1.0

Registration Statement Under the Securities Act of 1933 (Amendment No._____)

_____

(Name of small business issuer in its charter)

_____

(State or jurisdiction of incorporation or organization)

_____

(Primary Standard Industrial Classification Code Number)

_____

(I.R.S. Employer Identification No.)

_____

(Address and telephone number of principal executive offices)

_____

(Address of principal place of business or intended principal place of business)

_____

(Name, address and telephone number of agent for service)

Approximate date of proposed sale to the public

Calculation of Registration Fee

Title of each class of securities to be registered

Dollar 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

A. Use of Form and Place of Filing

1. A "small business issuer," defined in Rule 405 of the Securities Act of 1933 (the "Securities Act") may use this form to register securities to be sold for cash. See also Item 10(a) of Regulation S–B (17 CFR 228.10 et seq.)

2. Initial public offerings on Form SB–2 should be filed in the regional office that is closest to its principal place of business or the Washington, D.C. office. However, no filing may be made in the Philadelphia regional office; small business issuers in that region should file in the Atlanta, New York or Washington, D.C. offices. The Commission may refer the filing to another office for processing.

3. If the small business issuer is a reporting company or a holding company of a bank (see the definition of "bank" in section 12(i) of the Exchange Act), it should file the registration statement in the Commission's Washington, D.C. headquarters.

4. Post-effective amendments should be filed with the office that declare the registration statement effective.

B. General Requirements

1. Issuers registering securities for the first time should be aware of Form SR and Rule 463 under the Securities Act concerning sales of registered securities and the use of proceeds. First time issuers also should be aware of Exchange Act Rule 15c2–8 (§ 240.15c2–8) which requires broker dealers to deliver a prospectus 48 hours before a sale of securities can be confirmed.

2. Issuers engaged in real estate, oil and gas or mining activities should consult the Industry Guides in Item 801 of Regulation S–K (17 CFR 229.801). Real estate companies also should refer to Item 13 [Investment Policies of Registrant], Item 14 [Description of Real Estate], and Item 15 [Operating Data] of Form S–11 (17 CFR 239.18).

3. If the issuer is not organized under the laws of any of the states of or the United States of America, it shall at the time of filing this registration statement, file with the Commission a written irrevocable consent and power of attorney on Form F–X [§ 239.42]. Any change to the name or address of the agent for service of the issuer shall be communicated promptly to the Commission through amendment of the requisite form and referencing the file number of the registration statement.

Part I—Information Required in Prospectus

Item 1. Front of Registration Statement and Outside Front Cover of Prospectus

Furnish the information required by Item 501 of Regulation S–B.

Item 2. Inside Front and Outside Back Cover Pages of Prospectus

Furnish the information required by Item 502 of Regulation S–B.

Item 3. Summary Information and Risk Factors

Furnish the information required by Item 503 of Regulation S–B.

Item 4. Use of Proceeds

Furnish the information required by Item 504 of Regulation S–B.

Item 5. Determination of Offering Price

Furnish the information required by Item 505 of Regulation S–B.

Item 6. Dilution

Furnish the information required by Item 506 of Regulation S–B.

Item 7. Selling Security Holders

Furnish the information required by Item 507 of Regulation S–B.

Item 8. Plan of Distribution

Furnish the information required by Item 508 of Regulation S–B.

Item 9. Legal Proceedings

Furnish the information required by Item 103 of Regulation S–B.

Item 10. Directors, Executive Officers, Promoters and Control Persons

Furnish the information required by Item 401 of Regulation S–B.

Item 11. Security Ownership of Certain Beneficial Owners and Management

Furnish the information required by Item 403 of Regulation S–B.

Item 12. Description of Securities

Furnish the information required by Item 202 of Regulation S–B.

Item 13. Interest of Named Experts and Counsel

Furnish the information required by Item 509 of Regulation S–B.

Item 14. Disclosure of Commission Position on Indemnification for Securities Act Liabilities

Furnish the information required by Item 510 of Regulation S–B.

Item 15. Organization Within Last Five Years

Furnish the information required by Item 404 of Regulation S–B.

Item 16. Description of Business

Furnish the information required by Item 101 of Regulation S–B.

Item 17. Management's Discussion and Analysis or Plan of Operation

Furnish the information required by Item 303 of Regulation S–B.

Item 18. Description of Property

Furnish the information required by Item 102 of Regulation S–B.

Item 19. Certain Relationships and Related Transactions

Furnish the information required by Item 404 of Regulation S–B.

Item 20. Market for Common Equity and Related Stockholder Matters

Furnish the information required by Item 201 of Regulation S–B.

Item 21. Executive Compensation

Furnish the information required by Item 402 of Regulation S–B.

Item 22. Financial Statements

Furnish the information required by Item 310 of Regulation S–B.

Item 23. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

Furnish the information required by Item 304 of Regulation S–B.

Part II—Information Not Required in Prospectus

Item 24. Indemnification of Directors and Officers

Furnish the information required by Item 702 of Regulation S–B.

Item 25. Other Expenses of Issuance and Distribution

Furnish the information required by Item 511 of Regulation S–B.

Item 26. Recent Sales of Unregistered Securities

Furnish the information required by Item 701 of Regulation S–B.

Item 27. Exhibits

Furnish the exhibits required by Item 601 of Regulation S–B.

Item 28. Undertakings

Furnish the undertakings required by Item 512 of Regulation S–B.

Signatures

In accordance with 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 of filing on Form SB–2 and authorized this registration statement to be signed on its behalf by the undersigned, in the City of _____ State of _____ on _____, 19_____

(Registrant) _____

By (Signature and Title) _____

In accordance with the requirements of the Securities Act of 1933, this registration

statement was signed by the following persons in the capacities and on the dates stated.

(Signature) _____

(Title) _____

(Date) _____

Instructions for Signatures

(1) Who must sign: the small business issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and at least the majority of the board of directors or persons performing similar functions. If the issuer is a limited partnership then the general partner and a majority of its board of directors if a corporation.

(2) Beneath each signature, type or print the name of each signatory. Any person who occupies more than one of the specified positions shall indicate each capacity in which he or she signs the registration statement. *See* Rule 402 of Regulation C concerning manual signatures and Item 601 of Regulation S–B concerning signatures by powers of attorney.

20. Form S–2 (§ 239.12) is amended by adding paragraph C to General Instruction II to read as follows:

Note: The text of Form S–2 does not appear in the Code of Federal Regulations.

Form S–2

* * * * *

General Instruction

* * * * *

II. Application of General Rules and Regulations

* * * * *

C. A "small business issuer," defined in Rule 405 (17 CFR 230.405), that is eligible to use Form S–2, shall refer to the disclosure items in Regulation S–B (17 CFR 228.10 *et seq.*) and not Regulation S–K. For example, while Item 1 of Form S–2 requires the information required by Item 501 of Regulation S–K, a small business issuer shall provide the information in Item 501 of Regulation S–B. Where Regulation S–B does not contain a comparable Item, for example there is no Item "301" in Regulation S–B, then a small business issuer may omit the Item. A small business issuer shall provide the financial information in Item 310 of Regulation S–B in lieu of the financial information called for by Item 11 of Form S–2.

* * * * *

21. Form S–3 (§ 239.13) is amended by adding paragraph C to General Instruction II to read as follows:

Note: The text of Form S–3 does not appear in the Code of Federal Regulations.

Form S–3

* * * * *

General Instruction

* * * * *

II. Application of General Rules and Regulations

* * * * *

C. A "small business issuer," defined in Rule 405 (17 CFR 230.405), that is eligible to use Form S–3 shall refer to the disclosure items in Regulation S–B (17 CFR 228.10 *et seq.*) and not Regulation S-K. For example, while Item 1 of Form S–3 requires the information required by Item 501 of Regulation S–K, small business issuers shall provide the information in Item 501 of Regulation S–B. Where Regulation S–B does not contain a comparable Item, for example there is no Item "301" in Regulation S–B, then small business issuers may omit the Item. Small business issuers shall provide the financial information called for by Item 310 of Regulation S–B in lieu of the financial information called for by Item 11.

* * * * *

22. Form S–8 (§ 239.16b) is amended by adding instruction 3 to General Instruction B to read as follows:

Note: The text of Form S–8 does not appear in the Code of Federal Regulations.

Form S–8

* * * * *

General Instruction

* * * * *

B. Application of General Rules and Regulations

* * * * *

3. A "small business issuer," defined in § 230.405, shall refer to the disclosure items in Regulation S–B (17 CFR 228.10 *et seq.*) and not Regulation S–K (17 CFR 229.10 *et seq.*).

* * * * *

23. Form S–4 (§ 239.25) is amended by adding paragraph 3 to General Instruction D to read as follows:

Note: The text of Form S–4 will not appear in the Code of Federal Regulations.

Form S–4

* * * * *

General Instructions

* * * * *

D. Application of General Rules and Regulations

* * * * *

3. A *small business issuer,* defined in § 230.405, shall refer to the disclosure items in Regulation S–B (17 CFR 228.10 *et seq.*) and not Regulation S–K except with respect to disclosure called for by subpart 900 of Regulation S–K. Small business issuers shall provide or incorporate by reference the information called for by Item 310 of Regulation S–B.

* * * * *

24. By amending § 239.42 by revising the section heading and paragraph (a), removing the word "and" at the end of paragraph (d), removing the "period" at the end of paragraph (e) and adding to the end of paragraph (e) a "semi-colon" and the word "and" and adding a new paragraph (f) to read as follows: § 239.42. Form F–X, for appointment of agent for service of process and undertaking for issuers registering securities on Form F–8, F–9, F–10, or F–80 (§§ 239.38, 239.39, 239.40, or 239.41 of this chapter) or registering securities or filing periodic reports on Form 40–F (§ 249.240f of this chapter), or by any issuer or other non-U.S. person filing tender offer documents on Schedule 13E–4F, 14D–1F or 14D–9F (§§ 240.13e–102, 240.14d–102 or 240.14d–103 of this chapter), by any non-U.S. person acting as trustee with respect to securities registered on Form F–7 (§ 239.37 of this chapter), F–8, F–9, F–10, F–80 or SB–2 (§ 239.10 of this chapter), or by a Canadian issuer qualifying an offering statement pursuant to Regulation A (§ 230.251 et seq.) on Form 1–A (§ 239.90 of this chapter), or registering securities on Form SB–2.

* * * * *

(a) By any issuer registering securities on Form F–8, F–9, F–10, F–80 or SB–2 under the Securities Act of 1933;

* * * * *

(f) By a Canadian issuer qualifying an offering statement pursuant to the provisions of Regulation A, or registering securities on Form SB–2.

25. By amending Form F–X (§ 239.42) to revise the title of the form, to remove the word "and" at the end of General Instruction I(d), to revise General Instruction I(e), to add General Instruction I(f), to revise General Instructions IIE(b)(i) and F and add General Instruction G and to revise Instructions 2 to read as follows.

(**Note:** Form F–X does not appear in the Code of Federal Regulations).

U.S. Securities and Exchange Commission, Washington, DC 20549

Form F–X—Appointment of Agent for Service of Process and Undertaking, General Instructions

I. Form F–X shall be filed with the Commission:

* * * * *

(e) by any non-U.S. person acting as trustee with respect to securities registered on Form F–7, F–8, F–9, F–10, F–80, or SB–2; and

(f) by a Canadian issuer qualifying an offering statement pursuant to the provisions of Regulation A, or registering securities on Form SB–2.

* * * * *

II. * * *

E. * * *

(a) * * *

(b) any civil suit or action brought against the Filer or to which the Filer has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of any of its territories or possessions or of the District of Columbia, where the investigation, proceeding or cause of action arises out of or relates to or concerns (i) any offering made or purported to be made in connection with the securities registered or qualified by the Filer on Form (Name of form) _____ on (Date) _____ or any purchases or sales of any security in connection therewith; * * *

F. Each person filing this Form in connection with:

(a) the use of Form F–9, F–10, 40–F, or SB–2 or Schedule 13E–4F, 14D–1F or 14D–9F stipulates and agrees to appoint a successor agent for service of process and file an

amended Form F–X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time until six years have elapsed from the date the issuer of the securities to which such Forms and Schedules relate has ceased reporting under the Exchange Act;

(b) the use of Form F–8 or Form F–80 stipulates and agrees to appoint a successor agent for service of process and file an amended Form F–X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time until six years have elapsed following the effective date of the latest amendment to such Form F–8 or Form F–80;

(c) its status as trustee with respect to securities registered on Form F–7, F–8, F–9, F–10, F–80, or SB–2 stipulates and agrees to appoint a successor agent for service of process and file an amended Form F–X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time during which any of the securities subject to the indenture remain outstanding; and

(d) the use of Form 1–A or other Commission form for an offering pursuant to Regulation A stipulates and agrees to appoint a successor agent for service of process and file an amended Form F–X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time until six years have elapsed from the date of the last sale of securities in reliance upon the Regulation A exemption.

Each Filer further undertakes to advise the Commission promptly of any change to the Agent's name or address during the applicable period by amendment of this Form, referencing the file number of the relevant form in conjunction with which the amendment is being filed.

G. Each person filing this Form, other than a trustee filing in accordance with General Instruction I.(e) of this Form, undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to: the Forms, Schedules and offering statements described in General Instructions I.(a), I.(b), I.(c), I.(d) and I.(f) of this Form, as applicable; the securities to which such Forms, Schedules and offering statements relate; and the transactions in such securities.

* * * * *

Instructions

1. * * *

2. The name of each person who signs Form F–X shall be typed or printed beneath such person's signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which such person signs Form F–X. If any name is signed pursuant to a board resolution, a copy of the resolution shall be filed with each copy of Form F–X. A certified copy of such resolution shall be filed with the manually signed copy of Form F–X. If any name is signed pursuant to a power of attorney, a copy of the power of attorney shall be filed with each copy of Form F–X. A manually signed copy of such power of attorney shall be filed with the manually signed copy of Form F–X.

26. By revising §§ 239.90 and 239.91 to read as follows:

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

This form shall be used for filing under Regulation A (§§ 230.251–230.263 of this chapter).

§ 239.91. Form 2–A, report pursuant to Rule 257 of Regulation A.

This form shall be used for reports of sales and use of proceeds pursuant to Rule 257 of Regulation A (§ 230.257 of this chapter).

27. By revising Form 1–A (§ 239.90) and Form 2–A (§ 239.91) to read as follows:

(Note: Forms 1–A and 2–A do not appear in the Code of Federal Regulations).

Securities and Exchange Commission

Form 1–A—Regulation A Offering Statement Under the Securities Act of 1933

_____

(Exact name of issuer as specified in its charter)

_____

(State or other jurisdiction of incorporation or organization)

_____

(Address, including zip code, and telephone number, including area code of issuer's principal executive offices)

_____

(Name, address, including zip code, and telephone number, including area code, of agent for service)

_____

(Primary Standard Industrial Classification Code Number)

_____

(I.R.S. Employer Identification Number)

The following delaying notation is optional, but see Rule 252(g) before omitting it:

This offering statement shall only be qualified upon order of the Commission, unless a subsequent amendment is filed indicating the intention to become qualified by operation of the terms of Regulation A.

General Instructions

I. Eligibility Requirements for Use of Form 1–A

This form is to be used for securities offerings made pursuant to Regulation A, 17 CFR 230.251 *et seq.* Careful attention should be directed to the terms, conditions and requirements of the regulation, especially Rule 251, inasmuch as the exemption is not available to all issuers or to every type of securities transaction. Further, the aggregate offering amount of securities which may be sold in any 12 month period is strictly limited to $5 million.

II. Preparation and Filing of the Offering Statement

An offering statement shall be prepared by all persons seeking exemption pursuant to the provisions of Regulation A. Parts I, II and III shall be addressed by all issuers. Part II of the form which relates to the content of the required offering circular provides several alternate formats depending upon the nature and/or business of the issuer; only one format needs to be followed and provided in the offering statement. General information regarding the preparation, format, content of, and where to file the offering statement is contained in Rule 252. Requirements relating to the offering circular are contained in Rules 253 and 255. The offering statement may be printed, mimeographed, lithographed, or typewritten or prepared by any similar process which will result in clearly legible copies. The Commission will attempt to process the offering statement at the place of filing. However, the Commission may refer processing to a different office.

III. Supplemental Information

The following information shall be furnished to the Commission as supplemental information:

(1) A statement as to whether or not the amount of compensation to be allowed or paid to the underwriter has been cleared with the NASD.

(2) Any engineering, management or similar report referenced in the offering circular.

(3) Such other information as requested by the staff in support of statements, representations and other assertions contained in the offering statement.

Part I—Notification

The information requested shall be provided in the order which follows specifying each item number; the text of each item as presented in this form may be omitted. All items shall be addressed and negative responses should be included.

Item 1. Significant Parties

List the full names and business and residential addresses, as applicable, for the following persons:

(a) the issuer's directors;

(b) the issuer's officers;

(c) the issuer's general partners;

(d) record owners of 5 percent or more of any class of the issuer's equity securities;

(e) beneficial owners of 5 percent or more of any class of the issuer's equity securities;

(f) promoters of the issuer;

(g) affiliates of the issuer;

(h) counsel to the issuer with respect to the proposed offering;

(i) each underwriter with respect to the proposed offering;

(j) the underwriter's directors;

(k) the underwriter's officers;

(l) the underwriter's general partners; and

(m) counsel to the underwriter.

Item 2. Application of Rule 262

(a) State whether any of the persons identified in response to Item 1 are subject to any of the disqualification provisions set forth in Rule 262.

(b) If any such person is subject to these provisions, provide a full description including pertinent names, dates and other details, as well as whether or not an application has been made pursuant to Rule

262 for a waiver of such disqualification and whether or not such application has been granted or denied.

Item 3. Affiliate Sales

If any part of the proposed offering involves the resale of securities by affiliates of the issuer, confirm that the following description does not apply to the issuer.

The issuer has not had a net income from operations of the character in which the issuer intends to engage for at least one of its last two fiscal years.

Item 4. Jurisdictions in Which Securities Are to be Offered

(a) List the jurisdiction in which the securities are to be offered by underwriters, dealers or salespersons.

(b) List the jurisdictions in which the securities are to be offered other than by underwriters, dealers or salesmen and state the method by which such securities are to be offered.

Item 5. Unregistered Securities Issued or Sold Within One Year

(a) As to any unregistered securities issued by the issuer or any of its predecessors or affiliated issuers within one year prior to the filing of this Form 1–A, state:

(1) the name of such issuer;

(2) the title and amount of securities issued;

(3) the aggregate offering price or other consideration for which they were issued and the basis for computing the amount thereof;

(4) the names and identities of the persons to whom the securities were issued.

(b) As to any unregistered securities of the issuer or any of its predecessors or affiliated issuers which were sold within one year prior to the filing of this Form 1–A by or for the account of any person who at the time was a director, officer, promoter or principal security holder of the issuer of such securities, or was an underwriter of any securities of such issuer, furnish the information specified in subsections (1) through (4) of paragraph (a).

(c) Indicate the section of the Securities Act or Commission rule or regulation relied upon for exemption from the registration requirements of such Act and state briefly the facts relied upon for such exemption.

Item 6. Other Present or Proposed Offerings

State whether or not the issuer or any of its affiliates is currently offering or contemplating the offering of any securities in addition to those covered by this Form 1–A. If so, describe fully the present or proposed offering.

Item 7. Marketing Arrangements

(a) Briefly describe any arrangement known to the issuer or to any person named in response to Item 1 above or to any selling securityholder in the offering covered by this Form 1–A for any of the following purposes:

(1) To limit or restrict the sale of other securities of the same class as those to be offered for the period of distribution;

(2) To stabilize the market for any of the securities to be offered;

(3) For withholding commissions, or otherwise to hold each underwriter or dealer responsible for the distribution of its participation.

(b) Identify any underwriter that intends to confirm sales to any accounts over which it exercises discretionary authority and include an estimate of the amount of securities so intended to be confirmed.

Item 8. Relationship with Issuer of Experts Named in Offering Statement

If any expert named in the offering statement as having prepared or certified any part HP LaserJet III/IIIDHPLAIIII.PRSuer or any of its parents or subsidiaries or was connected with the issuer or any of its subsidiaries as a promoter, underwriter, voting trustee, director, officer or employee furnish a brief statement of the nature of such contingent basis, interest or connection.

Item 9. Use of a Solicitation of Interest Document

Indicate whether or not a written document or broadcast script authorized by Rule 254 was used prior to the filing of this notification. If so, indicate the date(s) of such use.

Part II—Offering Circular

Financial Statement requirements, regardless of the applicable disclosure model, are specified in Part F/S of this Form 1–A.

The Commission encourages the use of management's projections of future economic performance that have a reasonable basis and are presented in an appropriate format. See 17 CFR 228.10(e), 17 CFR 229.10. The Commission's safe harbor provision relative to projections is contained in Rule 175, 17 CFR 230.175.

The narrative disclosure contents of offering circulars are specified as follows:

A: For all corporate issuers—the information required by Model A of this Part II of Form 1–A.

B: For all other issuers and for any issuer that so chooses—the information required by either Part I of Form SB–2, 17 CFR 239.10, except for the financial statements called for there, or Model B of this Part II of Form 1–A. Offering circulars prepared pursuant to this instruction need not follow the order of the items or other requirements of the disclosure form. Such information shall not, however, be set forth in such a fashion as to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading. Information requested to be presented in a specified tabular format shall be given in substantially the tabular form specified in the item.

Offering Circular Model A.

General Instructions:

Each question in each paragraph of this part shall be responded to; and each question and any notes, but not any instructions thereto, shall be restated in its entirety. If the question or series of questions is inapplicable, so state. If the space provided in the format is insufficient, additional space should be created by cutting and pasting the format to add more lines.

Be very careful and precise in answering all questions. Give full and complete answers so that they are not misleading under the circumstances involved. Do not discuss any future performance or other anticipated event unless you have a reasonable basis to believe that it will actually occur within the foreseeable future. If any answer requiring significant information is materially inaccurate, incomplete or misleading, the Company, its management and principal shareholders may have liability to investors. The selling agents should exercise appropriate diligence to determine that no such inaccuracy or incompleteness has occurred, or they may be liable.

Cover Page

(Exact name of Company as set forth in Charter)

Type of securities offered:_____

Maximum number of securities offered:_____

Minimum number of securities offered: _____

Price per security: $_____

Total proceeds: If maximum sold: $_____ If minimum sold: $_____

(See Questions 9 and 10)

Is a commissioned selling agent selling the securities in this offering?

[ ] Yes [ ] No

If yes, what percent is commission of price to public? _____%.

Is there other compensation to selling agent(s)? [ ] Yes [ ] No

Is there a finder's fee or similar payment to any person?

[ ] Yes [ ] No (See Question No. 22)

Is there an escrow of proceeds until minimum is obtained?

[ ] Yes [ ] No (See Question No. 26)

Is this offering limited to members of a special group, such as employees of the Company or individuals? [ ] Yes [ ] No (See Question No. 25)

Is transfer of the securities restricted? [ ] Yes [ ] No (See Question No. 25)

Investment in small businesses involves a high degree of risk, and investors should not invest any funds in this offering unless they can afford to lose their entire investment. See Question No. 2 for the risk factors that management believes present the most substantial risks to an investor in this offering.

In making an investment decision investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities have not been recommended or approved by any federal or state securities commission or regulatory authority. Furthermore, these authorities have not passed upon the accuracy or adequacy of this document. Any representation to the contrary is a criminal offense.

The U.S. Securities and Exchange Commission does not pass upon the merits of any securities offered or the terms of the offering, nor does it pass upon the accuracy or completeness of any offering circular or selling literature. These securities are offered under an exemption from registration; however, the commission has not made an

independent determination that these securities are exempt from registration.

This Company:

[ ] Has never conducted operations.
[ ] Is in the development stage.
[ ] Is currently conducting operations.
[ ] Has shown a profit in the last fiscal year.
[ ] Other (Specify):_____

(Check at least one, as appropriate)

This offering has been registered for offer and sale in the following states:

State	State file No.	Effective date

Instruction: The Cover Page of the Offering Circular is a summary of certain essential information and should be kept on one page if at all possible. For purposes of characterizing the Company on the cover page, the term "development stage" has the same meaning as that set forth in Statement of Financial Accounting Standards No. 7 (June 1, 1975).

TABLE OF CONTENTS

	Page
The Company	
Risk Factors	
Business and Properties	
Offering Price Factors	
Use of Proceeds	
Capitalization	
Description of Securities	
Plan of Distribution	
Dividends, Distributions and Redemptions	
Officers and Key Personnel of the Company	
Directors of the Company	
Principal Stockholders	
Management Relationships, Transactions and Remuneration	
Litigation	
Federal Tax Aspects	
Miscellaneous Factors	
Financial Statements	
Managements Discussion and Analysis of Certain Relevant Factors	

This offering circular contains all of the representations by the company concerning this offering, and no person shall make different or broader statements than those contained herein. Investors are cautioned not to rely upon any information not expressly set forth in this offering circular.

This Offering Circular, together with Financial Statements and other Attachments, consists of a total of _____ pages.

The Company

1. Exact corporate name: _____

State and date of incorporation: _____

_____

Street address of principal office:

_____

_____

Company Telephone Number: ( ) _____

Fiscal year:

(month) _____

(day) _____

_____

Person(s) to contact at Company with respect to offering:

_____

Telephone Number (if different from above): (_____)_____

RISK FACTORS

2. List in the order of importance the factors which the Company considers to be the most substantial risks to an investor in this offering in view of all facts and circumstances or which otherwise make the offering one of high risk or speculative (i. e., those factors which constitute the greatest threat that the investment will be lost in whole or in part, or not provide an adequate return).

(1) _____

(2) _____

(3) _____

(4) _____

(5) _____

(6) _____

(7) _____

(8) _____

(9) _____

(10) _____

(11) _____

(12) _____

(13) _____

(14) _____

(15) _____

(16) _____

Note: In addition to the above risks, businesses are often subject to risks not foreseen or fully appreciated by management. In reviewing this Offering Circular potential investors should keep in mind other possible risks that could be important.

Instruction: The Company should avoid generalized statements and include only those factors which are unique to the Company. No specific number of risk factors is required to be identified. If more than 16 significant risk factors exist, add additional lines and number as appropriate. Risk factors may be due to such matters as cash flow and liquidity problems, inexperience of management in managing a business in the particular industry, dependence of the Company on an unproven product, absence of an existing market for the product (even though management may believe a need exists), absence of an operating history of the Company, absence of profitable operations in recent periods, an erratic financial history, the financial position of the Company, the nature of the business in which the Company is engaged or proposes to engage, conflicts of interest with management, arbitrary establishment of offering price, reliance on the efforts of a single individual, or absence of a trading market if a trading market is not expected to develop. Cross references should be made to the Questions where details of the risks are described.

Business and Properties

3. With respect to the business of the Company and its properties:

(a) Describe in detail what business the Company does and proposes to do, including what products or goods are or will be produced or services that are or will be rendered.

_____

_____

_____

_____

(b) Describe *how* these products or services are to be produced or rendered and how and when the Company intends to carry out its activities. If the Company plans to offer a new product(s), state the present stage of development, including whether or not a working prototype(s) is in existence. Indicate if completion of development of the product would require a material amount of the resources of the Company, and the estimated amount. If the Company is or is expected to be dependent upon one or a limited number of suppliers for essential raw materials, energy or other items, describe. Describe any major existing supply contracts.

_____

_____

_____

(c) Describe the industry in which the Company is selling or expects to sell its products or services and, where applicable, any recognized trends within that industry.

Describe that part of the industry and the geographic area in which the business competes or will compete.

Indicate whether competition is or is expected to be by price, service, or other basis. Indicate (by attached table if appropriate) the current or anticipated prices or price ranges for the Company's products or services, or the formula for determining prices, and how these prices compare with those of competitors' products or services, including a description of any variations in product or service features. Name the principal competitors that the Company has or expects to have in its area of competition. Indicate the relative size and financial and market strengths of the Company's competitors in the area of competition in which the Company is or will be operating. State why the Company believes it can effectively compete with these and other companies in its area of competition.

_____

_____

_____

Note: Because this Offering Circular focuses primarily on details concerning the Company rather than the industry in which the Company operates or will operate, potential investors may wish to conduct their own separate investigation of the Company's industry to obtain broader insight in assessing the Company's prospects.

(d) Describe specifically the marketing strategies the Company is employing or will employ in penetrating its market or in developing a new market. Set forth in response to Question 4 below the timing and size of the results of this effort which will be necessary in order for the Company to be profitable. Indicate how and by whom its products or services are or will be marketed (such as by advertising, personal contact by sales representatives, etc.), how its marketing structure operates or will operate and the basis of its marketing approach, including any market studies. Name any customers that account for, or based upon existing orders will account for a major portion (20% or more) of the Company's sales. Describe any major existing sales contracts.

_____

_____

_____

_____

_____

(e) State the backlog of written firm orders for products and/or services as of a recent date (within the last 90 days) and compare it with the backlog of a year ago from that date.

As of: _____/_____/_____
$_____
(a recent date)

As of: _____/_____/_____
$_____
(one year earlier)

Explain the reason for significant variations between the two figures, if any.

Indicate what types and amounts of orders are included in the backlog figures. State the size of typical orders. If the Company's sales are seasonal or cyclical, explain.

_____

_____

_____

_____

(f) State the number of the Company's present employees and the number of employees it anticipates it will have within the next 12 months. Also, indicate the number by type of employee (i.e., clerical, operations, administrative, etc.) the Company will use, whether or not any of them are subject to collective bargaining agreements, and the expiration date(s) of any collective bargaining agreement(s). If the Company's employees are on strike, or have been in the past three years, or are threatening to strike, describe the dispute. Indicate any supplemental benefits or incentive arrangements the Company has or will have with its employees.

_____

_____

_____

_____

(g) Describe generally the principal properties (such as real estate, plant and equipment, patents, etc.) that the Company owns, indicating also what properties it leases and a summary of the terms under those leases, including the amount of payments, expiration dates and the terms of any renewal options. Indicate what properties the Company intends to acquire in the immediate future, the cost of such acquisitions and the sources of financing it expects to use in obtaining these properties, whether by purchase, lease or otherwise.

_____

_____

_____

_____

(h) Indicate the extent to which the Company's operations depend or are expected to depend upon patents, copyrights, trade secrets, know-how or other proprietary information and the steps undertaken to secure and protect this intellectual property, including any use of confidentiality agreements, covenants-not-to-compete and the like. Summarize the principal terms and expiration dates of any significant license agreements. Indicate the amounts expended by the Company for research and development during the last fiscal year, the amount expected to be spent this year and what percentage of revenues research and development expenditures were for the last fiscal year.

_____

_____

_____

_____

(i) If the Company's business, products, or properties are subject to material regulation (including environmental regulation) by federal, state, or local governmental agencies, indicate the nature and extent of regulation and its effects or potential effects upon the Company.

_____

_____

_____

_____

(j) State the names of any subsidiaries of the Company, their business purposes and ownership, and indicate which are included in the Financial Statements attached hereto. If not included, or if included but not consolidated, please explain.

_____

_____

_____

_____

(k) Summarize the material events in the development of the Company (including any material mergers or acquisitions) during the past five years, or for whatever lesser period the Company has been in existence. Discuss any pending or anticipated mergers, acquisitions, spin-offs or recapitalizations. If the Company has recently undergone a stock split, stock dividend or recapitalization in anticipation of this offering, describe (and adjust historical per share figures elsewhere in this Offering Circular accordingly).

_____

_____

_____

_____

4.(a) If the Company was not profitable during its last fiscal year, list below in chronological order the events which in management's opinion must or should occur or the milestones which in management's opinion the Company must or should reach in order for the Company to become profitable, and indicate the expected manner of occurrence or the expected method by which the Company will achieve the milestones.

	Event or milestone	Expected manner of occurrence or method of achievement	Date or number of months after receipt of proceeds when should be accomplished
(1)			

	Event or milestone	Expected manner of occurrence or method of achievement	Date or number of months after receipt of proceeds when should be accomplished
(2)			
(3)			
(4)			
(5)			

(b) State the probable consequences to the Company of delays in achieving each of the events or milestones within the above time schedule, and particularly the effect of any delays upon the Company's liquidity in view of the Company's then anticipated level of operating costs. (See Question Nos. 11 and 12)

_____

_____

_____

Note: After reviewing the nature and timing of each event or milestone, potential investors should reflect upon whether achievement of each within the estimated time frame is realistic and should assess the consequences of delays or failure of achievement in making an investment decision.

Instruction: The inquiries under Business and Properties elicit information concerning the nature of the business of the Company and its properties. Make clear what aspects of the business are presently in operation and what aspects are planned to be in operation in the future. The description of principal properties should provide information which will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of the individual properties or legal descriptions by metes and bounds are not required and should not be given.

As to Question 4, if more than five events or milestones exist, add additional lines as necessary. A "milestone" is a significant point in the Company's development or an obstacle which the Company must overcome in order to become profitable.

Offering Price Factors

If the securities offered are common stock, or are exercisable for or convertible into common stock, the following factors may be relevant to the price at which the securities are being offered.

5. What were net, after-tax earnings for the last fiscal year? (If losses, show in parenthesis.)

Total $_____ ($_____ per share)

6. If the Company had profits, show offering price as a multiple of earnings. Adjust to reflect for any stock splits or recapitalizations, and use conversion or exercise price in lieu of offering price, if applicable.

$$\frac{\text{Offering Price Per Share}}{\text{Net After-Tax Earnings Last Year Per Share}} = \text{(price/earnings multiple)}$$

7.(a) What is the net tangible book value of the Company? (If deficit, show in parenthesis.) For this purpose, net tangible book value means total assets (exclusive of copyrights, patents, goodwill, research and development costs and similar intangible items) minus total liabilities.

$_____ ($_____ per share)

If the net tangible book value per share is substantially less than this offering (or exercise or conversion) price per share, explain the reasons for the variation.

_____

_____

_____

(b) State the dates on which the Company sold or otherwise issued securities during the last 12 months, the amount of such securities sold, the number of persons to whom they were sold, any relationship of such persons to the Company at the time of sale, the price at which they were sold and, if not sold for cash, a concise description of the consideration. (Exclude bank debt.)

_____

_____

_____

8.(a) What percentage of the outstanding shares of the Company will the investors in this offering have? Assume exercise of outstanding options, warrants or rights and conversion of convertible securities, if the respective exercise or conversion prices are at or less than the offering price. Also assume exercise of any options, warrants or rights and conversions of any convertible securities offered in this offering.

If the maximum is sold: _____%

If the minimum is sold: _____%

(b) What post-offering value is management implicitly attributing to the entire Company by establishing the price per security set forth on the cover page (or exercise or conversion price if common stock is not offered)? (Total outstanding shares after offering times offering price, or exercise or conversion price if common stock is not offered.)

If maximum is sold: $_____*

If minimum is sold: $_____*

(For above purposes, assume outstanding options are exercised in determining "shares" if the exercise prices are at or less than the offering price. All convertible securities, including outstanding convertible securities, shall be assumed converted and any options, warrants or rights in this offering shall be assumed exercised.)

*These values assume that the Company's capital structure would be changed to reflect any conversions of outstanding convertible securities and any use of outstanding securities as payment in the exercise of outstanding options, warrants or rights included in the calculation. The type and amount of convertible or other securities thus eliminated would be:_____. These values also assume an increase in cash in the Company by the amount of any cash payments that would be made upon cash exercise of options, warrants or rights included in the calculations. The amount of such cash would be: $_____.

Note: After reviewing the above, potential investors should consider whether or not the offering price (or exercise or conversion price, if applicable) for the securities is appropriate at the present stage of the Company's development.

Instruction: Financial information in response to Questions 5, 6 and 7 should be consistent with the Financial Statements. Earnings per share for purposes of Question 5 should be calculated by dividing earnings for the last fiscal year by the weighted average of outstanding shares during that year. No calculations should be shown for periods of less than one year or if earnings are negative or nominal. For purposes of Question 8, the "offering price" of any options, warrants or rights or convertible securities in the offering is the respective exercise or conversion price.

Use of Proceeds

9.(a) The following table sets forth the use of the proceeds from this offering:

	If minimum sold	If maximum sold
	Amount %	Amount %
Total Proceeds	$.....	$.....
Less: Offering Expenses, Commissions & Finders Fees	100%	100%
Legal & Accounting		
Copying & Advertising		
Other (Specify):		
Net Proceeds from Offering		
Use of Net Proceeds		
	$.....	$.....
	$.....	

	If minimum sold	If maximum sold
	Amount %	Amount %
Total Use of Net Proceeds		
	$..... 100%	$..... 100%

(b) If there is no minimum amount of proceeds that must be raised before the Company may use the proceeds of the offering, describe the order of priority in which the proceeds set forth above in the column "If Maximum Sold" will be used.

Note: After reviewing the portion of the offering allocated to the payment of offering expenses, and to the immediate payment to management and promoters of any fees, reimbursements, past salaries or similar payments, a potential investor should consider whether the remaining portion of his investment, which would be that part available for future development of the Company's business and operations, would be adequate.

10.(a) If material amounts of funds from sources other than this offering are to be used in conjunction with the proceeds from this offering, state the amounts and sources of such other funds, and whether funds are firm or contingent. If contingent, explain.

(b) If any material part of the proceeds is to be used to discharge indebtedness, describe the terms of such indebtedness, including interest rates. If the indebtedness to be discharged was incurred within the current or previous fiscal year, describe the use of proceeds of such indebtedness.

(c) If any material amount of proceeds is to be used to acquire assets, other than in the ordinary course of business, briefly describe and state the cost of the assets and other material terms of the acquisitions. If the assets are to be acquired from officers, directors, employees or principal stockholders of the Company or their associates, give the names of the persons from whom the assets are to be acquired and set forth the cost to the Company, the method followed in determining the cost, and any profit to such persons.

(d) If any amount of the proceeds is to be used to reimburse any officer, director, employee or stockholder for services already rendered, assets previously transferred, or monies loaned or advanced, or otherwise, explain:

11. Indicate whether the Company is having or anticipates having within the next 12 months any cash flow or liquidity problems and whether or not it is in default or in breach of any note, loan, lease or other indebtedness or financing arrangement requiring the Company to make payments. Indicate if a significant amount of the Company's tradepayables have not been paid within the stated trade term. State whether the Company is subject to any unsatisfied judgments, liens or settlement obligations and the amounts thereof. Indicate the Company's plans to resolve any such problems.

12. Indicate whether proceeds from this offering will satisfy the Company's cash requirements for the next 12 months, and whether it will be necessary to raise additional funds. State the source of additional funds, if known.

Instruction: Use of net proceeds should be stated with a high degree of specificity. Suggested (but not mandatory) categories are: leases, rent, utilities, payroll (by position or type), purchase or lease of specific items of equipment or inventory, payment of notes, accounts payable, etc., marketing or advertising costs, taxes, consulting fees, permits, professional fees, insurance and supplies. Categories will vary depending on the Company's plans. Use of footnotes or other explanation is recommended where appropriate. Footnotes should be used to indicate those items of offering expenses that are estimates. Set forth in separate categories all payments which will be made immediately to the Company's executive officers, directors and promoters, indicating by footnote that these payments will be so made to such persons. If a substantial amount is allocated to working capital, set forth separate sub-categories for use of the funds in the Company's business.

If any substantial portion of the proceeds has not been allocated for particular purposes, a statement to that effect as one of the Use of Net Proceeds categories should be included together with a statement of the amount of proceeds not so allocated and a footnote explaining how the Company expects to employ such funds not so allocated.

Capitalization

13. Indicate the capitalization of the Company as of the most recent balance sheet date (adjusted to reflect any subsequent stock splits, stock dividends, recapitalizations or refinancings) and as adjusted to reflect the sale of the minimum and maximum amount of securities in this offering and the use of the net proceeds therefrom:

	Amount outstanding		
	As of: / / (date)	As adjusted	
		Minimum	Maximum
Debt:			
Short-term debt (average interest rate %).	$.....	$.....	$.....
Long-term debt (average interest rate %).	.....	.....	.....
Total debt	.....	.....	.....
Stockholders equity (deficit):			
Preferred stock—par or stated value (by class of preferred in order of preferences).			
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
Common stock—par or stated value.	.....	.....	.....
Additional paid in capital.	.....	.....	.....
Retained earnings (deficit).	.....	.....	.....
Total stockholders equity (deficit).	.....	.....	.....
Total Capitalization.	.....	.....	.....

Number of class of preferred	Par Value shares authorized	Per share
.....	$	.....
.....	$	.....
.....	$	.....

Number of common shares authorized: _____ shares. Par or stated value per share, if any: $_____

Number of common shares reserved to meet conversion requirements or for the issuance upon exercise of options, warrants or rights:_____ shares.

Instruction: Capitalization should be shown as of a date no earlier than that of the most recent Financial Statements provided pursuant to Question 46. If the Company has mandatory redeemable preferred stock, include the amount thereof in "long term debt" and so indicate by footnote to that category in the capitalization table.

Description of Securities

14. The securities being offered hereby are:
[ ] Common Stock
[ ] Preferred or Preference Stock
[ ] Notes or Debentures
[ ] Units of two or more types of securities composed of: _____
[ ] Other: _____

15. These securities have:

Yes	No	
[ ]	[ ]	Cumulative voting rights
[ ]	[ ]	Other special voting rights
[ ]	[ ]	Preemptive rights to purchase in new issues of shares
[ ]	[ ]	Preference as to dividends or interest
[ ]	[ ]	Preference upon liquidation
[ ]	[ ]	Other special rights or preferences (specify):

Explain:

16. Are the securities convertible? [ ] Yes [ ] No
If so, state conversion price or formula.

Date when conversion becomes effective: / /
Date when conversion expires: / /

17.(a) If securities are notes or other types of debt securities:
(1) What is the interest rate? _____%
If interest rate is variable or multiple rates, describe:

(2) What is the maturity date? / /

If serial maturity dates, describe:

(3) Is there a mandatory sinking fund? [ ] Yes [ ] No
Describe: _____

(4) Is there a trust indenture? [ ] Yes [ ] No Name, address and telephone number of Trustee

(5) Are the securities callable or subject to redemption? [ ] Yes [ ] No
Describe, including redemption prices:

(6) Are the securities collateralized by real or personal property?
[ ] Yes [ ] No Describe:

(7) If these securities are subordinated in right of payment of interest or principal, explain the terms of such subordination.

How much currently outstanding indebtedness of the Company is senior to the securities in right of payment of interest or principal? $_____

How much indebtedness shares in right of payment on an equivalent (pari passu) basis? $_____

How much indebtedness is junior (subordinated) to the securities? $_____

(b) If notes or other types of debt securities are being offered and the Company had earnings during its last fiscal year, show the ratio of earnings to fixed charges on an actual and pro forma basis for that fiscal year. "Earnings" means pretax income from continuing operations plus fixed charges and capitalized interest. "Fixed charges" means interest (including capitalized interest), amortization of debt discount, premium and expense, preferred stock dividend requirements of majority owned subsidiary, and such portion of rental expense as can be demonstrated to be representative of the interest factor in the particular case. The pro forma ratio of earnings to fixed charges should include incremental interest expense as a result of the offering of the notes or other debt securities.

	Last fiscal year		
	Actual	Pro forma	
		Minimum	Maximum
"Earnings"="Fixed Charges"			
If no earnings show "Fixed Charges" only			

Note: Care should be exercised in interpreting the significance of the ratio of earnings to fixed charges as a measure of the "coverage" of debt service, as the existence of earnings does not necessarily mean that the Company's liquidity at any given time will permit payment of debt service requirements to be timely made. See Question Nos. 11 and 12. See also the Financial Statements and especially the Statement of Cash Flows.

18. If securities are Preference or Preferred stock: Are unpaid dividends cumulative?
[ ] Yes [ ] No Are securities callable?
[ ] Yes [ ] No
Explain:

Note: Attach to this Offering Circular copies or a summary of the charter, bylaw or contractual provision or document that gives rise to the rights of holders of Preferred or Preference Stock, notes or other securities being offered.

19. If securities are capital stock of any type, indicate restrictions on dividends under loan or other financing arrangements or otherwise:

20. Current amount of assets available for payment of dividends if deficit must be first made up, show deficit in parenthesis):
$_____.

PLAN OF DISTRIBUTION

21. The selling agents (that is, the persons selling the securities as agent for the Company for a commission or other compensation) in this offering are:
Name:
Address:

Telephone No. ( ) _____
Name:
Address:

Telephone No. ( ) _____

22. Describe any compensation to selling agents or finders, including cash, securities, contracts or other consideration, in addition to the cash commission set forth as a percent of the offering price on the cover page of this Offering Circular. Also indicate whether the Company will indemnify the selling agents or finders against liabilities under the securities laws. ("Finders" are persons who for compensation act as intermediaries in obtaining selling agents or other-wise making introductions in furtherance of this offering.)

23. Describe any material relationships between any of the selling agents or finders and the Company or its management.

Note: After reviewing the amount of compensation to the selling agents or finders for selling the securities, and the nature of any relationship between the selling agents or finders and the Company, a potential investor should assess the extent to which it may be inappropriate to rely upon any recommendation by the selling agents or finders to buy the securities.

24. If this offering is not being made through selling agents, the names of persons at the Company through which this offering is being made:
Name:
Address:

Telephone No. ( ) _____
Name:
Address:

Telephone No. ( ) _____

25. If this offering is limited to a special group, such as employees of the Company, or is limited to a certain number of individuals (as required to qualify under Subchapter S of the Internal Revenue Code) or is subject to any other limitations, describe the limitations and any restrictions on resale that apply:

Will the certificates bear a legend notifying holders of such restrictions?
[ ] Yes [ ] No

26. (a) Name, address and telephone number of independent bank or savings and loan association or other similar depository institution acting as escrow agent if proceeds are escrowed until minimum proceeds are raised:

(b) Date at which funds will be returned by escrow agent if minimum proceeds are not raised:

Will interest on proceeds during escrow period be paid to investors? [ ] Yes [ ] No

27. Explain the nature of any resale restrictions on presently outstanding shares, and when those restrictions will terminate, if this can be determined:

Note: Equity investors should be aware that unless the Company is able to complete a further public offering or the Company is able to be sold for cash or merged with a public company that their investment in the Company may be illiquid indefinitely.

Dividends, Distributions and Redemptions

28. If the Company has within the last five years paid dividends, made distributions upon its stock or redeemed any securities, explain how much and when:

Officers and Key Personnel of the Company

29. Chief Executive Officer:
Title:
Name:
Age:
Office Street Address:

Telephone No.: ( ) _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company [ ] Yes [ ] No

Indicate amount of time to be spent on Company matters if less than full time:

30. Chief Operating Officer:
Title:
Name:
Age:
Office Street Address:

Telephone No.: ( ) _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company? [ ] Yes [ ] No

Indicate amount of time to be spent on Company matters if less than full time:

31. Chief Financial Officer:

Title: _____

Name: _____

Age: _____

Office Street Address:

Telephone No.: ( ) _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company? [ ] Yes [ ] No

Indicate amount of time to be spent on Company matters if less than full time:

32. Other Key Personnel:

(A) Name: _____

Age: _____

Title: _____

Office Street Address:

Telephone No.: ( ) _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company? [ ] Yes [ ] No

Indicate amount of time to be spent on Company matters if less than full time:

(B) Name: _____

Age: _____

Title: _____

Office Street Address:

Telephone No.: ( ) _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company? [ ] Yes [ ] No

Indicate amount of time to be spent on Company matters if less than full time:

Instruction: The term "Chief Executive Officer" means the officer of the Company who has been delegated final authority by the board of directors to direct all aspects of the Company's affairs. The term "Chief Operating Officer" means the officer in charge of the actual day-to-day operations of the Company's business. The term "Chief Financial Officer" means the officer having accounting skills who is primarily in charge of assuring that the Company's financial books and records are properly kept and maintained and financial statements prepared.

The term "key personnel" means persons such as vice presidents, production managers, sales managers, or research scientists and similar persons, who are not included above, but who make or are expected to make significant contributions to the business of the Company, whether as employees, independent contractors, consultants or otherwise.

Directors of the Company

33. Number of Directors: _____. If Directors are not elected annually, or are elected under a voting trust or other arrangement, explain:

34. Information concerning outside or other Directors (i.e. those not described above):

(A) Name: _____

Age: _____

Office Street Address:

Telephone No.: ( ) _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

(B) Name: _____

Age: _____

Office Street Address:

Telephone No.: ( )

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

(C) Name:

Age:

Office Street Address:

Telephone No.: ( )

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

35. (a) Have any of the Officers or Directors ever worked for or managed a company (including a separate subsidiary or division of a larger enterprise) in the same business as the Company? [ ] Yes [ ] No

Explain:

(b) If any of the Officers, Directors or other key personnel have ever worked for or managed a company in the same business or industry as the Company or in a related business or industry, describe what precautions, if any (including the obtaining of releases or consents from prior employers), have been taken to preclude claims by prior employers for conversion or theft of trade secrets, know-how or other proprietary information.

(c) If the Company has never conducted operations or is otherwise in the development stage, indicate whether any of the Officers or Directors has ever managed any other company in the start-up or development stage and describe the circumstances, including relevant dates.

(d) If any of the Company's key personnel are not employees but are consultants or other independent contractors, state the details of their engagement by the Company.

(e) If the Company has key man life insurance policies on any of its Officers, Directors or key personnel, explain, including the names of the persons insured, the amount of insurance, whether the insurance proceeds are payable to the Company and whether there are arrangements that require the proceeds to be used to redeem securities or pay benefits to the estate of the insured person or a surviving spouse.

36. If a petition under the Bankruptcy Act or any State insolvency law was filed by or against the Company or its Officers, Directors or other key personnel, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of any such persons, or any partnership in which any of such persons was a general partner at or within the past five years, or any corporation or business association of which any such person was an executive officer at or within the past five years, set forth below the name of such persons, and the nature and date of such actions.

Note: After reviewing the information concerning the background of the Company's Officers, Directors and other key personnel, potential investors should consider whether or not these persons have adequate background and experience to develop and operate this Company and to make it successful. In this regard, the experience and ability of management are often considered the most significant factors in the success of a business.

Principal Stockholders

37. Principal owners of the Company (those who beneficially own directly or indirectly 10% or more of the common and preferred stock presently outstanding) starting with the largest common stockholder. Include separately all common stock issuable upon conversion of convertible securities (identifying them by asterisk) and show average price per share as if conversion has occurred. Indicate by footnote if the price paid was for a consideration other than cash and the nature of any such consideration.

Class of shares	Average price per share	Number of shares now held	Percent of total	Number of shares held after offering if all securities sold	Percent of total
Name:					
Office Street Address:					

Class of shares	Average price per share	Number of shares now held	Percent of total	Number of shares held after offering if all securities sold	Percent of total
.....					
Telephone No. ( )_____					
Principal occupation:					
Name:					
Office Street Address:					
Telephone No. ( )_____					
Principal occupation:					
Name:					
Office Street Address:					
Telephone No. ( )_____					
Principal occupation:					
Name:					
Office Street Address:					
Telephone No. ( )_____					
Principal occupation:					

38. Number of shares beneficially owned by Officers and Directors as a group:
Before offering: _____ shares (____ % of total outstanding)
After offering:
(a) Assuming minimum securities sold: _____ shares (____ % of total outstanding)
(b) Assuming maximum securities sold: _____ shares (____ % of total outstanding)
(Assume all options exercised and all convertible securities converted.)

Instruction: If shares are held by family members, through corporations or partnerships, or otherwise in a manner that would allow a person to direct or control the voting of the shares (or share in such direction or control—as, for example, a co-trustee) they should be included as being "beneficially owned." An explanation of these circumstances should be set forth in a footnote to the "Number of Shares Now Held."

Management Relationships, Transactions and Remuneration

39.(a) If any of the Officers, Directors, key personnel or principal stockholders are related by blood or marriage, please describe.

_____

_____

_____

(b) If the Company has made loans to or is doing business with any of its Officers, Directors, key personnel or 10% stockholders, or any of their relatives (or any entity controlled directly or indirectly by any such persons) within the last two years, or proposes to do so within the future, explain. (This includes sales or lease of goods, property or services to or from the Company, employment or stock purchase contracts, etc.) State the principal terms of any significant loans, agreements, leases, financing or other arrangements.

_____

_____

_____

_____

(c) If any of the Company's Officers, Directors, key personnel or 10% stockholders has guaranteed or co-signed any of the Company's bank debt or other obligations, including any indebtedness to be retired from the proceeds of this offering, explain and state the amounts involved.

_____

_____

_____

_____

40.(a) List all remuneration by the Company to Officers, Directors and key personnel for the last fiscal year:

	Cash	Other
Chief Executive Officer	$	$
Chief Operating Officer		
Chief Accounting Officer		
Key Personnel:		
Others:		
Total:		
Directors as a group (number of persons)		

(b) If remuneration is expected to change or has been unpaid in prior years, explain:

(c) If any employment agreements exist or are contemplated, describe:

41.(a) Number of shares subject to issuance under presently outstanding stock purchase agreements, stock options, warrants or rights: _____ shares (____% of total shares to be outstanding after the completion of the offering if all securities sold, assuming exercise of options and conversion of convertible securities). Indicate which have been approved by shareholders. State the expiration dates, exercise prices and other basic terms for these securities:

(b) Number of common shares subject to issuance under existing stock purchase or option plans but not yet covered by outstanding purchase agreements, options or warrants: _____ shares.

(c) Describe the extent to which future stock purchase agreements, stock options, warrants or rights must be approved by shareholders.

42. If the business is highly dependent on the services of certain key personnel, describe any arrangements to assure that these persons will remain with the Company and not compete upon any termination:

Note: After reviewing the above, potential investors should consider whether or not the compensation to management and other key personnel directly or indirectly, is reasonable in view of the present stage of the Company's development.

Instruction: For purposes of Question 39(b), a person directly or indirectly controls an entity if he is part of the group that directs or is able to direct the entity's activities or affairs. A person is typically a member of a control group if he is an officer, director, general partner, trustee or beneficial owner of a 10% or greater interest in the entity. In Question 40, the term "Cash" should indicate salary, bonus, consulting fees, non-accountable expense accounts and the like. The column captioned "Other" should include the value of any options or securities given, any annuity, pension or retirement benefits, bonus or profit-sharing plans, and personal benefits (club memberships, company cars, insurance benefits not generally available to employees, etc.). The nature of these benefits should be explained in a footnote to this column.

Litigation

43. Describe any past, pending or threatened litigation or administrative action which has had or may have a material effect upon the Company's business, financial condition, or operations, including any litigation or action involving the Company's Officers, Directors or other key personnel. State the names of the principal parties, the nature and current status of the matters, and amounts involved. Give an evaluation by management or counsel, to the extent feasible, of the merits of the proceedings or litigation and the potential impact on the Company's business, financial condition, or operations.

Federal Tax Aspects

44. If the Company is an S corporation under the Internal Revenue Code of 1986, and it is anticipated that any significant tax benefits will be available to investors in this offering, indicate the nature and amount of such anticipated tax benefits and the material risks of their disallowance. Also, state the name, address and telephone number of any tax advisor that has passed upon these tax benefits. Attach any opinion or description of the tax consequences of an investment in the securities by the tax advisor.

Name of Tax Advisor: _____

Address: _____

Telephone No. (_____) _____-_____

Note: Potential investors are encouraged to have their own personal tax consultant contact the tax advisor to review details of the tax benefits and the extent that the benefits would be available and advantageous to the particular investor.

Miscellaneous Factors

45. Describe any other material factors, either adverse or favorable, that will or could affect the Company or its business (for example, discuss any defaults under major contracts, any breach of bylaw provisions, etc.) or which are necessary to make any other information in this Offering Circular not misleading or incomplete.

Financial Statements

46. Provide the financial statements required by Part F/S of this Offering Circular section of Form 1–A.

Management's Discussion and Analysis of Certain Relevant Factors

47. If the Company's financial statements show losses from operations, explain the causes underlying these losses and what steps the Company has taken or is taking to address these causes.

48. Describe any trends in the Company's historical operating results. Indicate any changes now occurring in the underlying economics of the industry or the Company's business which, in the opinion of Management, will have a significant impact (either favorable or adverse) upon the Company's results of operations within the next 12 months, and give a rough estimate of the probable extent of the impact, if possible.

49. If the Company sells a product or products and has had significant sales during its last fiscal year, state the existing gross margin (net sales less cost of such sales as presented in accordance with generally accepted accounting principles) as a percentage of sales for the last fiscal year: _____%. What is the anticipated gross margin for next year of operations? Approximately _____%. If this is expected to change, explain. Also, if reasonably current gross margin figures are available for the industry, indicate these figures and the source or sources from which they are obtained.

_____

_____

_____

_____

50. Foreign sales as a percent of total sales for last fiscal year: _____%. Domestic government sales as a percent of total domestic sales for last fiscal year: _____%. Explain the nature of these sales, including any anticipated changes:

_____

_____

_____

_____

Offering Circular Model B.

Item 1. Cover Page

The cover page of the offering circular shall include the following information:

(a) Name of the issuer;

(b) The mailing address of the issuer's principal executive offices including the zip code and the issuer's telephone number;

(c) Date of the offering circular;

(d) Description and amount of securities offered (**Note:** this description should include, for example, appropriate disclosure of redemption and conversion features of debt securities);

(e) The statement required by Rule 253;

(f) The table(s) required by Item 2;

(g) The name of the underwriter or underwriters;

(h) Any materials required by the law of any state in which the securities are to be offered;

(i) If applicable, identify material risks in connection with the purchase of the securities; and

(j) Approximate date of commencement of proposed sale to the public.

Instruction: Where the name of the issuer is the same as the name of another well-known company or indicates a line of business in which the issuer is not engaged or is engaged to only a limited extent, a statement should be furnished to that effect. In some circumstances, however, disclosure may not be sufficient, and a change of name may be the only way to cure its misleading character.

Item 2. Distribution Spread

(a) The information called for by the following table shall be given, in substantially the tabular form indicated, on the outside front cover page of the offering circular as to all securities being offered (estimate, if necessary).

Underwriting	Proceeds price to public	Discount and commissions	To issuer or other persons
Per unit			
Total			

If the securities are to be offered on a best efforts basis, the cover page should set forth the termination date, if any, of the offering, any minimum required sale and any arrangements to place the funds received in an escrow, trust, or similar arrangement. The following tabular presentation of the total maximum and minimum securities to be offered should be combined with the table required above.

	Price to public	Underwriting discount and commissions	Proceeds to issuer or other persons
Total minimum			
Total maximum			

Instructions

1. The term "commissions" shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made in connection with the sale of such security.

2. Only commissions paid by the issuer in cash are to be indicated in the table. Commissions paid by other persons or any form of non-cash compensation shall be briefly identified in a note to the table with a cross-reference to a more complete description elsewhere in the offering circular.

3. Prior to the commencement of sales pursuant to Regulation A, the issuer shall inform the Commission whether or not the amount of compensation to be allowed or paid to the underwriters, as described in the offering statement, has been cleared with the National Association of Securities Dealers, Inc.

4. If the securities are not to be offered for cash, state the basis upon which the offering is to be made.

5. If it is impracticable to state the price to the public, the method by which it is to be determined shall be explained.

(b) Any finder's fees or similar payments shall be disclosed on the cover page with a reference to a more complete discussion in the offering circular. Such disclosure should identify the finder, the nature of the services rendered and the nature of any relationship between the finder and the issuer, its officers, directors, promoters, principal stockholders and underwriters (including any affiliates thereof).

(c) The amount of the expenses of the offering borne by the issuer, including underwriting expenses to be borne by the issuer, should be disclosed in a footnote to the table.

Item 3. Summary Information, Risk Factors and Dilution

(a) Where appropriate to a clear understanding by investors, there should be set forth in the forepart of the offering circular, under an appropriate caption, a carefully organized series of short, concise paragraphs, summarizing the principal factors which make the offering one of high risk or speculative. *Note:* These factors may be due to such matters as an absence of an operating history of the issuer, an absence of profitable operations in recent periods, an erratic financial history, the financial position of the issuer, the nature of the business in which the issuer is engaged or proposes to engage, conflicts of interest with management, reliance on the efforts of a single individual, or the method of determining the market price where no market currently exists. Issuers should avoid generalized statements and include only those factors which are unique to the issuer.

(b) Where there is a material disparity between the public offering price and the effective cash cost to officers, directors, promoters and affiliated persons for shares acquired by them in a transaction during the past three years, or which they have a right to acquire, there should 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 the extent of the dilution makes it appropriate, the following shall be given: (1) the net tangible book value per share before and after the distribution; (2) the amount of the increase in such net tangible book value per share attributable to the cash payment made by purchasers of the shares being offered; and (3) the amount of the immediate dilution from the public offering price which will be absorbed by such purchasers.

Item 4. Plan of Distribution

(a) If the securities are to be offered through underwriters, give the names of the principal underwriters, and state the respective amounts underwritten. Identify each such underwriter having a material relationship to the issuer and state the nature of the relationship. State briefly the nature of the underwriters' obligation to take the securities.

(b) State briefly the discounts and commissions to be allowed or paid to dealers, including all cash, securities, contracts or other consideration to be received by any dealer in connection with the sale of the securities.

(c) Outline briefly the plan of distribution of any securities being issued which are to be offered through the selling efforts of brokers or dealers or otherwise than through underwriters.

(d) If any of the securities are to be offered for the account of security holders, indicate on the cover page the total amount to be offered for their account and include a cross-reference to a fuller discussion elsewhere in the offering circular. Such discussion should identify each selling security holder, state the amount owned by him, the amount offered for

his account and the amount to be owned after the offering.

(e)(1) Describe any arrangements for the return of funds to subscribers if all of the securities to be offered are not sold; if there are no such arrangements, so state.

(2) If there will be a material delay in the payment of the proceeds of the offering by the underwriter to the issuer, the salient provisions in this regard and the effects on the issuer should be stated.

Instruction

Attention is directed to the provisions of Rules 10b–9 [17 CFR § 240.10b–9] and 15c2–4 [17 CFR § 240.15c2–4] under the Securities Exchange Act of 1934. These rules outline, among other things, antifraud provisions concerning the return of funds to subscribers and the transmission of proceeds of an offering to a seller.

Item 5. Use of Proceeds to Issuer

State the principal purposes for which the net proceeds to the issuer from the securities to be offered are intended to be used, and the approximate amount intended to be used for each such purpose.

Instructions

1. If any substantial portion of the proceeds has not been allocated for particular purposes, a statement to that effect shall be made together with a statement of the amount of proceeds not so allocated and how the registrant expects to employ such funds not so allocated.

2. Include a statement as to the use of the actual proceeds if they are not sufficient to accomplish the purpose set forth and the order of priority in which they will be applied. However, such statement need not be made if the underwriting arrangements are such that, if any securities are sold to the public, it can be reasonably expected that the actual proceeds of the issue will not be substantially less than the estimated aggregate proceeds to the issuer as shown under Item 2.

3. If any material amounts of other funds are to be used in conjunction with the proceeds, state the amounts and sources of such other funds.

4. If any material part of the proceeds is to be used to discharge indebtedness, describe the terms of such indebtedness. If the indebtedness to be discharged was incurred within one year, describe the use of the proceeds of such indebtedness.

5. If any material amount of the proceeds is to be used to acquire assets, otherwise than in the ordinary course of business, briefly describe and state the cost of the assets. If the assets are to be acquired from affiliates of the issuer 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 issuer.

6. The issuer may reserve the right to change the use of proceeds provided that such reservation is due to certain contingencies which are adequately disclosed.

Item 6. Description of Business

(a) Narrative description of business.

(1) Describe the business done and intended to be done by the issuer and its subsidiaries and the general development of the business during the past five years or such shorter period as the issuer may have been in business. Such description should include, but not be limited to, a discussion of the following factors if such factors are material to an understanding of the issuer's business:

(i) The principal products produced and services rendered and the principal markets for and method of distribution of such products and services.

(ii) The status of a product or service if the issuer has made public information about a new product or service which would require the investment of a material amount of the assets of the issuer or is otherwise material.

(iii) The estimated amount spent during each of the last two fiscal years on company-sponsored research and development activities determined in accordance with generally accepted accounting principles. In addition, state the estimated dollar amount spent during each of such years on material customer-sponsored research activities relating to the development of new products, services or techniques or the improvement of existing products, services or techniques.

(iv) The number of persons employed by the issuer, indicating the number employed full time.

(v) 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, may have upon the capital expenditures, earnings and competitive position of the issuer and its subsidiaries. The issuer shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and for such further periods as the issuer may deem material.

(2) The issuer should also describe those distinctive or special characteristics of the issuer's operation or industry which may have a material impact upon the issuer's future financial performance. Examples of factors which might be discussed include dependence on one or a few major customers or suppliers (including suppliers of raw materials or financing), existing or probable governmental regulation, material terms of and/or expiration of material labor contracts or patents, trademarks, licenses, franchises, concessions or royalty agreements, unusual competitive conditions in the industry, cyclicality of the industry and anticipated raw material or energy shortages to the extent management may not be able to secure a continuing source of supply.

(3) The following requirement in subparagraph (i) applies only to issuers (including predecessors) which have not received revenue from operations during each of the three fiscal years immediately prior to the filing of the offering statement.

(i) Describe, if formulated, the issuer's plan of operation for the twelve months following the commencement of the proposed offering. If such information is not available, the reasons for its unavailability shall be stated. Disclosure relating to any plan should include, among other things, a statement indicating whether, in the issuer's opinion, the proceeds from the offering will satisfy its cash requirements and whether, in the next six months, it will be necessary to raise additional funds.

(ii) Any engineering, management or similar reports which have been prepared or provided for external use by the issuer or by a principal underwriter in connection with the proposed offering should be furnished to the Commission at the time of filing the offering statement or as soon as practicable thereafter. There should also be furnished at the same time a statement as to the actual or proposed use and distribution of such report or memorandum. Such statement should identify each class of persons who have received or will receive the report or memorandum, and state the number of copies distributed to each such class. If no such report or memorandum has been prepared, the Commission should be so informed in writing at the time the report or memorandum would otherwise have been submitted.

(b) Segment Data. If the issuer is required to include segment information in its financial statements, an appropriate cross-reference shall be included in the description of business.

Item 7. Description of Property

State briefly the location and general character of the principal plants, and other materially important physical properties of the issuer and its subsidiaries. If any such property is not held in fee or is held subject to any major encumbrance, so state and briefly describe how held.

Instruction

What is required is information essential to an investor's appraisal of the securities being offered. Such information should be furnished as will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and should not be given.

Item 8. Directors, Executive Officers and Significant Employees

(a) List the names and ages of each of the following persons stating his term of office and any periods during which he has served as such and briefly describe 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 to his office or position:

(1) directors;

(2) persons nominated to become directors;

(3) executive officers;

(4) persons chosen to become executive officers;

(5) significant employees.

Instructions

1. No nominee or person chosen to become a director or person chosen to be an executive officer who has not consented to act as such should be named in response to this item.

2. The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration, or finance) and any other person who performs similar policy making functions for the issuer.

3. The term "significant employee" means 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 issuer.

(b) Family relationships. State the nature of any family relationship between any director, executive officer, person nominated or chosen by the issuer to become a director or executive officer or any significant employee.

Instruction

The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(c) Business experience. Give a brief account of the business experience during the past five years of each director, person nominated or chosen to become a director or executive officer, and each significant employee, 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 significant employee has been employed by the issuer for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of this 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.

(d) Involvement in certain legal proceedings. Describe any of the following events which occurred during the past five years and which are material to an evaluation of the ability or integrity of any director, person nominated to become a director or executive officer of the issuer.

(1) A petition under the Bankruptcy Act 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 general partner at or within 2 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 (excluding traffic violations and other minor offenses).

Item 9. Remuneration of Directors and Officers

(a) Furnish, in substantially the tabular form indicated, the aggregate annual remuneration of each of the three highest paid persons who are officers or directors as a group during the issuer's last fiscal year. State the number of persons in the group referred to above without naming them.

Name of individual or identity of group

_____

Capacities in remuneration was received

_____

Aggregate remuneration

_____

Instructions

1. In case of remuneration paid or to be paid otherwise than in cash, if it is impracticable to determine the cash value thereof, state in a note to the table the nature and amount thereof.

2. This item is to be answered on an accrual basis if practicable; if not so answered, state the basis used.

(b) Briefly describe all remuneration payments proposed to be made in the future pursuant to any ongoing plan or arrangement to the individuals and group specified in Item 9(a). The description should 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 measurements 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.

Item 10. Security Ownership of Management and Certain Securityholders

(a) Voting securities and principal holders thereof. Furnish the following information, in substantially the tabular form indicated, with respect to voting securities held of record by:

(1) each of the three highest paid persons who are officers and directors of the issuer;

Note—In the event none of the issuer's officers or directors have received a salary in the past twelve months, this item should be responded to for every officer and director;

(2) all officers and directors as a group;

(3) each shareholder who owns more than 10% of any class of the issuer's securities, including those shares subject to outstanding options.

(1) Title of class _____

(2) Name and address of owner _____

(3) Amount owned before the offering _____

(4) Amount owned after the offering _____

(5) Percent of class _____

Instruction

Column (4) need not be responded to if the information would be the same as that appearing under column (3).

(b) If, to the knowledge of the issuer, any other person holds or shares the power to vote or direct the voting of securities described pursuant to subsection (a) above, appropriate disclosure should be made. In addition, if any person other than those named pursuant to subsection (a) holds or shares the power to vote 10% or more of the issuer's voting securities, the information required by the table should be provided with respect to such person.

(c) Non-voting securities and principal holders thereof. Furnish the same information as required in subsection (a) above with respect to securities that are not entitled to vote.

(d) Options, warrants, and rights. Furnish the information required by the table as to options, warrants or rights to purchase securities from the issuer or any of its subsidiaries held by each of the individuals and referred to in subsection (a) above:

Name of holder _____

Title and amount securities called for by options, warrants or rights _____

Exercise price _____

Date of exercise _____

Instruction

Where the total market value of securities called for by all outstanding options, warrants or rights does not exceed $10,000 for any officer, director, or principal shareholder named in answer to this item, or $50,000 for all officers and directors as a group, this item need not be answered with respect to options, warrants or rights held by such person or group. If the issuer cannot ascertain the market value of its securities, the offering price may be used for purposes of this subsection. If, as is the case with offerings of debt securities, the offering price cannot be determined at the time of filing the offering statement, the issuer may utilize any reasonable method of valuation.

(e) List all parents of the issuer, showing the basis of control and as to each parent the percentage of voting securities owned or other basis of control by its immediate parent, if any.

Item 11. Interest of Management and Others in Certain Transactions

Describe briefly any transactions during the previous two years or any presently proposed transactions, to which the issuer 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 his relationship to the issuer, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the issuer;

(2) Any nominee for election as a director;

(3) Any principal securityholder named in answer to Item 10(a);

(4) If the issuer was incorporated or organized within the past three years, any promoter of the issuer;

(5) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same house as such person or who is a director or officer of any parent or subsidiary of the issuer.

Instructions

1. No information need be given in answer to this item as to any transaction where:

(a) The rates of charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or

contract carrier 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 a series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments does not exceed $50,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the issuer and the specified person receives no extra or special benefit not shared on a pro-rata basis by all of the holders of securities of the class.

2. It should be noted that this Item 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 issuer 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 Item 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 subparagraphs (1) through (5) above, 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 he and all other persons specified in (1) through (5) above 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 issuer or any of its subsidiaries and the transaction is not material to such other person.

3. Include the name of each person whose interest in any transaction is described and the nature of the relationships by reason of which such interest is required to be described. 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 disclosed.

4. Information should be included as to any material underwriting discounts and commissions upon the sale of securities by the issuer where any of the specified persons was or is to be a principal underwriter or is a controlling person, or member, of a firm which was or is to be a principal underwriter. Information need not be given concerning ordinary management fees paid by underwriters to a managing underwriter pursuant to an agreement among underwriters the parties to which do not include the issuer or its subsidiaries.

5. As to any transaction involving the purchase or sale of assets by or to any issuer or any subsidiary, 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.

6. Information shall be furnished in answer to this Item with respect to transactions not excluded above which involve remuneration from the issuer 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 issuer or its subsidiaries.

Item 12. Securities Being Offered

(a) If capital stock is being offered, state the title of the class and furnish the following information:

(1) Outline briefly: (i) dividend rights; (ii) voting rights; (iii) liquidation rights; (iv) preemptive rights; (v) conversion rights; (vi) redemption provisions; (vii) sinking fund provisions; and (viii) liability to further calls or to assessment by the issuer.

(2) Briefly describe potential liabilities imposed on shareholders under state statutes or foreign law, e.g., to laborers, servants or employees of the registrant, unless such disclosure would be immaterial because the financial resources of the registrant are such as to make it unlikely that the liability will ever be imposed.

(b) If debt securities are being offered, outline briefly the following:

(1) Provisions with respect to interest, conversion, maturity, redemption, amortization, sinking fund or retirement.

(2) Provisions with respect to the kind and priority of any lien securing the issue, together with a brief identification of the principal properties subject to such lien.

(3) Provisions restricting the declaration of dividends or requiring the maintenance of any ratio of assets, the creation or maintenance of reserves or the maintenance of properties.

(4) Provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against such issuance, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions.

Instruction

In the case of secured debt there should be stated (i) the approximate amount of unbonded property available for use against the issuance of bonds, as of the most recent practicable date, and (ii) whether the securities being issued are to be issued against such property, against the deposit of cash, or otherwise.

(c) If securities described are to be offered pursuant to warrants, rights, or convertible securities, state briefly:

(1) the amount of securities called for by such warrants, convertible securities or rights;

(2) the period during which and the price at which the warrants, convertible securities or rights are exercisable;

(3) the amounts of warrants, convertible securities or rights outstanding; and

(4) any other material terms of such securities.

(d) In the case of any other kind of securities, appropriate information of a comparable character.

Part F/S

The following financial statements of the issuer, or the issuer and its predecessors or any businesses to which the issuer is a successor shall be filed as part of the offering statement and included in the offering circular which is distributed to investors.

Such financial statements shall be prepared in accordance with generally accepted accounting principles (GAAP) in the United States. If the issuer is a Canadian company, a reconciliation to GAAP in the United States shall be filed as part of the financial statements.

Issuers which have audited financial statements because they prepare them for other purposes, shall provide them.

The Commission's Regulation S–X, 17 CFR 210.1 et seq. relating to the form, content of and requirements for financial statements shall not apply to the financial statements required by this part, except that if audited financial statements are filed, the qualifications and reports of an independent auditor shall comply with the requirements of Article 2 of Regulation S–X.

Issuers which are limited partnerships are required to also file the balance sheets of general partners: (1) if such general partner is a corporation, the balance sheet shall be as of the end of its most recently completed fiscal year; receivables from a parent or affiliate of such general partner (including notes receivable, but excluding trade receivables) should be deductions from shareholders equity of the general partner; where a parent or affiliate has committed to increase or maintain the general partner's capital, there shall also be filed the balance sheet of such parent or affiliate as of the end of its most recently completed fiscal year; (2) if such general partner is a partnership, its balance sheet as of the end of its most recently completed fiscal year; (3) if such general partner is a natural person, the net worth of such general partner(s) based on the estimated fair market value of their assets and liabilities, singly or in the aggregate shall be disclosed in the offering circular, and balance sheets of each of the individual general partners supporting such net worth shall be provided as supplemental information.

(1) Balance Sheet—as of a date within 90 days prior to filing the offering statement or such longer time, not exceeding 6 months, as the Commission may permit at the written request of the issuer upon a showing of good cause; for filings made after 90 days subsequent to the issuer's most recent fiscal year, the balance sheet shall be dated as of the end of the most recent fiscal year.

(2) Statements of income, cash flows, and other stockholders equity—for each of the 2

fiscal years preceding the date of the most recent balance sheet being filed, and for any interim period between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed, or for the period of the issuer's existence if less than the period above.

Income statements shall be accompanied by a statement that in the opinion of management all adjustments necessary for a fair statement of results for the interim period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made. If otherwise, there shall be furnished as supplemental information and not as part of the offering statement, a letter describing in detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of results shown.

(3) Financial Statements of Businesses Acquired or to be Acquired.

(a) Financial statements for the periods specified in (c) below should be furnished if any of the following conditions exist:

(i) Consummation of a significant business combination accounted for as a purchase has occurred or is probable (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method); or

(ii) Consummation of a significant business combination to be accounted for as a pooling is probable.

(b) A business combination shall be considered significant if a comparison of the most recent annual financial statements of the business acquired or to be acquired and the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition indicates that the business would be a significant subsidiary pursuant to the conditions specified in Rule 405 of Regulation C, 17 CFR § 230.405.

(c) (i) The financial statements shall be furnished for the periods up to the date of acquisition, for those periods for which the registrant is required to furnish financial statements.

(ii) These financial statements need not be audited.

(iii) The separate balance sheet of the acquired business is not required when the registrant's most recent balance sheet filed is for a date after the acquisition was consummated.

(iv) If none of the conditions in the definitions of significant subsidiary in Rule 405 exceeds 20%, income statements of the acquired business for only the most recent fiscal year and any interim period need be filed.

(d) If consummation of more than one transaction has occurred or is probable, the tests of significance shall be made using the aggregate impact of the businesses and the required financial statements may be presented on a combined basis, if appropriate.

(e) This paragraph (3) shall not apply to a business which is totally held by the registrant prior to consummation of the transaction.

(4) Pro Forma Financial Information.

(a) Pro forma information shall be furnished if any of the following conditions exist (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method);

(i) During the most recent fiscal year or subsequent interim period for which a balance sheet of the registrant is required, a significant business combination accounted for as a purchase has occurred;

(ii) After the date of the registrant's most recent balance sheet, consummation of a significant business combination to be accounted for by either the purchase method or pooling of interests method of accounting has occurred or is probable.

(b) The provisions of paragraph (3)(b), (d) and (e) apply to this paragraph (4).

(c) Pro forma statements shall ordinarily be in columnar form showing condensed historical statements, pro forma adjustments, and the pro forma results and should include the following:

(i) If the transaction was consummated during the most recent fiscal year or in the subsequent interim period, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, or

(ii) If consummation of the transaction has occurred or is probable after the date of the most recent balance sheet, a pro forma balance sheet giving effect to the combination as of the date of the most recent balance sheet required by paragraph (b). For a purchase, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, and for a pooling of interests, pro forma statements of income for all periods for which income statements of the registrant are required.

Part III—Exhibits

Item 1. Index to Exhibits

(a) An index to the exhibits filed should be presented immediately following the cover page to Part III.

(b) Each exhibit should be listed in the exhibit index according to the number assigned to it under Item 2 below.

(c) The index to exhibits should identify the location of the exhibit under the sequential page numbering system for this Form 1–A.

(d) Where exhibits are incorporated by reference, the reference shall be made in the index of exhibits.

Instructions

1. 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 offering statement.

2. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the issuer shall file with the reference a statement containing the text of such modification and the date thereof.

3. Procedurally, the techniques specified in Rule 411(d) of Regulation C shall be followed.

Item 2. Description of Exhibits

As appropriate, the following documents should be filed as exhibits to the offering statement.

(1) Underwriting Agreement—Each underwriting contract or agreement with a principal underwriter or letter pursuant to which the securities are to be distributed; where the terms have yet to be finalized, proposed formats may be provided.

(2) Charter and by-laws—The charter and by-laws of the issuer or instruments corresponding thereto as presently in effect and any amendments thereto.

(3) Instruments defining the rights of security holders—(a)All instruments defining the rights of any holder of the issuer's securities, including but not limited to: (i) Holders of equity or debt securities being issued; (ii) holders of long-term debt of the issuer, and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(b) The following instruments need not be filed if the issuer agrees to provide them to the Commission upon request: (i) Instruments defining the rights of holders of long-term debt of the issuer and all of its subsidiaries for which consolidated financial statements are required to be filed if such debt is not being issued pursuant to this Regulation A offering and the total amount of such authorized issuance does not exceed 5% of the total assets of the issuer and its subsidiaries on a consolidated basis; (ii) any instrument with respect to a class of securities which is to be retired or redeemed prior to the issuance or upon delivery of the securities being issued pursuant to this Regulation A offering and appropriate steps have been taken to assure such retirement or redemption; and (iii) copies of instruments evidencing scrip certificates or fractions of shares.

(4) Subscription agreement—The form of any subscription agreement to be used in connection with the purchase of securities in this offering.

(5) Voting trust agreement—Any voting trust agreements and amendments thereto.

(6) Material contracts—(a) Every contract not made in the ordinary course of business which is material to the issuer and is to be performed in whole or in part at or after the filing of the offering statement or was entered into not more than 2 years before such filing. Only contracts need be filed as to which the issuer or subsidiary of the issuer is a party or has succeeded to a party by assumption or assignment or in which the issuer or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business conducted by the issuer and its subsidiaries, it is 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 should be filed except where immaterial in amount or significance: (i) any contract to which directors, officers, promoters, voting trustees, security holders named in the offering statement, or underwriters are parties except where the contract merely involves the purchase or sale of current assets having a determinable market price, at such market price; (ii) any contract upon which the issuer's business is substantially dependent, as in the case of continuing contracts to sell the major part of the issuer's products or services or to purchase the major part of the issuer'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 the issuer's business depends to a material extent; (iii) any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15% of such fixed assets of the issuer on a consolidated basis; or (iv) any material lease under which a part of the property described in the offering statement is held by the issuer.

(c) Any management contract or any compensatory 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) shall be deemed material and shall be filed except for the following: (i) ordinary purchase and sales agency agreements; (ii) agreements with managers of stores in a chain organization or similar organization; (iii) contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such; (iv) any compensatory plan, contract or arrangement which pursuant to its terms is available to employees generally and which in operation provides for the same method of allocation of benefits between management and non-management participants.

(7) *Material foreign patents*—Each material foreign patent for an invention not covered by a United States patent. 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.

(8) *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 offering statement. 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 offering statement. 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.

(9) *Escrow agreements*—Any escrow agreement or similar arrangement which has been executed in connection with the Regulation A offering.

(10) *Consents*—(a) Experts: The written consent of (i) any accountant, engineer, geologist, appraiser or any person whose profession gives authority to a statement made by them and who is named in the offering statement as having prepared or certified any part of the document or is named as having prepared or certified a report or evaluation whether or not for use in connection with the offering statement; (ii) the expert that authored any portion of a report quoted or summarized as such in the offering statement, expressly stating their consent to the use of such quotation or summary; (iii) any persons who are referenced as having reviewed or passed upon any information in the offering statement, and that such information is being included on the basis of their authority or in reliance upon their status as experts.

(b) Underwriters: A written consent and certification in the form which follows signed by each underwriter of the securities proposed to be offered. All underwriters may, with appropriate modifications, sign the same consent and certification or separate consents and certifications may be signed by any underwriter or group of underwriters.

Consent and Certification by Underwriter

1. The undersigned hereby consents to being named as underwriter in an offering statement filed with the Securities and Exchange Commission by [insert name of issuer] pursuant to Regulation A in connection with a proposed offering of [insert title of securities] to the public.

2. The undersigned hereby certifies that it furnished the statements and information set forth in the offering statement with respect to the undersigned, its directors and officers or partners, that such statements and information are accurate, complete and fully responsive to the requirements of Parts I, II and III of the Offering Statement thereto, and do not omit any information required to be stated therein with respect of any such persons, or necessary to make the statements and information therein with respect to any of them not misleading.

3. If Preliminary Offering Circulars are distributed, the undersigned hereby undertakes to keep an accurate and complete record of the name and address of each person furnished a Preliminary Offering Circular and, if such Preliminary Offering Circular is inaccurate or inadequate in any material respect, to furnish a revised Preliminary Offering Circular or a Final Offering Circular to all persons to whom the securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons, or to send such a circular to such persons under circumstances that it would normally be received by them 48 hours prior to their receipt of confirmation of the sale.

_____

(Underwriter)

By _____

Date / /

(c) All written consents shall be dated and manually signed.

(11) *Opinion re legality*—An opinion of counsel as to the legality of the securities covered by the Offering Statement, indicating whether they will, when sold, be legally issued, fully paid and nonassessable, and if debt securities, whether they will be binding obligations of the issuer.

(12) *Sales Material*—Any material required to be filed by virtue of Rule 256.

(13) *"Test the Water" Material*—Any written document or broadcast script used under the authorization of Rule 254.

(14) *Appointment of Agent for Service of Process*—A Canadian issuer shall provide Form F-X.

(15) *Additional exhibits*—Any additional exhibits which the issuer may wish to file, which shall be so marked as to indicate clearly the subject matters to which they refer.

Signatures

The issuer has duly caused this offering 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)_____

This offering statement has been signed by the following persons in the capacities and on the dates. indicated.

(Signature) _____

(Title)_____

(Selling security holder)_____

(Date)_____

Instructions

1. The offering statement shall be signed by the issuer, its Chief Executive Officer, Chief Financial Officer, a majority of the members of its board of directors or other governing instrumentality, and each person, other than the issuer, for whose account any of the securities are to be offered. If a signature is by a person on behalf of any other person, evidence of authority to sign shall be filed with the offering statement, except where an executive officer signs on behalf of the issuer. If the issuer is Canadian, its authorized representative in the United States also shall sign. Where the issuer is a limited partnership, the offering statement shall also be signed by a majority of the board of directors of any corporate general partner.

2. The name of each person signing the offering statement shall be typed or printed beneath the signature.

Securities and Exchange Commission

FORM 2-A—Report of Sales and Uses of Proceeds Pursuant to Rule 257 of Regulation A File No. 24-_____

For period ending / /

Indicate whether the report is an:

initial report [ ]

amendment [ ]

or final report [ ]

If the report is an amendment, indicate the number of such amendment. / / /

If the offering has terminated, indicate the date of termination / /

General Instructions

The report shall be filed in accordance with the provisions of Rule 257 of Regulation A.

Answer each item in the box(es) or spaces provided. If additional space is required for any response, continue the response on an attached sheet.

If the issuer is required to file any report(s) on this form subsequent to its initial filing, each subsequent filing shall be deemed to be an amendment to the initial filing. Do not report in any amendment responses to Items 3-11 unless the information has changed.

No fee is required to accompany this filing.

Seven copies of the form shall be filed with the Commission Office where the Regulation A Offering Statement was qualified. At least one copy of the form shall be manually signed; other copies may bear typed or printed signatures.

1. _____
Exact name of issuer as specified in its charter.

2. Date of qualification of the offering statement: [ ][ ][ ][ ][ ][ ]

3. Has the offering commenced? [ ] Yes [ ] No.

If yes, date of commencement: [ ][ ][ ] [ ][ ]

If no, explain briefly:

_____

_____

_____

4. Did the offering terminate before any securities were sold? [ ] Yes [ ] No.

If yes, explain briefly:

_____

_____

_____

If "yes", do not answer Items 5–11.

5. Did the offering terminate prior to the sale of all the securities qualified under Regulation A? [ ] Yes [ ] No.

If yes, explain briefly:

_____

_____

_____

_____

6. Indicate the total number of shares or other units offered and sold to date: _____(issuer's account)_____(selling securityholders)

Indicate the number of shares or other units still being offered: _____(issuer's account)_____(selling securityholders)

7. Total amount of dollars received from the public to date. $_____

Total amount allocable to selling securityholders: $_____

Underwriting discount or commission allowed.	$_____
Underwriting expenses paid	$_____
Finders' Fees	$_____
Other expenses paid to date by or for issuer:	
Legal (including organization)	$_____
Accounting	$_____
Engineering	$_____
Printing and Advertising	$_____
Other (specify)	$_____
	$_____
	$_____
	$_____
Total costs and expenses	$_____
Total net proceeds remaining	$_____

8. Uses of net proceeds to date.

Instructions

1. Do not include any amount in "working capital" to which a more specific category is applicable.

2. Round all amounts to the nearest dollar.

3. Specify under "other purposes" any purpose for which at least 5% of the issuer's proceeds or $50,000, whichever is less, has been used.

Salaries and fees	$_____
Construction of plant, building and facilities.	$_____
Purchases and installation of machinery and equipment.	$_____
Purchase of real estate	$_____
Acquisition of other business(es)	$_____
Repayment of indebtedness	$_____
Working capital	$_____
Development expense (product development, research, patent costs, etc.).	$_____
Temporary investment (specify)	$_____
	$_____
	$_____
	$_____
Other purposes (specify):	
	$_____
	$_____
	$_____
	$_____
	$_____
	$_____
	$_____
	$_____

9. Do the use(s) of proceeds in Item 8 represent a material change in the use(s) of proceeds described in the offering circular? [ ] Yes [ ] No.

If yes, explain briefly:

_____

_____

_____

_____

_____

10. State the number of shares held by each promoter, director, officer or controlling person of the issuer, if different from the amount stated in the offering circular.

_____

_____

_____

_____

11. List the names and addresses of all brokers and dealers who have, to the knowledge of the issuer or underwriters, participated in the distribution of the securities during the period covered by this report.

_____

_____

_____

_____

Signature

Pursuant to the requirements of Rule 257 and Regulation A, _____ (duly authorized) has caused this report to be signed on its behalf by the undersigned thereunto.

_____

Issuer

By _____

Signature

_____

Date

Instruction:

The report shall be signed by an executive officer, general partner or counsel of the issuer or by any other duly authorized person. The name and any title of the person who signs the report shall be typed or printed beneath the signature.

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

28. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78*o*, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

§ 240.36–6 [Amended]

29. By amending § 240.3b–6 paragraph (b)(1)(i) after the words "Securities Act of 1933" add the words ", offering statement or solicitation of interest written document or broadcast script under Regulation A" and in paragraph (b)(2)(i) after the parenthetical "(§ 229.303 of this chapter)" add the words "or Regulation S–B (§ 228.303 of this chapter)" and after the words "Rule 3–20(c)" add the words "of Regulation S–X (§ 210.3–20(c)".

30. Section 240.12b–2 is amended by adding the definition of "small business issuer" in the appropriate alphabetical order to read as follows:

§ 240.12b–2 Definitions.

* * * * *

Small Business Issuer. The term "small business issuer" means an entity that meets the following criteria:

(1) has revenues of less than $25,000,000;

(2) is a U.S. or Canadian issuer;

(3) is not an investment company; and

(4) if a majority owned subsidiary, the parent corporation is also a small business issuer.

Provided however, that an entity is not a small business issuer if it has a public float (the aggregate market value of the issuer's outstanding securities held by non-affiliates) of $25,000,000 or more.

Note: The public float of a reporting company 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, on a date within 60 days prior to the end of its most recent fiscal year. The public float of a company filing an initial registration statement under the Exchange

Act shall be determined as of a date within 60 days of the date the registration statement is filed. In the case of an initial public offering of securities, public float shall be computed on the basis of the number of shares outstanding prior to the offering and the estimated public offering price of the securities.

* * * * *

31. By amending paragraph (b)(5)(ii) of § 240.14a–3 to add the words "or, if applicable, a plan of operation required by Item 303(a) of Regulation S–B (§ 228.303(a) of this chapter)" after the words "(§ 229.303 of this chapter)" and to add the following Note after the introductory text of paragraph (b) to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) * * *

Note to Small Business Issuers—A "small business issuer," defined under Rule 12b–2 of the Exchange Act (§ 240.12b–2), shall refer to the disclosure items in Regulation S–B (§ 228.10 *et seq.* of this chapter) rather than Regulation S–K (§ 229.10 *et seq.*). If there is no comparable disclosure item in Regulation S–B, a small business issuer need not provide the information requested. A small business issuers shall provide the information in Item 310(a) of Regulation S–B in lieu of the financial information required by Rule 14a–3(b)(1) (§ 240.14a–3(b)(1)).

* * * * *

32. By adding Note F to § 240.14a–101 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

Notes

* * * * *

F. *Note to Small Business Issuers*—Registrants and acquirees that meet the definition of "small business issuer" under Rule 12b–2 of the Exchange Act (§ 240.12b–2) shall refer to the disclosure items in Regulation S–B (§ 228.10 *et seq.* of this chapter) and not Regulation S–K (§ 229.10 *et seq.* of this chapter). If there is no comparable disclosure item in Regulation S–B, small business issuers need not provide the information requested. Small business issuers shall provide the financial information in Item 310 of Regulation S–B in lieu of the financial statements required in Schedule 14A.

* * * * *

33. By adding the following text to the end of the introductory Note to § 240.14c–101 to read as follows:

§ 240.14c–101 Schedule 14C. Information Required in Information Statement.

Note. * * * Registrants and acquirees that meet the definition of "small business issuer" under Rule 12b–2 of the Exchange Act (§ 240.12b–2) shall refer to the disclosure items in Regulation S–B (§ 228.10 *et seq.* of this chapter) and not Regulation S–K (§ 229.10 *et seq.* of this chapter). If there is no comparable disclosure item in Regulation S–B, small business issuers need not provide the information requested. Small business issuers shall provide the financial information in Item 310 of Regulation S–B in lieu of any financial statements required by Item 1 of § 240.14c–101.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

34. The authority for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted. 35. By adding § 249.210b to read as follows:

§ 249.210b Form 10–SB, optional form for the registration of securities of a small business issuer.

A "small business issuer," defined in Rule 12b–2 (§ 240.12b–2 of this chapter) may use Form 10–SB to register a class of its securities under Section 12 (b) or (g) of the Exchange Act. For further information concerning eligibility to use this form see Item 10(a) of Regulation S–B (17 CFR 228.10 et seq.).

Note: The text and instructions of Form 10–SB will not appear in the Code of Federal Regulations.

Form 10–SB

U.S. Securities and Exchange Commission
Washington, D.C. 20549

OMB Approval
OMB Number: xxxx–xxxx
Expires: Approval Pending
Estimated average burden hours per response: 1.0

General Form for Registration of Securities of Small Business Issuers Under Section 12 (b) or (g) of the Securities Exchange Act of 1934

_____
(Name of Small Business Issuer in its charter)

_____
(State or other jurisdiction of incorporation or organization)

_____
(I.R.S. Employer Identification No.)

_____
(Address of principal executive offices)

_____
(ZIP Code)

Issuer's telephone number, _____.

Securities to be registered under Section 12(b) of the Act:

Title of each class to be so registered

_____

_____

Name of each exchange on which each class is to be registered

_____

_____

Securities to be registered under Section 12(g) of the Act:

_____
(Title of class)

_____
(Title of class)

General Instructions

A. Use of Form 10–SB

1. This Form may be used by a "small business issuer," defined in Rule 12b–2 (§ 240.12b–2) of the Securities Exchange Act of 1934 (the "Exchange Act"), to register a class of securities under Section 12 (b) or (g) of the Exchange Act. For further information as to eligibility to use this form see Item 10(a) of Regulation S–B (17 CFR 228.10 et seq.).

2. If the small business issuer is not organized under the laws of any of the states of or the United States of America, it shall at the time of filing this registration statement, file with the Commission a written irrevocable consent and power of attorney on Form F–X [§ 239.42]. Any change to the name or address of the agent for service of the issuer shall be communicated promptly to the Commission through amendment of the requisite form and referencing the file number of the registration statement.

B. Signature and Filing of Registration Statement

1. File three "complete" copies and five "additional" copies of the registration statement with the Commission and file at least one complete copy with each exchange on which the securities will be registered. A "complete" copy includes financial statements, exhibits and all other papers and documents. An "additional" copy excludes exhibits.

2. Manually sign at least one copy of the report filed with the Commission and each exchange; other copies should have typed or printed signatures.

C. Information To Be Incorporated by Reference

Refer to Rule 12b–23 (§ 240.12b–23 of this chapter) if information will be incorporated by reference from other documents in answer or partial answer to any item of this Form.

Information Required in Registration Statement

Item 1. Description of Business

Furnish the information required by Item 101 of Regulation S–B.

Item 2. Management's Discussion and Analysis or Plan of Operation

Furnish the information required by Item 303 of Regulation S–B.

Item 3. Description of Property

Furnish the information required by Item 102 of Regulation S–B.

Item 4. Security Ownership of Certain Beneficial Owners and Management

Furnish the information required by Item 403 of Regulation S–B.

Item 5. Directors, Executive Officers, Promoters and Control Persons

Furnish the information required by Item 401 of Regulation S–B.

Item 6. Executive Compensation

Furnish the information required by Item 402 of Regulation S–B.

Item 7. Certain Relationships and Related Transactions

Furnish the information required by Item 404 of Regulation S–B.

Item 8. Legal Proceedings

Furnish the information required by Item 103 of Regulation S–B.

Item 9. Market for Common Equity and Related Stockholder Matters

Furnish the information required by Item 201 of Regulation S–B.

Item 10. Recent Sales of Unregistered Securities

Furnish the information required by Item 701 of Regulation S–B.

Item 11. Description of Securities

Furnish the information required by Item 202 of Regulation S–B.

Item 12. Indemnification of Directors and Officers

Furnish the information required by Item 702 of Regulation S–B.

Item 13. Financial Statements

Furnish the information required by Item 310 of Regulation S–B.

Item 14. Changes In and Disagreements With Accountants on Accounting and Financial Disclosure

Furnish the information required by Item 304 of Regulation S–B.

Item 15. 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–B.

Signatures

In accordance with Section 12 of the Securities Exchange Act of 1934, the registrant caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

_____

(Registrant)

Date _____

By _____

(Signature) *

* Print the name and title of each signing officer under his or her signature.

36. By adding § 249.310b to read as follows:

§ 249.310b Form 10–KSB, Optional Form for Annual and Transition Reports of Small Business Issuers Under Sections 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act").

A *small business issuer* defined in Rule 12b–2 of the Exchange Act (§ 240.12b–2 of this chapter), may use this form for its annual and transitional reports under section 13 or 15(d) of the Exchange Act. Annual reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report and transition reports shall be filed after an issuer changes its fiscal year end in accordance with Rule 13a–10 or Rule 15d–10 (§§ 240.13a–10 or 240.15d–10 of this chapter).

Note: The text and instructions of Form 10–KSB will not appear in the Code of Federal Regulations.

Form 10–KSB

U.S. Securities and Exchange Commission, Washington, DC 20549

OMB Approval

OMB Number: xxxx–xxxx

Expires: Approval Pending Estimated average burden hours per response—1.0

(Mark One)

[ ] Annual Report Under Section 13 or 15(d) of the Securities Exchange Act of 1934 [Fee Required]

For the fiscal year ended _____

[ ] Transition Report Under Section 13 or 15(d) of the Securities Exchange Act of 1934 [No Fee Required]

For the transition period from _____ to _____

Commission file number _____

_____

(Name of small business issuer in its charter)

_____

(State or other jurisdiction of incorporation or organization)

_____

(I.R.S. Employer Identification No.)

_____

(Address of principal executive offices)

_____

(ZIP Code)

Issuer's telephone number ( )_____

Securities registered under Section 12(b) of the Exchange Act:

Title of each class _____

_____

Name of each exchange on which registered

_____

Securities registered under Section 12(g) of the Exchange Act:

_____

(Title of class)

_____

(Title of class)

Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for past 90 days.

Yes _____ No _____

Check if there is no disclosure of delinquent filers in response to Item 405 of Regulation S–B is not contained in this form, and no disclosure will be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10–KSB or any amendment to this Form 10–KSB. [ ]

State issuer's revenues for its most recent fiscal year. _____.

State the aggregate market value of the voting stock held by non-affiliates 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 the past 60 days. (See definition of affiliate in Rule 12b–2 of the Exchange Act).

Note: If determining whether a person is an affiliate will involve an unreasonable effort and expense, the issuer may calculate the aggregate market value of the common equity held by non-affiliates on the basis of reasonable assumptions, if the assumptions are stated.

(Issuers Involved in Bankruptcy Proceedings During the Past Five Years)

Check whether the issuer has filed all documents and reports required to be filed by Section 12, 13 or 15(d) of the Exchange Act after the distribution of securities under a plan confirmed by a court. Yes _____ No _____

(Applicable Only to Corporate Registrants)

State the number of shares outstanding of each of the issuer's classes of common equity, as of the latest practicable date.

_____

Documents Incorporated by Reference

If the following documents are incorporated by reference, briefly describe them and identify the part of the Form 10–KSB (e.g., Part I, Part II, etc.) into which the document is incorporated: (1) any annual report to security holders; (2) any proxy or information statement; and (3) any prospectus filed pursuant to Rule 424 (b) or (c) of the Securities Act of 1933 ("Securities Act"). The listed documents should be clearly described for identification purposes (e.g., annual report to security holders for fiscal year ended December 24, 1990).

General Instructions

A. Use of Form 10–KSB

This Form may be used by a "small business issuer," defined in Rule 12b–2 of the Exchange Act, for its annual and transitional reports under section 13 or 15(d) of that Act. For further information as to eligibility to use this Form see Item 10(a) of Regulation S–B (17 CFR 228.10 et seq.). Annual reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report. Transition reports shall be filed within the time period specified in Rules 13a–10 or 15d–

10 of the Exchange Act (§§ 240.13a–10 or 240.15d–10 of this chapter).

B. Application of General Rules and Regulations

The General Rules and Regulations under the Exchange Act (§ 240.0–1 *et seq.*), particularly Regulation 12B (§ 240.12b–1 *et seq.*) contain certain general requirements for reports on any form which should be carefully read and observed in the preparation and filing of reports on this Form.

C. Signature and Filing of Report

1. File three "complete" copies and five "additional" copies of the registration statement with the Commission and file at least one complete copy with each exchange on which the securities will be registered. A "complete" copy includes financial statements, exhibits and all other papers and documents. An "additional" copy excludes exhibits. One of the copies filed with the Commission and each exchange should be manually signed; all other copies should have typed or printed signatures.

2. Who must sign: the small business issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and at least the majority of the board of directors or persons performing similar functions. If the issuer is a limited partnership then the general partner and a majority of its board of directors if a corporation. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the report. See Rule 12b–11 concerning manual signatures under powers of attorney.

D. Information as to Employee Stock Purchase, Savings and Similar Plans

Separate annual and other reports need not be filed under Section 15(d) of the Exchange Act for any employee stock purchase, savings or similar plan if the issuer of the securities offered under the plan furnishes to the Commission the information and documents specified in the Rule 15d–21 of the Exchange Act.

E. Information to be Incorporated by Reference

1. Refer to Rule 12b–23 (§ 240.12b–23 of this chapter) if information will be incorporated by reference from other documents in answer or partial answer to any item of this Form.

2. The Information called for in Parts I and II of this Form, Items 1–9, may be incorporated by reference from:

(a) the registrant's annual report to security holders furnished to the Commission under Rule 14a–3(b) or Rule 14c–3(a) of the Exchange Act (§§ 240.14a–3(b), 240.14c–3(a) of this chapter); or

(b) the registrant's annual report to shareholders if it contains the information required by Rule 14a–3 (§ 240.14–3 of this chapter).

3. The information required by Part III may be incorporated by reference from the registrant's definitive proxy statement (filed or to be filed in accor lance with § 240.14a–101, Schedule 14A) or definitive information statement (filed or to be filed pursuant to § 240.14c–101, Schedule 14C) which involves the election of directors, if such definitive proxy or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by this Form. If the definitive proxy or information statement is not filed within the 120-day period, the information called for in Part III information must be filed as part of the Form 10–KSB, or as an amendment to the Form 10–KSB under cover of Form 8 (§ 249.460 of this chapter), not later than the end of the 120-day period.

4. No item numbers of captions or items need be contained in the material incorporated by reference into the report. However, the registrant's attention is directed to Rule 12b–23(b) of the Exchange Act (§ 240.12b–23(b)) 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 by incorporation by reference from the registrant's annual report to security holders and all of the information in Part III of this Form by incorporating by reference from a definitive proxy statement or information statement involving the election of directors, then 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 page and/or pages in the referenced materials where the corresponding information appears.

F. Integrated Reports to Security Holders

Annual reports to security holders may be combined with the required information of this Form and will be suitable for filing with the Commission if the following conditions are satisfied:

1. The combined report contains complete answers to all items required by Form 10–KSB. 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–KSB is omitted by virtue of General Instruction E, a definitive proxy or information statement shall be filed.

2. The cover page and required signatures are included. A cross-reference sheet should be filed indicating the location of information required by items of the Form.

G. Omission of Information by Certain Wholly-Owned Subsidiaries

If, on the date of the filing of its report on Form 10–KSB, the registrant meets the conditions specified in paragraph (1) below, then it may furnish the abbreviated narrative disclosure specified in paragraph (2) below.

1. Conditions for availability of relief specified in paragraph (2) below.

(a) All of the registrant's equity securities are owned, either directly or indirectly, by a single person which is a reporting company and which has filed all the material required to be filed under sections 13, 14 or 15(d), as applicable, and which is named in conjunction with the registrant's description of its business;

(b) During the past thirty-six months and any subsequent period of days, there has not been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within thirty days, with respect to any indebtedness of the registrant or it subsidiaries, and there has not been any material default in the payment of rental under material long-term leases; and

(c) There is prominently set forth on the cover page of the Form 10–KSB, a statement that the registrant meets the conditions set forth in General Instruction G(1) (a) and (b) of Form 10–KSB and therefore filing this Form with the reduced disclosure format.

2. Registrants meeting the conditions specified in paragraph 1 above are entitled to the following relief:

(a) Such registrants may omit the information called for by Item 303(b), Management's Discussion and Analysis, if required by the Instruction to that Item, provided that the registrant includes in the Form 10–KSB a narrative analysis of the results of operations explaining the reasons for material changes in the amount of revenue and expense items between the most recent fiscal year presented and the fiscal year immediately preceding it. Explanations of material changes should include, but not be limited to, changes in the various elements which determine revenue and expense levels, such as unit sales volume, prices charged and paid, production levels, production cost variances, labor costs and discretionary spending programs. In addition, the analysis should include an explanation of the effect of any changes in accounting principles and practices or method of application that have a material effect on net income as reported.

(b) Such registrants may omit the list of subsidiaries exhibit required by Item 601 of Regulation S–B.

(c) Such registrants may omit the information called for by the following Items: Item 4, Submission of Matters to a Vote of Security Holders; Item 10 Directors and Executive Officers, etc.; Item 11, Executive Compensation; Item 12, Security Ownership of Certain Beneficial Owners, etc.; Item 13, Certain Relationships and Related Transactions.

Part I

Item 1. Description of Business

Furnish the information required by Item 101 of Regulation S–B.

Item 2. Description of Property

Furnish the information required by Item 102 of Regulation S–B.

Item 3. Legal Proceedings

Furnish the information required by Item 103 of Regulation S–B.

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 of Regulation A under the Act) terminating any solicitation subject to Rule 14a–11, including the cost or anticipated cost to the registrant.

Instructions to Item 4

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 should be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a shareholders' 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 published a report containing all of the information called for by this item, the item may be answered by reference to the information in that report.

Part II

Item 5. Market for Common Equity and Related Stockholder Matters

Furnish the information required by Item 201 of Regulation S–B.

Item 6. Management's Discussion and Analysis or Plan of Operation

Furnish the information required by Item 303 of Regulation S–B.

Item 7. Financial Statements

Furnish the information required by Item 310(a) of Regulation S–B.

Item 8. Changes In and Disagreements With Accountants on Accounting and Financial Disclosure

Furnish the information required by Item 304 of Regulation S–B.

Part III

Item 9. Directors, Executive Officers, Promoters and Control Persons; Compliance With Section 16(a) of the Exchange Act

Furnish the information required by Items 401 and 405 of Regulation S–B.

Instruction to Item 9

Checking the box provided on the cover page of this Form to indicate that Item 405 disclosure of delinquent Form 3, 4, or 5 filers is not contained herein is intended to facilitate Form processing and review. Failure to provide such indication will not create liability for violation of the federal securities laws. The space should be checked only if there is no disclosure in this Form of reporting person delinquencies in response to Item 405 of Regulation S–B (§ 228.405 of this chapter) and the registrant, at the time of filing of the Form 10–KSB, has reviewed the information necessary to ascertain, and has determined that, Item 405 disclosure is not expected to be contained in Part III of the Form 10–KSB or incorporated by reference.

Item 10. Executive Compensation

Furnish the information required by Item 402 of Regulation S–B.

Item 11. Security Ownership of Certain Beneficial Owners and Management

Furnish the information required by Item 403 of Regulation S–B.

Item 12. Certain Relationships and Related Transactions

Furnish the information required by Item 404 of Regulation S–B.

Item 13. Exhibits and Reports on Form 8–K

(a) Furnish the exhibits required by Item 601 of Regulation S–B. Where any financial statement or exhibit is incorporated by reference, the incorporation by reference shall be set forth in the list required by this item. See Exchange Act Rule 12b–23 (§ 240.12b–23 of this chapter).

(b) Reports on Form 8–K. State whether any reports on Form 8–K were filed during the last quarter of the period covered by this report, listing the items reported, any financial statements filed and the dates of such reports.

Signatures

In accordance with Section 13 or 15(d) of the Exchange Act, the registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant) _____

By (Signature and Title)* _____

Date _____

In accordance with the Exchange Act, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title)* _____

Date _____

By (Signature and Title)* _____

Date _____

* Print the name and title of each signing officer under his signature.

Supplemental information to be Furnished With Reports Filed Pursuant to Section 15(d) of the Exchange Act By Non-reporting Issuers

(a) Except to the extent that the materials enumerated in (1) and/or (2) below are specifically incorporated into this Form by reference (in which case, see rule 12b–23(b)), every issuer which files an annual report on this Form under Section 15(d) of the Exchange Act shall furnish the Commission for its information, at the time of filing its report on this Form, four copies of the following:

(1) Any annual report to security holders covering the registrant's last fiscal year; and

(2) Every proxy statement, form of proxy or other proxy soliciting material sent to more than ten of the registrant's security holders with respect to any annual or other meeting of security holders.

(b) The Commission will not consider the material to be "filed" or subject to the liabilities of Section 18 of the Exchange Act, except if the issuer specifically incorporates it in its annual report on this Form by reference.

(c) If no such annual report or proxy material has been sent to security holders, a statement to that effect shall be included under this caption. If such report or proxy material is to be furnished to security holders subsequent to the filing of the annual report on this Form, the registrant shall so state under this caption and shall furnish copies of such material to the Commission when it is sent to security holders.

37. Section 249.308b is added to read as follows:

§ 249.308b Form 10–QSB, Optional Form for Quarterly and Transition Reports of Small Business Issuers Under Section 13 or 15(d) of the Securities Exchange Act of 1934 ("Exchange Act").

A *small business issuer,* defined in Rule 12b–2, may use this Form for its transition and quarterly reports under section 13 or 15(d) of the Exchange Act and Rules 13a–13 and 15d–13 (§§ 240.13a–13 or 240.15d–13 of this chapter). For further information as to eligibility to use this Form see Item 10(a) of Regulation S–B (17 CFR 228.10 et seq.). A small business issuer shall file a quarterly report on this form within 45 days after the end of the first three fiscal quarters of each fiscal year. No report need be filed for the fourth quarter of any fiscal year. Transition reports shall be filed in accordance with the requirements set forth in Rule 13a–10 or Rule 15d–10.

Note: The text and instructions of Form 10–QSB will not appear in the Code of Federal Regulations.

Form 10–QSB

U.S. Securities and Exchange Commission, Washington, DC 20549
OMB approval
OMB Number: XXXX–XXXX
Expires: Approval Pending Estimated average burden hours per response—1.0

(Mark One)

[ ] Quarterly Report Under Section 13 or 15(d) of the Securities Exchange Act of 1934.
For the quarterly period ended———————
[ ] Transition Report Under Section 13 or 15(d) of the Exchange Act.
For the transition period from——————— to ———————

Commission file number ———————

———————

(Exact name of small business issuer as specified in its charter)

———————

(State or other jurisdiction of incorporation or organization)

———————

(IRS Employer Identification No.)

———————

(Address of principal executive offices)
( ) – ———————
(Issuer's telephone number)

———————

(Former name, former address and former fiscal year, if changed since last report)

Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ——— No ———

Applicable Only to Issuers Involved in Bankruptcy Proceedings During the Preceding Five Years

Check whether the registrant filed all documents and reports required to be filed by Section 12, 13 or 15(d) of the Exchange Act after the distribution of securities under a plan confirmed by a court. Yes ——— No ———

Applicable Only To Corporate Issuers

State the number of shares outstanding of each of the issuer's classes of common equity, as of the latest practicable date:

———————

General Instructions

A. Use of Form 10–QSB

1. A "small business issuer," defined in Rule 12b–2, may use this Form for its transition and quarterly reports under section 13 or 15(d) of the Exchange Act and Rules 13a–13 and 15d–13 (§§ 240.13a–13 and 240.15d–13 of this chapter). For further information as to eligibility to use of this Form see Item 10(a) of Regulation S–B (17 CFR 228.10 et seq.). A small business issuer shall file a quarterly report on this form within 45 days after the end of the first three fiscal quarters of each fiscal year. No report need be filed for the fourth quarter of any fiscal year. Transition reports shall be filed in accordance with the requirements set forth in Rule 13a–10 or Rule 15d–10.

B. Application of General Rules and Regulations

1. The General Rules and Regulations under the Exchange Act (§ 240.0–1 *et seq.*), particularly Regulation 12B (§ 240.12b–1 *et seq.*) contain certain general requirements for reports on any form which should be carefully read and observed in the preparation and filing of reports on this Form.

C. Incorporation by Reference

1. 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 this form, the information may be incorporated by reference from such published document or statement, in answer or partial answer to any item or items of Part I of this form provided copies of the document or statement are filed as an exhibit to Part I of the report on this form.

2. Other information may be incorporated by reference in answer or partial answer to any item or items of Part II of this form in accordance with the provisions of Rule 12b–23 of the Exchange Act.

D. Integrated Reports to Security Holders

Quarterly reports to security holders may be combined with the required information of Form 10–QSB 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–QSB. Additionally, as appropriate, a cross-reference sheet should be filed indicating the location of information required by items of the form.

E. Filed Status of Information Presented

1. Under Rule 13a–13(d) and 15d–13(d) of the Exchange Act (§§ 240.13a–13(d), 240.15d–13(d) of this chapter), 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 D 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 under Item 601 of Regulation S–B (§ 228.601 of this chapter) shall not be deemed filed for the purpose of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section of the Act but shall be subject to the other provisions of the Act.

2. Information presented in satisfaction of the requirements of this form other than those of Items 1 and 2 or Part I shall be deemed filed for the purpose of Section 18 of the Exchange Act; except that, where information presented in response to Item 1 or 2 of Part I (or an exhibit thereto) is also used to satisfy Part II requirements through incorporation by reference, only that portion of Part I (or exhibit thereto) consisting of the information required by Part II shall be deemed so filed.

F. Signature and Filing of Report

1. File three "complete" copies and five "additional" copies of the registration statement with the Commission and file at least one complete copy with each exchange on which the securities will be registered. A "complete" copy includes financial statements, exhibits and all other papers and documents. An "additional" copy excludes exhibits.

2. Manually sign at least one copy of the report filed with the Commission and each exchange; other copies should have typed or printed signatures. In the case where the principal financial or chief accounting officer is also authorized to sign on behalf of the registrant, one signature is acceptable provided that the registrant clearly indicates the dual responsibilities of the signatory.

G. Omission of Information by Certain Wholly-Owned Subsidiaries

If, on the date of the filing of its Form 10–QSB, the registrant meets the conditions in paragraph (1) below, then it may omit the information in paragraph (2) below.

1. Conditions for availability of relief specified in paragraph (2) below:

(a) All of the registrant's equity securities are owned, either directly or indirectly, by a single person which is a reporting company and which has filed all the material required to be filed pursuant to section 13, 14 or 15(d) of the Exchange Act.

(b) During the past thirty-six calendar months and any later period, there has not been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within thirty days, with respect to any indebtedness of the small business issuer, and there has not been any material default in the payment of rentals under material long-term leases; and

(c) There is prominently set forth, on the cover page of the Form 10–QSB, a statement that the registrant meets the conditions set forth in this instruction and is therefore filing this form with the reduced disclosure format.

2. Registrants meeting the conditions in paragraph (1) above are entitled to:

(a) Omit the information called for by Item 303 of Regulation S–B (§ 228.303 of this chapter), Management's Discussion and Analysis provided that the issuer includes in the Form 10–QSB a management's narrative analysis of the results of operations explaining the reasons for material changes in the amount of revenue and expense items between the most recent fiscal year-to-date period presented and the corresponding year-to-date period in the preceding fiscal year. Explanations of material changes should include, but not be limited to, changes in the

various elements which determine revenue and expense levels such as unit sales volume, prices charged and paid, production levels, production cost variances, labor costs and discretionary spending programs. In addition, the analysis should include an explanation of the effect of any changes in accounting principles and practices or method of application that have a material effect on net income as reported.

(b) Such registrants may omit the information called for by the following Items in Part II: Item 2, 3 and 4.

Part I—Financial Information

Item 1. Financial Statements

Furnish the information required by Item 310(b) of Regulation S–B.

Item 2. Management's Discussion and Analysis or Plan of Operation

Furnish the information required by Item 303 of Regulation S–B.

Part II—Other Information

Instruction to Part II

Any item which is inapplicable or to which the answer is negative may be omitted and no reference thereto need be made in the report. If substantially the same information 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 of the Exchange Act. A separate response need not be presented in Part II where information called for is already disclosed in the financial information in Part I and is incorporated by reference into Part II of the report by means of a statement to that effect in Part II which specifically identifies the incorporated information.

Item 1. Legal Proceedings

Furnish the information required by Item 103 of Regulation S–B. As to proceedings that terminated during the period covered by this report, furnish information similar to that required by Item 103 of Regulation S–B.

Instruction to Item 1

A legal proceeding need only be reported in the Form 10–QSB filed for the quarter in which it first became a reportable event and in subsequent quarters in which there have been material developments. Subsequent Form 10–QSB filings in the same fiscal year in which a legal proceeding or a material development is reported should reference any previous reports in that year.

Item 2. Changes in Securities

(a) If the instruments defining the rights of the holders of any class of registered securities have been materially modified, give the title of the class of securities involved and state briefly the general effect of such modification upon the rights of holders of such securities.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect of the issuance or modification of such other class of securities upon the rights of the holders of the registered securities.

Instruction to Item 2

1. Working capital restrictions and other limitations upon the payment of dividends are to be reported.

Item 3. Defaults Upon Senior Securities

(a) If there has been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within 30 days, with respect to any indebtedness of the small business issuer exceeding 5 percent of the total assets of the issuer identify the indebtedness and state the nature of the default. In the case of such a default in the payment of principal, interest, or a sinking or purchase fund installment, state the amount of the default and the total arrearage on the date of filing this report.

Instruction to Item 3(a)

1. This paragraph refers only to events which have become defaults under the governing instruments, i.e., after the expiration of any period of grace and compliance with any notice requirements.

(b) If any material arrearage in the payment of dividends has occurred or if there has been any other material delinquency not cured within 30 days, with respect to any class of preferred stock of the registrant which is registered or which ranks prior to any class of registered securities, or with respect to any class of preferred stock of any significant subsidiary of the registrant, give the title of the class and state the nature of the arrearage or delinquency. In the case of such a default in the payment of dividends, state the amount and the total arrearage on the date of filing this report.

Instruction to Item 3

1. Item 3 need not be answered as to any default or arrearage with respect to any class of securities all of which is held by, or for the account of, the registrant or its totally held subsidiaries.

Item 4. Submission of Matters to a Vote of Security Holders

If any matter was submitted 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 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 of Regulation A under the Exchange Act) terminating any solicitation subject to Rule 14a–11, including the cost or anticipated cost to the registrant.

Instructions to Item 4

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 should be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a shareholders' 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 Exchange 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 reference to the information in that report.

Item 5. Other Information

(a) The registrant may, at its option, report under this item any information, not previously reported in a report on Form 8–K, with respect to which information is not otherwise called for by this form. If disclosure of such other information is made under this item, it need not be repeated in a Form 8–K which would otherwise be required to be filed with respect to such information or in a subsequent report on Form 10–QSB.

Item 6. Exhibits and Reports on Form 8–K

(a) Furnish the exhibits required by Item 601 of Regulation S–B.

(b) *Reports on Form 8–K.* State whether any reports on Form 8–K were filed during the quarter for which this report is filed, listing the items reported, any financial statements filed and the dates of such reports.

Signatures

In accordance with the requirements of the Exchange Act, the registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

_____

(Registrant)

Date _____

(Signature)[1] _____

Date _____

(Signature)[1] _____

§ 249.308 [Amended]

38. Form 8–K (§ 249.308) is amended by adding paragraph 3 to General Instruction C to read as follows:

Note: The text and instructions of Form 8–K does not appear in the Code of Federal Regulations.

Form 8–K

* * * * *

General Instructions

* * * * *

C. Application of General Rules and Regulations.

* * * * *

3. A *small business issuer*, defined under Rule 12b–2 of the Exchange Act (§ 240.12b–2 of this chapter), shall refer to the disclosure items in Regulation S–B (17 CFR 228.10 *et seq.*) and not Regulation S–K. If there is no comparable disclosure item in Regulation S–B, a small business issuer need not provide the information requested. A small business issuer shall provide the information required by Item 310(a) of Regulation S–B in lieu of the financial information required by Item 7 of this Form.

* * * * *

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

39. The authority citation for part 260 continues to read as follows:

[1] Print the name and title of each signing officer under his signature.

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

40. By revising § 260.4a–1 to read as follows:

§ 260.4a–1 Exempted securities under section 304(a)(8).

The provisions of the Trust Indenture Act of 1939 shall not apply to any security that has been or will be issued otherwise than under an indenture. The same issuer may not claim this exemption within a period of twelve consecutive months for more than $5,000,000 aggregate principal amount of any securities.

§ 260.4a–3 [Redesignated from § 260.4a–2 and Amended]

41. § 260.4a–2 is redesignated as § 260.4a–3, in newly redesignated § 260.4a–3 remove both cites to "$5,000,000" and add in their place the words "$10,000,000", and add new § 260.4a–2 to read as follows:

§ 260.4a–2 Exempted securities under section 304(d).

The provisions of the Trust Indenture Act of 1939 shall not apply to any security that has been issued or will be issued in accordance with the provisions of Regulation A (17 CFR 230.251 *et seq.*) under the Securities Act of 1933.

§ 260.4d–9 [Amended]

42. Amend the introductory text of paragraph (a) of § 260.4d–9 by replacing "on Form F–7, F–8, F–9, F–10 or F–80 [§§ 239.37 through 239.41 of this chapter]" with "on Form SB–2, [§ 239.10 of this chapter] F–7, F–8, F–9, F–10 or F–80 [§§ 239.37 through 239.41 of this chapter]".

§ 260.10a–5 [Amended]

43. Amend paragraph (a) of § 260.10a–5 by replacing "on Form F–7, F–8, F–9, F–10 or F–80 [§§ 239.37 through 239.41 of this chapter]" with "on Form SB–2, [§ 239.10 of this chapter] F–7, F–8, F–9, F–10 or F–80 [§§ 239.37 through 239.41 of this chapter]".

PARTS 210, 229, 230, 239, 240, 249, AND 260—[AMENDED]

44. In addition to the amendments set forth above, in 17 CFR parts 210, 229, 230, 239, 240, 249, and 260 all references to: a. "Form 10–Q" are revised to read "Form 10–Q and Form 10–QSB"; b. "Form 10–K" are revised to read "Form 10–K and Form 10–KSB"; c. "Form 10" are revised to read "Form 10 and Form 10–SB";

45. In addition to the amendments set forth above, in 17 CFR parts 210, 229, 230, 239, 240, 249, and 260 all references to: "Form S–18" are revised to read "Form SB–2."

46. In addition to the amendment set forth above, in 17 CFR parts 210, 229, 230, 240, 249, and 260 all references to "Rule 504" are revised to read "Rule 504 and 504a";

By the Commission.

Dated: July 30, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–18543 Filed 8–12–92; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 230, 239, 240, 249, and 260

[Release No. 33-6950, 34-30969, 39-2288; File No. S7-28-92]

RIN: 3235-AF63

Additional Small Business Initiatives

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is publishing for comment additional revisions to its rules to facilitate financings by small business issuers under the Securities Act of 1933 and their compliance with the reporting requirements under the Securities Exchange Act of 1934. These proposals, which would ease the entry of small businesses into the reporting system for public companies, include a transitional registration and reporting system for small business issuers that have not registered more than $5 million of securities in any fiscal year, amendments to small business issuer financial statement requirements and revisions to the information and financial statement requirements contained in Rule 502 of Regulation D.

Newly adopted Rule 254 would be supplemented to provide that a "test the waters" solicitation document complying with Regulation A will not constitute a "prospectus." The deletion of Rule 504a is also proposed.

DATES: Comments must be submitted on or before September 29, 1992.

Comments regarding the proposed repeal of Rule 504a (§ 230.504a) must be submitted on or before September 14, 1992.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6-9, Washington, DC 20549. Comment letters should refer to File No. S7-28-92. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. With respect to Regulation A and Regulation D, Richard Wulff (202-272-2644); with respect to the SB registration and reporting system, Amy S. Bowerman, Darrell N Braman, Jr., or Martin P. Dunn (202-272-2573); and with respect to Item 310 of Regulation S-B, Teresa Iannaconi (202-272-2553).

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment new registration statement Form SB-1,[1] as well as amendments to Forms S-2,[2] S-4,[3] 10-SB,[4] 10-KSB [5] and 10-QSB,[6] Schedule 14A [7] and the annual report requirements of Rules 14a-3 [8] and 14c-3.[9] These proposals would provide transitional disclosure requirements for qualifying small business issuers under the Securities Act of 1933 ("Securities Act") [10] and the Securities Exchange Act of 1934 ("Exchange Act").[11]

The Commission also is proposing to revise the financial statement requirements for small business issuers, found in Item 310 [12] of Regulation S-B.[13] Amendments to Rule 502 [14] of Regulation D [15] and Rule 254 [16] of Regulation A [17] under the Securities Act are also published for comment. Further, the Commission is proposing that Rule 504a [18] under Regulation D be rescinded.

Finally, the Commission proposes to revise the definitions of "small business" and "small organization" for purposes of the Regulatory Flexibility Act to incorporate the definition of small business issuer used for the small business integrated disclosure system.[19]

I. Executive Summary and Background

In a companion release published today, the Commission adopted its Small Business Initiatives to facilitate the access of small business issuers to the public markets. That action effects significant revisions to the structure and operation of Regulation A and Rule 504 [20] of Regulation D, as well as the creation of an integrated registration and reporting system for small business issuers.[21] Based on the comments and suggestions received in response to its Small Business Initiatives, the Commission is proposing additional measures to ease a small business issuer's transition from non-reporting to reporting status and to simplify the disclosure requirements for small business issuers that engage in exempt offerings.

Under these proposals, a small business issuer may enter the reporting system using Regulation A disclosure with audited financial statements, either through an Exchange Act registration statement or a public offering of not more than $5 million registered under the Securities Act. These small business issuers would be permitted to meet their reporting requirements using the Regulation A model of disclosure until such time as they either (1) register more than $5 million in a single fiscal year, (2) elect to graduate to the standard small business disclosure system, or (3) are no longer small business issuers.

In order to implement this transitional system, amendments to Forms S-2, S-4, 10-SB, 10-KSB, and 10-QSB are proposed, in addition to amendments to Schedule 14A under the proxy rules and the annual report to security holders requirements in the proxy and information statement rules. Further, a new Securities Act registration statement, Form SB-1, is proposed to permit qualifying small business issuers to make small registered offerings up to $5 million annually using the Regulation A format with audited financial statements.

Two refinements to the financial statement requirements for small business issuers are also proposed. The first proposal would provide an automatic waiver of the requirements for audited financial statements of specified significant acquired businesses where such financial statements are not readily available. The other proposal would open the initial public offering ("IPO") financing window for small business issuers by permitting them to proceed in the first quarter of their fiscal years, without having to wait for

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[1] 17 CFR 239.9.
[2] 17 CFR 239.12.
[3] 17 CFR 239.25.
[4] 17 CFR 249.210b.
[5] 17 CFR 249.310b.
[6] 17 CFR 249.308b.
[7] 17 CFR 240.14a-101.
[8] 17 CFR 240.14a-3.
[9] 17 CFR 240.14c-3.
[10] 15 U.S.C. § 77a *et seq.*
[11] 15 U.S.C. § 78a *et seq.*
[12] 17 CFR 228.310.
[13] 17 CFR 228.10-702.
[14] 17 CFR 230.502.
[15] 17 CFR 230.501-508.
[16] 17 CFR 230.254.
[17] 17 CFR 230.251-262.
[18] 17 CFR 230.504a.
[19] 5 U.S.C. § 600 *et seq.* Revisions are proposed to Securities Act Rule 157(a) [17 CFR 230.157], Exchange Act Rule 0-10(a) [17 CFR 240.0-10], and Rule 0-7 [17 CFR 260.0-7] under the Trust Indenture Act of 1939 ("Trust Indenture Act"), 15 U.S.C. § 77aaa *et seq.*
[20] 17 CFR 230.504.
[21] A "small business issuer" is defined as an entity: (1) with revenues of less than $25,000,000 for its most recent fiscal year; (2) which is a U.S. or Canadian issuer; (3) which is not an investment company; and (4) which is not a majority-owned subsidiary of a non- "small business issuer," provided that an issuer does not qualify if its public float (the aggregate market value of the issuer's outstanding securities held by non-affiliates) is $25,000,000 or more. *See* Securities Act Rule 405 [17 CFR 230.405]; Exchange Act Rule 12b-2 [17 CFR 240.12b-2].

completion of the audit for the preceding fiscal year.

In light of the amendments to Regulation A adopted today, the Commission is proposing to amend the financial statement and informational requirements of Regulation D. Rule 502 would no longer require audited financial statements in Regulation D offerings involving non-reporting issuers, where audited statements are not otherwise available. Further, that Rule's information requirements with respect to non-reporting companies would reference Regulation A. In light of public comment received regarding revisions to Rule 504 adopted today, the Commission is proposing that Rule 504a be deleted.

With respect to the Regulation A "test the waters" procedure adopted today,[22] the Commission is publishing for comment revisions to Rule 254, which would provide that a written "test the waters" document complying with Regulation A is not a prospectus.

Finally, the Commission is proposing to incorporate into the definitions of "small business" and "small organization" for purposes of the Regulatory Flexibility Act, the definition of small business used in the small business integrated disclosure system.

II. Proposed Transitional Disclosure Requirements for Small Business Issuers

A. Transitional Exchange Act Registration and Reporting

In the course of the adoption of the small business integrated registration and reporting disclosure system, the Commission received favorable comment on the use of the Regulation A question-and-answer disclosure format. To ease a small business issuer's transition from a non-reporting to an Exchange Act reporting company, the Commission proposes to allow small business issuers to transition from non-reporting to reporting status using the disclosures permitted under Regulation A, with the addition of audited financial statements. Small business issuers required to file Exchange Act reports [23] could make use of this transitional disclosure so long as they (1) do not register more than $5 million under the Securities Act in a single fiscal year, (2) did not elect to file on a standard small business disclosure form (other than the proxy statement disclosure required by Schedule 14A), and (3) continue to satisfy the definition of small business issuer. Once a small business had filed a non-transitional disclosure document, it will be deemed to have graduated to the standard small business integrated disclosure system. A reporting company could not return to the transitional disclosure forms.

Newly adopted Forms 10–SB, 10–KSB and 10–QSB are proposed to be amended by adding instructions setting forth the transitional disclosure that small business issuers could elect. In addition, Forms 10–KSB and 10–QSB would contain a space on the cover page for the small business issuer to indicate its use of the transitional reporting requirements. The proposed transitional filers would not require a quarterly updating of Management's Discussion and Analysis ("MD&A").

The transitional disclosure requirements mirror the two disclosure models currently included in Form 1–A [24] under Regulation A—the question-and-answer and the line-item disclosure models. These disclosure requirements have been modified only to the extent necessary to reflect their continuous reporting, rather than transactional, purposes. Just as for other small business issuers, those eligible to use the transitional requirements could use their simplified Exchange Act reports for incorporation by reference into Forms S–3,[25] S–4 and S–8.[26] Small business issuers could also use Form S–2, but in light of the changes proposed to Rules 14a–3 and 14c–3, would be required to deliver their Form 10–KSB annual report.

As proposed to be amended, Form 10–SB would be available for any non-reporting small business issuer. This would provide small business issuers registering under the Exchange Act an option with respect to the disclosure format in that registration statement. The proposed transitional disclosure within Form 10–KSB would be available to any small business issuer that has not registered more than $5 million in securities offerings in any one fiscal year since it entered the Exchange Act reporting system (excluding registered offerings under employee benefit plans or dividend reinvestment programs).

Comment is requested as to the usefulness of, and the mechanics of operation for, the proposed small business transitional reporting system. Comment is also requested as to whether the yearly $5 million limit in registered securities offerings should be raised for use of the transitional small business disclosure system. Should transitional small business issuers be required to include MD&A in their quarterly reports on Form 10–QSB?

B. Proposed Form SB–1

As a complement to the transitional Exchange Act reporting system, the Commission today is proposing a new Securities Act registration statement, Form SB–1, which generally will be available to the same small business issuers eligible to use the transitional reporting system described above to sell up to $5 million annually in registered offerings. Again, the disclosure requirements and format would be based on Regulation A, with the addition of audited financial statements.

Form SB–1 would be available to (1) any non-reporting small business issuer and (2) any reporting small business issuer eligible to use the transitional format in Form 10–KSB, provided—in both instances—that the aggregate amount registered during the fiscal year did not exceed $5 million. In determining whether a small business issuer had registered more than $5 million during the year, the amount being registered on the Form SB–1 would be added to previous registered offerings in that fiscal year. The $5 million limit would exclude amounts, if any, registered for offerings under employee benefit plans on Form S–8 and dividend reinvestment plans on Form S–3.

Comment is requested as to whether other types of registered transactions, such as secondary offerings, should be excluded in calculating the ceiling for Securities Act and Exchange Act purposes. Comment is requested as to whether the $5 million ceiling, which is based upon the Regulation A offering annual limit contained in section 3(b) of the Securities Act,[27] should be increased to, for example, $10 million or $15 million. Comment also is requested as to the utility of the Form SB–1 for small business issuers.

C. Narrative Disclosure Requirements for Transitional Small Business Issuers

The basic disclosure required of transitional small business issuers would be the same as that currently required by Form 1–A under Regulation A. Accordingly, small business issuers eligible to use the transitional reporting scheme would have the choice of three alternative narrative disclosure formats: (1) A question-and-answer format contained in Offering Circular Model A of Form 1–A; (2) the line-item disclosure model contained in Offering Circular Model B of Form 1–A; or (3) the disclosure required by Form SB–2.

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[22] *See* Securities Act Rule 254 [17 CFR 230.254].

[23] The requirement may arise either pursuant to section 13 [15 U.S.C. § 78m] or 15(d) [15 U.S.C. 78o(d)] of the Exchange Act.

[24] 17 CFR 239.90.

[25] 17 CFR 239.13.

[26] 17 CFR 239.16b.

[27] 15 U.S.C. § 77c(b).

With respect to Form SB–1, several disclosure items—the undertakings contained in Item 512 of Regulation S–B,[28] the front and back cover page of prospectus requirements of Items 501 and 502 of Regulation S–B,[29] the additional offering expenses requirement of Item 511 of Regulation S–B,[30] selling security holder information of Item 507 of Regulation S–B,[31] and the disclosure requirements (Items 510 and 702 of Regulation S–B) concerning the Commission's position on indemnification [32]—have been added to the Regulation A disclosure formats. These additional disclosure items are necessary to make the two Form 1–A disclosure options appropriate for use in a registration statement under the Securities Act.

Comment is requested as to whether these additional disclosure requirements are necessary for inclusion in Form SB–1 and whether other disclosure items should be required of transitional small business issuers.

D. Financial Statement Requirements for Transitional Small Business Issuers

Small business issuers using the transitional disclosure requirements of Exchange Act Forms 10–SB and 10–KSB would be required to include the same financial information required by part F/S of Form 1–A, except that audited financial statements would be required. An initial registration statement on Form 10–SB would be required to contain audited financial statements for the issuer's most recent fiscal year, while subsequent Form 10–KSB filings, as well as offerings registered on Form SB–1, would be required to include audited financial statements for the two most recent fiscal years. Comment is requested as to the appropriateness of the proposed treatment of financial statements. Should the Form 10–SB require two years of audited financial statements? Should IPOs on Form SB–1 be permitted to include only one year of audited financial statements?

E. Annual Report to Security Holders and Proxy Requirements

To streamline and coordinate the disclosure requirements for small business issuers eligible to use the transitional disclosure requirements, the proxy and information statement rules regarding the annual report to security holders would also be revised. As proposed, Rules 14a–3 and 14c–3 would require small business issuers using the transitional reporting requirements for their most recent annual report on Form 10–KSB to provide to security holders only the financial statements contained in that Form 10–KSB. Small business issuers eligible for this disclosure alternative would not, therefore, be required to provide security holders with the narrative disclosure otherwise required.

Modified disclosure formats with respect to the proxy statement disclosure requirements are also proposed for small business issuers eligible to use the transitional disclosure system. These modifications include instructions to Schedule 14A which reference the alternative disclosure formats presented in the transitional disclosure system. Eligible small business issuers which elect not to respond to these modified disclosure requirements may continue to use the transitional reporting system.

Comment is requested as to the appropriateness of the proposed modifications to the annual report requirements and the modifications to the proxy statement requirements.

F. Other Securities Act Forms

Under the proposed Rules and Forms, a transitional small business issuer would be permitted to use the transitional disclosure requirements applicable to its Exchange Act reports for purposes of Forms S–2, S–3, S–4 and S–8. Due to the $5 million ceiling on registered offerings by transitional small business issuers in any one fiscal year, registered offerings on Forms S–2, S–3 and S–4 by transitional small business issuers would similarly be limited to that amount. As registered offerings under employee benefit plans are not included in the computation of the $5 million ceiling, the use of Form S–8 by transitional small business issuers would not be subject to the $5 million limit.

In light of the proposed streamlining of annual reports to security holders with respect to companies eligible to file on the proposed transitional small business issuer reporting system, a modified Form S–2 disclosure format is proposed. A new instruction to Form S–2 would specify that transitional small business issuers using the registration form furnish the Form 10–KSB in place of delivery of the annual report to security holders, and the financial statements required by Part F/S of Form SB–1 in place of the Regulation S–X requirements of that Form. Those small business issuers that do not elect to deliver the Form 10–KSB to their security holders would be required to respond to the disclosure requirements of Form S–2 in the same manner as small business issuers that are not eligible for use of the transitional disclosure system.

In light of the proposed Exchange Act transitional disclosures, issuers eligible to use Form SB–1 and Form S–3 for an offering could use the forward and backward incorporation by reference permitted in Form S–3, using their Exchange Act reports. Similarly, the Commission is proposing to permit transitional small business issuers to use their Exchange Act filings to satisfy the informational requirements of Form S–4.

The Commission adopted substantial revisions to Form S–8 in 1990.[33] These revisions, as well as the modified disclosure required in Regulation S–B, have streamlined the disclosure requirements in Form S–8. As such, revisions to the disclosure provisions in Form S–8 appear unnecessary.

Comment is requested as to whether the treatment of offerings by transitional small business issuers on Forms S–2, S–3, S–4 and S–8 is appropriate. In particular, commenters should address whether the proposed Form S–4 structure is appropriate for these transitional small business issuers.

III. Small Business Integrated Disclosure System—Financial Statements

A. Proposed Amendment of Rule Applicable to Financial Statements of Significant Acquired Businesses

The proposals include an amendment to the financial statement requirement in Regulation S–B with regard to audited historical financial statements of significant acquired businesses.[34] Registration statements, certain proxy material and periodic reports on Form 8–K that are filed with the Commission are required to include financial statements of acquired businesses for periods of one or two years based on the significance of the acquisition. An acquisition is defined as significant if the investment in, assets of or income of the acquired business exceeds 10% of the assets or income of the acquiror. If none of the three significance tests exceeds 20%, one year of an acquiree's financial statements are required. Where significance exceeds 20%, two years of financial statements are required.

For small businesses, an acquisition at any percentage level will be smaller in

[28] 17 CFR 228.512.

[29] 17 CFR 228.501 and 502.

[30] 17 CFR 228.511.

[31] 17 CFR 228.507.

[32] 17 CFR 228.510 and 702.

[33] Securities Act Release No. 6867 (June 6, 1990).

[34] *See* Item 310(c)(3)(iv) of Regulation S–B [17 CFR 228.310(c)(3)(iv)].

absolute terms than an acquisition at the same percentage levels for a larger company. For example, under the current rule a small business with total assets of $25 million would be required to obtain audited historical financial statements of an acquiree with total assets of anything over $2.5 million. There is greater likelihood that audited historical financial statements of a very small acquired business would not be available and the cost of obtaining audits of such small business acquisitions would be disproportionately higher for small businesses. Accordingly, under the proposed amendment, where audited financial statements are not readily available, financial statements would be automatically waived where the acquired business' significance does not exceed 20%, and the earlier of the two years of financial statements would be waived where significance does not exceed 40%. In either case, where unaudited financial statements are available, they should be used. Where a small business issuer relies on such an automatic waiver, the pro forma financial information included in a Form 8–K to report the acquisition may not be used as the basis for measuring the significance of later acquisitions as otherwise permitted by Item 310(c)(5) of Regulation S–B.[35]

Comments are requested concerning whether the proposed significance thresholds for waivers for acquisitions by small business issuers are too low, too high or whether some other criteria for requiring audited financial statements of significant acquired businesses should be considered. For example, should acquisitions below a certain dollar size always be exempt from audited financial statement requirements?

B. Proposed Amendment to Rule Applicable to Age of Small Business IPO Audited Financial Statements

The proposal would change the manner in which small business issuer IPOs are affected by Item 310(g) of Regulation S–B.[36] The current rule permits registration statements becoming effective and proxy material mailed during the period from 45 to 90 days after the end of a fiscal year to include financial statements as of the end of the third quarter provided the issuer meets four conditions. Those conditions are: (1) The issuer is a reporting company; (2) all reports due have been filed; (3) the issuer must reasonably expect to report income in the most recently completed fiscal year; and (4) the issuer must have reported income in at least one of the other two prior fiscal years.

The practical effect of the first requirement is limited to IPOs. The proposed rule amendment would simply delete the reporting status requirement for small business issuers. Comments are requested concerning the appropriateness of the proposed change and whether a parallel change should be made to Regulation S–K.

IV. Proposed Revisions to Regulation D Information Requirements

The general conditions that must be met in an offering under Regulation D are set forth in Rule 502. Among these conditions is the requirement that specified information be delivered to non-accredited investors in connection with offerings under Rules 505 [37] or 506.[38] The Commission proposes to revise the informational requirements of Regulation D to parallel the Small Business Initiatives adopted today. Specifically, a company would no longer be required to prepare audited financial statements solely for use in the Regulation D-exempt transaction.[39] In addition, the structure of the information requirements would be revised to conform to the changes in Regulation A and the replacement of Form S–18 with new Forms SB–1 and SB–2.

A. Proposed Revision of Financial Statement Requirements for Regulation D Offerings

As proposed, Regulation D offerings would no longer require that the financial statements included in the information provided to prospective investors by non-reporting issuers be certified by an independent certified public accountant.[40] Financial statements prepared in accordance with U.S. generally accepted accounting principles would continue to be required. Issuers that have audited financial statements would be required to provide them to purchasers in the Regulation D offering.[41]

The financial statement requirements in Regulation D would be premised upon the issuer's status as a small business issuer. Non-reporting small business issuers would provide only one year of financial statements; non-reporting companies which do not satisfy the definition of small business issuer would provide three years of financial statements. As noted above, however, none of the financial statements would be required to be certified.

Comment is requested as to the appropriateness of paralleling the Regulation D requirements to those of revised Regulation A. Should a different standard apply for Rule 506 offerings in excess of $5 million? Comment is also requested as to the appropriateness of differentiating between small business issuers and non-small business issuers with respect to the financial statement requirements for non-reporting companies under Regulation D. Should offerings in excess of $5 million include audited financial statements? Should non-reporting companies which are not small business issuers include audited financial statements?

B. Proposed Revision to Other Informational Requirements

The information required to be delivered by non-reporting issuers to non-accredited investors in offerings under Rules 505 and 506 of Regulation D currently depends upon the dollar amount offered.[42] As proposed, the different informational requirements would depend upon the issuer's eligibility to use a particular registration statement form or Regulation A. The dollar amount of the particular offering would no longer be determinative. Thus, non-reporting issuers conducting Regulation D offerings would be required to provide the same kind of information as is required in Part I of a Securities Act registration statement form that the issuer would be entitled to use. Non-reporting issuers eligible to use Regulation A would have the option of providing the same kind of information as required in Part II of Form 1–A. No substantive changes are proposed with respect to the informational requirements for reporting issuers.

Comment is requested as to the appropriateness of keying the information requirements to eligibility for other Commission disclosure formats, in lieu of staging disclosure thresholds to the dollar amount of an offering. Comment is also requested as

[35] 17 CFR 228.310(c)(5).

[36] 17 CFR 228.310(g).

[37] 17 CFR 230.505.

[38] 17 CFR 230.506.

[39] See Rule 502(b)(2)(i) [17 CFR 230.502(b)(2)(i)].

[40] Due to this revision in the requirements regarding financial statements, the discussion in the rule of corporate and limited partnership issuers that cannot obtain audited financial statements without unreasonable expense is proposed to be deleted.

[41] Rule 502(b)(2)(ii) [17 CFR 230.502(b)(2)(ii)], which requires that reporting issuers provide information specified in their Exchange Act reports, would not be revised under today's proposals. Such revision is not necessary, as Exchange Act reporting issuers will already have prepared audited financial statements in connection with their reporting requirements.

[42] *See* Rule 502(b)(2)(i)(A)–(C).

to whether one of the three alternative disclosure formats found in Form 1–A should be specified for use in Regulation D.

V. Repeal of Rule 504a

Revised Rule 504 adopted today by the Commission as part of its Small Business Initiatives is not available to blank check companies—development stage companies with no specific business plan or purpose or a business plan to engage in mergers or acquisitions with unidentified companies, or other entities.[43] Old rule 504, now designated Rule 504a, continues to be available to these offerings. The exclusion of blank check companies from revised Rule 504 is premised upon the Commission's own experience, as well as concerns raised in the public comment process following the proposal of the Small Business Initiatives. Blank check offerings have been found to be a common vehicle for fraud and manipulation. Focusing on demonstrated abuses in connection with blank check offerings, Congress in the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 [44] found that such offerings cause harm to investors and directed the Commission to adopt rules governing registration statements filed in connection with blank check offerings.[45] The Commission responded with the adoption of a special regulatory scheme for registered blank check offerings.[46] The Commission today is proposing that Rule 504a be rescinded, thereby excluding blank check companies from Rule 504-type offerings. Comment is requested as to the appropriateness of this proposal and the definition of blank check company in Rule 504. Commenters are also reminded of the 30-day comment period regarding the proposed exclusion.

VI. Regulation A—"Test the Waters" Document

In connection with the newly adopted rule permitting solicitation of indications of interest by issuers wishing to use Regulation A, public commenters expressed uncertainty with respect to the status of the written "test the waters" material under the Securities Act and the relationship of the disclosures in the test the waters document and those in the offering statement. To address these questions, the Commission is proposing to amend Rule 254 to specify that this material is not a "prospectus" as defined in Section 2(10) [47] of the Securities Act. In order to fall within the non-prospectus exclusion, the written test the waters material must be submitted to the Commission and otherwise fully comply with the requirements of Rule 254. This proposed treatment of the written test the waters document is analogous to that provided for advertising of registered offerings pursuant to Rule 134 of the Securities Act.[48] The anti-fraud provisions of the federal securities laws, however, would continue to apply to any written "test the waters" material. Also, any test the waters activity would be an "offer" as defined in Section 2(3) [49] under the Securities Act.[50]

Comment is requested as to the appropriateness of the proposed rule. Should the coverage of proposed Rule 254(e)—which is limited to written materials that are submitted to the Commission and otherwise fully comply with Rule 254—be broader or narrower?

VII. Definitions of "Small Business" and "Small Organization" Under the Regulatory Flexibility Act

In recognition of the definition of small business issuer adopted in the companion release, the Commission also proposes to revise certain Securities Act, Exchange Act and Trust Indenture Act [51] definitions of "small business" and "small organization" for purposes of the Regulatory Flexibility Act ("RFA") to incorporate the definition used for the small business integrated disclosure system.[52]

VIII. General Request for Comment

Any interested person wishing to submit written comments on the proposed rule amendments or suggest additional changes or comments on other matters that might have an impact on the proposals set forth in this release are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment is requested as to the impact of the proposals from the point of view of the public, as well as the entities or persons making filings with the Commission. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 19(a) of the Securities Act.[53] The Commission further requests comment on any competitive burdens that may result from adoption of the proposals. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.[54] Comment letters should refer to File No. S7–28–92. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

IX. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. § 603 regarding the proposed revisions.

The analysis notes that small businesses seeking to register their securities and become reporting issuers will benefit from the transitional disclosure alternatives proposed in Form SB–1 and the Exchange Act reporting forms.

The analysis also notes that the new provision specifying that written test the waters materials complying with Regulation A are not prospectuses under Section 2(10) of the Securities Act would benefit small businesses by specifying the application of the statute.

The analysis notes that Regulation D is proposed to be amended in connection with the Commission's on-going efforts to aid small businesses in connection with the raising of capital. The analysis also notes that small businesses seeking to offer exempt securities under Regulation D will benefit from the proposed revisions, due to the coordination of the informational

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[43] In connection with the revision of Rule 504, the Commission redesignated previously existing Rule 504 as 504a, which, pending action on this proposal, remains in effect.

[44] S.647, Pub. L. 101–429.

[45] *See* H.R. Rep. No. 101–617; 101 Cong., 2d Sess. 10–11, 15 (1990).

[46] *See* Securities Act Release No. 6932 (April 28, 1992).

[47] 15 U.S.C. § 77(b)(10).

[48] 17 CFR 230.134.

[49] 15 U.S.C. § 77b(3).

[50] Thus, the proposed revision to Rule 254 would not affect the status of oral test the waters activity as "oral communications" for purposes of Section 12(2).

[51] Securities Act Rule 157(a) [17 CFR 230.157(a)], Exchange Act Rule 0–10(a) [17 CFR 240.0–10] and Trust Indenture Act Rule 0–7 [17 CFR 260.07] would be revised.

[52] This action is taken only with respect to those entities which would fall within the definition of "small business issuer." As such, it does not affect the RFA definitions of "small business" and "small organization" as those terms apply to investment companies.

Certain of the Commission's definitions under the RFA specifically address the operation of a regulated entity. These definitions are not to be revised. As such, the Commission action discussed above would not affect the RFA definitions regarding public utility holding companies, brokers, dealers, clearing agencies, exchanges, bank municipal securities dealers, securities information processors and transfer agents.

[53] 15 U.S.C. § 77s(a).

[54] 15 U.S.C. § 78w(a).

requirements with other exemptions and registration statement forms and the elimination of the requirement that audited financial statements be developed solely for use in the exempt offering.

Finally, the analysis notes that the proposed changes to the Regulatory Flexibility Act definitions of small business and small organization would expand the category of covered entities, consistent with the benefits accorded to small businesses by the other proposals.

A copy of the Initial Regulatory Flexibility Act Analysis may be obtained from Twanna M. Young, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

X. Cost-Benefit Analysis

As an aid in the evaluation of the costs and benefits of these proposals, the Commission requests the views and other supporting information of the public. It appears to the Commission that the proposals, if adopted, would work significant cost savings for issuers without compromising investor protection.

XI. Statutory Basis, Text of Proposals and Authority

The amendments to the Commission's rules and forms are being proposed pursuant to Sections 2, 3(b), 6, 7, 8, 10, and 19(a) of the Securities Act, Sections 12, 13, 15(d), 16(a) and 23(a) of the Exchange Act and Section 319 of the Trust Indenture Act.

List of Subjects

17 CFR Parts 228, 230, 239, 240, 249 and 260

Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Proposals

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 228—SMALL BUSINESS DISCLOSURE REQUIREMENTS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa[25], 77aa[26], 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By amending § 228.310 by revising paragraphs (c)(3)(i) and (c)(3)(ii); by removing paragraph (c)(3)(iv); by adding one sentence to the end of paragraph (c)(5); and by revising paragraph (g)(2)((i) to read as follows:

§ 228.310 (Item 310) Financial Statements.

* * * * *

(c) * * *

(3)(i) Financial statements shall be furnished for the periods prior to the date of acquisition, for the same periods for which the small business issuer is required to furnish financial statements. The financial statements covering fiscal years shall be audited.

(ii) If none of the conditions in the definitions of significant subsidiary in paragraph (c)(2) of this Item exceeds 20% and the required audited financial statements of the acquired business are not readily available, an automatic waiver of the required audited financial statements is granted. If none of the conditions in the definitions of significant subsidiary exceeds 40% and the required audited financial statements are not readily available, an automatic waiver is granted with respect to the required audited financial statements for the fiscal year preceding the latest fiscal year. If unaudited financial statements or other financial information is available for any fiscal period for which an automatic waiver is granted, then such unaudited financial statements or other information shall be furnished.

* * * * *

(c)(5) * * *

If a Form 8–K was filed to report a significant acquisition but audited financial statements were not furnished pursuant to the automatic waiver provisions of paragraph (c)(3), upon written request from the issuer, the staff will consider permitting the use of previously filed pro forma financial information which was based on unaudited financial statements as the basis for measurement for the significance tests.

* * * * *

(g)(2) * * *

(i) If the small business issuer is a reporting company, all reports due must have been filed;

* * * * *

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

3. The authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 7sss, 78c, 78*l*, 78m, 78n, 78*o*, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

4. Amend paragraph (a) of § 230.157 by replacing "whose total assets on the last day of its most recent fiscal year were $5 million or less" with "whose annual revenues for its most recent fiscal year were less than $25,000,000 and who has a public float (the aggregate market value of the issuer's outstanding securities held by non-affiliates) of less than $25,000,000".

5. By adding paragraph (e) to § 230.254 to read as follows:

§ 230.254 Solicitation of Interest Document for Use Prior to an Offering Statement.

* * * * *

(e) Written solicitation of interest materials submitted to the Commission and otherwise in compliance with this section shall not be deemed to be a prospectus as defined in Section 2(10) of the Securities Act [15 U.S.C. 77b(10)].

6. By revising paragraph (b)(2)(i) and adding a note thereafter § 230.502 to read as follows:

§ 230.502 General conditions to be met.

* * * * *

(b) * * *

(2) * * *

(i) If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and is eligible to use Regulation A, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser, to the extent material to an understanding of the issuer, its business and the securities being offered, the same kind of information as would be required in Part II of Form 1–A [17 CFR 239.90]. If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and is not eligible to use Regulation A, it shall furnish the same kind of information as would be required in Part I of a Securities Act registration form that the issuer would be entitled to use. Small business issuers, as defined in Rule 405, shall provide financial information for the most recent fiscal year only. All other issuers shall provide financial information for the three most recent fiscal years. Financial statements need not be certified by an independent public or certified accountant, but issuers that have audited financial statements available shall provide them. Financial statements shall be prepared in accordance with U.S. generally accepted accounting principles.

Note: The Commission's Regulation S–X, 17 CFR 210.1 et seq. relating to the form, content of and requirements for financial statements shall not apply to the financial statements required to be provided, except that if audited financial statements are provided, the qualifications and reports of an

independent auditor shall comply with the requirements of Article 2 of Regulation S–X.

* * * * *

7. Amend § 230.502 by removing the last sentence in the note to paragraph (b)(1) and in the flush text of paragraph (d) by removing the words "and § 230.504a(b)(2)(ii) require" and adding the word "requires".

8. By removing § 230.504a.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

9. The authority citation for part 239 continues to read as follows:

Authority: 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

10. § 239.9 is added to read as follows:

§ 239.9 Form SB–1, optional form for the registration of securities to be sold to the public by certain small business issuers.

Small business issuers defined in Rule 405 (17 CFR 230.405 of this chapter) may use this form to register up to $5,000,000 of securities to be sold for cash, if they have not registered more than $5,000,000 in securities offerings in any one fiscal year, including the transaction being registered, and excluding any amounts sold pursuant to employee benefits plans on Form S–8 (§ 239.16b of this chapter) and registered dividend reinvestment plans.

Note: The Text and Instructions of Form SB–1 will not appear in the Code of Federal Regulations.

Form SB–1

U.S. Securities and Exchange Commission, Washington, DC 20549

OMB Approval

OMB Number: xxxx–xxxx

Expires: Approval Pending

Estimated average burden hours per response..1.0

Registration Statement Under the Securities Act of 1933

(Amendment No. _____)

_____

(Name of small business issuer in its charter)

_____

(State or jurisdiction of incorporation or organization)

_____

(Primary Standard Industrial Classification Code Number)

_____

(I.R.S. Employer Identification No.)

_____

(Address and telephone number of principal executive offices)

_____

(Address of principal place of business or intended principal place of business)

_____

(Name, address and telephone number of agent for service)

Approximate date of proposed sale to the public _____.

Calculation of Registration Fee

Title of each class of securities to be registered

Dollar Amount to be registered

Proposed maximum offering price per unit

Proposed maximum aggregate offering price

Amount of registration fee

The following delaying amendment is optional, but see Rule 473 before omitting it: 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.

Disclosure alternative used (check one): Alternative 1 _____; Alternative 2 _____; Alternative 3 _____

General Instructions

A. Use of Form and Place of Filing

1. A "small business issuer," defined in Rule 405 of the Securities Act of 1933 (the "Securities Act") may use this form to register securities to be sold for cash, so long as that issuer has not registered more than $5,000,000 of securities offerings in any one fiscal year, including the securities offered in the transaction being registered. Registered offerings of securities under employee benefit and/or dividend reinvestment plans may be excluded for purposes of computing this $5,000,000 ceiling.

2. If the small business issuer is not a reporting company, it should file the registration statement in the regional office that is closest to its principal place of business or the Washington, DC office. However, no filing may be made in the Philadelphia regional office; small business issuers in that region should file in the Atlanta, New York or Washington, DC offices.

3. If the small business issuer is a reporting company or a holding company of a bank (see the definition of "bank" in section 12(i) of the Securities Exchange Act of 1934), it should file the registration statement in the Commission's Washington, DC headquarters.

4. Post-effective amendments should be filed with the office that declared the registration statement effective.

5. The Commission may refer processing to an office other than that where filing was made.

B. General Requirements

1. Regulation S–B (17 CFR 228.10 *et seq.*) contains the disclosure requirements for the Form SB–2 disclosure alternative in Part I of this form. In preparing a registration statement on this Form, reference also should be made to the General Rules and Regulations under the Securities Act, particularly Regulation C which sets forth requirements for the preparation and filing of a registration statement such as paper type and size.

2. Issuers registering securities for the first time should be aware of Form SR and Rule 463 under the Securities Act concerning sales of registered securities and the use of proceeds. First-time issuers also should be aware of Exchange Act Rule 15c2–8 (§ 240.15c2–8), which requires broker-dealers to deliver a prospectus 48 hours before a sale of securities can be confirmed.

3. Issuers engaged in real estate, oil and gas or mining activities should consult the Industry Guides in Item 801 of Regulation S–K (17 CFR 229.801). Real estate companies also should refer to Item 13 [Investment Policies of Registrant], Item 14 [Description of Real Estate], and Item 15 [Operating Data] of Form S–11 (17 CFR 239.18).

C. Preparation and Filing of the Registration Statement

Part I of this form, which relates to the content of certain information about the issuer, provides several alternative disclosure formats. The registrant may elect any of these alternative formats.

D. Financial Statement Requirements

Regardless of the disclosure model used, all registrants shall provide the financial statements required by Part F/S of this Form SB–1.

E. Composition of Prospectus

The information required by Part I and Part F/S of this registration statement shall comprise the prospectus.

F. Registration of Securities to be Offered for the Account of Security Holders

If any of the securities registered on this Form SB–1 are to be offered for the account of security holders, Part I of this registration statement should include the information required by Item 507 of Regulation S–B.

G. Canadian Issuer—Consent of Service

Canadian issuers eligible to use this Form should file as an exhibit to this registration statement a written irrevocable consent and power of attorney on Form F–X (§ 239.42 of this title).

Part I—Narrative Information Required in Prospectus

Alternative 1

Any issuer may elect to provide the information required by Part I of Form SB–2, except for the financial statements called for there.

Alternative 2

Corporate issuers may elect to provide the information required by Model A of Form 1–A, as well as the following information.

Item 1. Front of Registration Statement and Outside Front Cover of Prospectus

Furnish the information required by Item 501 of Regulation S–B.

Item 2. Inside Front and Outside Back Cover Pages of Prospectus

Furnish the information required by Item 502 of Regulation S–B.

Item 3. Significant Parties

(a) List the full names and business and residential addresses, as applicable, for the following persons:

(1) the issuer's directors;

(2) the issuer's officers;

(3) the issuer's general partners;

(4) record owners of 5 percent or more of any class of the issuer's equity securities;

(5) beneficial owners of 5 percent or more of any class of the issuer's equity securities;

(6) promoters of the issuer;

(7) affiliates of the issuer;

(8) counsel to the issuer with respect to the proposed offering;

(9) each underwriter with respect to the proposed offering;

(10) the underwriter's directors;

(11) the underwriter's officers;

(12) the underwriter's general partners; and

(13) counsel to the underwriter.

Item 4. Relationship with Issuer of Experts Named in Registration Statement

If any expert named in the registration statement as having prepared or certified any part thereof was employed for such purpose on a contingent basis or, at the time of such preparation or certification or at any time thereafter, had a material interest in the issuer or any of its parents or subsidiaries or was connected with the issuer or any of its subsidiaries as a promoter, underwriter, voting trustee, director, officer or employee furnish a brief statement of the nature of such contingent basis, interest or connection.

Item 5. Selling Security Holders

Furnish the information required by Item 507 of Regulation S–B.

Item 6. Disclosure of Commission Position on Indemnification for Securities Act Liabilities

Furnish the information required by Item 510 of Regulation S–B.

Alternative 3

Any issuer may elect to provide the information required by Model B of Part II of Form 1–A, as well as the following information.

Item 1. Front of Registration Statement and Outside Front Cover of Prospectus

Furnish the information required by Item 501 of Regulation S–B.

Item 2. Inside Front and Outside Back Cover Pages of Prospectus

Furnish the information required by Item 502 of Regulation S–B.

Item 3. Significant Parties

(a) List the full names and business and residential addresses, as applicable, for the following persons:

(1) The issuer's directors;

(2) The issuer's officers;

(3) The issuer's general partners;

(4) Record owners of 5 percent or more of any class of the issuer's equity securities;

(5) Beneficial owners of 5 percent or more of any class of the issuer's equity securities;

(6) Promoters of the issuer;

(7) Affiliates of the issuer;

(8) Counsel to the issuer with respect to the proposed offering;

(9) Each underwriter with respect to the proposed offering;

(10) The underwriter's directors;

(11) The underwriter's officers;

(12) The underwriter's general partners; and

(13) Counsel to the underwriter.

Item 4. Relationship With Issuer of Experts Named in Registration Statement

If any expert named in the registration statement as having prepared or certified any part thereof was employed for such purpose on a contingent basis or, at the time of such preparation or certification or at any time thereafter, had a material interest in the issuer or any of its parents or subsidiaries or was connected with the issuer or any of its subsidiaries as a promoter, underwriter, voting trustee, director, officer or employee furnish a brief statement of the nature of such contingent basis, interest or connection.

Item 5. Selling Security Holders

Furnish the information required by Item 507 of Regulation S–B.

Item 6. Disclosure of Commission Position on Indemnification for Securities Act Liabilities

Furnish the information required by Item 510 of Regulation S–B.

Part F/S—Financial Information Required in Prospectus

The following financial statements of the issuer, or the issuer and its predecessors or any businesses to which the issuer is a successor, shall be filed as part of the registration statement and included in the prospectus which is distributed to investors. Such financial statements and the financial statements required to be provided for any significant business acquired or to be acquired shall be audited.

Issuers which are limited partnerships are required to also file the balance sheets of general partners: (1) If such general partner is a corporation, the balance sheet shall be as of the end of its most recently completed fiscal year; receivables from a parent or affiliate of such general partner (including notes receivable, but excluding trade receivables) should be deductions from shareholders equity of the general partner; where a parent or affiliate has committed to increase or maintain the general partner's capital, there shall also be filed the balance sheet of such parent or affiliate as of the end of its most recently completed fiscal year; (2) if such general partner is a partnership, its balance sheet as of the end of its most recently completed fiscal year; (3) if such general partner is a natural person, the net worth of such general partner(s) based on the estimated fair market value of their assets and liabilities, singly or in the aggregate shall be disclosed in the offering circular, and balance sheets of each of the individual general partners supporting such net worth shall be provided as supplemental information.

(1) Balance Sheet—as of a date within 90 days prior to filing the registration statement or such longer time, not exceeding 6 months, as the Commission may permit at the written request of the issuer upon a showing of good cause; for filings made after 90 days subsequent to the issuer's most recent fiscal year, the balance sheet shall be dated as of the end of the most recent fiscal year.

(2) Statements of income, cash flows, and other stockholders equity—for each of the 2 fiscal years preceding the date of the most recent balance sheet being filed, and for any interim period between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed, or for the period of the issuer's existence if less than the period above.

Income statements shall be accompanied by a statement that in the opinion of management all adjustments necessary for a fair statement of results for the interim period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made. If otherwise, there shall be furnished as supplemental information and not as part of the registration statement, a letter describing in detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of results shown.

(3) Financial Statements of Businesses Acquired or to be Acquired.

(a) Financial statements for the periods specified in (c) below should be furnished if any of the following conditions exist:

(i) Consummation of a significant business combination accounted for as a purchase has occurred or is probable (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method); or

(ii) Consummation of a significant business combination to be accounted for as a pooling is probable.

(b) A business combination shall be considered significant if a comparison of the most recent annual financial statements of the business acquired or to be acquired and the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition indicates that the business would be a significant subsidiary pursuant to the conditions specified in Item 310(c)(2) of Regulation S–B.

(c)(i) The financial statements shall be furnished for the periods up to the date of acquisition, for those periods for which the registrant is required to furnish financial statements.

(ii) The separate balance sheet of the acquired business is not required when the registrant's most recent balance sheet filed is for a date after the acquisition was consummated.

(iii) If none of the conditions in the definitions of significant subsidiary in Item 310(c)(2) of Regulation S–B exceeds 20% and the required audited financial statements of the acquired business are not readily available, an automatic waiver of the required audited financial statements is granted. If none of the conditions in the definitions of significant subsidiary exceeds 40% and the required audited financial

statements are not readily available, an automatic waiver is granted with respect to the required audited financial statements for the fiscal year preceding the latest fiscal year. If unaudited financial statements or other financial information is available for any fiscal period for which an automatic waiver is granted, then such unaudited financial statements or other information shall be furnished.

(d) If consummation of more than one transaction has occurred or is probable, the tests of significance shall be made using the aggregate impact of the businesses and the required financial statements may be presented on a combined basis, if appropriate.

(e) This paragraph (3) shall not apply to a business which is totally held by the registrant prior to consummation of the transaction.

(4) Pro Forma Financial Information.

(a) Pro forma information shall be furnished if any of the following conditions exist (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method);

(i) During the most recent fiscal year or subsequent interim period for which a balance sheet of the registrant is required, a significant business combination accounted for as a purchase has occurred;

(ii) After the date of the registrant's most recent balance sheet, consummation of a significant business combination to be accounted for by either the purchase method or pooling of interests method of accounting has occurred or is probable.

(b) The provisions of paragraph (3) (b), (d) and (e) apply to this paragraph (4).

(c) Pro forma statements shall ordinarily be in columnar form showing condensed historical statements, pro forma adjustments, and the pro forma results and should include the following:

(i) If the transaction was consummated during the most recent fiscal year or in the subsequent interim period, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, or

(ii) If consummation of the transaction has occurred or is probable after the date of the most recent balance sheet, a pro forma balance sheet giving effect to the combination as of the date of the most recent balance sheet required by paragraph (b)(1). For a purchase, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, and for a pooling of interests, pro forma statements of income for all periods for which income statements of the registrant are required.

Part II—Information Not Required in Prospectus

Item 1. Indemnification of Directors and Officers

Furnish the information required by Item 702 of Regulation S–B.

Item 2. Other Expenses of Issuance and Distribution

Furnish the information required by Item 511 of Regulation S–B.

Item 3. Undertakings

Furnish the undertakings required by Item 512 of Regulation S–B.

Item 4. Unregistered Securities Issued or Sold Within One Year

(a) As to any unregistered securities issued by the issuer or any of its predecessors or affiliated issuers within one year prior to the filing of this Form SB–1, state:

(1) The name of such issuer;

(2) The title and amount of securities issued;

(3) The aggregate offering price or other consideration for which they were issued and the basis for computing the amount thereof;

(4) The names and identities of the persons to whom the securities were issued.

(b) As to any unregistered securities of the issuer or any of its predecessors or affiliated issuers which were sold within one year prior to the filing of this Form SB–1 by or for the account of any person who at the time was a director, officer, promoter or principal security holder of the issuer of such securities, or was an underwriter of any securities of such issuer, furnish the information specified in subsections (1) through (4) of paragraph (a).

(c) Indicate the section of the Securities Act or Commission rule or regulation relied upon for exemption from the registration requirements of such Act and state briefly the facts relied upon for such exemption.

Item 5. Index to Exhibits

(a) An index to the exhibits should be presented.

(b) Each exhibit should be listed in the exhibit index according to the number assigned to it under Item 2 below.

(c) The index to exhibits should identify the location of the exhibit under the sequential page numbering system for this Form SB–1.

(d) Where exhibits are incorporated by reference, the reference shall be made in the index of exhibits.

Instructions

1. 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.

2. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the issuer shall file with the reference a statement containing the text of such modification and the date thereof.

3. Procedurally, the techniques specified in Rule 411(d) of Regulation C shall be followed.

Item 6. Description of Exhibits

As appropriate, the following documents should be filed as exhibits to the registration statement.

(1) *Underwriting Agreement*—Each underwriting contract or agreement with a principal underwriter or letter pursuant to which the securities are to be distributed; where the terms have yet to be finalized, proposed formats may be provided.

(2) *Charter and by-laws*—The charter and by-laws of the issuer or instruments corresponding thereto as presently in effect and any amendments thereto.

(3) *Instruments defining the rights of security holders*—(a) All instruments defining the rights of any holder of the issuer's securities, including but not limited to (i) holders of equity or debt securities being issued; (ii) holders of long-term debt of the issuer, and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(b) The following instruments need not be filed if the issuer agrees to provide them to the Commission upon request: (i) instruments defining the rights of holders of long-term debt of the issuer and all of its subsidiaries for which consolidated financial statements are required to be filed if such debt is not being issued pursuant to this offering and the total amount of such authorized issuance does not exceed 5% of the total assets of the issuer and its subsidiaries on a consolidated basis; (ii) any instrument with respect to a class of securities which is to be retired or redeemed prior to the issuance or upon delivery of the securities being issued pursuant to this offering and appropriate steps have been taken to assure such retirement or redemption; and (iii) copies of instruments evidencing scrip certificates or fractions of shares.

(4) *Subscription agreement*—The form of any subscription agreement to be used in connection with the purchase of securities in this offering.

(5) *Voting trust agreement*—Any voting trust agreements and amendments thereto.

(6) *Material contracts*—(a) Every contract not made in the ordinary course of business which is material to the issuer and is to be performed in whole or in part at or after the filing of the registration statement or was entered into not more than 2 years before such filing. Only contracts need be filed as to which the issuer or subsidiary of the issuer is a party or has succeeded to a party by assumption or assignment or in which the issuer or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business conducted by the issuer and its subsidiaries, it is 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 should be filed except where immaterial in amount or significance: (i) any contract to which directors, officers, promoters, voting trustees, security holders named in the registration statement, or underwriters are parties except where the contract merely involves the purchase or sale of current assets having a determinable market price, at such market price; (ii) any contract upon which the issuer's business is substantially dependent, as in the case of continuing contracts to sell the major part of the issuer's products or services or to purchase the major part of the issuer'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 the issuer's business depends to a material extent; (iii) any contract calling for the acquisition or sale of any property, plant

or equipment for a consideration exceeding 15% of such fixed assets of the issuer on a consolidated basis; or (iv) any material lease under which a part of the property described in the registration statement is held by the issuer.

(c) Any management contract or any compensatory 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) shall be deemed material and shall be filed except for the following: (i) ordinary purchase and sales agency agreements; (ii) agreements with managers of stores in a chain organization or similar organization; (iii) contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such; (iv) any compensatory plan, contract or arrangement which pursuant to its terms is available to employees generally and which in operation provides for the same method of allocation of benefits between management and non-management participants.

(7) *Material foreign patents*—Each material foreign patent for an invention not covered by a United States patent. 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.

(8) *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 registration statement. 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 registration statement. 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.

(9) *Escrow agreements*—Any escrow agreement or similar arrangement which has been executed in connection with the offering.

(10) *Consents*—(a) Experts: The written consent of (i) any accountant, engineer, geologist, appraiser or any person whose profession gives authority to a statement made by them and who is named in the registration statement as having prepared or certified any part of the document or is named as having prepared or certified a report or evaluation whether or not for use in connection with the registration statement; (ii) the expert that authored any portion of a report quoted or summarized as such in the registration statement, expressly stating their consent to the use of such quotation or summary; (iii) any persons who are referenced as having reviewed or passed upon any information in the registration statement, and that such information is being included on the basis of their authority or in reliance upon their status as experts.

(b) All written consents shall be dated and manually signed.

(11) *Opinion re legality*—An opinion of counsel as to the legality of the securities covered by the Registration Statement, indicating whether they will, when sold, be legally issued, fully paid and nonassessable, and if debt securities, whether they will be binding obligations of the issuer.

(12) *Additional exhibits*—Any additional exhibits which the issuer may wish to file, which shall be so marked as to indicate clearly the subject matters to which they refer.

(13) *Form F-X*—Canadian issuers eligible to use this Form SB-1 shall file a written irrevocable consent and power of attorney on Form F-X.

Signatures

In accordance with 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 of filing on Form SB-1 and authorized this registration statement to be signed on its behalf by the undersigned, in the City of _____, State of _____, on _____, 19____

(Registrant) _____

By (Signature and Title) _____

In accordance with the requirements of the Securities Act of 1933, this registration statement was signed by the following persons in the capacities and on the dates stated.

(Signature) _____

(Title) _____

(Date) _____

Instructions for Signatures

(1) Who must sign: the small business issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and at least the majority of the board of directors or persons performing similar functions. If the issuer is a limited partnership then the general partner and a majority of its board of directors if a corporation.

(2) Beneath each signature, type or print the name of each signatory. Any person who occupies more than one of the specified positions shall indicate each capacity in which he or she signs the registration statement. *See* Rule 402 of Regulation C concerning manual signatures and Item 601 of Regulation S-B concerning signatures by powers of attorney.

11. Form S-2 (§ 239.12) is amended by adding Paragraph D to General Instruction II to read as follows:

Note: The text of Form S-2 will not appear in the Code of Federal Regulations.

Form S-2

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General Instruction

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II. Application of General Rules and Regulations

* * * * *

D. A "small business issuer," defined in Rule 405 (17 CFR 230.405) that is eligible to use Form SB-1 *and* Form S-2, shall deliver its most recent Form 10-KSB in lieu of the annual report to security holders required by Rule 14a-3 [17 CFR 240.14a-3] or Rule 14c-3 [17 CFR 240.14c-3] in response to Item 11(a). Issuers relying upon this General Instruction II.D. may respond to Item 11(a)(3) by providing the financial information required in Part F/S of Form SB-1 with respect to acquired businesses and pro forma financial statements. Transitional small business issuers which do not elect to deliver their most recent Form 10-KSB, and instead set forth the disclosure required by Item 11(b), shall refer to General Instruction II.C.

12. Form S-4 (§ 239.25) is amended by adding Paragraph 4 to General Instruction D to read as follows:

Note: The text of Form S-4 will not appear in the Code of Federal Regulations.

Form S-4

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General Instructions

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D. Application of General Rules and Regulations

* * * * *

4. A "small business issuer," defined in Rule 405 (17 CFR 230.405) that is eligible to use Form SB-1 shall respond to Part I.B. and I.C. in the following manner: (1) Registrants and Companies to be Acquired which are eligible to use Form SB-1 *and* Form S-2 may provide all information required pursuant to General Instruction II.D. of Form S-2; and (2) Registrants and Companies to be Acquired which are eligible to use Form SB-1 shall provide the information required by that form.

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

13. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

14. Amend paragraph (a) of § 240.0-10 by replacing "that, on the last day of its most recent fiscal year, had assets of $5 million or less" with "whose annual

revenues for its most recent fiscal year were less than $25,000,000 and who has a public float (the aggregate market value of the issuer's outstanding securities held by non-affiliates) of less than $25,000,000".

15. By revising the Note following the introductory text of paragraph (b) of § 240.14a–3 to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) * * *

Note to Small Business Issuers—A "small business issuer," defined under Rule 12b–2 of the Exchange Act (§ 240.12b–2), shall refer to the disclosure items in Regulation S–B (§ 228.10 *et seq.* of this chapter) rather than Regulation S–K (§ 229.10 *et seq.*). If there is no comparable disclosure item in Regulation S–B, a small business issuer need not provide the information requested. A small business issuer shall provide the information in Item 310(a) of Regulation S–B in lieu of the financial information required by Rule 14a–3(b)(1) (§ 240.14a–3(b)(1)). Small business issuers using the transitional small business issuers disclosure format in the filing of their most recent annual report on Form 10–KSB need not provide the information specified below. Rather, those small business issuers shall provide only the financial statements required to be filed in their most recent Form 10–KSB.

* * * * *

16. Amend § 240.14a–101 by adding Note G, an Instruction 3 after Item 6, an Instruction after paragraph (a) of Item 7, an Instruction after paragraph (b) of Item 7, a Special Instruction after the Instruction to Item 8, an Instruction 6 to Item 10, an Instruction to paragraph (b) of Item 11, an Instruction to paragraph (b) of Item 12, an Instruction to paragraph (a)(1) of Item 13, an Instruction to paragraph (a)(3) of Item 13, and an Instruction to paragraph (b)(3)(i) of Item 14 to read as follows:

§ 249.14a–101 Schedule 14A. Information required in proxy statement.

Notes: * * *

G. Special Note to Small Business Issuers

Registrants and acquirees which meet the definition of "small business issuer" in Rule 12b–2 of the Exchange Act and filed their latest annual report in accordance with Alternative 2 or Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in Form 10–KSB shall refer to the "Special Instructions for Certain Small Business Issuers" which follow specific items in this Schedule. If there is no such special instruction, small business issuers should comply with the disclosure item in this schedule, as modified by Instruction F.

* * * * *

Item 6 * * *

Instruction

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3. Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 2 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Questions 14 and 15 of that disclosure format instead of paragraph (d) of this Item.

(b) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Item 5 of that disclosure format instead of paragraph (d) of this Item.

* * * * *

Item 7

* * * * *

(a) * * *

Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 2 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Questions 20 of that disclosure format instead of paragraph (a) of this Item.

(b) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Item 3(d) of that disclosure format instead of paragraph (a) of this Item.

* * * * *

(b) * * *

Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 2 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Questions 6–13 and 16 of that disclosure format instead of paragraph (b) of this Item.

(b) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Item 3(a)–(c) and Item 6 of that disclosure format instead of paragraph (b) of this Item.

* * * * *

Item 8

* * * * *

Instruction

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Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 2 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Questions 16–18 of that disclosure format instead of this Item. (b) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Item 4 of that disclosure format instead of this Item.

* * * * *

Item 10

* * * * *

Instructions

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6. Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 2 under "Information Required in Annual Reports of Transitional Small Business Issuers" in that Form, shall respond to Questions 17(c), 18 and 19 of that disclosure format instead of this Item.

(b) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Item 4 of that disclosure format instead of this Item.

* * * * *

Item 11

* * * * *

(b)

* * * * *

Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with "Information Required

in Annual Report of Transitional Small Business Issuers" need not respond to this paragraph (b).

* * * * *

Item 12

* * * * *

(b)

* * * * *

Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with "Information Required in Annual Report of Transitional Small Business Issuers" need not respond to this paragraph (b).

* * * * *

Item 13

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(a)

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(1)

* * * * *

Special Instruction for Certain Small Business Issuers. Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with "Information Required in Annual Report of Transitional Small Business Issuers" shall provide the information required by part F/S of that Form, instead of this paragraph.

* * * * *

(3)

* * * * *

Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 2 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form shall respond to Questions 4 and 22–25 of that disclosure format instead of this paragraph.

(b) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form shall respond to Item 1(a)(3) of that disclosure format instead of this paragraph.

* * * * *

Item 14

* * * * *

(b)

* * * * *

(3)(i)

* * * * *

Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 2 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form shall respond to Questions 2 and 3 of that disclosure format instead of paragraphs (b)(3)(i)(A) and (b)(3)(i)(B) of this Item. These issuers may also respond to questions 4 and 22–25 of that disclosure format instead of paragraph (b)(3)(i)(H) of this Item.

(b) Small business issuers which filed their most recent annual report on Form 10–KSB in accordance with Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form shall respond to Items 1 and 2 of that disclosure format instead of paragraphs (b)(3)(i)(A) and (b)(3)(i)(B) of this Item. These issuers may also respond to Item 1(a)(3) of that disclosure format instead of paragraph (b)(3)(i)(H) of this Item.

17. By adding the following Note after paragraph (a)(2) of § 240.14c–3 to read as follows:

§ 240.14c–3 Annual Report to be Furnished Security Holders.

(a) * * *

(2) * * *

Note to Small Business Issuers—In responding to the disclosure items under paragraph (b) of Rule 14a–3, (§ 240.14a–3 of this chapter) a "small business issuer," defined under Rule 12b–2 of the Exchange Act (§ 240.12b–2), shall refer to the disclosure items in Regulation S–B (§ 228.10 *et seq.* of this chapter) rather than Regulation S–K (§ 229.10 *et seq.*). If there is no comparable disclosure item in Regulation S–B, a small business issuer need not provide the information requested. A small business issuer shall provide the information in Item 310(a) of Regulation S–B in lieu of the financial information required by Rule 14a–3(b)(1) (§ 240.14a–3(b)(1)). Small business issuers using the transitional small business issuers disclosure format in the filing of their most recent annual report on Form 10–KSB need not provide the information required by paragraph (b) of Rule 14a–3. Rather, those small business issuers shall provide only the financial statements required to be filed in their most recent Form 10–KSB.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

17a. The authority for Part 249 continues to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

Note: The following forms will not appear in the Code of Federal Regulations.

18. By adding General Instruction E to Form 10–SB [§ 249.210b] to read as follows:

Form 10–SB

* * * * *

General Instructions

* * * * *

E. Alternative Disclosure Formats

Small business issuers which were not previously subject to the reporting requirements of section 13 or 15(d) of the Exchange Act may elect any one of the three alternative disclosure models of part I. Regardless of the disclosure model used, all registrants shall also complete parts II and III, and provide the financial statements required by part F/S.

19. By removing Items 1 through 15 under "Information Required in Registration Statement" of Form 10–SB [17 CFR 249.210b].

20. By adding part I; part II; part F/S and Part III after "Information Required in Registration Statement" of Form 10–SB [17 CFR 249.210b]:

Form 10–SB

* * * * *

Information Required in Registration Statement

Part I

Alternative 1

Any issuer may elect to provide the following information.

Item 1. Description of Business

Furnish the information required by Item 101 of Regulation S–B.

Item 2. Management's Discussion and Analysis or Plan of Operation

Furnish the information required by Item 303 of Regulation S–B.

Item 3. Description of Property

Furnish the information required by Item 102 of Regulation S–B.

Item 4. Security Ownership of Certain Beneficial Owners and Management

Furnish the information required by Item 403 of Regulation S–B.

Item 5. Directors, Executive Officers, Promoters and Control Persons

Furnish the information required by Item 401 of Regulation S–B.

Item 6. Executive Compensation

Furnish the information required by Item 402 of Regulation S–B.

Item 7. Certain Relationships and Related Transactions

Furnish the information required by Item 404 of Regulation S–B.

Item 8. Description of Securities

Furnish the information required by Item 202 of Regulation S–B.

Alternative 2

Corporate issuers may elect to provide the following information.

General Instructions:

Each question in each paragraph of this part shall be responded to; and each question and any notes, but not any instructions thereto, shall be restated in its entirety. If the question or series of questions is inapplicable, so state. If the space provided in the format is insufficient, additional space should be created by cutting and pasting the format to add more lines.

Be very careful and precise in answering all questions. Give full and complete answers so that they are not misleading under the circumstances involved. Do not discuss any future performance or other anticipated event unless you have a reasonable basis to believe that it will actually occur within the foreseeable future. If any answer requiring significant information is materially inaccurate, incomplete or misleading, the Company, its management and principal shareholders may have liability to investors. Appropriate diligence should be exercised to determine that no such inaccuracy or incompleteness has occurred.

The Company

1. Exact corporate name: _____
State and date of incorporation: _____

_____

Street address of principal office:

_____

_____

Company Telephone Number: (_____)
Fiscal year: _____
(month) (day)
Person(s) to contact at Company with respect to offering:

_____

Telephone Number (if different from above): (_____) _____

Business and Properties

2. With respect to the business of the Company and its properties:

(a) Describe in detail what business the Company does and proposes to do, including what products or goods are or will be produced or services that are or will be rendered.

_____

_____

_____

(b) Describe *how* these products or services are to be produced or rendered and how and when the Company intends to carry out its activities. If the Company plans to offer a new product(s), state the present stage of development, including whether or not a working prototype(s) is in existence. Indicate if completion of development of the product would require a material amount of the resources of the Company, and the estimated amount. If the Company is or is expected to be dependent upon one or a limited number of suppliers for essential raw materials, energy or other items, describe. Describe any major existing supply contracts.

_____

_____

_____

_____

(c) Describe the industry in which the Company is selling or expects to sell its products or services and, where applicable, any recognized trends within that industry. Describe that part of the industry and the geographic area in which the business competes or will compete.

Indicate whether competition is or is expected to be by price, service, or other basis. Indicate (by attached table if appropriate) the current or anticipated prices or price ranges for the Company's products or services, or the formula for determining prices, and how these prices compare with those of competitors' products or services, including a description of any variations in product or service features. Name the principal competitors that the Company has or expects to have in its area of competition. Indicate the relative size and financial and market strengths of the Company's competitors in the area of competition in which the Company is or will be operating. State why the Company believes it can effectively compete with these and other companies in its area of competition.

_____

_____

_____

_____

_____

_____

_____

_____

Note: Because this registration statement focuses primarily on details concerning the Company rather than the industry in which the Company operates or will operate, potential investors may wish to conduct their own separate investigation of the Company's industry to obtain broader insight in assessing the Company's prospects.

(d) Describe specifically the marketing strategies the Company is employing or will employ in penetrating its market or in developing a new market. Set forth in response to Question 4 below the timing and size of the results of this effort which will be necessary in order for the Company to be profitable. Indicate how and by whom its products or services are or will be marketed (such as by advertising, personal contact by sales representatives, etc.), how its marketing structure operates or will operate and the basis of its marketing approach, including any market studies. Name any customers that account for, or based upon existing orders will account for a major portion (20% or more) of the Company's sales. Describe any major existing sales contracts.

_____

_____

_____

_____

_____

_____

_____

(e) State the backlog of written firm orders for products and/or services as of a recent date (within the last 90 days) and compare it with the backlog of a year ago from that date.

As of: ___/___/___
$ _____
(a recent date)
As of: ___/___/___
$ _____
(one year earlier)

Explain the reason for significant variations between the two figures, if any. Indicate what types and amounts of orders are included in the backlog figures. State the size of typical orders. If the Company's sales are seasonal or cyclical, explain.

_____

_____

_____

_____

(f) State the number of the Company's present employees and the number of employees it anticipates it will have within the next 12 months. Also, indicate the number by type of employee (i.e., clerical, operations, administrative, etc.) the Company will use, whether or not any of them are subject to collective bargaining agreements, and the expiration date(s) of any collective bargaining agreement(s). If the Company's employees are on strike, or have been in the past three years, or are threatening to strike, describe the dispute. Indicate any supplemental benefits or incentive arrangements the Company has or will have with its employees.

_____

_____

_____

_____

(g) Describe generally the principal properties (such as real estate, plant and equipment, patents, etc.) that the Company owns, indicating also what properties it leases and a summary of the terms under those leases, including the amount of payments, expiration dates and the terms of any renewal options. Indicate what properties the Company intends to acquire in the immediate future, the cost of such acquisitions and the sources of financing it expects to use in obtaining these properties, whether by purchase, lease or otherwise.

_____

(h) Indicate the extent to which the Company's operations depend or are expected to depend upon patents, copyrights, trade secrets, know-how or other proprietary information and the steps undertaken to secure and protect this intellectual property, including any use of confidentiality agreements, covenants-not-to-compete and the like. Summarize the principal terms and expiration dates of any significant license agreements. Indicate the amounts expended by the Company for research and development during the last fiscal year, the amount expected to be spent this year and what percentage of revenues research and development expenditures were for the last fiscal year.

(i) If the Company's business, products, or properties are subject to material regulation (including environmental regulation) by federal, state, or local governmental agencies, indicate the nature and extent of regulation and its effects or potential effects upon the Company.

(j) State the names of any subsidiaries of the Company, their business purposes and ownership, and indicate which are included in the Financial Statements attached hereto. If not included, or if included but not consolidated, please explain.

(k) Summarize the material events in the development of the Company (including any material mergers or acquisitions) during the past five years, or for whatever lesser period the Company has been in existence. Discuss any pending or anticipated mergers, acquisitions, spin-offs or recapitalizations. If the Company has recently undergone a stock split, stock dividend or recapitalization in anticipation of this offering, describe (and adjust historical per share figures elsewhere in this registration statement accordingly).

3. (a) If the Company was not profitable during its last fiscal year, list below in chronological order the events which in management's opinion must or should occur or the milestones which in management's opinion the Company must or should reach in order for the Company to become profitable, and indicate the expected manner of occurrence or the expected method by which the Company will achieve the milestones.

Event or milestone	Expected manner of occurrence or method of achievement	Date or number of months after receipt of proceeds when should be accomplished
(1)		
(2)		
(3)		
(4)		
(5)		

(b) State the probable consequences to the Company of delays in achieving each of the events or milestones within the above time schedule, and particularly the effect of any delays upon the Company's liquidity in view of the Company's then anticipated level of operating costs. (See Question No. 4)

Note: After reviewing the nature and timing of each event or milestone, potential investors should reflect upon whether achievement of each within the estimated time frame is realistic and should assess the consequences of delays or failure of achievement in making an investment decision.

Instruction: The inquiries under Business and Properties elicit information concerning the nature of the business of the Company and its properties. Make clear what aspects of the business are presently in operation and what aspects are planned to be in operation in the future. The description of principal properties should provide information which will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of the individual properties or legal descriptions by metes and bounds are not required and should not be given.

As to Question 3, if more than five events or milestones exist, add additional lines as necessary. A "milestone" is a significant point in the Company's development or an obstacle which the Company must overcome in order to become profitable.

4. Indicate whether the Company is having or anticipates having within the next 12 months any cash flow or liquidity problems and whether or not it is in default or in breach of any note, loan, lease or other indebtedness or financing arrangement requiring the Company to make payments. Indicate if a significant amount of the Company's trade payables have not been paid within the stated trade term. State whether the Company is subject to any unsatisfied judgments, liens or settlement obligations and the amounts thereof. Indicate the Company's plans to resolve any such problems.

Description of Securities

5. The securities being registered on this Form 10–SB are:

[ ] Common Stock
[ ] Preferred or Preference Stock
[ ] Notes or Debentures
[ ] Units of two or more types of securities composed of:_____
[ ] Other:_____

6. These securities have:

Yes No
[ ] [ ] Cumulative voting rights
[ ] [ ] Other special voting rights
[ ] [ ] Preemptive rights to purchase in new issues of shares
[ ] [ ] Preference as to dividends or interest
[ ] [ ] Preference upon liquidation
[ ] [ ] Other special rights or preferences (specify): _____

Explain: _____

7. Are the securities convertible? [ ] Yes [ ] No

If so, state conversion price or formula: _____

Date when conversion becomes effective: _____/_____/_____

Date when conversion expires: _____/ _____/_____

8. (a) If securities are notes or other types of debt securities:

(1) What is the interest rate? ____%

If interest rate is variable or multiple rates, describe: _____

(2) What is the maturity date? _____/_____/_____

If serial maturity dates, describe: _____

(3) Is there a mandatory sinking fund? [ ] Yes [ ] No

Describe: _____

(4) Is there a trust indenture? [ ] Yes [ ] No

Name, address and telephone number of Trustee: _____

(5) Are the securities callable or subject to redemption? [ ] Yes [ ] No

Describe, including redemption prices: _____

(6) Are the securities collateralized by real or personal property?

[ ] Yes [ ] No Describe: _____

(7) If these securities are subordinated in right of payment of interest or principal, explain the terms of such subordination.

How much currently outstanding indebtedness of the Company is senior to the securities in right of payment of interest or principal? $_____

How much indebtedness shares in right of payment on an equivalent (pari passu) basis? $_____

How much indebtedness is junior (subordinated) to the securities? $_____

9. If securities are Preference or Preferred stock:

Are unpaid dividends cumulative?

[ ] Yes [ ] No

Are securities callable? [ ] Yes [ ] No

Explain: _____

Note: Include as an exhibit to this registration statement copies or a summary of the charter, bylaw or contractual provision or document that gives rise to the rights of holders of Preferred or Preference Stock, notes or other securities being offered.

10. If securities are capital stock of any type, indicate restrictions on dividends under loan or other financing arrangements or otherwise:

11. Current amount of assets available for payment of dividends if deficit must be first made up, show deficit in parenthesis): $_____.

Dividends, Distributions and Redemptions

12. If the Company has within the last five years paid dividends, made distributions upon its stock or redeemed any securities, explain how much and when:

Officers and Key Personnel of the Company

13. Chief Executive Officer:

Title: _____

Name: _____

Age: _____

Office Street Address: _____

Telephone No.: ( ) _____-_____

Name of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates): _____

Also a Director of the Company [ ] Yes [ ] No

Indicate amount of time to be spent on Company matters if less than full time:

14. Chief Operating Officer:

Title: _____

Name: _____

Age: _____

Office Street Address: _____

Telephone No.: ( ) _____-_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates): _____

Also a Director of the Company? [ ] Yes [ ] No.

Indicate amount of time to be spent on Company matters if less than full time:

15. Chief Financial Officer: Title: _____

Name: _____ Age: _____

Office Street Address: _____

Telephone No.: ( ) _____-_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates): _____

Also a Director of the Company? [ ] Yes [ ] No.

Indicate amount of time to be spent on Company matters if less than full time:

16. Other Key Personnel:

(A) Name: _____

Age: _____

Title: _____

Office Street Address: _____

Telephone No.: ( ) _____-_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company? [ ] Yes–[ ] No

Indicate amount of time to be spent on Company matters if less than full time:

(B) Name: _____ Age: _____
Title: _____
Office Street Address: _____

Telephone No.: ( ) _____-_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company? [ ] Yes [ ] No

Indicate amount of time to be spent on Company matters if less than full time:

Instruction: The term "Chief Executive Officer" means the officer of the Company who has been delegated final authority by the board of directors to direct all aspects of the Company's affairs. The term "Chief Operating Officer" means the officer in charge of the actual day-to-day operations of the Company's business. The term "Chief Financial Officer" means the officer having accounting skills who is primarily in charge of assuring that the Company's financial books and records are properly kept and maintained and financial statements prepared.

The term "key personnel" means persons such as vice presidents, production managers, sales managers, or research scientists and similar persons, who are not included above, but who make or are expected to make significant contributions to the business of the Company, whether as employees, independent contractors, consultants or otherwise.

Directors of the Company

17. Number of Directors: _____ If Directors are not elected annually, or are elected under a voting trust or other arrangement, explain:

18. Information concerning outside or other Directors (i.e. those not described above):
(A) Name: _____
Age: _____
Office Street Address:

Telephone No.: _____ _____-_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates): _____

(B) name : _____
Age: _____
Office Street Address:

Telephone No.: (_____) _____-_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates): _____

(C) Name: _____
Age: _____
Office Street Address:

Telephone No.: (_____) _____-_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

19. (a) Have any of the Officers or Directors ever worked for or managed a company (including a separate subsidiary or division of a larger enterprise) in the same business as the Company? [ ] Yes [ ] No

Explain:

(b) If any of the Officers, Directors or other key personnel have ever worked for or managed a company in the same business or industry as the Company or in a related business or industry, describe what precautions, if any, (including the obtaining of releases or consents from prior employers) have been taken to preclude claims by prior employers for conversion or theft of trade secrets, know-how or other proprietary information.

(c) If the Company has never conducted operations or is otherwise in the development stage, indicate whether any of the Officers or Directors has ever managed any other company in the start-up or development stage and describe the circumstances, including relevant dates.

(d) If any of the Company's key personnel are not employees but are consultants or other independent contractors, state the details of their engagement by the Company.

(e) If the Company has key man life insurance policies on any of its Officers, Directors or key personnel, explain, including the names of the persons insured, the amount of insurance, whether the insurance proceeds are payable to the Company and whether there are arrangements that require the proceeds to be used to redeem securities or pay benefits to the estate of the insured person or a surviving spouse.

20.If a petition under the Bankruptcy Act or any State insolvency law was filed by or against the Company or its Officers, Directors or other key personnel, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of any such persons, or any partnership in which any of such persons was a general partner at or within the past five years, or any corporation or business association of which any such person was an executive officer at or within the past five years, set forth below the names of such persons, and the nature and date of such actions.

Note: After reviewing the information concerning the background of the Company's Officers, Directors and other key personnel, potential investors should consider whether or not these persons have adequate background and experience to develop and operate this Company and to make it successful. In this regard, the experience and ability of management are often considered the most significant factors in the success of a business.

Principal Stockholders

21. Principal owners of the Company (those who beneficially own directly or indirectly 10% or more of the common and preferred stock presently outstanding) starting with the largest common stockholder. Include separately all common stock issuable upon conversion of convertible securities (identifying them by asterisk) and show average price per share as if conversion has occurred. Indicate by footnote if the price paid was for a consideration other than cash and the nature of any such consideration.

Class of shares	Average price per share	No. of shares now held	Percent of total
Name:			

Office Street Address:

Telephone No. (_____) _____-_____
Principal occupation:

Name:

Office Street Address:

Telephone No. (_____) _____-_____
Principal occupation:

Name:

Office Street Address:

Telephone No. (_____) _____-_____
Principal occupation:

Name:

Office Street Address:

Telephone No. (_____) _____-_____
Principal occupation:

22. Number of shares beneficially owned by Officers and Directors as a group: _____ shares (____% of total outstanding) (Assume all options exercised and all convertible securities converted.)

Instruction: If shares are held by family members, through corporations or partnerships, or otherwise in a manner that would allow a person to direct or control the voting of the shares (or share in such direction or control—as, for example, a co-trustee) they should be included as being "beneficially owned." An explanation of these circumstances should be set forth in a footnote to the "Number of Shares Now Held."

Management Relationships, Transactions and Remuneration

23.(a) If any of the Officers, Directors, key personnel or principal stockholders are related by blood or marriage, please describe.

(b) If the Company has made loans to or is doing business with any of its Officers, Directors, key personnel or 10% stockholders, or any of their relatives (or any entity controlled directly or indirectly by any such persons) within the last two years, or proposes to do so within the future, explain. (This includes sales or lease of goods, property or services to or from the Company, employment or stock purchase contracts, etc.) State the principal terms of any significant loans, agreements, leases, financing or other arrangements.

(c) If any of the Company's Officers, Directors, key personnel or 10% stockholders has guaranteed or co-signed any of the Company's bank debt or other obligations, including any indebtedness to be retired from the proceeds of this offering, explain and state the amounts involved.

24.(a) List all remuneration by the Company to Officers, Directors and key personnel for the last fiscal year:

	Cash	Other
Chief Executive Officer	$	$
Chief Operating Officer		
Chief Accounting Officer		
Key Personnel:		
Others:		

	Cash	Other
Total:	$	$
Directors as a group (number of persons ____)	$	$

(b) If remuneration is expected to change or has been unpaid in prior years, explain:

(c) If any employment agreements exist or are contemplated, describe:

25.(a) Number of shares subject to issuance under presently outstanding stock purchase agreements, stock options, warrants or rights: ____ shares (____% of total shares to be outstanding after the completion of the offering if all securities sold, assuming exercise of options and conversion of convertible securities). Indicate which have been approved by shareholders. State the expiration dates, exercise prices and other basic terms for these securities:

(b) Number of common shares subject to issuance under existing stock purchase or option plans but not yet covered by outstanding purchase agreements, options or warrants: ____ shares.

(c) Describe the extent to which future stock purchase agreements, stock options, warrants or rights must be approved by shareholders.

26. If the business is highly dependent on the services of certain key personnel, describe any arrangements to assure that these persons will remain with the Company and not compete upon any termination:

Note: After reviewing the above, potential investors should consider whether or not the compensation to management and other key personnel directly or indirectly, is reasonable in view of the present stage of the Company's development.

Instruction: For purposes of Question 23(b), a person directly or indirectly controls an entity if he is part of the group that directs or is able to direct the entity's activities or affairs. A person is typically a member of a control group if he is an officer, director, general partner, trustee or beneficial owner of a 10% or greater interest in the entity. In Question 24, the term "Cash" should indicate salary, bonus, consulting fees, non-accountable expense accounts and the like. The column captioned "Other" should include the value of any options or securities given, any annuity, pension or retirement benefits, bonus or profit-sharing plans, and personal benefits (club memberships, company cars, insurance benefits not generally available to employees, etc.). The nature of these benefits should be explained in a footnote to this column.

Litigation

27. Describe any past, pending or threatened litigation or administrative action which has had or may have a material effect upon the Company's business, financial condition, or operations, including any litigation or action involving the Company's Officers, Directors or other key personnel. State the names of the principal parties, the nature and current status of the matters, and amounts involved. Give an evaluation by management or counsel, to the extent feasible, of the merits of the proceedings or litigation and the potential impact on the Company's business, financial condition, or operations.

Miscellaneous Factors

28. Describe any other material factors, either adverse or favorable, that will or could affect the Company or its business (for example, discuss any defaults under major contracts, any breach of bylaw provisions, etc.) or which are necessary to make any other information in this registration statement not misleading or incomplete.

Management's Discussion and Analysis of Certain Relevant Factors

29. If the Company's financial statements show losses from operations, explain the causes underlying these losses and what steps the Company has taken or is taking to address these causes.

30. Describe any trends in the Company's historical operating results. Indicate any changes now occurring in the underlying economics of the industry or the Company's business which, in the opinion of Management, will have a significant impact (either favorable or adverse) upon the Company's results of operations within the next 12 months, and give a rough estimate of the probable extent of the impact, if possible.

31. If the Company sells a product or products and has had significant sales during its last fiscal year, state the existing gross margin (net sales less cost of such sales as presented in accordance with generally accepted accounting principles) as a percentage of sales for the last fiscal year: ____%. What is the anticipated gross margin for next year of operations? Approximately ____%. If this is expected to change, explain. Also, if reasonably current gross margin figures are available for the industry, indicate these figures and the source or sources from which they are obtained.

32. Foreign sales as a percent of total sales for last fiscal year: ____%. Domestic government sales as a percent of total domestic sales for last fiscal year: ____%. Explain the nature of these sales, including any anticipated changes:

Alternative 3

Any issuer may elect to provide the following information.

Item 1. Description of Business

(a) Narrative description of business.

(1) Describe the business done and intended to be done by the issuer and its subsidiaries and the general development of the business during the past five years or such shorter period as the issuer may have been in business. Such description should include, but not be limited to, a discussion of the following factors if such factors are material to an understanding of the issuer's business:

(i) The principal products produced and services rendered and the principal markets

for and method of distribution of such products and services.

(ii) The status of a product or service if the issuer has made public information about a new product or service which would require the investment of a material amount of the assets of the issuer or is otherwise material.

(iii) The estimated amount spent during each of the last two fiscal years on company-sponsored research and development activities determined in accordance with generally accepted accounting principles. In addition, state the estimated dollar amount spent during each of such years on material customer-sponsored research activities relating to the development of new products, services or techniques or the improvement of existing products, services or techniques.

(iv) The number of persons employed by the issuer, indicating the number employed full time.

(v) 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, may have upon the capital expenditures, earnings and competitive position of the issuer and its subsidiaries. The issuer shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and for such further periods as the issuer may deem material.

(2) The issuer should also describe those distinctive or special characteristics of the issuer's operation or industry which may have a material impact upon the issuer's future financial performance. Examples of actors which might be discussed include dependence on one or a few major customers or suppliers (including suppliers of raw materials or financing), existing or probable governmental regulation, material terms of and/or expiration of material labor contracts or patents, trademarks, licenses, franchises, concessions or royalty agreements, unusual competitive conditions in the industry, cyclicality of the industry and anticipated raw material or energy shortages to the extent management may not be able to secure a continuing source of supply.

(3) Issuers (including predecessors) which have not received revenue from operations during each of the three fiscal years immediately prior to the filing of the registration statement shall describe, if formulated, the issuer's plan of operation for the twelve months following the date of this registration statement. If such information is not available, the reasons for its unavailability shall be stated. Disclosure relating to any plan should include, among other things, a statement indicating whether, in the issuer's opinion, the issuer will be able to satisfy its cash requirements and whether, in the next six months, it will be necessary to raise additional funds.

(b) Segment Data. If the issuer is required to include segment information in its financial statements, an appropriate cross-reference shall be included in the description of business.

Item 2. Description of Property

State briefly the location and general character of the principal plants, and other materially important physical properties of the issuer and its subsidiaries. If any such property is not held in fee or is held subject to any major encumbrance, so state and briefly describe how held.

Instruction:

What is required is information essential to an investor's appraisal of the securities being offered. Such information should be furnished as will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and should not be given.

Item 3. Directors, Executive Officers and Significant Employees

(a) List the names and ages of each of the following persons stating his term of office and any periods during which he has served as such and briefly describe 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 to his office or position:

(1) directors;

(2) persons nominated to chosen to become directors;

(3) executive officers;

(4) persons chosen to become executive officers;

(5) significant employees.

Instructions:

1. No nominee or person chosen to become a director or person chosen to be an executive officer who has not consented to act as such should be named in response to this item.

2. The term "executive officer" means the president, secretary, treasurer, any vice-president in charge of a principal business function (such as sales, administration, or finance) and any other person who performs similar policy making functions for the issuer.

3. The term "significant employee" means 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 issuer.

(b) Family relationships. State the nature of any family relationship between any director, executive officer, person nominated or chosen by the issuer to become a director or executive officer or any significant employee.

Instruction:

The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(c) Business experience. Give a brief account of the business experience during the past five years of each director, person nominated or chosen to become a director or executive officer, and each significant employee, 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 significant employee has been employed by the issuer for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of this 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.

(d) Involvement in certain legal proceedings. Describe any of the following events which occurred during the past five years and which are material to an evaluation of the ability or integrity of any director, person nominated to become a director or executive officer of the issuer.

(1) A petition under the Bankruptcy Act 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 general partner at or within 2 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 (excluding traffic violations and other minor offenses).

Item 4. Remuneration of Directors and Officers

(a) Furnish, in substantially the tabular form indicated, the aggregate annual remuneration of each of the three highest paid persons who are officers or directors as a group during the issuer's last fiscal year. State the number of persons in the group referred to above without naming them.

Name of individual or identity of group
Capacities in remuneration was received
Aggregate remuneration

Instructions:

1. In case of remuneration paid or to be paid otherwise than in cash, if it is impracticable to determine the cash value thereof, state in a note to the table the nature and amount thereof.

2. This item is to be answered on an accrual basis if practicable; if not so answered, state the basis used.

(b) Briefly describe all remuneration payments proposed to be made in the future pursuant to any ongoing plan or arrangement to the individuals and group specified in Item 9(a). The description should 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 measurements 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.

Item 5. Security Ownership of Management and Certain Securityholders

(a) Voting securities and principal holders thereof. Furnish the following information, in substantially the tabular form indicated, with respect to voting securities held of record by:

(1) each of the three highest paid persons who are officers and directors of the issuer; *Note*—In the event none of the issuer's officers or directors have received a salary in the past twelve months, this item should be responded to for every officer and director;

(2) all officers and directors as a group;

(3) each shareholder who owns more than 10% of any class of the issuer's securities, including those shares subject to outstanding options.

(1) Title of class
(2) Name and address of owner
(3) Amount owned before the offering
(4) Amount owned after the offering
(5) Percent of class

Instruction:

Column (4) need not be responded to if the information would be the same as that appearing under column (3).

(b) If, to the knowledge of the issuer, any other person holds or shares the power to vote or direct the voting of securities described pursuant to subsection (a) above, appropriate disclosure should be made. In addition, if any person other than those named pursuant to subsection (a) holds or shares the power to vote 10% or more of the issuer's voting securities, the information required by the table should be provided with respect to such person.

(c) Non-voting securities and principal holders thereof. Furnish the same information as required in subsection (a) above with respect to securities that are not entitled to vote.

(d) Options, warrants, and rights. Furnish the information required by the table as to options, warrants or rights to purchase securities from the issuer or any of its subsidiaries held by each of the individuals and referred to in subsection (a) above:

Name of holder
Title and amount securities called for by options, warrants or rights
Exercise price
Date of exercise

Instruction:

Where the total market value of securities called for by all outstanding options, warrants or rights does not exceed $10,000 for any officer, director, or principal shareholder named in answer to this item, or $50,000 for all officers and directors as a group, this item need not be answered with respect to options, warrants or rights held by such person or group. If the issuer cannot ascertain the market value of its securities, the offering price may be used for purposes of this subsection. If, as is the case with offerings of debt securities, the offering price cannot be determined at the time of filing the registration statement, the issuer may utilize any reasonable method of valuation.

(e) List all parents of the issuer, showing the basis of control and as to each parent the percentage of voting securities owned or other basis of control by its immediate parent, if any.

Item 6. Interest of Management and Others in Certain Transactions

Describe briefly any transactions during the previous two years or any presently proposed transactions, to which the issuer 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 his relationship to the issuer, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the issuer;

(2) Any nominee for election as a director;

(3) Any principal securityholder named in answer to Item 10(a);

(4) If the issuer was incorporated or organized within the past three years, any promoter of the issuer;

(5) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same house as such person or who is a director or officer of any parent or subsidiary of the issuer.

Instructions:

1. No information need be given in answer to this item as to any transaction where:

(a) The rates of charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier 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 a series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments does not exceed $50,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the issuer and the specified person receives no extra or special benefit not shared on a pro-rata basis by all of the holders of securities of the class.

2. It should be noted that this Item 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 issuer 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 Item 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 subparagraphs (1) through (5) above, 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 he and all other persons specified in (1) through (5) above 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 issuer or any of its subsidiaries and the transaction is not material to such other person.

3. Include the name of each person whose interest in any transaction is described and the nature of the relationships by reason of which such interest is required to be described. 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 disclosed.

4. Information should be included as to any material underwriting discounts and commissions upon the sale of securities by the issuer where any of the specified persons was or is to be a principal underwriter or is a controlling person, or member, of a firm which was or is to be a principal underwriter. Information need not be given concerning ordinary management fees paid by underwriters to a managing underwriter pursuant to an agreement among underwriters the parties to which do not include the issuer or its subsidiaries.

5. As to any transaction involving the purchase or sale of assets by or to any issuer or any subsidiary, 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.

6. Information shall be furnished in answer to this Item with respect to transactions not excluded above which involve remuneration from the issuer 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 issuer or its subsidiaries.

Item 7. Securities Being Registered

(a) If capital stock is being registered, state the title of the class and furnish the following information:

(1) Outline briefly: (i) dividend rights; (ii) voting rights; (iii) liquidation rights; (iv) preemptive rights; (v) conversion rights; (vi) redemption provisions; (vii) sinking fund provisions; and (viii) liability to further calls or to assessment by the issuer.

(2) Briefly describe potential liabilities imposed on shareholders under state statutes or foreign law, e.g., to laborers, servants or employees of the registrant, unless such disclosure would be immaterial because the financial resources of the registrant are such as to make it unlikely that the liability will ever be imposed.

(b) If debt securities are being registered, outline briefly the following:

(1) Provisions with respect to interest, conversion, maturity, redemption, amortization, sinking fund or retirement.

(2) Provisions with respect to the kind and priority of any lien securing the issue, together with a brief identification of the principal properties subject to such lien.

(3) Provisions restricting the declaration of dividends or requiring the maintenance of any ratio of assets, the creation or maintenance of reserves or the maintenance of properties.

(4) Provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against such issuance, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions.

Instruction:

In the case of secured debt there should be stated (i) the approximate amount of unbonded property available for use against the issuance of bonds, as of the most recent practicable date, and (ii) whether the securities being issued are to be issued against such property, against the deposit of cash, or otherwise.

(c) If securities described are to be offered pursuant to warrants, rights, or convertible securities, state briefly:

(1) The amount of securities called for by such warrants, convertible securities or rights;

(2) The period during which and the price at which the warrants, convertible securities or rights are exercisable;

(3) The amounts of warrants, convertible securities or rights outstanding; and

(4) Any other material terms of such securities.

(d) In the case of any other kind of securities, appropriate information of a comparable character.

Part II

Item 1. Market Price of and Dividends on the Registrant's Common Equity and Other Shareholder Matters

Provide the information required by Item 201 of Regulation S–B.

Item 2. Legal Proceedings

Provide the information required by Item 103 of Regulation S–B.

Item 3. Changes in and Disagreements with Accountants

Provide the information required by Item 304 of Regulation S–B.

Item 4. Recent Sales of Unregistered Securities

Provide the information required by Item 701 of Regulation S–B.

Item 5. Indemnification of Directors and Officers

Provide the information required by Item 702 of Regulation S–B.

Part F/S

The following financial statements of the issuer, or the issuer and its predecessors or any businesses to which the issuer is a successor shall be filed as part of this form. Such financial statements and the financial statements required to be provided for any significant business acquired or to be acquired shall be audited for the most recent fiscal year, except that if audited financial statements for the preceding fiscal year are otherwise available, those financial statements shall also be provided.

Issuers which are limited partnerships are required to also file the balance sheets of general partners: (1) if such general partner is a corporation, the balance sheet shall be as of the end of its most recently completed fiscal year; receivables from a parent or affiliate of such general partner (including notes receivable, but excluding trade receivables) should be deductions from shareholders equity of the general partner; where a parent or affiliate has committed to increase or maintain the general partner's capital, there shall also be filed the balance sheet of such parent or affiliate as of the end of its most recently completed fiscal year; (2) if such general partner is a partnership, its balance sheet as of the end of its most recently completed fiscal year; (3) if such general partner is a natural person, the net worth of such general partner(s) based on the estimated fair market value of their assets and liabilities, singly or in the aggregate shall be disclosed in the offering circular, and balance sheets of each of the individual general partners supporting such net worth shall be provided as supplemental information.

(1) Balance Sheet—as of a date within 90 days prior to filing the registration statement or such longer time, not exceeding 6 months, as the Commission may permit at the written request of the issuer upon a showing of good cause; for filings made after 90 days subsequent to the issuer's most recent fiscal year, the balance sheet shall be dated as of the end of the most recent fiscal year.

(2) Statements of income, cash flows, and other stockholders equity—for each of the 2 fiscal years preceding the date of the most recent balance sheet being filed, and for any interim period between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed, or for the period of the issuer's existence if less than the period above.

Income statements shall be accompanied by a statement that in the opinion of management all adjustments necessary for a fair statement of results for the interim period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made. If otherwise, there shall be furnished as supplemental information and not as part of the registration statement, a letter describing in detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of results shown.

(3) Financial Statements of Businesses Acquired or to be Acquired.

(a) Financial statements for the periods specified in (c) below should be furnished if any of the following conditions exist:

(i) Consummation of a significant business combination accounted for as a purchase has occurred or is probable (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method); or

(ii) Consummation of a significant business combination to be accounted for as a pooling is probable.

(b) A business combination shall be considered significant if a comparison of the most recent annual financial statements of the business acquired or to be acquired and the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition indicates that the business would be a significant subsidiary pursuant to the conditions specified in Item 310(c)(2) of Regulation S–B.

(c)(i) The financial statements shall be furnished for the periods up to the date of acquisition, for those periods for which the registrant is required to furnish financial statements.

(ii) The separate balance sheet of the acquired business is not required when the registrant's most recent balance sheet filed is for a date after the acquisition was consummated.

(iii) If none of the conditions in the definitions of significant subsidiary in Item 310(c)(2) of Regulation S–B exceeds 20% and the required audited financial statements of the acquired business are not readily available, an automatic waiver of the required audited financial statements is granted. If none of the conditions in the definitions of significant subsidiary exceeds 40% and the required audited financial statements are not readily available, an automatic waiver is granted with respect to the required audited financial statements for the fiscal year preceding the latest fiscal year. If unaudited financial statements or other financial information is available for any fiscal period for which an automatic waiver is granted, then such unaudited financial statements or other information shall be furnished.

(d) If consummation of more than one transaction has occurred or is probable, the tests of significance shall be made using the aggregate impact of the businesses and the required financial statements may be presented on a combined basis, if appropriate.

(e) This paragraph (3) shall not apply to a business which is totally held by the registrant prior to consummation of the transaction.

(4) Pro Forma Financial Information.

(a) Pro forma information shall be furnished if any of the following conditions exist (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method);

(i) During the most recent fiscal year or subsequent interim period for which a balance sheet of the registrant is required, a significant business combination accounted for as a purchase has occurred;

(ii) After the date of the registrant's most recent balance sheet, consummation of a significant business combination to be accounted for by either the purchase method or pooling of interests method of accounting has occurred or is probable.

(b) The provisions of paragraph (3) (b), (d) and (e) apply to this paragraph (4).

(c) Pro forma statements shall ordinarily be in columnar form showing condensed historical statements, pro forma adjustments, and the pro forma results and should include the following:

(i) If the transaction was consummated during the most recent fiscal year or in the subsequent interim period, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, or

(ii) If consummation of the transaction has occurred or is probable after the date of the most recent balance sheet, a pro forma balance sheet giving effect to the combination as of the date of the most recent balance sheet required by paragraph (b). For a purchase, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, and for a pooling of interests, pro forma statements of income for all periods for which income statements of the registrant are required.

Part III

Item 1. Index to Exhibits

(a) An index to the exhibits should be presented.

(b) Each exhibit should be listed in the exhibit index according to the number assigned to it under Item 2 below.

(c) The index to exhibits should identify the location of the exhibit under the sequential page numbering system for this Form 10–SB.

(d) Where exhibits are incorporated by reference, the reference shall be made in the index of exhibits.

Instructions:

1. 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.

2. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the issuer shall file with the reference a statement containing the text of such modification and the date thereof.

3. Procedurally, the techniques specified in Rule 12b–23 shall be followed.

Item 2. Description of Exhibits

As appropriate, the following documents should be filed as exhibits to the registration statement.

(1) *Charter and by-laws*—The charter and by-laws of the issuer or instruments corresponding thereto as presently in effect and any amendments thereto.

(2) *Instruments defining the rights of security holders*—(a) All instruments defining the rights of any holder of the issuer's securities, including but not limited to (i) holders of equity or debt securities being issued; (ii) holders of long-term debt of the issuer, and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(b) The following instruments need not be filed if the issuer agrees to provide them to the Commission upon request: (i) instruments defining the rights of holders of long-term debt of the issuer and all of its subsidiaries for which consolidated financial statements are required to be filed if the total amount of such authorized issuance does not exceed 5% of the total assets of the issuer and its subsidiaries on a consolidated basis; and (ii) copies of instruments evidencing scrip certificates or fractions of shares.

(3) *Voting trust agreement*—Any voting trust agreements and amendments thereto.

(4) *Material contracts*—(a) Every contract not made in the ordinary course of business which is material to the issuer and is to be performed in whole or in part at or after the filing of the registration statement or was entered into not more than 2 years before such filing. Only contracts need be filed as to which the issuer or subsidiary of the issuer is a party or has succeeded to a party by assumption or assignment or in which the issuer or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business conducted by the issuer and its subsidiaries, it is 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 should be filed except where immaterial in amount or significance: (i) any contract to which directors, officers, promoters, voting trustees, security holders named in the registration statement, or underwriters are parties except where the contract merely involves the purchase or sale of current assets having a determinable market price, at such market price; (ii) any contract upon which the issuer's business is substantially dependent, as in the case of continuing contracts to sell the major part of the issuer's products or services or to purchase the major part of the issuer'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 the issuer's business depends to a material extent; (iii) any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15% of such fixed assets of the issuer on a consolidated basis; or (iv) any material lease under which a part of the property described in the registration statement is held by the issuer.

(c) Any management contract or any compensatory 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) shall be deemed material and shall be filed except for the following: (i) ordinary purchase and sales agency agreements; (ii) agreements with managers of stores in a chain organization or similar organization; (iii) contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such; (iv) any compensatory plan, contract or arrangement which pursuant to its terms is available to employees generally and which in operation provides for the same method of allocation of benefits between management and non-management participants.

(5) *Material foreign patents*—Each material foreign patent for an invention not covered by a United States patent. 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.

(6) *Additional exhibits*—Any additional exhibits which the issuer may wish to file, which shall be so marked as to indicate clearly the subject matters to which they refer.

* * * * *

21. Form 10–QSB (§ 249.308b) is amended by adding General Instruction H to read as follows:

* * * * *

General Instructions

* * * * *

H. (1) A small business issuer that has not registered more than $5,000,000 in securities offerings in any one fiscal year since it became subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act may omit the information required by Item 2 of Part I of this Form 10–QSB. In determining the $5,000,000 limit, small business issuers should exclude registered offerings under employee benefit plans or dividend reinvestment programs.

(2) In response to Item 6(a) of this Form 10–QSB, a small business issuer that has not registered more than $5,000,000 in securities offerings in any one fiscal year since it became subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act may include only those exhibits required by Part III of "Information Required in Annual Report of Transitional Small Business Issuers" of Form 10–KSB. See General Instruction H(1) of this Form 10–QSB with respect to determination of the $5,000,000 limit.

* * * * *

22. By adding the following at the end of the cover page of Form 10–KSB § 249.310b:

Form 10–KSB

* * * * *

Transitional Small Business Disclosure Format (Check one): Yes _____; No _____.

* * * * *

23. By adding General Instruction H to Form 10–KSB [§ 249.310b] to read as follows:

Form 10–KSB

* * * * *

General Instructions

* * * * *

H. Transitional Small Business Issuers.

In lieu of the disclosure requirements set forth under Parts I, II and III, a small business issuer that has not registered more than $5,000,000 in securities offerings in any one fiscal year since it became subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act may include the information required under "Information Required in Annual Report of Transitional Small Business Issuers." In determining the $5,000,000 limit, small business issuers should exclude registered offerings under employee benefit plans or dividend reinvestment programs.

* * * * *

24. By adding Part I, Part II, Part F/S and Part III after Item 13 of Form 10–KSB [§ 249.310b] to read as follows:

Form 10–KSB

* * * * *

Item 13

* * * * *

Information Required in Annual Report of Transitional Small Business Issuers

PART I

Note: Regardless of the disclosure model used, all registrants shall provide the financial statements required by Part F/S.

Alternative 1

Any issuer may elect to provide the information required under Parts I, II and III, above, except for the financial statements called for there.

Alternative 2

Corporate issuers may elect to provide the following information, as well as the information in Parts II and III, below.

General Instructions:

Each question in each paragraph of this part shall be responded to; and each question and any notes, but not any instructions thereto, shall be restated in its entirety. If the question or series of questions is inapplicable, so state. If the space provided in the format is insufficient, additional space should be created by cutting and pasting the format to add more lines.

Be very careful and precise in answering all questions. Give full and complete answers so that they are not misleading under the circumstances involved. Do not discuss any future performance or other anticipated event unless you have a reasonable basis to believe that it will actually occur within the foreseeable future. If any answer requiring significant information is materially inaccurate, incomplete or misleading, the Company, its management and principal shareholders may have liability to investors. Appropriate diligence should be exercised to determine that no such inaccuracy or incompleteness has occurred.

The Company

1. Exact corporate name: _____
State and date of incorporation: _____

_____

Street address of principal office:

_____

_____

Company Telephone Number: (_____)

_____

Fiscal year: _____
(month)

_____

(day)

Person(s) to contact at Company with respect to offering:

_____

Telephone Number (if different from above): (_____) _____

Business and Properties

2. With respect to the business of the Company and its properties:

(a) Describe in detail *what* business the Company does and proposes to do, including what products or goods are or will be produced or services that are or will be rendered.

_____

_____

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_____

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_____

(b) Describe *how* these products or services are to be produced or rendered and how and when the Company intends to carry out its activities. If the Company plans to offer a new product(s), state the present stage of development, including whether or not a working prototype(s) is in existence. Indicate if completion of development of the product would require a material amount of the resources of the Company, and the estimated amount. If the Company is or is expected to be dependent upon one or a limited number of suppliers for essential raw materials, energy or other items, describe. Describe any major existing supply contracts.

_____

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_____

(c) Describe the industry in which the Company is selling or expects to sell its products or services and, where applicable, any recognized trends within that industry. Describe that part of the industry and the geographic area in which the business competes or will compete.

Indicate whether competition is or is expected to be by price, service, or other basis. Indicate (by attached table if appropriate) the current or anticipated prices or price ranges for the Company's products or services, or the formula for determining prices, and how these prices compare with those of competitors' products or services, including a description of any variations in product or service features. Name the principal competitors that the Company has or expects to have in its area of competition. Indicate the relative size and financial and market strengths of the Company's competitors in the area of competition in which the Company is or will be operating. State why the Company believes it can effectively compete with these and other companies in its area of competition.

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Note: Because this annual report focuses primarily on details concerning the Company rather than the industry in which the Company operates or will operate, potential investors may wish to conduct their own separate investigation of the Company's industry to obtain broader insight in assessing the Company's prospects.

(d) Describe specifically the marketing strategies the Company is employing or will employ in penetrating its market or in developing a new market. Set forth in response to Question 4 below the timing and size of the results of this effort which will be necessary in order for the Company to be profitable. Indicate how and by whom its products or services are or will be marketed (such as by advertising, personal contact by sales representatives, etc.), how its marketing structure operates or will operate and the basis of its marketing approach, including any market studies. Name any customers that account for, or based upon existing orders will account for a major portion (20% or more) of the Company's sales. Describe any major existing sales contracts.

_____

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_____

(e) State the backlog of written firm orders for products and/or services as of a recent date (within the last 90 days) and compare it with the backlog of a year ago from that date.

As of: ___/___/___
(a recent date)
$ _____

As of: ___/___/___
(one year earlier)
$ _____

Explain the reason for significant variations between the two figures, if any. Indicate what types and amounts of orders are included in the backlog figures. State the size of typical orders. If the Company's sales are seasonal or cyclical, explain.

(f) State the number of the Company's present employees and the number of employees it anticipates it will have within the next 12 months. Also, indicate the number by type of employee (i.e., clerical, operations, administrative, etc.) the Company will use, whether or not any of them are subject to collective bargaining agreements, and the expiration date(s) of any collective bargaining agreement(s). If the Company's employees are on strike, or have been in the past three years, or are threatening to strike, describe the dispute. Indicate any supplemental benefits or incentive arrangements the Company has or will have with its employees.

(g) Describe generally the principal properties (such as real estate, plant and equipment, patents, etc.) that the Company owns, indicating also what properties it leases and a summary of the terms under those leases, including the amount of payments, expiration dates and the terms of any renewal options. Indicate what properties the Company intends to acquire in the immediate future, the cost of such acquisitions and the sources of financing it expects to use in obtaining these properties, whether by purchase, lease or otherwise.

(h) Indicate the extent to which the Company's operations depend or are expected to depend upon patents, copyrights, trade secrets, know-how or other proprietary information and the steps undertaken to secure and protect this intellectual property, including any use of confidentiality agreements, cc venants-not-to-compete and the like. Summarize the principal terms and expiration dates of any significant license agreements. Indicate the amounts expended by the Company for research and development during the last fiscal year, the amount expected to be spent this year and what percentage of revenues research and development expenditures were for the last fiscal year.

(i) If the Company's business, products, or properties are subject to material regulation (including environmental regulation) by federal, state, or local governmental agencies, indicate the nature and extent of regulation and its effects or potential effects upon the Company.

(j) State the names of any subsidiaries of the Company, their business purposes and ownership, and indicate which are included in the Financial Statements attached hereto. If not included, or if included but not consolidated, please explain.

(k) Summarize the material events in the development of the Company (including any material mergers or acquisitions) during the past five years, or for whatever lesser period the Company has been in existence. Discuss any pending or anticipated mergers, acquisitions, spin-offs or recapitalizations. If the Company has recently undergone a stock split, stock dividend or recapitalization, describe (and adjust historical per share figures elsewhere in this annual report accordingly).

3. (a) If the Company was not profitable during its last fiscal year, list below in chronological order the events which in management's opinion must or should occur or the milestones which in management's opinion the Company must or should reach in order for the Company to become profitable, and indicate the expected manner of occurrence or the expected method by which the Company will achieve the milestones.

Event or milestone	Expected manner of occurrence or method of achievement	Date or number of months after receipt of proceeds when should be accomplished
(1)		
(2)		
(3)		
(4)		
(5)		

(b) State the probable consequences to the Company of delays in achieving each of the events or milestones within the above time schedule, and particularly the effect of any delays upon the Company's liquidity in view of the Company's then anticipated level of operating costs. (See Question No. 4)

Note: After reviewing the nature and timing of each event or milestone, potential investors should reflect upon whether achievement of each within the estimated time frame is realistic and should assess the consequences of delays or failure of achievement in making an investment decision.

Instruction: The inquiries under Business and Properties elicit information concerning the nature of the business of the Company and its properties. Make clear what aspects of the business are presently in operation and what aspects are planned to be in operation in the future. The description of principal properties should provide information which will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of the individual properties or legal descriptions by metes and bounds are not required and should not be given.

As to Question 3, if more than five events or milestones exist, add additional lines as necessary. A "milestone" is a significant point in the Company's development or an obstacle which the Company must overcome in order to become profitable.

4. Indicate whether the Company is having or anticipates having within the next 12 months any cash flow or liquidity problems and whether or not it is in default or in breach of any note, loan, lease or other indebtedness or financing arrangement requiring the Company to make payments. Indicate if a significant amount of the Company's trade payables have not been paid within the stated trade term. State whether the Company is subject to any unsatisfied judgments, liens or settlement obligations and the amounts thereof. Indicate the Company's plans to resolve any such problems.

Dividends, Distributions and Redemptions

5. If the Company has within the last five years paid dividends, made distributions upon its stock or redeemed any securities, explain how much and when:

Officers and Key Personnel of the Company

6. Chief Executive Officer:
Name:
Office Street Address:

Title: _____

Age: _____

Telephone No.: (_____) _____-_____

Name of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company [ ] Yes [ ] No

Indicate amount of time to be spent on Company matters if less than full time:

7. Chief Operating Officer:
Name: _____

Office Street Address:

Title: _____
Age: _____

Telephone No.: (_____) _____-_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company? [ ] Yes [ ] No

Indicate amount of time to be spent on Company matters if less than full time:

8. Chief Financial Officer:
Name: _____

Office Street Address:

Title: _____
Age: _____

Telephone No.: (_____) _____-_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company? [ ] Yes [ ] No

Indicate amount of time to be spent on Company matters if less than full time:

9. Other Key Personnel:
(A) Name: _____
Office Street Address:

Title: _____
Age: _____

Telephone No.: (_____) _____-_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company? [ ] Yes [ ] No

Indicate amount of time to be spent on Company matters if less than full time:

(B) Name: _____
Office Street Address:

Title:

Age: _____

Telephone No.: (_____) _____-_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company? [ ] Yes [ ] No

Indicate amount of time to be spent on Company matters if less than full time:

INSTRUCTION: The term "Chief Executive Officer" means the officer of the Company who has been delegated final authority by the board of directors to direct all aspects of the Company's affairs. The term "Chief Operating Officer" means the officer in charge of the actual day-to-day operations of the Company's business. The term "Chief Financial Officer" means the officer having accounting skills who is primarily in charge of assuring that the Company's financial books and records are properly kept and maintained and financial statements prepared.

The term "key personnel" means persons such as vice presidents, production managers, sales managers, or research scientists and similar persons, who are not included above, but who make or are expected to make significant contributions to the business of the Company, whether as employees, independent contractors, consultants or otherwise.

Directors of the Company

10. Number of Directors: _____ If Directors are not elected annually, or are elected under a voting trust or other arrangement, explain:

11. Information concerning outside or other Directors (i.e. those not described above):

(A) Name:

Office Street Address:

Age:

Telephone No.: (_____) _____-_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

(B) Name:

Office Street Address:

Age:

Telephone No.: (_____) _____-_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

(C) Name:

Age:

Office Street Address:

Telephone No.: (_____) _____-_____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

12. (a) Have any of the Officers or Directors ever worked for or managed a company (including a separate subsidiary or division of a larger enterprise) in the same business as the Company? [ ] Yes [ ] No

Explain:

(b) If any of the Officers, Directors or other key personnel have ever worked for or managed a company in the same business or industry as the Company or in a related business or industry, describe what precautions, if any, (including the obtaining of releases or consents from prior employers) have been taken to preclude claims by prior employers for conversion or theft of trade secrets, know-how or other proprietary information.

(c) If the Company has never conducted operations or is otherwise in the development stage, indicate whether any of the Officers or Directors has ever managed any other company in the start-up or development stage and describe the circumstances, including relevant dates.

(d) If any of the Company's key personnel are not employees but are consultants or other independent contractors, state the details of their engagement by the Company.

(e) If the Company has key man life insurance policies on any of its Officers, Directors or key personnel, explain, including the names of the persons insured, the amount of insurance, whether the insurance proceeds are payable to the Company and whether there are arrangements that require the proceeds to be used to redeem securities or pay benefits to the estate of the insured person or a surviving spouse.

13. If a petition under the Bankruptcy Act or any State insolvency law was filed by or against the Company or its Officers, Directors or other key personnel, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of any such persons, or any partnership in which any of such persons was a general partner at or within the past five years, or any corporation or business association of which any such person was an executive officer at or within

the past five years, set forth below the name of such persons, and the nature and date of such actions.

Note: After reviewing the information concerning the background of the Company's Officers, Directors and other key personnel, potential investors should consider whether or not these persons have adequate background and experience to develop and operate this Company and to make it successful. In this regard, the experience and ability of management are often considered the most significant factors in the success of a business.

Principal Stockholders

14. Principal owners of the Company (those who beneficially own directly or indirectly 10% or more of the common and preferred stock presently outstanding) starting with the largest common stockholder. Include separately all common stock issuable upon conversion of convertible securities (identifying them by asterisk) and show average price per share as if conversion has occurred. Indicate by footnote if the price paid was for a consideration other than cash and the nature of any such consideration.

Class of shares	Average price per share	No. of shares now held	Percent of total
Name:			

Office Street Address:

Telephone No. (_____) _____-_____
Principal occupation:

Name:

Office Street Address:

Telephone No.
(_____) _____
Principal occupation:

Name:

Office Street Address:

Telephone No.
(_____) _____
Principal occupation:

Name:

Office Street Address:

Telephone No.
(_____) _____
Principal occupation:

15. Number of shares beneficially owned by Officers and Directors as a group: _____shares (% of total outstanding) (Assume all options exercised and all convertible securities converted.)

Instruction: If shares are held by family members, through corporations or partnerships, or otherwise in a manner that would allow a person to direct or control the voting of the shares (or share in such direction or control—as, for example, a co-trustee) they should be included as being "beneficially owned." An explanation of these circumstances should be set forth in a footnote to the "Number of Shares Now Held."

Management Relationships, Transactions and Remuneration

16. (a) If any of the Officers, Directors, key personnel or principal stockholders are related by blood or marriage, please describe.

(b) If the Company has made loans to or is doing business with any of its Officers, Directors, key personnel or 10% stockholders, or any of their relatives (or any entity controlled directly or indirectly by any such persons) within the last two years, or proposes to do so within the future, explain. (This includes sales or lease of goods, property or services to or from the Company, employment or stock purchase contracts, etc.) State the principal terms of any significant loans, agreements, leases, financing or other arrangements.

(c) If any of the Company's Officers, Directors, key personnel or 10% stockholders has guaranteed or co-signed any of the Company's bank debt or other obligations, including any indebtedness to be retired from the proceeds of this offering, explain and state the amounts involved.

17.(a) List all remuneration by the Company to Officers, Directors and key personnel for the last fiscal year:

	Cash	Other
Chief Executive Officer	$	$
Chief Operating Officer		
Chief Accounting Officer		
Key Personnel:		
Others:		
Total:		
Directors as a group (number of persons—).		

(b) If remuneration is expected to change or has been unpaid in prior years, explain:

(c) If any employment agreements exist or are contemplated, describe:

18.(a) Number of shares subject to issuance under presently outstanding stock purchase agreements, stock options, warrants or rights: _____shares (____% of total shares to be outstanding after the completion of the offering if all securities sold, assuming exercise of options and conversion of convertible securities). Indicate which have been approved by shareholders. State the expiration dates, exercise prices and other basic terms for these securities:

(b) Number of common shares subject to issuance under existing stock purchase or

option plans but not yet covered by outstanding purchase agreements, options or warrants: _____shares.

(c) Describe the extent to which future stock purchase agreements, stock options, warrants or rights must be approved by shareholders.

_____

_____

_____

_____

19. If the business is highly dependent on the services of certain key personnel, describe any arrangements to assure that these persons will remain with the Company and not compete upon any termination:

Note: After reviewing the above, potential investors should consider whether or not the compensation to management and other key personnel directly or indirectly, is reasonable in view of the present stage of the Company's development.

INSTRUCTION: For purposes of Question 16(b), a person directly or indirectly controls an entity if he is part of the group that directs or is able to direct the entity's activities or affairs. A person is typically a member of a control group if he is an officer, director, general partner, trustee or beneficial owner of a 10% or greater interest in the entity. In Question 40, the term "Cash" should indicate salary, bonus, consulting fees, non-accountable expense accounts and the like. The column captioned "Other" should include the value of any options or securities given, any annuity, pension or retirement benefits, bonus or profit-sharing plans, and personal benefits (club memberships, company cars, insurance benefits not generally available to employees, etc.). The nature of these benefits should be explained in a footnote to this column.

Litigation

20. Describe any past, pending or threatened litigation or administrative action which has had or may have a material effect upon the Company's business, financial condition, or operations, including any litigation or action involving the Company's Officers, Directors or other key personnel. State the names of the principal parties, the nature and current status of the matters, and amounts involved. Give an evaluation by management or counsel, to the extent feasible, of the merits of the proceedings or litigation and the potential impact on the Company's business, financial condition, or operations.

_____

_____

_____

_____

Miscellaneous Factors

21. Describe any other material factors, either adverse or favorable, that will or could affect the Company or its business (for example, discuss any defaults under major contracts, any breach of bylaw provisions, etc.) or which are necessary to make any other information in this annual report not misleading or incomplete.

_____

_____

_____

_____

Management's Discussion and Analysis of Certain Relevant Factors

22. If the Company's financial statements show losses from operations, explain the causes underlying these losses and what steps the Company has taken or is taking to address these causes.

_____

_____

_____

_____

23. Describe any trends in the Company's historical operating results. Indicate any changes now occurring in the underlying economics of the industry or the Company's business which, in the opinion of Management, will have a significant impact (either favorable or adverse) upon the Company's results of operations within the next 12 months, and give a rough estimate of the probable extent of the impact, if possible.

_____

_____

_____

_____

24. If the Company sells a product or products and has had significant sales during its last fiscal year, state the existing gross margin (net sales less cost of such sales as presented in accordance with generally accepted accounting principles) as a percentage of sales for the last fiscal year: _____%. What is the anticipated gross margin for next year of operations? Approximately _____%. If this is expected to change, explain. Also, if reasonably current gross margin figures are available for the industry, indicate these figures and the source or sources from which they are obtained.

_____

_____

_____

_____

25. Foreign sales as a percent of total sales for last fiscal year: _____%. Domestic government sales as a percent of total domestic sales for last fiscal year: _____%. Explain the nature of these sales, including any anticipated changes:

_____

_____

_____

_____

Alternative 3

Any issuer may elect to provide the following information, as well as the information required by Parts II and III, below.

Item 1. Description of Business

(a) Narrative description of business.

(1) Describe the business done and intended to be done by the issuer and its subsidiaries and the general development of the business during the past five years or such shorter period as the issuer may have been in business. Such description should include, but not be limited to, a discussion of the following factors if such factors are material to an understanding of the issuer's business:

(i) The principal products produced and services rendered and the principal markets for and method of distribution of such products and services.

(ii) The status of a product or service if the issuer has made public information about a new product or service which would require the investment of a material amount of the assets of the issuer or is otherwise material.

(iii) The estimated amount spent during each of the last two fiscal years on company-sponsored research and development activities determined in accordance with generally accepted accounting principles. In addition, state the estimated dollar amount spent during each of such years on material customer sponsored research activities relating to the development of new products, services or techniques or the improvement of existing products, services or techniques.

(iv) The number of persons employed by the issuer, indicating the number employed full time.

(v) 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, may have upon the capital expenditures, earnings and competitive position of the issuer and its subsidiaries. The issuer shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and for such further periods as the issuer may deem material.

(2) The issuer should also describe those distinctive or special characteristics of the issuer's operation or industry which may have a material impact upon the issuer's future financial performance. Examples of actors which might be discussed include dependence on one or a few major customers or suppliers (including suppliers of raw materials or financing), existing or probable governmental regulation, material terms of and/or expiration of material labor contracts or patents, trademarks, licenses, franchises, concessions or royalty agreements, unusual competitive conditions in the industry, cyclicality of the industry and anticipated raw material or energy shortages to the extent management may not be able to secure a continuing source of supply.

(3) Issuers (including predecessors) which have not received revenue from operations during each of the three fiscal years immediately prior to the filing of the annual report shall describe, if formulated, the issuer's plan of operation for the twelve months following the period covered by this annual report. If such information is not available, the reasons for its unavailability shall be stated. Disclosure relating to any plan should include, among other things, a statement indicating whether, in the issuer's opinion, the issuer will be able to satisfy its cash requirements and whether, in the next six months, it will be necessary to raise additional funds.

(b) Segment Data. If the issuer is required to include segment information in its financial statements, an appropriate cross-reference shall be included in the description of business.

Item 2. Description of Property

State briefly the location and general character of the principal plants, and other materially important physical properties of the issuer and its subsidiaries. If any such property is not held in fee or is held subject to any major encumbrance, so state and briefly describe how held.

Instruction

What is required is information essential to an investor's appraisal of the securities being offered. Such information should be furnished as will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and should not be given.

Item 3. Directors, Executive Officers and Significant Employees

(a) List the names and ages of each of the following persons stating his term of office and any periods during which he has served as such and briefly describe 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 to his office or position:

(1) directors;

(2) persons nominated to chosen to become directors;

(3) executive officers;

(4) persons chosen to become executive officers;

(5) significant employees.

Instructions

1. No nominee or person chosen to become a director or person chosen to be an executive officer who has not consented to act as such should be named in response to this item.

2. The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration, or finance) and any other person who performs similar policy making functions for the issuer.

3. The term "significant employee" means 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 issuer.

(b) Family relationships. State the nature of any family relationship between any director, executive officer, person nominated or chosen by the issuer to become a director or executive officer or any significant employee.

Instruction

The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(c) Business experience. Give a brief account of the business experience during the past five years of each director, person nominated or chosen to become a director or executive officer, and each significant employee, 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 significant employee has been employed by the issuer for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of this 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.

(d) Involvement in certain legal proceedings. Describe any of the following events which occurred during the past five years and which are material to an evaluation of the ability or integrity of any director, person nominated to become a director or executive officer of the issuer.

(1) A petition under the Bankruptcy Act 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 general partner at or within 2 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 (excluding traffic violations and other minor offenses).

Item 4. Remuneration of Directors and Officers

(a) Furnish, in substantially the tabular form indicated, the aggregate annual remuneration of each of the three highest paid persons who are officers or directors as a group during the issuer's last fiscal year. State the number of persons in the group referred to above without naming them.

Name of individual or identity of group
Capacities in which remuneration was received
Aggregate remuneration

Instructions

1. In case of remuneration paid or to be paid otherwise than in cash, if it is impracticable to determine the cash value thereof, state in a note to the table the nature and amount thereof.

2. This item is to be answered on an accrual basis if practicable; if not so answered, state the basis used.

(b) Briefly describe all remuneration payments proposed to be made in the future pursuant to any ongoing plan or arrangement to the individuals and group specified in Item 9(a). The description should 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 measurements 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.

Item 5. Security Ownership of Management and Certain Securityholders

(a) Voting securities and principal holders thereof. Furnish the following information, in substantially the tabular form indicated, with respect to voting securities held of record by:

(1) each of the three highest paid persons who are officers and directors of the issuer; Note—In the event none of the issuer's officers or directors have received a salary in the past twelve months, this item should be responded to for every officer and director;

(2) all officers and directors as a group;

(3) each shareholder who owns more than 10% of any class of the issuer's securities, including those shares subject to outstanding options.

(1) Title of Class
(2) Name and address of owner
(3) Amount owned before the offering
(4) Amount owned after the offering
(5) Percent of Class

Instruction

Column (4) need not be responded to if the information would be the same as that appearing under column (3).

(b) If, to the knowledge of the issuer, any other person holds or shares the power to vote or direct the voting of securities described pursuant to subsection (a) above, appropriate disclosure should be made. In addition, if any person other than those named pursuant to subsection (a) holds or shares the power to vote 10% or more of the issuer's voting securities, the information required by the table should be provided with respect to such person.

(c) Non-voting securities and principal holders thereof. Furnish the same information as required in subsection (a) above with respect to securities that are not entitled to vote.

(d) Options, warrants, and rights. Furnish the information required by the table as to options, warrants or rights to purchase securities from the issuer or any of its subsidiaries held by each of the individuals and referred to in subsection (a) above:

Name of holder

Title and amount securities called for by options. warrants or rights
Exercise price
Date of Exercise

Instruction

Where the total market value of securities called for by all outstanding options, warrants or rights does not exceed $10,000 for any officer, director, or principal shareholder named in answer to this item, or $50,000 for all officers and directors as a group, this item need not be answered with respect to options, warrants or rights held by such person or group. If the issuer cannot ascertain the market value of its securities, the offering price may be used for purposes of this subsection.

(e) List all parents of the issuer, showing the basis of control and as to each parent the percentage of voting securities owned or other basis of control by its immediate parent, if any.

Item 6. Interest of Management and Others in Certain Transactions

Describe briefly any transactions during the previous two years or any presently proposed transactions, to which the issuer 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 his relationship to the issuer, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the issuer;

(2) Any nominee for election as a director;

(3) Any principal securityholder named in answer to Item 10(a);

(4) If the issuer was incorporated or organized within the past three years, any promoter of the issuer;

(5) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same house as such person or who is a director or officer of any parent or subsidiary of the issuer.

Instructions

1. No information need be given in answer to this item as to any transaction where:

(a) The rates of charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier 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 a series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments does not exceed $50,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the issuer and the specified person receives no extra or special benefit not shared on a pro-rata basis by all of the holders of securities of the class.

2. It should be noted that this Item 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 issuer 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 Item 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 subparagraphs (1) through (5) above, 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 he and all other persons specified in (1) through (5) above 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 issuer or any of its subsidiaries and the transaction is not material to such other person.

3. Include the name of each person whose interest in any transaction is described and the nature of the relationships by reason of which such interest is required to be described. 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 disclosed.

4. Information should be included as to any material underwriting discounts and commissions upon the sale of securities by the issuer where any of the specified persons was or is to be a principal underwriter or is a controlling person, or member, of a firm which was or is to be a principal underwriter. Information need not be given concerning ordinary management fees paid by underwriters to a managing underwriter pursuant to an agreement among underwriters the parties to which do not include the issuer or its subsidiaries.

5. As to any transaction involving the purchase or sale of assets by or to any issuer or any subsidiary, 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.

6. Information shall be furnished in answer to this Item with respect to transactions not excluded above which involve remuneration from the issuer 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 issuer or its subsidiaries.

Part II

Item 1. Market Price of and Dividends on the Registrant's Common Equity and Other Shareholder Matters

Provide the information required by Item 201 of Regulation S–B.

Item 2. Legal Proceedings

Provide the information required by Item 103 of Regulation S–B.

Item 3. Changes in and Disagreements with Accountants

Provide the information required by Item 304 of Regulation S–B.

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 of Regulation A under the Act)

terminating any solicitation subject to Rule 14a–11, including the cost or anticipated cost to the registrant.

Instructions to Item 4

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 should be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a shareholders' 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 published a report containing all of the information called for by this item, the item may be answered by reference to the information in that report.

Item 5. Compliance with Section 16(a) of the Exchange Act

Provide the information required by Item 405 of Regulation S–B.

Item 6. Reports on Form 8–K

State whether any reports on Form 8–K were filed during the last quarter of the period covered by this report, listing the items reported, any financial statements filed and the dates of such reports.

Part F/S

The following financial statements of the issuer, or the issuer and its predecessors or any businesses to which the issuer is a successor shall be filed as part of this form. Such financial statements and the financial statements required to be provided for any significant business acquired or to be acquired shall be audited.

Issuers which are limited partnerships are required to also file the balance sheets of general partners: (1) if such general partner is a corporation, the balance sheet shall be as of the end of its most recently completed fiscal year; receivables from a parent or affiliate of such general partner (including notes receivable, but excluding trade receivables) should be deductions from shareholders equity of the general partner; where a parent or affiliate has committed to increase or maintain the general partner's capital, there shall also be filed the balance sheet of such parent or affiliate as of the end of its most recently completed fiscal year; (2) if such general partner is a partnership, its balance sheet as of the end of its most recently completed fiscal year; (3) if such general partner is a natural person, the net worth of such general partner(s) based on the estimated fair market value of their assets and liabilities, singly or in the aggregate shall be disclosed in the offering circular, and balance sheets of each of the individual general partners supporting such net worth shall be provided as supplemental information.

(1) Balance Sheet—as of a date within 90 days prior to filing the registration statement or such longer time, not exceeding 6 months, as the Commission may permit at the written request of the issuer upon a showing of good cause; for filings made after 90 days subsequent to the issuer's most recent fiscal year, the balance sheet shall be dated as of the end of the most recent fiscal year.

(2) Statements of income, cash flows, and other stockholders equity—for each of the 2 fiscal years preceding the date of the most recent balance sheet being filed, and for any interim period between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed, or for the period of the issuer's existence if less than the period above.

Income statements shall be accompanied by a statement that in the opinion of management all adjustments necessary for a fair statement of results for the interim period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made. If otherwise, there shall be furnished as supplemental information and not as part of the registration statement, a letter describing in detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of results shown.

(3) Financial Statements of Businesses Acquired or to be Acquired.

(a) Financial statements for the periods specified in (c) below should be furnished if any of the following conditions exist:

(i) Consummation of a significant business combination accounted for as a purchase has occurred or is probable (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method); or

(ii) Consummation of a significant business combination to be accounted for as a pooling is probable.

(b) A business combination shall be considered significant if a comparison of the most recent annual financial statements of the business acquired or to be acquired and the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition indicates that the business would be a significant subsidiary pursuant to the conditions specified in Item 310(c)(2) of Regulation S–B.

(c)(i) The financial statements shall be furnished for the periods up to the date of acquisition, for those periods for which the registrant is required to furnish financial statements.

(ii) The separate balance sheet of the acquired business is not required when the registrant's most recent balance sheet filed is for a date after the acquisition was consummated.

(iii) If none of the conditions in the definitions of significant subsidiary in Item 310(c)(2) of Regulation S–B exceeds 20% and the required audited financial statements of the acquired business are not readily available, an automatic waiver of the required audited financial statements is granted. If none of the conditions in the definitions of significant subsidiary exceeds 40% and the required audited financial statements are not readily available, an automatic waiver is granted with respect to the required audited financial statements for the fiscal year preceding the latest fiscal year. If unaudited financial statements or other financial information is available for any fiscal period for which an automatic waiver is granted, then such unaudited financial statements or other information shall be furnished.

(d) If consummation of more than one transaction has occurred or is probable, the tests of significance shall be made using the aggregate impact of the businesses and the required financial statements may be presented on a combined basis, if appropriate.

(e) This paragraph (3) shall not apply to a business which is totally held by

the registrant prior to consummation of the transaction.

(4) Pro Forma Financial Information.

(a) Pro forma information shall be furnished if any of the following conditions exist (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method);

(i) During the most recent fiscal year or subsequent interim period for which a balance sheet of the registrant is required, a significant business combination accounted for as a purchase has occurred;

(ii) After the date of the registrant's most recent balance sheet, consummation of a significant business combination to be accounted for by either the purchase method or pooling of interests method of accounting has occurred or is probable.

(b) The provisions of paragraph (3)(b), (d) and (e) apply to this paragraph (4).

(c) Pro forma statements shall ordinarily be in columnar form showing condensed historical statements, pro forma adjustments, and the pro forma results and should include the following:

(i) If the transaction was consummated during the most recent fiscal year or in the subsequent interim period, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, or

(ii) If consummation of the transaction has occurred or is probable after the date of the most recent balance sheet, a pro forma balance sheet giving effect to the combination as of the date of the most recent balance sheet required by paragraph (b). For a purchase, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, and for a pooling of interests, pro forma statements of income for all periods for which income statements of the registrant are required.

Part III

Item 1. Index to Exhibits

(a) An index to the exhibits should be presented.

(b) Each exhibit should be listed in the exhibit index according to the number assigned to it under Item 2 below.

(c) The index to exhibits should identify the location of the exhibit under the sequential page numbering system for this Form 10–KSB.

(d) Where exhibits are incorporated by reference, the reference shall be made in the index of exhibits.

Instructions:

1. 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.

2. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the issuer shall file with the reference a statement containing the text of such modification and the date thereof.

3. Procedurally, the techniques specified in Rule 12b–23 shall be followed.

Item 2. Description of Exhibits

As appropriate, the following documents should be filed as exhibits to the registration statement.

(1) *Charter and by-laws*—The charter and by-laws of the issuer or instruments corresponding thereto as presently in effect and any amendments thereto.

(2) *Instruments defining the rights of security holders*—(a) All instruments defining the rights of any holder of the issuer's securities, including but not limited to (i) holders of equity or debt securities being issued; (ii) holders of long-term debt of the issuer, and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(b) The following instruments need not be filed if the issuer agrees to provide them to the Commission upon request: (i) instruments defining the rights of holders of long-term debt of the issuer and all of its subsidiaries for which consolidated financial statements are required to be filed if the total amount of such authorized issuance does not exceed 5% of the total assets of the issuer and its subsidiaries on a consolidated basis; and (ii) copies of instruments evidencing scrip certificates or fractions of shares.

(3) *Voting trust agreement*—Any voting trust agreements and amendments thereto.

(4) *Material contracts*—(a) Every contract not made in the ordinary course of business which is material to the issuer and is to be performed in whole or in part at or after the filing of the registration statement or was entered into not more than 2 years before such filing. Only contracts need be filed as to which the issuer or subsidiary of the issuer is a party or has succeeded to a party by assumption or assignment or in which the issuer or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business conducted by the issuer and its subsidiaries, it is 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 should be filed except where immaterial in amount or significance: (i) any contract to which directors, officers, promoters, voting trustees, security holders named in the registration statement, or underwriters are parties except where the contract merely involves the purchase or sale of current assets having a determinable market price, at such market price; (ii) any contract upon which the issuer's business is substantially dependent, as in the case of continuing contracts to sell the major part of the issuer's products or services or to purchase the major part of the issuer'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 the issuer's business depends to a material extent; (iii) any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15% of such fixed assets of the issuer on a consolidated basis; or (iv) any material lease under which a part of the property described in the registration statement is held by the issuer.

(c) Any management contract or any compensatory 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) shall be deemed material and shall be filed except for the following: (i) ordinary purchase and sales agency agreements; (ii) agreements with managers of stores in a chain organization or similar organization; (iii) contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such; (iv) any compensatory plan, contract or arrangement which pursuant to its terms is available to employees generally and which in operation provides for the same method of allocation of benefits between management and non-management participants.

(5) *Material foreign patents*—Each material foreign patent for an invention not covered by a United States patent. 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.

(6) *Additional exhibits*—Any additional exhibits which the issuer may wish to file, which shall be so marked as to indicate clearly the subject matters to which they refer.

* * * * *

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

25. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*l*(d), 80b–3, 80b–4 and 80b–11.

26. Amend § 260.0–7 by replacing "whose total assets on the last day of its most recent fiscal year were $5 million or less" with "whose annual revenues for its most recent fiscal year were less than $25,000,000 and who has a public float (the aggregate market value of the issuer's outstanding securities held by non-affiliates) of less than $25,000,000".

By the Commission.

Dated: July 30, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–18544 Filed 8–12–92; 8:45 am]

BILLING CODE 8010–01–M

federal register

Thursday
August 13, 1992

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 1033, 1036, and 1049

Milk in the Ohio Valley Marketing Area, et al.; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1033, 1036, and 1049

[Docket Nos. AO-166-A61; AO-179-A56; and AO-319-A39; DA 90-015]

Milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends changes in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana Federal milk orders based on industry proposals considered at a public hearing held August 14–17, 1990, in Columbus, Ohio, and August 28–29, 1990, in Indianapolis, Indiana. For all three orders, the decision recommends adopting a plan for pricing milk on the basis of its protein, as well as butterfat, components. For the first time in the Federal milk order system, the proposed pricing plan includes adjustments to the protein price based on the somatic cell count of producer milk.

The decision also recommends pooling standards for producer milk and pool distributing and supply plants that will be more uniform between the three markets. Proposed amendments to the Ohio Valley and Indiana orders would price some diverted milk at the location of the plant from which it is diverted. The decision would reduce the level of the Indiana Class I price differential and amend the location adjustment provisions of the Indiana order. Also recommended are increases in the rate of maximum allowable marketing service assessments for all three orders, and an increase in the maximum allowable administrative assessment under the Eastern Ohio-Western Pennsylvania order to the level allowable under the other two orders.

DATES: Comments are due on or before September 14, 1992.

ADDRESSES: Comments (six copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

This action has been reviewed under Executive Order 12278, Civil Justice Reform. It is not intended to have retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued July 25, 1990; published July 31, 1990 (55 FR 31056).

Notice of Reconvened Hearing: Issued August 21, 1990; published August 23, 1990 (55 FR 34569).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC, 20250, by the 30th day after publication of this decision in the **Federal Register**. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Columbus, Ohio, on August 14–17, 1990, and at Indianapolis, Indiana, on August 28–29, 1990, pursuant to a notice of hearing issued July 25, 1990 (55 FR 31056) and a notice of reconvened hearing issued August 21, 1990 (55 FR 34569).

The material issues on the record of hearing relate to:

1. Definitions.
   a. Route Disposition (Order 49).
   b. Supply plant (Order 49).
   c. Pool distributing plant (Orders 33 and 49).
   d. Pool supply plant (all three orders).
   e. Co-op pool plant (Orders 33 and 49).
   f. Pool plant disaster clause (Order 49).
   g. Producer milk.
   i. Diversion limits (all three orders).
   ii. Pricing diverted milk (Orders 33 and 49).
2. Reporting (Order 49).
3. Classification (Order 49).
4. Multiple component pricing (all three orders).
   a. Protein pricing.
   b. Somatic cell adjustment.
5. Class prices and location adjustments (Order 49).
6. Accountability for 9(c) milk (Order 49).
7. Payments to producers.
   a. Due dates and late-payment charges (Order 49).
   b. Seasonal incentive payment plan (all three orders).
8. Administrative assessment (Order 36).
9. Marketing service assessments (all three orders).
10. Conforming changes.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

Definitions. A number of proposals were made by several parties to amend some of the definitions under the three orders. The definitions proposed to be amended range from what were described as clarifying amendments to the route disposition and supply plant definitions under the Indiana order through the pool plant and producer milk definitions of all three orders. Most of the proposals dealing with pool plant and producer milk definitions address the issue of which plants and producers will be eligible to participate in the marketwide pools and, consequently, generated extensive testimony.

The clarifying amendments proposed by the Hoosier Milk Marketing Agency to the "Route disposition" and "Supply plant" definitions of the Indiana order should be adopted. Neither amendment is expected to change the pool status of any entity, but will assure that the order's provisions will be more easily understood and administered.

In general, the pooling provisions of the three orders should be made more uniform. Merger of the three orders was not an issue considered at the hearing and cannot be adopted on the basis of the record of this proceeding. However, the record does show that many of the marketing conditions that normally are considered as reasons for merging Federal order marketing areas are present in these three regulated markets.

Testimony and exhibits in the record show clearly that there is a great deal of overlapping of milksheds between the Indiana and Ohio Valley markets, and between the Ohio Valley and Eastern Ohio-Western Pennsylvania markets. In addition, the record demonstrates that handlers regulated under the three orders have substantial volumes of overlapping sales, and that the order under which some handlers are regulated changes with the proportion of sales the handlers have in each order. The existence of a number of plants that operate as common reserve supplies or common surplus outlets for more than one of the markets also contributes to a picture of three very interrelated markets. In such a situation, differing levels of performance standards for pool plants and producers clearly can create inequities between handlers and producers who are competing within the same areas. Therefore, it is important that the pool plant and producer milk provisions of the orders be similar enough to assure that order provisions do not constitute artificial barriers to the participation of handlers and producers in any of the three marketwide pools.

The two major cooperative associations operating in the three marketing areas proposed amendments to the pool plant definitions that primarily would have the effect of reducing handler access to the three marketwide pools. One of the dominant cooperative associations is Milk Marketing, Inc. (MMI), which markets approximately two-thirds of the milk pooled under the Ohio Valley order (Order 33) and about two-fifths of the milk pooled under the Eastern Ohio-Western Pennsylvania order (Order 36). The other principal cooperative association is Associated Milk Producers, Inc., which pools milk through the Hoosier Milk Marketing Agency (Hoosier) in concert with MMI.

Hoosier markets approximately two-thirds of the milk pooled under the Indiana order (Order 49).

Most of the amendments proposed by the two cooperatives would make participation in the three marketwide pools more difficult for handlers and producers who are not assured of a stable and significant share of the markets' fluid use. National Farmers Organization (NFO) proposed amendments to all three orders that generally would allow slightly greater participation by producers in the three pools, on a more uniform basis than currently exists. Proprietary cheese plant operators and fluid milk handlers proposed amendments to Order 36 that would have opposing effects on the ability of pool supply plants to maintain their pool status.

For Order 49, in addition to the Hoosier proposals to tighten pooling provisions, NFO, the Milk Foundation of Indiana (MFI), an organization of milk plant operators, and New Paris Creamery, a proprietary handler, made and supported proposals that primarily would allow handlers and producers to participate in the marketwide pool more easily.

A set of proposals made by Hoosier (Nos. 20, 22 and 24), to exclude from the marketwide pool producers who are paid under the "Louisville" plan of another order during that order's "payback" months, was abandoned by proponent at the hearing, and not supported by any of the hearing participants. Since the record contains no support for these proposals, they are not considered in this decision.

a. *Route Disposition (Order 49).* A witness for Hoosier testified that the organization had proposed two changes to the route disposition definition. The first proposed change is to include other distributing plants, as well as other persons, in the description of milk movements that comprise "route dispositions." The witness stated that Hoosier's intention is that fluid milk products packaged for another distributing plant be included as part of the packaging plant's route sales and thus part of the computation of the packaging plant's qualification for pooling. The second proposed change would describe Class I fluid milk moved to any milk or filled milk processing plant in other than bulk form as "packaged." The Hoosier witness explained that at the present time bulk milk transferred from one distributing plant to another is not included in the route disposition calculation. He went on to say that at one time omission of bulk fluid sales from pooling qualification was justified by the pattern of milk movement in Order 49, but that such sales are used now only to manipulate the route disposition computation for determining qualification. There was no testimony opposing the proposal, and NFO's brief supported its adoption.

Although neither change to the current order language can be considered substantive, the proposed amendments do contribute some clarification to the route disposition definition. Therefore, the proposed changes should be adopted.

b. *Supply plant (Order 49).* An amendment to the Order 49 supply plant definition proposed by Hoosier that can be considered a clarification of current order language should be adopted. The witness for Hoosier stated that the addition of the words "and is physically unloaded and received into a distributing plant" to the supply plant definition would clarify what constitutes a delivery by a supply plant to a distributing plant. The present definition of a delivery may be considered open to interpretation by those unfamiliar with the order although, in fact, a court has ruled that the present language results in the same meaning that proponents wish to spell out. For purposes of clarity, the proposed language should be adopted, but its adoption in no way implies that the meaning which is to be spelled out more fully is deficient in conveying the requirement that milk that is "shipped to" must also be "physically unloaded and received into".

c. *Pool distributing plant.*

Order 33. Two changes to the pool distributing plant definition of the Ohio Valley order proposed by MMI should be denied. MMI proposed that the pool distributing plant in-area sales requirement for Order 33 be reduced from 15 percent to 10 percent of a handler's route disposition. In addition, MMI proposed increases in the total percentage of a distributing plant's receipts that must be disposed of on routes, from 40 percent to 50 percent for

the months of September through February (except December), from 35 percent to 40 percent for the months of March through July, and from 35 percent to 50 percent for the month of August.

Proponent's witness stated that a decrease in the in-area sales requirement, which would increase the likelihood of a partially regulated plant becoming fully regulated, is necessary to eliminate a partially regulated handler's competitive advantage over pooled handlers on raw milk costs. The witness stated that this competitive advantage is due to partially regulated handlers paying the equivalent of the Federal order blend price for their entire milk supply while regulated handlers must pay the Federal order Class I price for their Class I milk. The witness explained that his estimate of the cost difference between partially and fully regulated plants was between 60 cents per hundredweight and $2.19 per hundredweight, depending on which plants were compared. The proponent witness went on to explain that due to this competitive advantage in raw milk costs, partially regulated handlers are increasing sales in the Order 33 marketing area and thus taking sales from regulated handlers. The MMI witness characterized this situation as a disorderly marketing condition that would be remedied by their proposal.

Some concern was expressed by the proponent witness that because Order 36 would continue to have a 15-percent in-area sales requirement, certain plants would become regulated under Order 33 rather than under Order 36, causing proponents difficulty in economically supplying milk to these plants. In fact, the witness stated, a handler who had initially supported the proposal was now opposed to it because a proposed amendment to Order 36 was not also included in the hearing notice, as initially intended by the proponents.

In testimony and in a post-hearing brief the MMI witness explained that the second proposed change in the Order 33 pool distributing plant definition, to increase the total route disposition percentage, was needed to increase the amount of milk available to distributing plants. He said that when the requirements were lowered, in 1984, there was a surplus of milk in the marketing area. According to the witness, however, the situation has changed dramatically to the extent that substantial volumes of milk have had to be imported to satisfy the needs of the pool distributing plants in the Order 33 marketing area. The witness also explained that the increase was needed to prevent manufacturing plants from riding the pool by paying distributing plants for the opportunity to qualify for pooling.

Proponent witness explained that August should be added to the higher total route disposition standard because August has become a relatively high Class I demand month at a time when milk production is declining. The witness explained that this higher Class I demand is primarily due to the need to begin filling school inventories.

A witness for United Dairy, Inc. (United), testified in support of the MMI proposal, stating that United had lost an account because a partially regulated Virginia dairy had been able to offer a customer a 15- to 20-cent per gallon lower price. According to the United witness, a price difference of this size can be attributed only to a substantial difference in raw milk costs.

A witness representing Sani-Dairy, a partially regulated handler under Orders 33, 36 and 2 (New York-New Jersey), opposed adoption of the MMI proposal, and stated that no disorderly marketing conditions had been demonstrated. The witness explained that Sani-Dairy relies on uniform order provisions across the area in which it markets its products. The witness testified that at past hearings considerable effort has been made to make the provisions of Orders 33 and 36 the same. He stated that reducing the percentage of in-area route sales needed to qualify as a pool distributing plant in Order 33 without a corresponding change in Order 36 would likely cause his plant to become fully regulated under Order 33 while allowing Sani-Dairy's primary competitor in Johnstown, Pennsylvania, to avoid regulation.

The Sani-Dairy witness characterized the proposed change to Order 33 as an arbitrary change that would be disruptive and impede the free flow of goods, a result which the witness characterized as defeating the stabilizing purpose of the Federal order system. The witness also stated that Sani-Dairy needs to maintain its partially regulated status under the Federal order so it can continue to pay competitive prices to its producers.

A producer representing 133 producers shipping milk to Sani-Dairy also testified in opposition to the MMI proposal. The witness testified that if Sani-Dairy's pay price was reduced by Federal order regulation below Pennsylvania State pricing levels, he and other producers would have to consider shipping to another plant. If the price difference was significant, the producer stated, they would probably switch to another plant.

In a brief filed on behalf of Hoosier it was argued that information entered into the record for Toft Dairy, a partially regulated handler under both Orders 33 and 36, should be disregarded since it was not subject to cross-examination. Hoosier argued that Toft is able to distribute up to 15 percent of its receipts in each order without being fully regulated. The Toft information indicated that Toft pays the average of Order 33 and Order 36 Class I prices for raw milk, and argued that MMI had failed to meet the evidentiary burden necessary to justify adoption of its proposed amendment.

The portion of the MMI proposal that would reduce the in-area sales percentage requirement is the only amendment proposed by either MMI or Hoosier that would have the effect of loosening pooling standards to include more handlers in any of the three marketwide pools. Speculation by proponent witness that partially regulated handlers are able to increase sales in the regulated marketing areas because of an unfair advantage based on lower prices paid for raw milk is not a sufficient basis for reducing the in-area sales percentage at which a handler becomes fully regulated. The source of proponent's estimates of the size of two partially regulated plants about which he testified, and the magnitude of their disposition in the marketing areas (that of Order 36, as well as Order 33) was unclear, and the accuracy of the estimates was questionable. At any rate, Toft Dairy apparently represents less than .6 percent of the route disposition in the Order 33 marketing area, and approximately one-half of one percent of the Class I use in the marketing areas of Orders 33 and 36 combined. Reduction of the in-area sales percentage would, if Toft reduced its sales in order to avoid full regulation, remove from the Order 33 market fluid sales representing about .2 percent of the market's total Class I use.

Information contained in the record about Richfood Dairy in Virginia, which apparently distributes milk in both the Order 33 and Order 36 marketing areas, indicates that the value paid by Richfood for raw milk is at least as much as the dairy's obligation would be under full Federal order regulation, because it does not incur any obligation to the Federal order pool as a partially regulated distributing plant.

Given the very small share of Order 33 Class I use that the dairies in question represent, there is no basis for trying to have the small volume of sales represented by the handlers in question become part of the marketwide pool.

The second part of the MMI proposal represents an inappropriate method of attempting to assure that an adequate supply of milk is made available for fluid use. Pool distributing plant standards exist for the purpose of determining which plants are substantially involved in distributing fluid milk products in the marketing area, and therefore should be included in the marketwide pool. There is no evidence in the record of this proceeding that would support a conclusion that a plant distributing 40 percent of its total receipts on routes during the market's months of relatively high Class I utilization is not a significant enough source of fluid milk products for the marketing area to justify its pool status. The average Class I use percentage of milk pooled under Order 33 is barely over 55 percent, and exceeds 60 percent only about one month per year. Further, Class I use percentages do not support any argument that the pooling standard for the month of August should be increased. The record contains no basis upon which it can be determined that the current total pool distributing plant standards are not high enough. Attempts to assure that milk included in the marketwide pool is adequately associated with the fluid market are more appropriately directed at supply plant provisions.

Order 49. The pool distributing plant standards of the Indiana order should be reduced to more closely resemble those of the adjacent Ohio Valley order so that the order under which a given plant with route sales in both marketing areas is regulated is dependent upon the marketing order with which the plant has more association. The computation of the qualifying percentage should be amended to include as receipts diversions from distributing plants, but not transferred receipts from other distributing plants or diverted receipts from other order plants. Provisions allowing continued pool status for plants which have met pooling percentages for the previous month or during summer months for plants which have qualified during the preceding September through May should be retained.

Three proposals were made to amend the pool distributing plant standards for the Indiana order. Hoosier's proposal would reduce the minimum route disposition percentage from 50 percent to 40 percent of total receipts for the months of May through July, include diversions from distributing plants as receipts in computing qualification percentages, and remove the ability of distributing plants to qualify for pooling on the basis of their previous pool status. Generally, the proposal advanced by Hoosier would make it more difficult for handlers to qualify their plants for participation in the marketwide pool.

Proposals by the National Farmers Organization (NFO), a producer cooperative association, and Milk Foundation of Indiana (MFI), a group of six handlers regulated under Order 49, would loosen Order 49 pooling qualifications for distributing plants. NFO proposed that the required route disposition percentage be reduced from 50 percent to 35 percent year-round, but modified its proposal at the hearing to conform to the percentages included in the MFI proposal, and the current route disposition standards of Order 33. NFO's proposal would exclude diverted receipts from other order plants from the receipts used to determine qualifying percentages. The MFI proposal would reduce the percentage of a handler's receipts that must be disposed of as route dispositions if the handler's plant is to qualify for pooling from 50 percent year-round to 40 percent during the months of September through February and 35 percent for the months of March through August.

According to testimony presented by a Hoosier witness at the hearing and arguments included in a brief filed on behalf of Hoosier after the hearing, the current pool distributing plant provisions of the Indiana order allow handlers to attract and maintain receipts of milk without making them available for Class I use. The Hoosier witness stated that many distributing plant operators want a pooled milk supply for the purpose of making Class II products or diverting milk to nonpool plants for use in cheese or Class II products. Hoosier claimed that under the current provisions a distributing plant may be pooled all year on the basis of meeting the order's pooling standards in only 5 months.

The Hoosier witness stated that the Indiana market historically is deficit in milk production, and needs a supplemental supply for fluid use. He testified that during 1989 and 1990, Hoosier imported 3 to 8 million pounds of milk per month at a cost of $2.51 per hundredweight. The witness claimed that exclusion of milk diverted by handlers to nonpool plants from the computation of pool qualification percentages leaves a loophole for handlers to attract and maintain supplies of milk that are not made available for Class I.

According to the Hoosier witness, there is no evidence that the Hoosier proposal would result in depooling any distributing plants currently meeting pooling requirements, or impair the ability of any pool plants to remain pooled. The witness stated that the order should not allow the pooling of milk used in Class II while milk must be imported for Class I use at increased costs to handlers and consumers, and added that the Indiana market has one of the highest percentages of Class II use of the 3-class markets.

A witness for NFO testified that the cooperative markets approximately 16 million pounds of milk monthly on Order 49, and opposed Hoosier's proposals to tighten the pool distributing plant qualification requirements. NFO attributed changes in regulation of Wayne Dairy from Order 49 to Order 33, and back again to Order 49, to differences in the pooling standards for distributing plants under the two orders. As a result of the differing standards, according to NFO, Wayne Dairy was pooled on Order 33 even when the majority of the handler's sales were in the Order 49 marketing area. The cooperative asserted that changes in the order under which handlers are regulated create problems for other handlers and for producers because of the instability in the handler's regulatory status.

The NFO witness attributed Hoosier's proposals to tighten pool distributing plant requirements to former Hoosier customers changing their source of milk supply to other suppliers or to nonmembers, to an increase in the manufacture of Class II products in several of the Order 49 distributing plants, and to the competition of these distributing plants with Hoosier plants in the Class II finished product market. The NFO witness suggested that because Class II is a substantial portion of some distributing plants' product lines, the Order 49 distributing plant Class I disposition requirement should be loosened, not tightened. The NFO witness went on to say that any perceived problem generated by increased Class II use in the market was not caused by a few distributing plants, but by the increase in Class II use by nonpool plants, particularly by Hoosier members' plants.

According to NFO, the one-month lock-in provision for Order 49 distributing plants has been a stabilizing provision that has prevented pool plants from changing regulation under different orders, and should be retained. NFO criticized the Hoosier proposal as being anti-competitive, characterizing it as designed either to cause difficulty for Hoosier competitors in participating in

the Indiana pool, or discourage competitors from competing with Hoosier by producing Class II products such as condensed milk. The NFO witness favored retaining the present pooling framework and changing the qualifying percentages for pool distributing plants to agree with those effective under Orders 33 and 36.

The witness for MFI stated that a number of small distributing plants increased their Class II production as a means of utilizing their surplus butterfat, and that when they were supplied by Hoosier these distributing plants helped balance the market by using seasonal and weekend surplus milk. Since they no longer receive their supply of milk from Hoosier, they must balance their own supply. The MFI witness went on to state that since Order 49 can be characterized as a two-part market, those that are Hoosier customers and those who are not, order provisions should not contribute to the restrictive practices of Hoosier. He added that the Hoosier proposals would make retention of pool status more difficult for certain distributing plants that use significant amounts of milk in Class II, which would benefit Hoosier plants and customers who compete for the same sales.

The MFI witness pointed out that when the distributing plant provisions were written, fluid cream was considered a Class I product. Since fluid cream is now a Class II product, a plant would have had to increase its Class I route sales to maintain the same percentage for qualification. He also stated that during the last year, Class II had made a positive contribution to the producers' blend price and that Class II should not be considered a detriment to the pool.

The MFI witness argued that Class II use in pool plants had been stable over the previous 5 years, and that the increased Class II use in the market is due to milk used by nonpool plants who have received milk diverted to them by the market's cooperative associations. The witness stated that Class II use of pool milk in nonpool plants had increased by a factor of 10 during 1989.

The post-hearing brief filed on behalf of MFI stated that while there is no evidence plants have taken advantage of the one-month lock-in provision, that provision serves the purpose of assuring that a distributing plant will not lose its pool status as a result of the loss of one large customer, but will have a month to try to increase its fluid sales to the extent necessary to meet pooling qualifications. The brief argued that ice cream operations are an integral part of pool plant operations and use seasonal surpluses caused by seasonally-reduced Class I demand and increased production. According to the brief, Hoosier would not denigrate the importance of Class II use if they thought it would be lost to the market instead of gravitating to Hoosier plants.

A witness for New Paris Creamery Company, a pool distributing plant under Order 49 and member of MFI, stated that when New Paris was a full supply customer of Hoosier, Hoosier would move milk in such a way that New Paris would remain qualified under the order. Now that Hoosier is not supplying New Paris, he testified, Hoosier characterizes the same type of milk movements in which it once participated as "sham pooling transactions."

A representative of Miller Corporation, a distributing plant operator pooled under Order 49 and a member of MFI, testified in opposition to Hoosier's proposal to tighten the pool distributing plant requirements. The Miller witness stated that he had been a full supply customer of Hoosier for many years until Miller developed a sizable market for its Class II condensed milk. He testified that Hoosier expressed unhappiness with the amount of Class II use at his plant and started assessing an extra charge for Class II products moving to other orders. The witness for Miller stated that Miller changed suppliers because Hoosier had pulled a considerable amount of milk from the Miller plant and was unhappy with Miller, and another supply became available. He continued by saying that to a small distributing plant the loss of one account could mean the difference between being a pool plant and being a partially regulated plant. The witness indicated that in Miller's case, they would probably try very hard to maintain their pool status. He also stated that in many cases Miller's condensed product is in competition with condensed skim milk marketed by MMI, a member of Hoosier.

The record contains no justification for a higher pool distributing plant qualification percentage for Order 49 than for Order 33. These two adjoining orders share much of the same milkshed, and many of the handlers regulated under either of the orders have route disposition within the other order's marketing area. Approximately 10 percent of Indiana handlers' total route sales are within the Order 33 marketing area, and amount to over 6 percent of the total sales within the Ohio Valley marketing area.

The existence of significantly higher pooling standards in the Indiana order than in Ohio Valley can serve only as an artificial barrier that may have the effect of keeping plants pooled under Order 33 when they actually have more sales in the Indiana marketing area. As in Order 33, pool distributing plant standards should not be used as a means of restricting producer access to the pool, but solely as a means of determining which plants are significantly engaged in distributing fluid milk products in the marketing area, and which distributing plants have a close enough association with the market to justify their inclusion in the marketwide pool. Therefore, the pool distributing plant standards under the Indiana order should be relaxed to the level currently effective under the neighboring Ohio Valley order.

The receipts to be considered in calculating pool plant qualification should correspond with those included in the Ohio Valley order. The receipts to be considered, therefore, are fluid milk products received at and diverted from the distributing plant, but not bulk fluid milk products received as Class II or Class III by transfer or diversion from other plants. All producer milk for which the handler is responsible to the pool should be considered as receipts of the distributing plant, along with other fluid milk receipts for which Class II or Class III classification is not requested. Such receipts represent the supply of milk available to the handler for fluid use. Receipts of milk for which Class II or Class III classification is requested by both the selling and buying handler, however, represent a supply of milk for which fluid use has already been precluded.

The current provisions of the Indiana pool distributing plant definition that allow a plant to retain pool status for one month after meeting the pool plant percentage requirement and allow plants which have met pooling requirements for the previous months of September through May to retain pool status for the months of June, July and August should remain in the order, as long as the plant has some in-area route disposition during the month. Plants regulated by the Indiana order clearly have greater than average proportions of their milk used in Class II. Indiana handlers apparently use milk for Class II products consumed in other marketing areas with lower percentages of Class II use.

Although Hoosier argued that Class II use does not enhance the pool, such use clearly had added significantly to the uniform price during the year preceding the hearing, and may do so again. This increased value should be recognized by accommodating the pool status of

handlers using milk in cream products and soft manufactured products.

The provision that allows a pool plant to retain its pool status for one month after meeting pool qualifications for a month is unusual, but does exist in modified form in the Ohio Valley and Middle Atlantic orders. In a marketing area such as Indiana, where handlers have a greater than normal share of Class II use, it is entirely possible that a distributing plant losing a fluid milk customer could fail to meet pooling qualifications for a month. Disorderly marketing conditions, such as producers losing their pooling base because of a sudden loss of a handler's route dispositions, are more likely to result in the absence of the provision than to be caused by the provision. However, the current provision should be amended to require that a handler meet at least the in-area route disposition requirement to retain pool status.

Similarly, the "free ride" provision for summer months is not contained in most orders, but has some utility in an order regulating the handling of milk in an area such as Indiana, which produces more than its per capita share of Class II products. Class I sales generally are at their lowest level while milk production usually increases during summer months, leaving handlers to deal with more surplus milk than during the rest of the year. Summer is also a time when demand is higher for Class II products such as ice cream and cottage cheese, and production of these products is at its highest level. Handlers who have met the distributing plant qualification percentages during the months of greatest demand for fluid products should not have to be concerned about meeting those percentages when fluid demand is low.

d. *Pool supply plant.*

Order 33. A proposal by Milk Marketing, Inc. (MMI), to increase the percentage of a supply plant's receipts that must be shipped to pool distributing plants from 35 percent to 50 percent if the supply plant is to meet pooling requirements should be denied, as should the portion of the proposal that would add August to the months in which shipping percentages must be met. The proposed requirement that qualifying shipments be met on a net basis should be adopted. The portion of the proposed net shipments provision that contains an allowance for transfers or diversions from distributing plants to supply plants during holidays because of reduced Class I consumption at such times should not be adopted, although the significant reduction in fluid milk consumption during the Christmas holiday season should be recognized by reducing the required shipping percentage for the month of December to 30 percent.

A witness for MMI explained that although there were no proprietary supply plants pooled under Order 33 at the time of the hearing, one was expected to qualify for pooling in the following month. The witness asserted that higher shipping standards are necessary because the market was experiencing a shortage of milk supplies at the time of the hearing. He observed that a pool supply plant should supply the fluid market and not ride the pool, reducing blend prices to producers. The MMI witness explained that as a result of increasing the percentage, only those supply plants actually supplying the market would be pooled. He stressed the need for a net shipment provision as a means of preventing a supply plant from shipping milk to a distributing plant and then having the distributing plant return milk to the supply plant, thus defeating the purpose of allowing the supply plant to participate in the pool. The witness stated that August should be added to the qualifying months to assure a supply of milk for the market when it is needed.

A representative of the Kroger Company, a handler operating a pool distributing plant under Order 33, testified in support of the proposal to increase Order 33 pool supply plant shipping percentages. The witness stated that Kroger has spent a great deal of money procuring a supply of milk for its Order 33 distributing plant, and expressed the belief that the adoption of the MMI proposal would result in more local milk being more readily available to the Class I market, reducing costs to handlers and therefore to consumers.

Briefs filed on behalf of MMI and Hoosier supported adoption of the proposal for the purpose of increasing milk supplies available to bottling plants and reducing the need for costly importation of supplemental supplies.

Evidence in the record fails to support any need for increased pool supply plant shipping percentages for the Ohio Valley market. In addition to the absence of any recent experience of such plants under the order or, consequently, any pooling difficulties associated with the order's present shipping percentages, the Class I use percentages for prior years do not support any increase in supply plant shipping requirements.

If supply plants were to become part of the Ohio Valley market, however, they should ship the required percentages without exchanging milk shipments with distributing plants for the purpose of evading the order's pooling standards. Therefore, the proposed net shipment provision should be adopted, without, however, including the allowances for holidays. The proposed percentage allowances for shipments of milk from distributing plants back to supply plants are needlessly complicated. For the purpose of allowing for reduced fluid milk consumption during late December, however, the shipping percentage for the month of December should be reduced to 30 percent.

The record of Class I use in the market also fails to support any need to remove August from the months during which supply plant operators who have met the order's requirements for the preceding period of relatively high Class I use may be pooled without meeting the order's shipping percentages. Increased shipments of milk for fluid use may be needed at the very end of August in order to satisfy school contracts, but such needs do not constitute a basis for requiring shipments at the full fall level for the entire month of August.

Order 36. Shipping requirements for Eastern Ohio-Western Pennsylvania pool supply plants should be increased from 30 to 35 percent for the months of January and February with provision added to require net shipments for all months, but the increases proposed by MMI and United Dairy should not be adopted. An MMI proposal that supply plants be required to transfer at least one tankerload of milk (45,000 pounds) during the fall months to maintain pool status should be adopted. A proposal by Brewster Dairy, a proprietary cheese manufacturer and supply plant operator, to allow supply plants to meet some of their qualifications for pooling on the basis of shipments to nonpool distributing plants should be denied.

Proposals by MMI and United Dairy, a proprietary pool distributing plant, would increase the amount of milk required to be moved from pool supply plants to pool distributing plants from 40 percent to 50 percent for September, October, and November, and from 30 percent to 40 percent for the remaining months of the year. The proposals also included a net shipment provision to eliminate sales back to the supply plants from pool distributing plants. The MMI proposal included a requirement that supply plants must ship at least 45,000 pounds of milk to a pool distributing plant during the months of September, October and November.

The witness for MMI explained that in recent years more and more supply plants are being pooled on Order 36. The witness went on to explain that the increase in supply plants has not

increased the amount of milk available to pool distributing plants because some of these supply plants have accumulated a supply of Grade A milk and then have not performed the function of supplying the market. According to the witness, the intended function of a supply plant is to carry a reserve supply of milk for the market and provide milk for Class I use when the market needs it. The witness stated that these supply plants have not joined the market to serve the Class I needs of the market, but to help affiliated cheese plants obtain additional supplies of milk. The witness noted that for a supply plant to provide for the fluid needs of the market, it must be able to segregate, cool, store, load, and unload Grade A milk. According to the witness, the provision in the MMI proposal that would require supply plants to transfer at least one tankerload of milk during September, October, and November would demonstrate that a supply plant has the necessary facilities to supply the market.

The MMI witness continued by noting that the supply of producer milk had declined slightly over the last eight years in Order 36, while the combined Class I and Class II needs of Order 36 had increased by 17 percent during the same period. The witness went on to explain that supply plant shipping requirements had not changed during this time and that the requirements should be changed to reflect the change in the market, particularly since supply plants are joining the market to ride the pool.

A witness for United Dairy, who also represented Hillside Dairy and R. Bruce Fike Dairy, two other Order 36 pool distributing plants, testified in support of the United Dairy proposal, which he characterized as similar or identical to the MMI proposal. According to the witness, the net shipments provision is necessary to eliminate sales back to supply plants from pool distributing plants, a practice which he said does not increase the amount of milk available to the fluid market, and therefore does not benefit the market.

The United Dairy witness stated that in Order 36, supply plants do not fulfill their function as a reserve and balancing supply for the Class I market. The witness explained that the supply plants draw millions of dollars from the Order 36 pool and yet do not supply the market when the milk is needed. The witness testified that the supply plants use the pool money to pay their producers, which, combined with premiums derived from profitable cheese operations, allows the supply plants to outpay the distributing plants and thus attract a significant portion of a diminishing Grade A milk supply. The United Dairy witness concluded that the order must contain minimum supply plant shipping percentages that reflect the needs of the market, not only in the quantity needed but also at the times needed.

A witness for Hillside Dairy testified in support of United's proposal. The witness stated that supply plants are not releasing sufficient supplies of milk in the fall. He explained that distributing plants cannot compete with the supply plants for a supply of milk due not only to the draw the supply plants receive from the pool to pay their producers, but also the premiums they can afford to offer. The witness indicated that the supply plants can pay premiums because they can derive additional benefits from milk that distributing plants can not derive, such as higher cheese yields from higher protein milk. The Hillside witness testified that when the shipping percentages were reduced to their present levels in 1978, milk was plentiful. Since that time, he stated, the supply situation had changed, and therefore the proposed increase in the shipping percentage would enhance the marketing conditions in Order 36.

A witness representing Brewster Dairy, a pool supply plant under Order 36, testified in opposition to the MMI and United Dairy proposals, and in support of Brewster's proposal to include shipments by Order 36 supply plants to nonpool distributing plants in determining supply plant pool qualifications. The witness explained that supply plants such as Brewster serve an important function in the market by balancing the market when the demand for Class I milk does not meet the available Grade A supply. The witness noted that the supply plants not only balance the market seasonally but also on a daily, weekly, and monthly basis. The witness indicated that United Dairy's problems in acquiring milk at certain times of the year are not due to a shortage in the market, but to United Dairy's unwillingness to pay a reasonable price for the milk. The witness characterized United Dairy's problem as one of its own making, a problem that should not be remedied by regulation but by the marketplace.

The Brewster Dairy witness claimed that increasing the supply plant shipping percentage would not increase Class I use in the market but would require one sector of the market to supply milk for fluid use, thus leaving more milk for another sector of the market to use for manufacturing. Opposition to the MMI and United Dairy proposals by the Brewster Dairy witness also concerned a perceived inequity in the difference between the proposed shipping percentages for supply plants and the shipping percentages for cooperative pool plants. The witness pointed out that in some neighboring Federal orders the shipping percentages for proprietary supply plants are the same as for cooperative supply plants and in at least one Federal order the requirements for a cooperative plant are greater than for a proprietary plant.

The Brewster witness explained that allowing proprietary pool supply plants to ship milk to other order distributing plants for qualification in Class I would enhance the Order 36 blend price and help to achieve greater equity between the two types of supply plants (proprietary and cooperative). The Brewster witness continued by stating that proprietary pool supply plants should be allowed qualifying shipments of milk to other order distributing plants for the same reasons that such shipments are allowed for cooperative supply plants. The Brewster Dairy witness' testimony in favor of the Brewster proposal was supported by two other Order 36 proprietary pool supply plants, Hans Rothenbuhler & Sons (Rothenbuhler) and Miceli Dairy Products Company.

A brief filed on behalf of the Dairy Industry Association of Pennsylvania expressed support of the MMI and United Dairy proposals to increase supply plant shipping percentages because of the difficulty of obtaining supplies of milk for Class I and Class II use, as demonstrated by temporary revisions of the shipping percentages during fall months in two recent years. The brief argued that the increased number of supply plants on the Eastern Ohio-Western Pennsylvania market has not had the effect of serving Class I needs. The supply plants were described as riding the pool during the flush production months, drawing payments from Class I handlers to pay producers the order's blend price plus premiums that enable the supply plant operators to capture a milk supply to fill their own manufacturing needs, and shipping milk out of the market during the fall months rather than supplying Order 36 distributing plants. The Association brief stressed the need for adopting a net shipments provision to make milk available for fluid use and fulfill the intent of the supply plant provision.

A brief filed on behalf of National Farmers Organization (NFO) took no position on the appropriate levels of shipment for proprietary supply plants, but suggested that higher shipping

percentages could be justified for fall months because the proprietary supply plants are not required to meet qualifying percentages year-round, as cooperative plants are required to do.

The MMI and United Dairy proposals were opposed in briefs filed by Brewster Dairy and Rothenbuhler. Both briefs stated that United Dairy doesn't plan for and negotiate supplies of milk, and is unwilling to pay the prevailing rate for milk. They argued that the proposals are based on a temporary downward trend in production which, at the time of the hearing, was in the process of reversing itself. Brewster stated that no abuses were detailed in the record that warranted adoption of a net shipping standard, and asserted that there are valid reasons for distributing plants to return shipments. The brief charged that MMI wants supply plants making Class II products to have to release their supplies of milk to competing distributing plants.

The Brewster Dairy proposal to allow shipments to nonpool distributing plants to be included in determining whether supply plants meet the order's qualifying percentages was supported in briefs filed by Brewster Dairy and Rothenbuhler. The Brewster brief stated that although Brewster sells Class I milk to nonpool plants in the south and southeastern United States, the handler has also had to depool Order 36 milk because of deliveries to Order 33 pool plants because no local customer required the supplies.

Briefs filed on behalf of the Dairy Industry Association of Western Pennsylvania, United Dairy, Fike Dairy and Hillside Dairy, and MMI opposed adoption of the Brewster proposal. According to the briefs, if the proposal were adopted a supply plant could ride the pool during the flush production months while shipping only 20 percent of its receipts to pool distributing plants during the fall. The Association brief argued that Order 36 pool distributing plants should not have to pay prices consistent with both Order 36 and other markets for seasonal and spot supplies of milk.

Although the percentage of Class I use under Order 36 is generally slightly less than the same percentage under Order 33, the percentage of a supply plant's receipts that must be shipped to pool distributing plants to qualify the supply plant for pooling is 5 percentage points higher in Order 36 than in Order 33 for the months of September through November. This seeming discrepancy is explainable by differing marketing conditions and structure in the two markets. The record of this proceeding contains testimony about fluid milk handlers' difficulties in obtaining adequate supplies of milk under Order 36, while no such problems were described in relation to Order 33. In addition, only about half of the 26 Eastern Ohio-Western Pennsylvania pool distributing plants listed at the time of the hearing were described as having contracts with MMI for all or some of their milk supply, while more than three-quarters of the 16 Ohio Valley pool distributing plants were locked into a cooperative supply of milk. Clearly, a greater need exists for reliable supplies of milk at Order 36 distributing plants than for Order 33 plants, both in the proportion and number of plants that need to procure milk from sources other than the principal cooperative association.

Based on the apparent need for continued supplies of milk for Order 36 distributing plants from supply plants, there appears to be no reason to reduce the current shipping percentages to the level of Order 33. At the same time, the need to increase the shipping percentages to the levels proposed by MMI and United Dairy is not evident either. Even though the percentage of producer milk used in Class I had increased slightly in 1989 above 1987 and 1988 levels, it still represented a 10-percent decrease from the 1969–1975 period, when supply plant shipping standards were 10 percentage points higher.

It is reasonable to require that supply plants actually ship to distributing plants the percentage of their receipts specified by the order. Pooling standards that can be negated by offsetting shipments from distributing plants are meaningless. Therefore, the standards adopted should represent net shipments from supply plants to distributing plants.

The data in the record support a higher shipping standard for the months of December through February than for the "free ride" months of March through August. Class I use percentages for the market are noticeably higher during this period while schools are still in session, requiring a relatively high level of fluid milk products, and before milk production starts to increase seasonally. However, because of the customary decline in Class I use late in December, the percentage for only January and February should be increased. Therefore, the 30-percent shipping standard for all months except September through November should be increased to 35 percent for January and February and remain unchanged for the months of March through August, and December.

The MMI proposal that each supply plant be required to ship at least one tankerload of milk (at least 45,000 pounds) during the months of September, October and November to demonstrate that the plant has the facilities to segregate, cool, store, load and unload Grade A milk is a reasonable criterion for a supply plant, and should be adopted. Proponent's testimony is unclear as to whether the intent of the proposal is to require the minimum volume of shipment in each of the three months, or in just one of the months. Establishing that a plant has the ability to handle the milk, however, should be necessary for only one of the three months, and the recommended language reflects such a requirement.

The Brewster Dairy proposal that proprietary supply plants be allowed to fulfill up to half of their required deliveries to pool distributing plants with shipments to nonpool distributing plants would not assure that Order 36 supply plants are contributing sufficiently to the supply of milk for fluid use in the Order 36 marketing area, and should be denied. Proprietary supply plants meet the order's shipping requirements for the purpose of being able to pay their producers the market's blend price, which is generated by the Class I use of pool distributing plant operators in the market under which they are pooled. It is the market's distributing plant operators who contribute the portion of the marketwide pool that exceeds the Class III price and that enables supply plant operators to pay their producers a higher price than manufacturing uses normally would generate.

Brewster Dairy apparently sells milk for fluid uses to more southerly markets during the fall months when those markets are experiencing even tighter milk supply conditions than exist in the Order 36 market. If Brewster's proposal were adopted, the handler (and other supply plant operators) would be able to use such sales as part of their qualifying shipping percentage under the Order 36 market, reap the advantages of collecting large premium payments from the southern handlers, and still maintain pool status under Order 36. Brewster would then be able to ride the Order 36 pool during the flush production months, shipping nothing to distributing plants during the months of March through August, while collecting equalization payments from the Order 36 pool to enhance its payments to its own producers.

Order 49. The portion of a Hoosier proposal to amend the Indiana order pool supply plant provision that would

reduce the shipping percentage for the "free ride" period from 50 percent to 35 percent should be adopted. The percentage of milk that must be moved by supply plants to distributing plants during the months of September through February should be reduced from 50 percent to 40 percent, to bring the order more closely into agreement with the other orders involved in this proceeding. Also, pooling qualification percentages should be subject to temporary adjustment by the market administrator when marketing conditions warrant.

Proposals by New Paris Creamery and the Milk Foundation of Indiana to allow diversions of milk, as well as transfers, from supply plants to distributing plants as qualifying shipments should be adopted, up to the limit of the volume of milk transferred. An aspect of the Hoosier proposal that would shorten the "free ride" period to May through July instead of April through August should be denied. The Hoosier proposal that shipments of condensed milk re-used in fluid milk products be included in supply plant qualifying shipments has been rendered moot in light of the recommended decision [Issued November 6, 1991; published November 22, 1991 (56 FR 58972)] on the record of the national hearing held in the Fall of 1990. [Docket No. AO–14–A64, etc. DA–90–017; RIN 0581–AA37].

The Hoosier witness characterized the Indiana market as a deficit market in which outside sources of milk have been needed for many years. He explained that since Hoosier supplies the majority of the supplemental milk for the market at a cost substantially above order prices, Hoosier's producers bear the brunt of the cost while other producers on the market share in the blend price, but not in the cost of supplying the market's Class I needs. The witness stated that present order provisions contribute to the problem by allowing supply plants to ride the pool.

The Hoosier representative testified that pool supply plant qualifying percentages should be computed on the basis of all producer receipts at the supply plant, including milk diverted to other plants and commercial food establishments. Other changes to the pool supply plant definition proposed by Hoosier included shortening the "free ride" period to May through July instead of April through August, allowing condensed skim milk to be used for qualification, and providing for the shipping percentages to be changed at the discretion of the market administrator.

The witness for Hoosier explained that the shipment of milk by supply plants to pool distributing plants should be on a net basis. He stated that adoption of a net shipment provision would prevent supply plants from establishing schemes to ship fluid milk to pool distributing plants for qualification and then have the distributing plants ship the fluid milk back to the supply plant or to a nonpool plant. The witness went on to say that the Hoosier proposal would allow condensed skim milk to be used by the supply plant as part of its qualification shipments. He stated that even though this type of movement does not occur presently under the order, the use of condensed skim milk or specialty condensed mixes for fortification is a coming trend, and provision should be made for this type of movement. The witness testified that Hoosier did not intend that condensed skim milk be considered a fluid milk product.

NFO opposition to Hoosier's proposal centered around the proposed reduction in the "free-ride" period. The NFO witness stated that tightening the shipping requirements by reducing the "free-ride" period has no sound basis, and would place Order 49 supply plants at a competitive disadvantage to supply plants regulated under Order 33. The NFO witness spoke in favor of the proposed net shipments provision provided that reasonable shipping requirements are used (presumably 35 percent in March through July and December, with no change for other months). The NFO witness also supported the portion of the Hoosier proposal that would give the Market Administrator authority to adjust shipping percentages as needed.

MFI presented testimony opposing the proposal to tighten the supply plant shipping requirements. The MFI witness stated that the only change in marketing conditions in the Indiana market had been that neither of the two supply plants operating under the order at the time of the hearing marketed their milk through Hoosier, and therefore at least one of them had had to make uneconomic movements of milk to remain a supply plant under Order 49. The witness explained that even though milk is moved to qualify a plant, the movement does not result in any more milk being available for the distributing plants, and in fact some milk moves when the distributing plants do not need it. The MFI witness stated that in view of Indiana market conditions, loosening the supply plant standards would be more appropriate than tightening the standards as proposed by Hoosier.

The MFI witness explained that the MFI proposal to amend the supply plant qualification provisions, in contrast to Hoosier's proposal, would improve the efficiency of the market by allowing supply plants to divert milk to distributing plants to meet the supply plant qualification percentage. The witness testified that many other orders allow supply plants to qualify on the basis of milk movements to distributing plants direct from farms, and that such movements are recognized as the most efficient and least cost method of supplying milk to distributing plants.

In the 20 years between the merger of the Indianapolis, Fort Wayne and Northwestern Indiana orders to form the present Indiana marketing area and the hearing in this proceeding, the percentage of Indiana producer milk used in Class I declined approximately 10 percentage points. Over the same time period, the percentages of producer milk used in Class I in the Ohio Valley and Eastern Ohio-Western Pennsylvania marketing areas declined about 15 percentage points and 10 percentage points, respectively. (Official Notice has been taken of the Annual Federal Milk order Market Statistics for the years 1969–1990). Over the same twenty-year time period, Order 33 supply plant pooling requirements have been reduced by 15 percentage points, while the same requirements for Order 36 pool supply plants have been reduced by 10 percentage points.

It is apparent from these trends that a failure to loosen pooling provisions does not cause Class I use percentages to remain at a higher level. Also, with Class I utilization of about 60 percent annually, the Indiana market is clearly not seriously deficit in terms of milk supply for fluid uses. Although Hoosier obviously has imported large quantities of milk, sometimes at substantial cost, the market's need for such imported milk for fluid use is not clearly shown. The record indicates that some handlers have found it difficult to find fluid outlets for supplies of milk they wish to pool. Testimony by an NFO witness indicates that NFO would have been willing and able to supply some or all of the milk required by Hoosier to fulfill its supply contracts, in order to meet qualification requirements for its own milk supply. According to Hoosier testimony, 9 of the 10 fluid milk plants on the Indiana market at the time of the hearing were full or partial supply customers of Hoosier's, leaving 1 customer to be supplied by other sources.

In keeping with amendments to pool qualification provisions in Order 33 and Order 36, the Indiana pool supply plant shipping percentages should be reduced to 40 percent for the months of September through February, and to 35

percent for the months of March through August. The record provides no basis for changing the order's current "free ride" period, during which supply plants meeting the order's pooling requirements during the months of September through February retain their pool status for the following months of April through August, to May through July as proposed by Hoosier. The Class I use statistics for the previous 5 years show that the percentage of milk needed for fluid use drops sharply between the months of March and April in the Indiana market and rises most markedly between the months of August and September. In this respect the Indiana market differs slightly from the 2 Ohio markets, where the seasonal drop in Class I use is more marked between the months of February and March.

The percentage of a pool supply plant's milk supply that must be delivered to pool distributing plants should be a net requirement. As in the 2 Ohio markets, failure to adopt a net shipment requirement would result in meaningless shipping standards, and would not help to assure an adequate supply of milk for fluid use.

For the purpose of facilitating efficiencies in milk marketing, diversions of producer milk should be considered in determining supply plant qualifications, up to the amount of milk moved by transfer to distributing plants. Moving milk directly from farms to distributing plants is a more efficient way of getting milk to where it is needed than having to unload and reload the milk at supply plants. In addition, extra unloading and reloading increases the cost to handlers of handling milk and causes the milk to deteriorate in quality. Direct delivery by supply plants from producers' farms to distributing plants supplies the market just as transfers do, but at a lower cost.

Milk diverted by a supply plant operator should be considered a receipt at the plant for the purpose of determining pool qualification, as should .9(c) milk received from a cooperative association. Such milk constitutes the supply of producer milk available to the handler for shipment to distributing plants. In addition, allowing diversions of producer milk to be included as qualifying shipments necessitates that such movements be considered as receipts. Receipts of other source milk or transfers and diversions for which Class II or III classification is requested by both the shipping handler and receiving supply plant handler do not need to be considered as receipts for qualification purposes.

Provision should be made in the pool plant definition for the market administrator to temporarily adjust the percentage shipping requirement by up to 10 percentage points if such action is needed to assure an adequate supply of milk for fluid use, or to prevent uneconomic shipments of milk. Such a provision will allow more efficiency in adjusting regulations to marketing conditions.

e. *Co-op pool plant.*

Order 33. A proposal by National Farmers Organization (NFO) to reduce the shipping percentages required of a cooperative association plant from 50 to 35 percent should be adopted. The modification to the proposal made by proponent at the hearing, to eliminate the requirement that qualifying shipments be to pool plants instead of to pool distributing plants, should not be adopted. The NFO witness testified that NFO's proposal to change the cooperative pool plant shipping percentage in Order 33 to equal the Order 36 cooperative pool plant shipping percentage would further NFO's goal of making the provisions of the 2 Ohio orders more uniform. The witness explained that the Class I utilization of the two orders was almost equal in 1989, and that no other parties at the hearing had proposed increasing the cooperative pool plant shipping percentages effective under Order 36. The NFO witness further stated that a long-time fluid milk customer had ceased bottling activity, causing NFO difficulty in meeting the order's pooling requirements.

The proposal was opposed by MMI and Hoosier on the basis that shipping requirements under Order 33 should be tightened, not loosened. The MMI brief argued that there is no reason to reduce shipping requirements in a market with 80 percent Class I and Class II use. The brief filed on behalf of Hoosier stated that the NFO plant at McCartyville is only 15 miles from the MMI New Bremen plant to which some of the NFO milk is delivered. The Hoosier brief stated that the NFO facility is a reload point, not an actual plant with the ability to cool or hold milk, and that its operation makes no economic sense and serves no balancing function for the market. The Hoosier brief also argued that NFO moves milk to its own plant first to multiply the pounds of milk it can qualify for pooling on the basis of sales to New Bremen and other handlers.

The current language of the order makes very clear that a cooperative pool plant can qualify for pooling only if 50 percent of the association's member producer milk is actually delivered to pool distributing plants, and leaves no room at all for pyramiding additional volumes of pooled milk on top of the milk which is qualified at the cooperative pool plant. In view of the Class I use percentage of the Ohio Valley market and the portion of the market dominated by MMI, it is unreasonable to require a cooperative association to deliver 50 percent of its milk supply to pool distributing plants on a year-round basis. Reduction of the required percentage to 35 percent will still require that cooperatives operating cooperative pool plants demonstrate a higher level of commitment to supplying the fluid market than regular supply plants must meet because supply plants that meet the 35-percent shipping percentage requirement for the months of September through February do not have to do so during the months of March through August. There is no reason to require cooperative pool plants to meet a significantly higher shipping percentage than regular supply plants, as well as meeting such a percentage on an average annual basis.

The proposal to allow any shipments to pool plants as qualifying, however, or to include shipments to nonpool distributing plants in cooperative pool plant qualification, would have the effect of ignoring the responsibility of such plants to supply the market for fluid use within the Ohio Valley Federal milk order marketing area. Therefore, these modifications to the proposal should not be adopted.

Order 49. A proposal by NFO that a cooperative pool plant provision be added to the Indiana order should not be adopted. The NFO witness stated that NFO's proposal was patterned after similar provisions in Order 33 and Order 36 where, he said, the cooperative supply plant provision has been a positive method of efficiently pooling the milk of cooperative members. The witness explained that this provision would allow the most efficient pooling of NFO's supply plant and the cooperative's total milk supply. The provision would allow a cooperative to qualify a cooperative supply plant if the cooperative shipped 35 percent of its total producer milk on the market year-round to pool distributing plants.

The proposal was opposed in a brief filed on behalf of Hoosier on the basis that the Indiana marketing area does not need supply plants, and has never needed a balancing plant. According to Hoosier, the NFO Madison plant doesn't serve the purpose of a balancing plant because it provides no processing of the market's reserve supplies.

The record provides no indication that a cooperative pool plant provision is needed in the Indiana order. There was no testimony that milk must be

transferred from farm pick-up routes to over-the-road tankers to assure Indiana fluid milk handlers of a milk supply. The producer milk diversion allowances, relaxed under this decision, should allow NFO to continue to qualify its member producer milk associated with the Indiana market to retain pool status without adding an unnecessary provision to the order.

f. *Pool plant disaster clause (Order 49).* A "disaster clause" proposed by Hoosier for inclusion in the Indiana order should be adopted. The proposal would assure continued pool status for pool distributing and pool supply plants if a plant was unable to meet the order's pooling standards because of disastrous circumstances. Proponent witness defined such disasters as unavoidable circumstances such as natural weather-related events, fires, breakdowns and work stoppages, and proposed that relief be limited to two consecutive months to prevent abuse.

No opposition to the proposal was expressed at the hearing, and the NFO brief filed on the basis of the hearing record supported the proposal as preserving orderly marketing in the event of natural disasters or other events that could interfere with pool plant status. An order provision assuring continued pool status in the event of an unforeseen and unavoidable circumstance that is not a result of a handler's business decisions should enhance the orderly marketing of milk in the Indiana marketing area. Such provisions have worked well in other orders over a number of years. Therefore, the proposal should be adopted.

g. *Producer milk.*

(i) *Diversion limits (all three orders).* A proposal by NFO to make the diversion limits uniform between the three orders should be adopted. The amended orders would allow 50 percent of a handler's producer milk to be diverted during the months of September through February, except for the month of December when the allowable percentage of diversions would be 60 percent. Diversions during the months of March through August would continue to be unlimited. During the months of September through November at least one day's production of each producer's milk would have to be received at a pool plant. Proposals to eliminate requirements in Orders 36 and 49 that producer milk be received at pool plants before being eligible for diversion are adopted.

The NFO witness testified that the NFO proposal to amend the producer milk definitions of the three orders to achieve a higher degree of uniformity is based on the high degree of interrelation between the three marketing areas. The witness stated that NFO's proposal would achieve uniformity by (a) requiring each producer to "touch base" at a pool plant during each month of September through November, as is currently the case under Orders 33 and 36, (b) allowing a producer's milk to be diverted to a nonpool plant prior to being received at a pool plant, and (c) establishing a uniform 50-percent diversion limit for the months of September through February, excluding December.

NFO's proposal was opposed in briefs filed on behalf of MMI and Hoosier, wherein it was argued that the proposed diversion limits would liberalize and reduce shipping standards that are needed to protect the integrity of the pools and insure an adequate supply of milk for fluid use. In addition, Hoosier's brief stated that the pooling provisions of each order are established on the basis of production and marketing data unique to each. The brief argued that if the uniformity argument is not specious, the pooling provisions of Order 49 should also conform with those of Orders 30, 40, 32, 50 and 46.

NFO's proposed amendment to Order 36 would enable producers to maintain their producer status after a break in deliveries (such as in the case of a degrade) without having to touch base at a pool plant, as long as their milk has not been pooled under another order since being pooled under Order 36. The witness explained that under the present provisions of Order 36 a producer must maintain continuous association with the market to be diverted, even during those months when there is no touch-base requirement. According to the witness, uneconomical movements of milk result when a producer temporarily loses Grade A status. In such a case, the producer's first day's production upon returning to the market must be received at a pool plant, requiring that the entire load with which the producer's milk is picked up be received at a pool plant, and resulting in uneconomical and unnecessary movements of milk. The witness explained that NFO's proposal would allow a producer's milk to be diverted before being received at a pool plant if the producer has not been associated with another Federal order during the time the milk was not pooled. No testimony or briefs were received opposing the NFO proposal to amend the Order 36 producer milk provisions.

A proposal by Milk Marketing, Inc., to amend Order 36 would limit March through August diversions of producers with less than one-third of their milk pooled during the preceding months of September through November. The MMI witness stated that producers who share in proceeds from the fluid market during the flush production months should be expected to deliver some milk to market when it is most needed for Class I. The MMI brief referred to testimony in the record that some producers ship milk south in the fall and ride the Order 36 pool in the spring. The proposal was characterized by MMI as similar to provisions in other markets.

NFO opposed adoption of the proposal on the basis that it would be difficult if not impossible to administer. The NFO brief described the MMI proposal as an attempt to penalize or restrict movement of producers off of Order 36 and back on again. According to NFO, no problem necessitating adoption of the proposal was demonstrated at the hearing. The Dairy Industry Association of Pennsylvania filed a brief stating that the Association had no objection to the proposal if producers' milk may be diverted without limit in December and March through August when one-third of the producers' milk is pooled during the months of September through November.

The MMI proposal should not be adopted. The amended producer milk provisions should provide sufficient assurance that producers whose milk is qualified for pooling are adequately associated with the fluid market to share in the proceeds of the marketwide pool. The record contains little or no basis to support adoption of the proposal.

A proposal by Hoosier for Order 49 would amend the producer milk definition to allow producers to "touch base" at pool plants any time during a month, allow producer milk to be diverted to commercial food processors as well as to nonpool plants, and remove April and August from the months in which unlimited diversions are allowed. A brief filed on behalf of NFO supported the portions of the proposal that would allow diversions of producer milk to commercial food processors and allow a new producer's milk to be diverted before it is received at a pool plant. NFO opposed tightening Order 49 delivery standards, arguing that if Order 49 standards are significantly higher than those under Order 33, the result will be more milk pooled under Order 33 rather than more milk available to Order 49 pool distributing plants.

As adopted herein, the Indiana producer milk definition will allow producers to "touch base" at pool plants at any time during each of the months of

September through November, for the same reasons of efficient hauling and handling that such provisions were adopted for Order 36. In addition, the November 1991 decision on the 1990 national hearing adopts provisions that allow producer milk to be diverted to commercial food processing establishments. Therefore, that issue is not addressed in this decision. Finally, the record provides no basis for tightening Indiana diversion provisions.

All of the ways in which the milk marketing activities of these three markets overlap support the argument that producer milk diversion limits should be more uniform between the three orders. The milkshed of the Ohio Valley marketing area overlaps significantly with those of the Eastern Ohio-Western Pennsylvania and Indiana marketing areas, to the extent that in December 1989 nearly 80 percent of the milk pooled under Order 33 was produced in counties which also supplied milk to Orders 36 and 49. Over 60 percent of the producer milk pooled under the Ohio Valley order was produced in the common milkshed with Order 49, while over 20 percent of the producer milk pooled under the Indiana order was produced in the common Order 33-Order 49 milkshed. Further, milk was pooled under Order 33 in 1990 from 12 counties in Indiana and Michigan that did not supply milk to Order 33 handlers in 1988 or 1989 but did supply Order 49 handlers, and from 6 Michigan, Pennsylvania and Ohio counties that did not supply milk to Order 33 handlers in 1988 or 1989 but did supply order 36 handlers, indicating significant levels of changes in market by producers among the three markets.

The outlets for surplus milk supplies used by the three markets also demonstrate a high degree of interrelationship. During 1989 and 1990, 21 nonpool plants were listed as recipients of Class II and Class III milk from both Order 33 and Order 36, while thirteen nonpool plants were listed as receiving surplus milk from handlers regulated under Orders 33 and 49. Ten nonpool plants received Class II and Class III milk from handlers regulated under Orders 36 and 49 in 1990, and 11 nonpool plants received Class II and Class III milk from handlers regulated under all three orders during the period 1985–90.

Two pool distributing plants, Smith Dairy and Wayne Dairy, shifted between orders in both 1989 and 1990; Smith Dairy becoming pooled under Order 33 instead of Order 36 during some fall months of both years, and Wayne Dairy shifting regulation from Order 49 to Order 33 during the summer of 1989 and fall of 1990. In addition, at the time of the hearing, the Shipshewanna supply plant was expected to shift regulation from Order 49 to Order 33. The effect of a shift in the order under which a plant is regulated will be disorderly for producers if they fail to meet the delivery requirements of the order under which they find their handler regulated, instead of the requirements of the order under which their handler had been regulated.

As noted earlier, the pooling provisions of the Indiana order have failed to be adjusted in accordance with marketing conditions as milk production pooled under the order has increased faster than Class I sales by regulated handlers. For this reason, and because of the need for uniformity between provisions of the three orders as outlined above, the producer shipping percentages of the three orders should be amended as proposed by NFO.

ii. *Pricing diverted milk (Orders 33 and 49).*

Order 33. A proposal by MMI to amend the Ohio Valley order to price milk diverted to plants located outside the marketing area and outside the State of Ohio from farms located inside Ohio or in five Michigan counties at the location of the plant from which diverted should be adopted, with some modification. At the time of the hearing, proponent modified the proposal to require that producers whose milk is priced at the location of the plant from which it is diverted deliver at least 66 percent, or 20 days' production, of their milk to pool plants during each of the months of September, October and November. The proposal as adopted would be further modified by limiting the location adjustment applicable to the uniform price paid to such producer to that effective at the location of the producer's farm for the months of March through August, but only when 65 percent of a producer's milk is delivered to a pool plant or plants at which an equivalent or higher price is applicable during the months of September through February.

The MMI witness stated that every fluid milk market needs facilities or access to facilities to handle reserve supplies of milk that are not needed for fluid use on weekends and holidays. He testified that the number of manufacturing plants in the Order 33 marketing area has decreased to such an extent that on many occasions milk not needed for the Class I market must be moved long distances to be processed into storable products. According to the witness, milk produced outside the marketing area near the reserve processing plants creates no difficulty, but that milk produced within the marketing area that must be transported outside the area to manufacturing plants does create financial problems.

The witness testified that producers whose milk is moved to distant plants (located at Goshen and Auburn, Indiana) expect to be subject to prices and hauling rates competitive with their neighbors whose milk goes to nearby fluid outlets. He explained that disruptive and disorderly marketing conditions would occur if individual dairy farmers began competing for the local market and trying to avoid the cost of sending their milk to distant plants and receiving a lower blend price as well. The MMI witness argued that producers who have diverted their milk from local markets have already suffered financial loss due to increased hauling, and should not be subject to the additional loss of receiving a lower blend price as well. However, the witness also testified that producers pay a fixed rate for hauling under their contracts with haulers, regardless of the destination of their milk. Proponent cited what he described as similar provisions to those proposed for the Ohio Valley order in the current Southern Michigan order and former Lake Mead order.

It appears that adoption of the proposal may have the effect of causing milk to be moved to Goshen rather than to fluid plants in the southern part of the marketing area, where much less milk is produced and where more milk is needed for fluid use. The distance from New Bremen, Ohio, where much of the milk in question is normally received, to the surplus outlet at Goshen, Indiana, (about 120 miles) is about the same as the distance from New Bremen to Cincinnati, Ohio, in the southern part of the Ohio Valley marketing area. The ability of producers to easily receive the same price for deliveries to a surplus outlet as they would if their milk had gone to a nearby plant would remove the incentive intended by the order's location adjustment provisions to move milk to the more southerly part of the marketing area where it is needed.

Three-quarters of the distributing plants, at which milk is needed for fluid use, that are pooled under the Ohio Valley order are located south of Zone 2 and south of the area of heavy milk production in which the MMI witness indicated producers experience problems with additional negative location adjustments. In fact, in December 1989 over 50 percent of the

Ohio milk pooled under Order 33 was produced in the Ohio counties of the Ohio Valley marketing area north of Zone 3, while less than 40 percent of the Ohio milk pooled under Order 33 was produced south of Zone 2. With less than 40 percent of Ohio milk available from nearby sources to supply approximately 75 percent of the Class I needs of the market, it is apparent that the need for price incentives to move milk from the heavy production area of northern Ohio to the southern Ohio area of greater Class I demand still exists in the market. Therefore, the incentives contained in the current location adjustment structure of the market should not be curtailed as abruptly as proposed by MMI.

The provisions of the Southern Michigan order and the former Lake Mead order differ significantly from those proposed by MMI. Under the Southern Michigan order, only the milk of producers who each month deliver 65 percent of their production to plants at which the same location adjustment rate is applicable are eligible to have all of their milk deliveries subject to that same rate, rather than a lower rate for milk diverted to distant manufacturing outlets. The Lake Mead order provided that only those producers located in two counties for which the only nearby outlet was a fluid milk plant in Las Vegas, Nevada, would have their milk priced at the plant from which diverted. The location adjustment on prices paid to producers located in the vicinity of a distant manufacturing plant was capped at the rate applicable at that plant. Similar provisions for the Ohio Valley order would allow pricing at the location from which diverted only for the milk of producers located in the Cincinnati area, and require the assumption that the nearest surplus outlet is in Goshen, Indiana.

According to the record of this proceeding, there are at least six nonpool plants located in Zones 1 and 2 of the Ohio Valley marketing area and the three northwestern Ohio counties that lie between the Order 33 and Order 49 marketing areas that receive Class II and Class III milk from pool plants for use in the manufacture of ice cream, yogurt, and evaporated milk. A number of surplus outlets also exist in Zones 3 and 4 for milk usually delivered to pool plants in that area that must be diverted from fluid use at times when the fluid plants do not need it. These plants certainly represent closer surplus outlets for the milk of producers in northern Ohio and southern Michigan than the Goshen facility, as does a Kraft ice cream plant in Huntington, Indiana.

Although proponent witness referred specifically to problems encountered in the diversion of producer milk to manufacturing outlets on weekends and holidays, it is apparent from seasonal production and fluid use statistics that a greater problem exists in connection with moving surplus milk to manufacturing outlets in the spring and summer months when production increases and fluid milk needs decline.

For the period March 1987 through February 1988, which apparently was unaffected by any shift in plant regulation under Order 33, the average daily volume of producer milk used in Class III during the months of March through August exceeded the average daily Class III use for the following September through February period by more than 130 percent, or over 1,600,000 pounds per day. In view of the availability of some nearby manufacturing plants and the wide seasonal variation in the amount of surplus milk that must be disposed of, changes in the pricing of diverted producer milk should be confined to the season in which significant volumes of surplus milk are produced. Further, those producers who benefit from the amended provision should not benefit to the extent of having milk that is diverted to a lower-priced area priced at the same rate as if it were received at a plant in a higher-priced zone. In order to avoid such a situation, the location adjustment provisions should limit the price paid for diverted milk to the price effective for the zone in which the farm is located.

The provisions adopted in this decision will assure that the order retains a price incentive to move milk from the northern area of heavy production for the Ohio Valley market to southern Ohio, where consumption is greater relative to production. Only producers whose milk is regularly received at pool plants during the months when supply plants are required to ship milk to distributing plants should be eligible to have their diverted milk priced at the plants where it is regularly received rather than at reserve processing plants. Adoption of a provision pricing most milk at the location from which it is diverted, even if applicable only to producers in a particular vicinity, would provide a disincentive to move milk from farm locations to the cities where it is needed for fluid use.

Order 49. A proposal by the Milk Foundation of Indiana (MFI) to price all diverted milk at the location at which it is received instead of the location from which it is diverted should be adopted, with modifications. MFI, a group of proprietary distributing plant operators, proposed the deletion of a provision of the Indiana order that allows milk diverted to a plant located in the marketing area, the State of Ohio, or south of the marketing area to be priced at the plant from which diverted. The witness for MFI stated that the provision allows Hoosier to take as much as $60,000 a month out of the pool by moving milk to nonpool manufacturing plants for surplus use instead of to fluid milk plants for Class I use, as normally intended by location adjustment provisions.

A portion of Hoosier's proposal to amend the producer milk definition would have provided for diverted milk to be priced at the location of the last pool plant from which it was diverted, and, in the case of a dairy farmer who was not pooled under the order in the prior month, for such milk to be priced at the location at which it is first received.

MFI's proposal was opposed by Hoosier and Milk Marketing, Inc., on the basis that producers who normally deliver milk to a particular plant expect to receive the price paid at that location, not a lower price when their milk must be diverted to a distant plant for which they incur higher hauling costs. According to the brief filed by Hoosier, the Indiana market is unlike most Midwest areas, in that diverted milk pooled under the Indiana order primarily moves from inside the marketing area to the periphery, instead of from the periphery to the center. Further, the brief stated, Indiana differs from many Midwest areas where the milk supply is located to the north of the fluid handlers and location adjustments are needed to avoid paying "phantom freight" for diversions of milk to nearby manufacturing plants. The Hoosier brief stated that there is no "phantom freight" in Order 49, and that the present provision is justified on the same basis as the Lake Mead provision referred to in relation to the Ohio Valley location pricing proposal.

Hoosier explained that many of its producers are located near handlers to which milk is delivered when needed. When not needed by fluid handlers, the brief stated, the milk is diverted to a balancing outlet some miles distant. Hoosier argued that such producers should not be penalized by receiving lower prices for their milk that must be diverted, as well as incurring higher hauling costs.

Hoosier's argument that diverted Indiana pool milk moves from the center of the market to the periphery, and not

from a northern production area, is contradicted by record evidence. According to data in the record, milk production in the northern part of the Indiana market is much heavier in relation to fluid needs than is the case in the southern part of the market. Sixty percent of the milk produced for the Indiana market is produced in the northern part of the marketing area, where the primary surplus outlets are also located and where negative location adjustments are effective. A number of other surplus outlets are located in Illinois, where minus location adjustments apply, and in Ohio Valley zones with lower Class I differentials under Order 33 than under the Indiana base zone, but subject to no location adjustments under the Indiana order.

Only one-half to two-thirds of the volume of milk used in Class I in the Indiana zero adjustment zone is produced there. Similarly, seventy to ninety percent of the milk needed for Class I use in the minus 20-cent zone, just north of the zero zone, is produced within the minus 20-cent zone. Eighty-five to ninety percent of the Indiana Class I milk is distributed from plants located in the zero and minus 20-cent zones, but less than 40 percent of the milk in the pool is produced in the Indiana portion of the zero and minus 20-cent zones where the distributing plants are located.

The need for supplemental milk supplies in the two southern zones of the Indiana order makes it clear that the order should provide some incentive for milk to be moved from northern Indiana, Ohio and southern Michigan, where it is produced, to southern and central Indiana distributing plants. The present order provisions, allowing milk to be priced at the plant from which diverted, contain no economic incentive to move milk to where it is needed for fluid use. Provisions similar to those adopted for the Ohio Valley order, as explained above, should provide the needed economic incentive to move milk for fluid use without unduly penalizing handlers who must move milk to distant manufacturing plants when their milk supplies are not needed for fluid use.

Because of the dearth of outlets for surplus milk in the southern portion of the Indiana marketing area, the diverted milk of producers who meet the 65-percent shipping requirement to pool plants in the southern zones during any month should not be subject to any additional minus location adjustments. However, milk delivered primarily to locations in the northern part of the marketing area, in which most of the primary surplus outlets are located, should be priced at the plant at which it is physically received. Such provisions will assure that producers whose milk is usually received in the lower-priced northern portion of the market will have a price incentive to allow their milk to be moved south, where it is more likely to be needed for fluid use. In addition, the provisions adopted in this decision will more closely resemble the Southern Michigan and Lake Mead provisions cited by Hoosier and MMI than do the current Indiana order provisions regulating the pricing of diverted milk.

For the reasons stated above, the Indiana order should require that 65 percent of a producer's milk be delivered to a pool plant or plants in the current zero and minus 20–cent pricing zones of the marketing area during any month in order to have the producer's diverted milk priced at the location from which diverted. Milk customarily delivered elsewhere should be priced at the location at which it is physically received.

2. *Reporting* (Order 49). A Hoosier proposal to eliminate from Order 49 a reporting requirement that handlers notify the market administrator of their intention to divert milk prior to doing so should be adopted. According to proponent witness, the notification requirement has not been enforced for many years. He also stated that such a reporting requirement would be cumbersome, if not impossible, to fulfill, and that the market administrator has no use for such data even if it were reported. No opposition to the proposal was received at the hearing, and its adoption was supported in the brief filed on behalf of NFO.

The provision proposed to be deleted appears to be not only unnecessary, but, if it were enforced, a positive hindrance to the efficient and economical marketing of producer milk. Diversions of milk to nonpool plants apparently have become much more common and voluminous since the provision was adopted. Many diversions also would not be planned for with enough time to give prior notice to the market administrator. Other Federal milk orders operate well without such provisions, as the Indiana order apparently has for some time without it being enforced. Therefore, the requirement should be removed.

3. *Classification.* The portion of the multiple component pricing proposal that would have changed the classification of packaged fluid milk products in inventory at the end of a month from Class III to Class I does not need to be considered in this proceeding because the proposed change was included in the November 1991 recommended decision on issues considered at the national hearing held in the fall of 1990.

A proposal by New Paris Creamery to amend Order 49 to change the classification of milk used in infant formulas from Class II to Class III because of a difference in classification of the product between the Indiana and Southern Michigan orders also is not addressed in this decision. The November 1991 recommended decision on national hearing issues included uniform classification provisions for all Federal milk orders. Adoption of uniform classification should eliminate the problem addressed by the New Paris Creamery proposal.

4. *Multiple Component Pricing (all three orders).*

a. *Protein pricing.* A proposal to incorporate a multiple component pricing plan in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana Federal milk orders should be adopted, with some modifications. The pricing plan generally would be patterned after the multiple component pricing plan that has operated under the Great Basin milk order for several years. Producers would be paid on the basis of the pounds of milkfat and protein contained in their milk, and would share in the value of the pool's Class I and Class II uses on a per hundredweight basis. Regulated handlers would pay for the milk they receive on the basis of total milkfat, the protein used in Classes II and III, the skim milk used in Class I, and the hundredweight of total product used in Classes I and II.

The pricing plan recommended in this decision would vary from that in the Great Basin order by using the percentage of protein contained in the milk included in the Minnesota-Wisconsin price survey rather than the marketwide average protein percentage, and by adjusting protein prices paid to producers and charged to handlers by the somatic cell count of the milk.

The proposal to incorporate multiple component pricing in Orders 33, 36 and 49 was proposed by Milk Marketing Incorporated (MMI), and Hoosier Milk Marketing Agency (Hoosier). The proponents' witness explained that in May of 1990 MMI marketed approximately 67 percent of the milk pooled on Order 33 with 1,988 producers and approximately 40 percent of the milk pooled on Order 36 with 2,020 producers. The witness explained that Hoosier consists of Associated Milk Producers, Inc. (AMPI) and MMI. These two cooperatives, through Hoosier, represent 1,475 producers whose milk is

pooled on Order 49, and 65 percent of the producer milk pooled under that order.

Proponent witness explained that milk has been priced on the basis of butterfat and volume for many years. He stated that in recent years, however, demand for lowfat dairy products has changed the emphasis as to which fraction of the milk has the most value. For many years, he testified, the butterfat fraction had the most value and therefore was a major pricing factor in milk. However, with the popularity of lowfat products, the skim fraction has become the major factor of value in milk. Data introduced by the witness showed that butterfat has gone from 77 percent of the value of milk down to 32 percent of the value, with the skim showing a corresponding increase in the percentage of value in the milk. The witness went on to state that by pricing milk on the basis of its protein, as well as butterfat content the producers would receive the pricing signal necessary to adjust to changes in the marketplace.

The proponents' representative presented several reasons for the implementation of multiple component pricing under Orders 33, 36, and 49. The first reason given by the witness was that these three orders should have mandatory multiple component pricing regulated by the Federal order system. The witness stated that although 77 percent of the Order 33 producers, 65 percent of the Order 36 producers, and 99 percent of the Order 49 producers were eligible for some form of multiple component pricing in May of 1989, the multiple component pricing plans currently in effect vary in their payment criteria, resulting in disorderly marketing conditions in these three markets.

The witness explained that since proponents' plan would incorporate the pooling of the protein value, producers with above average protein would benefit. According to the witness, some milk is bypassing certain plants to receive multiple component pricing, thus increasing transportation costs and helping create a disorderly marketing condition. He stated that producers would benefit from having their milk shipped to the nearest plant rather than bypassing bottling plants and going to manufacturing plants.

The second reason given by the proponents' witness for implementing multiple component pricing was that the current pricing system does not properly reflect the value of the milk.

The witness pointed out that the skim fraction of milk has gone from representing 25 percent of the value of milk to representing 65 percent of the value of milk. The witness stated that as a result the most valuable portion of the milk is not priced. Therefore, he concluded, the market does not send economic signals to the producer about the composition of the milk produced.

The third reason given by the proponents' witness for implementing multiple component pricing under the Federal orders is the growing interest by consumers in the nutritive value of their diets. The witness explained that consumers are becoming increasingly interested in the nutritive content of their dairy foods, while the present pricing system does not recognize the relative value of these components in milk. The witness pointed out that while the present system does not reward dairy farmers who produce milk containing more than average protein, which is valued by consumers, it does pay for additional butterfat, which is rejected by consumers. The witness continued by explaining that the proposed multiple component pricing plan would encourage producers to increase the content of milk components that are worth more, such as protein, in relation to the components of milk that are not worth as much, thus improving the milk to meet the demands of the marketplace.

The representative for the proponents explained that the proposed multiple component pricing plan is modeled from the Great Basin order, and would include protein as a component to be priced, in addition to the butterfat and product pounds that are now used in determining producers, pay prices.

Proponent witness stated that the proposed multiple component pricing plan is modeled on the Great Basin order because the provisions of that order incorporate the current structure of the three orders for which the plan is proposed, and have been used successfully for several years. He stated further that the Great Basin order excludes adjustments to the Class I price, an important feature for maintaining uniformity in Class I handler costs. The witness also argued that the Great Basin order provides for multiple component pricing on Class II and Class III milk, where there is a demonstrable relationship between the components of milk and the yield of finished products.

The witness then explained the modifications of the Great Basin order's multiple component pricing plan proposed by proponents. The first modification addressed the computation of the protein price. Under the Great Basin order, the handler protein price is computed by dividing the Class III skim price by the previous month's marketwide average protein percentage.

According to the witness, use of a different marketwide protein test for each market would result in each market having a different protein price and, therefore, differing Class III prices between markets, leading to disorderly marketing conditions.

Proponent witness described five alternatives for determining the protein price, and said that the most preferred method would use formulas to compute a butterfat price and a protein price, probably based on the Chicago butter market and the Green Bay cheese exchange. However, the witness indicated, this type of change in pricing would not be practical now. All of the remaining alternatives for computing the protein prices would use the Class III skim price divided by one of several protein percentages. The witness stated that proponents prefer the method which would use the protein percentage of the milk received by plants included in the Minnesota-Wisconsin survey. According to the witness, use of this protein percentage under all three orders would result in the same handler protein price under the three orders, thus avoiding a potential source of market disorder. The protein price would then reflect more closely the value of protein contained in milk included in the M–W survey.

The witness also pointed out that by using the M–W protein percentage, producers will be able to increase the protein content of their milk without reducing the protein price, a result which would occur when market average protein content is used. Another alternative suggested by the witness would be to have the Market Administrators of Orders 30 and 68 (for the Chicago and Upper Midwest marketing areas) test and report a protein percentage for the plants that are in Minnesota and Wisconsin and are pooled on those orders. A third alternative that the witness listed for determining the protein percentage was to have the department conduct a survey of plants in Minnesota and Wisconsin to determine the average protein content of their milk. This average would then be used to determine the handler protein price. The witness added that if the protein percentage from one of the above alternatives cannot be obtained, use of the current month's market average protein percentage would be acceptable.

Another modification of the Great Basin order advocated by proponents' witness was to include the Class II price differential in computing the producer

protein price. The Great Basin order uses both the Class I price differential and the Class II price differential in computing the producers' weighted average differential price. In proposing this change, the witness stated there would be a Class II protein price as well as a Class III protein price. The witness said that this change would show the producer that the protein fraction of the producer's milk is worth something and would thus encourage producers to increase the protein content of their milk.

Another change from the Great Basin order proposed by proponents is the separate pricing of Class II and Class III milk used-to-produce manufactured products, and the other milk uses in these two classes. The proponents' proposal would price milk used to produce manufactured items on the basis of protein and butterfat, while the other Class II and Class III uses, such as inventory, shrinkage, and fluid cream products, would be priced as they are now; i.e., on the basis of skim and butterfat. The witness stated that this change is favored because non-used-to-produce items do not rely on the protein content of the milk for their value. Therefore, he said, handlers should not have to pay for protein that has no relationship to yield. The witness also advocated the inclusion of transfers and diversions to nonpool plants under the multiple component pricing plan.

Proponents' representative explained that the final modification proponents desired to make in the Great Basin order to adapt its use to the three orders under consideration is the inclusion of somatic cells in the computation of handler protein prices and producer protein prices. The witness characterized this difference as pricing protein on its' "true value". The witness said that the industry recognizes somatic cells as a factor in the "availability" of protein for use by handlers, and therefore as affecting the value of protein to handlers. The witness continued by saying that producers would receive the proper return for their milk by including somatic cells in the computation of each producer's pay price. The pricing of milk according to its somatic cell content will be discussed in detail later in this decision.

A witness for National All-Jersey, Inc., testifying in support of proponents' multiple component pricing plan, stated that including multiple component pricing in these three orders will provide an important mechanism for enhancing the efficiency of milk production and marketing. The witness pointed out that not only will handlers and producers benefit from multiple component pricing, but consumers also will benefit.

The witness explained that handlers would benefit because they would be required to account for the milk components that give milk value. With multiple component pricing, handlers would know the protein content of the milk they are receiving and would consequently be able to do a better job of using the protein to yield the best return. The witness compared accounting for protein to the present accounting for butterfat. The witness went on to explain that handlers do not want to pay for something that they don't receive, and that with the proposed multiple component pricing plan, they would pay only for what they get.

Producers would benefit, explained the witness, because they would be rewarded if they produce the higher-protein milk that is demanded by the marketplace, in contrast to the present system in which there is no reward for higher-protein milk. Also, he said, since under the proposed multiple component pricing plan the producer would be paid for pounds of protein, pounds of butterfat, and total product pounds, the producer could clearly determine what component of his milk is giving the greatest return and therefore what component to improve in his herd. The witness also pointed out that since the product pounds will be valued at the weighted average differential the producer can see what value participation in the pool contributes to his return.

A representative of National Farmers Organization, a dairy farmer cooperative, testified in support of the proposed multiple component pricing plan. The witness explained that NFO supports multiple component pricing because producers will be rewarded for supplying the market with the milk components that the marketplace demands. The witness went on to explain that NFO supports the proposed pricing plan because, unlike the Great Basin multiple component pricing plan, the producer protein price would not be reduced as the marketwide percentage of protein increases.

The NFO witness also expressed support for the use of protein rather than nonfat solids in the proposed multiple component pricing plan. He supported the use of protein rather than nonfat solids because protein is the component most demanded by handlers in the marketplace, and because producers are familiar with protein levels in their herds due to protein testing by the Dairy Herd Improvement Association (DHIA) and by USDA sire summaries. The NFO witness did, however, express concern over the use of a producer protein price that may cause a decline in income for 50 percent of the producers. The witness suggested that a neutral protein range be adopted with a plus adjustment for protein percentages above the neutral range and negative adjustments for protein percentages below the neutral range.

A representative of Dairylea Cooperative, Inc., testified that Dairylea has approximately 2,300 members, with the milk of one hundred and twenty of these producers pooled on Order 36. The Dairylea representative stated that at Dairylea's last annual meeting a resolution was passed favoring Federal order amendments that encourage the use of protein or nonfat solids as part of the pricing system. The witness continued by saying that the time has come for protein pricing, particularly since the value of butterfat has declined substantially relative to the value of the protein or nonfat fraction of milk solids.

A witness for Kraft USA testified in favor of the multiple component pricing proposal. The witness expressed particular support for the use of the M–W protein average in computing the handler protein price. The Kraft witness explained that by using the M–W protein average rather than a market average, handlers' cost of protein from market to market would be equal, as it is for butterfat. This would allow handlers from areas with varying protein levels to compete on an equal price basis. According to the witness, this would not be the case when the market average protein percentages are used to compute the handler protein price.

The multiple component pricing proposal was also supported by a representative of National All-Jersey Inc., and the American Jersey Cattle Club (NALJ–AJCC). The witness explained that National All-Jersey is a national dairy farmer organization affiliated with the American Jersey Cattle Club, a breed registry organization for owners of Jersey cattle that provides marketing services to its members. The witness stated that the two organizations have 796 members in Indiana, Ohio, and Pennsylvania. He explained that a milk pricing system should give producers the incentive to produce the components demanded by consumers, be of value to processors, and be fair to producers. The witness testified that the present pricing system does not accomplish this function, while the proposed multiple component pricing plan would. The witness said that the present pricing system, because

it does not account for the protein or solids in milk, encourages a producer to produce water for which he receives the same return as he does for the solids. By accounting for and pricing protein, the witness stated, the multiple component pricing plan would encourage producers to manage their herds to obtain the greatest return by increasing their protein levels. The witness continued by saying that the production tools are in place to increase protein levels, even to the extent of increasing protein while decreasing butterfat. All that is lacking, he said, is the marketing incentive to do so, and incentives will be provided with the implementation of multiple component pricing.

The multiple component pricing proposal was supported in a post-hearing brief filed on behalf of Brewster Dairy, a proprietary supply plant operator regulated under Order 36. The Brewster brief favored adoption of the proposal on the basis that the proposed provisions providing a uniform price per pound for protein and an economic adjustment for somatic cells are needed.

A brief filed on behalf of the Dairy Industry Association of Western Pennsylvania opposed adoption of the multiple component pricing plan on the basis that the record of the hearing supports a national multiple component pricing plan with consistency between orders. The Association's brief states that over-order premiums already are substantial and significant enough to provide incentives and send signals for producers to increase the protein content of their milk production until uniform multiple component pricing provisions can be adopted nationally. The brief acknowledged the benefits from and demand for higher protein content and lower somatic cell counts demonstrated in the hearing record.

Multiple component pricing should be included in the amended orders, with pricing on the basis of butterfat and protein. The record shows that a large percentage of producers whose milk is pooled under the three orders already are eligible for or receive some form of multiple component pricing, and that nearly all of these component pricing plans use protein as a pricing component. The record also indicates, however, that different handlers have differing protein premium payment programs, resulting in nonuniform bases of payments to producers. Such differing bases for payment may cause, and according to proponents has caused, disorderly conditions in the procurement of milk supplies by competing handlers. In addition, adoption of multiple component pricing will allow the order to recognize the additional value in milk with a higher-than-average protein content by incorporating such pricing within the order.

The hearing evidence leaves no question that payment for milk on the basis of its protein content can be justified on the criterion of economic value. Milk containing a higher percentage of protein will result in greater yields of most manufactured products than milk with a lower protein test. Handlers receiving milk that will result in greater volumes of finished products such as cheese or cottage cheese than an equivalent volume of milk testing lower in protein should be required to pay more for the higher-testing milk. At the same time, the dairy farmer producing milk that yields greater amounts of finished product deserves to be paid more for it than a dairy farmer producing the same volume of milk that results in less product yield.

Pricing milk on the basis of its protein content also meets the criteria of measurability, intrinsic value, and variability. The evidence in the record shows that protein can be easily measured and, in fact, that the variability in measurement may be less than the variability in butterfat testing because protein does not separate as butterfat does. Second, the record evidence shows that protein has value to the manufacturing sector in the form of improved product yield and product structure. The value to the fluid sector was not quantified in the hearing record; however, testimony indicated some benefit to the fluid sector from higher-protein milk, resulting in a more nutritional product. The criterion of variability is necessary to justify pricing a component separately from the product in which it is contained. In the case of protein in milk the record shows that the level of protein varies from season to season, region to region, and farm to farm. In view of its economic value in dairy products, its widespread use as a pricing component in the three markets, and its qualification under the three criteria above, protein appears to be the appropriate component for pricing milk in these orders.

The price for protein should be based on the Minnesota-Wisconsin price and the protein content of the milk included in the Minnesota-Wisconsin price series. The handler protein price should be computed by subtracting from the Minnesota-Wisconsin price for the month the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk included in the determination of the Minnesota-Wisconsin price.

Proponents presented several alternatives for computing the handler protein price because it was not known at the time of the hearing whether or not the protein content of the Minnesota-Wisconsin milk would be available to compute the handler protein price. Since the hearing, however, the protein content of the milk used for the Minnesota-Wisconsin price has begun to be collected and reported for the month preceding the month for which the M–W price is announced. This data can be adjusted for the current month using historical data collected by the market administrators of the Upper Midwest and Chicago Regional milk orders. With the availability of this information, the other alternatives are no longer relevant. Not only did the testimony strongly favor using the protein content of the Minnesota-Wisconsin milk to determine the handler protein price, but as multiple component pricing becomes a more common feature of Federal milk orders, it will be necessary that a standard price for protein be used.

The proponents' proposal to price Class II and Class III used-to-produce items separately from Class II and Class III other uses should not be included in the amended orders. This proposal would result in the three orders included in this proceeding having five classes of utilization as well as different protein prices for Class II and Class III. At the present time, almost every Federal order has a three-class market, with the industry moving to more uniform classification rather than away from it. The November 1991 recommended decision on the national Federal milk order hearing includes provisions for uniform classification in all of the federal orders. Adoption of proponents' modification would compound problems of interorder differences in regulation. At the same time, there is some question about whether only used-to produce items are favorably affected by higher protein content. Testimony at the hearing indicated that fluid cream products benefit from higher protein levels, and therefore should be included in the protein pricing of Class II items. The remaining products that make up the proposed "other uses" portion of Class II and III are a very small percentage of the milk pooled and would therefore not affect the producer protein price. In fact, on the basis of pool data from the hearing record, this particular portion of the multiple component pricing proposal would have no effect on the weighted average differential and producer protein price or handlers' cost of milk.

The argument that protein used in Class II should have a higher price than protein used in Class III was not supported by the evidence at the hearing. The testimony at the hearing clearly showed that protein has value in used-to-produce products in both Class II and Class III, but the testimony did not establish any additional value or additional contribution of the protein used in Class II products versus protein used in Class III products. Therefore, the added value of Class II products should be represented entirely by the weighted average differential rather than by a Class II protein price.

b. *Somatic cell adjustment.* A producer's value of milk should reflect the level of somatic cells contained in that milk. The adjustment to the producer's value should be made by adjusting the producer protein price paid to each producer rather than including such adjustments in handlers' pool obligations.

An expert witness for proponents of the multiple component pricing proposal testified that a somatic cell count is a measure of the concentration of white blood cells in milk. According to the witness, these cells are present in the milk as an immune response to a bacterial infection of a cow's udder. The white blood cells attack and destroy the bacteria and, in the process, contribute to the damage the bacteria has done in the secretory system. They also release enzymes that not only attack the bacteria, but also affect the milk. Besides causing loss of quality of the milk, the somatic cells also may cause a decrease in production in the affected animal and, in very severe cases, death of the animal.

The witness continued by saying that the effect of somatic cells on milk occurs primarily in the udder of the cow where conditions are favorable for the development of bacteria and the activity of the somatic cells. Once the milk has been removed from the cow and placed under correct handling conditions, stored at or below 40 degrees Fahrenheit, the activity of the cells is reduced and further deterioration of the milk is minimal. Some of the enzymes, however, are not destroyed during pasteurization and therefore may continue to affect milk quality. The expert witness testified that somatic cells cause a breakdown of fat with a resultant release of free fatty acids. These fatty acids cause a rancidity and an off-flavor in dairy products.

Proponents' expert witness testified that the effect of somatic cells on manufactured products is attributed to the enzymes released by the somatic cells. These enzymes attack the casein in the milk and break the casein down into shorter chain proteins that are then lost in the whey during the cheese-making process. The genera1 result is that under identical conditions with milk of equal protein tests, milk with a higher somatic cell count will yield less cheese due to lower casein levels than will milk with a lower somatic cell count. The witness also explained that somatic cell levels affect the final moisture content of the cheese and the activity of the cheese starter. According to the witness this reduction in the functional ability of protein to result in a high-quality manufactured product is not limited to cheese. He stated that any manufactured product that relies on protein to give it structure or form is also affected by degradation of the protein by somatic cells.

Several proponent witnesses testifying on the issue of somatic cells stated that as the number of somatic cells increases, the quality of milk, even that used in fluid products, decreases. A witness for Brewster Dairy testified that Brewster's fluid customers are willing to pay a premium for low somatic cell count milk because of its extended shelf life. Another witness, representing Dean Foods, stated that lowering the somatic cell counts helps bottlers by increasing the quality of the milk, consequently increasing the shelf life of the fluid products.

The quantitative effect of various somatic cell levels on the yield of cheese was discussed at great length at the hearing because this measurement is the basis for the somatic cell differential levels included in the protein payment proposal. Proponents' witness indicated that commingled milk shows a more linear relationship between somatic cell counts and cheese yield than does milk from individual cows, and that milk from individual udder quarters will show more variability from a linear relationship of the two factors than milk from individual cows. However, he stated, the relationship between changes in somatic cell counts and cheese yields is not linear, even with commingled milk. Proponents' witness explained that there is a sudden decrease in cheese yield of about one percent as the somatic cell count increases to approximately 100,000. As the somatic cell count increases from 100,000 to 1,300,000, he testified, the decline in cheese yield may be an additional one to two percent depending on milk handling conditions. The witness testified that there is a three- to four-percent decline in cheese yield as the somatic cell count goes from 100,000 to 1,000,000. Although there is an apparent discrepancy between one of the studies introduced and the testimony of the proponent witness, both show a relationship between somatic cell levels and cheese yields.

The witness went on to discuss research that showed cheese yield decreasing by approximately five percent as somatic cell counts increased from 100,100 to 500,000. The study showed that as somatic cell counts increased from 500,000 to 1,000,000, cheese yields decreased an additional 3.7 percent for a total decrease in yield of 8.7 percent. The witness pointed out that the researcher identified a loss in cheese yield of .045 kg per 45.36 kg of milk for every 100,000 increase in somatic cell counts. This translates to 1/10th of the one percent decrease in cheese yield per every 100,000 increase in somatic cells.

A witness for Kraft USA summarized the results of the three studies received into evidence by concluding that the studies showed an average .07 pound decrease in cheese yield for every 100,000 increase in somatic cell count. A representative of Brewster Dairy stated that Brewster uses as a rule of thumb a 1/10th of one pound change in cheese yield for each 100,000 change in the somatic cell count.

A witness for MMI explained that the five percent figure used in the multiple component pricing proposal to compute the somatic cell differential was derived from the conclusion that as somatic cell counts increase from 100,000 to 1,000,000, cheese yields decline by one pound. The witness stated that this one pound decline represented a ten percent factor of the cheese price and that the proposal was intended to represent one-half of the reduction in cheese yield attributable to somatic cells. The proposed ten percent factor represents the incremental change of one tenth of one pound of cheese and not the percentage change in the cheese yield if the yield changed from 10 pounds of cheese per 100 pounds of milk to 9.9 pounds of cheese per 100 pounds of milk.

A witness for MMI stated that the neutral range in the somatic cell differential was chosen because that is the range into which MMI's weighted average somatic cell count falls. Proponents proposed that producers' pay prices increase with somatic cell counts below the neutral range and decrease with somatic cell counts above the neutral range. Proponent witness explained the use of 200,000 cells as the lowest category by stating that there is no significant effect on cheese yields as somatic cell counts decline below 200,000. A witness for Kraft USA stated

that the 200,000 somatic cell level was used as the minimum category because McDonald College of McGill University considers somatic cell counts below 200,000 to be from a healthy cow.

A witness for Kraft USA, testifying as a proponent, explained that somatic cell testing consists of counting the number of cells in a specified size sample of milk, and described two procedures used for counting somatic cells: The direct microscopic somatic cell count (DMSCC) and the optical somatic cell count (OSCC). The DMSCC is a manual microscope counting method while the OSCC is an electronic method.

The Kraft witness explained that there are two different machines that use different techniques for determining somatic cell levels. The Fossomatic machine uses a dye to stain somatic cell nuclei and then counts the stained cells. The Coulter counter counts particles of a certain size. A witness for proponents observed that the Fossomatic was the more commonly used machine in the dairy industry. It was also pointed out that both machines must be calibrated against a known standard, and that in the case of somatic cell testing, the standard is the DMSCC method.

A witness for MMI testified that both MMI and the Ohio DHIA use the Fossomatic machine for their somatic cell testing. The witness stated that a Fossomatic machine costs around $65,000, while another proponent witness put the cost of OSCC machines between $38,000 and $195,000, depending on the options included, as compared to the $2,000 to $4,000 for the DMSCC.

The proponent witness noted that, as with any laboratory procedure, employee training and skill are critical to the results of the procedure. The record states that the coefficient of variation for somatic cell testing should be below 5 to 7.5 percent while the coefficient of variation for butterfat and protein testing is approximately one half of one percent. However, according to proponents' expert witness, the variability in testing is randomly distributed and therefore would not consistently bias a producer's pay price one way or another. The witness also testified that since there are many industry payment plans using somatic cells as part of their payment criteria there is an industry standard for somatic cell testing that the industry trusts and uses.

For somatic cell counts to be used for determining payments to producers, the level of somatic cells must affect the value of the milk to the user. The hearing record contains substantial testimony to the effect that as somatic cell counts increase the functional value of the milk decreases. The record shows that this change in functional value affects all dairy products, from fluid milk to hard products. In fact, several witnesses testified that high somatic cell counts reduce the quality and shelf life of fluid milk products. The record also shows that somatic cell levels have an effect on the molecular structure of soft manufactured products, including the ability of cream to whip properly. In the manufacture of hard products, record evidence shows that the yield of cheese is directly related to the level of somatic cells in milk.

Since the value of the milk has been shown to be affected by the level of somatic cells, appropriate adjustments must be determined to apply to the various levels of somatic cells that will then be used to adjust individual producers' protein prices. As contained in this decision, the somatic cell differential adjustment to the producer protein price will be computed by multiplying the appropriate constant for each producer's average somatic cell count by the monthly average 40-pound block cheese price at the National Cheese Exchange as published monthly by the Dairy Division. The resulting somatic cell differential value will be added or subtracted from each producer's protein price.

The somatic cell differential value to be used for adjusting producers' protein prices is derived from the reduction in cheese yield as the somatic cell level goes from zero to 1,000,000, converted to a value per pound of protein. The evidence contained in the hearing record shows that as somatic cells increase from 100,000 to 1,000,000 cheese yield declines anywhere from three percent to nine percent, with a substantial amount of this decline occurring below 200,000 somatic cells and above 900,000 somatic cells. Since the record clearly shows that the relationship between cheese yield and somatic cell count is not linear, the relationship adopted in this decision between the somatic cell differential value and the somatic cell count is not linear, but reflects the proportional change in cheese yields as the somatic cell level changes.

The constant to be used was computed by dividing the change in the cheese yields attributable to changes in somatic cell counts by the average protein test of producer milk. As proposed, the adjustment to the producer protein price for somatic cell content would be computed by dividing the product of the cheese price and a factor, which varied with the somatic cell level, by the average protein percent used in calculating the handler protein price. The proposed factors varied from .15 for a somatic cell count below 200,000 to −.30 for a somatic cell count above 1,000,000. The proposed factors changed by .05 for every 100,000 change in somatic cells, with a neutral range of 400,000 to 500,000 somatic cells. The factors contained in the proposal were based on the reduction in cheese yield associated with varying somatic cell counts, assuming a linear relationship between cheese yields and somatic cell counts.

Because the reduction in cheese yield with increasing somatic cells is not linear, the factors to be used in adjusting producers' payments for protein are revised from the proposal, as shown in Table 1. Dividing these factors by the average protein of the three markets involved in this decision yields the constants shown in Table 1 to be used for computing the somatic cell differential. Use of a constant substantially simplifies the computation of the somatic cell differential without changing the corresponding value. This result occurs because the protein percentage must change by a considerable amount before the differential will change. Therefore, the somatic cell differential will be calculated by multiplying the constant corresponding to each somatic cell count interval by the average price of 40-pound block cheese at the National Cheese Exchange as reported monthly by the Dairy Division.

TABLE 1.—FACTORS AND CONSTANTS TO BE USED IN COMPUTING THE SOMATIC CELL DIFFERENTIAL

Somatic cell counts	Factors	Constants for computing the somatic cell differential
0 to 99,999	2.30	.09375
100,000 to 199,999	.20	.06250
200,000 to 299,999	.10	.03125
300,000 to 399,999	.05	.01562
400,000 to 499,999	.00	.00000
500,000 to 599,999	−.05	−.01562
600,000 to 699,999	−.10	−.03125
700,000 to 799,999	−.15	−.04688
800,000 to 899,999	−.20	−.06250
900,000 and above	−.30	−.09375

According to the record, one of the goals of the multiple component pricing proposal is to send a signal to producers by rewarding them for milk that is worth more in the marketplace than milk of average protein and somatic cell content, and penalizing them for milk that is worth less. Therefore, the somatic cell differential as contained herein

includes a neutral range based on an estimate of the average somatic cell count of the market as described by the MMI witness, of 400,000 to 500,000. Producers with an average somatic cell count of less than 400,000 somatic cells will be rewarded by higher protein prices at an increasing rate as the somatic cell count decreases to a level below 100,000, while those producers with average somatic cell counts above 500,000 will receive a lower protein price, also adjusted at a graduated rate, as their somatic cell counts increase to levels above 900,000.

The proposal to include a somatic cell adjustment in the protein pool was based on the hypothesis that the Class I handlers should not pay for lower somatic cell levels because such handlers cannot recover the added cost of additional protein from the market. However, the record of this hearing contains significant testimony that Class I handlers benefit from lower somatic cell counts through higher-quality (better-tasting) milk and longer shelf life. Although no quantitative value was placed on these benefits to the Class I handler as was attributed to the Class III handler (particularly cheese manufacturers), there is adequate basis in the record for including somatic cell adjustments in the payment provisions for all producer milk. Therefore, the value adjustment attributed to somatic cells should not be included in the pool, but should be used to adjust the producer protein price paid to each producer, based on each producer's average somatic cell count.

In an ex parte communication received after the hearing, a veterinarian from Ohio expressed opposition to the inclusion of somatic cell adjustments in the multiple component pricing plan. His opposition stemmed from the variability in somatic cell testing that he had seen in his practice. His major complaint was with the accuracy of testing when the Coulter Counter is used for somatic cell testing.

As specified in the Agricultural Marketing Agreement Act of 1937, one of the functions of the market administrator is "Providing * * * for the verification of weights, sampling, and testing of milk purchased from producers." Since the market administrator will now be verifying the sampling and testing of milk for somatic cells, the variation in somatic cell levels due to testing should be minimized much as differences in butterfat tests due to testing variations were minimized when the Federal milk order program was first instituted. The concern expressed in the ex parte communication over the accuracy of the Coulter Counter is, perhaps, relevant in the current situation in which producer payments are affected by somatic cell counts only outside the Federal order. However, the Coulter Counter testing method is not one of the methods approved by the American Association of Analytical Chemists (AOAC) for determining somatic cell content, and is not likely to be deemed acceptable for determining producer payments under the Federal order. (Official Notice is taken of the publication "Standard Methods for the Examination of Dairy Products"; 15th Edition; Gary H. Richardson, Ph.D., Editor; American Public Health Association; 1985).

In the brief filed on behalf of NFO, the cooperative objected to the inclusion of somatic cells in the multiple component pricing plan. The brief contained four arguments against the inclusion of somatic cell adjustments to producer payments: (1) Somatic cells are not part of the milk, and therefore are not subject to price differentials under the Agricultural Marketing Agreement Act in section 8c(5) 7 U.S.C. section 608c(5), (2) somatic cells are a product of disease and subject to wide fluctuations that could lead to inaccurate pricing unless every load is tested, (3) under the proposal, Class I handlers would not have to pay for somatic cells even though the hearing record showed that somatic cell levels are important to such handlers, and (4) the somatic cell adjustment contained in the multiple component pricing proposal uses a linear price reduction while the evidence in the hearing record indicated that the relationship between somatic cell levels and the value of milk to handlers is non-linear.

The Agricultural Marketing Agreement Act in section 8c(5) 7 U.S.C. section 608c(5) specifically authorizes adjustments to prices paid to producers for "the grade or quality of the milk delivered." Because the record of this hearing shows that the presence of somatic cells directly affects the quality of milk and that the level of somatic cells in producer milk affects the grade of the milk in that somatic cell counts above a certain level will result in loss of a producer's Grade A permit, the argument that somatic cells can not be used as a criteria for adjusting a producer's pay price is not valid.

The contention that somatic cell counts have wider fluctuations than butterfat or protein tests is apparently valid. However, the hearing record does not contain enough evidence that the variability in testing outweighs the benefits of including somatic cell counts in the multiple component pricing plan.

Point numbers three and four of NFO's objections to including somatic cells in the multiple component pricing plan are objections to the plan as proposed. As adopted in this decision, all payments for all producer milk will be subject to adjustments for somatic cell content instead of only producer milk used in Class II and Class III, as proposed. The somatic cell adjustment as contained in this decision reflects the nonlinear relationship between somatic cell content and cheese yield described in the record, rather than the linear relationship that was proposed.

With the inclusion of multiple component pricing in the three orders affected by this decision, certain conforming changes need to be made in these orders to implement this decision. Since protein will now be priced under the three orders included in this decision, each handler will need to include the amount of milk protein contained in total producer receipts, including protein contained in producer milk diverted to other plants, with its report of receipts and utilization. As in the Great Basin order, the assumption will be made that the protein is uniformly contained in the skim portion of the milk and may not be separated easily. Therefore, the protein will follow the skim milk through the allocation process and be allocated proportionately with the skim milk. This allocation procedure means that handlers will not have to report the protein content of milk transferred to other handlers. For handlers filing payroll reports with the market administrator, the milk protein content and the average somatic cell count of each producer's milk will be included on the payroll report in addition to the information currently reported to the market administrator on such reports.

To properly price the components under the amended orders, several price computations must be defined. These are the skim milk price, the butterfat price, and the protein price. The skim milk price per hundredweight will be determined by subtracting the butterfat differential multiplied by 3.5 from the Class III price. The butterfat price per pound will be determined by adding the skim milk price divided by 100 to the butterfat differential. The handler protein price per pound will be determined by subtracting the butterfat price per pound, multiplied by 3.5, from the Class III price and dividing the result by the average protein content of milk used in obtaining the basic formula price (the Minnesota-Wisconsin price). Since

the proposed skim milk prices, butterfat prices, and protein prices for Class I and Class II are not specifically needed to determine the weighted average differential or the producer protein price, these prices are not defined in this decision.

Two separate marketwide pools will be used to determine the amount that producers will be paid for the milk, and the protein contained in the milk, that they deliver. The first marketwide pool will determine the weighted average differential, while the second marketwide pool will determine the producer protein price. The weighted average differential is the additional value of the Class I and Class II milk in the pool and will be paid on all producer milk. The producer protein price is determined by the amount of protein used in Class II and Class III and the amount of skim milk used in Class I. In determining payments to producers, the producer protein price will be adjusted for each producer's somatic cell count, and be paid on a per pound of protein basis.

The weighted average differential is determined by computing, for each handler, the differential value of the product pounds used in Class I and Class II, and then adding or subtracting, as is appropriate, the value of such items as inventory reclassification, shrinkage or overage, receipts of other source milk allocated to Class I, receipts from unregulated supply plants, and location adjustments. The above values are then combined for all handlers and the value of producer location adjustments and one-half the unobligated balance in the producer settlement fund are added. The resulting value is then divided by the total pounds of producer milk in the pool and an amount not less than four cents or more than five cents will be subtracted to arrive at the weighted average differential for the zero zone.

The producer protein price is determined by combining the value of the pounds of skim milk allocated to Class I at the skim milk price with the value of protein contained in the skim milk allocated to Class II and Class III at the handler protein price. The resulting total is divided by the total pounds of protein contained in pooled producer milk. Each producer's protein price will then be adjusted for the average somatic cell count of the individual's producer milk. The adjustment, or somatic cell differential, will be determined by multiplying the cheese price by the appropriate constant for each producer's average somatic cell count.

Each producer will be paid based on total product pounds at the weighted average differential at the applicable zone, the pounds of protein contained in the producer milk at the protein price adjusted for the producer's average somatic cell count, and the pounds of butterfat contained in the producer milk at the butterfat price.

The value of producer milk to each handler will consist of the sum of the value of pounds of producer milk in Class I times the difference between the Class I and Class III prices, the pounds of producer milk in Class II times the difference between the Class II price and the Class III price, the value of overage, inventory reclassification, other source milk, receipts from unregulated supply plants, handler location adjustments, the value obtained by multiplying the pounds of skim milk in Class I by the skim milk price, and the value obtained by multiplying the pounds of protein contained in the skim milk in Class II and Class III by the protein price. The pounds of protein shall be computed by multiplying the pounds of skim milk in Class II and Class III by the percentage of protein contained in the skim milk of the handler's producer milk.

A handler's obligation to the producer settlement fund will be the difference between the value of producer milk to the handler and the sum of: (a) The value of the handler's receipts of producer milk at the weighted average differential price after adjusting for the producer's location, (b) the value of the protein contained in the handler's receipts of producer milk at the producer protein price, and (c) the value of other source milk at the weighted average differential adjusted for the location of the plant from which the milk was shipped.

Somatic cell adjustments to protein prices will be made when handlers pay producers for their milk. As in the case of payments to producers for butterfat, these adjustments do not have to be included in pool obligations or credits for payments to producers. The handlers receiving producer milk will pay for the protein in the milk based on its somatic cell count because they are the parties directly affected by the quality of milk they receive.

5. *Class I price and location adjustments* (Order 49). The Class I price differential and location adjustment provisions of the Indiana order should be amended to bring pricing within the Indiana marketing area into closer alignment with surrounding marketing order areas. The MFI proposal to amend the Indiana Class I price and location adjustment provisions should be adopted in a modified form to minimize intermarket price misalignment and enhance price alignment within the marketing area. A proposal by Hoosier to amend the order's location adjustment provisions should be denied, but changes that would address some of Hoosier's concerns should be made.

Hoosier proposed that the order's location adjustment provisions be changed to provide for adjusting prices downward at locations in the State of Ohio and in parts of Indiana not specifically zoned by the distance of such locations from the Indiana basing points. Proponents argued that the proposed amendment would result in pricing all receipts of producer milk at locations outside the marketing area on an equal basis, and would remove incentives for handlers to associate milk with the Indiana order and then divert it to Ohio locations at no reduction in the blend price. They also stated that the language "south of the marketing area," in the current location adjustment provision, describing locations at which no location adjustment is applicable, is inexact and confusing. An NFO witness opposed the Hoosier proposal as arbitrary and without economic justification, and stated that it would apply negative location adjustments in areas subject to higher milk prices.

Hoosier's proposal would, indeed, result in the application of negative location adjustments in locations at which higher prices apply, and such a misalignment of prices between orders would be very unlikely to result in more orderly marketing conditions. If the proposal were adopted, the Indiana Class I price adjusted for location at Louisville would be 35 cents less than the price at Louisville under the Louisville-Lexington-Evansville order. Producer prices for milk pooled under the Indiana order but delivered to the Louisville area would fall short of Louisville producer prices by 24 cents more than the current amount by which the Louisville blend price exceeds the Indiana blend price. Similarly, a negative location adjustment under the Indiana order at, for instance, Dayton, Ohio, would result in an Indiana Class I price at Dayton 26 cents lower than the Ohio Valley price for the same location. The difference in producer prices under the two orders at Dayton, Ohio, (or at any Ohio location) would be at least 10–15 cents, with Indiana producer milk receiving the lower price.

A provision such as that proposed by Hoosier would give handlers located outside the Indiana marketing area an incentive to acquire pool status under the Indiana order or to procure supplies of milk pooled under the Indiana order.

Price alignment between the Indiana marketing area and locations to its south and east would be most equitable to both handlers and producers who receive and price milk pooled under the adjoining order areas if the Indiana price were adjusted to a level equivalent to that effective at the other order locations where Indiana-pooled milk is received. Accordingly, such language should be included in the order.

A witness for the Milk Foundation of Indiana (MFI), which proposed changes in the order's Class I differential and location adjustments, stated that the Foundation is composed of six proprietary handlers, five of which are pool plant handlers under the Indiana order. The witness testified that the Food and Security Act of 1985 had resulted in the Indiana Class I price differential being increased significantly more than the Class I price differentials for the surrounding markets were increased. He stated that, based on the location of Indianapolis relative to other population centers in the region, the Indianapolis Class I price is too high and results in an intermarket misalignment of prices. The MFI witness argued that there would be no shortage of milk for Class I use if the Indiana Class I price differential were reduced to correspond more closely with the price levels in surrounding marketing areas. According to the witness, the interorder misalignment of prices has caused Indiana handlers to lose sales to handlers regulated under other orders because they are unable to compete on the basis of price.

The MFI witness also testified in support of the MFI proposal to reduce the rate of location adjustments within the Indiana marketing area. The proposal, as modified at the hearing, would combine the present minus 20- and 30-cent zones into one minus 10-cent zone, and change the location adjustment of the present minus 40-cent zone to minus 30 cents. The witness stated that the location adjustments in the Indiana order do not serve the purpose of attracting milk to the market's principal consumption centers because the price differences are not reflected in differences in payments to cooperative member producers. At the same time, he said, the order's location adjustments create a disparity in price among competing handlers regulated under the Indiana order.

The MFI proposal was opposed by both Hoosier and NFO. Both parties argued that Class I price levels and location adjustments were considered in the national hearing proceeding held in late 1990, and should not be determined for just one market. Hoosier's brief stated that the present Class I differentials were based on the cost of transporting milk to consumption centers from areas of alternate milk supplies available at lower prices, and that the best alternate supply area for Indiana is northeast Iowa, central and western Wisconsin and southeastern Minnesota. Hoosier cited testimony by a representative of Dean Foods Company that Dean experiences no Class I price misalignment between the Indiana and surrounding order areas, and stated that price alignment between Indiana plants and Order 30 (Chicago) bottling plants located 80–100 miles from Chicago needs to be considered. The Hoosier brief concluded that adoption of the MFI proposal would create disorder and disarray in surrounding marketing areas.

A comparison of Class I price differentials effective at different locations within the Indiana and surrounding marketing areas both before and after 1985 shows that Class I differentials were increased significantly more for the Indiana Federal order area than for neighboring marketing areas. The 1985 Class I price increases were 14 cents at Chicago, 21 cents at Louisville, 19 cents in the southern part of the Southern Michigan marketing area, 29 cents in the northern portion of the Southern Illinois market adjoining Indiana, and a maximum of 41 cents under the Ohio Valley order, at Cincinnati. The price increase at Dayton, Ohio, a location closer to the population centers of the Indiana market, was 34 cents. In comparison, the Class I price increase at Indianapolis, the major population area of the Indiana marketing area, was 47 cents.

The price misalignment between markets resulting from the 1985 price increases is particularly noticeable between Chicago and Indianapolis, and between Indianapolis and Louisville, or in a north-south direction. According to the 1985 Household Goods Carriers' Bureau Mileage Guide, of which official notice is taken, the mileage between Chicago and Louisville is 286 miles, with 175 miles from Chicago to Indianapolis, and 111 miles from Indianapolis to Louisville. If the $.024483 location adjustment rate per 10 miles of distance reflected in the current Chicago-Louisville price difference of 71 cents is applied to the Chicago-Indianapolis distance and the Indianapolis-Louisville distance, the appropriate Class I price differential at Indianapolis would be $1.83, very close to the $1.82 level proposed by MFI.

The north-south price alignment in the Indiana order is significant because most of the milk supply for the Indiana market comes from northern Indiana, southern Michigan and the two northern pricing zones of Ohio, and a disproportionate amount of Class I milk is used in the southern part of the Indiana marketing area. Hoosier characterized Wisconsin and Minnesota as the primary alternative sources of supply for the Indiana market. These locations apparently serve as sources of milk for handlers importing supplies of milk that are pooled elsewhere, rather than being sources of producer milk pooled under the Indiana order. Statistics in the record indicate that during only one of the months for which milk production by state and county was published was Wisconsin milk pooled under the Indiana order, with none from Minnesota. The one month in which Wisconsin milk was shown to be pooled under the Indiana order was May 1988, when only 54 percent of the producer milk pooled under the Indiana order was used in Class I. According to the Hoosier witness' testimony, some of the milk Hoosier arranges to buy in Wisconsin for the Indiana market never moves to Indiana plants.

Another factor that must be considered is price alignment between markets from west to east. In spite of the fact that pricing between Chicago and Louisville would justify a $1.83 Class I price differential at Indianapolis, an appropriate price alignment between west central Illinois, Indianapolis, and Dayton, Ohio, establishes a minimum Class I price differential at Indianapolis of $1.90. The current price difference between Champaign, Illinois, and Dayton, Ohio is 29 cents, while the distance between these two points is 223 miles. The resulting rate per hundredweight is $.0126 per 10 miles of distance. When this rate is applied to the distance between each of these two points and Indianapolis (124 miles to Champaign and 105 miles to Dayton) and the corresponding price level at Indianapolis is computed, an Indianapolis Class I price differential of $1.90 results. In addition, an Indiana pool distributing plant located at Richmond, Indiana, is located only about 40 miles from an Ohio Valley pool distributing plant at Dayton, Ohio, where the Class I differential is $2.04. It would be difficult to justify a 20-cent price difference between these two locations (at a rate of $.0525 per 10 miles), just as it is difficult to defend the current 20-cent price difference between Chicago and Gary, Indiana, located only 28 miles apart (at a rate of $.067 per ten miles).

For the foregoing reasons, the Class I price differential at Indianapolis should be reduced to $1.90. At the same time, location adjustments within the marketing area should be reduced to maintain alignment with adjoining Federal order pricing, especially in the northern portion of the Ohio Valley marketing area. The current $2.00 price differential should be maintained for a strip of counties on the southern edge of the Indiana marketing area, including Jackson, Jefferson, Jennings, Lawrence, Ripley and Switzerland counties. These counties, located about halfway between Louisville and Indianapolis, can comprise an intermediate pricing zone between the Indiana and Louisville-Lexington-Evansville marketing areas. The current minus 40-cent location adjustment zone in the northwest corner of the marketing area should become a minus 35-cent pricing zone, to moderate the large price difference between Chicago and Gary, Indiana.

Although the MFI witness was correct in stating that intramarket location adjustments have had little effect in the Indiana market because of the provision allowing milk to be priced at the location from which diverted, this decision adopts amendments to the order that will result in more milk being priced at the location at which it is actually received. Consequently, it is important for reasons of both intermarket and intramarket price alignment to assure that the price differences between various points in the marketing area will accommodate movements of milk from where it is produced to where it is needed for fluid use. The location adjustments in the current minus 20- and minus 30-cent zones therefore should be changed to minus 10- and minus 20-cents, respectively, while the current minus 40-cent adjustment should become a minus 35-cent adjustment. These changes will assure that the current price differences between northeastern Indiana and northwestern Ohio are unchanged.

6. *Accountability for .9(c) milk (Order 49).* A proposal by Hoosier to change the accountability to the pool for milk moved directly from producers' farms to pool plants by cooperative associations pursuant to section .9(c) of the Indiana order from the receiving pool plant operator to the cooperative association handler should be adopted. The proposal, as adopted, would require .9(c) handlers to sell such milk to receiving handlers at classified prices, including component values, and equalize with the pool on the value of the milk so moved. The .9(c) handler would be responsible for the testing of individual producers' milk, and for paying its member producers on the basis of those test results. The Hoosier proposal encountered no opposition, and was supported by NFO. Adoption of the proposal will simplify reporting and accounting for milk and its components under the multiple component pricing plan adopted in this decision.

7. *Payments to Producers.*

a. *Due dates and late-payment charges (Order 49).* A proposal by NFO, joined in by Hoosier, to require timely payment by handlers for producer milk by imposing a one-percent per month late charge on payments not made by the due date required in the order should be adopted. According to the NFO witness, handler payments made under Orders 33 and 36, which require payments to be made to the market administrator, are made on a much more timely basis than payments for milk under Order 49. The witness stated that the current delay in Order 49 is 6½ days, and attributed the delay to the use of the postal service in making payments rather than using wire transfers. The witness testified that the late payment fee should be assessed by the market administrator, even on monies due to cooperatives from handlers, and paid into the administrative fund. Hoosier supported the proposal on the basis that current technology allows a requirement that payments be required to be received when due, not just mailed by the due date.

The proposal should be adopted to assure that monies due to producers is available to be paid to them when it is due. Handlers currently are able to rely on a delay in the delivery of mailed checks to enhance their own cash flow positions at the expense of the dairy farmers from whom they obtain milk. The widespread availability of bank transfers of funds makes possible faster payment, which should be passed along to producers as soon as possible. The one-percent late-payment charge will provide an incentive for handlers to make their payments for milk in a timely manner. Payment of any late-payment charges collected into the administrative fund should cover the market administrator's cost of implementing and enforcing timely payment.

b. *Seasonal incentive payment plan (all three orders).* The Brewster Dairy proposal to provide a seasonal plan to pay dairy farmers, designed to even out monthly milk production under Orders 33, 36 and 49, should be denied. At the present time, producers supplying these three markets receive the uniform price for their monthly milk deliveries. None of the three orders provides any type of seasonal payment program.

Brewster Dairy, Inc., proposed that a unique type of "Louisville" plan be incorporated into each of the three orders. The Order 36 proprietary supply plant operator testified that seasonal pricing programs are needed in these three markets to encourage dairy farmers to level out their milk production during the year so that the amount of milk they produce each month is in better alignment with the amount of milk that fluid processors and manufacturers demand. Traditionally, more milk is produced in the spring than the fall and fluid bottling plants need more milk for processing in the fall than in the spring. To demonstrate this problem, proponent pointed out that the average daily receipts from producers in November represent only about 85 percent of the amount produced in May while daily Class I use in November is normally about 10 percent greater than in May.

In support of its proposal, Brewster's witness argued that the marketing problems associated with seasonal milk production are complicated by distributing plant operators who contract to buy only enough milk to meet their Class I needs in the spring and rely on others to furnish them with additional supplies in the fall. The Brewster witness stated that these purchasing arrangements, coupled with the seasonality of milk production, result in raising the overall marketing cost to the region's dairy industry. In the spring, he testified, the milk in excess of bottling needs that also exceeds the manufacturing capacity at local plants must be hauled to distant plants for disposal. Conversely, he stated, in the fall supplemental milk from sources beyond the normal procurement area must be transported to distributing plants to furnish the fluid requirements of such plants. According to the witness these extra transportation costs are borne primarily by cooperatives and their member producers. In addition, he said, handlers maintain plant capacity to manufacture reserve milk supplies in the spring and much of that capacity is inefficiently idled in the fall when more of the lower seasonal milk supply is needed for Class I purposes at distributing plants.

Proponent characterized its proposal as a "modest" plan that is designed to reward producers who make the extra effort to increase their milk production in the fall relative to the amount they produced in the prior spring. Brewster proposed that monetary incentives be

used to encourage dairy farmers whose milk is pooled under these three orders to gear their milk production toward greater output in the fall. In this regard, the handler proposed that 5 cents per hundredweight be deducted from the pool funds due producers in computing the uniform prices for the months of February through July.

The "Louisville" plan proposed by Brewster is unique in terms of how the money deducted in the prior months of February through July would be returned to dairy farmers. As proposed, the funds would be distributed in the months of September through November, but only to dairy farmers who qualified for incentive payments. Producers whose average daily milk deliveries in the months of September through November equal 90 percent or more of their daily deliveries in the prior months of February through July would qualify to receive incentive payments. Producers whose average daily deliveries fall below the 90-percent level would not qualify for incentive money.

NFO was supportive of the concept of tailoring milk production to more nearly coincide with the demands of the marketplace. The cooperative's witness insisted, however, that the program must be designed so that the program's costs and benefits are more appropriately aligned. In that regard, he testified that dairy farmers have to spend money to alter their seasonal production patterns, while the benefits of level milk production accrue to handlers because they are able to achieve greater plant operating efficiencies. In recognition of these cost and benefit factors, NFO suggested that Brewster's proposal be modified so that handlers, rather than all of the market's producers, would fund the program. As modified by NFO, handlers would pay a surcharge of 5 cents per hundredweight on their producer milk deliveries assigned to each class during the months of February through July. Such funds would be returned to qualified dairy farmers in the following months of September through November on the same basis proposed by Brewster.

MMI also endorsed the concept of seasonal incentive plans. A spokesman for the cooperative testified that Brewster's proposal has merit, but that MMI would prefer a handler-financed seasonal payment program, as suggested by NFO, to the one proposed by Brewster which would be funded by dairy farmers. He further testified that the dairy industry has made many attempts over the years to encourage dairy farmers to alter their production patterns and thereby increase the efficiency of the entire milk marketing system. The witness asserted that any program designed to address this issue would be welcomed by his association.

A representative of the Hoosier Milk Marketing Agency also supported the concept of seasonal pricing and NFO's modification whereby the incentive money would be derived by increasing the handler Class I prices by 5 cents per hundredweight rather than deducting that rate per hundredweight from the pool funds due producers. In addition, Hoosier testified that this issue should more appropriately be addressed at the national hearing and took the position that a seasonal payment plan should not be adopted for these three markets unless it is provided under all neighboring Federal orders. The Agency's spokesman stated that adoption of a seasonal payment plan for Orders 33, 36 and 49 and not in surrounding orders would create competitive problems similar to those now experienced by Indiana handlers who are competing with handlers regulated by the Louisville-Lexington-Evansville order, which provides a seasonal base-excess plan to pay dairy farmers.

Hoosier also asked that any seasonal payment program adopted for these markets not be mandatory each year. In that regard, the producer spokesman suggested that the amended orders include provisions that would establish procedures whereby the operation of the seasonal plan could be made inoperative for any year if a review of marketing conditions indicates that it would be unnecessary to encourage additional fall milk production in that particular year.

If Brewster's payment plan had been in effect during 1989, record data show that producers under Orders 33 and 36 would have received about $2.00 per hundredweight on their eligible milk deliveries during the months of September through November and about 40 percent of the markets' dairy farmers would have qualified for incentive payments. They also indicate that Order 49 producers would have received about $1.30 per hundredweight for their eligible milk deliveries in such months and about half of the market's dairy farmers would have qualified for incentive payments.

In addition, the record evidence indicates that an Order 36 dairy farmer producing the market's average daily delivery per farm would have had about $180 deducted from pool funds on his or her behalf through the computation of the uniform prices for February through July of 1989. If such producer marketed the same daily quantity of milk during the following months of September through November as he or she marketed in the spring, the dairy farmer would have received an additional $370 on 10 percent of his or her deliveries during the ensuing 3-month period. Proponent testified that this may not seem like a lot of money, but if producers know they will be rewarded for extra effort it will motivate them to work hard to qualify for incentive payments.

It is evident from the foregoing that the financial impact of Brewster's proposal on individual dairy farmers would not be substantial. Thus, it is questionable whether the monetary rewards would be sufficient under the proposed seasonal plans to encourage dairy farmers to make the necessary herd management decisions to gear their production patterns toward greater milk production in the fall. Also, as more producers qualify additional milk for incentive payments, the per hundredweight incentive rate of return for the participating dairy farmers would decrease.

Furthermore, the hearing testimony indicates that there are many differences of opinion among interested parties regarding the adoption of any seasonal payment program for these three markets. These programs affect dairy farmers and, with the exception of the evidence presented by Brewster, no other interested party supported adoption of the proposal as it appeared in the hearing notice.

The hearing participants who represented dairy farmers generally supported the concept of seasonal pricing but stated that Brewster's proposal should be modified in certain respects. For instance, three producer groups (MMI, Hoosier and NFO), which represent a considerable portion of the milk pooled under each of these three orders, endorsed the modification advanced by NFO whereby the incentive money would be generated through higher class prices paid by handlers rather than deducted from money due dairy farmers, as Brewster proposed. Without the support of Hoosier, MMI and NFO, the Brewster proposal lacks widespread support among dairy farmers who supply milk for these three markets.

The funding modification, which shifts the program's cost from producers to handlers, represents a major change in the proposal's impact. It would be inappropriate to adopt such a revision on the basis of this record, since the hearing notice did not alert interested parties that such a proposal would be

considered at this hearing and thus provided no opportunity for hearing participants to comment on such a proposition. In view of this consideration and the aforementioned shortcomings, Brewster's proposal must be denied.

Several seasonal incentive plan proposals, including one advanced by MMI, were considered at the national hearing. Such proposals involved many of the same issues that are addressed herein regarding Brewster's three-market proposal. On the basis of the national hearing record, all of the seasonal payment plan proposals were denied.

8. *Administrative expense* (Order 36). The maximum allowable rate of assessment to be paid by handlers to cover the cost of administering the Eastern Ohio-Western Pennsylvania order (Order 36) should be increased to 4 cents per hundredweight. The assessment would continue to be applied to the same milk to which the present assessment applies.

The Act specifies that persons who are regulated shall pay the cost of operating the program through an assessment on the milk handled by regulated persons who are defined as handlers under the order. The present 3-cent per hundredweight maximum allowable rate of assessment has been provided for the administration of Order 36 since the Eastern Ohio-Western Pennsylvania order became effective on July 1, 1968.

A one-cent increase in the maximum allowable rate was proposed by MMI, a cooperative that supplies a considerable portion of the market's total milk needs. A spokesman for the producer group testified that the current maximum funding level of 3 cents per hundredweight is no longer adequate to administer Order 36 effectively.

There was no other testimony on this proposal at the hearing. In briefs, NFO supported the proposed increase and MMI reiterated its hearing position on this issue.

The one-cent increase in the Order 36 maximum rate of administrative assessment was opposed in a brief filed by the Dairy Industry Association of Western Pennsylvania. The handlers' counsel contended that there is no evidence in the record to justify a 33-percent rate increase. He argued that the record fails to adequately demonstrate how much of an increase, if any, is needed and stated that an increase of this magnitude certainly is not warranted.

The Ohio Valley and Eastern Ohio-Western Pennsylvania orders (Orders 33 and 36) are administered under the supervision of a single market administrator who, at the time of the hearing, was headquartered in Columbus, Ohio. Since 1987, consolidated Balance Sheets and Income and Expense Statements for the Administrative Fund, which combine the income and expense activities for the two markets, have been compiled by the market administrator and reported annually to regulated handlers as well as other interested parties. Also, since the market administrator conducts essentially the same verification program in connection with the administration of both orders, the handler assessment rate has been maintained at the same level in both markets.

Record data for the years 1985–89 show that the administrative expenses associated with the operation of Orders 33 and 36 exceeded the income the market administrator received from assessments by more than $900,000. They also indicate that an assessment rate of 2.4 cents per hundredweight of milk handled was effective for 1986, 1987 and 1988. It was raised to 2.8 cents for 1989 and further increased to 3 cents per hundredweight for 1990. (Official notice is taken of the market administrator's annual report to all handlers of the Income and Expense Statement for the calendar year ending December 31, 1990.) Since the Order 36 assessment for administration is at the maximum level currently allowed under the order, there is no opportunity for the market administrator to increase the rate to cover any further cost increases. Without the opportunity to increase the assessment rate, additional operating funds can be generated only if substantially greater quantities of milk are pooled under the order or if the expenses of administering the program decline significantly.

Handlers and producers serving the market have jointly asked that a new pricing program be provided to establish handlers' value of Class II and III milk and to pay dairy farmers. A program similar to that requested by the dairy farmers and processors is adopted herein. The implementation and administration of that pricing plan for Order 36 may require the purchase of some new laboratory equipment and the performance of additional administrative duties. Many of the testing expenses associated with the multiple component pricing program will be paid for with money from the marketing service fund. However, since the value of milk used by handlers in Class II and Class III will be established on the basis of the milk's butterfat, protein and somatic cell content, some of the expenses related to establishing the level of these factors in producer milk likely will be paid for with money from the administrative fund. Thus, there is no reason to expect the expenses of administering the order to decline.

The pounds of pooled milk to which the assessment rate applies under Orders 33 and 36 has declined considerably during the past few years. For example, receipts of milk from dairy farmers supplying these two markets in 1989 was 14 percent less than the amount pooled in 1985. Also, producer receipts in 1990 were unchanged from 1989. (Official notice is taken of the publication Federal Milk Order Statistics for December 1990). Current milk price and production trends provide no basis to expect receipts from the market's producers to increase dramatically anytime soon.

It is evident from the foregoing that sufficient funds to cover administrative expenses in the future cannot be guaranteed by either increased milk production or reduced administrative expenses. Accordingly, the proposed one-cent increase in the maximum allowable assessment rate is adopted as the best way of assuring continued adequate funding for the effective administration of the Eastern Ohio-Western Pennsylvania order.

This one-cent increase for Order 36 will establish the same 4-cent per hundredweight maximum allowable administrative assessment rate that exists under Orders 33 and 49, as well as most other Federal milk orders. Increasing the Order 36 maximum permissible administrative assessment rate to 4 cents per hundredweight will give the market administrator the necessary flexibility to generate the financial resources needed to properly administer the order, as amended. It also should enable him to establish and maintain an appropriate financial reserve that is within the Department's guidelines.

Providing a higher maximum rate of assessment in the order does not mean that the higher rate will apply automatically when the amended order becomes effective. The amendment gives the market administrator the discretionary authority to set the rate at any level up to the maximum specified in the order. Because of that discretion, when the amended order becomes effective the market administrator may decide that no change in the effective assessment rate is necessary, or he may find that some increase is warranted, but not up to the maximum allowed.

9. *Marketing service assessments (all three orders).* The maximum rate of deduction from payments to nonmember producers for the cost of providing marketing services such as butterfat, protein and somatic cell testing and market information for nonmember producers should be increased to 7 cents per hundredweight under the three orders (Orders 33, 36 and 49) involved in this proceeding. The increase is needed to assure sufficient funding to cover the expenses incurred by the market administrators in providing such services to producers for whom the services are not provided by a cooperative association.

Currently, 6 cents per hundredweight is the maximum allowable deduction for such services under Order 33, and 5 cents is the maximum under Orders 36 and 49. These maximum rates have been effective under the individual orders for many years. For example, the 6-cent maximum has been provided in the Ohio Valley order since August 1, 1970. The 5-cent rate has been provided in the Eastern Ohio-Western Pennsylvania order since July 1, 1968, and in the Indiana order since January 1, 1969.

Milk Marketing, Inc. and the Hoosier Milk Marketing Agency proposed that the limits on the rates of deduction be raised to 7 cents per hundredweight under the three orders. These producer organizations represent a substantial portion of the milk supply pooled under each of the 3 orders. The producer spokesman testified that the cost of performing marketing services for dairy farmers has increased considerably over the years. He also testified that the market administrators have streamlined their operations to the extent possible and adopted the latest office and laboratory technology available in an attempt to provide the maximum services to dairy farmers for the lowest possible cost. He contended that the extent to which costs can be reduced before affecting the program's effectiveness is limited.

In support of their proposal, proponents argued that the maximum rates of deduction for marketing services provided under the three orders represent much smaller percentages of the markets' blend prices now than when the rates originally were provided. Proponent witness stated that over the years the market administrators have expanded their marketing services for dairy farmers and that the cost of performing these functions has increased. The witness testified that the marketing service assessment proposal is designed to complement the cooperatives' proposal to provide multiple component pricing plans for these three markets. Since the new pricing plan will require accurate measurement of the butterfat, protein and somatic cell content of producer milk, additional milk testing duties will be imposed on the market administrators.

No other interested party testified on this issue at the hearing. In briefs, NFO agreed that an increase in the maximum rates of deduction for marketing services would be needed with the implementation of component pricing plans under these three orders.

Opposition to the proposed increase in the maximum allowable marketing service assessment was expressed in a brief filed on behalf of the Dairy Industry Association of Western Pennsylvania. The brief argued that the record fails to justify rate increases of up to 40 percent for marketing services. Counsel for the handlers stated that proponents offered only vague and nonspecific reasons to support their proposal and relied primarily on the fact that the maximum rates had not been changed for several years and that inflationary pressures have resulted in increased operating costs. The brief argued that these generalities do not provide an adequate basis for increasing the rates and insisted that if higher maximum rates are justified, they certainly would not have to be raised to the 7-cent level proposed by MMI and Hoosier.

The marketing service programs for these three orders are provided under the supervision of two market administrators. The program for the Ohio Valley and Eastern Ohio-Western Pennsylvania orders (Orders 33 and 36) was, at the time of the hearing, conducted under the auspices of the market administrator who was headquartered in Columbus, Ohio. The orders are still administered by a single market administrator. Since 1987, Balance Sheets and Income and Expense Statements for the Marketing Service Fund for these two markets have been published annually on a combined basis for nonmember producers and other interested parties. Since the market administrator provides essentially the same marketing service program for producers under both orders, the rate of deduction to cover such services under Orders 33 and 36 has been maintained at the 5-cent maximum level provided in Order 36.

Similarly, the marketing service program for the Chicago Regional and Indiana orders (Orders 30 and 49) is operated under the jurisdiction of the market administrator who is located in Glen Ellyn, Illinois. Since 1987, Balance Sheets and Income and Expense Statements for the Marketing Service Fund showing combined activities for these two markets have been reported annually to nonmember producers and other interested parties. Similar services are provided by the market administrator for nonmember dairy farmers supplying both markets and 5 cents per hundredweight, which is the maximum provided under both orders, has been deducted from payments to dairy farmers to cover the expenses associated with providing these services.

Record data for Orders 33 and 36 show that for the years of 1985–1989 the marketing service program expenses exceeded the amount deducted from producer payments for such services by a net amount of almost $127,000. They also indicate that expenses exceeded deductions in 4 of the 5 years and that most of the income shortfall, $82,000, was accounted for in 1989. Marketing service expenses in these two markets for the 5-year period averaged 5.1 cents per hundredweight of nonmember milk pooled. For 1985–89, expenses represented 5.0, 4.9, 5.1, 5.1 and 5.4 cents per hundredweight respectively of such producer milk.

Record data for Orders 30 and 49 show that the expenses incurred by the market administrator in providing marketing services for nonmember dairy farmers in these two markets for the 3-year period of 1987–89 exceeded the amount deducted from producer payments to cover such expenses by almost $10,000. The 3-year net figure, however, does not demonstrate the seriousness of the income shortfall because in 1989 expenses exceeded the amount deducted by more than $38,000. The data also show that the marketing service program expenses in these two markets for the 3-year period averaged 5.1 cents per hundredweight of nonmember milk pooled. For the years of 1987–89, expenses represented 4.6, 4.8 and 5.7 cents per hundredweight, respectively, of such producer milk.

It is evident from the foregoing that the 5-cent deductions from producer payments for marketing services in these 3 markets have been inadequate to cover the expenses incurred in the performance of such duties by the market administrators. It also shows that the financial situations are becoming progressively worse each year. In addition, the multiple component pricing plan adopted in this decision is going to require additional testing activities. Since not all handlers are equipped to make all of the

determinations that will be required under the amended order, many of these extra duties will have to be performed by the market administrators responsible for the administration of these three orders.

The 7-cent maximum rate of deduction for marketing services proposed by MMI and Hoosier should be provided in the three orders involved in this proceeding. These higher rates should give the market administrators the necessary flexibility to conduct effective marketing service programs, including any additional duties relating to the implementation and administration of the new pricing program that will be incorporated in the three orders.

Provision of a 7-cent maximum rate does not mean that the 7-cent rate will become effective automatically. Maximum rather than fixed rates of deduction are specified in the orders because the relationship between income and expenses for these funds is subject to many variables. Changes in the pounds of nonmember milk marketed and the rate assessed on these marketings increase or decrease the income of the marketing services funds while changes in order requirements and the expenses of providing marketing services result in changes in total outlays. Because of such variations, an increase in maximum allowable assessments will give the market administrators the discretionary authority to set the rates of deduction for marketing services at levels necessary to cover the expense of providing marketing services. If the market administrators decide that rates below the upper limits adopted in the amended orders will provide sufficient funding to conduct an adequate program for nonmember producers they may use their discretionary authority to do so.

10. *Conforming changes.* The provisions specifying reporting requirements and the computation of handlers' obligations to the pool and to producers have been changed as needed to assure that the multiple component pricing plan adopted herein will be practicable. In addition, the current requirement under both the Ohio Valley and Eastern Ohio-Western Pennsylvania milk orders that handlers report each producer's days of production is removed in the accompanying order language changes.

Neither of these orders contains a base plan or any other provisions that would necessitate such a reporting requirement.

The proposed amendments to order language included with this recommended decision are based on the proposed amended order language published for these three orders with the recommended decision for the 1990 national hearing for all orders, issued in late 1991. If some or all of the proposed amendments resulting from the national proceeding are not adopted, the proposed amendments included with this decision will be modified accordingly.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held; and

(d) It is hereby found that the necessary expense of the market administrator of the Eastern Ohio-Western Pennsylvania order for the maintenance and functioning of that agency will require the payment by each handler, as his prorata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1036.85 of the aforesaid tentative marketing agreement and the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania Federal milk order as proposed to be amended.

Recommended Marketing Agreement and Order Amending the Orders

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1033, 1036 and 1049

Milk marketing orders.

1. The authority citation for 7 CFR Parts 1033, 1036 and 1049 continues to read as follows:

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

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

Part 1033 as proposed to be amended at 56 FR 59031, Nov. 22, 1991, would be further amended as follows:

1. Section 1033.7 is amended by revising the introductory language of paragraph (b), redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4), adding a new paragraph (b)(2); and changing the words "50 percent" in the introductory text of paragraph (c) and in paragraph (c)(2) to "35 percent"; to read as follows:

§ 1033.7 Pool plant.

* * * * *

(b) A supply plant from which 35 percent or more during the months of January through November, and 30 percent in December, of the receipts at such plant from producers (including producer milk diverted from the plant but excluding milk diverted to such

plant) and from handlers described in § 1033.9(c) is delivered by transfer or diversion as fluid milk products except filled milk, to pool distributing plants qualified pursuant to paragraph (a) of this section, subject to the following conditions:

* * * * *

(2) Shipments to be used in determining qualifying percentages shall be milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from such distributing pool plants;

* * * * *

2. In § 1033.13, paragraphs (e)(2), (e)(3), and (f) are revised to read as follows:

§ 1033.13 Producer milk.

* * * * *

(e) * * *

(2) The operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (e)(3) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk physically received at or diverted from such pool plant during the month;

(3) A cooperative association may divert an aggregate quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk that the cooperative association caused to be physically received at or diverted from pool plants during the month; and

* * * * *

(f) Milk diverted pursuant to paragraph (d) or (e) of this section shall be priced at the location of the plant where it is received, except that for the months of March through August the uniform price applicable to milk of producers located within the State of Ohio or the Michigan counties of Hillsdale, Lenawee, Monroe, Jackson and Washtenaw that is diverted to a plant located outside the marketing area and outside the State of Ohio shall not be adjusted downward below the uniform price for the month applicable at the location of the producer's farm, *Provided, That* 65 percent or more of such producer's milk is delivered to a plant or plants at which the same or a higher uniform price is applicable during the preceding months of September through February.

3. Section 1033.30 is amended by revising paragraphs (a)(1)(i), (a)(3)(ii), (a)(4), and (b) to read as follows:

§ 1033.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) * * *

(i) Producer milk, showing in the case of milk received directly from each producer the pounds of milk, and the butterfat and milk protein contained in the milk;

* * * * *

(3) * * *

(ii) Transfers and diversions to other plants, and the butterfat and milk protein content of such milk;

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat and milk protein as the market administrator may prescribe;

(b) Each cooperative association shall report:

(1) The quantities of skim milk, butterfat and milk protein contained in milk from producers for which it is the handler pursuant to § 1033.9 (b) or (c), showing:

(i) The quantity of milk delivered to each plant; and

(ii) For each producer the pounds of milk, butterfat and milk protein tests, the somatic cell count, and the number of days of production involved;

(2) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (b)(1) of this section, except that contained in producer milk described in § 1033.13(b); and

(3) Such other information with respect to its receipts and utilization of skim milk, butterfat and protein as the market administrator may prescribe; and

* * * * *

4. Section 1033.31 is amended by revising paragraph (a)(2), the second sentence of paragraph (b), and paragraph (c), to read as follows:

§ 1033.31 Payroll reports.

(a) * * *

(2) The total pounds of milk and, with respect to final payments, the average butterfat and protein content and somatic cell count of the milk for which payment is being made;

(b) * * * Such payroll shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

(c) On or before the 22nd day after the end of the month, each cooperative association with respect to the milk of producers shall submit to the market administrator the association's completed producer payroll which shall list the pounds of milk received, the average butterfat and milk protein content thereof, the somatic cell count of the milk, and the rate and net amount of the payment made to such dairy farmer, together with the amount and nature of any deductions involved.

5. Section 1033.32 is amended by revising paragraphs (e)(2), (e)(4) and (e)(5), and paragraph (f) to read as follows:

§ 1033.32 Other reports.

* * * * *

(e) * * *

(2) The total pounds of producer milk received from such producer, its average butterfat and milk protein content, and its somatic cell content;

* * * * *

(4) The total pounds of skim milk, butterfat and milk protein received from a handler described in § 1033.9(c); and

(5) The total pounds of skim milk, butterfat and protein in bulk fluid milk products received from a pool plant operated by a cooperative association.

(f) On or before the second day prior to the reporting dates specified in paragraphs (c) and (e) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred or diverted to another pool plant within the time periods described in paragraphs (c) and (e) of this section shall report to each such pool plant operator and the market administrator the name and location of each transferor-plant and the total pounds, butterfat and milk protein included in the bulk fluid milk products transferred or diverted from each such plant.

* * * * *

6. Section 1033.41 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 1033.41 Shrinkage.

* * * * *

(c) * * * If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, with protein and butterfat tests and somatic cell counts determined from farm bulk tank samples, the applicable percentage for the cooperative association shall be zero.

7. Section 1033.43 is amended by revising paragraph (d) to read as follows:

§ 1033.43 General classification rules.

* * * * *

(d) Bulk fluid milk products transferred or diverted from a pool plant operated by a cooperative association to another pool plant shall be classified in accordance with the rules set forth in § 1033.42(a) and the value thereof shall be used to compute the receiving handler's pool obligation for such milk pursuant to § 1033.60 (a), (b), (h), (i), and (j).

8. Section 1033.50 is amended by changing the section heading, revising the introductory language, and adding new paragraphs (d), (e), and (f), to read as follows:

§ 1033.50 Class and component prices.

Subject to the provisions of § 1033.52, the class and component prices for the month, per hundredweight or per pound, shall be as follows:

* * * * *

(d) *Butterfat price.* The butterfat price per pound shall be the total of:

(1) The skim milk price per hundredweight for the month, computed pursuant to paragraph (f) of this section, divided by 100; and

(2) The butterfat differential for the month, computed pursuant to § 1033.73 multiplied by 10.

(e) *Milk protein price.* The price per pound for milk protein shall be computed by subtracting from the Class III price the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk on which the basic formula price is based for the previous month as reported by the Department and adjusted for the current month by the Dairy Division, and rounding the result to the nearest whole cent.

(f) *Skim milk price.* The skim milk price per hundredweight shall be computed by subtracting from the Class III price the butterfat differential computed pursuant to § 1033.73 times 35, and rounding the result to the nearest whole cent.

9. Section 1033.53 is revised to read as follows:

§ 1033.53 Announcement of class and component prices.

The market administrator shall announce on or before:

(a) The fifth day of each month:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The butterfat differential for the preceding month;

(4) The butterfat price, the milk protein price, and the skim milk price computed pursuant to § 1033.50(d), (e) and (f) for the preceding month; and

(5) The monthly average price for 40-pound blocks of cheese at the National Cheese Exchange (Green Bay, Wisconsin) for the preceding month.

(b) The 15th day of each month, the Class II price for the following month computed pursuant to § 1033.50(b).

10. The heading before § 1033.60 is revised to read: "Differential Pool and Handler Obligations."

11. Section 1033.60 is revised to read as follows:

§ 1033.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler defined in § 1033.9(a) with respect to each of such handler's pool plants, and for each handler defined in § 1033.9 (b) and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to § 1033.44, and the pounds of bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d) in Class I, both multiplied by the difference between the Class I price (adjusted pursuant to § 1033.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to § 1033.44, and the pounds of bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d) in Class II, both multiplied by the difference between the Class II price and the Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1033.44(a)(14) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1033.44(a)(14), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(14) and the corresponding step of § 1033.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1033.44(a)(14) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1033.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1033.44(a)(14) and the corresponding step of § 1033.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to § 1033.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1033.44(b) multiplied by the butterfat price;

(3) The protein pounds in skim milk overage subtracted from Class III pursuant to § 1033.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1033.44(b) multiplied by the butterfat price;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1033.44(a)(9) and the corresponding step of § 1033.44(b), and the value of the protein pounds associated with the skim milk subtracted from Class II pursuant to § 1033.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(9) and the corresponding step of § 1033.44(b) applicable at the location of the pool plant at the current month's Class I–Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1033.44(a)(9) and the corresponding step of § 1033.44(b) at the current month's Class II–Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(7) (i) through (iv), and the corresponding step of § 1033.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I–Class III price difference;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(7) (v) and (vi) and the corresponding step of § 1033.44(b) applicable at the location of

the transferor-plant at the current month's Class I–Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(11) and the corresponding step of § 1033.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I–Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to § 1033.44, and the pounds of skim milk in Class I bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d), both multiplied by the skim milk price for the month computed pursuant to § 1033.50(f).

(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed, separately, and the pounds of protein in Class II and Class III skim milk in bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d), both multiplied by the protein price for the month computed pursuant to § 1033.50(e).

(j) The pounds of butterfat in all three classes as determined pursuant to § 1033.44, and the pounds of butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d), both multiplied by the butterfat price for the month computed pursuant to § 1033.50(d).

(k) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use, provided that the handler establishes a disposition of labeled reconstituted fluid milk products; and

(l) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1033.76(c).

12. Section 1033.61 is revised to read as follows:

§ 1033.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1033.60, paragraphs (a) through (g) and (k) and (l), for all handlers who made reports pursuant to § 1033.30 and who made payments pursuant to § 1033.71 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1033.74(a);

(c) Subtract an amount equal to the total value of the plus location differentials computed pursuant to § 1033.74(a);

(d) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1033.60(g).

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "Weighted Average Differential Price";

13.–17. New §§ 1033.62 through 1033.66 are added under the revised heading "Differential Pool and Handler Obligations" to read as follows:

§ 1033.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to § 1033.60, paragraphs (h) and (i), for all handlers who made reports pursuant to § 1033.30 and who made payments pursuant to § 1033.71 for the preceding month;

(b) Divide the resulting amount by the total pounds of protein in producer milk; and

(c) Round to the nearest whole cent. The result is the "Producer protein price."

§ 1033.63 Uniform price.

A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1033.61 to the basic formula price for the month.

§ 1033.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 12th day after the end of the month the weighted average differential price computed pursuant to § 1033.61, the producer protein price computed pursuant to § 1033.62, and the uniform price computed pursuant to § 1033.63(a).

§ 1033.65 Value of producer milk.

The value of producer milk shall be the sum of:

(a) The weighted average differential price computed pursuant to § 1033.61 and adjusted pursuant to § 1033.74, multiplied by the total hundredweight of producer milk received from the producer;

(b) The producer protein price computed pursuant to § 1033.62 and adjusted pursuant to § 1033.66, multiplied by the total milk protein contained in the producer milk received from the producer; and

(c) The butterfat price computed pursuant to § 1033.50(d) multiplied by the total butterfat contained in the producer milk received from the producer.

§ 1033.66 Computation of somatic cell adjustment.

(a) For milk having a monthly average somatic cell count of 500,000 or above or a monthly average somatic cell count of less than 400,000, the producer protein price shall be adjusted as follows:

(1) For a monthly average somatic cell count less than 100,000, the result of the cheese price times .09375;

(2) For a monthly average somatic cell count greater than 100,000 but less than 200,000, the result of the cheese price times .06250;

(3) For a monthly average somatic cell count greater than 200,000 but less than 300,000, the result of the cheese price times .03125;

(4) For a monthly average somatic cell count greater than 300,000 but less than 400,000, the result of the cheese price times .01562;

(5) For a monthly average somatic cell count greater than 500,000 but less than 600,000, the result of the cheese price times −.01562;

(6) For a monthly average somatic cell count greater than 600,000 but less than

700,000, the result of the cheese price times —.03125;

(7) For a monthly average somatic cell count greater than 700,000 but less than 800,000, the result of the cheese price times —.04688;

(8) For a monthly average somatic cell count greater than 800,000 but less than 900,000, the result of the cheese price times —.06250;

(9) For a monthly average somatic cell count greater than 900,000, the result of the cheese price times —.09375;

(10) If a handler has not determined a monthly average somatic cell count, it will be determined by the market administrator.

(b) For purposes of this section, the cheese price shall be the average price for the month of 40-pound blocks of cheese at the National Cheese Exchange at Green Bay, WI, as reported monthly by the Dairy Division, Agricultural Marketing Service.

18. In § 1033.70, paragraph (b) is revised to read as follows:

§ 1033.70 Producer-settlement fund.

* * * * *

(b) The difference between the amount added pursuant to § 1033.61(d) and the amount resulting from the subtraction pursuant to § 1033.61(f) shall be deposited in, or withdrawn from, this fund, as the case may be.

19. Section 1033.71 is amended by revising the introductory language of paragraph (b) and paragraph (b)(1) to read as follows:

§ 1033.71 Payments to the market administrator.

* * * * *

(b) Subject to paragraph (c) of this section, each handler shall pay to the market administrator on or before the 15th day after the end of each month the value of such handler's milk pursuant to § 1033.60(a) through (l), plus or minus the adjustments made pursuant to § 1033.66 to the value of protein in producer milk, and the value of bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d) as determined pursuant to § 1033.60 (a), (b), (h), (i) and (j), less:

(1) The amount obtained from multiplying the weighted average differential price applicable at the location of the plants from which the other source milk is received (not to be less than zero) by the hundredweight of other source milk for which a value is computed pursuant to § 1033.60(g);

* * * * *

20. Section 1033.72 is amended by revising paragraphs (b) and (d)(2) to read as follows:

§ 1033.72 Payments to producers and to cooperative associations.

* * * * *

(b) On or before the 17th day after the end of the month, the market administrator shall make payment, subject to paragraphs (c) and (d) of this section, to each producer for milk received from such individual producer and to each cooperative association for bulk fluid milk products delivered from its pool plant to another pool plant during the month by handlers from whom the appropriate payments have been received pursuant to § 1033.71(b) the amount determined pursuant to § 1033.65, less:

* * * * *

(d) * * *

(2) The total pounds and, with respect to final payments, the average butterfat and protein content and somatic cell count of the milk for which payment is being made;

* * * * *

21. Section 1033.86 is amended by revising paragraph (a) to read as follows:

§ 1033.86 Deduction for marketing services.

(a) The market administrator, in making payments to each producer pursuant to § 1033.72, shall deduct 7 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk (except a handler's own farm production) of such producer for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association as determined by the Secretary.

* * * * *

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. Section 1036.7 is amended by revising paragraph (b) to read as follows:

§ 1036.7 Pool plant.

* * * * *

(b) A supply plant from which not less than 40 percent during the months of September, October and November, not less than 35 percent during the months of January and February, and not less than 30 percent in all other months, of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is physically received at such plant from dairy farmers (including milk diverted from the plant as producer milk pursuant to § 1036.13 but excluding milk received as diverted milk) and handlers defined in § 1036.9(c) is transferred or diverted to and physically received in the form of fluid milk products, except filled milk, at pool plants qualified under paragraph (a) of this section or disposed of as route disposition in the marketing area, subject to the following conditions:

(1) At least one tank load of Grade A fluid milk products (not less than 45,000 pounds) must be shipped from the supply plant to a pool distributing plant during one of the months of September, October and November; and

(2) Shipments to be used in determining qualifying percentages shall be milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from such distributing pool plants.

2. Section 1036.13 is amended by changing the reference "(e), (f) and (g)" in paragraphs (a)(3) and (b) to "(e) and (f)", revising paragraphs (e), (f) and (h) to read as follows, and removing and reserving paragraph (g):

§ 1036.13 Producer milk.

* * * * *

(e) During March through August, subject to the conditions of paragraph (f) of this section, the operator of a pool plant or a cooperative association may divert the milk of a producer without limit.

(f) Diverted to a nonpool plant for the account of a handler operating a pool plant or for the account of a handler described in § 1036.9(c), subject to the following conditions:

(1) The operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (f)(2) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk physically received at or diverted from such pool plant during the month;

(2) A cooperative association may divert an aggregate quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk that the cooperative association caused to be physically received at or diverted from pool plants during the month;

(3) During each of the months of September through November not less than one day's production of a producer

must be physically received at a pool plant;

(4) Milk of a producer shall not be eligible for diversion unless the milk of such producer has been physically received at least once as producer milk at a pool plant and the dairy farmer has not been pooled on another federal order since that time;

(5) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be deemed to have been received at such pool plant and shall not be producer milk;

(6) Any milk diverted in excess of the limit set forth in paragraph (f)(1) and (f)(2) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to do so, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(7) Milk diverted to an other order plant shall be producer milk only if a Class II or Class III classification is designated for such milk pursuant to the provisions of the other order issued pursuant to the Act and such milk is not subject to the pricing and pooling provisions of such order.

(g) [Reserved]

(h) Milk diverted pursuant to paragraphs (a)(3), (a)(4) and (b) of this section shall be deemed to have been received by the diverting handler at the location of the plant to which diverted.

3. Section 1036.30 is amended by revising paragraphs (a)(1)(i), (a)(3)(ii), (a)(4) and (b) to read as follows:

§ 1036.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) * * *

(i) Producer milk, showing in the case of milk received directly from each producer the pounds of milk, and the butterfat and milk protein contained in the milk;

* * * * *

(3) * * *

(ii) Transfers and diversions to other plants, and the butterfat and milk protein content of such milk;

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat and milk protein as the market administrator may prescribe;

(b) Each cooperative association shall report:

(1) The quantities of skim milk, butterfat and milk protein contained in milk from producers for which it is the handler pursuant to § 1036.9 (b) or (c), showing:

(i) The quantity of milk delivered to each plant; and

(ii) For each producer the pounds of milk, butterfat and milk protein tests, the somatic cell count, and the number of days of production involved;

(2) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (b)(1) of this section, except that contained in producer milk described in § 1036.13(b); and

(3) Such other information with respect to its receipts and utilization of skim milk, butterfat and protein as the market administrator may prescribe; and

* * * * *

4. Section 1036.31 is amended by revising paragraph (a)(2) and paragraph (b)(3) to read as follows:

§ 1036.31 Payroll reports.

(a) * * *

(2) The total pounds of milk, and, with respect to final payments, the average butterfat and protein content and somatic cell count of the milk for which payment is being made;

* * * * *

(b) * * *

(3) The average butterfat and milk protein content, and the somatic cell count, of such milk;

* * * * *

5. Section 1036.32 is amended by revising paragraph (c)(2) and paragraph (d) to read as follows:

§ 1036.32 Other reports.

* * * * *

(c) * * *

(2) The total pounds of producer milk received from such producer, its average butterfat and milk protein contents, and its average somatic count;

* * * * *

(d) On or before the second day prior to the reporting dates specified in paragraphs (a) and (c) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred or diverted to pool plants of other handlers within the time periods described in paragraphs (a) and (c) of this section shall report to each such pool plant operator and the market administrator the name and location of the transferor-plant and the total pounds, with butterfat and protein content, of the bulk fluid milk products transferred or diverted from the plant.

* * * * *

6. Section 1036.41as proposed to be amended at 56 FR 59040, Nov. 22, 1991, would be further amended by revising the second sentence of paragraph (c) to read as follows:

§ 1036.41 Shrinkage.

* * * * *

(c) * * * If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, with protein and butterfat tests and somatic cell counts determined from farm bulk tank samples, the applicable percentage for the cooperative association shall be zero.

7. Section 1036.50 is amended by changing the section heading, revising the introductory language, and adding new paragraphs (d), (e) and (f), to read as follows:

§ 1036.50 Class and component prices.

Subject to the provisions of § 1036.52, the class and component prices for the month, per hundredweight or per pound, shall be as follows:

* * * * *

(d) *Butterfat price.* The butterfat price per pound shall be the total of:

(1) The skim milk price per hundredweight for the month, computed pursuant to paragraph (f) of this section, divided by 100; and

(2) The butterfat differential for the month, computed pursuant to § 1036.74 multiplied by 10.

(e) *Milk protein price.* The price per pound for milk protein shall be computed by subtracting from the Class III price the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk on which the basic formula price is based for the previous month as reported by the Department and adjusted for the current month by the Dairy Division, and rounding the result to the nearest whole cent.

(f) *Skim milk price.* The skim milk price per hundredweight shall be computed by subtracting from the Class III price the butterfat differential computed pursuant to § 1036.74 times 35, and rounding the result to the nearest whole cent.

8. Section 1036.53 is revised to read as follows:

§ 1036.53 Announcement of class and component prices.

The market administrator shall announce on or before:

(a) The fifth day of each month:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The butterfat differential for the preceding month; and

(4) The butterfat price, the milk protein price, and the skim milk price computed pursuant to § 1036.50 (d), (e), and (f) for the preceding month.

(5) The monthly average price for 40-pound blocks of cheese at the National Cheese Exchange (Green Bay, Wisconsin) for the preceding month.

(b) The 15th day of each month, the Class II price for the following month computed pursuant to § 1036.50(b).

9. The heading before § 1036.60 is revised to read:

"Differential Pool and Handler Obligations"

10. Section 1036.60 is revised to read as follows:

§ 1036.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler defined in § 1036.9 (a), (b), and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to § 1036.44 multiplied by the difference between the Class I price (adjusted pursuant to § 1036.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to § 1036.44 multiplied by the difference between the Class II price and the Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1036.44(a)(16) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1036.44(a)(16), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(16) and the corresponding step of § 1036.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1036.44(a)(16) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1036.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1036.44(a)(16) and the corresponding step of § 1036.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to § 1036.44 (a)(16) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1036.44(b) multiplied by the butterfat price;

(3) The protein pounds in skim milk overage subtracted from Class III pursuant to § 1036.44(a)(16) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1036.44(b) multiplied by the butterfat price;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1036.44(a)(9) and the corresponding step of § 1036.44(b), and the value of the protein pounds associated with the skim milk subtracted from Class II pursuant to § 1036.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(9) and the corresponding step of § 1036.44(b) applicable at the location of the pool plant at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1036.44(a)(9) and the corresponding step of § 1036.44(b) at the current month's Class II-Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(7) (i) through (iii), and the corresponding step of § 1036.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I-Class III price difference;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(7) (iv) and (v) and the corresponding step of § 1036.44(b) applicable at the location of the transferor-plant at the current month's Class I-Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(12) and the corresponding step of § 1036.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I-Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to § 1036.44 multiplied by the skim milk price for the month computed pursuant to § 1036.50(f).

(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed, separately, multiplied by the protein price for the month computed pursuant to § 1036.50(e).

(j) The pounds of butterfat in all three classes as determined pursuant to § 1036.44 multiplied by the butterfat price for the month computed pursuant to § 1036.50(d).

(k) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use, provided that the handler establishes a disposition of labeled reconstituted fluid milk products; and

(l) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1036.76(c).

11. Section 1036.61 is revised to read as follows:

§ 1036.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1036.60, paragraphs (a) through (g) and (k) and (l), for all handlers who made reports

pursuant to § 1036.30 and who made payments pursuant to § 1036.71 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1036.75(a);

(c) Subtract an amount equal to the total value of the plus location differentials computed pursuant to § 1036.75(a);

(d) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1036.60(g).

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "Weighted Average Differential Price";

12. Section 1036.62 is revised to read as follows:

§ 1036.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to § 1036.60, paragraphs (h) and (i), for all handlers who made reports pursuant to § 1036.30 and who made payments pursuant to § 1036.71 for the preceding month;

(b) Divide the resulting amount by the total pounds of protein in producer milk; and

(c) Round to the nearest whole cent. The result is the "Producer protein price."

13.–16. New §§ 1036.63 through 1036.66 are added under the revised heading "Differential Pool and Handler Obligations" to read as follows:

§ 1036.63 Uniform price and handlers' obligations for producer milk.

(a) A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1036.61 to the basic formula price for the month.

(b) Handler obligations to producers and cooperative associations for producer milk shall be determined in accordance with the provisions of §§ 1036.65 and 1036.73.

§ 1036.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 13th day after the end of the month the weighted average differential price computed pursuant to § 1036.61, the producer protein price computed pursuant to § 1036.62, and the uniform price computed pursuant to § 1036.63(a).

§ 1036.65 Value of producer milk.

The value of producer milk shall be the sum of:

(a) The weighted average differential price computed pursuant to § 1036.61 and adjusted pursuant to § 1036.75, multiplied by the total hundredweight of producer milk received from the producer;

(b) The producer protein price computed pursuant to § 1036.62 and adjusted pursuant to § 1036.66, multiplied by the total milk protein contained in the producer milk received from the producer; and

(c) The butterfat price computed pursuant to § 1036.50(d) multiplied by the total butterfat contained in the producer milk received from the producer.

§ 1036.66 Computation of somatic cell adjustment.

(a) For milk having a monthly average somatic cell count of 500,000 or above or a monthly average somatic cell count of less than 400,000, the producer protein price shall be adjusted as follows:

(1) For a monthly average somatic cell count less than 100,000, the result of the cheese price times .09375;

(2) For a monthly average somatic cell count greater than 100,000 but less than 200,000, the result of the cheese price times .06250;

(3) For a monthly average somatic cell count greater than 200,000 but less than 300,000, the result of the cheese price times .03125;

(4) For a monthly average somatic cell count greater than 300,000 but less than 400,000, the result of the cheese price times .01562;

(5) For a monthly average somatic cell count greater than 500,000 but less than 600,000, the result of the cheese price times −.01562;

(6) For a monthly average somatic cell count greater than 600,000 but less than 700,000, the result of the cheese price times −.03125;

(7) For a monthly average somatic cell count greater than 700,000 but less than 800,000, the result of the cheese price times −.04688;

(8) For a monthly average somatic cell count greater than 800,000 but less than 900,000, the result of the cheese price times −.06250;

(9) For a monthly average somatic cell count greater than 900,000, the result of the cheese price times −.09375;

(10) If a handler has not determined a monthly average somatic cell count, it will be determined by the market administrator.

(b) For purposes of this section, the cheese price shall be the average price for the month of 40-pound blocks of cheese at the National Cheese Exchange at Green Bay, WI, as reported monthly by the Dairy Division, Agricultural Marketing Service.

17. Section 1036.71 is amended by revising the introductory language of paragraph (b), paragraph (b)(1), and paragraph (c) to read as follows:

§ 1036.71 Payments to the market administrator.

* * * * *

(b) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the 17th day after the end of each month the value of such handler's milk pursuant to § 1036.60 (a) through (l), plus or minus the adjustments made pursuant to § 1036.66 to the value of protein in producer milk, less:

(1) The amount obtained from multiplying the weighted average differential price applicable at the location of the plants from which the other source milk is received (not to be less than zero) by the hundredweight of other source milk for which a value is computed pursuant to § 1036.60(g);

* * * * *

(c) Subject to paragraph (d) of this section, each handler operating a pool plant who receives bulk fluid milk products by transfer or diversion from a pool plant operated by a cooperative association, or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1036.9(c) that also operates a pool plant, shall pay to the market administrator, on or before the 17th day after the end of each month, an amount determined by the sum of the following:

(1) The quantity of such receipts classified as Class I pursuant to § 1036.44(a)(15) and the corresponding step of § 1036.44(b) multiplied by the difference between the Class I price (adjusted pursuant to § 1036.44(a)(15)) and the corresponding step of § 1036.44(b) multiplied by the difference between the Class I price at the receiving plant (adjusted pursuant to § 1036.52) and the Class III price;

(2) The quantity of such receipts classified as Class II pursuant to

§ 1036(a)(15) and the corresponding step of § 1035.44(b) multiplied by the difference between the Class II price and the Class III price;

(3) The quantity of skim milk in such receipts classified as Class I pursuant to § 1036.44(a)(15) multiplied by the skim milk price for the month computed pursuant to § 1036.50(f);

(4) The pounds of protein in the skim milk in such receipts classified in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of skim milk from a pool plant operated by a cooperative association, or from a cooperative association in its capacity as a handler pursuant to § 1036.9(c);

(5) The pounds of butterfat in all three classes as determined pursuant to § 1036.44(b)(15) multiplied by the butterfat price for the month computed pursuant to § 1036.50(d); less

(6) Any payments made by the handler pursuant to paragraphs (a)(2) and (a)(3) of this section for such month.

* * * * *

18. Section 1036.72 is revised to read as follows:

§ 1036.72 Payments from the producer-settlement fund.

Subject to § 1036.73(c), on or before the 18th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the net pool obligation pursuant to § 1036.60 for such handler is less than the value of such handler's receipts of producer milk at the weighted average differential price adjusted pursuant for location pursuant to § 1036.75, the protein price before adjustments are made for somatic cell count, and the butterfat price.

19. Section 1036.73 is amended by revising paragraphs (a)(2), (b)(2), (d)(2), and (d)(3) to read as follows:

§ 1036.73 Payments to producers and to cooperative associations.

(a) * * *

(2) On or before the 18th day after the end of the month, to each producer not less than the value determined pursuant to § 1036.65, less the following amounts:

* * * * *

(b) * * *

(2) On or before the 18th day after the end of each month for milk for which payment is received by the market administrator pursuant to § 1036.71. Such payment shall be in the amount determined for such milk pursuant to § 1036.65, less the payments made pursuant to paragraph (b)(1) of this section.

* * * * *

(d) * * *

(2) The total pounds and, with respect to final payments, the average butterfat and milk protein content and somatic cell count of the milk for which payment is being made;

(3) The minimum rates of payment required by the order and the rates of payment used if such rates are other than the applicable minimum rates;

* * * * *

§ 1036.85 [Amended]

20. Section 1036.85 is amended by changing the words "3 cents" in the introductory language to "4 cents."

§ 1036.86 [Amended]

21. Section 1036.86 is amended by changing the words "5 cents" in paragraph (a) to "7 cents."

PART 1049—MILK IN THE INDIANA MARKETING AREA

1. Section 1049.3 is revised to read as follows:

§ 1049.3 Route disposition.

Route disposition means a delivery (including that packaged for another person, another distributing plant, disposition from a plant store or from a distribution point, and distribution by a vendor or vending machine) of any packaged fluid milk product classified as Class I milk other than a delivery in bulk form to any milk or filled milk processing plant.

2. Section 1049.6 is revised to read as follows:

§ 1049.6 Supply plant.

Supply plant means a plant in which some milk approved by any duly constituted health authority for fluid consumption in the marketing area is assembled and shipped in bulk as a fluid milk product and is physically unloaded and received into a distributing plant during the month.

3. Section 1049.7 is amended by revising paragraphs (a) and (b), redesignating present paragraph (c) as paragraph (d), and adding a new paragraph (c), to read as follows:

§ 1049.7 Pool plant.

* * * * *

(a) A distributing plant with:

(1) Total route disposition of not less than 40 percent during each of the months of September through February, and 35 percent during each of the months of March through August, of its total receipts of fluid milk products (including milk diverted from such plant but excluding bulk fluid milk products received by transfer or diversion from other plants as Class II or Class III milk) that are approved by a duly constituted health authority for fluid consumption, subject to the following conditions:

(i) In making the percentage computations in paragraphs (a)(1) and (2) of this section, a plant's route disposition and receipts shall be exclusive of filled milk and of packaged fluid milk products received from other pool or other Federal order plants;

(ii) A plant meeting such percentage requirement for the preceding month and the requirement of paragraph (a)(2) of this section for the current month may remain qualified under this paragraph in the current month; and

(iii) A plant meeting the requirements of this paragraph in each of the months of September through May, inclusive, shall continue to have pool plant status in the months of June, July, and August, immediately following if the plant meets the requirements of paragraph (a)(2) of this section;

(2) Route disposition within the marketing area during the month of at least 10 percent of such receipts, such route disposition to be exclusive of packaged fluid milk products received from other plants and filled milk.

(b) A supply plant from which not less than 40 percent during the months of September through February and not less than 35 percent during the months of March through August, of the Grade A milk received from producers (including producer milk diverted from the plant but excluding milk diverted to such plant) and from handlers described in § 1049.9(c) at such plant during the month is shipped to plants qualifying for the month pursuant to paragraph (a) of this section. A plant qualified pursuant to this paragraph in each of the immediately preceding months of September through February shall remain so qualified for the months of April through August unless written application is filed with the market administrator on or before the first day of any such month to designate such plant as a nonpool plant for such month and for each subsequent month through August during which it would otherwise not qualify under this paragraph. Pool supply plant qualification shall be subject to the following conditions:

(1) The operator of a supply plant may include milk diverted from such plant to pool distributing plants as qualifying deliveries in meeting up to one-half of the required deliveries;

(2) Shipments to be used in determining qualifying percentages shall be milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions

of bulk fluid milk products from such distributing pool plants; and

(3) The shipping percentage requirements of this paragraph may be increased or decreased temporarily by up to 10 percentage points by the market administrator if such person finds that such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision on either such person's own initiative or at the request of interested persons. If the investigation shows that a temporary revision might be appropriate, the market administrator shall issue a notice stating that revision is being considered and invite data, views, or arguments in favor of or in opposition to the proposed temporary revision.

(c) Any plant that qualifies as a pool plant in each of the immediately preceding three months pursuant to paragraph (a) of this section or by meeting the shipping percentages in paragraph (b) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood) fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

* * * * *

4. Section 1049.13 is revised to read as follows:

§ 1049.13 Producer milk.

Producer milk means the skim milk and butterfat contained in milk from producers which is:

(a) Received at a pool plant directly from a producer, excluding any such milk received by diversion from another pool plant;

(b) Received at a pool plant from a handler described in § 1049.9(c) under the conditions set forth therein;

(c) Received by a handler described in § 1049.9(c) from producers in excess of the quantity delivered to pool plants;

(d) Diverted from a pool plant for the account of the handler operating such plant to another pool plant; or

(e) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler operating such pool plant or for the account of a handler described in § 1049.9(b), subject to the following conditions:

(1) During each of the months of September through November not less than one day's production of the producer must be physically received at a pool plant;

(2) The operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (e)(3) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk physically received at or diverted from such pool plant during the month;

(3) A cooperative association may divert an aggregate quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk that the cooperative association caused to be physically received at or diverted from pool plants during the month;

(4) Any milk diverted in excess of the limit set forth in paragraph (e) (2) or (3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(5) To the extent that milk diverted by a cooperative association as a handler described in § 1049.9(b) during any month would result in a plant failing to qualify as a pool plant under § 1049.7, such diverted milk shall not be producer milk; and

(f) Milk diverted pursuant to paragraph (d) or (e) of this section shall be priced at the location of the plant where it is received, except that the uniform price applicable to milk that is diverted to a plant located outside the areas specified in § 1049.52(a) (1) through (3) shall not be adjusted downward below the uniform price for the month applicable at the location of the producer's farm, *Provided,* that 65 percent or more of such producer's milk is delivered to a plant or plants at which the same or a higher uniform price is applicable.

5. Section 1049.30 is amended by revising paragraphs (a)(1), (a)(6), and (c), to read as follows:

§ 1049.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants, showing the pounds of milk, butterfat and milk protein contained in the milk;

* * * * *

(6) The utilization or disposition of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately:

(i) Total route dispositions and route disposition in the marketing area, showing separately such disposition of filled milk inside and outside the marketing area; and

(ii) Transfers and diversions to other plants, and the butterfat and milk protein content of such milk;

* * * * *

(c) Each cooperative association shall report:

(1) The quantities of skim milk, butterfat and milk protein contained in milk from producers for which it is the handler pursuant to § 1049.9 (b) or (c), showing:

(i) The quantities of such receipts delivered to each pool plant of other handlers; and

(ii) The classification of such receipts diverted pursuant to § 1049.13.

* * * * *

6. Section 1049.31 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 1049.31 Payroll reports.

(a) * * *

(3) The average butterfat content, average milk protein content, and average somatic cell count of such milk; and

(4) The price per hundredweight, butterfat and milk protein prices and somatic cell adjustment to the producer protein price, the gross amount due, the amount and nature of any deductions, and the net amount paid.

* * * * *

§ 1049.32 [Amended]

7. Section 1049.32 is amended by removing paragraph (a) and the paragraph designation from paragraph (b).

8. Section 1049.41 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 1049.41 Shrinkage.

* * * * *

(c) * * * If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, with protein and butterfat tests

and somatic cell counts determined from farm bulk tank samples, the applicable percentage for the cooperative association shall be zero.

9. Section 1049.50 is amended by revising the section heading, revising the introductory language and paragraph (a), and adding new paragraphs (d), (e), and (f), to read as follows:

§ 1049.50 Class and component prices.

Subject to the provisions of § 1049.52, the class and component prices for the month, per hundredweight or per pound, shall be as follows:

(a) The Class I price shall be the basic formula price for the second preceding month plus $1.90.

* * * * *

(d) *Butterfat price.* The butterfat price per pound shall be the total of:

(1) The skim milk price per hundredweight for the month, computed pursuant to paragraph (f) of this section, divided by 100; and

(2) The butterfat differential for the month, computed pursuant to § 1049.74 multiplied by 10.

(e) *Milk protein price.* The price per pound for milk protein shall be computed by subtracting from the Class III price the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk on which the basic formula price is based for the previous month as reported by the Department and adjusted for the current month by the Dairy Division, and rounding the result to the nearest whole cent.

(f) *Skim milk price.* The skim milk price per hundredweight shall be computed by subtracting from the Class III price the butterfat differential computed pursuant to § 1049.74 times 35, and rounding the result to the nearest whole cent.

10. Paragraph (a) of § 1049.52 is revised to read as follows:

§ 1049.52 Plant location adjustments for handlers.

(a) For producer milk received at pool plants located in the following zones, which milk is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1049.50(a) shall be adjusted as set forth in paragraphs (a)(1)–(a)(7), as follows, except that in no event shall the adjustment result in a price less than the Class III price for the month:

(1) *Zero adjustment zone.* Any Indiana county not specifically named in paragraphs (a)(2) through (a)(5) of this section, and not part of the Louisville-Lexington-Evansville marketing area.

(2) *Plus 10-cent adjustment zone.* The Indiana counties of Jackson, Jefferson, Jennings, Lawrence, Ripley, Scott and Switzerland.

(3) *Minus 10-cent adjustment zone.* The Indiana counties of Adams, Allen, Benton, Blackford, Carroll, Cass, Fulton, Huntington, Jay, Miami, Wabash, Wells, and White.

(4) *Minus 20-cent adjustment zone.* The Indiana counties of Dekalb, Elkhart, Jasper, Kosciusko, Lagrange, La Porte, Marshall, Newton, Noble, Pulaski, Starke, Steuben, St. Joseph, and Whitley; and the Michigan counties of Berrien, Branch, Cass and St. Joseph.

(5) *Minus 35-cent adjustment zone.* The Indiana counties of Lake and Porter.

(6) At locations in other Federal order marketing areas, the appropriate price adjustment shall be the difference between the applicable Class I price effective at such plant location under the order for the area in which the plant is located and the Class I price specified in § 1049.50(a). For purposes of this paragraph, the locations in the Ohio counties of Defiance, Paulding, Van Wert and Williams, and the Michigan counties of Hillsdale, Lenawee and Monroe that are not part of any Federal milk order marketing area, will be considered to be in pricing zone 1 of the Eastern Ohio-Western Pennsylvania milk marketing area.

(7) At locations outside any Federal order marketing area and north of 38 degrees latitude, the applicable adjustment rate per hundredweight shall be based on the shortest highway distance between the plant and the nearest of the Monument Circle, Indianapolis, Indiana, or the main post offices of Fort Wayne, South Bend, or Valparaiso, Indiana, and shall be minus 2.0 cents for each 10 miles or fraction thereof from such point in addition to the amount of the location adjustment pursuant to paragraphs (a)(1)–(5) of this section applicable at the respective point.

* * * * *

11. Section 1049.53 is revised to read as follows:

§ 1049.53 Announcement of class and component prices.

The market administrator shall announce on or before:

(a) The fifth day of each month:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The butterfat differential for the preceding month; and

(4) The butterfat price, the milk protein price, and the skim milk price computed pursuant to § 1049.50 (d), (e) and (f) for the preceding month.

(5) The monthly average price for 40-pound blocks of cheese at the National Cheese Exchange (Green Bay, Wisconsin) for the preceding month.

(b) The 15th day of each month, the Class II price for the following month computed pursuant to § 1049.50(b).

12. The heading before § 1049.60 is revised to read **"DIFFERENTIAL POOL AND HANDLER OBLIGATIONS"**

13. Section 1049.60 is revised to read as follows:

§ 1049.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each pool plant of each handler, and for each handler pursuant to § 1049.9 (b) and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to § 1049.44 multiplied by the difference between the Class I price (adjusted pursuant to § 1049.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to § 1049.44 multiplied by the difference between the Class II price and the Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1049.44(a)(14) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1049.44(a)(14), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(14) and the corresponding step of § 1049.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1049.44(a)(14) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1049.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1049.44(a)(14) and the corresponding step of § 1049.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to

§ 1049.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1049.44(b) multiplied by the butterfat price;

(3) The protein pounds in skim milk overage subtracted from Class III pursuant to § 1049.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1049.44(b) multiplied by the butterfat price;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1049.44(a)(9) and the corresponding step of § 1049.44(b), and the value of the protein pounds associated with the skim milk subtracted from Class II pursuant to § 1049.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(9) and the corresponding step of § 1049.44(b) applicable at the location of the pool plant at the current month's Class I–Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1049.44(a)(9) and the corresponding step of § 1049.44(b) at the current month's Class II–Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(7)(i) through (iv), and the corresponding step of § 1049.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I–Class III price difference;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(7)(v) and (vi) and the corresponding step of § 1049.44(b) applicable at the location of the transferor-plant at the current month's Class I–Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from 'Class I pursuant to § 1049.44(a)(11) and the corresponding step of § 1049.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I–Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to § 1049.44 multiplied by the skim milk price for the month computed pursuant to § 1049.50(f).

(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed, separately, multiplied by the protein price for the month computed pursuant to § 1049.50(e).

(j) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use, provided that the handler establishes a disposition of labeled reconstituted fluid milk products; and

(k) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1049.76(c).

14. Section 1049.61 is revised to read as follows:

§ 1049.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1049.60, paragraphs (a) through (g) and (j) and (k), for all handlers who made reports pursuant to § 1049.30 and who made payments pursuant to § 1049.71 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1049.75(a);

(c) Subtract an amount equal to the total value of the plus location differentials computed pursuant to § 1049.75(a);

(d) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included-in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1049.60(g).

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "Weighted Average Differential Price";

15. Section 1049.62 is revised to read as follows:

§ 1049.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to § 1049.60, paragraphs (h) and (i), for all handlers who made reports pursuant to § 1049.30 and who made payments pursuant to § 1049.71 for the preceding month;

(b) Divide the resulting amount by the total pounds of protein in producer milk; and

(c) Round to the nearest whole cent. The result is the "Producer protein price."

16.–19. New §§ 1049.63 through 1049.66 are added under the revised heading "Differential Pool and Handler Obligations" to read as follows:

§ 1049.63 Uniform price and handlers' obligations for producer milk.

(a) A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1049.61 to the basic formula price for the month.

(b) Handler obligations to producers and cooperative associations for producer milk shall be determined in accordance with the provisions of §§ 1049.65 and 1049.73.

§ 1049.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 14th day after the end of the month the weighted average differential price computed pursuant to § 1049.61, the producer protein price computed pursuant to § 1049.62, and the uniform price computed pursuant to § 1049.63(a).

§ 1049.65 Value of producer milk.

The value of producer milk shall be the sum of:

(a) The weighted average differential price computed pursuant to § 1049.61 and adjusted pursuant to § 1049.75; multiplied by the total hundredweight of producer milk received from the producer;

(b) The producer protein price computed pursuant to § 1049.62 and adjusted pursuant to § 1049.66, multiplied by the total milk protein contained in the producer milk received from the producer; and

(c) The butterfat price computed pursuant to § 1049.50(d) multiplied by the total butterfat contained in the producer milkreceived from the producer.

§ 1049.66 Computation of somatic cell adjustment.

(a) For milk having a monthly average somatic cell count of 500,000 or above or a monthly average somatic cell count of less than 400,000, the producer protein price shall be adjusted as follows:

(1) For a monthly average somatic cell count less than 100,000, the result of the cheese price times .09375;

(2) For a monthly average somatic cell count greater than 100,000 but less than 200,000, the result of the cheese price times .06250;

(3) For a monthly average somatic cell count greater than 200,000 but less than 300,000, the result of the cheese price times .03125;

(4) For a monthly average somatic cell count greater than 300,000 but less than 400,000, the result of the cheese price times .01562;

(5) For a monthly average somatic cell count greater than 500,000 but less than 600,000, the result of the cheese price times −.01562;

(6) For a monthly average somatic cell count greater than 600,000 but less than 700,000, the result of the cheese price times −.03125;

(7) For a monthly average somatic cell count greater than 700,000 but less than 800,000, the result of the cheese price times −.04688;

(8) For a monthly average somatic cell count greater than 800,000 but less than 900,000, the result of the cheese price times −.06250;

(9) For a monthly average somatic cell count greater than 900,000, the result of the cheese price times −.09375;

(10) If a handler has not determined a monthly average somatic cell count, it will be determined by the market administrator.

(b) For purposes of this section, the cheese price shall be the average price for the month of 40-pound blocks of cheese at the National Cheese Exchange at Green Bay, WI, as reported monthly by the Dairy Division, Agricultural Marketing Service.

20. Section 1049.71 is amended by revising paragraphs (a)(1) and (a) (2) to read as follows:

§ 1049.71 Payments to the producer settlement fund.

(a) * * *

(1) The total obligation of the handler for such month as determined pursuant to § 1049.60.

(2) The sum of:

(i) The value of such handler's receipts of producer milk at the weighted average differential price adjusted pursuant to § 1049.75;

(ii) The value of the protein in such handler's receipts of producer milk at the producer protein price computed pursuant to § 1049.62; and

(iii) The value at the weighted average differential price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1049.60(g).

* * * * *

21. Section 1049.73 is amended by revising the first sentence of paragraph (a)(2), paragraph (c)(2)(ii), and paragraph (d)(2) to read as follows:

§ 1049.73 Payments to producers and to cooperative associations.

(a) * * *

(2) On or before the 18th day after the end of the month to each producer, not less than the value determined pursuant to § 1049.65, less any payment made pursuant to paragraph (a)(1) of this section, and less the deduction for advertising and promotion made pursuant to § 1049.107. * * *

* * * * *

(c) * * *

(2) * * *

(ii) On or before the 16th day of the following month for milk received during the month, not less than the value of milk determined pursuant to § 1049.65, less any payments made pursuant to paragraph (c)(2)(i) of this section.

(d) * * *

(2) The daily and total pounds of producer milk, its butterfat and milk protein content, and the somatic cell count of the milk;

* * * * *

22. Section 1049.75 is revised to read as follows:

§ 1049.75 Plant location adjustments for producers and on nonpool milk.

(a) The weighted average differential price for producer milk received at pool plants or diverted to nonpool plants shall be adjusted according to the location of the plants at which it was received or was deemed to have been received at the rates set forth in § 1049.52(a), except that the adjusted weighted average differential price plus the withholding rate for the Advertising and Promotion program computed in § 1049.121(e), shall be not less than zero for the month.

(b) For purposes of computations pursuant to §§ 1049.71 and 1049.72 the weighted average differential price shall be adjusted at the rates set forth in § 1049.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average differential price shall not be less than zero.

23. Section 1049.78 is revised to read as follows:

§ 1049.78 Charges on overdue accounts.

(a) Any unpaid obligation of a handler pursuant to § 1049.71, § 1049.76, § 1049.77(a), § 1049.78, § 1049.85, or § 1049.86(a) shall be increased 1 percent beginning on the first day after the due date of such obligation and on the same day of each succeeding month until such obligation is paid. All such charges on overdue accounts shall be paid to the administrative assessment fund maintained by the market administrator.

(b) Any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due, shall be considered to have been payable by the date it would have been due if the report had been filed when due.

§ 1049.86 [Amended]

24. Section 1049.86 is amended by changing the words "5 cents" in paragraph (a) to "7 cents."

Signed at Washington, DC, on: July 30, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92–18553 Filed 8–12–92; 8:45 am]

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federal register

Thursday
August 13, 1992

Part IV

Department of Transportation

Federal Transit Administration

Announcement of the Initiation of a Turnkey Demonstration Program; Solicitation of Letters of Intent To Propose; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Announcement of the Initiation of a Turnkey Demonstration Program; Solicitation of Letters of Intent To Propose

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration announces a competition for the selection of not less than 2 turnkey system demonstration projects. The Turnkey Demonstration Program is in response to section 3019 of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240). This program will determine the degree to which turnkey system procurement can reduce the time and lower the cost of transit capital project development.

DATES: A pre-proposal conference on this announcement is scheduled for August 31, 1992 in Washington, DC. "Letters of Intent to Propose" are due on or before September 25, 1992.

ADDRESSES: Parties interested in attending the pre-proposal conference should notify, by August 18, Edward L. Thomas, Chief, Capital Development Division (TTS–11), Federal Transit Administration, 400 7th Street, SW., Washington, DC 20590, Phone Number: (202) 366–0264. Letters of Intent to Propose shall be sent to Walter Kulyk, Director, Office of Mobility Enhancement (TTS–10), Federal Transit Administration, 400 7th Street, SW., Washington, DC 20590 and shall reference Turnkey Demonstration Program.

FOR FURTHER INFORMATION CONTACT: Edward L. Thomas, Capital Development Division (TTS–11), at (202) 366–0264.

SUPPLEMENTARY INFORMATION:

1. Background

Section 3019 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240) amended the Federal Transit Act to add new Special Procurement Initiatives at section 12(l)(1). Among those initiatives are provisions for demonstrations of not less than two turnkey system projects. The Federal Transit Administration (FTA) is soliciting proposals for turnkey system project demonstrations. As stated in the new section 12(l)(1) of the Federal Transit Act, as amended, a turnkey system project is defined as a project under which a recipient contracts with a consortium of firms, individual firms, or a vendor to build a transit system that meets specific performance criteria and which is operated by the vendor for a period of time. Section 12(l)(1)(A) provides that turnkey project contracts may be conditionally awarded before Federal requirements have been met on the project so long as the award is made without prejudice to the implementation of those Federal requirements. Federal financial assistance under this Act may be made available for such a project when the recipient has complied with relevant Federal requirements. To be eligible for Federal funding, a commitment for construction, under a turnkey contract, is conditional upon completion of the environmental requirements of the National Environmental Policy Act, (NEPA), as implemented by joint FTA and Federal Highway Administration (FHWA) regulations, "Environmental Impact and Related Procedures," 49 CFR part 622 and 23 CFR part 771.

Recipients selected to participate in the demonstration program will benefit from expedited grant processing for those projects for which the recipients may seek Federal capital assistance. The FTA will provide intensive staff support to help satisfy administrative requirements. This includes, but is not limited to, project development, third party procurements, right-of-way acquisition, Buy America goals, performance bond level, and project management. Selection as a turnkey demonstration site may therefore help reduce the time of project completion. The FTA will also work diligently with FHWA to explore all opportunities for flexible funding as provided in the ISTEA.

2. Description of Turnkey Demonstration Program

a. Objectives

The purpose of this notice is to announce the initiation of the FTA Turnkey Demonstration Program; and to solicit "Letters of Intent to Participate" in this program from interested applicants.

As stated in the ISTEA, the goal of the demonstration initiative is to advance new technology and lower the cost of constructing new transit systems. In achieving this goal, the FTA wants to determine the degree to which turnkey system projects may enhance the effectiveness of construction and acquisition scheduling; increase private sector financial participation; improve the flow of funds; diversify all aspects of project risks; enhance contract management; and reduce the cost of transit system development, operation and maintenance. The FTA will use the results of the demonstrations in developing regulations or in modifying existing third party contracting guidelines.

b. Selection Process

Selection of turnkey demonstration projects will follow a two-step process. After a pre-proposal conference to describe the details of the program, the FTA will request "Letters of Intent to Participate." The FTA will subsequently evaluate the letters and seek a "Formal Request for Participation" from those applicants that have proposed projects which the FTA believes are most likely to be of greatest value in demonstrating the potential benefits of turnkey procurement on a nationwide basis.

c. Categories of Projects

Ultimate demonstration selection will be made for projects in three categories:

(1) Fixed guideway projects about to commence preliminary engineering,

(2) Fixed guideway projects nearing the end of the preliminary engineering phase, and

(3) Other eligible projects.

A variety of projects are eligible for assistance under this program. Some examples of eligible transit projects include, but are not limited to, new and extensions to existing light rail transit systems, heavy rail transit systems, automated guideway transit systems, commuter rail systems, busways and high occupancy vehicle corridor systems, and advanced public transit systems.

For projects in Category (1), the FTA will consider supporting preliminary engineering by multiple turnkey bidding teams before a final team is selected, and a turnkey contract awarded. Such an effort will stimulate competition in the design process and in ultimate bid prices. It will also permit a comparison of this approach to turnkey methods in Category (2) and Category (3) projects and to projects implemented through conventional procurement methods.

d. Pre-proposal Conference

The FTA will sponsor a one-day conference with transit agency officials, turnkey contractors and agency consultants from areas in which turnkey demonstration proposals are anticipated. The conference will discuss the structure and requirements of the demonstration program, and entertain questions on the solicitation. Persons who are interested in attending the pre-proposal conference should follow the guidance in the "Addresses" section of this notice.

e. Letters of Intent to Participate

The FTA requests that potential applicants wait to submit Letters of Intent to Participate in this program until after they have had the benefit of attending the pre-proposal conference.

Letters of Intent to Participate should be sent to the name and address in the "Addresses" section of this notice. A copy of the letter also should be sent to the appropriate FTA Regional Offices whose addresses are listed at the end of this Notice.

Letters of Intent to Participate must include preliminary information on: (1) Physical and operating characteristics of the capital project; (2) estimated total project cost and operating cost; (3) proposed design and construction schedule; (4) proposed construction management plan; (5) proposed operating plan; (6) proposed financial plan, including local and state shares, anticipated involvement of the FTA, potential use of highway funding, and opportunities for private sector participation; (7) proposed management plan describing the competitive procurement procedures to be used in selecting a turnkey contractor; (8) degree of local and state commitment to project; (9) consultant support; and (10) the turnkey contractor team or stage in the procurement of a turnkey contractor team.

f. Submission of Formal Request for Participation

The FTA is not soliciting formal requests at this time. Formal requests will be solicited by the FTA from those eligible applicants which have submitted a Letter of Intent to Participate and which, in the opinion of the FTA, are proposing projects of the most benefit to the objectives of this Turnkey Demonstration Program. Information provided in this section also will benefit potential applicants when preparing Formal Requests for Participation.

g. Project Description

The requesting agency should describe the stage of the project's development, and its physical, operational, and cost characteristics. Typical stages of transportation project development are planning, design and construction. Facilities, equipment and their location are the essential physical characteristics of the project. Operational characteristics should include service provided, labor arrangements, and forecasts of the demand for the service provided. Capital, operating, and maintenance costs estimates should be provided as well.

h. Financial Strategy

The request for participation should contain a description of the financial strategy. The financial strategy should identify the local consensus and include a description of annual cost estimates, sources of funds for capital expenditures and any operating deficits, and financing strategy. It also should clearly identify private sector participation and proposals for use of the flexible funding provisions contained in the ISTEA.

i. Management Plan

The request for participation should contain a description of the organization that will implement the project, what entities will be involved, how the project will be implemented, and the technical resources available to the requesting agency. This would consist of a description of the disciplines and backgrounds of the requesting agency internal team and consultants, and if and when selected, members of the turnkey contracting team. The plan should describe the competitive procurement procedures the recipient has applied or plans to apply in selecting the turnkey contractor. A recipient that has awarded the turnkey contract for its project will not be considered for participation in this demonstration program unless the procurement was conducted in a manner providing full and open competition. The management plan should also delineate the work schedule; budget; products; and roles and responsibilities of the requesting agency, its agents, and the turnkey contractor organizations.

Included among the products is a risk management plan. This risk management plan should contain the organizational structure and management system necessary to provide an operational framework for risk management.

3. Selection for Participation in Program

In evaluating the formal requests for participation in this turnkey demonstration program, the FTA will consider the relevance of the proposed projects to the goals set forth in Section 12(l)(1) of the Federal Transit Act, as amended, evidence of local consensus, proposals for creative financing, management capability including risk management, and technical resources. Each of these areas of consideration is described as follows:

a. *Relevance to the Section 12(l)(1) goals and the* **Federal Register** *Notice:* This is the requesting agency's responsiveness to this notice and in particular, the goals and objectives of this demonstration initiative.

b. *Local Consensus for the Project:* For those projects that are completing the planning phase, the FTA expects designation of a locally preferred alternative or other demonstrations of a consensus to advance a project into preliminary engineering or its equivalent. For those projects nearing the completion of preliminary engineering, the FTA expects a local consensus to advance the project into final design and construction, and a level of design appropriate for minimizing the uncertainty associated with the project. Documentation of local consensus should also include evidence from an authorized body that funding to operate both the proposed project and the existing transit system will be available.

c. *Creative Financing:* The FTA is particularly interested in proposals in which private sector financial resources are used to leverage public funds, and proposals to employ the funding flexibility contained in the ISTEA. Some examples include use of highway funding for transit projects; turnkey contractor participation through vendor financing, advance construction financing, lease financing, and joint development; and other private sector participation through air rights development, tax increment financing, special assessment districts, and cost sharing.

d. *Management Capability:* This focuses on the organizations to be involved. Management capability will be reviewed on the basis of the requesting agency's and, if a turnkey contractor is already selected, the contractor's experience in the areas of planning, engineering, procurement, financial management, construction management, and construction involving transit construction and acquisition projects similar to the one being proposed. The FTA will determine if project cost, scheduling, and financial risk are adequately described, and if an implementation plan has been developed to manage this risk. The FTA will also consider the ability of the requesting agency or turnkey contractor to operate the proposed project.

e. *Technical Expertise:* This focuses on the expertise of the personnel of the requesting agency, consultants to the requesting agency, and the turnkey contractor in the critical areas of the project. The critical areas include transportation systems analysis, design engineering, architectural design, finance, management systems, systems engineering, procurement, construction

management, construction, and transit operations.

f. *Selection Schedule*

—Pre-proposal Conference—August 31, 1992
—Deadline for Receipt of Letters of Intent to Propose—September 25, 1992
—FTA Request for Formal Requests for Participation—October 23, 1992
—Deadline For Receipt of Formal Requests for Participation—October 23, 1992
—Deadline For Receipt of Formal Requests for Participation—December 31, 1992
—Completion of Evaluations of Requests for Participation—January, 1993
—FTA Announcements of Turnkey System Demonstration Projects—February, 1993

4. Funding for Demonstration Projects

Federal capital assistance for turnkey demonstration projects is available through the section 3 discretionary and section 9 formula assistance programs of the Federal Transit Act, as amended, and based on flexible funding in the ISTEA from the Surface Transportation Program (STP), National Highway System (NHS), Congestion Mitigation Air Quality (CMAQ), and other highway funds. Projects seeking funding under the new starts category of section 3 are subject to the provisions of section 3(i) of the Federal Transit Act, as amended. Funds for rail modernization projects are apportioned according to the formula in section 3(h) of the Federal Transit Act, as amended. The replacement, rehabilitation and construction of bus-related facilities are eligible for funding under section 3(k) of the Federal Transit Act, as amended.

Funding to develop and implement selected demonstration projects under this initiative will be processed through the normal grant programs. Typical development efforts include development of turnkey procurement request for proposal, contractor selection, advance planning, preliminary engineering, environmental document preparation, and financial plan development and implementation. Final design, project management, acquisition and construction are the normal project implementation efforts. Any questions on the FTA grant programs should be directed to the appropriate FTA Regional Offices. Addresses and telephone numbers for the Regional Offices are listed at the end of this announcement.

5. Documentation of Demonstration Projects

The FTA will want to work with the selected demonstration sites to ensure that all phases of the turnkey project are documented. This will include, but will not be limited to, all aspects of the turnkey selection process; documentation of turnkey contracts, and subcontracts; project management plan; roles and responsibilities of the parties; measurement, allocation and management of risk; engineering products; transportation systems analysis results; construction and acquisition schedules; project management systems and procedures; financial plans and implementation strategies; right-of-way acquisition program; utility relocation plans; cost sharing plans; power source agreements; operating plans; construction management; construction; and operations.

6. Evaluation of On-Going Demonstration Projects

The FTA will conduct evaluations of projects selected for the Turnkey Demonstration Initiative and other projects involving turnkey procurements as they proceed to completion. These evaluations will assist the FTA in comparing the costs and benefits of different types of turnkey procurements and of turnkey procurements compared to conventional procurements.

7. References

In developing proposals, agencies may want to refer to an FTA study, "Turnkey Procurement: Opportunities and Issues", which reviewed turnkey experiences and applications in the United States (U.S.) and abroad. This study provides information on turnkey development of domestic energy recovery plants, waste water treatment facilities, highway projects, flood control projects, Federal government office buildings, and transit systems. Several foreign transit systems, which have been implemented through turnkey procurements, are also reviewed.

The report documents potential benefits of turnkey development and issues associated with turnkey development of transit systems. Examples of typical benefits are capital and operating cost savings, flexible financing through private sector leveraging of public funds, diversification of risk, and augmentation of public sector project management capabilities. Some of the outstanding issues to be addressed by the demonstrations are necessary level of project specification, role of taxable versus tax-exempt financing, equitable allocation of risk, and public agency oversight role in a turnkey procurement.

Copies of the report "Turnkey Procurement: Opportunities and Issues" may be obtained from Edward L. Thomas, Chief, Capital Development Division, Office of Technical Assistance and Safety, Federal Transit Administration, 400 7th Street SW., Room 6107, Washington, DC 20590.

8. FTA Regional Offices

Area/region	Name/address	Telephone No.
Eastern Area		
● Region 1	Richard Doyle, Regional Administrator, Transportation Systems Center, 55 Broadway, Suite 920, Cambridge, MA 02142.	(617) 494-2055
● Region 2	Leonard Braun, Eastern Area Director, and Regional Administrator, 26 Federal Plaza, Suite 2940, New York, NY 10278.	(212) 8162
Southeastern Area		
● Region 3	Sheldon A. Kinbar, Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103	(215) 656-6900
● Region 4	Peter N. Stowell, Southeastern Area Director, and Regional Administrator, 1720 Peachtree Road, NW., Suite 400, Atlanta, GA 30309.	(404) 347-3948
Central Area		
● Region 5	Joel P. Ettinger, Central Area Director, and Regional Administrator, 55 E. Monroe Street, Suite 1415, Chicago, IL 60603.	(312) 353-2789
Midwestern Area		
● Region 6	Wilbur E. Hare, Jr., Regional Administrator, 819 Taylor Street, Suite 9A32, Fort Worth, TX 76102	(817) 334-3787
● Region 7	Lee O. Waddleton, Midwestern Area Director, and Regional Administrator, 6301 Rockhill Road, Suite 303, Kansas, City, MO 64131.	(816) 926-5053
Western Area		
● Region 8	Louis F. Mraz, Jr., Western Area Director, and Regional Administrator, Columbine Place, 216 16th Street, Suite 650, Denver, CO 80202.	(303) 844-3242
● Region 9	Stewart F. Taylor, Regional Administrator, 211 Main Street, Suite 1160, San Francisco, CA 94105	(415) 744-3133

Area/region	Name/address	Telephone No.
● Region 10.....	Terry L. Ebersole, Regional Administrator, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174.	(206) 553-4210

9. Evaluation

An Evaluation Panel will review all Formal Proposals to Participate, and forward the results of the evaluations to the FTA Administrator. The final selection of the demonstration projects will be made by the FTA Administrator.

Issued On: August 7, 1992.

Brain W. Clymer,

Administrator.

[FR Doc. 92-19234 Filed 8-12-92; 8:45 am]

BILLING CODE 4910-SF-M

federal register

Thursday
August 13, 1992

Part V

Department of Education

Office of Special Education and Rehabilitative Services; Private Schools Serving Publicly Placed Children With Disabilities; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Invitation To Comment on the Personnel Standards Requirements That Must Be Met by Private Schools in Order for a Public Agency to Place a Child With a Disability in the School for the Purpose of Receiving Free Appropriate Public Education (FAPE)

AGENCY: Department of Education.

ACTION: Notice inviting comments.

SUMMARY: The Secretary of Education invites comments from all interested parties concerning the personnel standards requirements of part B of the Individuals with Disabilities Education Act (IDEA) (formerly known as the Education of the Handicapped Act) that apply to private schools serving publicly placed children with disabilities. Section 613(a)(4)(B)(ii) of the IDEA requires that if a public agency places a child with a disability in a private program or facility for the purpose of providing a free appropriate public education (FAPE), the State educational agency (SEA) must ensure that the program meets the standards that apply to publicly operated programs.

DATES: All comments must be received on or before September 28, 1992.

ADDRESSES: Written comments should be addressed to Ms. Lucille Sleger, U.S. Department of Education, 400 Maryland Avenue SW., room 3615, Switzer Building, Washington, DC 20202–2720.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas B. Irvin, U.S. Department of Education, 400 Maryland Avenue SW., room 3092, Switzer Building, Washington, DC 20202–2720. Telephone: (202) 205–8825. Individuals who are deaf or hearing impaired may call (202) 205–9090 for TDD services.

SUPPLEMENTARY INFORMATION: In 1975, when Congress amended Part B of the Education of the Handicapped Act, it included private schools as a necessary component in the continuum of programs for serving children with disabilities. Congress required, in section 613(a)(4)(B)(i) of the Act, that if a child with a disability is placed in a private school program by a public agency for the purpose of receiving FAPE the placement must be provided at no cost to parents. Congress also included, in section 613(a)(4)(B)(ii), the requirement that in all such instances, the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies * * *

The provision related to State standards helped to ensure that children with disabilities would not be placed in substandard programs. This provision is implemented in 34 CFR 300.401(a)(3), which requires State educational agencies to insure that the private school or facility into which children with disabilities are placed by public agencies "* * * meets the standards that apply to State and local educational agencies (including the requirements in * * * [Part 300]) * * *." One of the effects of these provisions has been to require that all special education personnel serving publicly placed children must meet State standards that are identical to the standards that apply to local school districts.

The Secretary believes that this statutory provision, and the regulatory provision that implements it, have played an important part in protecting the rights of children with disabilities placed by public agencies in private schools. However, he also believes that an unintended effect has been to limit access to quality private school programs in situations where the public agency and parent agree that a particular private school program is needed to provide FAPE to the child, but the private school special education personnel who will provide services to that child do not meet the identical standards that apply to public school personnel. With regard to these personnel standards requirements, the Secretary is interested in whether there are ways to give public agencies greater flexibility and access to using placements in private school programs while ensuring that children with disabilities are placed in quality programs where they will be able to receive FAPE and continue to be afforded all rights and protections under the IDEA.

INVITATION FOR PUBLIC COMMENT: The Secretary invites public comment on whether the IDEA should be amended to permit public agencies to place children in private school programs if, under State law or policy, it is determined that the private school special education personnel meet standards that are comparable or equivalent (according to State law or policy)—although different—from the personnel standards that apply to publicly operated programs. Comments and recommendations on how States would formulate State policy regarding equivalent or comparable personnel standards are specifically requested.

Dated: July 31, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–19348 Filed 8–12–92; 8:45 am]

BILLING CODE 4000–01–M

federal register

Thursday
August 13, 1992

Part VI

Department of Education

Dwight D. Eisenhower Regional Mathematics and Science Education Consortiums Program; Notice of Final Priority for Fiscal Year 1992

DEPARTMENT OF EDUCATION

Dwight D. Eisenhower Regional Mathematics and Science Education Consortiums Program

AGENCY: Department of Education.

ACTION: Notice of final priority for Fiscal Year 1992.

SUMMARY: The Eisenhower Regional Mathematics and Science Education Consortiums Program supports the establishment and operation of regional consortiums to disseminate exemplary mathematics and science education materials and to provide technical assistance for the implementation of teaching methods and assessment tools for use by elementary and secondary school students, teachers, and administrators. The Secretary establishes a priority for fiscal year 1992 to establish and operate regional mathematics and science education consortiums that support systemic school improvement activities.

The Secretary takes this action to focus Federal financial assistance on activities to help students meet emerging national standards in mathematics and science, by implementing State and local curriculum frameworks and assessment processes based on these standards, and by ensuring that teachers are prepared to deliver instruction that will enable students to attain the desired standards of achievement.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Allen Schmieder, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 522, Washington, DC 20208–5524. Telephone: (202) 219–1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION:

One of the six National Education Goals calls for U.S. students to be first in the world in mathematics and science achievement by the year 2000. The President's AMERICA 2000 strategy for helping the Nation achieve the goals calls for the establishment of world-class standards for what students should know and be able to do and a system of improved assessments tied to those standards. The National Council on Education Standards and Testing (NCEST) was a congressionally chartered group charged with investigating the desirability and feasibility of national standards and improved assessment. The report NCEST issued in January, 1992, called for the development of those standards and a system of voluntary assessments as an urgently needed first step in reforming American education.

Standards for mathematics education have already been developed by the National Council of Teachers of Mathematics. Substantial progress in developing world-class standards in science has also been made under the leadership of such organizations as the National Science Teachers Association and the American Association for the Advancement of Science. Standards provide the foundation for systemic reform. As the bridge from the standards to the classroom, curriculum frameworks provide guidelines for the particular content of the curriculum and how knowledge should be organized and presented in order to help students reach the standards. Those frameworks set out themes, topics, and objectives for learning outcomes at different levels of schooling, such as at the end of 4th, 8th, and 12th grades, and allow for local flexibility while setting clear directions for schools in general.

New methods of assessing student knowledge need to be developed to accompany the standards. A variety of organizations are doing work in this area and are drawing upon recommendations such as those contained in the Mathematical Sciences Education Board's For Good Measure: Principles and Goals for Mathematics Assessment and the report of the National Council on Education Standards and Testing, Raising Standards for American Education.

The Secretary believes, however, that standards, curriculum frameworks, and assessments alone cannot achieve systemic reform. It is the teacher who must provide the kind of classroom instruction that will enable students to achieve world-class standards. Thus, teacher education (both preservice and inservice) and teacher certification also need to be reformed in ways that reflect world-class standards so that teachers are prepared for the classrooms of the future.

The Secretary believes that regional mathematics and science consortiums can help strengthen, support, and promote systemic reform in mathematics and science education by disseminating exemplary instructional materials, providing professional development services for teachers, and providing technical assistance to help States develop and implement world-class standards and curriculum frameworks and assessment instruments based on those standards. The statute authorizing the regional consortiums defines "region" as a region of the United States served by a regional educational laboratory that is supported by the Secretary pursuant to section 405(d)(4)(A)(i) of the General Education Provisions Act.

The Secretary will provide technical assistance, information, and support services so that the regional consortiums may keep in contact with national standards-setting groups and curricular and assessment projects in other parts of the country.

On May 7, 1992 the Secretary published a notice of proposed priority for this program in the **Federal Register** (57 FR 19788).

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition was published in the **Federal Register** on June 23, 1992 (57 FR 28026).

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, five parties, each representing sizeable constituencies, submitted comments. An analysis of the comments and of the changes in the priority since publication of the notice of proposed priority follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comments: One commenter advocated funding consortium programs that focused on major urban centers, including the direct funding of a consortium serving a single urban center.

Discussion: The legislation requires that any consortium funded serve one of ten multi-state regions, with the regions defined as those regions currently served by a regional educational laboratory. The Secretary emphasizes, however, that although an individual consortium must provide services throughout its service region, providing assistance to major urban centers should be a high priority for the consortium. Major urban centers may also seek to participate in the development and submission of an eligible application in the consortium competition.

Changes: None.

Comments: One commenter recommended that extensive evaluation of all materials not be a required

consortium activity. A second commenter proposed that evaluation be periodic and not continual.

Discussion: The Secretary believes that the consortium materials must be evaluated to ensure that the consortium is selective about the types of materials that are disseminated. The Secretary believes that projects should not be burdened financially with continuous evaluation.

Changes: Section (b) of the priority has been changed to eliminate the word "continually."

Comments: One commenter referred to the required activity that consortiums ensure continued access to information and materials available from the Eisenhower National Clearinghouse. The commenter recommended clarification of the nature of the relationship between the consortiums and the Clearinghouse and the budget implications of that relationship. The commenter also recommended that access be ensured specifically to materials that consortiums and their clients have determined to be most appropriate to local, State, or regional needs.

Discussion: The intent of the priority is that the Eisenhower National Clearinghouse will serve as one of the major sources of information and materials to be disseminated by the consortiums. A notice inviting applications for regional consortiums awards was published in the **Federal Register** on June 23, 1992 (57 FR 28026). The notice provides applicants with an estimate of the funds available for consortium awards. It is expected that applicants will describe the details of the relationship they propose to establish with the Clearinghouse and the related budget requirements. Further, the Secretary expects that in carrying out their activities, the consortiums will help their clients determine which materials are most appropriate to meet local, State, and regional needs and to help students meet emerging world-class standards in mathematics and science.

Changes: None.

Comments: One commenter recommended that the term "governing" be stricken from Section (g) of the priority notice and that requirements for the regional board be stated in such a manner as to avoid duplication or conflict with the responsibilities of existing independent governing boards such as those of the regional educational laboratories.

Discussion: The Secretary agrees that the proposed "regional governing board" may cause confusion with existing governing boards with similar responsibilities and that the functions of the consortium board should be clarified.

Changes: The priority has been changed to clarify the responsibilities of the regional board and to distinguish the regional board from a governing board.

Comments: One commenter suggested a clarification of the list of eligible entities, specifically the reference to a regional laboratory in consortium with a research and development center specified under section 405(d)(4)(A) of the General Education Provisions Act.

Discussion: A regional laboratory in consortium with a research and development center is one of several eligible applicants. A regional laboratory in a region in which there is no research and development center may apply as a non-profit organization.

Changes: None.

Comments: One commenter agreed that the consortiums should identify and disseminate materials and methods, but questioned the consortiums' proposed role in developing instructional materials, assessments, content standards, and curriculum frameworks.

Discussion: The Secretary agrees that the intent of the legislation is to support activities that identify, adapt, disseminate, and implement mathematics and science instruction materials, teaching methods, and assessment tools. However, the Secretary believes that any technical assistance provided by the consortiums should be consistent with State efforts to adopt world-class standards and to develop curriculum frameworks, assessments, and professional development for teachers consistent with those standards.

Changes: The priority has been revised to clarify that the function of the regional consortiums is to disseminate information and provide technical assistance rather than develop frameworks, materials, standards, and assessments.

Comment: One commenter expressed strong support for the technical assistance activity in paragraph (a) of the priority while providing a number of suggested revisions including requiring the consortium to provide, at cost, materials that are otherwise unavailable, focus professional development on educational leaders, include teacher educators in most proposed activities, and include the State agency for higher education in each State on the regional board.

Discussion: The Secretary believes that each regional consortium should propose its own plan for disseminating materials and does not want to direct specifically how it is to be done. Further, the statute authorizing the regional consortiums identifies classroom teachers, rather than educational leaders, as key recipients of professional development. Finally, the Secretary believes that the existing references in the priority to "university scholars" includes teacher educators and that the reference to "State educational agencies" in paragraph (g) is sufficient for the purposes of the priority.

Changes: None.

Comments: One commenter expressed concern that the priority did not clarify the terminology "world-class standards" in mathematics and science achievement.

Discussion: The Supplemental Information section discusses the fourth National Education Goal, which states that by the year 2000, U.S. students should be first in the world in science and mathematics achievement. The priority reflects the AMERICA 2000 strategy for achieving this goal. World-class standards, as used in the AMERICA 2000 strategy, represent what young Americans need to know and be able to do if they are to live and work in today's world. These standards will incorporate both knowledge and skills to ensure that, when young Americans leave school, they are prepared for further study and the work force. The fourth National Education Goal is discussed thoroughly in a number of publications concerning the AMERICA 2000 Education Strategy.

Changes: None.

Comments: One commenter recommended that the priority give attention to the needs of groups that are underrepresented in, and underserved by, mathematics and science education.

Discussion: The Secretary expects that in carrying out the required activities, the consortiums will give attention to the needs of the underrepresented. For example, providing technical assistance to help States adopt world-class standards for all children requires recognition that every child can learn, regardless of background or disability.

Changes: None.

Comments: One commenter recommended that the priority be revised to state that consortiums sponsor as well as provide leadership training.

Discussion: The Secretary has decided to clarify Section (c) regarding the responsibility of the consortiums to conduct inservice professional development programs and to coordinate these programs with other inservice programs.

Changes: Section (c) now clarifies that the consortiums must either conduct or

sponsor inservice professional development programs. Section (c) further provides that the design and implementation of these programs must be coordinated with other inservice professional development programs sponsored with Federal and State funds.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority:

Development and Operation of Regional Consortiums to Support Systemic Reform

Projects that propose to establish and operate regional consortiums that will promote systemic reform by disseminating exemplary materials, teaching methods, and assessment tools and by providing technical assistance in the implementation and adaptation of these materials, teaching methods, and assessment tools.

The consortiums must carry out all of the following activities:

(a) Provide technical assistance to help States adopt worldclass standards in mathematics and science, develop curriculum frameworks that embody these standards, and develop new forms of assessment matched to the curriculum frameworks. The consortiums must also provide technical assistance to help States develop and implement new approaches to teacher inservice and preservice education and teacher certification appropriate to the standards and frameworks.

(b) Identify and disseminate exemplary mathematics and science education instructional materials, teaching methods, and assessment tools for use by elementary and secondary school students. All materials and methods disseminated by the consortiums must reflect emerging world-class standards for mathematics and science and be evaluated for their positive impact on student learning. In order to identify the exemplary materials, teaching methods, and assessment tools and appropriate teacher education and certification programs, the consortiums must consult with classroom teachers (both public and private) and university scholars, together with State science and mathematics supervisors, Eisenhower State coordinators, National Diffusion Network State Facilitators, and representatives from the regional educational laboratory, the National Science Foundation's State Systemic Initiative projects, and other organizations and activities promoting science and mathematics reform in the region. Consortiums must also consult with directors of exemplary mathematics and science projects in the region, whether funded by the Department of Education, the National Science Foundation, the Department of Energy, other federal agencies, or private foundations.

(c) Train and provide technical assistance to classroom teachers, administrators, and other educators to adapt and use the instructional materials, teaching methods, curricula, and assessment tools described above. The consortiums must conduct or sponsor intensive inservice professional development programs, including local workshops during summer months, for science and mathematics teachers, including elementary teachers, and for student teachers engaged in pre-service clinical programs. Design and implementation of these programs must be coordinated with other inservice professional development programs in mathematics and science sponsored with other Federal or State funds in order to ensure maximum coverage and minimize duplication of services. The professional development programs must prepare teachers to teach to world-class standards and new curriculum frameworks developed to implement those standards. The work of designing these professional development programs must involve teachers, scholars, administrators in the States and school districts, and other knowledgeable parties within the region.

The consortiums must also provide necessary follow-up support for teachers and student teachers who receive intensive training under this program to ensure continued access to information and materials—especially those made available by the Eisenhower National Clearinghouse—that will help them integrate world-class standards into their local curricula.

(d) Provide financial assistance, if necessary, to enable teachers, administrators, and other educators to help design, organize, attend, and participate in the activities of the regional consortium.

(e) Maintain on-line computer communications with all regional consortiums and the Eisenhower National Clearinghouse for Science and Mathematics Education.

(f) Document and report to the Secretary on the consortium's development and implementation process, and collect data that allow for evaluation of each major project objective, especially in terms of the impact of participation in consortium activities on the performance of teachers and their students. Each consortium must participate in any evaluation the Secretary may conduct.

(g) Establish a broadly based regional board to oversee the administration and establishment of program priorities for the regional consortium. The board shall include classroom teachers (public and private), university scholars, and representatives of major regional groups, organizations, or programs active in mathematics and science systemic reform efforts, such as State educational agencies, the National Diffusion Network, mathematics and science professional organizations, the National Science Foundation's State Systemic Initiatives, State legislatures, Governor's offices, local schools, boards of education, parent organizations, and business, labor, and industry organizations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: The Education Department's General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Program Authority: 20 U.S.C. 2994–2994f.

(Catalog of Federal Domestic Assistance Number 84.168, Dwight D. Eisenhower Regional Mathematics and Science Education Consortiums Program)

Dated: July 31, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–19379 Filed 8–12–92; 8:45 am]

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Reader Aids

Federal Register

Vol. 57, No. 157

Thursday, August 13, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-3187
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

34061-34200.....3
34201-34494.....4
34495-34664.....5
34665-34850.....6
34851-35454.....7
35455-35744.....10
35745-35980.....11
35981-36350.....12
36351-36586.....13

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6463.....36349

Executive Orders:
8597 (Revoked by PLO 6939 of July 22, 1992.....35467
12674 (See OGE final rule of May 7, 1992).....35006
12731 (See OGE final rule of May 7, 1992).....35006
12813.....34851

4 CFR
Ch. III.....34167

5 CFR
532.....35745
2635.....35006

Proposed Rules:
297.....35491

7 CFR
28.....34495
246.....34500
400.....34665
718.....34201
719.....34201
720.....34201
907.....34203
908.....34203
932.....35745, 36351
944.....35747, 36354
989.....34206
998.....34061
1209.....34349, 35004
1413.....34201
1414.....34201
1942.....35627

Proposed Rules:
58.....35492
300.....34349
318.....35627
319.....34349
906.....34268
948.....34269
1033.....36536
1036.....36536
1049.....36536
1124.....34694
1135.....34694
1413.....34087

8 CFR
103.....34506
240.....34506

9 CFR
303.....34174
381.....34174

Proposed Rules:
318.....35505

10 CFR
50.....35455

Proposed Rules:
Ch. I.....34886
50.....34666

11 CFR
110.....36344
200.....34508

Proposed Rules:
110.....36023

12 CFR
201.....34064
226.....34676
584.....35456
1102.....35004, 36356
1617.....35728

Proposed Rules:
Ch. VII.....34090
3.....35507
203.....36024
208.....35507
225.....35507
325.....35507
741.....34091

14 CFR
13.....34511
21.....34208-34213, 34511, 35981
23.....35981
25.....34208-34213, 34511, 34681
39.....34065-34073, 34215-34220, 35982
71.....34074, 35983
91.....34614
95.....36361
97.....34221, 34512, 35984, 35986
121.....34681
135.....34681

Proposed Rules:
1.....35888
21.....34270, 36027, 36029, 36375
25.....34270, 36375
27.....36027
29.....36029
39.....36439
61.....35888
71.....34271, 34530, 34531, 34809, 36031, 36378
91.....35888
121.....35888
125.....35888
135.....35888

141 ... 35888
142 ... 35888

15 CFR

903 ... 35749

16 CFR

260 ... 36363
1115 ... 34222
1116 ... 34230
Proposed Rules:
19 ... 34532
23 ... 34532
245 ... 34532
453 ... 34532
1116 ... 34272
1700 ... 34274

17 CFR

4 ... 34853
30 ... 36369
32 ... 36369
200 ... 36442
228 ... 36442
229 ... 36442
230 ... 36442
239 ... 36442
240 ... 36442
249 ... 36442
260 ... 36442
Proposed Rules:
1 ... 34533
200 ... 35070, 35202
201 ... 35070
202 ... 35070, 35431, 35442
210 ... 35070
228 ... 36502
229 ... 35070, 35202
230 ... 35070, 35202, 36502
232 ... 35070
239 ... 34701, 35070, 35202, 36502
240 ... 34701, 35070, 35202, 36502
249 ... 35070, 35202, 36502
250 ... 35431
259 ... 35070
260 ... 35070, 35442, 36502
269 ... 35431
270 ... 34701, 34726, 35202
274 ... 34701, 35202

18 CFR

271 ... 34682
284 ... 36128
Proposed Rules:
2 ... 35525
284 ... 35525, 35766

19 CFR

4 ... 35750
24 ... 35458
207 ... 34820
Proposed Rules:
101 ... 34809, 35530
146 ... 35530

20 CFR

10 ... 35752
416 ... 35459

21 CFR

14 ... 35461
155 ... 34244
169 ... 34245
176 ... 34865
178 ... 35462
510 ... 35988
520 ... 35988
558 ... 34515
1308 ... 36371, 36372
Proposed Rules:
341 ... 34733–34735
1301 ... 36439
1304 ... 36439

23 CFR

1212 ... 35989
Proposed Rules:
750 ... 34168

24 CFR

4 ... 34246
889 ... 36338
890 ... 36330
Proposed Rules:
92 ... 34640
290 ... 34834
886 ... 34834

25 CFR

Proposed Rules:
515 ... 34809
519 ... 34349
522 ... 34349
523 ... 34349
524 ... 34349
556 ... 34349
558 ... 34349
571 ... 34809
577 ... 34809

26 CFR

1 ... 36001
5f ... 36001
602 ... 36001
Proposed Rules:
1 ... 34092, 34736, 34740, 34886, 35536
5h ... 34736, 34740
301 ... 36031

28 CFR

524 ... 34662
571 ... 34662

29 CFR

1910 ... 35630
1926 ... 35630
Proposed Rules:
1910 ... 34192
1926 ... 34656

30 CFR

70 ... 34683
75 ... 34683
Proposed Rules:
250 ... 36032
718 ... 35960
720 ... 35960

31 CFR

312 ... 34684
317 ... 34684
Proposed Rules:
210 ... 34650

32 CFR

191 ... 35755
706 ... 35463, 35464

33 CFR

100 ... 34075
117 ... 34868
135 ... 36314
136 ... 36314
137 ... 36314
155 ... 36222
157 ... 36222
165 ... 35465, 35466, 35755
222 ... 35757
Proposed Rules:
165 ... 34741, 36034
179 ... 36034

34 CFR

8 ... 34646
Proposed Rules:
99 ... 35964
280 ... 36324
316 ... 34620
318 ... 34620
319 ... 34620
555 ... 34488

37 CFR

Proposed Rules:
1 ... 36034
10 ... 36034

38 CFR

3 ... 34517, 36439
21 ... 35628
Proposed Rules:
3 ... 34536

40 CFR

52 ... 34249–34251, 35758, 35759, 36004
180 ... 34517, 34518, 36004
185 ... 36005
281 ... 34519
721 ... 34252
Proposed Rules:
50 ... 35542
52 ... 35769, 35771, 36040
122 ... 35774
180 ... 34537, 36042–36046
268 ... 35940
271 ... 35940
300 ... 34742
308 ... 34742
721 ... 34281–34283

41 CFR

101–45 ... 34253

42 CFR

405 ... 36006
406 ... 36006
409 ... 36006
410 ... 36006
411 ... 36006
412 ... 36006
413 ... 36006
418 ... 36006
420 ... 35760
489 ... 36006
493 ... 35760

43 CFR

3100 ... 35968
Public Land Orders:
6932 ... 35627
6938 ... 34520
6939 ... 35467
6940 ... 35468
6941 ... 34685
Proposed Rules:
12 ... 34755

44 CFR

64 ... 34685, 34688
361 ... 34868

45 CFR

98 ... 34352
99 ... 34352
255 ... 34434
257 ... 34434
801 ... 36018
Proposed Rules:
1224 ... 35775

46 CFR

28 ... 34188
30 ... 36222
32 ... 36222
70 ... 36222
90 ... 36222
172 ... 36222
272 ... 34689
298 ... 34690
514 ... 36248
515 ... 36248
520 ... 35761
550 ... 34076, 35761, 36248
580 ... 34076, 35761, 36248
581 ... 36248

47 CFR

22 ... 34077
43 ... 34520
64 ... 34253
73 ... 34077, 34078, 34263, 34692, 34872, 35763, 36018–36021
76 ... 35468
80 ... 34261
90 ... 34692
95 ... 36372
Proposed Rules:
Ch. I ... 35776
1 ... 36047
15 ... 36049
21 ... 34889
22 ... 34889
23 ... 34889
25 ... 34889
73 ... 34092, 34284, 34285, 36047, 36050, 36051
74 ... 36378
94 ... 34093
97 ... 34285

48 CFR

332 ... 35472
333 ... 35472
2509 ... 34881
2527 ... 34882
9900 ... 34167
9902 ... 34167
9903 ... 34078, 34167
9904 ... 34078, 34167
Proposed Rules:
1819 ... 34094
1852 ... 34094
5415 ... 36051
5452 ... 36051

49 CFR

1063 ... 35763

1109.....35628
Proposed Rules:
172.....34542
225.....34756
234.....36054
571.....34539
1002.....35557
1039.....34890
1141.....34891
1180.....34891, 35559

50 CFR

17.....35473
215.....34081
630.....34264
661.....34085, 34883, 34884, 35764, 36021
663.....34266, 35765
672.....34884, 35004, 35487, 35489, 35765
675.....35487, 35489
Proposed Rules:
17.....34095–34100, 34892, 36380
20.....35446
216.....34101
218.....34101
222.....34101
611.....35627
625.....34107, 36055
663.....34757
685.....35627

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List August 7, 1992

Public Laws

102d Congress, 2nd Session, 1992

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