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Presidential Documents

Title 3—

The President

Proclamation 7153 of December 1, 1998

World AIDS Day, 1998

By the President of the United States of America

A Proclamation

On World AIDS Day, we are heartened by the knowledge that our unprecedented investments in AIDS research have resulted in new treatments that are prolonging the lives of many people living with the disease. Thousands of scientists, health care professionals, and patients themselves have joined together to advance our understanding of HIV and AIDS and improve treatment options. Because of the heroic efforts of these people, fewer and fewer Americans are losing their lives to AIDS, and for that we are immensely thankful.

But the AIDS epidemic is far from over. Within racial and ethnic minority communities, HIV and AIDS are a severe and ongoing crisis. While the number of deaths in our country attributed to AIDS has declined for 2 consecutive years, AIDS remains the leading killer of African American men aged 25–44 and the second leading killer of African American women in the same age group. African Americans, who comprise only 13 percent of the U.S. population, accounted for 43 percent of new AIDS cases in 1997 and 36 percent of all AIDS cases. Hispanic Americans represent just 10 percent of our population, but they account for more than 20 percent of new AIDS cases; and AIDS is also becoming a critical concern to Native American and Asian American communities. Young people of every racial and ethnic community are also disproportionately impacted by AIDS, both in the number of new AIDS cases and in the number of new HIV infections. In fact, the Centers for Disease Control and Prevention estimate that approximately half of all new HIV infections in the United States occur in people under age 25 and that one-quarter occur in people under age 22.

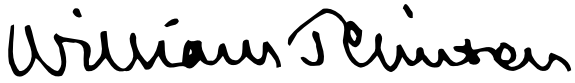
Across the world, the situation is even more grim. As with other epidemics before it, AIDS hits hardest in areas where knowledge about the disease is scarce and poverty is high. Of the nearly 6 million people newly infected with HIV each year, more than 90 percent live in the poorest nations of the world.Entire communities are threatened by this epidemic, and the growing number of children who will lose parents to AIDS will have a devastating impact on these societies. By the year 2010, there may be as many as 40 million children who will have been orphaned by AIDS, and developing nations will have to struggle to deal with the overwhelming needs of a generation of young people left without parents.

This year's World AIDS Day theme, ''Be A Force For Change,'' is a reminder that each of us has a role to play in bringing the AIDS epidemic to an end. Our response must be comprehensive and ongoing. It must also be a collaborative one, bringing together governments and communities in a shared effort to expand prevention efforts, raise awareness among young people of the risks of HIV infection and how to avoid it, increase access to lifesaving therapies, and ensure that those who are living with HIV and AIDS receive the care and services they need.

Developing a vaccine for HIV is perhaps our best hope of eradicating this terrible disease and stemming the tide of pain and desolation it has wrought. The global community has joined together in making the development of an HIV vaccine a top international priority. Within the next decade, we hope to have the means to stop this deadly virus, but until we reach that day we must remain strong in our crusade to prevent the spread of HIV and AIDS and to care for those living with the disease. In this way we can best honor the memory of the many loved ones we have lost to AIDS.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 1, 1998, as World AIDS Day. I invite the Governors of the States, the Commonwealth of Puerto Rico, officials of the other territories subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to defeating HIV and AIDS. I encourage every American to participate in appropriate commemorative programs and ceremonies in workplaces, houses of worship, and other community centers and to reach out to protect and educate our children and to help and comfort all people who are living with HIV and AIDS.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of December, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.



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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department in order to delegate to the Chief Economist and the Director of the Office of Risk Assessment and Cost-Benefit Analysis the authority to enter into contracts, grants, or cooperative agreements to further research programs in the food and agricultural sciences as authorized in 7 U.S.C. 3318.

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Betty L. Ollila, Deputy Assistant General Counsel, General Law Division, Office of the General Counsel, Department of Agriculture, Room 2321–S, Washington, D.C. 20250, telephone 202–720–5824.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required and good cause is found that this rule may be made effective upon publication in the **Federal Register**.

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12866 and 12988. In addition, this action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 605), and thus is exempt from the provisions of that Act. Finally, this action is not a rule as defined in 5 U.S.C. 804, and thus does not require review by Congress.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for part 2 continues to read as follows:

Authority: Sec. 212(a), Pub. L. 103–354, 108 Stat. 3210, 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949–1953 Comp., p. 1024.

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

2. Section 2.29 is amended by adding a new paragraph (a)(2)(iii) to read as follows:

§ 2.29 Chief Economist.

(a) * * *

(2) * * *

(iii) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agriculture sciences (7 U.S.C. 3318).

* * * * *

Subpart L—Delegations of Authority by the Chief Economist

3. Section 2.71 is amended by adding a new paragraph (a)(3) to read as follows:

§ 2.71 Director, Office of Risk Assessment and Cost-Benefit Analysis.

(a) * * *

(3) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agriculture sciences (7 U.S.C. 3318).

* * * * *

For Subpart D.

Dated: November 30, 1998.

Dan Glickman,

Secretary of Agriculture.

For Subpart L.

Dated: October 13, 1998.

Keith Collins,

Chief Economist.

[FR Doc. 98–32281 Filed 12–3–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–172–AD; Amendment 39–10544; AD 98–11–19]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in airworthiness directive (AD) 98–11–19 that was published in the **Federal Register** on May 28, 1998 (63 FR 29096). The typographical error in the applicability statement of the AD resulted in a reference to an engine model that does not exist. This AD is applicable to certain Airbus Model A310 and A300–600 series airplanes. This AD requires a visual inspection to detect cracks in the aft mount beam assembly of the engine; and replacement of any cracked beam with a new beam or beam assembly; and a fluorescent penetrant inspection to detect cracks in the aft mount beam assembly of the engine, and various follow-on actions.

DATES: Effective July 2, 1998.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 98–11–19, amendment 39–10544, applicable to certain Airbus Model A310 and A300–600 series airplanes, was published in the **Federal Register** on May 28, 1998 (63 FR 29096). That AD requires a visual inspection to detect cracks in the aft mount beam assembly of the engine, and replacement of any cracked beam with a new beam or beam assembly. That AD also requires a fluorescent penetrant inspection to detect cracks in the aft mount beam assembly of the engine, and various follow-on actions.

As published, that AD contained a typographical error in the applicability statement: the applicability statement indicated that the AD is applicable to

Model A310 and A300–600 series airplanes, equipped with Pratt & Whitney engines of various models, including Model PW4151. The designation should be Model PW4152. The engine model designated PW4151 in the applicability statement of the published AD does not exist.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

The effective date of this AD remains July 2, 1998.

§ 39.13 [Corrected]

On page 29097, in the second column, the applicability statement of AD 98–11–19 is corrected to read as follows:

* * * * *

''Applicability: Model A310 and A300–600 series airplanes, equipped with Pratt & Whitney Model JT9D–7R4D1, JT9D–7R4E1, JT9D–7R4H1, PW4152, PW4156A, or PW4158 engines; certificated in any category.''

* * * * *

Issued in Renton, Washington, on November 25, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–32097 Filed 12–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–12]

Establishment of Class D and E Airspace, Amendment to Class D and E Airspace; Montgomery, AL

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Final rule.

SUMMARY: This amendment modifies Class D and E surface areas airspace for Montgomery Regional Airport—Dannelly Field, Montgomery, AL, and establishes Class D and E surface areas airspace for Maxwell AFB, AL. Presently, Maxwell AFB is contained within the Montgomery, AL, Class D and E airspace areas. As a result of this action, the Montgomery, AL, Class D and E airspace to the surface will be reduced concurrent with the establishment of the Class D and E airspace areas for Maxwell AFB.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On October 9, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class D and E surface areas airspace at Montgomery Regional Airport—Dannelly Field, Montgomery, AL, and establishing Class D and E surface areas airspace for Maxwell AFB, AL, (63 FR 54403). This action provides adequate Class D and E surface areas airspace for IFR operations at Montgomery Regional Airport—Dannelly Field, Montgomery, AL, and establishes Class D and E surface areas airspace at Maxwell AFB, AL. Maxwell AFB currently is included in the Montgomery, AL, Class D and E airspace areas. Class D designations and Class E airspace areas designated as surface areas for an airport are published in Paragraphs 5000 and 6002 respectively of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class D and E airspace at Montgomery Regional Airport—Dannelly Field, Montgomery, AL, and establishes Class D and E airspace at Maxwell AFB, AL. Class D and E airspace to the surface is required to accommodate current Standard Instrument Approach Procedures (SIAP's) and contain Instrument Flight Rules (IFR) operations at Maxwell AFB.

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 ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11304; 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 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

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO AL D Maxwell AFB, AL [New]

Maxwell AFB
(Lat. 32°22′45″N, long. 86°21′45″W)
Montgomery Regional Airport—Dannelly Field, AL
(Lat. 32°18′02″N, long. 86°23′38″W)
Montgomery VORTAC
(Lat. 32°13′20″N, long. 86°19′11″W)

That airspace extending upward from the surface to and including 2,200 feet MSL within a 5-mile radius of Maxwell AFB, excluding that airspace south of a line 2.5 miles north of and parallel to RWY 10–28 at Montgomery Regional Airport—Dannelly Field and southwest of a line along the Montgomery VORTAC 320° radial. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO AL D Montgomery, AL [Revised]

Montgomery Regional Airport—Dannelly Field, AL
(Lat. 32°18′02″N, long. 86°23′38″W)
Maxwell AFB
(Lat. 32°22′45″N, long. 86°21′45″W)
Montgomery VORTAC
(Lat. 32°13′20″N, long. 86°19′11″W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 5-mile radius of Montgomery Regional Airport—Dannelly Field, excluding that airspace north of a line 2.5 miles north of and parallel to RWY 10–28 at Montgomery Regional Airport—Dannelly Field and northeast of a line along the Montgomery VORTAC 320° radial. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace designated as surface areas

* * * * *

ASO AL E2 Maxwell AFB, AL [New]

Maxwell AFB
(Lat. 32°22′45″N, long. 86°21′45″W)
Montgomery Regional Airport—Dannelly Field, AL
(Lat. 32°18′02″N, long. 86°23′38″W)
Montgomery VORTAC
(Lat. 32°13′20″N, long. 86°19′11″W)

Within a 5-mile radius of Maxwell AFB, excluding that airspace south of a line 2.5 miles north of and parallel to RWY 10–28 at Montgomery Regional Airport—Dannelly Field and southwest of a line along the Montgomery VORTAC 320° radial. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO AL E2 Montgomery, AL [Revised]

Montgomery Regional Airport—Dannelly Field, AL
(Lat. 32°18′02″N, long. 86°23′38″W)
Maxwell AFB
(Lat. 32°22′45″N, long. 86°21′45″W)
Montgomery VORTAC
(Lat. 32°13′20″N, long. 86°19′11″W)

Within a 5-mile radius of Montgomery Regional Airport—Dannelly Field, excluding that airspace north of a line 2.5 miles north of and parallel to RWY 10–28 at Montgomery Regional Airport—Dannelly Field and northeast of a line along the Montgomery VORTAC 320° radial. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on November 19, 1998.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–32247 Filed 12–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–37]

Amendment to Class D Airspace and Class E Airspace; Rome, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action removes Class D airspace and Class E airspace extensions at Griffiss Airfield, Rome, NY. The airport has been closed and all instrument procedures for the airport have been cancelled. The need for Class D and the Class E airspace extensions no longer exists for Instrument Flight Rules (IFR) operations at the airport. This action will result in the airspace reverting to Class G airspace.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 2, 1998, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove the Class D airspace and associated Class E airspace extensions at Griffiss Airfield, Rome, NY, was published in the **Federal Register** (63 FR 52996).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be removed subsequently from the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) removes Class D airspace and the Class E airspace extensions at Rome, NY. The required criteria for Class D airspace and the Class E airspace extensions at Griffiss Airfield no longer exists since the instrument approach procedures to the Griffiss Airfield have been cancelled. These areas will be removed from the appropriate aeronautical charts.

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. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Exective Order 12866; (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 will not have 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

Airspace, Incorporation by reference, Navigation (air).

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. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AEA NY D Rome, NY [Removed]

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AEA NY E–4 Rome, NY [Removed]

* * * * *

Issued in Jamaica, New York on November 24, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–32243 Filed 12–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–38]

Establishment of Class E Airspace; Fishers Island, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Fishers Island, NY. The amendment of a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) to Elizabeth Field, Fishers Island, NY, requires the establishment of controlled airspace extending upward from 700 feet Above Ground Level (AGL) to accommodate the SIAP and for Instrument Flight Rules (IFR) operations to the airport. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations to Elizabeth Field at Fishers Island, NY.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111. John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 20, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Fishers Island, NY, was published in the **Federal Register** (63 FR 55972). The VOR or GPS–A SIAP has been amended for Elizabeth Field. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at the airport.

The notice proposed to establish controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes Class E airspace at Fishers Island, NY, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the VOR or GPS–A SIAP to Elizabeth Field.

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. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (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 will not have 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

Airspace, Incorporation by reference, Navigation (air).

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. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Fishers Island, NY [New]

Elizabeth Field, NY

(Lat. 41°15′05″ N., long. 72°01′54″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Elizabeth Field, excluding the portion that coincides with the Montauk, NY, Westerly, RI, and Groton, CT, Class E airspace areas.

* * * * *

Issued in Jamaica, New York on November 24, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–32244 Filed 12–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–36]

Amendment to Class E Airspace; Rome, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E airspace at Griffiss Airfield, Rome, NY. The airport has been closed and all instrument procedures for the airport have been cancelled. The need for Class E airspace no longer exists for Instrument Flight Rules (IFR) operations at the airport. This action will result in the airspace reverting to Class G airspace.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 2, 1998, a proposal to amend Part 71 of the Federal Aviation

Regulations (14 CFR Part 71) to remove the Class E airspace extending upward from 700 feet above the surface at Griffiss Airfield, Rome, NY, was published in the **Federal Register** (63 FR 52999).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be removed subsequently from the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) removes Class E airspace at Rome, NY. The need for controlled airspace extending from 700 feet AGL at the Griffiss Airfield no longer exists. This area will be removed from the appropriate aeronautical charts.

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. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (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 will not have 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

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Rome, NY [Removed]

* * * * *

Issued in Jamaica, New York on November 24, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–32242 Filed 12–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SPATS No. AL–068–FOR]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Alabama proposed revisions to and additions of rules concerning definitions, petitions to initiate rulemaking, license applications, operation plans, reclamation plans, subsidence control, lands eligible for remining, permit applications, small operator assistance program, performance bond release, hydrologic balance, coal mine waste, backfilling and grading, revegetation, soil removal and stockpiling, inspections, and hearings. Alabama intends to revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290–7282. Internet: aabbs@balgw.mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Alabama Program

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the May 20, 1982, **Federal Register** (47 FR 22062). You can find later actions concerning the Alabama program at 30 CFR 901.15 and 901.16.

II. Submission of the Proposed Amendment

By letter dated August 4, 1998 (Administrative Record No. AL–0584), Alabama submitted an amendment to its program under SMCRA. Alabama submitted the amendment in response to a May 20, 1996, letter (Administrative Record No. AL–0555) and a June 17, 1997, letter (Administrative Record No. AL–0568) that we sent to Alabama in accordance with 30 CFR 732.17(c) and at its own initiative.

We announced receipt of the amendment in the August 25, 1998, **Federal Register** (63 FR 45192). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on September 24, 1998. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment, we identified regulation reference errors at 880–X–2A–.06, definitions of material damage and occupied residential dwellings and structures related thereto, and at 880–X–8I–.10, subsidence control plans. We notified Alabama of these concerns by telephone on October 1, 1998, and by letter dated October 15, 1998 (Administrative Record No. AL–0587).

During our telephone conversation on October 1, 1998, Alabama indicated that it would not be able to address the regulation reference errors during the

current State rulemaking. Therefore, we are proceeding with this final rule **Federal Register** document.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment.

Any revisions that we do not discuss below are about minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. Revisions to Alabama's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

The State rules listed in the table contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State rules and the Federal regulations are minor.

Topic	State regulation	Federal counterpart regulation
Definition of drinking, domestic or residential water supply.	880–X–2A–.06	30 CFR 701.5.
Definition of lands eligible for remining	880–X–2A–.06	30 CFR 701.5.
Definition of non-commercial building	880–X–2A–.06	30 CFR 701.5.
Definition of previously mined area	880–X–2A–.06	30 CFR 701.5.
Definition of program administrator	880–X–2A–.06	30 CFR 795.3.
Definition of qualified laboratory	880–X–2A–.06	30 CFR 795.3.
Definition of replacement of water supply.	880–X–2A–.06	30 CFR 701.5.
Definition of unanticipated event or condition.	880–X–2A–.06	30 CFR 701.5.
Surface Mining; Operations Plan: Permit Map(s).	880–X–8F–.08 (1)(e), (1)(l) and (1)(o)	30 CFR 779.24(e), 779.25 (a)(8) and (a)(9).
Surface Mining; Reclamation Plan: General Requirements.	880–X–8F–.09(2)(d)	30 CFR 780.18(b)(4).
Surface Mining; Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments.	880–X–8F–.11 (1), (1)(b), (1)(c), (2), (3)(c) and (6).	30 CFR 780.25 (a), (a)(2), (a)(3), (b), (c)(3) and (f).
Surface Mining; Additional Cross Sections, Maps, and Plans.	880–X–8F–.20	30 CFR 779.25(a) (1) through (4), (6) and (10).
Underground Mining; Description of Geology and Hydrology and Determination of the Probable Hydrologic Consequence (PHC).	880–X–8H–.06(1)(e)3.(iv)	30 CFR 784.14(e)(3)(iv).
Underground Mining; Operations Plan: Permit Map(s).	880–X–8I–.07 (1)(e), (1)(l) and (1)(o)	30 CFR 783.24(e), 783.25 (a)(8) and (a)(9).
Underground Mining; Subsidence Control Plan.	880–X–8I–.10 (1), (2), (2)(b) and (2)(g)	30 CFR 784.20 (a), (b), (b)(2) and (b)(7).
Underground Mining; Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments.	880–X–8I–.12 (1), (1)(b), (1)(c), (2), (3)(c) and (6).	30 CFR 784.16 (a), (a)(2), (a)(3), (b), (c)(3) and (f).
Underground Mining; Additional Cross Sections, Maps, and Plans.	880–X–8I–.20	30 CFR 783.25.
Lands Eligible for Remining	880–X–8J–.13	30 CFR 785.25.
Review of Permit Applications	880–X–8K–.10 (2)(d) and (3)(m)	30 CFR 773.15 (b)(4) and (c)(13).
Small Operator Assistance Program; Eligibility for Assistance.	880–X–8N–.07(c)	30 CFR 795.6(a)(2).
Small Operator Assistance Program; Data Requirements.	880–X–8N–.10	30 CFR 795.9.
Small Operator Assistance Program; Applicant Liability.	880–X–8N–.13 (1), (1)(c), (1)(e), (1)(f) and (2).	30 CFR 795.12 (a), (a)(1), (a)(2), (a)(3) and (b).
Procedures for Seeking Release of Performance Bond.	880–X–9D–.02(1)(c)	30 CFR 800.40(a)(3).
Surface Mining; Hydrologic Balance: Siltation Structures.	880–X–10C–.17 (1)(c) and (3)(b)	30 CFR 701.5 and 816.46(c)(2).
Surface Mining; Impoundments	880–X–10C–.20 (1)(a), (1)(d), (1)(e), (1)(f)1., (1)(i)2.(i), (1)(i)2.(iii), (1)(l), (3)(b)1. and (3)(b)2.	30 CFR 816.49 (a)(1), (a)(4), (a)(5), (a)(6)(i), (a)(9)(ii)(a), (a)(9)(ii)(c), (a)(12), (c)(2)(i) and (c)(2)(ii).
Surface Mining; Coal Mine Waste: General Requirements.	880–X–10C–.38(1)	30 CFR 816.81(a).
Surface Mining; Backfilling and Grading: Thin Overburden.	880–X–10C–.54	30 CFR 816.104.
Surface Mining; Backfilling and Grading: Thick Overburden.	880–X–10C–.55	30 CFR 816.105.
Surface Mining; Revegetation: Standards for Success.	880–X–10C–.62(3)	30 CFR 816.116(c) (1) and (2).
Underground Mining; Hydrologic–Balance Protection.	880–X–10D–.12 (9)	30 CFR 817.41(j).
Underground Mining; Hydrologic Balance: Siltation Structures.	880–X–10D–.17 (1)(c) and (3)(b)	30 CFR 701.5 and 817.46(c)(2).

Topic	State regulation	Federal counterpart regulation
Underground Mining; Impoundments	880–X–10D–.20 (1)(a), (1)(d), (1)(e), (1)(f)1., (1)(i)2.(i), (1)(i)2.(iii), (1)(l), (3)(b)1. and (3)(b)2.	30 CFR 817.49 (a)(1), (a)(4), (a)(5), (a)(6)(i), (a)(9)(ii)(a), (a)(9)(ii)(c), (a)(12), (c)(2)(i) and (c)(2)(ii).
Underground Mining; Coal Mine Waste: General Requirements.	880–X–10D–.34(1)	30 CFR 817.81(a).
Underground Mining; Revegetation: Standards for Success.	880–X–10D–.56(3)	30 CFR 817.116(c) (1) and (2).
Underground Mining; Subsidence Control.	880–X–10D–.58	30 CFR 817.121.
Prime Farmland; Applicability	880–X–10G–.03(2)	30 CFR 823.11(b).
Prime Farmland; Soil Removal and Stockpiling.	880–X–10G–.04(3)(b)	30 CFR 823.12(c)(2).
Inspections	880–X–11B–.02 (8)(d) and (9)	30 CFR 840.11 (g)(4) and (h).
Request for Hearing	880–X–11D–.11(1)	30 CFR 845.19(a).

Because the above revisions have the same meaning as the corresponding Federal regulations, we find that these regulations are no less effective than the Federal regulations.

2. 880–X–2A–.06 Definition of Material Damage

Alabama added a definition of material damage at 880–X–2A–.06. The definition found at 880–X–2A–.06 is the same as the Federal definition at 30 CFR 701.5. However, Alabama's definition refers to the term ''material damage'' as used in 880–X–8I–.20 and 880–X–10D–.58; and Alabama's regulation at 880–X–8I–.20 does not use this term. The definition should refer to 880–X–8I–.10 and 880–X–10D–.58, since these are the regulations that use the term ''material damage.'' Alabama's regulations at 880–X–8I–.10 and 880–X–10D–.58 are also the counterparts to the Federal references of 30 CFR 784.20 and 30 CFR 817.121. As discussed earlier in this document, we notified Alabama of this typographical error by telephone on October 1, 1998, and in our letter dated October 15, 1998. Because the term ''material damage'' does not appear in 880–X–8I–.20, we find that this incorrect reference will have no effect on Alabama's program. Therefore, since Alabama's definition language is the same as the Federal definition language, we are approving the definition for use with Alabama's regulations at 880–X–8I–.10 and 880–X–10D–.58.

3. 880–X–2A–.06 Definition of Occupied Residential Dwelling and Structures Related Thereto

Alabama added a definition of occupied residential dwelling and structures related thereto at 880–X–2A–.06. Alabama's definition is the same as the Federal definition found at 30 CFR 701.5. However, Alabama's definition refers to the term ''occupied residential dwelling and structures related thereto'' as used at 880–X–8I–.20 and 880–X–10D–.58; and Alabama's regulation at 880–X–8I–.20 does not use this term. The definition should refer to 880–X–8I–.10 and 880–X–10D–.58, since these are the regulations that use the term ''occupied residential dwelling and structures related thereto.'' Alabama's regulations at 880–X–8I–.10 and 880–X–10D–.58 are also the counterparts to the Federal references of 30 CFR 784.20 and 30 CFR 817.121. As discussed earlier in this document, we notified Alabama of this typographical error by telephone on October 1, 1998, and in our letter dated October 15, 1998. Because the term ''occupied residential dwelling and structures related thereto'' does not appear in 880–X–8I–.20, we find that this incorrect reference will have no effect on Alabama's program. Therefore, since Alabama's definition language is the same as the Federal definition language, we are approving the definition for use with Alabama's regulations at 880–X–8I–.10 and 880–X–10D–.58.

4. 880–X–2A–.06, 880–X–10C–.17(1)(a), and 880–X–10D–.17(1)(a) Definition of Siltation Structure

Alabama defines a siltation structure as a ''sedimentation pond, a series of sedimentation ponds, or other treatment facility.'' Alabama removed this definition from its sections on surface coal mining and underground coal mining siltation structures at 880–X–10C–.17(1)(a) and 880–X–10D–.17(1)(a), and moved it to its definition section at 880–X–2A–.06.

Removing the definition of siltation structure from 880–X–10C–.17(1)(a) and 880–X–10D–.17(1)(a) and adding it to 880–X–2A–.06 is consistent with the changes made to the Federal regulations. We moved the counterpart Federal definition of siltation structure from the sections on surface coal mining and underground coal mining siltation structures at 30 CFR 816.46(a)(1) and 817.46(a)(1) and added it to the definition section at 30 CFR 701.5 on October 20, 1994 (59 FR 53022). Therefore, we find that the relocation of the definition of siltation structure will not make Alabama's regulations less effective than the Federal regulations.

5. 880–X–2A–.08 Petitions To Initiate Rulemaking

This section allows citizens to submit to Alabama's State regulatory authority a petition for the issuance, amendment, or repeal of any regulation. If the regulatory authority determines that the petition has a reasonable basis, it must publish a notice in a newspaper of general circulation once a week for two consecutive weeks, asking for public comment on the proposed change. Within 60 days of the receipt of the petition to initiate rulemaking, the regulatory authority must either deny the petition in writing on the merits or initiate rulemaking proceedings.

We find that Alabama's revised provisions are consistent with the intent of the counterpart Federal regulation provisions at 30 CFR 700.12 concerning petitions to initiate rulemaking. The Federal provisions allow any person to petition the Director of OSM to initiate a proceeding for the issuance, amendment, or repeal of any regulation under SMCRA. If the Director of OSM determines that the petition has a reasonable basis, a notice is published in the **Federal Register** asking for public comment on the proposed change. Within 90 days of the receipt of the petition, the Director of OSM must issue a written decision either granting or denying the petition. Therefore, Alabama's regulation is no less effective than the Federal regulation, and we are approving it.

6. 880–X–8I–.10(2)(h) Subsidence Control Plan

This section requires that a subsidence control plan include a description of the measures the permittee will take in accordance with 880–X–10D–.12(10) and 880–X–10D–.58(3) to replace adversely affected

protected water supplies or to mitigate or remedy any subsidence-related material damage to the land and protected structures. Alabama's requirement in this section is the same as the Federal requirements at 30 CFR 784.20(b)(8). However, the referenced regulation at 880–X–10D–.12(10) does not exist. Alabama's regulation should instead reference 880–X–10D–.12(9) and 880–X–10D–.58(3), which are counterparts to the Federal reference to 30 CFR 817.41(j) and 817.121(c). As discussed earlier in this document, we notified Alabama of this typographical error by telephone on October 1, 1998, and in our letter dated October 15, 1998. Therefore, we are approving 880–X–8I–.10(2)(h) with the understanding that Alabama will interpret the reference to 880–X–10–.12(10) as 880–X–10–.12(9) until such time that Alabama can correct the reference.

IV. Summary and Disposition of Comments

Public Comments

We requested public comments on the amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Alabama program (Administrative Record No. AL–0585). We did not receive any comments.

Environmental Protection Agency (EPA)

Provisions found at 30 CFR 732.17(h)(11)(ii) require us to get the written consent of the EPA for those provisions of the program amendment that relate to air or water quality standards published under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Alabama proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not request the EPA's consent.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. AL–0585). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Provisions found at 30 CFR 732.17(h)(4) require us to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 14, 1998, we requested comments on Alabama's amendment from the SHPO and ACHP (Administrative Record No. AL–0585), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment, with additional requirements, as submitted by Alabama on August 4, 1998. We approve the rules that Alabama proposed with the provision that they be fully placed in force in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 901, which codify decisions concerning the Alabama program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Alabama to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change to an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to State programs that are not approved by OSM. In the oversight of the Alabama program, we will recognize only the statutes, rules and other materials approved by the Secretary or by us, together with any consistent implementing policies, directives and other materials. We will require the enforcement by Alabama of only such provisions.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 13, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 901 is amended as set forth below:

PART 901—ALABAMA

1. The authority citation for Part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 901.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 901.15 Approval of Alabama regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
August 4, 1998	December 4, 1998	880–X–2A–.06; .08; 880–X–6A–.06(d)3.; 880–X–8F–.08(1)(e), (l) and (o); .09(2)(d); .11(1), (1)(b) and (c), (2), (3)(c), (6); .20; 880–X–8H–.06(1)(e)3.(iv); 880–X–8I–.07(1)(e),(l) and (o); .10(1), (2), (2) (b), (g) and (h); .12(1), (1) (b) and (c), (2), (3)(c), (6); .20; 880–X–8J–.13; 880–X–8K–.10(2)(d), (3)(m); 880–X–8N–.07(c); .10; .13(1), (1) (c), (e) and (f), (2);880X–9D–.02(1)(c);880–X–10C–.17(1) (a) and (c), (3)(b); .20(1)(a), (d), (e), (f)1., (i)2.(i) and (iii), (l), (3)(b)1. and 2.; .38(1); .54; .55; .62(3); 880–X–10D–.12(9); .17(1) (a) and (c), (3)(b); .20(1) (a), (d), (e), (f)1., (i)2. (i) and (iii), (l), (3)(b)1.and .2; .34(1); .56(3); .58; 880–X–10G–.03(2); .04(3)(b); 880–X–11B–.02 (8)(d), (9); 880–X–11D–.11(1).

[FR Doc. 98–32350 Filed 12–3–98; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–243–FOR, #76]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Ohio regulatory program (Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio proposed revisions to its rules pertaining to permitting requirements, bond release, and performance standards to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: George Rieger, Manager, Pittsburgh Oversight and Inspection Office, Appalachian Regional Coordinating Center, OSM, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153. Internet: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the August 10, 1982, **Federal Register** (47 FR 34668). You can find later actions on conditions of approval and program amendments at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of the Proposed Amendment

By letter dated December 30, 1997 (Administrative Record No. OH–2174–05), Ohio submitted a proposed amendment to its program in accordance with SMCRA and 30 CFR 732.17(c). Ohio proposes to revise the Ohio Administrative Code (OAC) at sections:

1501.13–4–05—Permit Application Requirements
1501.13–4–12—Special Categories of Mining
1501.13–4–14—Underground Permit Application Requirements
1501.13–7–05—Release of Performance Bond
1601.13–9–04—Performance Standards

We announced receipt of the proposed amendment in the January 23, 1998, **Federal Register** (63 FR 3507), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on February 23, 1998.

During our review of the amendment, we identified concerns with Ohio's rules at OAC 1501 at subsections 13–4–12, 13–4–05, 13–4–14, and 13–9–04. We notified Ohio of our concerns via electronic mail on May 5, 1998 (Administrative Record No. OH–2174–11). By letter dated June 2, 1998 (Administrative Record No. OH–2174–12), Ohio submitted revisions at OAC 1501 at subsections:

13–4–05 (H)(1)(c), (H)(2)(c), (H)(6)
13–4–14 (H)(1)(c), (H)(2)(c), (H)(6)
13–9–04 (H)(1)(c)(ii), (H)(1)(d)

to reference the criteria in Natural Resources Conservation Service's Technical Release No. 60 (TR 60), ''Earth Dams and Reservoirs,'' relating to the provisions of 1513.13(E) (1) and (2).

During a conference call on July 16, 1998 (Administrative Record No. OH–2174–13), we informed Ohio that one issue remained at OAC 1501:13–4–12. On September 4, 1998, Ohio telefaxed us revisions to subsection 13–4–12(F) (Administrative Record No. OH–2174–16).

Based on these revisions, we reopened the public comment period in the October 6, 1998, **Federal Register** (63 FR 53618). The comment period closed on October 21, 1998.

III. Director's Findings

Following, according to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the proposed amendment.

Any revisions that we do not specifically discuss below concern nonsubstantive wording changes or revised cross-references and paragraph notations to reflect organizational changes that result from this amendment.

A. Revisions to Ohio's Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

The proposed State regulations listed in the table below contain language that is the same or similar to the

corresponding sections of the Federal regulations. Any differences between the proposed State regulations and the Federal regulations are nonsubstantive.

Topic	State regulation (OAC)	Federal counterpart (30 CFR)
Permit Application Requirements	1501:13–4–05(H)(1)(a)	780.25(a)
Permit Application Requirements	1501.13–4–05(H)(1)(b)	780.25(a)(2)
Permit Application Requirements	1501:13–4–05(H)(1)(c)	780.25(a)(3)
Permit Application Requirements	1501:13–4–05(H)(2)(c)	780.25(c)(3)
Permit Application Requirements	1501:13–4–05(H)(3)(a)	780.25(c)
Permit Application Requirements	1501:13–4–05(H)(3)(c)	780.25(c)(2)
Permit Application Requirements	1501:13–4–05(H)(6)	780.25(f)
Permit Application Requirements	1501:13–4–12(E)	785.16(a)
Requirements for Special Categories Underground Mining	1501:13–4(H)(1)(a)	784.16(a)
Permit Application Underground Mining	150:13–4–14(H)(1)(b)	784.16(a)(2)
Permit Application Underground Mining	1501:13–4–14(H)(1)(c)	784.16(a)(3)
Permit Application Requirements Underground Mining	1501:13–4–14(H)(2)(c)	784.16(c)(3)
Permit Application Requirements Underground Mining	1501:13–4–14(H)(3)(a)	784.16(c)
Permit Application Requirements Underground Mining	1501:13–4–14(H)(3)(c)	784.16(c)(2)
Permit Application Requirements Underground Mining	1501:13–4–14(H)(6)	784.16(f)
Permit Application Requirements Bond Release	1501:13–7–05(A)(2)(a)(iv)	800.40(a)(3)
Protection of Hydrologic System	1501:13–9–04(H)(1)(a)	816/817.49(a)(1)
Protection of Hydrologic System	1501:13–9–04(H)(1)(c)(i)	816/817.49(a)(4)(i)
Protection of Hydrologic System	1501:13–9–04(H)(1)(c)(ii)	816/817.49(a)(4)(ii)
Protection of Hydrologic System	1501:13–9–04(H)(1)(d)	816/817.49(a)(5)
Protection of Hydrologic System	1501:13–9–04(H)(1)(e)(i)	816/817.49(a)(6)(i)
Protection of Hydrologic System	1501:13–9–04(H)(1)(h)(iii)	816/817.49(a)(ii)(A)
Protection of Hydrologic System	1501:13–9–04(H)(1)(k)	816/817.49(a)(12)

B. Regulations That Ohio Removed From the Ohio Administrative Code (OAC)

Ohio proposed to remove OAC 1501:13–9–04(G)(3)(b)—Sedimentation Ponds. We are approving the deletion because Ohio addresses these requirements at OAC 1501:13–9–04(H)(1)(h). We find that this change does not make the Ohio program less effective than the Federal regulations.

C. Revisions to Ohio's Regulations That Are Not Substantively Identical to the Corresponding Provisions of the Federal Regulations

Ohio proposed to add section OAC 1501:13–4–12(F)(4)(e) to prohibit a decrease in the aggregate total prime farmland acreage from that which existed prior to mining. Any constructed permanent water bodies must be located within the post-reclamation non-prime farmland portions of the permit area. If the prime farmland acreage is to be restored in a location other than the premining location, Ohio must approve the relocation. The permittee must obtain the consent of all affected landowners. We approve the provisions of this section because they are no less effective than 30 CFR 785.17(e)(5).

Ohio proposed to revise OAC 1501:13–7–05(A)(2)(c)(ii) to require that the request for the approval of reclamation phase III includes yield data for those acres reclaimed as pasture or grazing land, if appropriate. While the Federal regulations at 30 CFR 800.40 do not include this specific requirement, we are approving the revision as it is not inconsistent with the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

We solicited public comments and provided an opportunity for a public hearing on the proposed amendment. Because no one requested an opportunity to speak at a public hearing, no hearing was held. Two public comments were received. One commenter requested a copy of the specific language being proposed at OAC 1501:13–4–12(E). He also suggested that OAC 1501:13–9–4(H) include a notification of MSHA provision. We note that the Federal regulations at 30 816/817.49(a)(9) do not have this requirement. The second commenter questioned the 15-day comment period. She thought 30 days was required. We note that the shorter comment period appeared in the second **Federal Register** notice which re-opened the comment period. 30 CFR 732.17(h)(3) provides for a 15-day comment period under certain circumstances. The commenter also submitted a list of questions which generally addressed the effects of the proposed amendment on the landowner, industry, and the community at large. We note that amendments are reviewed based on consistency with the Federal regulations and accordance with the provisions of SMCRA. As discussed in Section V above, Ohio's proposed amendment is approved because it meets those standards.

Federal Agency Comments

According to 30 CFR 732.17(h)(11)(i), we solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Ohio program. The Department of Labor, Mine Safety and Health Administration, and the Department of the Army, Army Corps of Engineers, both concurred without comment.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions Ohio proposed to make in its amendment pertains to air or water quality standards. Nevertheless, OSM requested EPA's concurrence with the proposed amendment. EPA did not respond to OSM's request.

V. Director's Decision

Based on the above findings, we approve the proposed amendment as submitted by Ohio on December 30, 1997 and revised on June 2, 1998 and

September 4, 1998. We approve the rules that Ohio proposed with the provision that they be fully placed in force in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 935 which codifies decisions concerning the Ohio program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Ohio to bring its program into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 526DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

List of Subjects in 30 CFR 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 13, 1998.

Allen D. Klein,

Assistant Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 935.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 935.15 Approval of Ohio regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
December 30, 1997	December 4, 1998	OAC 1501:13–4–05, 1501:13–4–12, 1501:13–4–14, 1501: 13–7–05, 1501:13–9–04.

[FR Doc. 98–32349 Filed 12–3–98; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SPATS No. UT–039–FOR]

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published in the **Federal Register** (63 FR 63608) on November 16, 1998. The final rule removed a required amendment imposed by the Director of the Office of Surface Mining Reclamation and Enforcement (OSM) resulting from OSM's review of a previous amendment to the Utah Code. The November 16, 1998, final rule removed the last required amendment placed on Utah at 30 CFR 944.16, but inadvertently omitted removing the introductory text of § 944.16. This correction rectifies that error by removing and reserving all of § 944.16.

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: John A. Trelease, (202) 208–2783.

Correction of Publication

In final rule FR Doc. 98–30547, on page 63 FR 63611 in the **Federal Register** issue of November 16, 1998, make the following correction:

In the first column, § 944.16 should read, ''Section 944.16 is removed and reserved.''

Dated: December 1, 1998.

Richard G. Bryson,

Acting Assistant Director.

[FR Doc. 98–32348 Filed 12–3–98; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6192–8]

RIN 2060–AC28

National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: Today's action suspends the National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations (EO NESHAP) requirements for chamber exhaust and aeration room vents. The suspension allows affected sources subject to the EO NESHAP to defer compliance with the NESHAP requirements for chamber exhaust and aeration room vents for one year until December 6, 1999. This suspension does not affect the requirement for sources subject to the EO NESHAP to comply with provisions for sterilizer vents by December 6, 1998. This action does not change the level of the standards or the intent of the NESHAP promulgated in 1994.

DATES: This action is effective December 4, 1998.

Comments may be submitted until January 4, 1999.

ADDRESSES: Comments may be submitted to the Docket address which follows. Docket No. A–88–03, category VIII Amendments, containing information considered by the EPA in developing this rule, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, except for Federal holidays, at the EPA's Air and Radiation Docket and Information Center, room M1500, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying. This docket also contains information considered by the EPA in proposing and promulgating the original EO NESHAP.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact the appropriate EPA regional or Office of Enforcement and Compliance Assurance (OECA) representative:

Region I: Susan Lancey, Air Programs Enforcement Office Chief, U.S. EPA, Region I, JFK Federal Building (SEA), Boston, MA 02203–2211, PH: (617) 565–3587 Fax: (617) 565-4940

Region II: Umesh Dholakia, Air Compliance Branch Chief, U.S. EPA, Region II, 290 Broadway, New York, NY 10007–1866, PH: (212) 637–4023, Fax: (212) 637–3901

Region III: Dianne Walker, U.S. EPA, Region III (3AT12), 841 Chestnut Building, Philadelphia, PA 19107, PH: (215) 566–3297, Fax number (215) 566–2114

Region IV: Lee Page, U.S. EPA, Region IV (AR–4), 100 Alabama Street, SW, Atlanta, GA 30303–3104, PH: (404) 562–9131, Fax: (404) 562–9095

Region V: Bruce Vainer (AE–17J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, PH: (312) 886–6793, Fax: (312) 353–8289

Region VI: Robert Todd (6PD-R), U.S. EPA, Region VI (6PD–R), 1445 Ross Avenue, Suite 700, Dallas, TX 75202–2733, PH: (214) 665–2156, Fax: (214) 665–7263

Region VII: Richard Tripp, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, PH: (913) 551–7566 Fax: (913) 551–7065

Region VIII: Victoria Parker-Christensen, U.S. EPA, Region VIII (8P2–A), 999 18th Street, Suite 500, Denver, CO 80202–2405, PH: (303) 312–6441, Fax: (303) 312–6064

Region IX: Mae Wang, U.S. EPA, Region IX (Air–4), 75 Hawthorne Street, San Francisco, CA 94105, PH: (415) 744–1200 Fax: (415) 744–1076

Region X: Andrea Wullenweber, Office of Air Quality (OAQ–107), U.S. EPA, Region X, 1200 Sixth Avenue, Seattle, WA 98101–9797, PH: (206) 553–8760 Fax: (206) 553–0110

OECA: Charlie Garlow, U.S. EPA, OECA (2242A), 401 M Street, SW, Washington, DC 20460, PH: (202) 564–1088, Fax: (202) 564–0068.

For information concerning the analyses performed in developing this interim final rule, contact Mr. David Markwordt, Policy, Planning and Standards Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, PH: (919) 541–0837 Fax: (919) 541–0942. For information concerning the accident investigations, contact Mr. Craig Matthiessen, Chemical Emergency Preparedness and Prevention Office (5101), Office of Solid Waste and Emergency Response, U.S. EPA, 401 M Street, SW, Washington, DC 20460, PH: (202) 260–9781 Fax: (202) 260 0927.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic version of this rule is available for downloading from the EPA Technology Transfer Network (TTN) at ''http://www.epa.gov/ttn/oarpg/ramain.html.'' For assistance in downloading files, call the TTN Help line at (919) 541–5384.

Regulated Entities

Regulated categories and entities include:

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

Entity category	Description/SIC code
Industrial	Medical suppliers/3841, 3842. Pharmaceuticals/2834, 5122, 2831, 2833. Spice manufactures/2099, 5149, 2034, 2035, 2046. Contract Sterilizers/7399, 7218, 8091.
Federal Government	Not Affected.
State/Local/Tribal Gov	Not Affected.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities regulated by the NESHAP addressed in this interim final rule. If you have questions regarding the applicability of the NESHAP addressed in this interim final rule to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION** section.

The information presented in this preamble is organized as follows:

I. Background and Summary of Action
II. Summary of and Rationale for Suspension of Chamber Exhaust and Aeration Room Vent Requirements
III. Administrative Requirements
A. Paperwork Reduction Act
B. Executive Order 12866—Regulatory Planning and Review
C. Unfunded Mandates Reform Act
D. Regulatory Flexibility Act
E. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks
F. National Technology Transfer and Advancement Act
G. Executive Order 12875—Enhancing the Intergovernmental Partnerships
H. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments
I. Submission to Congress and the Comptroller General
J. Petitions for Judicial Review

I. Background and Summary of Action

On December 6, 1994 (59 FR 62585), the EPA promulgated the EO NESHAP which regulates emissions of ethylene oxide from new and existing commercial sterilization and fumigation operations using one ton or more of EO per year. The regulated category and entities affected by today's action are the sources described in 40 CFR 63.360. That provision includes commercial operations using ethylene oxide as a sterilant and fumigant in the production of medical equipment and supplies, and in miscellaneous sterilization and fumigation operations at both major and area sources. Note that this description is not intended to be exhaustive but, rather, to provide a guide for readers interested in this compliance extension. To determine whether your facility is affected by today's action, you should carefully examine the applicability criteria in 40 CFR 63.360 and the explanation provided in this document. If you have questions about the applicability of today's action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

In July 1997, the Agency learned of reports of explosions at ethylene oxide sterilization and fumigation facilities. EPA subsequently suspended the EO NESHAP for one year until December 6, 1998 to provide time to determine the appropriate action necessary to mitigate the cause of the explosions. 62 FR 64736

II. Summary of and Rationale for Suspension of Chamber Exhaust and Aeration Room Vent Requirements

As noted above, in July 1997, the Agency learned of reports of explosions at ethylene oxide facilities. Several of these explosions occurred at facilities subject to the EO NESHAP. The Agency immediately began conducting a preliminary investigation to determine if the emission control equipment mandated by 40 CFR part 63, Subpart O was in any way associated with the cause of the problems at these facilities. The Agency, on December 9, 1997, wishing to adopt a cautious approach in order to assure public and worker safety, published in the **Federal Register** an interim final rule suspending 40 CFR Part 63, Subpart O. 62 FR 64736. Since publication of the December 9, 1997 rule, both EPA and industry have continued to investigate the cause of the accidents.

In a June 2, 1998 letter to the Agency, the Ethylene Oxide Sterilization Association (EOSA) recommended, ''additional time to consider safe and economical control, installation, operation and maintenance alternatives applicable to aeration and chamber exhaust (backvent) emissions . . . ''(see Docket No. A–88–03, Item No. VIII–D–2). The Health Industries Manufacturers Association (HIMA) reviewed the recommendation. EOSA and HIMA membership represent most of the ethylene oxide sterilization and fumigation industry. EOSA ''concluded that the oxidizer systems had not been properly integrated with traditional EtO sterilization process operations, that is, installation, operation and maintenance issues had not been sufficiently addressed by sterilizer operators.'' EOSA also concluded that ''improperly overfeeding the oxidizer system from the chamber backvent was the primary safety concern.''

The Agency also conducted an independent investigation of the accidents and reviewed reports prepared by EPA Regional Offices and by EOSA member sterilization companies and, based on that investigation and review, concurred with the industry conclusion and recommendation quoted above (see Docket No. A–88–03, Item No. VIII–B–1). The Agency agrees that, in the cases where explosions occurred, the catalytic oxidizer units were overfed with ethylene oxide in concentrations above the safe operations limit due to abnormal activation of the chamber exhaust (backvent). Normally, EO rich effluent drawn (vented) from the sterilizer chamber at low flow is metered or mechanically restricted and diluted with air to prevent high concentrations of EO from entering the emissions control unit. The much greater backvent or chamber exhaust flow, often in combination with aeration room exhaust, generally is not restricted or diluted before entering the emissions control unit. Aeration room concentrations typically are well below the lower flammability limit for EO and the backvent is supposed to be activated only when an extremely low concentration of EO is present in the chamber during loading/unloading of products. Although all units functioned as intended, the abnormal activation of the backvent at high EO concentrations in the sterilization chamber led to the explosions. The Agency also concludes main vent emissions routed through the vacuum pump played no role in the explosions.

The Agency also concludes that any emissions control technology necessary to comply with this rule needs to be properly integrated into the sterilization system and operations, and must reflect the full range of normal and abnormal conditions that may occur. Investigations and safety reviews, conducted independently by EPA and EOSA members, confirmed that, as currently designed and operated, there still is a possibility that backvents could be activated while high EO concentrations are present in the sterilization chamber. Consequently, sterilization chamber operators will need to further evaluate the integration of the emission control technology with sterilizer operation to ensure prevention of future explosions. Total system safety issues can be addressed by conducting a comprehensive process hazard analysis (PHA) for each sterilizer process and developing and instituting safeguards that address these hazards. Additional time is required to complete these analyses and install safeguards.

In this matter, the Agency wishes to err, if at all, on the side of safety. Accordingly, the Agency is today suspending the EO NESHAP emission limitation requirements in 40 CFR Part 63, Subpart O, for chamber exhaust and aeration room vents, as those emission points are defined at 40 CFR 63.361, for one year, until December 6, 1999, pursuant to EPA's general rulemaking authority under CAA Section 301(a), 42 U.S.C. 7601(a). Sources must comply with the EO NESHAP emission limitation requirements in 40 CFR part 63, Subpart O, for sterilization chamber vents, as those emission points are defined at 40 CFR 63.361 by December 6, 1998 because EPA has determined that they do not pose a safety concern.

CAA Section 301(a) grants the Administrator of the EPA the authority ''to prescribe such regulations as are necessary to carry out his functions under this Act.'' Given the unique circumstances and uncertainty surrounding the EO NESHAP, as described in this document, EPA believes that it is necessary to further suspend this rule's requirements for chamber exhaust and aeration room vent for the safety of the public and workers in and around EO facilities. As EOSA's and EPA's investigations have shown, the control requirements of the EO NESHAP for chamber exhaust and aeration room vents continue to pose potential problems for which solutions are being developed. These solutions include the redesign of control systems to prevent the overfeeding of EO in concentrations above safe operating limits. The EOSA is also exploring an alternative control strategy for back draft vent emissions. This control approach does not require an abatement device thus completely eliminating the possibility of overfeeding (see Docket No. A–88–03, Items No.VIII–D–2 & 6).

The further extension provided in this document allows time for those solutions to be perfected and finalized. This action is consistent with the objectives of the Clean Air Act as stated in Section 101(b), 42 U.S.C. 7401(b). ''The purposes of this sub chapter are . . . to promote the public health and welfare and the productive capacity of its population. . . .''

The original EO NESHAP and today's action are promulgated pursuant to CAA Section 307(d), 42 U.S.C. 7607(d), which requires that any rule subject to that section be issued only after the public has received notice of, and an opportunity to comment on, the rule. However, Section 307(d)(1) exempts from those requirements any rule for which the Agency finds under the Administrative Procedure Act, 5 U.S.C. 553(b), that providing prior notice-and-comment would be impracticable, unnecessary or contrary to the public interest.

EPA believes the circumstances presented here provide good cause to take this action without prior notice-and-comment. EPA finds that providing prior notice-and-comment would be impracticable and contrary to the public interest based on the potential ongoing danger to public and worker safety posed by the recent incidents at ethylene oxide facilities. There is simply not enough time to provide notice-and-comment procedures before the current compliance date of December 6, 1998 arrives, and until the compliance date is extended, sources are faced with having to install control equipment in time to meet the current compliance date. Only by omitting notice-and-comment from this action can EPA provide sources affected by the EO NESHAP with timely legal relief from the current compliance date, while EPA investigates the situation. Consequently, this action is being promulgated without prior notice-and-comment as provided for in CAA Section 307(b)(1) and is effective December 4, 1998 as provided for in CAA Section 112(d)(10).

Nonetheless, EPA is providing 30 days for submission of public comments. EPA will consider all written comments submitted in the allotted time period to determine if any change to this action is necessary.

In suspending the EO NESHAP requirements for chamber exhaust and aeration room vents, the Administrator wishes to remind the public and the regulated community that the role of the EPA has been and continues to be protection of public health and the environment in a way that is consistent with safety concerns.

III. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements of the EO NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 2060–0283) may be obtained from Ms. Sandy Farmer, Information Policy Branch (2136); U.S. EPA; 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–2740.

Today's action has no impact on the information collection burden estimates made previously. Today's action merely suspends the EO NESHAP requirements for chamber exhaust and aeration room vents for one year. This change does not impose new requirements. Consequently, the ICR has not been revised.

B. Executive Order 12866—Regulatory Planning and Review

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

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

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

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

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

Today's action does not fall within any of the four categories described above. Instead, it reduces the burden on certain sources by temporarily suspending the EO NESHAP requirements for chamber exhaust and aeration vents. Consequently, under Executive Order 12866, this action is not a ''significant regulatory action'' and is, therefore, not subject to review by the Office of Management and Budget.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objects of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Instead, this rule provides additional time to comply with some requirements of the EO NESHAP. Because the rule is not expected to result in the expenditure by State, local, and tribal governments or the private sector of $100 million or more in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan

with regard to small governments. For the reasons stated above, the requirements of the UMRA do not apply to this section.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (or RFA), Public Law 96–354, whenever an Agency publishes any proposed or final rule in the **Federal Register**, it must, except under certain circumstances, prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). That analysis is not necessary if the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

EPA believes that there will be little or no adverse impact on any small entities as a result of the promulgation of this rule because, rather than imposing additional requirements, this rule provides additional time to comply with parts of the EO NESHAP. Because the impacts are anticipated to be insignificant or beneficial, pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Consequently, an RFA is not required.

E. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that (1) OMB determines is ''economically significant'' as defined under Executive Order 12866, and (2) EPA determines the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety aspects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This interim final rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

F. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act of 1995 (NTTAA) requires federal agencies to evaluate existing technical standards when developing new regulations. To comply with the NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that the use of VCS in this interim final rule is impractical. The suspension of the EO NESHAP requirements for chamber exhaust and aeration room vents is merely a procedural action that does not require sources to take substantive steps that lend themselves to VCS.

G. Executive Order 12875—Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Rather, the rule temporarily suspends certain regulatory requirements. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule imposes no enforceable duties on these entities. Rather, the rule temporarily suspends certain regulatory requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective December 4, 1998.

J. Petitions for Judicial Review

Under Section 307(b)(1) of the Clean Air Act (Act), judicial review of this final action is available only by filing a petition for review in the U.S. Court of

Appeals for the District of Columbia Circuit within 60 days of today's publication of this interim final rule. Under Section 307(b)(2) of the Act, the actions taken in today's document may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Ethylene oxide sterilization, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 18, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—[Amended]

2. Section 63.360 is amended by revising paragraphs (g)(1), (g)(2), and (g)(3) and adding paragraphs (g)(4), (g)(5), and (g)(6) to read as follows:

§ 63.360 Applicability.

* * * * *

(g) * * *

(1) All sterilization chamber vents subject to the emissions standards in § 63.362 with an initial startup date before December 6, 1998, no later than December 6, 1998.

(2) All sterilization chamber vents subject to the emissions standards in § 63.362 with an initial startup date on or after December 6, 1998, immediately upon initial startup of the source.

(3) All sterilization chamber vents at sources using less than 1 ton of ethylene oxide that increase their ethylene oxide usage after December 6, 1998 such that the sterilization chamber vent becomes subject to the emissions standards in § 63.362(c), immediately upon becoming subject to the emission standards.

(4) All aeration room and chamber exhaust vents subject to the emissions standards in § 63.362 with an initial startup date before December 6, 1999, no later than December 6, 1999.

(5) All aeration room and chamber exhaust vents subject to the emissions standards in § 63.362 with an initial startup on or after December 6, 1999, immediately upon initial startup of the source.

(6) All aeration room and chamber exhaust vents at sources using less than 10 tons of ethylene oxide that increase their ethylene oxide usage after December 6, 1999 such that the aeration room and chamber exhaust vents become subject to the emissions standards in § 63.362(d) and § 63.362(e), immediately upon becoming subject to the emission standards.

[FR Doc. 98–31396 Filed 12–3–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300757; FRL–6044–5]

RIN 2070–AB78

Thiabendazole; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the fungicide thiabendazole and its metabolites in or on lentils at 0.1 part per million (ppm) for an additional 18–month period, to April 30, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on lentils. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective December 4, 1998. Objections and requests for hearings must be received by EPA, on or before February 2, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300757], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300757], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300757]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail:Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 267, CM 2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308–9356; e-mail:beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of February 25, 1998 (63 FR 9435) (FRL–5767–6), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of thiabendazole and its metabolites in or on lentils at 0.1 ppm, with an expiration date of October 31, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received requests to extend the use of thiabendazole on lentils for this year's growing season due to the situation remaining an emergency. The Applicants (Idaho, Washington, and

North Dakota) state that the ascochyta blight fungus has only occurred in the United States in recent years, and presently available fungicides do not adequately control its spread in lentils, to prevent significant economic loss. Additionally, a recently-discovered sexually-reproducing strain is of even greater concern, as this sexual stage releases spores, capable of traveling long distances on the wind. This disease was initially of isolated occurrence in the U.S. until the last several years. The sexual strain has potential to lead to significant widespread infection of lentils, and without the requested use of thiabendazole to control this disease, significant economic losses are expected. After having reviewed the submission, EPA concurs that emergency conditions exist for these states. EPA has authorized under FIFRA section 18 the use of thiabendazole on lentils for control of ascochyta blight in lentils.

EPA assessed the potential risks presented by residues of thiabendazole in or on lentils. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of February 25, 1998 (63 FR 9435). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 18–month period. Although this tolerance will expire and is revoked on April 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on lentils after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 2, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300757] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule extends a time-limited tolerance that was previously established by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). IN addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from*

Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: November 10, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

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

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

§ 180.242 [Amended]

2. In § 180.242, by amending the entry for ''Lentils'' in the table under paragraph (b) by revising the date ''10/31/98'' to read ''4/30/00''.

[FR Doc. 98–31966 Filed 12–3–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300761; FRL–6046–9]
RIN 2070–AB78

Myclobutanil; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the fungicide myclobutanil and its metabolites in or on cucurbits at 0.3 part per million (ppm) for an additional 18-month period, to May 30, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on cucurbits. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective December 4, 1998. Objections and requests for hearings must be received by EPA, on or before February 2, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300761], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees) and forwarded to: EPA Headquarters Accounting Operations Branch, OPP

(Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300761], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300761]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308–9358; e-mail: Deegan.dave@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of January 9, 1997 (62 FR 1284) (FRL–5579–7), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of myclobutanil and its metabolites in or on cucurbits at 0.3 ppm, with an expiration date that was extended until November 30, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of myclobutanil on cucurbits for this year growing season due to the continued development of powdery mildew on cucurbit vegetables in several states, and the presumed development of resistance in previously registered products. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of myclobutanil on cucurbits for control of powdery mildew in cucurbits.

EPA assessed the potential risks presented by residues of myclobutanil in or on cucurbits. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of January 9, 1997. Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 18-month period. Although this tolerance will expire and is revoked on May 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cucurbits after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 2, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rule. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300761] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division

(7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule extends a time-limited tolerance that was previously established by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since this extension of an existing time-limited tolerance that was established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels, or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: November 18, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

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

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

§ 180.443 [Amended]

2. In § 180.443, paragraph (b), in the table, amend the entry ''Curcubit vegetables'' by removing the expiration date ''11/30/98'' and adding in its place ''5/30/00''.

[FR Doc. 98–31964 Filed 12–3–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–300749; FRL–6039–5]

40 CFR Part 180

RIN 2070–AB78

Any Edible Food Commodity Used As A Pesticide; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of any edible food commodity (except for peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat) used as a pesticide, when applied in accordance with good agricultural practices, in or on all food commodities. Any edible food commodity used as a pesticide under this exemption must not be ''adulterated food'' as defined in the Federal Food, Drug, and Cosmetic Act (FFDCA) section 402 (21 U.S.C. 342). The exemption from the requirement of a tolerance is being established by the Agency on its own initiative, under the FFDCA as Amended by Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation becomes effective December 4, 1998. Written objections and requests for hearings must be received by February 2, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300749], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300749], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300749]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Freshteh Toghrol, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 9th Floor, Crystal Mall 2, 1921 Jefferson David Highway, Arlington, VA; (703) 308–7014, e-mail: toghrol.freshteh@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 10, 1998 (62 FR 38513) (FRL–6016–1), EPA proposed, pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a(d) to amend 40 CFR 180.1164 by establishing an exemption from the requirement of a tolerance for residues of any edible food commodities (except for peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat) in or on all food commodities, when applied in accordance with good agricultural practice. The term edible food commodity means a food that is widely consumed for its nutrient properties. The term only applies to food in the form it is sold or distributed to the public for consumption. This language has been added to the rule text for the sake of clarity. EPA has excluded peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat from this exemption because these foods or food groups have been identified as common allergens. Normally, a person allergic to one of these foods would be able to avoid the food because the food is recognizable. When a food is used as a pesticide, however, the presence of its residues on another food commodity, if that occurred, could not be readily identified. Therefore, EPA has excluded these common allergens from this exemption.

There were no comments received (exept for one positive comment from Nurfam Americas, Inc.) in response to the proposed rule. Nurfam Americas, Inc. has supported the proposed tolerance exemption for ''its overall practicality, efficiency and reasonable presumption of safety. However, the proposed exceptions from the exemption for peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea and wheat are overly conservative and call into question several currently exempt products.'' Nurfam Americas, Inc. has listed several commodities that are exempted when used as inert ingredients under 40 CFR 180.1001(c), (d), and (e) and has shown concern that this proposed rule may affect the exemptions from tolerances already in effect for these inert ingredients. This rule is for food used as active ingredients only and will not affect the tolerance exemption for food used as inert ingredients, which already are established under 40 CFR 180.1001(c), (d), and (e). The commenter suggested including the excepted foods based on a restriction that the food was applied prior to crop emergence or when edible portions of crops are not present. An exemption for these foods may be appropriate under such restrictions if it could be shown that no residues would be present. However, examination of that issue is beyond the scope of the present rulemaking.

Based on the reasons set forth in the preamble to the proposed rule, EPA establishes an exemption from tolerance for residues of any edible food commodities as provided below in 40 CFR 180.1164(d) below.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(e) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which governs the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 2, 1999, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ADDRESSES section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i) or a request for a fee waiver. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300749] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes an exemption from the requirement of a tolerance under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on

matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 2, 1998.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1164 is amended by adding a new paragraph (d) to read as follows:

§ 180.1164 Food and food by-products; exemption from the requirement of a tolerance.

* * * * *

(d) Any edible food commodity (except for peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat) used as a pesticide is exempted from the requirement of a tolerance when used in accordance with good agricultural practice in or on all food commodities. This exemption shall not apply to any edible food commodity that is adulterated under section 342 of Title 21 of the United States Code. The term edible food commodity means a food that is widely consumed for its nutrient properties. The term only applies to food in the form it is sold or distributed to the public for consumption.

[FR Doc. 98–32073 Filed 12–3–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under

Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No. 7256).	City of Avondale ..	September 4, 1998, September 11, 1998, *Arizona Republic*.	The Honorable Thomas S. Morales, Jr., Mayor, City of Avondale, 525 North Central Avenue, Avondale, Arizona 85323.	August 19, 1998 ..	040038
Maricopa (FEMA Docket No. 7256).	Town of Gilbert	August 11, 1998, August 18, 1998, *Gilbert Tribune*.	The Honorable Cynthia Dunham, Mayor, Town of Gilbert, 1025 South Gilbert Road, Gilbert, Arizona 85296.	July 15, 1998	040044
Maricopa (FEMA Docket No. 7256).	Unincorporated Areas.	August 11, 1998, August 18, 1998, *Arizona Republic*.	The Honorable Janice K. Brewer, Chairman, Maricopa County, Board of Supervisors, 301 West Jefferson Street, Tenth Floor, Phoenix, Arizona 82003.	July 15, 1998	040037
Maricopa (FEMA Docket No. 7256).	City of Mesa	August 20, 1998, August 27, 1998, *Arizona Republic*.	The Honorable Wayne Brown, Mayor, City of Mesa, P.O. Box 1466, Mesa, Arizona 85211.	July 20, 1998	040048
California:					
Santa Clara (FEMA Docket No. 7256).	City of Gilroy	August 7, 1998, August 14, 1998, *The Dispatch*.	The Honorable K.A. Mike Gilroy, Mayor, City of Gilroy, 7351 Rosanna Street, Gilroy, California 95020.	July 9, 1998	060340
Santa Barbara (FEMA Docket No. 7256).	Unincorporated Areas.	August 7, 1998, August 14, 1998, *Santa Barbara News Press*.	The Honorable Gail Marshall, Chairperson, Santa Barbara County, Board of Supervisors, 105 East Anapamu Street, Santa Barbara, California 93101.	July 9, 1998	060331
Santa Clara (FEMA Docket No. 7256).	Unincorporated Areas.	August 7, 1998, August 14, 1998, *The San Jose Mercury News*.	The Honorable Blanca Alverado, Chairperson, Santa Clara County Board of Supervisors, 70 West Hedding Street, East Wing, Tenth Floor, San Jose, California 95110.	July 9, 1998	060337
Ventura (FEMA Docket No. 7256).	Unincorporated Areas.	August 12, 1998, August 19, 1998, *Ventura County Star*.	The Honorable Judy Mikels, Chairperson, Ventura County Board of Supervisors, 3855–F Alamo Street, Simi Valley, California 93063.	July 13, 1998	060413
Colorado: Rio Blanco (FEMA Docket No. 7256).	Town of Meeker ..	August 20, 1998, August 27, 1998, *Meeker Herald*.	The Honorable Bill Dunham Mayor, Town of Meeker, P.O. Box 38, Meeker, Colorado 81641.	August 6, 1998	080151
Hawaii: Maui County (FEMA Docket No. 7256).	Unincorporated Areas.	August 7, 1998, August 14, 1998, *Maui News*.	The Honorable Linda Lingle, Mayor, Maui County, 200 South High Street, Wailuku, Maui, Hawaii 96793.	July 13, 1998	150003
Nebraska: Sarpy (FEMA Docket No. 7256).	Unincorporated Areas.	September 16, 1998, September 23, 1998, *The Papillion Times*.	The Honorable Tim Gray, Chairman, Sarpy County, Board of Commissioners, County Courthouse, 1210 Golden Gate Drive, Suite 1118, Papillion, Nebraska 68046.	August 14, 1998 ..	310190
New Mexico:					
Bernalillo (FEMA Docket No. 7256).	City of Albuquerque.	September 4, 1998, September 11, 1998, *Albuquerque Journal*.	The Honorable Jim Baca, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	July 17, 1998	350002
Bernalillo (FEMA Docket No. 7256).	Unincorporated Areas.	September 4, 1998, September 11, 1998, *Albuquerque Journal*.	The Honorable Tom Rutherford, Chairman, Bernalillo County Board of Commissioners, 2400 Broadway Southeast, Albuquerque, New Mexico 87102.	July 17, 1998	350001
Oklahoma:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma (FEMA Docket No. 7256).	City of Oklahoman City.	August 27, 1998, September 3, 1998, *Daily Oklahoman*.	The Honorable Ronald Norick, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	August 4, 1998	405378
Tulsa (FEMA Docket No. 7256).	City of Tulsa	September 23, 1998, September 30, 1998, *Tulsa World*.	The Honorable M. Susan Savage, Mayor, City of Tulsa, City Hall, 200 Civic Center, Tulsa, Oklahoma 74103.	August 14, 1998 ..	405381
Texas:					
Tarrant (FEMA Docket No. 7256).	City of Mansfield	August 20, 1998, August 27, 1998, *Mansfield News-Mirror*.	The Honorable Harry David, Mayor, City of Mansfield, 1305 East Broad Street, Mansfield, Texas 76063.	August 4, 1998	480606
Montgomery (FEMA Docket No. 7256).	Unincorporated Areas.	August 14, 1998, August 21, 1998, *Conroe Courier*.	The Honorable Alan Sadler, Montgomery County Judge, 301 North Thompson Street, Suite 210, Conroe, Texas 77301.	July 14, 1998	480483
McLennan (FEMA Docket No. 7256).	City of Waco	August 4, 1998, August 11, 1998, *Waco Tribune-Herald*.	The Honorable Michael D. Morrison, Mayor, City of Waco, P.O. Box 2570, Waco, Texas 76702–2570.	July 9, 1998	480461

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: November 24, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–32300 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7264]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California:					
Sacramento	Unincorporated Areas.	November 23, 1998, November 30, 1998, *Sacramento Bee*.	The Honorable Illa Collin, Chairperson, Sacramento County Board of Supervisors, 700 H Street, Room 2450, Sacramento, California 95814.	October 23, 1998	060262
San Diego	City of San Diego	November 10, 1998, November 17, 1998, *San Diego Union-Tribune*.	The Honorable Susan Golding, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	October 19, 1998	060295
New Mexico:					
Bernalillo	City of Albuquerque.	November 11, 1998, November 18, 1998, *Albuquerque Journal*.	The Honorable Jim Baca, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	October 21, 1998	350002
Bernalillo	Unincorporated Areas.	November 11, 1998, November 18, 1998, *Albuquerque Journal*.	The Honorable Steve Gallegos, Chairman, Bernalillo County, Board of Commissioners, One Civic Plaza Northeast, 10th Floor, Albuquerque, New Mexico 87102.	October 21, 1998	350001
Bernalillo	Village of Corrales	November 11, 1998, November 18, 1998, *Albuquerque Journal*.	The Honorable Gary Kanin, Mayor, Village of Corrales, P.O. Box 707, Corrales, New Mexico 87048.	October 21, 1998	350094
Dona Ana	City of Las Cruces	November 18, 1998, November 25, 1998, *The Sun News*.	The Honorable Rubin A. Smith, Mayor, City of Las Cruces, P.O. Box 20000, Las Cruces, New Mexico 88004.	October 23, 1998	355332
Bernalillo	City of Rio Rancho.	November 11, 1998, November 18, 1998, *Albuquerque Journal*.	The Honorable John Jennings, Mayor, City of Rio Rancho, 3900 Southern Boulevard, Rio Rancho, New Mexico 87124.	October 21, 1998	350146
Oklahoma	City of Shawnee ..	September 18, 1998, September 25, 1998, *Shawnee News-Star*.	The Honorable Chris Harden, Mayor, City of Shawnee, P.O. Box 1448, Shawnee, Oklahoma 74802–1448.	August 14, 1998 ..	400178
Texas:					
Tarrant	City of Dal- worthington Gardens.	November 13, 1998, November 20, 1998, *Fort Worth Star-Telegram*.	The Honorable Al Taub, Mayor, City of Dalworthington Gardens, 2600 Roosevelt Drive, Dalworthington Gardens, Texas 76016.	October 19, 1998	481013
Travis	Unincorporated Areas.	November 18, 1998, November 25, 1998, *Austin American Statesman*.	The Honorable Bill Aleshire, Travis County Judge, P.O. Box 1748, Austin, Texas 78767–1748.	October 26, 1998	481026

(Catalog of Federal Domestic Assistance No. 83.100, Flood Insurance)

Dated: November 24, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–32299 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and

modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CALIFORNIA	
Menlo Park (City), San Mateo County (FEMA Docket No. 7246)	
Shallow Flooding:	
At the intersection of Laurel Avenue and Haight Street	*24
At the intersection of Pope Street and Woodland Avenue	*43
At the intersection of Willow and Middlefield Roads	*56
Maps are available for inspection at the City of Menlo Park Engineering Department, 701 Laurel Street, Menlo Park, California.	
LOUISIANA	
Slidell (City), St. Tammany Parish (FEMA Docket No. 7246)	
Diversion Canal (W–14 Main):	
At Daney Street	*9
Approximately 700 feet upstream of Pawns Road	*19.5
Bayou Vincent:	
Approximately 1,500 feet downstream of West Hall Avenue	*9
Approximately 1,000 feet downstream of Interstate Highway 12	*13.8
West Diversion Canal:	
At confluence with Bayou Vincent	*11.8
At confluence with Diversion Canal (W–14 Main)	*15.1
Rein Canal West:	
At confluence with Diversion Canal (W–14 Main)	*14.1
At confluence with Rein Canal East	*15.1
Rein Canal East:	
2,800 feet above confluence with French Branch	*15
Maps are available for inspection at the City of Slidell City Hall, 2056 Second Street, Slidell, Louisiana.	
St. Tammany Parish (Unincorporated Areas) (FEMA Docket No. 7246)	
West Diversion Canal:	
At confluence with Bayou Vincent	*11.8
2,600 feet upstream of Southern Railroad	*14.6
Bayou Vincent:	
Approximately 1,000 feet downstream of West Hall Road	*9
Approximately 1,000 feet downstream of Interstate Highway 12	*16.5
Rein Canal East:	
At confluence with French Branch	*14.2
160 feet upstream of Interstate Highway 10	*14.8
Diversion Canal (W–14 Main):	
At Daney Street	*9
Approximately 700 feet upstream of Pawns Boulevard	*19.8
Maps are available for inspection at 21490 Koop Road, Mandeville, Louisiana.	
OREGON	
Douglas County (Unincorporated Areas) (FEMA Docket No. 7218)	
Cow Creek (Near Riddle):	
At confluence with South Umpqua River	*656
Approximately 2,100 feet upstream of Glenbrook Road	*713
Cow Creek (Near Glendale):	
Approximately 3,400 feet downstream of confluence of McCullough Creek	*1,359
At Rueben Road	*1,396
Cow Creek:	
Approximately 300 feet upstream of White Horse Creek Road	*1,702
Approximately 1,700 feet upstream of confluence of Sugar Creek	*1,928

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for inspection at the Douglas County Planning Department, Justice Building, Room 106, Douglas County Courthouse, Roseburg, Oregon.	
Douglas County (Unincorporated Areas) (FEMA Docket No. 7246)	
Newton Creek:	
Just upstream of Stephens Street	*519
Approximately 1,180 feet upstream of Parker Road	*583
South Umpqua River:	
Approximately 5,600 feet downstream of confluence of Newton Creek	*429
At confluence of Newton Creek	*433
Maps are available for inspection at the Douglas County Planning Department, Justice Building, Room 106, Douglas County Courthouse, Roseburg, Oregon.	
Roseburg (City), Douglas County (FEMA Docket No. 7246)	
South Umpqua River:	
Approximately 5,160 feet downstream of confluence with Newton Creek	*428
Approximately 170 feet downstream of confluence with Newton Creek	*437
Just downstream of Interstate Highway 5	*443
Newton Creek:	
At confluence with the South Umpqua River	*433
Just upstream of Edenbower Boulevard	*486
Just upstream of Stephens Street	*520
Maps are available for inspection at the City of Roseburg Community Development Department, 900 Southeast Douglas Avenue, Roseburg, Oregon.	

(Catalog of Federal Domestic Assistance No. 83.100, Flood Insurance)

Dated: November 24, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–32298 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54, 64 and 69

[CC Docket Nos. 97–21 and 96–45; FCC 98–206]

Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission reconsiders its July 18, 1997 order to the extent that the Universal Service Worksheet (Worksheet) attached to that order required universal service contributors to report as end-user telecommunications revenues those revenues derived from the provision of inside wiring maintenance. The Commission amends of its rules to permit the Administrator of the federal universal service support mechanisms to utilize Telecommunications Relay Services Fund data to verify the accuracy of revenue information provided on the Worksheet. The Commission also amends its rules to clarify that a telecommunications carrier seeking reimbursement from the Administrator may request that the amount of the discount afforded to that school or library be applied either as an offset to the carrier's universal service contribution obligation or reimbursed to the carrier from the universal service support mechanisms.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Lisa Boehley, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on November 17, 1998. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

Summary of Second Report and Order in CC Docket No. 97–21, Third Order on Reconsideration in CC Docket No. 97–21 and Sixth Order on Reconsideration in CC Docket No. 96–45

I. Introduction

1. In this Order, we reconsider the Commission's July 18, 1997 order to the extent that the Universal Service Worksheet attached as an appendix to that order required universal service contributors to report as end-user telecommunications revenues those revenues derived from the provision of inside wiring maintenance. We also adopt amendments to the Commission's Part 54 and Part 64 rules to permit the Administrator of the federal universal service support mechanisms to utilize Telecommunications Relay Services (TRS) Fund data to verify the accuracy of revenue information provided on the Universal Service Worksheet by contributors to the universal service support mechanisms. In addition, we amend §§ 54.515 of our rules to clarify that a telecommunications carrier seeking reimbursement from the Administrator for the provision of services to a school or library may request that the amount of the discount afforded to that school or library be applied either as an offset to the carrier's universal service contribution obligation or reimbursed to the carrier from the universal service support mechanisms. We find, however, that a carrier that fails to remit its monthly universal service obligation is not entitled to choose direct reimbursement under the universal service support mechanism for schools and libraries. Rather, any support amounts owed to such a carrier under the support mechanism for schools and libraries must first be applied as an offset to the carrier's contribution obligation.

II. Inside Wiring Maintenance

2. We reconsider the *NECA Order*, 62 FR 41294 (August 1, 1997), to the extent that the Worksheet attached as an appendix to that order required universal service contributors to include as end-user telecommunications revenues those revenues derived from the provision of inside wiring maintenance. We are persuaded by petitioners that the provision of inside wiring maintenance does not constitute ''telecommunications'' or a ''telecommunications service'' and we therefore conclude that revenues derived from this activity should not be included as end-user telecommunications revenues on the Worksheet. As the Commission stated in the *Inside Wiring Order*, 51 FR 44479 (December 10, 1986), inside wiring is severable from underlying common carrier transmission services and includes all telephone plant located on the customer's side of the demarcation point marking the end of the telephone network.

3. We conclude that inside wiring maintenance—the maintenance of telephone plant—does not constitute telecommunications or a telecommunications service because it

does not involve the ''transmission'' of information. MCI, the only party asking us to include in the universal service contribution base revenues derived from the provision of inside wiring maintenance, correctly points out that internal connections make possible the transmission of information. Consistent with the rationale set forth in the *Inside Wiring Order,* however, we note that inside wiring maintenance does not itself constitute ''telecommunications'' as that term is statutorily defined. MCI references language in paragraph 451 of the *Universal Service Order,* 62 FR 32862 (June 17, 1997), as support for its proposition that the Commission has concluded, in the context of defining eligible services for schools and libraries, that the installation and maintenance of internal connections constitute telecommunications services. Paragraph 451 and the surrounding discussion make clear, however, that the Commission determined only that the installation and maintenance of internal connections are among the additional *non-telecommunications* services for which eligible schools and libraries may receive discounts under section 254 of the Act. Neither this paragraph, nor the surrounding discussion, support MCI's assertion that the provision of inside wire maintenance constitutes telecommunications as that term is defined by the statute.

4. This change relieving contributors of their obligation to report as end-user telecommunications revenues those revenues derived from the provision of inside wiring maintenance will become effective 30 days after publication of this Order in the **Federal Register**. We note, however, that contributors are not required to file another Worksheet until March 31, 1999. Accordingly, we direct carriers to adjust the 1998 full-year data that they will report on the March 31, 1999 Worksheet to reflect this change starting from the effective date of this Order.

III. The Use of TRS Data by the Universal Service Administrator

5. We amend § 64.604(c)(4)(iii)(I) as proposed in the *NECA II Further Notice,* 62 FR 47369 (September 9, 1997), to permit the use of TRS data by the Administrator for purposes of verifying the accuracy of information reported by contributors on the Universal Service Worksheet. We conclude that authorizing the Administrator to use TRS data for this purpose may assist the Administrator in monitoring contributors' compliance with the universal service contribution requirements by revealing potential inconsistencies between revenue data reported on the TRS Fund Worksheet and revenue data reported on the Universal Service Worksheet. As noted by NECA, the use of TRS data for this purpose will provide a more efficient method of monitoring contributors' compliance with the contribution requirements than if the universal service Administrator were forced to rely on audits alone. MCI, BellSouth, and NECA support the Commission's proposal to authorize the use of TRS data for this purpose. No parties filed comments opposing the Commission's proposal. We also amend § 54.711(a) to direct the TRS administrator to provide to the Administrator TRS data so that the Administrator may verify the accuracy of information reported by contributors on the Universal Service Worksheet. As an outgrowth of our decision to authorize the Administrator to use TRS data, we also amend § 69.616 to ensure that the Administrator exercises this authority in an equitable and non-discriminatory manner. We direct the Administrator, in comparing the revenue data filed by universal service contributors with that filed by TRS Fund contributors, to undertake company-by-company comparisons for all entities filing Universal Service Worksheets and TRS Fund Worksheets.

6. We also amend § 54.711(b) as proposed in the *NECA II Further Notice* to require the Administrator to keep confidential all TRS data obtained from the Administrator of the TRS Fund, prohibit the Administrator from using TRS data for purposes other than the administration of federal universal service support mechanisms, and prohibit the disclosure of TRS data in company-specific form unless directed to do so by the Commission. We direct the Bureau to make decisions regarding disclosure of company-specific information.

7. We agree with NECA that § 54.711(b)'s prohibition on the disclosure of company-specific information does not prohibit the Administrator from releasing aggregate, non-company specific data. In order to ensure that any report or document containing aggregate, non-company-specific data does not, by virtue of the manner in which particular data are organized, inadvertently reveal company-specific information, we require the Administrator to obtain the approval of the Bureau prior to release of such a report or document to persons outside of the Commission.

8. BellSouth requests that the Commission declare all commercial mobile radio service (CMRS) subscriber and financial data reported on TRS and Universal Service Worksheets confidential data subject to Exemption 4 of the Freedom of Information Act (FOIA). BellSouth asserts that requiring each CMRS provider to request confidential treatment for such data creates unnecessary paperwork for contributors and the Commission. On March 4, 1998 and July 31, 1998, the Bureau announced revisions to the Universal Service Worksheet. The revised Worksheet provides a space for contributors to indicate that they wish to request confidential treatment of the data contained on the Worksheet. Contributors making such an election must certify that the information contained on the Worksheet is privileged or confidential commercial or financial information and that disclosure of such information would likely cause substantial harm to the competitive position of the company filing the Worksheet. If the Commission receives a request for, or proposes disclosure of, the information contained on the Worksheet, the carrier will be required to make the full showing required by our rules. We anticipate that this revision will ease significantly the paperwork burden on all contributors, not just CMRS providers. Contributors to the TRS Fund shall continue to comply with §§ 0.459 and 0.461 of the Commission's rules in order to request confidential treatment of the revenue data reported on the TRS Worksheet. We do not believe that this poses a substantial burden on TRS contributors, because the TRS Worksheet, unlike the Universal Service Worksheet, is filed only annually, rather than semi-annually.

9. The Bureau will make the initial decision regarding disclosure of company-specific information derived from the Universal Service Worksheet or from the TRS Administrator. In the event that it directs disclosure of data for which confidential treatment was requested by the contributor, the Bureau will follow the procedures specified in §§ 0.459 and 0.461 of the Commission's rules. Accordingly, the company will be given an opportunity to file an application for review by the Commission of any decision to release assertedly confidential data and, if it is denied, to seek a judicial stay before any assertedly confidential information is released. Consequently, we do not find it necessary to conclude that all CMRS subscriber and financial data reported on the Worksheets are confidential.

10. BellSouth also asserts that the release of company-specific CMRS subscriber and revenue data should be prohibited under any circumstances and maintains that the Commission should be precluded from releasing such

information. Although we recognize the competitively sensitive nature of the CMRS data in question, we decline to foreclose altogether the Commission's or the Bureau's ability to disclose or direct the disclosure of company-specific subscriber or revenue data reported for purposes of determining TRS or universal service contributions. The Commission has no present intention to disclose company-specific subscriber or revenue data and, absent substantial justification, does not anticipate disclosing or directing the disclosure of such data. In view of the possibility, however, that an occasion may arise in which the Commission or the Bureau determines that disclosure would be in the public interest (e.g., in the context of an action brought against a contributor to enforce the contribution requirements, or after a long delay so that financial information would no longer be competitively sensitive), and the safeguards provided by §§ 0.459 and 0.461 of our rules, we decline to amend our rules to preclude the disclosure of company-specific subscriber or revenue data under any circumstances.

IV. Offset Versus Reimbursement

11. In light of the inconsistency that USAC has brought to our attention between paragraph 586 of the *Universal Service Order* and § 54.515 of the Commission's rules, we conform § 54.515 to the text of paragraph 586 of the *Universal Service Order* by adopting the amendments reflected below. As amended, a telecommunications carrier applying for support under § 54.515 for services provided to an eligible school or library either may apply the amount of the discount afforded to a school or library as an offset to its universal service contribution obligation or be reimbursed for that amount from the universal service support mechanisms. We further find, however, that the statute does not provide carriers participating in the support mechanism for schools and libraries with an unconditional right to select between offset and direct reimbursement. As USAC explains in its September 16, 1998 letter, it may be costly and administratively burdensome if USAC is asked to alter on a frequent basis the method by which a carrier is reimbursed. We therefore require carriers that are owed support under the universal service support mechanism for schools and libraries to elect on an annual basis the method by which they will receive payment. Such carriers shall elect a payment method in January of each year and shall remain subject to that method for the duration of the calendar year.

12. Additionally, consistent with USAC's July 31, 1998 letter, we find that any support amount that is owed to a carrier participating in the support mechanism for schools and libraries that fails to remit its monthly universal service obligation must first be applied as an offset to that carrier's contribution obligation. Thus, a carrier participating in the support mechanism for schools and libraries that has failed to make its required contribution to universal service in a given month is entitled to receive direct reimbursement from the universal service support mechanisms only to the extent that the amount owed the carrier under the schools and libraries support mechanism exceeds the amount of the carrier's total universal service obligation. We find that this decision is reasonable because, to the extent that a carrier is in arrears on its universal service obligations, it has already effectively chosen an offset method of compensation. We are persuaded that requiring the use of an offsetting procedure as described above for a carrier that fails to make timely contributions serves the public interest by ensuring an appropriate universal service fund and minimizing the need for costly and time-consuming enforcement actions. Consistent with USAC's recommendation in its September 16, 1998 letter, carriers that are in arrears on their universal service contribution obligations will remain subject to the offsetting method for the remainder of the calendar year in which they failed to remit their monthly universal service obligation. A carrier with an outstanding balance at the end of a calendar year shall remain subject to the offsetting method for the next calendar year. A carrier that has been subject to this mandatory offsetting procedure by USAC but that disputes its contribution obligation may bring this matter to the attention of the Commission through a request for declaratory ruling.

V. Final Regulatory Flexibility Certification

13. The Regulatory Flexibility Act (RFA) requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

14. In the *NECA II Further Notice*, the Commission certified, pursuant to § 605(b) of the RFA, that the proposed rule amendments attached thereto, which would permit the Administrator to use TRS data to verify the accuracy of data provided on the Universal Service Worksheet, would not have a significant economic impact on a substantial number of small entities. The Commission did not receive any comments on this tentative conclusion. The rules adopted in this order permit the Administrator to use TRS data to verify the accuracy of data provided by universal service contributors on the Worksheet. This Order therefore permits the transfer of already collected data. This exchange of information will enable the Administrator to verify the accuracy of universal service data, thus ensuring the sufficiency of the universal service support mechanisms. We conclude that the rules adopted in this order regarding the use of TRS data will not have a significant economic impact on small entities.

15. We find that our amendment to § 54.515, which clarifies that telecommunications carriers seeking reimbursement for the provision of services to a school or library may request either that the reimbursement amount be applied as an offset to the carrier's universal service contribution obligation or that it receive direct reimbursement from the universal service support mechanisms, will not have a significant economic impact on small entities. This amendment will provide telecommunications carriers providing services to schools and libraries with flexibility in structuring the manner in which they will be reimbursed. Additionally, we do not believe that small entities will experience a significant economic impact due to our determination that any support amount owed to a carrier that fails to remit its monthly universal service obligation should first be applied as an offset against that carrier's contribution obligation. We find that, to the extent that a carrier is in arrears on its universal service obligations, it has already effectively chosen an offset method of compensation. We also find that requiring carriers to select a reimbursement method on an annual basis, or be subject to mandatory offset for the remainder of the year during which they failed to pay their universal

service contribution obligation, will not have a significant economic impact on small entities. Rather, we find that allowing carriers to elect annually the method by which they will be reimbursed provides carriers with a reasonable degree of flexibility in structuring their operations. Furthermore, we find that requiring nonpaying carriers to accept the offsetting procedure for the remainder of the calendar year in which they failed to pay their universal service contributions is reasonable in light of the need to establish a reliable payment history on the part of such carriers and to maintain the certainty and sufficiency of the universal service support mechanisms.

16. We also conclude that our determination in this Order to eliminate the requirement that contributors report as end-user telecommunications revenues those revenues derived from the provision of inside wiring maintenance will not have a significant economic impact on small entities. In fact, this determination will lessen contributors' reporting requirements and may lessen the contribution amount of some contributors.

VI. Ordering Clauses

17. Accordingly, it is ordered that, pursuant to the authority contained in § 1–4, 201–205, 254, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 254, and 405 and § 553 of the Administrative Procedure Act, 5 U.S.C. 553, the adoption of this Second Report and Order, Third Order on Reconsideration, and Sixth Order on Reconsideration is effective January 4, 1999.

18. It is further ordered that the amendments to parts 54, 64, and 69 of the Commission's rules are effective January 4, 1999.

List of Subjects

47 CFR Part 54

Healthcare providers, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

47 CFR Part 64

Communications common carriers.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Parts 54, 64, and 69 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Section 54.515 is amended by revising paragraphs (a) and (b) and removing paragraphs (c) and (d).

§ 54.515 Distributing support.

(a) A telecommunications carrier providing services eligible for support under this subpart to eligible schools and libraries may, at the election of the carrier, treat the amount eligible for support under this subpart as an offset against the carrier's universal service contribution obligation for the year in which the costs for providing eligible services were incurred or receive a direct reimbursement from the Administrator for that amount. Carriers shall elect in January of each year the method by which they will be reimbursed and shall remain subject to that method for the duration of the calendar year. Any support amount that is owed a carrier that fails to remit its monthly universal service contribution obligation, however, shall first be applied as an offset to that carrier's contribution obligation. Such a carrier shall remain subject to the offsetting method for the remainder of the calendar year in which it failed to remit their monthly universal service obligation. A carrier that continues to be in arrears on its universal service contribution obligations at the end of a calendar year shall remain subject to the offsetting method for the next calendar year.

(b) If a telecommunications carrier elects to treat the amount eligible for support under this subpart as an offset against the carrier's universal service contribution obligation and the total amount of support owed to the carrier exceeds its universal service obligation, calculated on an annual basis, the carrier shall receive a direct reimbursement in the amount of the difference. Any such reimbursement due a carrier shall be submitted to that carrier no later than the end of the first quarter of the calendar year following the year in which the costs were incurred and the offset against the carrier's universal service obligation was applied.

3. Section 54.711 is amended by revising paragraphs (a) and (b) to read as follows:

§ 54.711 Contributor reporting requirements.

(a) Contributions shall be calculated and filed in accordance with the Universal Service Worksheet. The Universal Service Worksheet sets forth information that the contributor must submit to the Administrator on a semi-annual basis. The Commission shall announce by Public Notice published in the **Federal Register** and on its website the manner of payment and dates by which payments must be made. An officer of the contributor must certify to the truth and accuracy of the Universal Service Worksheet, and the Commission or the Administrator may verify any information contained in the Universal Service Worksheet at the discretion of the Commission. The administrator of the Telecommunications Relay Service Fund shall provide data reported on the Telecommunications Relay Service Worksheet to the Administrator so that the Administrator may verify information contained in the Universal Service Worksheet. Inaccurate or untruthful information contained in the Universal Service Worksheet may lead to prosecution under the criminal provisions of Title 18 of the United States Code. The Administrator shall advise the Commission of any enforcement issues that arise and provide any suggested response.

(b) The Commission shall have access to all data reported to the Administrator, Rural Health Care Corporation, and Schools and Libraries Corporation. Contributors may make requests for Commission nondisclosure of company-specific information by so indicating on the Universal Service Worksheet. The Commission shall make all decisions regarding nondisclosure of company-specific information. The Administrator, Rural Health Care Corporation, and Schools and Libraries Corporation shall keep confidential all data obtained from contributors, including all data obtained from the administrator of the Telecommunications Relay Service Fund, shall not use such data except for purposes of administering the universal service support programs, and shall not disclose such data in company-specific form unless directed to do so by the Commission.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

4. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, and 403 unless otherwise noted.

5. Section 64.604 is amended by revising paragraph (c)(4)(iii)(I) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(4) * * *

(iii) * * *

(I) *Information filed with the administrator.* The administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission. The administrator shall not use such data except for purposes of administering the TRS Fund, enabling the universal service Administrator to verify revenue information provided by contributors to those mechanisms, calculating the regulatory fees of interstate common carriers, and aggregating such fee payments for submission to the Commission. The Commission shall have access to all data reported to the administrator, and shall have the authority to audit TRS providers.

* * * * *

PART 69—ACCESS CHARGES

6. Section 69.616 is amended by adding paragraph (e) as follows:

§ 69.616 Independent subsidiary functions.

* * * * *

(e) Pursuant to its responsibility for billing and collecting contributions, the independent subsidiary shall compare periodically information collected by the Administrator of the TRS Fund from TRS Fund Worksheets with information submitted by contributors on Universal Service Worksheets in order to verify the accuracy of information submitted on Universal Service Worksheets. When performing a comparison of contributor information as provided by this subsection, the independent subsidiary must undertake company-by-company comparisons for all entities filing Universal Service and TRS Fund Worksheets.

[FR Doc. 98–32303 Filed 12–3–98; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 63, No. 233
Friday, December 4, 1998

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 97–110–3]

RIN 0579–AA92

Importation of Grapefruit, Lemons, and Oranges From Argentina

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; change in date and location of public hearing.

SUMMARY: We are advising the public that we have changed the date and location of the public hearing that we will hold to give interested persons an opportunity for the oral presentation of data, views, and arguments regarding our proposed rule regarding the importation of grapefruit, lemons, and oranges from Argentina.

DATES: Consideration will be given only to comments on Docket No. 97–110–1 that are received on or before February 11, 1999. We will also consider comments made at a public hearing that will be held in Thousand Oaks, CA, on February 8, 1999, from 9 a.m. to 5 p.m.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–110–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–110–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room. The public hearing will be held at the Thousand Oaks Civic Arts Plaza, Fred Kavli Theatre, 2100 Thousand Oaks Boulevard, Thousand Oaks, CA.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Campbell, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799; e-mail: Ronald.C.Campbell@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 1998, the Animal and Plant Health Inspection Service (APHIS) published a proposed rule in the **Federal Register** (63 FR 43117–43125, Docket No. 97–110–1) to amend the citrus fruit regulations by recognizing a citrus-growing area within Argentina as being free from citrus canker. In that document, we also proposed to amend the fruits and vegetables regulations to allow the importation of grapefruit, lemons, and oranges from the citrus canker-free area of Argentina under conditions designed to prevent the introduction into the United States of two other diseases of citrus, sweet orange scab and citrus black spot, and other plant pests. These proposed changes would allow grapefruit, lemons, and oranges to be imported into the United States from Argentina subject to certain conditions.

On October 16, 1998, we published in the **Federal Register** (63 FR 55559, Docket No. 97–110–2) a notice advising the public that we were extending the comment period for the proposed rule by 120 days and that we had scheduled a public hearing to give interested persons the opportunity for the oral presentation of data, views, and arguments regarding the proposed rule.

In our October 16, 1998, notice, we announced that the public hearing would be held on December 17, 1998, at the Scherr Forum in the Thousand Oaks Civic Arts Plaza, Thousand Oaks, CA. However, we have been asked to reschedule the public hearing to a later date to give interested persons more time to review the proposed rule and its supporting information prior to the hearing. We have also been informed that the number of attendees at the public hearing may exceed the capacity of the Scherr Forum Theatre.

Therefore, the public hearing that had been scheduled for December 17, 1998, at the Scherr Forum in the Thousand Oaks Civic Arts Plaza, Thousand Oaks, CA, has been canceled. The public hearing is now scheduled for February 8, 1999, at the Fred Kavli Theatre in the Thousand Oaks Civic Arts Plaza, Thousand Oaks, CA.

The purpose of this hearing is to give interested persons an opportunity for the oral presentation of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to the comments at the hearing, except to clarify or explain provisions of the proposed rule.

A representative of APHIS will preside at the public hearing. Any interested person may appear and be heard in person, by attorney, or by other representative. Written statements may be submitted and will be made part of the hearing record. Persons who wish to speak at a public hearing will be asked to provide their name and organization. We ask that anyone who reads a statement or submits a written statement provide two copies to the presiding officer at the hearing.

The public hearing will begin at 9 a.m. and is scheduled to end at 5 p.m., local time. However, the hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. If the number of speakers at the hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

Done in Washington, DC, this 25th day of November 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–32228 Filed 12–3–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 360 and 361

[Docket No. 98–063–1]

Noxious Weeds; Update of Weed Lists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and notice of public hearing.

SUMMARY: We are proposing to amend the noxious weeds regulations by

adding *Solanum tampicense* Dunal (wetland nightshade) and *Caulerpa taxifolia* (Mediterranean clone) to the list of aquatic weeds and removing *Ipomoea triloba* Linnaeus from the list of terrestrial weeds. We are also proposing to update the taxonomic names of two other weeds currently listed and make one editorial change to the regulations. These actions appear to be necessary to prevent the artificial spread of noxious weeds into noninfested areas of the United States, to remove unnecessary restrictions, and to make the regulations easier to understand.

DATES: Consideration will be given only to comments received on or before February 2, 1999. We will also consider comments made at a public hearing to be held on January 6, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–063–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–063–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room. The public hearing will be held at the USDA Center at Riverside, room 3B01, 4700 River Road, Riverdale, MD. Picture identification is required. Parking is available next to the building for a $2.00 fee (have quarters or $1 bills). The nearest Metro Station is the College Park station on the Green Line, and is within walking distance.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lehtonen, Botanist, Biological Assessment and Taxonomic Support, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236, (301) 734–8896.

SUPPLEMENTARY INFORMATION:

Background

The noxious weed regulations were promulgated under authority of the Federal Noxious Weed Act (FNWA) of 1974, as amended (7 U.S.C. 2801 *et seq.*), and are set forth in 7 CFR part 360. They contain restrictions on the movement of listed noxious weeds into or through the United States, but do not affect the movement of listed noxious weeds that are moved solely intrastate.

Under the authority of the Federal Seed Act (FSA) of 1939, as amended (7 U.S.C. 1551 *et seq.*), the U.S. Department of Agriculture (USDA) regulates the importation and interstate movement of certain agricultural and vegetable seeds and screenings. Title III of the FSA, ''Foreign Commerce,'' requires shipments of imported agricultural and vegetable seeds to be labeled correctly and to be tested for the presence of the seeds of certain noxious weeds as a condition of entry into the United States. The Animal and Plant Health Inspection Service's (APHIS's) regulations implementing the provisions of Title III of FSA are found in 7 CFR part 361. A list of noxious weed seeds is contained in § 361.6. Paragraph (a)(1) of § 361.6 lists species of noxious weeds whose seeds have no tolerances applicable to their introduction into the United States.

In this document we are proposing to amend the noxious weed regulations by adding two weeds to the list of aquatic weeds in § 360.200(a), removing another weed from the list of terrestrial weeds in § 360.200(c), and updating the taxonomy of two other currently listed weeds. Also, since the FSA regulations in § 361.6(a) support the noxious weed regulations by prohibiting or restricting the importation of the seeds of noxious weeds listed in § 360.200, we are proposing to amend the noxious weed seed list in § 361.6(a) accordingly.

Addition of *Solanum tampicense*

The FNWA defines a noxious weed as ''any living stage (including but not limited to, seeds and reproductive parts) of any parasitic or other plant of a kind, or subdivision of a kind, which is of foreign origin, is new to or not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation, or navigation or the fish or wildlife resources of the United States or the public health.''

Solanum tampicense Dunal (wetland nightshade) is currently found in five counties in southwestern Florida. Representatives of the Florida Division of Plant Industry and the Florida Department of Environmental Protection participated with APHIS in the New Pest Advisory Group meeting for this species, and concluded that the species meets the FNWA's definition of a noxious weed.

S. tampicense will grow as a perennial only in areas free of frost. Therefore, Florida, and other areas that are generally free from frost, are at risk for the establishment of the *S. tampicense.* The establishment of *S. tampicense* in Florida could have both economic and ecological consequences. Its prickly growth could inhibit access by livestock to wetlands areas, a potentially serious dry-season problem. It also has the potential to invade natural ecosystems and alter current plant and animal habitats.

Listing this weed would help avert further introductions and help prevent the artificial spread of the weed into noninfested areas of the United States. Therefore, we are proposing to add *S. tampicense* to the list of aquatic weeds in § 360.200(a) and to the list of seeds with no tolerances applicable to their introduction in § 361.6(a)(1).

Addition of *Caulerpa taxifolia* (Mediterranean clone)

The Mediterranean clone of the green seaweed *Caulerpa taxifolia* has invaded the Mediterranean coasts of France and Italy and now covers thousands of acres of the coastal zone. This invasive, aquarium-bred clone appears to have been introduced into the Mediterranean Sea from the Monaco Aquarium in 1984. It covered approximately 1 square yard in 1984, spread to over 2 acres by 1989, and now covers over 10,000 acres, extending from the shore to depths of over 250 feet. *C. taxifolia* (Mediterranean clone) grows on both rocky and sandy bottoms, from protected bays to exposed capes, and attains great densities, forming monocultural stands whose impact has been compared to unrolling a carpet across the bottom of the sea. In the regions where it is established, *C. taxifolia* (Mediterranean clone) has caused ecological devastation by overgrowing and eliminating native seaweeds, sea grasses, and invertebrates (such as corals, sea fans, and sponges) and has caused economic damage by harming tourism and recreational diving and creating a costly impediment to commercial fishing. No effective eradication strategies have been identified for *C. taxifolia* (Mediterranean clone).

France, Spain, and Australia have already banned the possession, transport, and sale of *C. taxifolia* (Mediterranean clone), but it continues to be available for importation and sale in the United States for use in public and private aquariums. We believe that *C. taxifolia* (Mediterranean clone), if released into the environment, presents a risk of becoming established in the United States, thus threatening coastal waters and coral reefs from North Carolina to Florida, the Gulf of Mexico, southern California, Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa.

Listing *C. taxifolia* (Mediterranean clone) as a Federal noxious weed would

help prevent its introduction and spread into the natural environment of the United States. Therefore, we are proposing to add *C. taxifolia* (Mediterranean clone) to the list of aquatic weeds in § 360.200(a) and to the list in § 361.6(a)(1).

Removal of *Ipomoea triloba*

The regulations also list *Ipomoea triloba* Linnaeus (little bell, aiea morning glory) as a terrestrial noxious weed. The FNWA's definition of ''noxious weed'' requires, in part, that such weeds be ''of foreign origin.'' *I. triloba*, however, according to an authority on the family Convolvulaceae, is a species native to Florida, and therefore is not within the scope of the FNWA. We concur with that expert's determination and are, therefore, proposing to remove *I. triloba* from the list of terrestrial weeds in § 360.200(c) and from the list of seeds with no tolerances applicable to their introduction in § 361.6(a)(1).

Miscellaneous

We are also proposing to update the taxonomy of *Rottboellia exaltata* Linnaeus S. and *Borreria alata* (Aublet) de Candolle in the terrestrial noxious weed list in § 360.200(c) and the noxious weed seeds list in § 361.6(a)(1). The revised taxonomical names are *Rottboellia cochinchinensis* (Lour.) W. Clayton and *Spermacoce alata* (Aublet) de Candolle, respectively. We are proposing this action because the revised taxonomic names are the names currently recognized by the scientific community and the USDA Germplasm Resources Information Network.

The noxious weeds listed in § 360.200(a) fall under the heading ''Aquatic weeds.'' It has come to our attention that some weeds on that list could be more appropriately described as ''wetland weeds.'' We agree with that suggestion and are, therefore, proposing to rename the heading of that list ''Aquatic and wetland weeds'' so that it more accurately represents the list's contents.

Public Hearing

APHIS will host a public hearing to provide interested persons a full opportunity to present their views regarding this proposal. The hearing will be held on January 6, 1999, at the USDA Center at Riverside, room 3BO1, 4700 River Road, Riverdale, MD.

A representative of APHIS will preside at the public hearing. Any interested person may appear and be heard in person, by attorney, or by other representative. Persons who wish to speak at the public hearing will be asked to sign in, listing their names and organizations.

The public hearing will begin at 10:00 a.m. local time and is scheduled to end at 12:00 p.m. local time. However, the hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. If the number of speakers at a hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

The purpose of the hearings is to give interested persons an opportunity for oral presentations of data, views, and arguments. Questions about the content of the proposed rules may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at a hearing, except to clarify or explain provisions of the proposed rules.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, set forth below, regarding the impact of this proposed rule on small entities. We do not currently have all the data necessary for a comprehensive analysis of the economic effects of this rule on small entities. Therefore, we are inviting comments concerning potential economic impacts. In particular, we are interested in determining the number and kinds of small entities that may incur benefits or costs from implementation of this proposed rule.

In accordance with 7 U.S.C. 2803 and 2809, the Secretary of Agriculture is authorized to promulgate regulations to prevent the movement of any noxious weed into the United States, or interstate, except under conditions prescribed by the Secretary.

Addition of *S. tampicense and C. taxifolia* (Mediterranean clone)

This proposed rule would add *Solanum tampicense* (wetland nightshade) to the list of Federal noxious weeds. *S. tampicense* will grow as a perennial only in areas free of frost, and is therefore a threat to southern Florida and areas of the country with a climate similar to that of southern Florida. *S. tampicense* is currently established in five counties in southwestern Florida and could potentially have economic consequences for livestock producers in those areas. Its prickly growth may inhibit access by livestock to wetland areas, a potentially serious dry-season problem.

The majority of cattle operations in the counties harboring existing populations of *S. tampicense* are small entities. The extent to which they would be adversely affected by the continued spread of *S. tampicense* is not known. Preventing further introductions and curtailing spread would have a positive economic impact on livestock producers not yet affected.

The unchecked spread of *S. tampicense* may also have a negative impact on natural ecosystems. Although the extent to which *S. tampicense* could displace other natural species is not known, due to the proximity of Everglades National Park to the currently affected areas, the weed could potentially have harmful effects on natural vegetation and wildlife. In responding to the potential harm caused by *S. tampicense* to natural ecosystems, one or more small organizations or governmental jurisdictions in affected areas could incur control costs if the weed were to spread. Although the size and magnitude of such potential costs are not known, it is clear that the proposed rule, if adopted, would help to ensure that the costs would be minimal or nonexistent.

This proposed rule would also add *Caulerpa taxifolia* (Mediterranean clone) to the list of aquatic noxious weeds. We believe that some importers may currently be importing *C. taxifolia* (Mediterranean clone) into the United States for use in public and private aquariums, but data on the amount of *C. taxifolia* (Mediterranean clone) if any, currently being imported into the United States is unavailable.

The unchecked spread of *C. taxifolia* (Mediterranean clone) into the United States can, however, be expected to have a negative impact on natural ecosystems, given its significant negative effects on the regions in the Mediterranean where it is already established. In responding to the potential harm caused by *C. taxifolia* (Mediterranean clone) to natural ecosystems, one or more organizations or governmental jurisdictions in affected areas could incur control costs if the weed were to be introduced into the environment. Although the size and magnitude of such potential costs are not known, it is clear that the proposed rule, if adopted, would help to prevent the need for such expenditures.

We therefore believe that adding *S. tampicense* and *C. taxifolia* (Mediterranean clone) to the list of Federal noxious weeds would help preclude potential economic and ecological consequences that could result from their spread.

Removal of *Ipomoea triloba*

We are proposing to remove *Ipomoea triloba* (little bell, aiea morning glory) from the list of Federal noxious weeds because it has been determined that *I. triloba* is a species native to Florida. Native species are not within the scope of the FNWA, and we therefore have no authority to continue to regulate *I. triloba* as such. The delisting of *I. triloba* could have a slightly positive economic impact on importers of agricultural and vegetable seed, whose shipments would no longer be delayed or refused at the port of entry due to contamination with *I. triloba*.

Alternatives Considered

The only significant alternative to this proposed rule would be to make no changes in the regulations, i.e., to not add *S. tampicense* and *C. taxifolia* (Mediterranean clone) to the list of Federal noxious weeds and to retain *I. triloba* on that list. We have rejected the alternative of not listing *S. tampicense* and *C. taxifolia* (Mediterranean clone) as Federal noxious weeds because of the potential economic and ecological consequences that we believe would result from their spread. We have also rejected the alternative of retaining *I. triloba* on the list of Federal noxious weeds because it has been determined that *I. triloba* is a species native to Florida. Native species are not within the scope of the FNWA, and we therefore have no authority to continue to regulate *I. triloba* as such.

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 360

Imports, Plants (Agriculture), Quarantine, Reporting and recordkeeping requirements, Transportation, Weeds.

7 CFR Part 361

Agricultural commodities, Imports, Labeling, Quarantine, Reporting and recordkeeping requirements, Seeds, Vegetables, Weeds.

Accordingly, we are proposing to amend 7 CFR parts 360 and 361 as follows:

PART 360—NOXIOUS WEED REGULATIONS

1. The authority citation for part 360 would continue to read as follows:

Authority: 7 U.S.C. 2803 and 2809; 7 CFR 2.22, 2.80, and 371.2(c).

§ 360.200 [Amended]

2. Section § 360.200 would be amended as follows:

a. In paragraph (a), the paragraph heading would be revised to read ''Aquatic and wetland weeds.''

b. In paragraph (a), the list of noxious weeds would be amended by adding, in alphabetical order, entries for ''*Caulerpa taxifolia* (Mediterranean clone)'' and ''*Solanum tampicense* Dunal (wetland nightshade)''.

c. In paragraph (c), the list of noxious weeds would be amended by removing the entries for ''*Borreria alata* (Aublet) de Candolle'', ''*Ipomoea triloba* Linnaeus (little bell, aiea morning glory)'', and ''*Rottboellia exaltata* Linnaeus f. (itchgrass, raoulgrass)'', and by adding, in alphabetical order, entries for ''*Rottboellia cochinchinensis* (Lour.) W. Clayton'' and ''*Spermacoce alata* (Aublet) de Candolle''.

PART 361—IMPORTATION OF SEED AND SCREENINGS UNDER THE FEDERAL SEED ACT

3. The authority citation for part 361 would continue to read as follows:

Authority: 7 U.S.C. 1581–1610; 7 CFR 2.22, 2.80, and 371.2(c).

§ 361.6 [Amended]

4. In § 361.6, paragraph (a)(1), the list of noxious weeds would be amended as follows:

a. The entries for ''*Borreria alata* (Aublet) de Candolle'' and ''*Ipomoea triloba* L.'' would be removed.

b. The entry for ''*Rottboellia cochinchinensis* Clayon (=*R. exaltata* (L.)L. f.)'' would be amended by removing the words ''Clayon (=*R. exaltata* (L.)L. f.)'' and adding the words ''W. Clayton'' in their place.

c. New entries for ''*Caulerpa taxifolia* (Mediterranean clone)'', ''*Solanum tampicense* Dunal (wetland nightshade)'', and ''*Spermacoce alata* (Aublet) de Candolle'' would be added in alphabetical order.

Done in Washington, DC, this 25th day of November 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–32229 Filed 12–3–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–44]

Proposed Modification of the Legal Description of Class D Airspace and Class E Airspace; Binghamton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the legal description of the Class D airspace and Class E airspace at Binghamton Regional/Edwin A. Link field Airport (BGM), Binghamton, NY. The air traffic control tower at BGM has reduced their operating hours. Therefore, the Class D airspace and Class E airspace area designated as an extension to a Class D surface area will be effective only during specific dates and times. This action proposes to designate the airspace as part time and does not propose to change the actual dimensions of the airspace. Adoption of this proposal would result in the affected areas reverting to Class E airspace for the airspace extending upward from 700 feet above the surface during the specified hours of reduced operation.

DATES: Comments must be received on or before January 4, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–44, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building, # 111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

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, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number 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. 98–AEA–44.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise to the legal description of the BGM Class D and Class E airspace areas at Binghamton, NY. The required criteria for full time Class D airspace is no longer being met. The control tower for BGM has reduced the hours of operation. Therefore, the need for the airspace is reduced accordingly. The reduction of hours of use for Class D airspace will also cause the reduction of hours of use of the Class E airspace extensions to the Class D airspace. The affected airspace will revert to Class E airspace for that portion extending upward from 700 feet above the surface. Class D airspace designations are published in paragraph 5000, and Class E airspace designations for airspace designated as an extension to Class D surface area are published in Paragraph 6004, of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be removed subsequently from the Order.

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. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (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 would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have 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

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, is proposed to be amended as follows:

Paragraph 5000 Class D airspace

* * * * *

AEA NY D Binghamton, NY [Revised]

Binghamton Regional/Edwin A. Link Field Airport, Binghamton, NY
(Lat. 42°12′31″N., Long. 75°58′47″W.)

That airspace extending upward from the surface to and including 4,1000 feet MSL within a 4.1-mile radius of the Binghamton Regional/Edwin A. Link Field Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AEA NY E–4 Binghamton, NY [Revised]

Binghamton Regional/Edwin A. Link Field Airport, Binghamton, NY
(Lat. 42°12′31″N., Long. 75°58′47″W.)
Binghamton VORTAC
(Lat. 42°09′27″N., Long. 76°08′11″W.)
SMITE OM
(Lat. 42°06′17″N., Long. 75°53′28″W.)

That airspace extending upward from the surface within 1.8 miles each side of the Binghamton VORTAC 067° radial extending from the 4.1-mile radius of the Binghamton Regional/Edwin A. Link Field Airport to the VORTAC and within 1.8 miles each side of the Binghamton Reginal/Edwin A. Link Field Airport, ILS Localizer SE course extending from the 4.1-mile radius of the airport to 1.8 miles SE of the SMITE OM. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York, on November 24, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–32245 Filed 12–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–43]

Proposed Amendment to Class E Airspace; Laurel, DE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Laurel, DE. The development of new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Laurel Airport, DE, has made this proposal necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before January 4, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 98–AEA–43, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

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, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number 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. 98–AEA–43.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs 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 amend the Class E airspace area at Laurel, DE. A GPA–A SIAP has been developed for the Laurel Airport. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (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 would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have 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

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA DE E5 Laurel, DE [Revised]

Laurel Airport, DE

(Lat. 38°32′28″N., long. 75°35′34″W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Laurel Airport, excluding the portion that coincides with the Salisbury, MD, Class E airspace area.

* * * * *

Issued in Jamaica, New York, on November 24, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc 98–32246 Filed 12–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–14]

Proposed Amendment to Class E Airspace; Lawrence, KS; Perryville, MO; Warrensburg, MO; Burlington, IA; Des Moines, IA; Fort Madison, IA; and Dubuque, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) which proposed amending the Class E airspace designations at Lawrence, KS; Perryville, MO; Warrensburg, MO; Burlington, IA; Des Moines, IA; Fort Madison, IA; and Dubuque, IA. The NPRM is being withdrawn due to an error in Docket No. 98–ACE–14 (63 FR 14388), published March 25, 1998.

DATES: This withdrawal is made on December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

The Proposed rule

On March 25, 1998, a Notice of Proposed Rulemaking was published in the **Federal Register** to amend the Class E airspace designations at Lawrence, KS; Perryville, MO; Warrensburg, MO; Burlington, IA; Des Moines, IA; Fort Madison, IA; and Dubuque, IA (63 FR 14388). The Class E airspace, 700 feet and above, was enlarged to comply with the criteria specified in FAA Order 7400.2D. The Airport Reference Points (ARP) for Perryville, MO, and Des Moines, IA, were amended. The Instrument Landing System (ILS) and coordinates were added to the airspace designation for Des Moines, IA. Due to an error in Docket No. 98–ACE–14, a determination has been made to withdraw the NPRM.

Conclusion

In consideration of the aforementioned error, action is being taken to withdraw the NPRM.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawal of the Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 98–ACE–14, as published in the **Federal Register** on March 25, 1998 (63 FR 14388), is hereby withdrawn.

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Kansas City, MO, on October 28, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–32241 Filed 12–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–15]

Proposed Amendment to Class E Airspace; Garden City, KS; Liberal, KS; Fort Dodge, IA; Fort Madison, IA; Columbus, NE; Grand Island, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) which proposed amending the Class E airspace designations at Garden City, KS; Liberal, KS; Fort Dodge, IA; Fort Madison, IA; Columbus, NE; and Grand Island, NE. The NPRM is being withdrawn due to an error in Docket No. 98–ACE–15 (63 FR 15108), published March 30, 1998.

DATE: This withdrawal is made on December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On March 30, 1998, a Notice of Proposed Rulemaking was published in the **Federal Register** to amend the Class E airspace designations at Garden City, KS; Liberal, KS; Fort Dodge, IA; Fort Madison, IA; Columbus, NE; and Grand Island, NE (63 FR 15108). The Class E airspace, 700 feet and above, was enlarged to comply with the criteria specified in FAA Order 7400.2D. The Airport Reference Points (ARP) for Garden City Regional Airport, KS, and Columbus Municipal Airport, NE, were amended. The Instrument Landing System (ILS) and coordinates were added to the airspace designation for Grand Island, Central Nebraska Airport, NE, and Columbus Municipal Airport, NE. The name of the Garden City Municipal Airport, KS, was changed to Garden City Regional Airport, KS. Due to an error in Docket No. 98–ACE–15, a determination has been made to withdraw the NPRM.

Conclusion

In consideration of the aforementioned error, action is being taken to withdraw the NPRM.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawal of the Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 98–ACE–15, as published in the **Federal Register** on March 30, 1998 (63 FR 15108), is hereby withdrawn.

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Kansas City, MO, on October 28, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–32240 Filed 12–3–98; 8:45 am]

BILLING CODE 4910–13–M

POSTAL SERVICE

39 CFR Part 20

International Postal Rates; Proposed Changes

AGENCY: Postal Service.

ACTION: Proposed changes in international postal rates.

SUMMARY: Pursuant to its authority under 39 U.S.C. 407, the Postal Service is proposing changes in international postal rates. As required under the Postal Reorganization Act, the proposed changes will result in international postal rates that do not apportion the costs of the service so as to impair the overall value of the service to the users, are fair and reasonable, and are not unduly or unreasonably discriminatory or preferential.

DATES: Comments on the proposed changes must be received on or before January 4, 1999.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Pricing, Costing, and Classification, International Business Unit, U.S. Postal

Service, 475 L'Enfant Plaza, SW, Room 370–IBU, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, in the International Business Unit, 10th Floor, 901 D Street SW, Washington DC.

FOR FURTHER INFORMATION CONTACT: Angus MacInnes, (202) 268–2268.

SUPPLEMENTARY INFORMATION: The proposed international rates, shown in the tables below, are needed by the Postal Service to accommodate changes in the cost of providing international mail service. In addition, the Postal Service believes that the proposed changes will result in improved international mail service.

The Postal Service is proposing to change only the rates contained in the charts below. Rates not contained in these charts, such as the letter/letter package to countries other than Canada, air AO rates to all countries other than Canada and Mexico, and surface AO rates to Canada are not being changed.

Country rate groupings have been changed for Express Mail International Service and air parcel post. These grouping changes were necessary to more closely align the cost of providing service to certain countries to the rate charged for the service.

The country groupings for Global Priority Mail flat-rate envelope (large and small envelope) and single-piece variable weight option have been simplified from 3 to 2 groups. All countries to which this service is available are combined into a single group with only Canada having a separate rate. Variable weight sticker option volume rates (International Mail Manual (IMM) 226.43), flat-rate box rates (IMM 226.44), flat-rate box volume rates (IMM 226.44) are eliminated. These services are being abolished. Sections 226.43 through 226.452, and 226.52 of the IMM will be eliminated.

The Postal Service is also proposing drop shipment discounts for publishers' periodicals tendered at the New Jersey International and Bulk Mail Center. The proposed discount is $0.25 per pound. Mail will have to be presorted and sacked by country as is currently required; however, the per sack minimum weight will be eliminated for drop shipment.

This notice does not address proposed changes in the International Priority Airmail (IPA) service program, which is the subject of a separate notice. Changes in certain international special mail service fees (see 63 FR 40180) will be implemented on January 10, 1999.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment at the above address.

The Postal Service proposes to adopt the following rates and fees and to amend the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, Incorporation by reference, International postal services.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual will be amended to incorporate the following postal rates:

Proposed International Postage Rates

(See section VII for rate groups for individual countries.)

I. Express Mail International Service

A. On Demand Service

1. Country-Specific Rates

Weight not over (lb.)	Country				
	Canada	Mexico	Great Britain	China	Japan
0.5	$15.50	$15.50	$18.50	$15.00	$15.00
1	18.00	18.00	22.50	18.00	17.50
2	21.50	21.50	26.50	21.00	20.50
3	25.00	25.00	30.50	25.00	24.50
4	28.50	28.50	34.50	30.00	29.50
5	32.00	32.00	38.50	35.00	34.50
6	34.50	34.50	42.50	39.50	39.00
7	37.00	37.00	46.50	44.00	43.50
8	39.50	39.50	50.50	48.50	48.00
9	42.00	42.00	54.50	53.00	52.50
10	44.50	44.50	58.50	57.50	57.00
Each additional pound or fraction of a pound	$2.50	$2.50	$4.00	$4.50	$4.50

2. Rate Group Countries

Weight not over (lb.)	Rate group					
	1	2	3	4	5	6
0.5	$19.00	$21.00	$15.00	$19.00	$18.00	$20.00
1	21.50	24.50	19.00	23.00	21.00	22.50
2	25.50	28.50	23.00	27.50	24.50	26.50
3	29.50	32.50	28.00	32.00	28.00	30.50
4	34.00	37.00	33.00	36.50	31.50	35.00
5	39.00	41.50	38.00	41.00	35.00	39.50

Weight not over (lb.)	Rate group					
	1	2	3	4	5	6
6	43.50	45.50	42.50	45.00	38.00	44.00
7	48.00	49.50	47.00	49.00	41.00	48.50
8	52.50	53.50	51.50	53.00	44.00	53.00
9	57.00	57.50	56.00	57.00	47.00	57.50
10	61.50	61.50	60.50	61.00	50.00	62.00
Each additional pound or fraction of a pound	$4.50	$4.00	$4.50	$4.00	$3.00	$4.50

B. Custom Designed Service

1. Country-Specific Rates

Weight not over (lb.)	Country				
	Canada [1]	Mexico	Great Britain	China	Japan
0.5	.....	$23.50	$26.50	$23.00	$23.00
1	.....	26.00	30.50	26.00	25.50
2	.....	29.50	34.50	29.00	28.50
3	.....	33.00	38.50	33.00	32.50
4	.....	36.50	42.50	38.00	37.50
5	.....	40.00	46.50	43.00	42.50
6	.....	42.50	50.50	47.50	47.00
7	.....	45.00	54.50	52.00	51.50
8	.....	47.50	58.50	56.50	56.00
9	.....	50.00	62.50	61.00	60.50
10	.....	52.50	66.50	65.50	65.00
Each additional pound or fraction of a pound	.....	$2.50	$4.00	$4.50	$4.50

[1] Custom designed service not available.

2. Rate Group Countries

Weight not over (lb.)	Rate Group					
	1	2	3	4	5	6
0.5	$27.00	$29.00	$23.00	$27.00	$26.00	$28.00
1	29.50	32.50	27.00	31.00	29.00	30.50
2	33.50	36.50	31.00	35.50	32.50	34.50
3	37.50	40.50	36.00	40.00	36.00	38.50
4	42.00	45.00	41.00	44.50	39.50	43.00
5	47.00	49.50	46.00	49.00	43.00	47.50
6	51.50	53.50	50.50	53.00	46.00	52.00
7	56.00	57.50	55.00	57.00	49.00	56.50
8	60.50	61.50	59.50	61.00	52.00	61.00
9	65.00	65.50	64.00	65.00	55.00	65.50
10	69.50	69.50	68.50	69.00	58.00	70.00
Each additional pound or fraction of a pound	$4.50	$4.00	$4.50	$4.00	$3.00	$4.50

II. Letters and Letter Packages

A. Canada

Weight not over		Rate
(lb.)	(oz.)	
0	0.5	$0.48
0	1	0.55
0	1.5	0.67
0	2	0.76
0	3	1.00
0	4	1.20
0	5	1.40
0	6	1.60
0	7	1.80
0	8	2.00
0	9	2.19
0	10	2.39
0	11	2.59
0	12	2.79
1	0	3.59
1	8	4.52
2	0	5.44
2	8	6.36
3	0	7.29
3	8	8.21
4	0	9.14

A 4-pound maximum applies except for registered items sent to Canada. Canada-bound registered items may weigh up to 66 pounds. For registered items weighing over 4 pounds, the rate is $1.85 for each additional pound up to the 66-pound limit.

B. Bulk Letter Service to Canada

Weight not over (oz.)	Rate
0.5	$0.43
1	0.52
1.5	0.62
2	0.71
3	0.95

III. Post/Postal Cards and Aerogrammes

A. Post/Postal Cards

Country	Rate
Canada	$0.45
Mexico	0.40
All others	0.55

B. Aerogrammes

All countries: $0.60 each.

IV. Global Priority Mail (GPM)

A. GPM—World Wide Flat-Rate Prices

Envelope [1]		
	Small	Large
Canada	$4.00	$7.00
All other countries	$5.00	$9.00

[1] Maximum weight is 4 pounds.

B. GPM—World Wide Single-Piece Weight-Based

Weight [1] (lb.)	All other countries	Canada
	Rate	Rate
0.5	$8.00	$6.00
1.0	13.00	10.00
1.5	18.00	15.00
2.0	21.00	17.00
2.5	25.00	19.00
3.0	28.00	21.00
3.5	32.00	23.00
4.0	34.00	25.00

[1] Maximum weight is 4 pounds.

V. Other Articles (AO)

A. Regular Printed Matter and Small Packets—Surface

Weight not over		Mexico	All other countries except Canada
(lb.)	(oz.)	Rate	Rate
0	1	$0.60	$0.70
0	2	0.80	1.04
0	3	1.06	1.30
0	4	1.25	1.45
0	5	1.50	1.96
0	6	1.50	1.96
0	7	1.85	2.46
0	8	1.85	2.46
0	9	2.19	2.96
0	10	2.19	2.96
0	11	2.47	3.47
0	12	2.47	3.47
0	13	2.81	3.97
0	14	2.81	3.97
0	15	3.14	4.48
1	0	3.14	4.48
1	2	3.43	4.84
1	4	3.72	5.20
1	6	4.01	5.56
1	8	4.30	5.92
1	10	4.58	6.28
1	12	4.87	6.64
1	14	5.16	7.00
2	0	5.45	7.36
3	0	7.37	9.66
4	0	9.29	11.96
Each additional pound or fraction of a pound		$1.92	$2.30

B. Valuepost/Canada

Weight	Rate
Letter-size	
1 ounce or less.	$0.42
Over 1 ounce.	$0.39 plus $0.51 per pound or fraction of a pound
Flat-size	
5 ounces or less.	$0.71
Over 5 ounces.	$0.43 plus $1.16 per pound or fraction of a pound

C. Publishers' Periodicals—Surface

Weight Not Over		Mexico	All other countries except Canada
(lb.)	(Oz.)	Rate	Rate
0	1	0.40	0.38
0	2	0.50	0.48
0	3	0.65	0.62
0	4	0.75	0.72
0	5	0.94	0.91
0	6	0.94	0.91
0	7	1.13	1.10
0	8	1.13	1.10
0	9	1.31	1.30
0	10	1.31	1.30
0	11	1.50	1.49
0	12	1.50	1.49
0	13	1.69	1.68
0	14	1.69	1.68
0	15	1.88	1.87
1	0	1.88	1.87
1	2	2.05	2.05
1	4	2.23	2.23
1	6	2.40	2.41
1	8	2.58	2.59
1	10	2.75	2.77
1	12	2.93	2.95
1	14	3.10	3.13
2	0	3.28	3.31
2	0	4.48	4.46
4	0	5.68	5.61
5	0	6.88	6.76
6	0	8.08	7.91
7	0	9.28	9.06
8	0	10.48	10.21
9	0	11.68	11.36
10	0	12.88	12.51
11	0	14.08	13.66

Dropship Discount—$0.25 per pound for volume made up to country and tendered at the New Jersey International and Bulk Mail Center.

D. Books and Sheet Music—Surface

Weight not over	Mexico	All other countries except Canada
(lb.)	Rate	Rate
1	$1.88	$1.87
2	3.28	3.31
3	4.48	4.46
4	5.68	5.61
5	6.88	6.76
6	8.08	7.91
7	9.28	9.06
8	10.48	10.21
9	11.68	11.36
10	12.88	12.51
11	14.08	13.66

E. Air—Other Articles (Printed Matter, Matter for the Blind, and Small Packets)

1. Canada and Mexico—Air

Weight not over		Canada	Mexico
(lb.)	(oz.)	Rate	Rate
0	0.5	$0.60	$0.60
0	1	0.69	0.76
0	1.5	0.84	0.91
0	2	0.85	0.89
0	3	1.26	1.30
0	4	1.50	1.56
0	5	1.74	1.82
0	6	1.84	2.08
0	7	2.06	2.34
0	8	2.29	2.60
0	9	2.51	2.86
0	10	2.74	3.12
0	11	2.96	3.38
0	12	3.19	3.64
1	0	4.09	4.68
1	8	4.68	6.76
2	0	5.60	8.84
2	8	6.52	10.92
3	0	7.44	13.00
3	8	8.36	15.08
4	0	9.28	17.16
Each Additional ½ pound or fraction of ½ pound		$0.92	$2.08

VI. Parcel Post

(The weight limits for parcels vary by country. Parcels to Canada have a minimum weight limit of 1 pound.)

A. Surface Parcel Post

Weight not over (lb.)	Canada	Bahamas, Bermuda, Caribbean Islands, Central America, Mexico, and St. Pierre and Miquelon	All other countries
	Rate	Rate	Rate
2	$11.33	$14.65	$15.70
3	11.69	15.34	16.60
4	13.13	16.01	17.47
5	13.51	16.65	18.32
6	13.90	18.85	20.88
7	14.28	19.52	21.75
8	15.88	20.17	22.59
9	16.30	20.80	23.42
10	16.71	21.42	24.22
11	18.45	23.86	27.10
12	18.89	24.51	27.93
13	19.34	25.14	28.76
14	19.79	25.77	29.57
15	20.23	26.38	30.36
16	20.68	26.99	31.15
17	21.13	27.59	31.93

Weight not over (lb.)	Canada	Bahamas, Bermuda, Caribbean Islands, Central America, Mexico, and St. Pierre and Miquelon	All other countries
	Rate	Rate	Rate
18	21.57	28.18	32.69
19	22.02	28.77	33.45
20	22.47	29.35	34.20
21	22.91	29.93	34.94
22	23.36	30.50	35.68
23	23.81	31.07	36.41
24	24.25	31.63	37.14
25	26.03	33.42	39.09
26	26.48	33.98	39.80
27	26.92	34.53	40.51
28	27.37	35.07	41.22
29	27.82	35.62	41.92
30	28.27	36.16	42.61
31	28.71	36.70	43.31
32	29.16	37.24	44.00
33	29.61	37.77	44.68
34	30.05	38.30	45.37
35	30.50	38.83	46.05
36	30.95	39.36	46.73
37	31.39	39.89	47.40
38	31.84	40.41	48.07
39	32.29	40.93	48.75
40	32.73	41.45	49.41
41	33.18	41.97	50.08
42	33.63	42.49	50.75
43	34.07	43.01	51.41
44	34.55	43.52	52.07
Each additional pound or fraction of a pound	$0.50	$0.60	$0.70

B. Air Parcel Post

(See section VII for country rate groups.)

Weight not over (lb.)	Rate Groups						
	Canada	Mexico	A	B	C	D	E
1	$10.94	$9.98	$10.86	$11.76	$13.80	$15.11	$16.69
2	12.61	12.12	13.71	15.42	17.28	19.83	20.68
3	13.28	13.36	15.57	18.01	19.51	23.19	23.15
4	15.11	15.82	18.87	22.31	23.55	28.76	27.75
5	15.84	17.16	20.88	25.12	25.96	32.40	30.43
6	16.56	18.50	22.89	27.92	28.37	36.03	33.11
7	17.29	19.84	24.90	30.73	30.78	39.67	35.79
8	19.40	22.81	28.99	36.11	35.75	46.63	41.42
9	20.18	24.26	31.15	39.13	38.34	50.55	44.30
10	20.97	25.70	33.31	42.15	40.94	54.47	47.19
11	21.75	27.15	35.48	45.17	43.54	58.38	50.07
12	22.53	28.59	37.64	48.19	46.14	62.30	52.95
13	23.32	30.04	39.81	51.21	48.73	66.21	55.84
14	24.10	31.48	41.97	54.23	51.33	70.13	58.72
15	24.88	32.93	44.14	57.25	53.93	74.04	61.60
16	25.66	34.37	46.30	60.27	56.52	77.96	64.49
17	26.45	35.82	48.47	63.29	59.12	81.88	67.37
18	27.23	37.26	50.63	66.31	61.72	85.79	70.25
19	28.01	38.71	52.80	69.33	64.32	89.71	73.14
20	28.79	40.15	54.96	72.35	66.91	93.62	76.02

Weight not over (lb.)	Rate Groups						
	Canada	Mexico	A	B	C	D	E
21	29.58	41.60	57.13	75.37	69.51	97.54	78.90
22	30.36	43.04	59.29	78.39	72.11	101.45	81.79
23	31.14	44.49	61.46	81.41	74.70	105.37	84.67
24	31.92	45.93	63.62	84.43	77.30	109.29	87.55
25	34.04	48.71	67.12	88.76	81.23	114.53	91.61
26	34.82	50.15	69.28	91.78	83.83	118.44	94.49
27	35.60	51.60	71.45	94.80	86.42	122.36	97.38
28	36.38	53.04	73.61	97.82	89.02	126.27	100.26
29	37.17	54.49	75.78	100.84	91.62	130.19	103.14
30	37.95	55.93	77.94	103.86	94.21	134.11	106.03
31	38.73	57.38	80.11	106.88	96.81	138.02	108.91
32	39.51	58.83	82.27	109.90	99.41	141.94	111.79
33	40.30	60.27	84.44	112.92	102.00	145.85	114.68
34	41.08	61.72	86.60	115.94	104.60	149.77	117.56
35	41.86	63.16	88.77	118.96	107.20	153.68	120.44
36	42.65	64.61	90.93	121.98	109.80	157.60	123.33
37	43.43	66.05	93.10	125.00	112.39	161.52	126.21
38	44.21	67.50	95.26	128.02	114.99	165.43	129.09
39	44.99	68.94	97.43	131.04	117.59	169.35	131.98
40	45.78	70.39	99.59	134.06	120.18	173.26	134.86
41	46.56	71.83	101.76	137.08	122.78	177.18	137.74
42	47.34	73.28	103.92	140.10	125.38	181.09	140.63
43	48.12	74.72	106.09	143.12	127.98	185.01	143.51
44	48.91	76.17	108.25	146.14	130.57	188.95	146.39
Each additional pound or fraction of a pound	$0.80	$1.40	$1.50	$3.00	$2.60	$4.00	$3.00

VII. Country Table

Country	Express mail rate group	Air parcel post rate group
Afghanistan [1]		E
Albania	4 [2]	D
Algeria	6 [2]	D
Andorra	4	B
Angola	6	D
Anguilla		A
Antigua and Barbuda		A
Argentina	5	E
Armenia	4	E
Aruba	5	B
Ascension		
Australia	3	D
Austria	2	D
Azerbaijan	4	A
Azores	4	D
Bahamas	5	A
Bahrain	6	C
Bangladesh	1	B
Barbados	5	A
Belarus	4	C
Belgium	2	D
Belize	5	A
Benin	6	A
Bermuda	5	C
Bhutan	1 [2]	D
Bolivia	5	C
Bosnia-Herzegovina	2	A
Botswana	6	D
Brazil	5	E
British Virgin Islands		A
Brunei Darussalam	1	A
Bulgaria	4	D
Burkina Faso	6	D
Burma		B
Burundi [1]	6	B
Cambodia	1	B

Country	Express mail rate group	Air parcel post rate group
Cameroon	6	D
Canada	Country-Specific Rate [2]	Country-Specific Rate
Cape Verde	6	D
Cayman Islands	5	A
Central African Republic	6	E
Chad	6	D
Chile	5	C
China	Country-Specific Rate	D
Colombia	5	B
Comoros		B
Congo, Dem. Rep. of the [1]	6	B
Congo, Rep. of the (Brazzaville)	6	E
Corsica	4	D
Costa Rica	5	A
Côte d'Ivoire (Ivory Coast)	6	C
Croatia	4	C
Cuba		
Cyprus	4	C
Czech Republic	4	C
Denmark	2	C
Djibouti	6	D
Dominica		A
Dominican Republic	5	A
Ecuador	5	B
Egypt	6	D
El Salvador	5	A
Equatorial Guinea	6	B
Eritrea	6	D
Estonia	4 [2]	D
Ethiopia	6	B
Falkland Islands		
Faroe Islands	2	C
Fiji	1 [2]	A
Finland	2	A
France (incl. Monaco)	4 [2]	D
French Guiana	5 [2]	E
French Polynesia	1	E
Gabon	6	D
Gambia		A
Georgia, Republic of	4	E
Germany	2 [2]	A
Ghana	6	D
Gibraltar		B
Great Britain and Northern Ireland	Country-Specific Rate	D
Greece	2	A
Greenland		C
Grenada	5	A
Guadeloupe	5 [1]	E
Guatemala	5	A
Guinea	6	A
Guinea-Bissau [1]	6	A
Guyana	5	A
Haiti	5	A
Honduras	5	A
Hong Kong	3	D
Hungary	2	C
Iceland	2	A
India	1	D
Indonesia	1	D
Iran		E
Iraq	6	
Ireland	4	A
Israel	6	D
Italy	2	A
Jamaica	5	A
Japan	Country-Specific Rate	D
Jordan	6	B
Kazakhstan	4	B
Kenya	6	D
Kiribati		A
Korea, Dem. People's Rep. (North)		
Korea, Republic of (South)	3	B

Country	Express mail rate group	Air parcel post rate group
Kuwait	6	D
Kyrgyzstan	4	C
Laos	1	E
Latvia	4	B
Lebanon		A
Lesotho	6	D
Liberia [1]	6	
Libya		D
Liechtenstein	2	C
Lithuania	4	D
Luxembourg	4	C
Macao	1	D
Macedonia	4	C
Madagascar	6	E
Madeira Islands	4	D
Malawi	6	D
Malaysia	1	B
Maldives	1	E
Mali	6	D
Malta	2	D
Martinique	5 [2]	E
Mauritania	6	A
Mauritius	6	B
Mexico	Country-Specific Rate	Country-Specific Rate
Moldova	4	D
Mongolia	1	D
Montserrat		A
Morocco	6	C
Mozambique	6	E
Namibia	6	D
Nauru	1 [2]	B
Nepal	1	D
Netherlands	2 [2]	B
Netherlands Antilles	5	B
New Caledonia	1	E
New Zealand	1	D
Nicaragua	5	A
Niger	6	C
Nigeria	6	D
Norway	2	D
Oman	1	B
Pakistan	1	D
Panama	5	A
Papua New Guinea	1	E
Paraguay	5	C
Peru	5	C
Philippines	1	D
Pitcairn Island		D
Poland	4	C
Portugal	4	D
Qatar	6	B
Reunion		E
Romania	4	D
Russia	4	E
Rwanda	6	D
Saint Christopher (St. Kitts) and Nevis	5	B
Saint Helena		C
Saint Lucia	5	A
Saint Pierre and Miquelon		B
Saint Vincent and the Grenadines	5	C
San Marino		A
Sao Tome and Principe		B
Saudi Arabia	6	B
Senegal	6	D
Serbia-Montenegro	4	B
Seychelles	6	C
Sierra Leone [1]	6	D
Singapore	3	D
Slovak Republic	4	B
Slovenia	2	C
Solomon Islands	1	B
Somalia [1]	6	

Country	Express mail rate group	Air parcel post rate group
South Africa	6	D
Spain	4	B
Sri Lanka	1	B
Sudan	6	B
Suriname		A
Swaziland	6	B
Sweden	2[2]	E
Switzerland	2	C
Syrian Arab Republic	6	C
Taiwan	3	D
Tajikistan	4	C
Tanzania	6	C
Thailand	3	B
Togo	6	D
Tonga		A
Trinidad and Tobago	5	A
Tristan da Cunha		A
Tunisia	6	B
Turkey	6	B
Turkmenistan	4	D
Turks and Caicos Islands		A
Tuvalu		A
Uganda	6	D
Ukraine	4	D
United Arab Emirates	6	C
Uruguay	5	C
Uzbekistan		E
Vanuatu	1[2]	A
Vatican City		A
Venezuela	5	A
Vietnam	1	B
Wallis and Futuna Islands		E
Western Samoa	1	B
Yemen	6	C
Zambia	6	D
Zimbabwe	6	E

[1] All mail service suspended.
[2] On Demand service only.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–31974 Filed 12–3–98; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7266]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arizona	Mohave County (Unincorporated Areas).	Wash A	Approximately 150 feet upstream of Shipp Road.	None	*2,765
			At Agua Fria Drive	None	*2,920
		Wash A–Tributary 1	At confluence of Wash A	None	*2,878
			Approximately 100 feet downstream of Agua Fria Drive.	None	*2,930
		Wash B	Approximately 130 feet upstream of Shipp Drive.	None	*2,780
			Approximately 2,700 feet upstream of Agua Fria Drive.	None	*3,011
		Wash B—Reach 1B	200 feet upstream of Shipp Drive	None	*2,775
			Approximately 150 feet downstream of State Route 68.	None	*2,798
		Wash B—Reach 1C	100 feet upstream of Shipp Drive	None	*2,781
			Approximately 700 feet downstream of State Route 68.	None	*2,805
		Wash B—Tributary 1	Approximately 1,780 feet downstream of Adobe Road.	None	*2,828
			Approximately 1,350 feet upstream of Agua Fria Road.	None	*2,890
		Wash B—Tributary 2	At confluence with Wash B	None	*2,962
			Approximately 3,200 feet upstream of Agua Fria Drive.	None	*3,024
		Divergence From Wash B	At confluence with Wash B	None	*2,822
			Approximately 1,000 feet downstream of Adobe Road.	None	*2,888
		Wash C	Approximately 200 feet upstream of Shipp Drive.	None	*2,826
			Approximately 1,250 feet upstream of Chino Drive.	None	*2,955
		Wash C—Tributary 1	At confluence with Wash C	None	*3,046
			Approximately 800 feet upstream of Agua Fria Drive.	None	*3,121
		Wash C—Tributary 2	At confluence with Wash C	None	*2,936
			Approximately 1,800 feet upstream of Chino Drive.	None	*2,981
		Wash C—Tributary 3	At confluence with Wash C—Tributary 1	None	*2,981
			Approximately 2,400 feet downstream of Bacobi Road.	None	*3,002
		Cerbat Wash	Approximately 200 feet upstream of Shipp Drive.	None	*2,762
			Approximately 300 feet downstream of Agua Fria Drive.	None	*2,895
		Cerbat Wash—Tributary 1	Approximately 140 feet downstream of Route 68.	None	*2,797
		Cerbat Wash—Tributary 2	At confluence of Cerbat Wash	None	*2,848

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 300 feet downstream of Agua Fria Drive.	None	*2,900
		Sacramento Wash	Approximately 2,600 feet downstream of Shipp Drive.	None	*2,723
			Approximately 160 feet downstream of Agua Fria Drive.	None	*2,852
		Sacramento Wash—Tributary 1A.	At confluence with Sacramento Wash	None	*2,803
			Approximately 1 mile upstream of Estrella Road.	None	*2,870
		Sacramento Wash—Tributary 1B.	At confluence with Sacramento Tributary 1A.	None	None
			Approximately 3,400 feet upstream of Chino Drive.	None	None
		Sacramento Wash—Tributary 2.	At confluence with Sacramento Wash	None	None
			Approximately 1 mile upstream of Estrella Road.	None	None
		Sacramento Wash—Tributary 3.	At confluence with Sacramento Wash	None	*2,833
			Approximately 2,700 feet downstream of Agua Fria Drive.	None	*2,861
		Sacramento Wash—Tributary 4.	At confluence with Sacramento Wash	None	*2,768
			Approximately 2,000 feet above confluence with Sacramento Wash—Tributary 4A.	None	*2,827
		Sacramento Wash—Tributary 4A.	At confluence with Sacramento Wash—Tributary 4.	None	*2,804
			Approximately 1,940 feet upstream of confluence with Sacramento Wash—Tributary 4.	None	*2,827
		Sacramento Wash—Tributary 5.	At confluence with Sacramento Wash	None	*2,748
			Approximately 6,250 feet upstream of Chino Drive.	None	*2,868
		Sacramento Wash—Tributary 5A.	At confluence with Sacramento Wash	None	*2,790
			Approximately 2,700 feet upstream of Chino Drive.	None	*2,823
		Sacramento Wash—Tributary 6.	Approximately 250 feet upstream of Shipp Drive.	None	*2,760
			Approximately 5,350 feet upstream of Chino Drive.	None	*2,886
		Sacramento Wash—Tributary 6A.	At confluence with Sacramento Wash—Tributary 6.	None	*2,788
			Approximately 2,900 feet upstream of confluence with Sacramento Wash—Tributary 6B.	None	*2,880
		Sacramento Wash—Tributary 6B.	At confluence with Sacramento Wash—Tributary 6A.	None	*2,860
			Approximately 1,760 feet upstream of confluence with Sacramento Wash—Tributary 6A.	None	*2,880
		Thirteen Mile Wash	Approximately 500 feet upstream of Shipp Drive.	None	*2,800
			Approximately 3,050 feet upstream of Agua Fria Drive.	None	*3,117
		Thirteen Mile Wash—Tributary 1.	At confluence of Thirteen Mile Wash	None	*3,030
			At Agua Fria Drive	None	*3,062
		Thirteen Mile Wash—Tributary 2.	At confluence of Thirteen Mile Wash	None	*3,013
			100 feet upstream of Agua Fria Drive	None	*3,121

Maps are available for inspection at 3015 Stockton Hill Road, Kingman, Arizona.

Send comments to Mr. Paul McIntosh, Mohave County Manager, P.O. Box 7000, Kingman, Arizona 86402–7000.

Arkansas	Crawford County and Incorporated Areas.	Louemma Creek	Approximately 3,500 feet downstream of North Hills Boulevard.	None	*419

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Just upstream of Rena Road	None	*487
			Approximately 200 feet upstream of Highway 59.	None	*574
		Louemma Tributary	Approximately 850 feet downstream of Highway 59.	None	*477
			Just upstream of Highway 59	None	*493
			Approximately 3,700 feet upstream of Highway 59.	None	*570
		Rena Branch	Approximately 1,050 feet downstream of Sandstone Drive.	None	*419
			Just upstream of Old Uniontown Road	None	*458
			Approximately 2,200 feet upstream of Blake Road.	None	*523
Maps are available for inspection at 1003 Broadway, Van Buren, Arkansas.					
Send comments to The Honorable John Riggs, Mayor, City of Van Buren, P.O. Box 668, Van Buren, Arkansas 72956.					
Maps are available for inspection at 300 Main Street, Van Buren, Arkansas.					
Send comments to The Honorable Jerry H. Williams, Crawford County Judge, 300 Main Street, Van Buren, Arkansas 72956–5798.					
	Earle (City) Crittenden County.	Blackfish Bayou	Approximately 2,000 feet east of Desha Street and approximately 1,200 feet south of the Missouri Pacific Railroad.	None	*203
			Approximately 800 feet east of Route 149 and 2,000 feet north of Route 64.	None	*205
		Tyronza River	Approximately 400 feet west of Route 149 and approximately 400 feet south of the northern corporate limits.	None	*205
			Approximately 5,200 feet west of Route 149 and approximately 1,200 feet south of Route 184.	None	*205
Maps are available for inspection at the City of Earle City Hall, 1004 Second Street, Earle, Arkansas.					
Send comments to The Honorable Sherman Smith, Mayor, City of Earle, P.O. Box 213, Earle, Arkansas 72331.					
	Crittenden County (Unincorporated Areas).	Tyronza River	Approximately 3,000 feet west of Route 149 and approximately 4,250 feet north of the City of Earle corporate limits.	None	*205
			Approximately 750 feet north of Route 64 and approximately 8,250 feet south of Route 184.	None	*205
		Blackfish Bayou	Approximately 1,000 feet east of Route 149 and approximately 4,000 feet south of Barham Road.	None	*203
			Approximately 1,000 feet south of U.S. Route 64 and 7,600 feet east of Desha Street.	None	*203
			Approximately 7,000 feet east of Route 149 and 7,000 feet south of U.S. Route 64.	None	*203
			Approximately 1,600 feet east of Route 149 and approximately 1,600 feet north of U.S. Route 64.	None	*205
Maps are available for inspection at the Crittenden County Courthouse, 100 Court Square, Marion, Arkansas.					
Send comments to The Honorable Brian Williams, Crittenden County Judge, 100 Court Square, Marion, Arkansas 72364.					
California	East Palo Alto (City) San Mateo County.	San Francisco Bay	Approximately 150 feet downstream of Tulane Avenue.	*7	*8
			Approximately 1,000 feet downstream of Cami.	*7	*8
		San Francisquito Creek Overflow.	Just downstream of Alberni Street	None	*11
			Approximately 600 feet upstream of Green Street.	None	*26
Maps are available for inspection at the City of East Palo Alto City Hall Annex, 2200 University Avenue, East Palo Alto, California.					
Send comments to The Honorable R.B. Jones, Mayor, City of East Palo Alto, 2415 University Avenue, Second Floor, East Palo Alto, California 94303.					
Nebraska	Lindsay (Village) Platte County.	Shell Creek	Approximately 7,100 feet downstream of Elk Street.	None	*1,647

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 6,400 feet upstream of U.S. Route 91.	None	*1,668
Maps are available for inspection at the Village of Lindsay City Hall, 115 Pine Street, Lindsay, Nebraska. Send comments to The Honorable Kenneth Kurtenbach, Mayor, Village of Lindsay, P.O. Box 116, Lindsay, Nebraska 68644.					
Washington	Brewster (City) Okanogan County.	Swamp Creek	Just upstream of Bridge Street	*797	*786
			Approximately 2,550 feet above mouth, at the corporate limits.	None	*915
Maps are available for inspection at the City of Brewster Clerk/Treasurer's Office, 105 South Third Street, Brewster, Washington. Send comments to The Honorable Bonnie House, Mayor, City of Brewster, P.O. Box 340, Brewster, Washington 98819.					
	North Bonneville (City) Skamania County.	Hamilton Creek	Just upstream of confluence with the Columbia River.	None	*36.0
			Approximately 100 feet upstream of Evergreen Drive.	None	*47.0
		Columbia River	Approximately 1.6 miles upstream of confluence of Hamilton Creek.	None	*37.6
			Approximately 2 miles upstream of confluence with Hamilton Creek.	None	*38.9
		Greenleaf Creek	Just upstream of confluence with Hamilton Creek.	None	*47.0
			Approximately 550 feet upstream of Moffet Hot Springs Road.	None	*58.0
Maps are available for inspection at the City of North Bonneville Clerk/Treasurer's Office, Cascade Drive, North Bonneville, Washington. Send comments to The Honorable John Kirk, Mayor, City of North Bonneville, P.O. Box 7, North Bonneville, Washington 98639.					
	Washtucna (Town) Adams County.	Washtucna Coulee	Just upstream of confluence with Staley Coulee.	None	*1,024
			Approximately 850 feet upstream of confluence with Staley Coulee.	None	*1,024.5
		Staley Coulee	Approximately 2,700 feet downstream of Cooper Street.	None	*1,015.5
			Approximately 400 feet upstream of Main Street.	None	*1,033.0
Maps are available for inspection at the Town of Washtucna Clerk/Treasurer's Office, Southeast 165 Main Street, Washtucna, Washington. Send comments to The Honorable Syd Sullivan, Mayor, Town of Washtucna, P.O. Box 713, Washtucna, Washington 99371.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: November 24, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–32297 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 550, 551, 555, 560, 565, 585, 586, 587, and 588

[Docket No. 98–25]

Amendments to Regulations Governing Restrictive Foreign Shipping Practices, and New Regulations Governing Controlled Carriers

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to revise and redesignate its regulations relating to section 19 of the Merchant Marine Act, 1920, section 13(b)(5) of the Shipping Act of 1984, and the Foreign Shipping Practices Act of 1988, and add new regulations relating to section 9 of the Shipping Act of 1984, in order to incorporate certain amendments made by the Ocean Shipping Reform Act of 1998 as well as to clarify and reorganize existing regulations.

DATES: Submit comments on or before January 4, 1999.

ADDRESSES: Address all comments concerning this proposed rule to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street N.W., Room 1046, Washington, D.C. 20573–0001.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street N.W., Washington, D.C. 20573–0001, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Ocean Shipping Reform Act of 1998, Public Law 105–258, 112 Stat. 1902 (''OSRA''), amends the Shipping Act of 1984 (''1984 Act''), the Merchant Marine Act, 1920 (''1920 Act''), and the Foreign Shipping Practices Act of 1988 (''FSPA'') in several areas. The Commission's rules at former 46 CFR parts 585, 586, 587, and 588 effectuate the statutory obligations mandated by the 1984 Act, the 1920 Act, and the FSPA. The Commission now proposes to update, redesignate, and clarify these rules to reflect the changes made by OSRA. In addition, the Commission proposes a new regulation, 46 CFR part 565, which would implement changes made by OSRA to section 9 of the 1984 Act and would gather previously scattered regulations affecting

controlled carriers into a more readily accessible codification.

Clarification and Amendment of Former 46 CFR Part 585

The proposed rule would amend the Commission's regulations covering the provisions of section 19 of the 1920 Act, to incorporate the changes made by OSRA. The entire part is redesignated as part 550.

Changes to redesignated § 550.102 and § 550.301 reflect OSRA's clarification that ''pricing practices'' are among the practices that could give rise to a condition unfavorable to shipping. The changes to the authority citation and to redesignated § 550.103(a) reflect the addition of OSRA as an amendment to the 1920 Act. The changes to redesignated §§ 550.103(b), 550.201, 550.202(b), and 550.301(d) reflect OSRA's use of the new term ''ocean transportation intermediary'' in place of the old terms ''ocean freight forwarder'' and ''non-vessel-operating common carrier''.

The amendments instituted by OSRA include the addition of the suspension of service contracts to the list of available remedies in redesignated §§ 550.505(a), 550.601(c), and 550.602. The Commission's proposed rule reflects this change.

Redesignation of Former 46 CFR Part 586 and Removal of § 586.3

The proposed rule would redesignate former 46 CFR part 586 as part 551, Actions To Adjust or Meet Conditions Unfavorable to Shipping in the U.S. Foreign Trade. Former 46 CFR 586.3, *Conditions unfavorable to shipping in the United States/Ecuador trade,* is no longer an ongoing proceeding and is therefore removed.

Clarification and Amendment of Former 46 CFR Part 587

The proposed rule would amend the Commission's regulations covering the 1984 Act's provisions providing relief for U.S.-flag vessels unduly impaired from accessing the ocean trade between foreign ports. *See* section 13(b)(5) of the 1984 Act, 46 U.S.C. app. § 1712(b)(5) (renumbered by OSRA as section 13(b)(6)). The entire part is redesignated as part 560.

Changes to redesignated §§ 560.1(a)(1) and (2) and 560.5(a) are changes to reflect renumbering of the Act. Section 560.2(c) refers to ''fighting ships,'' a term which has been deleted from the definitions section of the Act and elsewhere. The removal of this term effects that deletion. The changes to redesignated § 560.7(b)(3)(i) reflect OSRA's addition of the suspension of service contracts as a section 11a(e)(1)(B) remedy.

Clarification and Amendment of Former 46 CFR Part 588

The proposed rule would amend the Commission's regulations covering the FSPA's provisions authorizing Commission action to address adverse conditions affecting U.S.-flag carriers that do not exist for foreign carriers in the United States. The entire part is redesignated as part 555.

The change to redesignated § 555.1 makes reference to OSRA as an amendment to the FSPA. Changes to redesignated § 555.2 (a) and (d), and § 555.4 reflect OSRA's use of the new term ''ocean transportation intermediary'' in place of the old terms ''ocean freight forwarder'' and ''non-vessel-operating common carrier''. The change to redesignated § 555.2(c) corrects an error of word choice and corresponds to the language employed in the FSPA.

The change to redesignated § 555.4(c) improves the clarity of the provision. The changes to redesignated § 555.8 reflect OSRA's addition of the suspension of service contracts as a remedy.

New 46 CFR Part 565

The proposed new rule would implement OSRA's revision of section 9 of the 1984 Act, and would provide procedures for reviewing controlled carrier rates, charges, classifications, rules and regulations. The proposed rule improves the clarity of regulations governing controlled carriers, and gathers into a single part regulations which were previously scattered among the tariff and service contract regulations in former 46 CFR Part 514.

In addition to the 1984 Act's prohibitions against ''maintaining'' rates or charges below a level that is just and reasonable, OSRA adds the prohibition against ''charging or assessing'' such rates. Similarly, OSRA adds the prohibition on ''enforcing'' unjust or unreasonable rates, charges, classifications, rules or regulations in addition to ''establishing and maintaining'' them.

The change of tariff filing to tariff publication under OSRA is also reflected in section 9(a) of the 1984 Act as it applies to controlled carriers. Hence, in place of ''filing,'' the Commission is authorized to prohibit the ''publication or use'' of any rates, charges, classifications, rules or regulations that a controlled carrier has failed to show are just and reasonable.

In a further reflection of the new tariff system, OSRA changes the authority of the Commission from ''disapproving'' the ''filing'' to ''prohibiting and suspending'' the ''publication and use'' of unjust and unreasonable rates, charges, classifications, rules or regulations. Likewise, the Commission is directed by OSRA to take into account whether the rates or charges which have been ''published or assessed'' are below a compensatory level.

OSRA imposes a new time limit on the Commission's decision on whether or not a rate, charge, classification, rule or regulation is unjust or unreasonable. The Commission must decide such matters within 120 days of the receipt of information. This is reflected in proposed 46 CFR 565.8.

Finally, a significant change was made by OSRA to the regulation of controlled carriers in the exceptions found in section 9(f) of the 1984 Act. Three of the five exceptions were removed by OSRA; the provisions of section 9 now apply to all controlled carriers except those that are: (1) of a state whose vessels are entitled by a treaty of the United States to receive national treatment or Most Favored Nation treatment; or (2) in a trade served exclusively by controlled carriers. Proposed regulation § 565.5 reflects those changes. In addition to requiring ocean common carriers to inform the Commission of any changes to their control which might affect their controlled carrier classification, § 565.4 also requires newly commencing controlled common carrier operations to notify the Commission of the details of their ownership or control.

This document also outlines the proposed restructuring of subchapter C of chapter IV, 46 CFR, by revising the subchapter heading and adding redesignated parts 550, 555, and 560 and new part 565 to subchapter C. Current provisions of part 514 which are proposed here to be incorporated into new part 565 will be removed from part 514 in a subsequent document.

In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information requests or requirements in 46 CFR parts 585, 586, 587 and 588 are not subject to the requirements of section 3507 of the Paperwork Reduction Act because such collections of information are pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

The reporting requirements contained in 46 CFR Part 565 have been submitted to the Office of Management and Budget (OMB). The Commission estimates that

the public burden for this collection of information is estimated to be 70 annual personhours for all of the estimated 10 annual respondents. This estimate includes, as applicable, the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information, search existing data sources, gathering and maintain the data needed, and complete and review the collection of information; and transmit or otherwise disclose the information.

Send comments regarding the burden estimate to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Federal Maritime Commission, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503 within 30 days of publication in the **Federal Register**.

The FMC would also like to solicit comments to: (a) evaluate the accuracy of the Commission's burden estimates for the proposed collection of information; (b) enhance the quality, utility, and clarity of the information to be collected; and (c) minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this proposed rulemaking will be summarized and/or included in the final rule and will become a matter of public record. The OMB control number will be displayed in the final rule.

The Chairman certifies, pursuant to section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, that the proposed amendments will not, if promulgated, have a significant impact on a substantial number of small entities. The proposed changes affect vessel-operating common carriers, entities that are not considered to be small.

List of Subjects

46 CFR Parts 585 and 550

Administrative practice and procedure, Maritime carriers.

46 CFR Parts 586 and 551

Japan, Maritime carriers.

46 CFR Parts 587 and 560

Administrative practice and procedure, Maritime carriers.

46 CFR Parts 588 and 555

Administrative practice and procedure, Investigations, Maritime carriers.

46 CFR Part 565

Administrative practice and procedure, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Commission proposes to amend 46 CFR parts 585, 586, 587, and 588, and to add new part 565, as set forth below:

1. Revise the title of subchapter C to read:

SUBCHAPTER C—REGULATIONS AND ACTIONS TO ADDRESS RESTRICTIVE FOREIGN MARITIME PRACTICES

PART 585—REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES

PART 585—[REDESIGNATED AS PART 550]

1. Redesignate part 585 as part 550, and transfer newly designated part 550 to subchapter C.

2. The authority citation for redesignated part 550 is revised to read as set forth below:

Authority: 5 U.S.C. 553; sec. 19 (a)(2), (e), (f), (g), (h), (i), (j), (k) and (l) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876 (a)(2), (e), (f), (g), (h), (i), (j), (k) and (l), as amended by Pub. L. No. 105–258; Reorganization Plan No. 7 of 1961, 75 Stat. 840; and sec. 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a.

2a. Add a note to newly designated part 550 to read as follows:

Note to part 550: In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information requests or requirements in 46 CFR part 550 are not subject to the requirements of section 3507 of the Paperwork Reduction Act because such collections of information are pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

3. Revise redesignated § 550.102 to read as set forth below:

§ 550.102 Scope.

Regulatory actions may be taken when the Commission finds, on its own motion or upon petition, that a foreign government has promulgated and enforced or intends to enforce laws, decrees, regulations or the like, or has engaged in or intends to engage in practices which presently have or prospectively could create conditions unfavorable to shipping in the foreign trade of the United States, or when owners, operators, agents or masters of foreign vessels engage in or intend to engage in competitive methods, pricing practices or other practices which have created or could create such conditions.

4. Revise redesignated § 550.103 (a) and (b) to read as set forth below:

§ 550.103 Definitions.

* * * * *

(a) *Act* means the Merchant Marine Act, 1920, as amended by Pub. L. No. 101–595 and as amended by Pub. L. No. 105–258.

(b) *Person* means individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country, and includes any common carrier, tramp operator, bulk operator, shipper, shippers' association, importer, exporter, consignee, ocean transportation intermediary, marine terminal operator, or any component of the Government of the United States.

* * * * *

5. Revise redesignated § 550.201(a) to read as set forth below:

§ 550.201 Information orders.

* * * * *

(a) The Commission may, by order, require any person (including any common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or any officer, receiver, trustee, lessee, agent, or employee thereof), to file with the Commission a report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate;

* * * * *

6. Revise redesignated § 550.202(b) introductory text and (b)(3) to read as set forth below:

§ 550.202 Type of information.

* * * * *

(b) Shipper, shippers' association, or ocean transportation intermediary in the affected trade to furnish any or all of the following information:

* * * * *

(3) Amount of brokerage, ocean transportation intermediary compensation or other charges collected or paid in connection with shipments in the affected trade; and

* * * * *

7. Revise the introductory text and paragraph (d) of redesignated § 550.301 to read as set forth below:

§ 550.301 Findings.

For the purposes of this part, conditions created by foreign governmental action or competitive methods, pricing practices or other practices of owners, operators, agents or masters of foreign vessels are found unfavorable to shipping in the foreign trade of the United States, if such conditions:

* * * * *

(d) Restrict or burden a carrier's intermodal movements or shore-based maritime activities, including terminal operations and cargo solicitation; agency services; ocean transportation intermediary services and operations; or other activities and services integral to transportation systems; or

* * * * *

8. Revise redesignated § 550.601(c) to read as set forth below:

§ 550.601 Actions to correct unfavorable conditions.

* * * * *

(c) Suspend, in whole or in part, tariffs and service contracts for carriage to or from United States ports, including a common carrier's right to use tariffs of conferences and service contracts of agreements in United States trades of which it is a member for any period the Commission specifies;

* * * * *

9. Revise redesignated § 550.602 to read as set forth below:

§ 550.602 Penalty.

A common carrier that accepts or handles cargo for carriage under a tariff or service contract that has been suspended under § 550.505 or § 550.601 of this part, or after its right to use another tariff or service contract has been suspended under those sections, is subject to a civil penalty of not more than $50,000 for each day that it is found to be operating under a suspended tariff or service contract.

PART 586—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE U.S. FOREIGN TRADE

1. Redesignate part 586 as part 551, and transfer newly designated part 551 to subchapter C.

PART 586—[REDESIGNATED AS PART 551]

2. The authority citation for redesignated part 551 is revised to read as set forth below:

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 876 (5) through (12); 46 CFR part 550; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

2a. Add a note to newly designated part 551 to read as follows:

Note to part 551: In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information requests or requirements in 46 CFR part 551 are not subject to the requirements of section 3507 of the Paperwork Reduction Act because such collections of information are pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

3. Redesignated § 551.3 is removed.

PART 587—ACTIONS TO ADDRESS CONDITIONS UNDULY IMPAIRING ACCESS OF U.S.-FLAG VESSELS TO OCEAN TRADE BETWEEN FOREIGN PORTS

PART 587—[REDESIGNATED AS PART 560]

1. Redesignate part 587 as part 560, and transfer newly designated part 560 to subchapter C.

2. The authority citation for redesignated part 560 is revised to read as set forth below:

Authority: 5 U.S.C. 553; secs. 13(b)(6), 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(6), 1714, and 1716, as amended by Pub. L. No. 105–258; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a), as amended by Pub. L. No. 105–258.

3. Revise redesignated § 560.1(a) to read as set forth below:

§ 560.1 Purpose; general provisions.

(a)(1) It is the purpose of this part to enumerate certain conditions resulting from the action of a common carrier, acting alone or in concert with any person, or a foreign government, which unduly impair the access of a vessel documented under the laws of the United States whether liner, bulk, tramp or other vessel, (hereinafter ''U.S. flag vessel'') to ocean trade between foreign ports, which includes intermodal movements, and to establish procedures by which the owner or operator of a U.S. flag vessel (hereinafter ''U.S. flag carrier'') may petition the Federal Maritime Commission for relief under the authority of section 13(b)(6)of the Shipping Act of 1984 (''the Act'') (46 U.S.C. app. 1712(b)(6)).

(2) It is the further purpose of this part to indicate the general circumstances under which the authority granted to the Commission under section 13(b)(6)may be invoked, and the nature of the subsequent actions contemplated by the Commission.

(3) This part also furthers the goals of the Act with respect to encouraging the development of an economically sound and efficient U.S. flag liner fleet as stated in section 2 of the Act (46 U.S.C. app. 1701).

* * * * *

4. Revise redesignated § 560.2(c) to read as set forth below:

§ 560.2 Factors indicating conditions unduly impairing access.

* * * * *

(c) Use of predatory practices, possibly including but not limited to below market pricing designed to exclude competition, and use of closed conferences employing deferred rebates, which unduly impair access of a U.S. flag vessel to the trade.

* * * * *

5. Revise the first sentence of the introductory text of redesignated § 560.5(a) to read as set forth below:

§ 560.5 Receipt of relevant information.

(a) In making its decision on matters arising under section 13(b)(6)of the Act, the Commission may receive and consider relevant information from any owner, operator, or conference in an affected trade, or from any foreign government, either directly or through the Department of State or from any other reliable source. * * *

* * * * *

6. Revise redesignated § 560.7(b)(3)(i) to read as set forth below:

§ 560.7 Decision; sanctions; effective date.

* * * * *

(b) * * *

(3)(i) Suspension, in whole or in part, of any or all tariffs or service contracts for carriage to or from United States ports for any period the Commission specifies, or until such time as unimpaired access is secured for U.S. flag carriers in the affected trade.

* * * * *

PART 588—ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING U.S. FLAG CARRIERS THAT DO NOT EXIST FOR FOREIGN CARRIERS IN THE UNITED STATES

PART 588—[REDESIGNATED AS PART 555]

1. Redesignate part 588 as part 555, and transfer newly designated part 555 to subchapter C.

2. The authority citation for redesignated part 555 is revised to read as set forth below:

Authority: 5 U.S.C. 553; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a), as amended by Pub. L. No. 105–258.

2a. Add a note to newly designated part 555 to read as follows:

Note to part 555: In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information requests or requirements in 46 CFR part 555 are not subject to the requirements of section 3507 of the Paperwork Reduction Act because such collections of information are pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

3. Revise redesignated § 555.1 to read as set forth below:

555.1 Purpose.

It is the purpose of the regulations of this part to establish procedures to implement the Foreign Shipping Practices Act of 1988, as amended by the Ocean Shipping Reform Act of 1998, which authorizes the Commission to take action against foreign carriers, whose practices or whose government's practices result in adverse conditions affecting the operations of United States carriers, which adverse conditions do not exist for those foreign carriers in the United States. The regulations of this part provide procedures for investigating such practices and for obtaining information relevant to the investigations, and also afford notice of the types of actions included among those that the Commission is authorized to take.

4. Revise redesignated § 555.2(a), (c), and (d) to read as set forth below:

§ 555.2 Definitions.

* * * * *

(a) *Common carrier, marine terminal operator, ocean transportation intermediary, ocean common carrier, person, shipper, shippers association,* and *United States* have the meanings given each such term, respectively, in section 3 of the Shipping Act of 1984 (46 U.S.C. app. 1702);

* * * * *

(c) *Maritime services* means port-to-port carriage of cargo by the vessels operated by ocean common carriers;

(d) *Maritime-related services* means intermodal operations, terminal operations, cargo solicitation, agency services, ocean transportation intermediary services and operations, and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates on their own and others' behalf;

* * * * *

5. Revise redesignated § 555.4 (a) and (c) to read as set forth below:

§ 555.4 Petitions.

(a) A petition for investigation to determine the existence of adverse conditions as described in § 555.3 may be submitted by any person, including any common carrier, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States. Petitions for relief under this part shall be in writing, and filed in the form of an original and fifteen copies with the Secretary, Federal Maritime Commission, Washington, DC 20573.

* * * * *

(c) A petition which the Commission determines fails to comply substantially with the requirements of paragraph (b) of this section shall be rejected promptly and the person filing the petition shall be notified of the reasons for such rejection. Rejection is without prejudice to the filing of an amended petition.

6. Revise redesignated § 555.8(a)(2) to read as set forth below:

§ 555.8 Action against foreign carriers.

(a) * * *

(2) Suspension, in whole or in part, of any or all tariffs or service contracts, including the right of an ocean common carrier to use any or all tariffs or service contracts of conferences in United States trades of which it is a member for such period as the Commission specifies;

* * * * *

PART 565—[ADDED]

1. Add part 565 to subchapter C to read as set forth below:

PART 565—CONTROLLED CARRIERS

Sec.
565.1 Purpose and scope.
565.2 Definitions.
565.3 Classification as controlled carrier.
565.4 Notification to Commission of change in control.
565.5 Exceptions.
565.6 Level of rates and charges generally.
565.7 Effective dates.
565.8 Special permission.
565.9 Commission review, suspension and prohibition of rates, charges, classifications, rules or regulations.
565.10 Suspension procedures, period and replacement rates.
565.11 Presidential review.
565.12 Stay, postponement, discontinuance or suspension of action.

Authority: 46 U.S.C. App. 1708, as amended by Pub. L. No. 105–258.

§ 565.1 Purpose and scope.

(a) *Purpose.* The regulations of this part are intended to carry out the Commission's mandate under section 9 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998, to monitor the practices of controlled carriers and ensure that they do not:

(1) Maintain rates or charges in their tariffs and service contracts that are below a level that is just and reasonable; nor

(2) Establish, maintain or enforce unjust or unreasonable classifications, rules or regulations in those tariffs or service contracts which result or are likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level.

(b) *Scope.* The regulations contained in this part set forth the special procedures whereby controlled carriers' tariffs and service contracts become effective and are reviewed by the Commission. These regulations in no way exempt controlled carriers from other Commission regulations or statutory authority to which they may otherwise be subject as ocean common carriers. These regulations apply to all controlled carriers operating in the foreign commerce of the United States unless excepted under section 9(f) of the Shipping Act of 1984, as reflected by § 565.5.

§ 565.2 Definitions.

(a) *Controlled carrier* means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by a government. Ownership or control by a government shall be deemed to exist with respect to any ocean common carrier if:

(1) A majority portion of the interest in the carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(2) That government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer or the chief executive officer of the carrier.

(b) *Effective date* has the same meaning it has in 46 CFR part 520.

§ 565.3 Classification as controlled carrier.

(a) *Notification.* The Commission will periodically review the ocean common carriers operating in the foreign commerce of the United States and will notify any ocean common carrier of any change in its classification as a controlled carrier.

(b) *Rebuttal of classification.* (1) Any ocean common carrier contesting such a classification may, within 30 days after

the date of the Commission's notice, submit a rebuttal statement.

(2) The Commission shall review the rebuttal and notify the ocean common carrier of its final decision.

§ 565.4 Notification to Commission of change in control.

Whenever the operation, control or ownership of an ocean common carrier is transferred resulting in a majority portion of the interest of that ocean common carrier being owned or controlled in any manner by a government, the ocean common carrier shall immediately send written notification of the details of the change to the Secretary of the Commission. If a carrier is newly commencing ocean common carrier operations in a United States trade, and if a majority portion of the carrier is owned or controlled by a government, or if a government may approve or disapprove the majority of directors or the chief executive or operating officer of the carrier, the carrier shall immediately send written notification to the Secretary of the details of such ownership or control.

§ 565.5 Exceptions.

All controlled carriers shall be subject to provisions of this part and section 9 of the Shipping Act of 1984 except those which meet the following exceptions:

(a) When the vessels of the controlling state are entitled by a treaty of the United States to receive national or most-favored-nation treatment; or

(b) When the controlled carrier operates in a trade served exclusively by controlled carriers.

§ 565.6 Level of rates and charges generally.

No controlled carrier may maintain or enforce rates or charges in its tariffs or service contracts that are below a level that is just and reasonable. No controlled carrier may establish or maintain unjust or unreasonable classifications, rules, or regulations in its tariffs or service contracts. An unjust or unreasonable classification, rule or regulation means one that results or is likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level. *See* § 565.9(a)(2) (Rate standards).

§ 565.7 Effective dates.

(a) *Generally.* Except for service contracts, the rates, charges, classifications, rules or regulations of controlled carriers may not, unless the Commission has granted special permission, become effective sooner than the 30th day after the date of publication.

(b) *Open rates.* (1) *Generally.* Controlled carriers that are members of conference agreements publishing rates for commodities designated as open by the conference are subject to the 30-day controlled carrier notice requirement, except when special permission is granted by the Commission under § 565.8.

(2) *Conference publication of reduced open rates.* Notwithstanding paragraph (b)(1) of this section, a conference may, on less than 30 days' notice, publish reduced rates on behalf of controlled carrier members for open-rated commodities:

(i) At or above the minimum level set by the conference; or

(ii) At or above the level set by a member of the conference that has not been determined by the Commission to be a controlled carrier subject to section 9 of the Shipping Act of 1984.

(c) *Independent action rates of controlled carriers.* Conferences may publish on behalf of their controlled carrier members lower independent action rates on less than 30 days' notice, subject to the requirements of their basic agreements and subject to such rates being published at or above the level set by a member of the conference that has not been determined by the Commission to be a controlled carrier subject to section 9 of the Shipping Act of 1984.

§ 565.8 Special permission.

Section 8(d) of the Shipping Act of 1984 authorizes the Commission, in its discretion and for good cause shown, to permit increases or decreases in rates, or the issuance of new or initial rates, on less than statutory notice under § 565.7. Section 9(c) of the Shipping Act of 1984 authorizes the Commission to permit a controlled carrier's rates, charges, classifications, rules or regulations to become effective on less than 30 days' notice. The Commission may also in its discretion and for good cause shown, permit departures from the requirements of this part. The Commission will consider such requests for special permission by controlled carriers pursuant to its procedures set forth at 46 CFR part 520.

§ 565.9 Commission review, suspension and prohibition of rates, charges, classifications, rules or regulations.

(a)(1) *Request for justification.* Within 20 days of a request (with respect to its existing or proposed rates, charges, classifications, rules or regulations) from the Commission, each controlled carrier shall file a statement of justification that sufficiently details the controlled carrier's need and purpose for such rates, charges, classifications, rules or regulations upon which the Commission may reasonably base its determination of the lawfulness thereof.

(2) *Rate standards.* (i) In determining whether rates, charges, classifications, rules or regulations by a controlled carrier are just and reasonable, the Commission shall take into account whether the rates or charges which have been published or assessed or which would result from the pertinent rates, charges, classifications, rules or regulations are below a level which is fully compensatory to the controlled carrier based upon that carrier's actual or constructive costs.

(ii) For the purposes of § 565.9(a)(2)(i), ''constructive costs'' means the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade.

(iii) The Commission may also take into account other appropriate factors, including, but not limited to, whether:

(A) The rates, charges, classifications, rules or regulations are the same as or similar to those published or assessed by other carriers in the same trade;

(B) The rates, charges, classifications, rules or regulations are required to assure movement of particular cargo in the trade; or

(C) The rates, charges, classifications, rules or regulations are required to maintain acceptable continuity, level or quality of common carrier service to or from affected ports.

(3) *Time for determination.* The Commission shall determine within 120 days of the receipt of information requested by the Commission under this section, whether the rates, charges, classifications, rules or regulations of a controlled carrier may be unjust and unreasonable. Whenever the Commission is of the opinion that the rates, charges, classifications, rules or regulations published or assessed by a controlled carrier may be unjust and unreasonable, the Commission shall issue an order to the controlled carrier to show cause why those rates, charges, classifications, rules or regulations should not be prohibited.

(b) *Suspension.* Pending a decision on whether to prohibit the rates, charges, classifications, rules or regulations of a controlled carrier, the Commission may suspend the rates, charges, classifications, rules or regulations. *See* § 565.10.

(c) *Prohibition.* The Commission shall prohibit the use of any rates, charges, classifications, rules or regulations that the controlled carrier has failed to demonstrate to be just and reasonable. In a proceeding under this paragraph, the burden of proof is on the controlled

carrier to demonstrate that its rates, charges, classifications, rules or regulations are just and reasonable. The use of rates, charges, classifications, rules or regulations published or assessed by a controlled carrier that have been suspended or prohibited by the Commission is unlawful.

(d) *Publication.* All final orders of prohibition shall be published in the **Federal Register**.

§ 565.10 Suspension procedures, period and replacement rates.

(a) (1) *Suspension prior to effective date.* Pending a determination as to their lawfulness in a prohibition proceeding as described in § 565.9, the Commission may suspend the rates, charges, classifications, rules or regulations at any time before their effective date.

(2) *Suspension after effective date.* In the case of rates, charges, classifications, rules or regulations that have already become effective, the Commission may, upon the issuance of an order to show cause, suspend those rates, charges, classifications, rules or regulations on not less than 30 days' notice to the controlled carrier.

(b) *Period of suspension.* In any case, no period of suspension may be greater than 180 days.

(c) *Implementation.* (1) Upon issuance of an order suspending a rate, charge, classification, rule or regulation in whole or in part, the Commission shall direct the controlled carrier to remove the suspended material from its tariff publication; or

(2) If the matter subject to the suspension order is not covered by paragraph (c)(1) of this section, the Commission shall set forth procedures in the order for implementing the suspension.

(3) *Publication.* All orders of suspension shall be published in the **Federal Register**.

(d) *Replacement rates.* Controlled carriers may publish in tariffs or file in service contracts rates, charges, classifications, rules or regulations in lieu of the suspended matter (''replacement rates'').

(1) *Effective date.* In the case of replacement rates which are published in tariffs and which are scheduled to become effective during a suspension period, may become effective immediately upon either their publication in tariffs or upon the effective date of the suspension, whichever is later.

(2) *Rejection of replacement rates.* The Commission may reject the replacement rates, charges, classifications, rules or regulations published in tariffs or filed in service contracts to take effect during the suspension period if they are unjust and unreasonable. In determining whether to reject replacement rates, charges, classifications, rules or regulations, the Commission will consider whether they would result in total charges (i.e, rate plus applicable surcharges) that are lower than the lowest comparable charges effective for a common carrier, other than a controlled carrier, serving the same trade.

(3) At the same time it announces replacement rates, the controlled carrier shall submit to the Secretary of the Commission, a letter identifying the specific competing common carrier's rates, charges, classification or rules resulting in total charges which are equal to or lower than its own.

§ 565.11 Presidential review.

The Commission shall transmit all orders of suspension or final orders of prohibition to the President of the United States concurrently with the submission of such orders to the **Federal Register** pursuant to § 565.9(d) or § 565.10(c)(3). The President may, within 10 days of either the receipt or effective date of the order, request in writing that the Commission stay the effect of the order for reasons of national defense or foreign policy.

§ 565.12 Stay, postponement, discontinuance or suspension of action.

The Commission may, on its own motion or upon petition, postpone, discontinue, or suspend any and all actions taken by it under the provisions of this part. The Commission shall immediately stay the effect of any order issued under this part as requested by the President pursuant to § 565.11.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–32224 Filed 12–3–98; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–196, RM–9325]

Radio Broadcasting Services; Whitewright, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Chinquapin Creek Broadcasting Company, proposing the allotment of Channel 260A to Whitewright, Texas. The channel can be allotted to Whitewright without a site restriction at coordinates 33–30–48 and 96–23–42.

DATES: Comments must be filed on or before January 11, 1999, and reply comments on or before January 26, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, Law Offices of Henry E. Crawford, 1150 Connecticut Avenue, N.W., Suite 900, Washington, D.C. 20036–4192.

FOR FURTHER INFORMATION CONTACT:

Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–196, adopted November 9, 1998, and released November 20, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–32302 Filed 12–3–98; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AE39

Migratory Bird Hunting; Temporary Conditional Approval of Tin Shot as Nontoxic for the 1998–99 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to amend Section 20.21(j) and grant temporary and conditional approval of tin shot as nontoxic for the 1998–99 migratory bird hunting season while chronic toxicity/reproductive testing is being completed. Tin shot has been submitted for consideration as nontoxic by the International Tin Research Institute, Ltd. (ITRI), of Uxbridge, Middlesex, Great Britain.

DATES: Comments on the proposed rule or draft Environmental Assessment (EA) (see caption NEPA CONSIDERATION) must be received no later than January 4, 1999.

ADDRESSES: Copies of the EA are available by writing to the Chief, Office of Migratory Bird Management (MBMO), U.S. Fish and Wildlife Service, 1849 C Street, NW., ms 634–ARLSQ, Washington, DC 20240. Comments may also be forwarded to this same address. The public may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert J. Blohm, Acting Chief, or James R. Kelley, Jr., Wildlife Biologist, Office of Migratory Bird Management (MBMO), (703) 358–1714.

SUPPLEMENTARY INFORMATION: Since the mid-1970s, the Service has sought to identify shot that does not pose a significant toxic hazard to migratory birds or other wildlife. Currently, only steel and bismuth-tin shot are approved by the Service as nontoxic. Tungsten-iron and tungsten-polymer shot have been given temporary conditional approval for the 1998–99 hunting season. Compliance with the use of nontoxic shot has been increasing over the last few years. The Service believes that this level of compliance will continue to increase with the availability and approval of other nontoxic shot types. The Service is eager to consider these other materials for approval as nontoxic shot.

The revised procedures for approving nontoxic shot (50 CFR 20.134) consist of a three-tier process whereby existing information can minimize the need for full testing of a candidate shot. However, applicants still carry the burden of proving that the candidate shot is nontoxic. By developing the new approval procedure, it was the Service's intent to discontinue the practice of granting temporary conditional approval to candidate shot material. However, the application by ITRI was initiated prior to implementation of the new protocol. To date, scientific information presented in the application suggests that tin is nontoxic under conditions for the proposed shot configuration. Therefore, the Service proposes to grant temporary conditional approval for the 1998–99 hunting season. Permanent approval will not be granted until chronic toxicity/reproductive testing is successfully completed and the results are reviewed and approved by the Director.

ITRI's candidate shot is made from commercially pure tin; no alloying or other alterations are intentionally made to the chemical composition of the shot. The shot material has a density of approximately 7.29 g/cm^3. The shot is 99.97 percent tin, with a low level of iron pickup due to the steel production equipment.

ITRI's application includes a statement of proposed use, a description of the new tin shot, a toxicological report (Thomas 1997), and results of a 30-day dosing study of the toxicity of the candidate shot in game-farm mallards (Wildlife International, Ltd. 1998). The toxicological report incorporates toxicity information (a synopsis of acute and chronic toxicity data for mammals and birds, potential for environmental concern, and toxicity to aquatic and terrestrial invertebrates, amphibians and reptiles), effects of firing on tin shot, and information on environmental fate and transport. The toxicity study is a 30-day dosing test to determine if the candidate shot poses any deleterious effects to game-farm mallards. This will meet the requirements for Tier 2, as described in 50 CFR 20.134(b)(3).

Toxicity Information

Detailed reviews of the toxicological impacts of different tin compounds have been conducted by Eisler (1989) and Cooney (1988). Both reviews indicate that elemental tin, which is the material used in this shot, is non-toxic to animals. Tin shot designed for waterfowl hunting is utilized in several European countries and no reports exist that suggest that tin shot is causing toxicity problems for wildlife in those countries.

Environmental Fate and Transport

Tin pellets will undergo slow surface oxidation to form hydrated tin oxide, which is extremely insoluble in water (Lide 1990). Therefore dissolution will be slow, and highly localized aqueous concentrations will not arise. This means that elemental tin will over time remain largely in the same inorganic form as when it is discharged. Tin pellets discharged into wetlands where sulphur ions are released during organic decomposition would become coated with tin sulphide, which is highly insoluble in water and resistant to aquatic hydrolysis (Hoiland 1995).

Environmental Concentrations

Calculation of the estimated environmental concentration (EEC) of tin in a terrestrial ecosystem is based on 69,000 shot per hectare (Pain 1990). The EEC for tin in soil is 19.3 g/m^3. Calculation of the EEC in an aquatic ecosystem assumes complete erosion of the shot in one cubic foot of water. The EEC in water for tin is 19.3 mg/L. Tin shot is considered insoluble and is stable in basic, neutral, and mildly acidic environments. Therefore, erosion is expected to be minimal, and adverse effects on biota are not expected to occur.

Effects on Birds

Several studies have been conducted in which pellets made of tin or tin alloys have been placed inside the digestive tract or tissues of ducks to determine if toxic effects occur. Grandy et al. (1968) and the Huntingdon Research Centre (1987) conducted 30 and 28-day, respectively, acute toxicity tests on mallard ducks and reported that all treatment ducks survived with insignificant weight loss or development of pathological lesions.

Ringelman et al. (1993) conducted a 32-day acute toxicity study which involved dosing game-farm mallards with a shot alloy of tungsten-bismuth-tin (TBT), which was 39, 44.5 and 16.5 percent by weight, respectively. No dosed birds died during the trial, and behavior was normal. Examination of tissues post-euthanization revealed no toxicity or damage related to shot exposure. Blood calcium differences between dosed and un-dosed birds were judged to be unrelated to shot exposure. This study concluded that ''. . . TBT shot presents virtually no potential for acute intoxication in mallards under the conditions of this study.''

Kraabel et al. (1996) surgically embedded TBT shot in the pectoralis muscles of ducks to simulate wounding by gunfire and to test for toxic effects of

the shot. These authors found that TBT shot produced no toxic effects nor induced any adverse systemic effects on the health of ducks during the 8-week period.

The potential for bismuth-tin (BT) shot to produce toxicological effects in ducks during reproduction has been investigated under both acute and chronic testing conditions. Tin as a 2% component of the tested shot, did not pose a toxic risk to ducks when fed a nutritionally-imbalanced, corn-based diet. Neither has BT shot been shown to pose an adverse risk to the health of ducks, the reproduction by male and female birds, nor the survival of ducklings over the long term (Sanderson et al. 1997).

The studies cited above summarize the available published information on shot types in which tin is a component. However, these studies involve either short-term acute toxicity tests, or shot compositions in which tin is a minor component. Additional information is needed to fully assess the toxicity of tin shot.

ITRI's 30-day dosing study (Wildlife International Ltd., 1998) with the candidate shot included 4 treatment and 1 control group of game-farm mallards. Treatment groups were exposed to 1 of 3 different types of shot: 8 #4 steel, 8 #4 lead, or 8 #4 TM; whereas the control group received no shot. The 2 tin treatment groups (1 group deficient diet, 1 group balanced diet) each consisted of 16 birds (8 males and 8 females); whereas remaining treatment and control groups consisted of 6 birds each (3 males and 3 females). All tin-dosed birds survived the test and showed no overt signs of toxicity or treatment-related effects on body weight. There were no differences in hematocrit or hemoglobin concentration between the tin treatment group and either the steel shot or control groups. No histopathological lesions were found during gross necropsy. In general, no adverse effects were seen in mallards given 8 #4 size tin shot and monitored over a 30-day period. No levels of tin above the limit of detection were observed in any tissues collected from either tin treatment group.

Based on the results of the toxicological report and the toxicity test (Tier 1 and 2), the Service concludes that tin shot, (approximately 99.9 percent tin by weight with <1 percent residual lead), does not appear to pose a significant danger to migratory birds or other wildlife and their habitats. However, the Service is concerned that available information on the effect of tin on reproduction in birds is based on shot alloys in which tin is a small component. Therefore, effects of the candidate shot on reproduction in birds is relatively unknown.

The first condition of approval is toxicity testing. Candidate materials not approved under Tier 1 and/or 2 testing are subjected to standards of Tier 3 testing. The scope of Tier 3 includes chronic exposure under adverse environmental conditions and effects on reproduction in game-farm mallards, as outlined in 50 CFR 20.134 (b)(4)(A and B) (Tier 3), and in consultation with the Service's Office of Migratory Bird Management and the U.S. Geological Survey's Division of Biological Resources. This study includes assessment of long-term toxicity under depressed temperature conditions using a nutritionally-deficient diet, as well as a moderately long-term study that includes reproductive assessment. The tests require the applicant to demonstrate that tin shot is nontoxic to waterfowl and their offspring.

The second condition of final unconditional approval is testing for residual lead levels. Any tin shot with lead levels equal to or exceeding 1 percent will be considered toxic and, therefore, illegal. In the **Federal Register** of August 18, 1995 (60 FR 43314), the Service indicated that it would establish a maximum level for residual lead. The Service has determined that the maximum environmentally acceptable level of lead in any nontoxic shot is trace amounts of <1 percent and has incorporated this requirement (50 CFR 20.134(b)(5)) in the December 1, 1997, final rule (62 FR 63608). ITRI documented that tin shot had no residual lead levels equal to or exceeding 1 percent.

The third condition of final unconditional approval involves enforcement. In the August 18, 1995 **Federal Register** (60 FR 43314), the Service indicated that final unconditional approval of any nontoxic shot would be contingent upon the development and availability of a noninvasive field testing device. Several noninvasive field testing devices are under development to separate tin shot from lead shot. Furthermore, tin shot can be drawn to a magnet as a simple field detection method. This requirement was incorporated into regulations at 50 CFR 20.134(b)(6) in the December 1, 1997, final rule (62 FR 63608).

This proposed rule would amend 50 CFR 20.21(j) by temporarily and conditionally approving tin shot as nontoxic for the 1998–99 migratory bird hunting season throughout the United States. It is based on the request made to the Service by ITRI on November 17, 1997, the toxicological reports, and the acute toxicity studies. Results of the toxicological report and 30-day toxicity test undertaken for ITRI indicate the apparent absence of any deleterious effects of tin shot when ingested by captive-reared mallards or to the ecosystem. The comment period for the proposed rule has been shortened to 30 days. This time frame will make it possible for tin shot, if temporarily approved, to be available for use by hunters during the 1998–99 hunting season. This will increase the number of nontoxic shot options available to hunters.

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Wildlife International, Ltd. 1998. Tin shot: An oral toxicity study with the mallard. Project No. 476–101. 158 pp.

NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), the Service prepared an Environmental Assessment (EA) in October 1998. This EA is available to the public for comment at the location indicated under the **ADDRESSES** caption.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 *et seq.*), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *'' The Service has initiated a Section 7 consultation under the ESA for this proposed rule. The result of the Service's consultation under Section 7 of the ESA will be available to the public at the location indicated under the **ADDRESSES** caption.

Regulatory Flexibility Act, Executive Order 12866, and the Paperwork Reduction Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. The approved shot will merely supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems, therefore, this rule would have minimal effect on such entities. The Service anticipates no dislocation or other local effects with regard to hunters and others. This document is not a significant rule subject to Office of Management and Budget review under Executive Order 12866. This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Unfunded Mandates Reform

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department has determined that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Authorship

The primary author of this proposed rule is James R. Kelley, Jr., Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and record-keeping requirements, Transportation, Wildlife.

Accordingly, Part 20, subchapter B, chapter 1 of Title 50 of the Code of Federal Regulations is proposed to be amended as follows:

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

2. Section 20.21 is amended by revising paragraph (j) introductory text, and adding paragraph (j)(5) to read as follows:

§ 20.21 Hunting methods.

* * * * *

(j) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin (97 parts bismuth: 3 parts tin with <1 percent residual lead) shot, or tungsten-iron ([nominally] 40 parts tungsten: 60 parts iron with <1 percent residual lead) shot, or tungsten-polymer (95.5 parts tungsten: 4.5 parts Nylon 6 with <1 percent residual lead) shot, or tungsten-matrix (95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead) shot, or tin (99.9 percent tin with <1 percent residual lead) shot, or such shot approved as nontoxic by the Director pursuant to procedures set forth in § 20.134, provided that:

* * * * *

(5) Tin shot (99.9 percent tin with <1 percent residual lead) is legal as nontoxic shot for waterfowl and coot hunting for the 1998–1999 hunting season only.

Dated: November 17, 1998.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–32236 Filed 12–3–98; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 63, No. 233
Friday, December 4, 1998

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 Marketing Service

[FV–98–326N]

United States Standards for Grades of Canned Mushrooms

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments on its proposal to revise the United States Standards for Grades of Canned Mushrooms. Specifically, USDA is proposing to lower the Recommended Minimum Drained Weight Averages (RMDWA's) and lower limits for mushrooms packed in the 8 ounce, jumbo, and No. 10 can sizes. These changes would bring the standards in line with the Food and Drug Administration (FDA) minimum drained weights.

DATES: Written comments may be submitted on or before February 2, 1999.

ADDRESSES: Written comments may be submitted to Chere L. Shorter, Processed Products Branch, Fruit and Vegetable Programs, STOP 0247, P.O. Box 96456, Washington, D.C. 20090-6456; faxed to (202) 690–1087; or e-mailed to chere__l__shorter@usda.gov. All comments received will be made available for public inspection at the above address during regular business hours (8:00 to 4:30 p.m.).

The current United States Standards for Grades of Canned Mushrooms, along with the proposed changes, are available either through the above address or by accessing AMS's website on the Internet at www.ams.usda.gov/standards/vegcan.htm.

FOR FURTHER INFORMATION CONTACT: Chere L. Shorter at (202) 720–4693.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards to encourage uniformity and consistency in commercial practices . . .''. The Agricultural Marketing Service (AMS) is committed to carrying out this authority in a way that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request.

The U.S. Standards for Grades of Processed Products are available either by writing to the Branch Chief at the above address, by phone at (202) 720–4693, by fax at (202) 690–1087, or by accessing the AMS website on the Internet at www.ams.usda.gov/standards. The United States Standards for Grades of Canned Mushrooms do not appear in the Code of Federal Regulations.

AMS is proposing to change the United States Standards for Grades of Canned Mushrooms using the procedures it published in the August 13, 1997, **Federal Register** and that appear in Part 36 of Title 7 of the Code of Federal Regulations (7 CFR Part 36). The United States Standards for Grades of Canned Mushrooms will be improved by lowering the Recommended Minimum Drained Weight Averages (RMDWA's) and lower limits for all styles, in selected container sizes. The purpose of this proposed change is to improve the usability of the standards, and help to facilitate the marketing of canned mushrooms. This change will allow for a better marketing environment for the canning industry because it would align the standards with FDA minimum drained weight requirements.

In August 1990, USDA, through one of its field offices, received a letter from a food importer in New York alerting AMS to the disparity in the United States Standards for Grades of Canned Mushrooms. The company proposed that the RMDWA's in the U.S. Standards for Grades of Canned Mushrooms be lowered to 56 percent of the water capacity of the container, the FDA minimum fill requirement appearing in 21 CFR 155.201.

In consideration of this proposal, the Agricultural Marketing Service (AMS) gathered information from government and industry sources.

Drained weight, although not a factor of quality in canned mushrooms, is very important in connection with the marketing of processed fruit and vegetable products. Drained weight indicates the amount of fruit and vegetable ingredient in relation to packing media and to some extent the degree to which a product may have disintegrated during processing and handling. Most U.S. standards for canned fruits and vegetables contain a recommended drained weight. Drained weight, when applicable, is a requirement in federal specifications and other purchase specifications or contracts. The USDA reports the range of drained weights on their certificates when there is a mandatory FDA requirement, such as for canned mushrooms. Although drained weight is an FDA mandatory requirement in canned mushrooms, buyers and sellers can establish their own specification of minimum drained weights that exceed the FDA.

Presently, the U.S. standard for canned mushrooms includes a recommended minimum drained weight of 62 percent of the water capacity, or 68.0 ounces for the No. 10 can, while the FDA minimum is 61.3 ounces (56 percent) for this can size. The water capacity is determined according to the FDA method outlined in 21 CFR 130.12. The FDA established its current 56 percent minimum in rulemaking based upon a petition from the National Food Processors Association (NFPA) requesting that the drained weight required for mushrooms packed in larger cans be reduced because of the high incidence of bacterial spoilage in such containers. The FDA initiated rulemaking in a proposed rule (47 FR 26843; June 22, 1982). The NFPA attributed the problem to overfilling to meet the drained weight requirement. Therefore, the NFPA proposed to reduce the drained weight requirement for larger cans so that the ratio of mushrooms to water capacity of the container was not less than 56 percent. A final rule was published in the **Federal Register** on March 15, 1983 in 48 FR 10812 and a final rule; confirmation effective dates was published on September 14, 1983 in 48 FR 41155.

AMS believes that the RMDWA's should be changed in the U.S. Standard for Grades Canned Mushrooms to equal the requirement of 56 percent established by FDA. Specifically, the changes would affect the 8 ounce, Jumbo, and No. 10 can sizes. The new lower limit for drained weights would be reduced from 8.0 to 7.6 ounces, 16.0 to 14.4 ounces, and 68.0 to 61.3 ounces, respectively. The lower limit for drained weight for smaller can sizes would remain the same at 56 percent of the water capacity.

AMS believes the proposed change in the U.S. Standards for Grades of Canned Mushrooms would provide a more equitable marketing environment for canned mushrooms, improve quality by eliminating overfill, and align the RMDWA's and lower limits with FDA requirements. Therefore, AMS is publishing this notice with a 60 day comment period which should provide sufficient time for interested persons to comment on the revision of the standard.

Authority: 7 U.S.C. 1641–1627.

Dated: November 27, 1998.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–32208 Filed 12–3–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To be Used for Publication of Legal Notice of Appealable Decisions Under 36 CFR Part 217 and Corrections Under 36 CFR Part 215 for the Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice and correction.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR part 217 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 217.5(d), the public shall be advised through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notices of decisions. Newspaper publication of notices of decisions is in addition to direct notice of decisions to those known to be interested in or affected by a specific decision. The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published on May 15, 1998, of principal newspapers to be utilized for publishing notices of proposed actions and of decisions subject to appeal under 36 CFR part 215. The list of newspapers to be used for 215 notice and decision is corrected.

DATES: Use of these newspapers for purposes of publishing legal notices of decisions subject to appeal under 36 CFR part 217 and the use of the corrected newspaper listed under 36 CFR part 215 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT:

Jean Paul Kruglewicz. Regional Appeals Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW, Atlanta, Georgia 30367–9102, Phone: 404–347–4867.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 in the following newspaper which are listed by Forest Service Administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notices of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper. The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions:

Affecting National Forest System lands in more than one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico.

Atlanta Journal, published daily in Atlanta, GA

Southern Region

Regional Forester Decisions:

Affecting National Forest System lands in only one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico or only one Ranger District will appear in the principal newspaper elected by the National Forest of that state or Ranger District.

National Forests in Alabama, Alabama

Forest Supervisor Decisions:

Montgomery Advertiser, published daily in Montgomery, AL

District Ranger Decisions:

Bankhead Ranger District: *Northwest Alabamian*, published weekly (Monday & Thursday) in Haleyville, AL

Conecuh Ranger District: *The Andalusia Star*, published daily (Tuesday through Saturday) in Andalusia, AL

Oakmulgee Ranger District: *The Tuscaloosa News*, published daily in Tuscaloosa, AL

Shoal Creek Ranger District: *The Anniston Star*, published daily in Anniston, AL

Talladega Ranger District: *The Daily Home*, published daily in Talladega, AL

Tuskegee Ranger District: *Tuskegee News*, published weekly (Thursday) in Tuskegee, AL

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions:

El Nuevo Dia, published daily in Spanish in San Juan, PR

San Juan Star, published daily in English in San Juan, PR

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions:

The Times, published daily in Gainesville, GA

District Ranger Decisions:

Armuchee Ranger District: *Walker County Messenger*, published bi-weekly (Wednesday & Friday) in LaFayette, GA

Toccoa Ranger District: *The News Observer* published weekly (Wednesday) in Blue Ridge, GA

Brasstown Ranger District: *North Georgia News*, published weekly (Wednesday) in Blairsville, GA

Tallulah Ranger District: *Clayton Tribune*, published weekly (Thursday) in Clayton, GA

Chattooga Ranger District: *Northeast Georgian*, published twice weekly (Tuesday & Friday) in Cornelia, GA

Chieftain & Toccoa Record, published twice weekly (Tuesday & Friday) in Toccoa, GA

White County News Telegraph, published weekly (Thursday) in Cleveland, GA

The Dahlonega Nuggett, published weekly (Thursday) in Dahlonega, GA

Cohutta Ranger District: *Chatsworth Times*, published weekly (Wednesday) in Chatsworth, GA

Oconee Ranger District: *Monticello News,* published weekly (Thursday) in Monticello, GA

Cherokee National Forest, Tennessee

Forest Supervisor Decisions:

Knoxville News Sentinel, published daily in Knoxville, TN (covering McMinn, Monroe, and Polk Counties)
Johnson City Press, published daily in Johnson City, TN (covering Carter, Cocke, Greene, Johnson, Sullivan, Unicoi and Washington Counties)

District Ranger Decisions:

Ocoee-Hiwassee Ranger District: *Polk County News,* published weekly (Wednesday) in Benton, TN
Daily Post-Athenian, published daily (Monday–Friday) in Athens, TN
Tellico-Hiwassee Ranger District: *Monroe County Advocate,* published weekly (Thursday) in Sweetwater, TN
Daily Post-Athenian, published daily (Monday–Friday) in Athens, TN
Nolichucky-Unaka Ranger District: *Johnson City Press,* published daily in Johnson City, TN
Watauga Ranger District: *Johnson City Press,* published daily in Johnson City, TN

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions:

Lexington Herald-Leader, published daily in Lexington, KY

District Ranger Decisions:

Morehead Ranger District: *Morehead News,* published bi-weekly (Tuesday and Friday) in Morehead, KY
Stanton Ranger District: *The Clay City Times,* published weekly (Thursday) in Stanton, KY
London Ranger District: *The Sentinel-Echo,* published tri-weekly (Monday, Wednesday, and Friday) in London, KY
Somerset Ranger District: *Commonwealth-Journal,* published daily (Sunday through Friday) in Somerset, KY
Stearns Ranger District: *McCreay County Record,* published weekly (Tuesday) in Whitley City, KY
Redbird Ranger District: *Manchester Enterprise,* published weekly (Thursday) in Manchester, KY

National Forests in Florida, Florida

Forest Supervisor Decisions:

The Tallahassee Democrat, published daily in Tallahassee, FL

District Ranger Decisions:

Apalachicola Ranger District: *The Liberty Journal,* published weekly (Wednesday) in Bristol, FL
Lake George Ranger District: *The Ocala Star Banner,* published daily in Ocala, FL
Osceola Ranger District: *The Lake City Reporter,* published daily (Monday–Saturday) in Lake City, FL
Seminole Ranger District: *The Daily Commercial,* published daily in Leesburg, FL
Wakulla Ranger District: *The Tallahassee Democrat,* published daily in Tallahassee, FL

Francis Marion & Sumter National Forest, South Carolina

Forest Supervisor Decisions:

The State, published daily in Columbia, SC

District Ranger Decisions:

Enoree Ranger District: *Newberry Observer,* published tri-weekly (Monday, Wednesday, and Friday) Newberry, SC
Andrew Pickens Ranger District: *Seneca Journal and Tribune,* published bi-weekly (Wednesday and Friday) in Seneca, SC
Long Cane Ranger District: *The Augusta Chronicle,* published daily in Augusta, GA
Wambaw Ranger District: *News and Courier,* published daily in Charleston, SC
Witherbee Ranger District: *News and Courier,* published daily in Charleston, SC

George Washington and Jefferson National Forests, Virginia

Forest Supervisor Decisions:

Roanoke Times, published daily in Roanoke, VA

District Ranger Decisions:

Lee Ranger District: *Shenandoah Valley Herald,* published weekly (Wednesday) in Woodstock, VA
Warm Springs Ranger District: *The Recorder,* published weekly (Thursday) in Monterey, VA
Pedlar Ranger District: *Roanoke Times,* published daily in Roanoke, VA
James River Ranger District: *Virginian Review,* published daily (except Sunday) in Covington, VA
Deerfield Ranger District: *Daily News Leader,* published daily in Staunton, VA
Dry River Ranger District: *Daily News Record,* published daily (except Sunday) in Harrisonburg, VA
Blacksburg Ranger District: *Roanoke Times,* published daily in Roanoke, VA
Monroe Watchman, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the *Roanoke Times* and *Monroe Watchman*)
Glenwood Ranger District: *Roanoke Times,* published daily in Roanoke, VA
New Castle Ranger District: *Roanoke Times,* published daily in Roanoke, VA
Monroe Watchman, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the *Roanoke Times* and *Monroe Watchman*)
Mount Rogers National Recreation Area: *Bristol Herald Courier,* published daily in Bristol, VA
Clinch Ranger District: *Kingsport-Times News,* published daily in Kingsport, TN
Wythe Ranger District: *Southwest Virginia Enterprise,* published bi-weekly (Wednesday and Saturday) in Wytheville, VA

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions:

Alexandria Daily Town Talk, published daily in Alexandria, LA

District Ranger Decisions:

Caney Ranger District: *Minden Press Herald,* published daily in Minden, LA
Homer Guardian Journal, published weekly (Wednesday) in Homer, LA
Catahoula Ranger District: *Alexandria Daily Town Talk,* published daily in Alexandria, LA
Colfax Chronicle, published weekly (Wednesday) in Colfax, LA
Calcasieu Ranger District: *Alexandria Daily Town Talk,* published daily in Alexandria, LA
Kisatchie Ranger District: *Natchitoches Times,* published daily (Tuesday–Friday and on Sunday) in Natchitoches, LA
Winn Ranger District: *Winn Parish Enterprise,* published weekly (Wednesday) in Winnfield, LA

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions:

Clarion-Ledger, published daily in Jackson, MS

District Ranger Decisions:

Bienville Ranger District: *Clarion-Ledger,* published daily in Jackson, MS
Chickasawhay Ranger District: *Clarion-Ledger,* published daily in Jackson, MS
Delta Ranger District: *Clarion-Ledger,* published daily in Jackson, MS
De Soto Ranger District: *Clarion-Ledger,* published daily in Jackson, MS

Holly Springs Ranger District: *Clarion-Ledger,* published daily in Jackson, MS
Homochitto Ranger District: *Clarion-Ledger,* published daily in Jackson, MS
Tombigbee Ranger District: *Clarion-Ledger,* published daily in Jackson, MS
Ashe-Erambert Project: *Clarion-Ledger,* published daily in Jackson, MS

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions:

The Asheville Citizen-Times, published daily in Asheville, NC

District Ranger Decisions:

Appalachian Ranger District: *The Asheville Citizen-Times,* published daily in Asheville, NC
Cheoah Ranger District: *Graham Star,* published weekly (Thursday) in Robbinsville, NC
Croatan Ranger District: *The Sun Journal,* published weekly (Sunday through Friday) in New Bern, NC
Grandfather Ranger District: *McDowell News,* published daily in Marion, NC
Highlands Ranger District: *The Highlander,* published weekly (mid May–mid Nov Tues & Fri; mid Nov–mid May Tues only) in Highlands, NC
The Cashiers Crossroads Chronicle, published weekly (Wednesday) in Cashiers, NC
The Sylva Herald, published weekly on Thursday in Sylva, NC
Pisgah Ranger District: *The Asheville Citizen-Times,* published daily in Asheville, NC
Tusquitee Ranger District: *Cherokee Scout,* published weekly (Wednesday) in Murphy, NC
Uwharrie Ranger District: *Montgomery Herald,* published weekly (Wednesday) in Troy, NC
Wayah Ranger District: *The Franklin Press,* published bi-weekly (Wednesday and Friday) in Franklin, NC

Ouachita National Forest, Arkansas, Oklahoma

Forest Supervisor Decisions:

Arkansas Democrat-Gazette, published daily in Little Rock, AR

District Ranger Decisions:

Caddo Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Cold Springs Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Fourche Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Jessieville Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Mena Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Oden Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Poteau Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Winona Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Womble Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Choctaw Ranger District: *Tulsa World,* published daily in Tulsa, OK
Kiamichi Ranger District: *Tulsa World,* published daily in Tulsa, OK
Tiak Ranger District: *Tulsa World,* published daily in Tulsa, OK

Ozark-St. Francis National Forest: Arkansas

Forest Supervisor Decisions:

The Courier, published daily (Sunday through Friday) in Russellville, AR

District Ranger Decisions:

Sylamore Ranger District: *Stone County Leader,* published weekly (Tuesday) in Mountain View, AR
Buffalo Ranger District: *Newton County Times,* published weekly in Jasper, AR
Bayou Ranger District: *The Courier,* published daily (Sunday through Friday) in Russellville, AR
Pleasant Hill Ranger District: *Johnson County Graphic,* published weekly (Wednesday) in Clarksville, AR
Boston Mountain Ranger District: *Southwest Times Record,* published daily in Fort Smith, AR
Magazine Ranger District: *Southwest Times Record,* published daily in Fort Smith, AR
St. Francis Ranger District: *The Daily World,* published daily (Sunday through Friday) in Helena, AR

National Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions:

The Lufkin Daily News, published daily in Lufkin, TX

District Ranger Decisions:

Angelina National Forest: *The Lufkin Daily News,* published daily in Lufkin, TX
Davy Crockett National Forest: *The Lufkin Daily News,* published daily in Lufkin, TX
Sabine National Forest: *The Lufkin Daily News,* published daily in Lufkin, TX
Sam Houston National Forest: *The Courier,* published daily in Lufkin, TX
Sam Houston National Forest: *The Courier,* published daily in Conroe, TX
Caddo & LBJ National Grasslands: *Denton Record-Chronicle,* published daily in Denton, TX

The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published in May 15, 1998, of principal newspapers to be utilized for publishing notices of proposed actions and of decisions subject to appeal under 36 CFR 215. The list of newspapers to be used for 215 notice and decision is corrected as follows:

Cherokee National Forest, Tennessee

District Ranger Decisions:

Change to:
Ocoee-Hiwassee Ranger District: *Polk County News,* published weekly (Wednesday) in Benton, TN
Daily Post-Athenian, published daily (Monday-Friday) in Athens, TN
Tellico-Hiwassee Ranger District: *Monroe County Advocate,* published weekly (Thursday) in Sweetwater, TN
Daily Post-Athenian, published daily (Monday-Friday) in Athens, TN
Nolichucky-Unaka Ranger District: *Johnson City Press,* published daily in Johnson City, TN

Daniel Boone National Forest, Kentucky

District Ranger Decisions:

Delete:
Berea Ranger District: Jackson County Sun, published weekly (Thursday) in McKee, KY

National Forests in North Carolina, North Carolina

District Ranger Decisions:

Change to:
Highlands Ranger District: *The Highlander,* published weekly (mid May-mid Nov Tues & Fri; mid Nov-mid May Tues only) in Highlands, NC
The Cashiers Crossroads Chronicle, published weekly (Wednesday) in Cashiers, NC

Ozark-St. Francis National Forest: Arkansas

District Ranger Decisions:

Change to:
Buffalo Ranger District: *Newton County Times,* published weekly in Jasper, AR

Dated: November 25, 1998.

David G. Holland,

Deputy Regional Forester for Natural Resources.

[FR Doc. 98–32306 Filed 12–3–98; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: January 4, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 31, August 21, September 25, October 16 and 23, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 F.R. 40877, 44834, 51336, 55577 and 56906) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Gloves, Patient Examining
6515–01–364–8554

Pen, Ballpoint, Pushcap w/Refills
7520–01–451–1065 (Black Barrel, Black Ink)
7520–01–451–1066 (Burgundy Barrel, Blue Ink)
7510–01–451–2269 (Refill, Black Ink)
7510–01–451–2273 (Refill, Blue Ink)

Hood, Balaclava, Cold Weather
8415–01–310–0606

Services

Grounds Maintenance, Naval Air Weapons Station, China Lake, California

Operation of Individual Equipment Element Store, Bolling Air Force Base, Washington, DC

Operation of Individual Equipment Element Store, Seymour-Johnson Air Force Base, North Carolina

Operation of Postal Service Center and Base Information Transfer Services, Basewide, Brooks Air Force Base, Texas

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action may result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Tool Box, Portable
5140–00–651–7676
5140–00–388–3416
5140–00–226–9020
5140–00–226–9021
5140–00–329–6305
5140–00–226–9019
5140–00–226–9018
5140–00–289–8911
5140–00–289–8910

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–32340 Filed 12–3–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 981120290–8290–01]

1998 Company Organization Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: In conformity with Title 13, United States Code, Sections 182, 224, and 225, I have determined that a 1998 Company Organization Survey is needed to update the multiestablishment companies in the Business Register. This survey, which has been conducted annually since 1974, is designed to collect information on the number of employees, payroll, geographic location, current operational status, and kind of business for establishments of multilocation companies. These data will have significant application to the needs of the public and government agencies and are not available from any other source.

FOR FURTHER INFORMATION CONTACT: Edward D. Walker, Assistant Chief for Register Activities, Economic Planning and Coordination Division, on (301) 457–2617.

SUPPLEMENTARY INFORMATION: The data collected in this survey will be within the general scope, type, and character of those that are covered in the economic census.

The Office of Management and Budget (OMB) approved the proposed survey on October 21, 1998 under OMB Control No. 0607–0444 in accordance with the Paperwork Reduction Act, Pub. L. 104–

13. Report forms will be furnished to organizations included in the survey, and additional copies of the forms are available upon request to the Director, Bureau of the Census, Washington, DC 20233–0101.

Based upon the foregoing, I have directed that the 1998 Company Organization Survey be conducted for the purpose of collecting these data.

Dated: November 18, 1998.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 98–32227 Filed 12–3–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Update of the National Security Assessment of the U.S. Cartridge and Propellant Actuated Device Industry

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 2, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Brad Botwin, Director, Strategic Analysis Division, Bureau of Export Administration (BXA), Department of Commerce, Room 3876, 14th and Constitution Avenue, NW, Washington, DC 20230 (telephone no. (202) 482–4060, fax no. (202) 482–5650, e-mail address: bbotwin@bxa.doc.gov).

SUPPLEMENTARY INFORMATION:

I. Abstract

Commerce/BXA, in consultation with Naval Surface Warfare Center/Indian Head Division (NSWC/IHD) is conducting a follow-on national security assessment of the domestic cartridge and propellant actuated device industry in order to re-evaluate the health and competitiveness of the U.S. industry and its ability to support current and future defense needs. The original assessment was conducted in 1994 (approved under OMB Control No. 0694–0080), and NSWC/IHD is interested in conducting a follow-on assessment in light of recent Navy and industry actions to maintain and enhance this critical sector.

II. Method of Collection

The information will be collected using a non-recurring, mandatory survey. It will be collected in written form.

III. Data

The survey will collect information on the nature of the business performed by each firm; estimated sales and employment data; financial information; research and development expenditures and funding sources; capital expenditures and funding sources; and competitiveness issues.

OMB Number: None.

Form Number: N/A.

Type of Review: Regular submission.

Affected Public: The domestic U.S. cartridge and propellant actuated device industry.

Estimated Number of Respondents: 40.

Estimated Time Per Response: 5.0 hours.

Estimated Total Annual Burden Hours: 200 hours.

Estimated Total Annual Cost: $0 for respondents—no equipment or other materials will need to be purchased to comply with the requirement.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 30, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–32337 Filed 12–3–98; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112498B]

Marine Mammals; Scientific Research Permit (PHF# 393–1480)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Ms. Deborah A. Glockner-Ferrari, Center for Whale Studies, 39 Woodvine Court, Covington, Louisana 70433–4724, has applied in due form for a permit to take North Pacific humpback whales (*Megaptera novaeangliae*) and several species of small odontocete cetaceans for purposes of scientific research.

DATES: Written comments must be received on or before January 4, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (562/980-4001); and

Protected Species Program Manager, Pacific Islands Area Office, 2570 Dole Street, Room 106, Honolulu, HI 9682–2396 (808/973–2987).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this application would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak or Trevor Spradlin, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222.23).

The purpose of the proposed research is to continue the long-term study on humpback whales (begun in 1975) for an additional 5-year period to: (1) identify and determine the sex, relative age-class, and reproductive condition of individual whales through photo identification techniques; (2) describe and photo document social behavior; (3) record social sounds and individual whale songs; and (4) collect and export free-floating samples of sloughed skin and mucous secretions for genetic analyses. Observations may be made of the following species on an opportunistic basis, during conduct of the research on humpback whales: Pacific bottlenose dolphins (*Tursiops truncatus*), spotted dolphins (*Stenella longirostris*), Hawaiian spinner dolphins (*Stenella longirostris*), false killer whales (*Pseudorca crassidens*), and short-finned pilot whales (*Globicephala macrorhynchus*).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 30, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–32336 Filed 12–3–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Transshipment Charges for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

November 30, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing 1999 limits and charging transshipments to the 1999 limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Memorandum of Understanding dated February 1, 1997 between the Governments of the United States and the People's Republic of China establishes limits for textiles and textile products, produced or manufactured in China and exported during the period beginning on January 1, 1999 and extending through December 31, 1999.

A notice published in the **Federal Register** on May 7, 1998 (63 FR 25202) announced that transshipment charges would be made to the 1999 quota year for Categories 331, 341, 347/348, 351, 352, 631, 636, 641, 647, 649 and 652, pursuant to the February 1, 1997 MOU and in accordance with a letter to the Government of the People's Republic of China dated May 4, 1998.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for 1999 and to charge transshipments to the aforementioned categories for 1999.

The 1999 limits may be revised if China becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to China.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 30, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and a Memorandum of Understanding dated February 1, 1997 between the Governments of the United States and the People's Republic of China, you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month limit
Group I 200, 218, 219, 226, 237, 239, 300/301, 313–315, 317/326, 331, 333–336, 338/339, 340–342, 345, 347/348, 350–352, 359–C [1], 359–V [2], 360–363, 369–D [3], 369–H [4], 369–L [5], 410, 433-436, 438, 440, 442–444, 445/446, 447, 448, 607, 611, 613–615, 617, 631, 633–636, 638/639, 640–643, 644/844, 645/646, 647–652, 659–C [6], 659–H [7], 659–S [8], 666, 669–P [9], 670–L [10], 831, 833, 835, 836, 840, 842 and 845–847, as a group.	1,474,997,500 square meters equivalent.

Category	Twelve-month limit
Sublevels in Group I	
200	738,030 kilograms.
218	11,375,249 square meters.
219	2,428,588 square meters.
226	11,027,555 square meters.
237	2,021,092 dozen.
239	3,078,460 kilograms.
300/301	2,287,697 kilograms.
313	42,178,479 square meters.
314	49,663,934 square meters.
315	133,759,386 square meters.
317/326	21,574,143 square meters of which not more than 4,127,558 square meters shall be in Category 326.
331	5,236,526 dozen pairs.
333	99,130 dozen.
334	325,800 dozen.
335	388,299 dozen.
336	173,920 dozen.
338/339	2,333,946 dozen of which not more than 1,771,721 dozen shall be in Categories 338–S/339–S [11].
340	793,325 dozen of which not more than 396,662 dozen shall be in Category 340–Z [12].
341	687,410 dozen of which not more than 412,447 dozen shall be in Category 341–Y [13].
342	269,265 dozen.
345	129,032 dozen.
347/348	2,346,533 dozen.
350	168,670 dozen.
351	563,860 dozen.
352	1,645,485 dozen.
359–C	611,569 kilograms.
359–V	890,996 kilograms.
360	7,841,685 numbers of which not more than 5,348,786 numbers shall be in Category 360–P [14].
361	4,321,525 numbers.
362	7,248,200 numbers.
363	21,618,724 numbers.
369–D	4,755,168 kilograms.
369–H	5,032,562 kilograms.
369–L	3,355,586 kilograms.
410	999,047 square meters of which not more than 800,845 square meters shall be in Category 410–A [15] and not more than 800,845 square meters shall be in Category 410–B [16].
433	20,850 dozen.
434	13,332 dozen.
435	24,487 dozen.
436	15,086 dozen.
438	26,399 dozen.
440	37,715 dozen of which not more than 21,551 dozen shall be in Category 440–M [17].
442	39,924 dozen.
443	128,982 numbers.
444	206,916 numbers.
445/446	288,045 dozen.
447	70,617 dozen.
448	22,277 dozen.
607	3,272,155 kilograms.
611	5,425,251 square meters.
613	7,676,725 square meters.
614	12,063,423 square meters.
615	25,113,855 square meters.
617	17,546,797 square meters.
631	1,313,751 dozen pairs.
633	57,906 dozen.
634	629,976 dozen.
635	664,515 dozen.
636	552,517 dozen.
638/639	2,436,841 dozen.
640	1,386,568 dozen.
641	1,313,487 dozen.
642	339,479 dozen.
643	517,491 numbers.
644/844	3,686,959 numbers.
645/646	825,078 dozen.
647	1,570,813 dozen.
648	1,122,336 dozen.
649	957,686 dozen.
650	117,506 dozen.
651	781,504 dozen of which not more than 137,589 dozen shall be in Category 651–B [18].
652	2,801,039 dozen.
659–C	413,736 kilograms.
659–H	2,868,694 kilograms.
659–S	624,909 kilograms.
666	3,583,233 kilograms of which not more than 1,287,016 kilograms shall be in Category 666–C [19].
669–P	2,039,720 kilograms.
670–L	16,233,984 kilograms.
831	567,873 dozen pair.
833	29,199 dozen.
835	123,582 dozen.
836	284,329 dozen.
840	480,737 dozen.
842	271,439 dozen.
845	2,459,489 dozen.
846	179,107 dozen.
847	1,259,660 dozen.
Group II	
330, 332, 349, 353, 354, 359–O [20], 431, 432, 439, 459, 630, 632, 653, 654 and 659–O [21], as a group.	124,802,482 square meters equivalent.
Group III	
201, 220, 222, 223, 224–V [22], 224–O [23], 225, 227, 229, 369–O [24], 400, 414, 464, 465, 469, 600, 603, 604–O [25], 606, 618–622, 624–629, 665, 669–O [26] and 670–O [27], as a group.	258,883,627 square meters equivalent.
Sublevel in Group III	
224–V	3,653,945 square meters.
225	6,303,750 square meters.
Group IV	
832, 834, 838, 839, 843, 850–852, 858 and 859, as a group.	11,705,740 square meters equivalent.
Levels not in a Group	
369–S [28]	613,826 kilograms.
863–S [29]	8,661,622 numbers.
870	33,265,202 kilograms.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[2] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[5] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905.

[6] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[7] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[8] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[9] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[10] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

[11] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[12] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[13] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[14] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[15] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[16] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[17] Category 440–M: Only HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[18] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[19] Category 666–C: only HTS number 6303.92.2000.

[20] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[21] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[22] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[23] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[24] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 (Category 369–D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369–H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369–S)

[25] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[26] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669–P).

[27] Category 670–O: only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

[28] Category 369–S: only HTS number 6307.10.2005.

[29] Category 863–S: only HTS number 6307.10.2015.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the People's Republic of China.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 22, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if China becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to China.

The conversion factor for merged Categories 638/639 is 12.96 (square meters equivalent/category unit).

Pursuant to the February 1, 1997 MOU and in accordance with a letter to the Government of the People's Republic of China dated May 4, 1998, you are directed to charge the following amounts to the 1999 limits for categories listed below:

Category	Amount to be charged
331	82,122 dozen pairs.
341	80 dozen.
347/348	518 dozen.
351	62 dozen.
352	7,692 dozen.
631	30,700 dozen pairs.
636	101 dozen.
641	1,309 dozen.
647	25 dozen.
649	3,061 dozen.
652	6,372 dozen.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–32355 Filed 12–3–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

November 30, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Hong Kong and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see 63 FR 53881, published on October 7, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits. These limits have been increased, variously, for adjustments permitted under the flexibility provisions of the ATC.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999

CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 30, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Hong Kong and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Group I	
200–227, 300–326, 360–363, 369(1)[1], 369pt.[2], 400–414, 464, 469pt.[3], 600–629, 666, 669pt.[4] and 670, as a group.	248,373,685 square meters equivalent.
Sublevels in Group I	
219	43,774,441 square meters.
218/225/317/326	75,509,804 square meters of which not more than 4,158,786 square meters shall be in Category 218(1)[5] (yarn dyed fabric other than denim and jacquard).
611	6,901,630 square meters.
617	4,354,444 square meters.
Group I subgroup	
200, 226/313, 314, 315, 369(1) and 604, as a group	116,923,712 square meters equivalent.
Within Group I subgroup	
200	377,406 kilograms.
226/313	78,521,945 square meters.
314	21,176,426 square meters
315	10,469,698 square meters.
369(1) (shoptowels)	860,397 kilograms.
604	259,063 kilograms.
Group II	
237, 239pt.[6], 331–348, 350–352, 359(1)[7], 359(2)[8], 359pt.[9], 431, 433–438, 440–448, 459pt.[10], 631, 633–652, 659(1)[11], 659(2)[12], 659pt.[13], and 443/444/643/644/843/844(1), as a group.	855,820,099 square meters equivalent.
Sublevels in Group II	
237	1,265,837 dozen.
331	4,336,479 dozen pairs.
333/334	312,390 dozen.
335	347,274 dozen.
338/339[14] (shirts and blouses other than tank tops and tops, knit).	2,951,725 dozen.
338/339(1)[15] (tank tops and knit tops).	2,217,646 dozen.
340	2,826,588 dozen.
345	475,195 dozen.
347/348	6,846,378 dozen of which not more than 6,756,378 dozen shall be in Categories 347–W/348–W[16]; and not more than 5,120,239 dozen shall be in Category 348–W.
352	7,445,492 dozen.
359(1) (coveralls, overalls and jumpsuits).	649,428 kilograms.
359(2) (vests)	1,353,543 kilograms.
433	10,663 dozen.
434	11,446 dozen.
435	77,706 dozen.
436	101,208 dozen.
438	831,206 dozen.
442	94,572 dozen.
443	63,856 numbers.
444	42,823 numbers.
445/446	1,373,874 dozen.
447/448	69,092 dozen.
631	702,558 dozen pairs.
633/634/635	1,401,229 dozen of which not more than 524,090 dozen shall be in Categories 633/634; and not more than 1,075,986 dozen shall be in Category 635.
638/639	4,955,336 dozen.
641	856,261 dozen.
644	47,651 numbers.
645/646	1,358,164 dozen.
647	584,436 dozen.
648	1,193,100 dozen of which not more than 1,178,310 dozen shall be in Category 648–W[17].
649	899,796 dozen.
650	186,074 dozen.
652	5,226,191 dozen.
659(1) (coveralls, overalls and jumpsuits).	717,789 kilograms.
659(2) (swimsuits)	297,137 kilograms.
443/444/643/644/843/844(1) (made-to-measure suits).	59,256 numbers.
Group II subgroup	
336, 341, 342, 350, 351, 636, 640, 642 and 651, as a group.	161,892,727 square meters equivalent.
Within Group II subgroup	
336	244,484 dozen.
341	2,861,158 dozen.
342	580,865 dozen.
350	144,826 dozen.
351	1,208,423 dozen.
636	329,033 dozen.
640	1,011,349 dozen.
642	261,660 dozen.
651	356,335 dozen.
Group III	
831, 833–838, 840–844, 847–858 and 859pt.[18], as a group.	46,482,012 square meters equivalent.
Sublevels in Group III	
834	13,391 dozen.
835	116,441 dozen.
836	174,460 dozen.
840	691,677 dozen.
842	272,972 dozen.
847	371,455 dozen.
Limits not in a group	
845(1)[19] (sweaters made in Hong Kong).	1,131,105 dozen.
845(2)[20] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	2,707,434 dozen.
846(1)[21] (sweaters made in Hong Kong).	182,910 dozen.
846(2)[22] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	440,745 dozen.

[1] Category 369(1): only HTS number 6307.10.2005.

[2] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 6406.10.7700 and HTS number in 369(1).

[3] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[4] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[5] Category 218(1): all HTS numbers except 5209.42.0060, 5209.42.0080, 5211.42.0060, 5211.42.0080, 5514.32.0015 and 5516.43.0015.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[8] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[9] Category 359pt.: all HTS numbers except 6406.99.1550 and HTS numbers in 359(1) and 359(2).

[10] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[11] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[12] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659pt.: all HTS numbers except 6406.99.1510, 6406.99.1540 and HTS numbers in 659(1) and 659(2).

[14] Categories 338/339: all HTS numbers except 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[15] Category 338/339(1): only HTS numbers 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[16] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040;Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[17] Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

[18] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

[19] Category 845(1): only HTS numbers 6103.29.2074, 6104.29.2079, 6110.90.9024, 6110.90.9042 and 6117.90.9015.

[20] Category 845(2): only HTS numbers 6103.29.2070, 6104.29.2077, 6110.90.9022 and 6110.90.9040.

[21] Category 846(1): only HTS numbers 6103.29.2068, 6104.29.2075, 6110.90.9020 and 6110.90.9038.

[22] Category 846(2): only HTS numbers 6103.29.2066, 6104.29.2073, 6110.90.9018 and 6110.90.9036.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 22, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see directive dated September 30, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

The conversion factors for merged Categories 333/334, 633/634/635 and 638/639 are 33, 33.90 and 13, respectively. The conversion factor for Category 239pt. is 8.79.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–32354 Filed 12–3–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

November 30, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Philippines and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and a Memorandum of Understanding dated August 19, 1998 between the Governments of the United States and the Republic of the Philippines.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see 63 FR 53881, published on October 7, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 30, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Uruguay Round Agreement on Textiles and Clothing (ATC) and a Memorandum of

Understanding dated August 19, 1998, between the Governments of the United States and the Republic of the Philippines, you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
237	1,933,471 dozen.
331/631	6,261,190 dozen pairs.
333/334	302,881 dozen of which not more than 43,482 dozen shall be in Category 333.
335	197,145 dozen.
336	717,428 dozen.
338/339	2,333,411 dozen.
340/640	1,036,170 dozen.
341/641	935,013 dozen.
342/642	620,539 dozen.
345	184,795 dozen.
347/348	2,174,025 dozen.
350	163,592 dozen.
351/651	676,821 dozen.
352/652	2,658,051 dozen.
359–C/659–C [1]	919,562 kilograms.
361	2,066,437 numbers.
369–S [2]	468,409 kilograms.
431	173,058 dozen pairs.
433	3,408 dozen.
443	41,205 numbers.
445/446	28,144 dozen.
447	7,825 dozen.
611	6,201,542 square meters.
633	39,984 dozen.
634	496,097 dozen.
635	357,334 dozen
636	1,869,660 dozen.
638/639	2,397,048 dozen.
643	955,056 numbers.
645/646	809,378 dozen.
647/648	1,311,785 dozen.
649	8,168,184 dozen.
650	117,088 dozen.
659–H [3]	1,540,576 kilograms.
847	1,021,835 dozen.
Group II	
200–227, 300–326, 332, 359–O [4], 360, 362, 363, 369–O [5], 400–414, 434–438, 440, 442, 444, 448, 459pt. [6], 464, 469pt. [7], 600–607, 613–629, 644, 659–O [8], 666, 669–O [9], 670–O [10], 831, 833–838, 840–846, 850–858 and 859pt. [11], as a group.	193,226,490 square meters equivalent.
Sublevel in Group II 604	2,190,816 kilograms.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[4] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); and 6406.99.1550 (359pt.).

[5] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[6] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[7] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[8] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[9] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[10] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[11] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC, administrative arrangements notified to the Textiles Monitoring Body and a Memorandum of Understanding dated August 19, 1998 between the Governments of the United States and the Republic of the Philippines.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 1, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see directive dated September 30, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–32353 Filed 12–3–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Romania

November 30, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Romania and exported during the period January 1, 1999 through December 31, 1999 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see 63 FR 53881, published on October 7, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits. The limits for certain categories have been reduced for carryforward applied in 1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 30, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month limit
313	2,156,440 square meters.
314	1,617,329 square meters.
315	3,892,107 square meters.
333/833	154,149 dozen.
334	372,595 dozen.
335/835	195,257 dozen.
338/339	842,685 dozen.
340	367,827 dozen.
341/840	154,149 dozen.
347/348	657,706 dozen.
350	34,818 dozen.
352	234,461 dozen.
359pt. [1]	841,005 kilograms.
360	2,173,391 numbers.
361	1,448,928 numbers.
369pt. [2]	381,423 kilograms.
410	174,734 square meters.
433/434	9,106 dozen.
435	9,525 dozen.
442	11,724 dozen.
443	85,101 numbers.
444	40,118 numbers.
447/448	23,513 dozen.
604	1,667,999 kilograms.
638/639	783,169 dozen.
640	107,712 dozen.
647	102,546 dozen.
648	77,532 dozen.
666	156,155 kilograms.

[1] Category 359pt.: all HTS numbers except 6406.99.1550.

[2] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated November 24, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see directive dated September 30, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–32352 Filed 12–3–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

November 30, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 8, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift, and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67837, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 30, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive

issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998.

Effective on December 8, 1998, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement:

Category	Adjusted twelve-month limit [1]
Group I	
200–224, 225/317/326, 226, 227, 229, 300/301/607, 313–315, 360–363, 369–L/670–L/870 [2], 369–S [3], 369–O [4], 400–414, 464–469, 600–606, 611, 613/614/615/617, 618, 619/620, 621–624, 625/626/627/628/629, 665, 666, 669–P [5], 669–T [6], 669–O [7], 670–H [8] and 670–O [9], as a group.	618,894,181 square meters equivalent.
Sublevels in Group I	
363	13,173,415 numbers.
619/620	15,134,873 square meters.
625/626/627/628/629	19,694,045 square meters.
Sublevels in Group II	
331	439,068 dozen pairs.
336	134,458 dozen.
338/339	1,002,524 dozen.
345	127,133 dozen.
347/348	1,535,616 dozen of which not more than 1,309,866 dozen shall be in Categories 347–W/348–W [10].
352/652	3,256,767 dozen.
433	14,188 dozen.
435	24,687 dozen.
442	41,761 dozen.
443	56,018 numbers.
444	86,383 numbers.
631	5,404,494 dozen pairs.
633/634/635	1,771,888 dozen of which not more than 1,035,357 dozen shall be in Categories 633/634 and not more than 923,601 dozen shall be in Category 635.
638/639	6,633,003 dozen.
642	839,380 dozen.
647/648	5,456,952 dozen of which not more than 5,193,775 dozen shall be in Categories 647–W/648–W [11].
Within Group II Subgroup	
342	228,120 dozen.
350/650	147,541 dozen.
351	371,954 dozen.
447/448	21,160 dozen.
636	398,390 dozen.
651	483,789 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369–S).

[5] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[6] Category 669–T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9030.

[7] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 6306.12.0000, 6306.19.0010 and 6306.22.9030 (Category 669–T).

[8] Category 670–H: only HTS numbers 4202.22.4030 and 4202.22.8050.

[9] Category 670–O: all HTS numbers except 4202.22.4030, 4202.22.8050 (Category 670–H); 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[10] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[11] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–32357 Filed 12–3–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Unit of Quantity Requirement for Textile and Apparel Products Produced or Manufactured in Various Countries

November 30, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs requiring visa quantities be in whole numbers only.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Brian F. Fennessy, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The United States Government has notified all countries with visa arrangements with the United States of the requirement to issue visas in whole numbers. Shipments of textile and apparel products subject to visa arrangements are charged by U.S. Customs Service using whole numbers only. Quantities stated in decimals or fractions will not be accepted. Shipment quantities not in whole units must be

reported as a whole number on the visa, as follows:

1. Shipments of less than a single whole unit must be reported as ''one'' whole unit;

2. Shipment quantities over one whole unit, may be rounded up or down to a whole number. Quantities one-half of a whole unit or higher must be rounded up. Shipment quantities of less than one-half of a whole unit may be rounded down.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to require that the quantity stated on the visa be listed in whole numbers only.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 30, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and Executive Order 11651 of March 3, 1972, as amended, the United States Government has notified all countries with visa arrangements with the United States of the requirement to issue visas in whole numbers.

Effective on January 1, 1999, you are directed to require that shipment quantities of textile and apparel products entered for consumption or withdrawn from warehouse for consumption into the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) be stated on the visa in whole numbers only. Quantities stated in decimals or fractions will not be accepted. Shipment quantities not in whole units must be reported as a whole number on the visa, as follows:

1. Shipments of less than a single whole unit must be reported as ''one'' whole unit;

2. Shipment quantities over one whole unit, may be rounded up or down to a whole number. Quantities one-half of a whole unit or higher must be rounded up. Shipment quantities of less than one-half of a whole unit may be rounded down.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–32356 Filed 12–3–98; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, December 17, 1998, 9:30 a.m.

LOCATION: Room 410 B/C, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the public.

MATTER TO BE CONSIDERED: *Compliance Status Report:* The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: December 1, 1998.

Sadye E. Dunn,

Secretary.

[FR Doc. 98–32428 Filed 12–2–98; 2:54 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, December 15, 1998, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the public.

MATTER TO BE CONSIDERED: *Methacrylic Acid:* The staff will brief the Commission on a proposed rule requiring child-resiseant packaging under the Poison Prevention Packaging Act for household products containing more than 5 percent methacrylic acid in a single package.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: December 1, 1998.

Sadye E. Dunn,

Secretary.

[FR Doc. 98–32429 Filed 12–2–98; 2:54 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Finding of No Significant Impact (FNSI) and Final Programmatic Environmental Assessment (PEA) for the Army National Guard Pest Management Program

AGENCY: National Guard Bureau, Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality (CEQ) Regulations (40 CFR Part 1500–1508); and Army Regulation 200–2, the National Guard Bureau (NGB) gives notice that an Environmental Impact Statement (EIS) is not being prepared for adoption of an Integrated Pest Management (IPM) Program.

DATES: The public review period for this FNSI and PEA ends on January 4, 1999.

ADDRESSES: Copies of the FNSI and PEA can be obtained by contacting Ms. Pamela Goodman, National Guard Bureau, Office of Public Affairs, Environmental Branch, 4501 Ford Avenue, Alexandria, VA 22301.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela Goodman at 1–800–252–8959.

SUPPLEMENTARY INFORMATION: A PEA has been prepared to examine the potential environmental impacts associated with this determination. The EA for this Federal action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, the NGB has determined that the preparation and review of an EIS is not needed for this project. Based on the findings, the NGB has reached a FNSI with regard to its determination on this proposed action.

The final PEA describes and analyzes the proposed action, consisting of three action alternatives, and the no action option. The alternatives analyzed were: (1) mechanical, cultural, and biological management techniques; (2) chemical management techniques; (3) an emphasis on nonchemical techniques with limited chemical management techniques with a general reduction of toxic chemical used by 50%; and (4) no action. All alternatives could have been implemented in full compliance with applicable state and Federal laws and regulations. Alternative number 3 was selected for implementation.

The NGB provided a 30-day public comment period on the draft PEA. The draft PEA was also forwarded to the Environmental Protection Agency, the

CEQ, and several other Federal and state agencies, as well as several national environmental groups for review and comment. The final PEA was refined based upon the comments received. Analysis and response to the comments received have also been incorporated into the FNSI. The NGB has found the PEA adequate for its decision to adopt the IPM program and has issued its FNSI.

Copies of the FNSI, executive summary of the final PEA, and/or the complete PEA will be mailed to individuals who participate in the Draft PEA review process. Copies will also be sent to select Federal and state agencies. Individuals not currently on the mailing list may obtain a copy be request.

Dated: December 1, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 98–32320 Filed 12–3–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES: Wednesday, December 16, 1998: 6:00 p.m.–9:00 p.m., 6:30 p.m. to 7:00 p.m. (public comment session).

ADDRESSES: Holiday Inn, 1005 Paseo de Pueblo Sur, Taos, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Northern New Mexico Citizens' Advisory Board, Los Alamos National Laboratory, 528 35th Street, Los Alamos, New Mexico 87544, (505) 665–5048.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:00 p.m.—Call to Order by DOE
6:00 p.m.—Welcome by Chair, Roll Call, Approval of Agenda and Minutes
6:30 p.m.—Public Comments
7:00 p.m.—Break
7:15 p.m.—Board Business
9:00 p.m.—Adjourn

Public Participation: The meeting is open to the public. The public may file written statements with the Committee, either before or after the meeting. A sign-up sheet will also be available at the door of the meeting room to indicate a request to address the Board. Individuals who wish to make oral presentations, other than during the public comment period, should contact Ms. Ann DuBois at (505) 665–5048 five (5) business days prior to the meeting to request that the Board consider the item for inclusion at this or a future meeting. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Ms. M.J. Byrne, Deputy Designated Federal Officer, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on December 1, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–32309 Filed 12–3–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Petroleum Council

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: 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: National Petroleum Council (NPC)

Date and Time: Tuesday, December 15, 1998, 9 am

Place: The Madison Hotel, Dolley Madison Ballroom, 15th & M Streets, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5), Washington, D.C. 20585, Telephone: 202/586–3867.

SUPPLEMENTARY INFORMATION:

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda

—Call to order and introductory remarks by Joe B. Foster, Chair of the NPC.

—Remarks by the Honorable Bill Richardson, Secretary of Energy.

—Consideration of the proposed final report of the NPC Committee on Product Supply.

—Administrative matters.

—Discussion of any other business properly brought before the NPC.

—Public comment (10-minute rule).

—Adjournment.

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. This notice is being published less than 15 days in advance of the meeting due to certain programmatic issues which had to be resolved prior to publication in the **Federal Register**. This notice is being published less than 15 days before the date of the meeting due to the Thanksgiving holiday.

Transcripts: Available for public review and copying at the Public Reading Room, Room IE–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on December 1, 1998.

Rachel M. Samuel,

Deputy Committee Advisory Management Officer.

[FR Doc. 98–32310 Filed 12–3–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–88–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

November 30, 1998.

Take notice that on November 23, 1998, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP99–88–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon certain miscellaneous tap with appurtenances, and the service rendered under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso proposes to abandon 24 miscellaneous taps, with associated appurtenances and the related natural gas service rendered by means of such facilities. The facilities are located in New Mexico. These facilities were required by El Paso to facilitate, generally, the delivery and/or measurement and sale of natural gas from its interstate transmission pipeline system to PNM Gas Service, a division of Public Service Company of New Mexico, for resale. El Paso states that the abandonments will not result in or cause any interruption, reduction or termination of natural gas service presently rendered by El Paso to any of its customers.

Any person or the Commission's staff may, within 45 days after 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 Section 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 therefor, 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.

David P. Boergers,

Secretary.

[FR Doc. 98–32232 Filed 12–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–85–000]

National Fuel Gas Supply Corporation; Notice of Application

November 30, 1998.

Take notice that on November 23, 1998, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP99–85–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities in Venango County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National Fuel proposes to abandon approximately 5,822 feet of 6-inch steel pipeline, known as Line N–M31, located in Venango County, Pennsylvania, because of its age and deteriorated condition. National Fuel also proposes to abandon in its entirety Station T–No. 2261, a regulator station, located on Line N–M31, which was used to reduce the pressure of Line N–M31 to 60 psig. National Fuel states that the abandonment will not have an effect on its existing services because National Fuel's existing parallel Line N–M43 has sufficient capacity to maintain current delivery volumes and will provide more reliable service.

Any person desiring to be heard or to make any protest with reference to said Application should on or before December 21, 1998, file with the Federal Energy Regulatory Commission, 888 First 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 or 18 CFR 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 the jurisdiction conferred upon the 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 Application if no petition 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 abandonment is required by the public convenience and necessity. If a petition 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 Applicant to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–32231 Filed 12–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–28–000, et al.]

SEI Wisconsin, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

November 27, 1998.

Take notice that the following filings have been made with the Commission:

1. SEI Wisconsin, L.L.C.

[Docket No. EG99–28–000]

Take notice that on November 20, 1998, SEI Wisconsin, L.L.C. (SEI Wisconsin), 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338–4780, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

SEI Wisconsin is a Delaware limited liability company that intends to construct, own, and operate a 340 MW generation facility located in the Town of Neenah, Wisconsin. SEI Wisconsin is engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: December 10, 1998, in accordance with Standard Paragraph E

at the end of this notice. The Commission will limit its consideration of comments to those concerning the adequacy or accuracy of the application.

2. Golden Valley Power Company

[Docket No. ER98–4334–000]

Take notice that on November 23, 1998, Golden Valley Power Company (Golden), tendered for filing an amendment to its petition filed on August 24, 1998, in the above-referenced docket in response to FERC staff request issued September 17, 1998.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Western Resources, Inc.

[Docket No. ER98–4401–000]

Take notice that on November 23, 1998, Western Resources, Inc., tendered for filing an amendment to its Electric Power Supply Agreement filed on August 28, 1998, in response to deficiency letter issued on November 26, 1998.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Electric Power Company

[Docket No. ER99–324–000]

Take notice that on November 23, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an amendment in the above-referenced proceeding. The amendment contains a revised Attachment 1, to the service specifications contained in the transmission service agreement tendered in this proceeding on October 26, 1998.

Wisconsin Electric renews its original requested effective date of sixty days after the original tender date.

Copies of the filing have been served on Wisconsin Electric Power Marketing, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Edison Company

[Docket No. ER99–659–000]

Take notice that on November 23, 1998, Commonwealth Edison Company (ComEd), tendered for filing a service agreement establishing Niagara Mohawk Energy Marketing (NMEM), as a customer under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of November 19, 1998, for the service agreement, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing were served on NMEM and the Illinois Commerce Commission.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Orange and Rockland Utilities, Inc.

[Docket No. ER99–660–000]

Take notice that on November 23, 1998, Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing a Service Agreement between Orange and Rockland and West Penn Power d.b.a. Allegheny Energy (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of October 28, 1998, for the Service Agreement.

Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company (Minnesota), Northern States Power Company) (Wisconsin)

[Docket No. ER99–661–000]

Take notice that on November 23, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and New Century Energies.

NSP requests that the Commission accept both the agreements effective October 29, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER99–662–000]

Take notice that on November 23, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and Ameren Services Company.

NSP requests that the Commission accept both the agreements effective November 12, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. PP&L, Inc.

[Docket No. ER99–663–000]

Take notice that on November 23, 1998, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated November 9, 1998, with H.Q. Energy Services (U.S.) Inc. (HQ), under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Volume No. 5. The Service Agreement adds HQ as an eligible customer under the Tariff.

PP&L requests an effective date of November 23, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to HQ and to the Pennsylvania Public Utility Commission.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Western Resources, Inc.

[Docket No. ER99–664–000]

Take notice that on November 23, 1998, Western Resources, Inc., tendered for filing agreements between Western Resources and Engage Energy US, L.P. Western Resources states that the purpose of the agreement is to permit the customer to take service under Western Resources' market-based power sales tariff on file with the Commission.

The agreement is proposed to become effective October 23, 1998.

Copies of the filing were served upon Engage Energy US, L.P., and the Kansas Corporation Commission.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Pittsfield Generating Company, L.P.

[Docket No. ER99–665–000]

Take notice that on November 23, 1998, Pittsfield Generating Company, L.P., tendered for filing Power Sales Agreements associated with service under its Rate Schedule FERC No. 1 as required by the Commission in Pittsfield Generating Co., L.P., 85 FERC ¶ 61,147 (1998).

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. EME Homer City, L.P.

[Docket No. ER99–666–000]

Take notice that on November 23, 1998, EME Homer City, L.P. (EMEHC), tendered for filing an application requesting acceptance of its proposed Market-Based Rates Tariff, waiver of certain regulations and blanket approvals. The proposed tariff would authorize EMEHC to engage in the wholesale sales of electric capacity, energy, and certain ancillary services to eligible customers at market-based rates.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Consumers Energy Company

[Docket No. ER99–667–000]

Take notice that on November 23, 1998, Consumers Energy Company (Consumers), tendered for filing a fully executed Grand Traverse Interconnection Facilities Agreement between Consumers, Wolverine Power Supply Cooperative, Inc., and the Light and Power Department of Traverse City (Agreement). Consumers requested that the Agreement be allowed to become effective in accordance with its terms, on the first day of the month following its acceptance for filing. The Agreement is to replace and supersede Consumers Rate Schedule FERC No. 78, which is to terminate when the Agreement takes effect.

Copies of the filing were served by Consumers upon the other two parties to the Agreement and upon the Michigan Public Service Commission.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Duke Electric Transmission, a Division of Duke Energy Corporation

[Docket No. ER99–668–000]

Take notice that on November 23, 1998, Duke Electric Transmission, a division of Duke Energy Corporation (Duke), tendered for filing a Non-Firm Transmission Service Agreement and a Firm Transmission Service Agreement between Duke and DTE Energy Trading, Inc., dated as of October 7, 1998, and October 20, 1998, respectively.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. SEI Wisconsin, L.L.C.

[Docket No. ER99–669–000]

Take notice that on November 20, 1998, SEI Wisconsin, L.L.C. (SEI Wisconsin), tendered for filing an application requesting acceptance of its proposed Market Rate Tariff, waiver of certain regulations, and blanket approvals. The proposed tariff would authorize SEI Wisconsin to engage in wholesale sales of capacity and energy to eligible customers at market rates.

Comment date: December 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Central Vermont Public Service Corporation

[Docket No. ER99–670–000]

Take notice that on November 23, 1998, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Great Bay Power Corporation under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power, energy, and/or resold transmission capacity at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on November 27, 1998.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Illinois Power Company

[Docket No. ER99–671–000]

Take notice that on November 23, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Associated Electric Cooperative, Inc., will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of November 1, 1998.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER99–672–000]

Take notice that on November 23, 1998, Louisville Gas and Electric Company/Kentucky Utilities Company (LG&E/KU), tendered for filing an executed Service Agreement for Non-Firm Point-to-Point Transmission Service between LG&E/KU and Ameren Services Company.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER99–673–000]

Take notice that on November 23, 1998, Louisville Gas and Electric Company/Kentucky Utilities Company (LG&E/KU), tendered for filing an executed Service Agreement for Non-Firm Point-to-Point Transmission Service between LG&E/KU and Southwestern Public Service Company.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER99–674–000]

Take notice that on November 23, 1998, Louisville Gas and Electric Company/Kentucky Utilities Company (LG&E/KU), tendered for filing an executed Service Agreement for Firm Point-to-Point Transmission Service between LG&E/KU and Ameren Services Company.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Boston Edison Company

[Docket No. ER99–675–000]

Take notice that on November 23, 1998, Boston Edison Company (Boston Edison), tendered for filing a Standstill Agreement between itself and Montaup Electric Company (Montaup). The Standstill Agreement extends through March 29, 1999, the time in which Montaup may institute a legal challenge to the 1996 true-up bill under Boston Edison's FERC Rate Schedule No. 69, governing sales to Montaup from the Pilgrim Nuclear Station.

Boston Edison requests waiver of the Commission's notice requirement to allow the Standstill Agreement to become effective November 28, 1998.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Alliant Services Company

[Docket No. ER99–676–000]

Take notice that on November 23, 1998, Alliant Services Company tendered for filing two executed Service Agreements for long-term firm point-to-point transmission service with Madison Gas and Electric Company.

Alliant Services Company requests an effective date of March 1, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa

Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Illinois Power Company

[Docket No. ER99–677–000]

Take notice that on November 23, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing an amendment to the existing firm transmission agreements under which Olin Brass and Winchester, Inc., is taking transmission service pursuant to our open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date for the amendment of November 1, 1998.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. ERI Enterprises, L.L.C.

[Docket No. ER99–681–000]

Take notice that on November 23, 1998, ERI Enterprises, L.L.C. (Enterprises), tendered for filing pursuant to Section 35.15 of the Commission's Regulations, 18 CFR 35.15, a notice canceling Enterprises' Rate Schedule FERC No. 1, effective October 22, 1998. In its notice, Enterprises states that it has no customers.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Equitable Energy, LLC

[Docket No. ER99–682–000]

Take notice that on November 23, 1998, Equitable Energy, LLC tendered for filing pursuant to Section 35.16 of the Commission's Regulations, 18 CFR 35.16, a notice of succession in ownership or operation. In its notice, Equitable Energy, LLC adopts, ratifies, and makes its own, Rate Schedule FERC No. 1, heretofore filed with the Federal Energy Regulatory Commission by ERI Enterprises, L.L.C., effective October 22, 1998.

Comment date: December 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. MDU Resources Group, Inc.

[Docket No. ES99–10–000]

Take notice that on November 13, 1998, MDU Resources Group, Inc. (Applicant), filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act (Act), seeking an authorization to incur up to $75,000,000 of short-term indebtedness during the period commencing January 1, 1999 and ending December 31, 2000.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. South Carolina Gas & Electric Company

[Docket No. ES99–12–000]

Take notice that on November 20, 1998, South Carolina Gas & Electric Co. (Applicant), filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act (Act), seeking an authorization to incur up to $250,000,000 of short-term indebtedness during the period commencing January 1, 1999 and ending December 31, 2000.

Comment date: December 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Department of Energy—Bonneville Power Corporation

[Docket No. NJ97–7–001]

Take notice that on October 23, 1998, Department of Energy—Bonneville Power Corporation (Bonneville), tendered for filing revised standards of conduct in response to the Commission's September 18, 1998 Order, (84 FERC ¶ 61,257 (1998)).

Comment date: December 14, 1998, 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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–32230 Filed 12–3–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Accepting Application for Filing and Requesting Interventions and Protests

November 30, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Minor License.

b. *Project No.:* 696–010.

c. *Date Filed:* October 27, 1998.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* American Fork Hydroelectric Project.

f. *Location:* On American Fork Creek, near the City of American Fork, Utah County, Utah. The project affects about 28.8 acres of federal lands within the Uinta National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. *Applicant Contact:* Michael B. Burke, Project Manager, PacifiCorp, 825 NE Multnomah, Suite 1500, Portland, OR 97323, (503) 813–6656.

i. *FERC Contact:* Any questions on this notice should be addressed to Gaylord W. Hoisington, E-mail address Gaylord.Hoisington@FERC.FED.US, or telephone (202) 219–2756.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following existing facilities: (1) a 29-foot-long, 9-inch wide, and 4.5-foot-high reinforced concrete diversion dam; (2) a 6-foot-wide, 6-foot-long intake; (3) a 6-foot-long, 6-foot-wide manually operated sluice gate; (4) a 2-foot-long, 2-foot-wide manually

operated upstream sluice gate; (5) A 28-inch-diameter welded steel pipe flowline approximately 11,666 feet long that transitions into a 33-inch-diameter, 253-foot-long riveted steel penstock that transitions into a 20-inch-diameter, 61-foot-long riveted steel penstock; (6) an approximately 2,700-square foot brick powerhouse containing one turbine generator unit with a rated capacity of 1,050 kilowatts; and (7) other appurtenances.

m. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. This notice also consists of the following standard paragraphs: B1, E1.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

David P. Boergers,

Secretary.

[FR Doc. 98–32233 Filed 12–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed with the Commission

November 30, 1998.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Amendment of License for the Non-Project Use of Project Lands and Waters, the Construction and Operation of a Raw Water Intake and Pumping Station Located on the Shoreline of Lay Reservoir.

b. *Project No:* 2146–083.

c. *Date Filed:* November 17, 1998.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Coosa River Project.

f. *Location:* Talladega County.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jim Crew, Alabama Power Company, P.O. Box 2641, Birmingham, AL 35291, (205) 257–4265.

i. *FERC Contact:* Jim Haimes, (202) 219–2780.

j. *Comment Date:* January 8, 1999.

k. *Description of Project:* The licensee proposes to lease 2.7 acres of land on the eastern shoreline of Lay Reservoir (Coosa River) downstream of the confluence with Cedar Creek to the Utilities Board, City of Sylacauga, Alabama for the construction and operation of a raw water intake and pumping station with the capacity to withdraw 30 million gallons per day for municipal water supply. The proposed facilities would be developed on a vacant parcel at the intersection of Cedar Creek Circle and Edwards Drive, adjacent to a residential subdivision. Project facilities would include a 48-inch-diameter, buried, intake pipe that extends approximately 1,320 feet into the reservoir. Installation of this intake line would require dredging approximately 1,900 cubic yards of river bottom silt and sand, which would be disposed of at an offsite, upland location. The intake opening would be screened to minimize the entrainment and impingement of fish.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 C.F.R. sections 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTEST'' OR ''MOTION TO INTERVENE,'' as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Motions to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant. The application may be viewed on the web site at www.ferc.fed.us. Call (202) 208–2222 for assistance.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also

be sent to the applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 98–32234 Filed 12–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Scoping Comments

November 30, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application: Major New License.*

b. *Project No.:* P–2722–008.

c. *Dated filed:* August 21, 1998.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Pioneer Hydroelectric Project.

f. *Location:* On the Ogden River in Weber County, Utah. The project doesn't affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Randy Landolt, Director, Hydro resources, PacifiCorp, 920 SW Sixth Avenue, Portland, Oregon 97204, (503) 464–5339.

i. *FERC Contact:* Any questions on this notice can be addressed to Carl J. Keller, E-mail address carl.keller@ferc.fed.us, or telephone (202) 219–2831.

j. Deadline for filing motions to intervene, protests, and scoping comments: 60 days from the date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of that document on that resource agency.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time.

l. *Brief Description of Project:* The existing project consists of: (1) The existing intake structure; (2) a 75-inch diameter, 5.5-mile-long flowline; (3) a 27-foot-high by 28-foot-diameter surge tank; (4) a 6-foot-diameter, 4,000-foot-long steel penstock; (5) a brick powerhouse with two generating units with a total installed capacity of 5.0 megawatts; (6) a 3,000-foot-long, tailrace canal; (6) an 11,000-foot-long, 66-kV transmission line; and (7) appurtenant facilities.

m. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. *Scoping:* The Commission intends to prepare an Environmental Assessment (EA) for the project in accordance with the National Environmental Policy Act. In the EA, we will consider reasonable alternatives to the project as proposed by PacifiCorp, and analyze both site-specific and cumulative environmental impacts of the project, as well as, economic and engineering impacts.

The draft EA will be issued and circulated to those on the mailing list for this project. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations presented in the final EA will then be presented to the Commission to assist in making a licensing decision.

We are asking agencies, Indian tribes, non-governmental organizations, and individuals to help us identify the scope of environmental issues that should be analyzed in the EA, and to provide us with information that may be useful in preparing the EA.

To help focus comments on the environmental issues, a scoping document outlining subject areas to be addressed in the EA will soon be mailed to those on the mailing list for the project. Those not on the mailing list may request a copy of the scoping document from the project coordinator (see item 1). A copy of the scoping document may also be viewed on the web.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

David P. Boergers,

Secretary.

[FR Doc. 98–32235 Filed 12–3–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5497–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 16, 1998 Through November 20, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (62 FR 17856).

Draft EISs

ERP No. D–DOE–L09813–ID Rating EC2, Advanced Mixed Waste Treatment Project, Construction and Operation, Site Selection, Idaho National Engineering and Environmental Laboratory (INEEL), Eastern Snake River Plain, ID.

Summary: EPA expressed environmental concerns that the draft EIS does not mention the cumulative impacts of present and reasonably foreseeable action caused by such pending project proposals.

ERP No. D–UAF–G11034–NM Rating LO, University of New Mexico (UNM), Construction of the Enchanted Skies Park and Observatory on Horace Mesa near Grants, Cibola County, NM.

Summary: EPA had no objection to the selection of the agency's selected plan of action.

ERP No. D–UAF–J11015–ND Rating EC2, Minuteman III Missile System Dismantlement, Intercontinental Ballistic Missile (ICBM) Launch Facilities (LFs) and Missile Alert Facilities (MAFs), Deployment Areas, Grand Forks Air Forces Base, ND.

Summary: EPA expressed environmental concerns and offered several recommendations to protect ground water during and after demolition. There may also be opportunities to create wetlands when the sewage lagoons are decommissioned.

ERP No. D–USA–K11090–AZ Rating LO1, Fort Huachuca Real Property Master Planning, Approval of Land Use and Real Estate Investment Strategies, Cochise County, AZ.

Summary: EPA expressed a lack objection to the proposed project.

ERP No. D–USN–K11089–HI Rating EO2, Pacific Missile Range Facility Enhanced Capabilities, To Accommodate Theater Ballistic Missile Defense (TBMD) Training & Testing and Theater Missile Defense (TMD) Testing, NPDES Permit, several counties, HI.

Summary: EPA expressed objections due to insufficient information and analysis of biological resource issues. The proposed action may significantly impact entire breeding populations of sea and shore birds on Johnston Atoll (East, North, Sand, and Johnston Islands), however, no impacts or mitigation have been described.

ERP No. D–USN–K11093–HI Rating EC2, Barbers Point Naval Air Station, Disposal and Reuse of Land Facilities, HI.

Summary: EPA expressed environmental concerns that contamination of an underground source of drinking water has not been sufficiently described, that the possible impacts of changes in airport use has not been sufficiently developed in the analysis, and that the DEIS does not fully develop relevant, reasonable mitigation that could help to improve reuse plans for the protection of human health and the environment.

ERP No. DR–USN–K11078–00 Rating EC2, Marianas Islands Military Training, Implementation, Continue Use of DOD-Controlled Lands, Proposed sites Tinian Military Lease Area, Guam Active Military Bases and Farallon de Medina (FDM) a Navy-Leased Island, HI.

Summary: EPA raised concerns on rating biological resources and hazardous materials. EPA requested that the final contain a full analysis of the reasonable alternative identified in the document.

Final EISs

ERP No. F–USN–K11082–CA San Diego Naval Training Center (NTC) Disposal and Reuse of Certain Real Properties, Implementation, City of San Diego, San Diego County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–USN–K11084–CA Miramar Naval Air Station Realignment of E–2 Aircraft Squadrons, Three Installations are consider: Point Muga Naval Air Weapons Station, Lemoore Naval Air Station and El Centro, Ventura, Fresno, King and Imperial Counties, CA.

Summary: EPA expressed environmental concerns that the final EIS did not include a sufficient analysis of a no action alternative.

ERP No. FA–USA–A11072–00 Theater Missile Defense (TMD) Extended Test Range (ETR) Project, Eglin Gulf Test Range to Conduct (TMD) Testing or Training Activities, Santa Rosa Island and Cape San Blas, FL.

Summary: EPA had no objection to the proposed project provided that monitoring remains in effect.

Other

ERP No. LD–USN–K11091–NV Rating EC2, Fallon Naval Air Station, Renewal of the B–20 Land Withdrawal, City of Fallon, Churchill County, NV.

Summary: EPA expressed environmental concerns regarding cultural resources, public health and safety, and transportation.

Dated: December 1, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–32346 Filed 12–3–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5497–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed November 23, 1998 Through November 28, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980481, Final EIS, FTA, FL, Central Florida Light Rail Transit System Transportation Improvement to the North/South Corridor Project, Locally Preferred Alternative (LPA) and Minimum Operable Segment (MOS), Orange and Seminole Counties, FL, Due: January 04, 1999, Contact: J. Anthony Dittmeier (404) 562–3512.

EIS No. 980482, Final EIS, BLM, AZ, Hualapai Mountain Land Exchange/ Plan Amendment, Implementation, Kingman and Dutch Flat, Mohave County, AZ, Due: January 04, 1999, Contact: Don McClure (520) 692–4400.

EIS No. 980483, Draft EIS, AFS, ID, WY, Targhee National Forest Open Road and Open Motorized Trail Analysis, To Implement a new Travel Plan, several counties, ID and Lincoln and Teton Counties, WY, Due: February 01, 1999, Contact: Alan Silker (208) 624–3151.

EIS No. 980484, Draft EIS, NPS, LA, New Orleans Jazz National Historical Park, General Management Plan, Implementation, City of New Orleans, Parish of Orleans, LA, Due: January 25, 1999, Contact: Gail Hazelwood (504) 589–3882.

EIS No. 980485, Draft Supplement, AFS, OR, Nicore Mining Project, Implementation, New Information on Six New Alternatives, Plan-of-Operations, Mining of Four Sites, Road Construction, Reconstruction, Hauling and Stockpiling of Ore, Rough and Ready Creek Watershed, Illinois Valley Ranger District, Siskiyou National Forest, Medford District, Due: January 29, 1999, Contact: Rochelle Desser (541) 592–2166.

EIS No. 980486, Final Supplement, AFS, NV, Griffon Mining Project, Implementation, Updated Information, Revision for Expanding Gold Mining, Plan of Operations, Humboldt-Toiyabe National Forests, Ely Ranger District, White Pine County, NV, Due: January 04, 1999, Contact: James Winfrey (702) 289–3031.

EIS No. 980487, Final EIS, FHW, WI, US 12 Highway Improvement, Sauk City to Middleton, Funding and COE Section 404 Permits Issuance, Sauk and Dane Counties, WI, Due: January 04, 1999, Contact: Richard Madrzak (608) 829–7510.

Amended Notices

EIS No. 980377, Draft EIS, FHW, UT, Legacy Parkway Project, Construction from I–215 at 2100 North in Salt Lake City to I–15 and US 89 near Farmington, Funding and COE Section 404 Permit, Salt Lake and Davis Counties, UT, Due: January 08, 1999, Contact: Tom Allen (801) 963–0182. Published FR 10–02–98—Review Period extended.

EIS No. 980421, Draft EIS, COE, OR, WA, Columbia and Lower Willamette River Federal Navigation Channel, Improvement Channel Deepening, OR and WA, Due: February 05, 1999, Contact: Steve Stevens (503) 808–4768. Published FR 10–23–98 Review Period Extended.

Dated: December 1, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–32347 Filed 12–3–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00568; FRL–6048–2]

Pesticides; Science Policy Issues Related to the Food Quality Protection Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: To assure that EPA's science policies related to implementing the Food Quality Protection Act (FQPA) are transparent and open to public participation, EPA is soliciting comments on three draft science policy papers—''Proposed Threshold of Regulation Policy When a Food Use Does Not Require a Tolerance,'' ''Assigning Values to Nondetected/Nonquantified Pesticide Residues in Human Health Dietary Exposure Assessments'' and ''A Statistical Method for Incorporating Nondetected Pesticide Residues into Human Health Dietary Exposure Assessments.''

DATES: Written comments for each science policy paper, identified by separate docket control numbers provided in the ADDRESSES section, should be submitted by February 4, 1999.

ADDRESSES: The docket number for ''Proposed Threshold of Regulation Policy When a Food Use Does Not Require a Tolerance'' is OPP–00569, for ''Assigning Values to Nondetected/Nonquantified Pesticide Residues in Human Health Dietary Exposure Assessments'' is OPP–00570, and for ''A Statistical Method for Incorporating Nondetected Pesticide Residues into Human Health Dietary Exposure Assessments'' is OPP–00571. By mail, submit written comments identified by the docket control number listed for each to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St.. SW, Washington, DC 20460. In person, deliver comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epa.gov. Follow the instructions under Unit V. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For ''Proposed Threshold of Regulation Policy When a Food Use Does Not Require a Tolerance'' contact Vivian Prunier, Environmental Protection Agency (7506C), 401 M St., SW., Washington, DC 20460. Office location and telephone number: 1921 Jefferson Davis Highway, 7509C, Arlington, VA, 22207, 703–308–9341, fax: 703–305–5884, e-mail: prunier.vivian@epa.gov.

For ''Assigning Values to Nondetectable Pesticide Residues in Human Health Dietary Exposure Assessments'' and ''A Statistical Method for Incorporating Nondetectable Pesticide Residues into Human Health Dietary Exposure Assessments'' contact by mail: Kathleen Martin, Environmental Protection Agency (7509C), 401 M St., SW., Washington, DC 20460. Office location, telephone number, fax and e-mail: 1921 Jefferson Davis Highway, 7509C, Arlington, VA, 22207, 703–308–2857, fax: 703–305–5147, e-mail: martin.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

A. Internet

Electronic copies of this document, a table entitled ''TRAC Science Policy Area #3: Exposure Assessment—'No Residues Detected,''' and the three science policy papers are available from the EPA Home page at the **Federal Register** — Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

B. Fax-on-Demand

For Fax-on-Demand, use a faxphone to call 202–401–0527 and select item 6024 for ''Proposed Threshold of Regulation Policy When a Food Use Does Not Require a Tolerance,'' item 6025 for ''Assigning Values to Nondetected Pesticide Residues in Human Health Dietary Exposure Assessments'' and item 6026 for ''A Statistical Method for Incorporating Nondetected Pesticide Residues into Human Health Dietary Exposure Assessments.''

II. Background

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. Effective upon signature, the FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent

health-based standard (''a reasonable certainty of no harm'') for pesticide residues in foods to assure protection from unacceptable pesticide exposure; provided heightened health protections for infants and children from pesticide risks; required expedited review of new, safer pesticides; created incentives for the development and maintenance of effective crop protection tools for farmers; required reassessment of existing tolerances over a 10 year period; and required periodic re-evaluation of pesticide registrations and tolerances to ensure that scientific data supporting pesticide registrations will remain up-to-date in the future.

Subsequently, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on some of the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs (OPP). The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that met FQPA's standard but that could be revisited if additional information became available or as the science evolved. As EPA's approach to implementing the scientific provisions of FQPA has evolved, the Agency has sought independent review and public participation, often through presentation of many of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to OPP.

In addition, as directed by Vice President Albert Gore, EPA has been working with the U.S. Department of Agriculture (USDA) and another subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC), chaired by the EPA Deputy Administrator and the USDA Deputy Secretary, to address FQPA issues and implementation. TRAC comprises more than 50 representatives of affected user, producer, consumer, public health, environmental, states and other interested groups. The TRAC has met five times as a full committee from May 27 through September 16, 1998.

The Agency has been working with the TRAC to ensure that its science policies, risk assessments of individual pesticides, and process for decision making are transparent and open to public participation. An important product of these consultations with TRAC is the development of a framework for addressing key science policy issues. The Agency decided that the FQPA implementation process would benefit from initiating notice and comment on the major science policy issues.

The TRAC identified nine science policy issue areas they believe were key to implementation of FQPA and tolerance reassessment. The framework calls for EPA to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In addition to comments received in response to these **Federal Register** notices, EPA will consider comments received during the TRAC meetings. Each of these issues is evolving and in a different stage of refinement. Accordingly, as the issues are further refined by EPA in consultation with USDA and others, they may also be presented to the SAP.

In accordance with the framework described in a separate notice published in the **Federal Register** of October 29, 1998 (63 FR 58038)(FRL–6041–5), EPA is issuing a series of draft documents concerning nine science policy issues identified by the TRAC related to the implementation of FQPA. This notice announces the availability of three draft documents identified above, all of which relate to science policy area #3 (Exposure Assessment—Interpreting ''No Residues Detected'') as described in the framework notice published in the **Federal Register** of October 29, 1998 (63 FR 58038). A table entitled ''TRAC Science Policy Area #3: Exposure Assessment—'No Residues Detected''' that accompanies this notice summarizes these papers and shows how they interrelate.

III. Summary of Draft Papers

A. ''Proposed Threshold of Regulation Policy When a Food Use Does Not Require a Tolerance''

EPA is considering a new policy regarding the use of the pesticide on or in or near food does not result in residues that are detected in food. Currently, EPA considers that a specific use of a pesticide chemical will result in a pesticide residue in or on a food if the pesticide is used in a manner which has a reasonable likelihood to produce residues in food. Before registering a pesticide for such use under FIFRA, EPA ordinarily requires the establishment under FFDCA of a tolerance or an exemption from the requirement to establish a tolerance (tolerance exemption). In practice, EPA has applied this science policy in such a manner that an agricultural pesticide use is deemed to result in residues in or on food unless the use is shown to result in essentially zero residues.

EPA is deliberating whether to adopt a policy that would set forth conditions under which the Agency would determine that there is no requirement to establish a tolerance for an agricultural pesticide or a pesticide otherwise used in the vicinity of food in certain circumstances where use of the pesticide does not result in detection of residues of a pesticide in a food. If EPA adopts such a policy, the Agency would regulate qualifying pesticide uses solely under FIFRA. The Agency would not perform the analyses required under section 408 of FFDCA as to such use. However, if use of a pesticide registered in accordance with such a policy were to result in detected residues, then food that bears or contains such residues would be adulterated under FFDCA and may not be sold.

Under the policy being considered, the determination could be based on either of the following criteria:

1. *Threshold of Regulation based on ''essentially zero'' risk*. There would be no requirement for a tolerance or tolerance exemption under FFDCA if: (i) Using a reliable and appropriately sensitive analytical method to measure residues in the commodity, there are no detected residues in the commodity under expected conditions of use when the commodity enters interstate commerce; and (ii) using reasonably protective criteria, the estimated potential dietary risk of any theoretically possible residues is so small as to not be of concern.

2. *Threshold of Regulation based on ''essentially zero'' exposure*. EPA will evaluate data concerning the amount of residue resulting from the use of a pesticide in foods (other than milk, meat, poultry or eggs derived from animals fed pesticide-treated feed) to determine whether there is ''no reasonable expectation of finite residues'' in these foods, and therefore, there would be ''essentially zero'' exposure. If EPA makes such a determination, no tolerance would be established under FFDCA section 408.

EPA is considering adopting the Threshold of Regulation policy because it would allow the Agency to grant new food uses or to permit the continuation of existing food uses that pose ''essentially zero'' dietary risk. The policy would make Agency resources available for pre-market review of safer pesticides to replace pesticides that do not meet the new safety standard of the Food Quality Protection Act on 1996 (FQPA). It also would support a reasonable transition for agriculture by

retaining some pesticide uses that might otherwise be discontinued and by expanding the number of potential replacements for high risk food use pesticides.

B. ''Assigning Values to Nondetected/ Nonquantified Pesticide Residues in Human Health Dietary Exposure Assessments''

When residue data are submitted in support of establishing or reassessing a tolerance for a particular food use, in some cases a portion of the measurements of the levels of pesticide residue present on food shows no detection of residues. These ''nondetects'' (NDs) do not necessarily mean that the pesticide is not present at any level, but simply that any amount of pesticide present was below the level that could be detected or reliably quantified using a particular analytical method.

The primary science policy issue concerning NDs is what value EPA should assign to them in calculating dietary exposure and risk from a pesticide. This science policy paper describes the value that EPA generally will assign to NDs under different circumstances when EPA conducts a dietary exposure and risk estimate for a pesticide food use. First, EPA will assign a value of zero to the proportion of the data set corresponding to the percentage of the commodities which were not treated with the pesticide. For the remainder of the data points for pesticide-treated commodities, EPA will use the following assumptions:

(1) If a valid Limit of Detection (LOD) exists, EPA will use ½ LOD as the assigned value for NDs when conducting dietary exposure and risk assessments.

(2) If an LOD is not available, but a valid Limit of Quantitation (LOQ) exists, EPA will use ½ LOQ for the NDs.

(3) If neither an LOD nor an LOQ is available, EPA will use the full Lower Limit of Method Validation (LLMV) for the NDs.

(4) If unquantified residues are found between the LOQ and LOD, EPA will use ½ LOQ for those NDs.

In adopting this science policy, EPA's goal is to avoid underestimating exposure to potentially sensitive or highly exposed groups such as infants and children while attempting to approximate actual residue levels as closely as possible. Both biological information and empirical residue measurements support EPA's belief that this science policy is consistent with these goals. Recognizing, however, that these assumptions may, in some cases, either overestimate or underestimate exposure, EPA's policy will be to perform a ''sensitivity analysis'' to determine the impact of different assumptions, e.g., assuming NDs = LOQ or NDs = zero, on the Agency's assessment of risk. If the Agency risk assessment changes as a result of these alternate substitutions, the sensitivity analysis will have demonstrated that the Agency risk assessment is sensitive to assumed concentrations for the NDs and may request that additional data and/or an improved analytical method be developed and submitted.

C. ''A Statistical Method for Incorporating Nondetected Pesticide Residues into Human Health Dietary Exposure Assessments''

As mentioned for the previous document, the primary science policy issue concerning NDs is what value EPA should assign to them in calculating dietary exposure and risk from a pesticide. In adopting this science policy, EPA has the same goal as for its policy for assigning values to NDs. In addition, just as for that policy, available biological information and empirical residue measurements indicate that this science policy will be protective of public health, including potentially sensitive or highly exposed groups such as infants and children.

This science policy document describes a statistical method which may be used for determining the distribution of non-detectable residues below the LOD where some of the residues of the data set are undetectable. This method is fully described in EPA's *Guidance for Data Quality Assessment: Practical Methods for Data Analysis* issued in July 1996 (EPA/600/R–96/084, which has been peer reviewed by EPA program offices, regional offices and laboratories. The method, referred to as ''Cohen's method,'' would be available in situations where the treated NDs comprise less than half the data set and the rest of the data are normally or lognormally distributed. Generally, these values would be expected to be less than ½ the LOD but greater than zero. When properly employed, such methods can provide a scientifically sound basis for more accurately estimating dietary exposure and risk than assuming that ND values represent ½ LOD. This document is intended to be used chiefly by persons conducting probabilistic human health exposure assessments for purposes of registration or reregistration of pesticides. This guidance will help assure that dietary exposure assessments accurately portray exposures and risks to the U.S. population and subpopulations of special concern such as infants and children. Such assessments will play an increasingly important role in the evaluation of risks posed by pesticides and will improve the Agency's ability to make regulatory decisions that fully protect public health and sensitive subpopulations, including infants and children.

D. Public Comments on the Science Policy Issue: ''Exposure Assessment -- Interpreting No Residues Detected''

The Agency received several comments as part of the discussions with the Tolerance Reassessment Advisory Committee on issues relating to some aspects of the science policies in the three papers being made available today. In particular, a coalition of farm, food, manufacturing and pest management organizations, called the Implementation Working Group (IWG), argued that EPA's risk assessment methodology tended to overstate possible exposure to pesticide residues in food by assigning inappropriate values to samples on which no residue had been detected. The IWG recommended that: (1) One half the LOQ should be used as a ''general reasonable default'' for residue levels in samples which are known or believed to have been treated but which fall below the LOQ; (2) for certain use patterns (e.g., seed treatments and applications to dormant fruit and nut trees), EPA should assign a value of zero to residues falling below the LOQ; and (3) EPA should avoid taking regulatory action against a pesticide use, due to its dietary risk, when the risk is attributable in any extent to the amount of residues estimated to be present for ND values. These recommendations are addressed both in the texts of the papers and in the identification of issues for public comment in this notice.

IV. Questions/Issues for Comment

While comments are invited on any aspect of the above three papers, EPA is particularly interested in comments on the following questions and issues.

A. ''Proposed Threshold of Regulation Policy When a Food Use Does Not Require a Tolerance''

1. Is the proposed Threshold of Regulation policy a reasonable approach for dealing with food uses which result in no detected pesticide residues?

2. Are the data and criteria that the Agency would use for determining that a use results in ''essentially zero'' exposure appropriate?

3. Are the data and criteria that the Agency would use for determining that a use results in ''essentially zero'' risk appropriate?

4. Would this policy have any implications for international trade?

5. Should existing tolerances be revoked if the Threshold of Regulation policy is adopted and certain tolerance are determined not to be needed?

B. ''Assigning Values to Nondetectable Pesticide Residues in Human Health Dietary Exposure Assessments''

1. Under what circumstances would either ½ LOD or LOQ for NDs significantly underestimate or overestimate dietary exposure? Does any available information demonstrate that this method either underestimates or overestimates dietary exposure?

2. Should EPA consider a different approach for incorporating nondetectable samples into risk assessments depending on the type of risk assessment being performed (i.e., chronic risks, acute risks, short-term risks (Section 18's))?

3. Are the methods for determining LOD and LOQ adequately defined?

4. Would this policy have any implications for international trade?

C. ''A Statistical Method for Incorporating Nondetectable Pesticide Residues into Human Health Dietary Exposure Assessments''

1. Are other methods available which may be preferable to the methods described in this paper for statistically estimating the distribution or mean values of nondetectable residue samples?

2. Under what circumstances, if any, would use of Cohen's method not be considered reliable or appropriate?

V. Public Record and Electronic Submissions

A record has been established for these policy guidances under docket control numbers ''OPP–00569,'' ''OPP–00570,'' and ''OPP–00571'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for public inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control numbers ''OPP–00569,'' ''OPP–00570,'' or ''OPP–00571.'' Electronic comments on this document may be filed online at many Federal Depository Libraries.

VI. Contents of Docket

Documents that are referenced in this notice document will be inserted in the docket under the docket control numbers ''OPP–00569,'' ''OPP–00570,'' or ''OPP–00571.'' In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) have also been inserted in the docket under docket control number OPP–00557.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, pesticides and pests.

Dated: November 30, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 98–32344 Filed 12–3–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34154; FRL–6048–7]

Iprodione; Availability of the Reregistration Eligibility Decision Document for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of and starts a 60-day public comment period of the Reregistration Eligibility Decision (RED) document for the active ingredient iprodione. The RED for this chemical is the Agency's formal regulatory assessment of the health and environmental database of the subject chemical and presents the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Written comments on the RED decisions must be submitted by February 2, 1999.

ADDRESSES: Three copies of comments identified with the docket control number ''OPP–34154'' and the case number (noted below), should be submitted to: By mail: Public Information and Records Integrity Branch, Information Resources and Services Division (7502), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Room 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION'' of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice (including comments and data submitted electronically). The public docket and docket index, including printed paper versions of electronic comments, which does not include any information claimed as CBI will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED document should be directed to the following Chemical Review Manager:

Chemical Name	Case No	Chemical Review Manager	Telephone No.	e-mail Address
Iprodione	2335	Dennis Deziel	703–308–8173	Deziel.Dennis@epamail.epa.gov

To request a copy of any of the above listed RED document, or a specific RED Fact Sheet, contact the OPP Pesticide Docket, Public Information and Records Integrity Branch, in Rm. 119, at the address given above or call (703) 305–5805.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Electronic copies of this document and various support documents are available from the EPA home page at the Federal Register-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

Electronic copies of the REDs and RED fact sheets can be downloaded from the Pesticide Special Review and Reregistration Information System at (703) 308–7224, and also can be reached on the Internet via EPA's website at: http://www.epa.gov/REDs.

II. Reregistration Eligibility Decision

The Agency has issued a Reregistration Eligibility Decision (RED) document for the pesticidal active ingredient iprodione. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting a reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of iprodione is substantially complete.

To lessen human health risk, residential risk, worker risk, and ecological effects posed by iprodione, Rhone-Poulenc Ag Co., the current manufacturer of iprodione, has proposed to implement a series of risk mitigation measures based on the Agency's risk assessment, as discussed in the Iprodione RED. These mitigation measures include:

Proposed cancellation by Rhone-Poulenc of all residential uses of iprodione.

For iprodione use on strawberries, increase the pre-harvest interval from 0–days to up to but not after first flower. In addition, the tolerance for strawberries will be reduced to the limit of quantitation (0.05 parts per million (ppm)).

For iprodione use on all stone fruit (apricots, cherries, nectarines, plums, and prunes), increase the pre-harvest interval from 7–days to up to but not after petal fall (approximately 45 - 90-day pre-harvest interval). In addition, the tolerances for all stone fruit, including peaches, will be reduced to limit of quantitation (0.05 ppm).

For iprodione use on table grapes (fresh, cooked, canned, juice, raisin or otherwise; mitigation does not include wine and sherry grapes), reduce the application rate from 4 times per season to one application per season at early- to mid-bloom. Tolerances remain unchanged consistent with the RED (10 ppm).

Limit the maximum number of applications on non-residential turf, lawn, golf course, ornamental trees, and ornamental plants from ''unlimited'' to 6 per year, with the maximum annual application of up to but no more than 24 pounds (lbs.) active ingredient (a.i.).

Proposed cancellation by Rhone-Poulenc of all herbaceous ornamental seed treatment uses of iprodione.

The Agency intends to publish in the near future a 6(f) FR Notice announcing those canceled iprodione uses. The Agency has determined that all remaining uses of iprodione are eligible for reregistration subject to certain other conditions imposed in the RED.

All registrants of products containing the above listed active ingredient have been sent the Iprodione RED document and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of receipt. Products containing other active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing this RED as a final document with a 60-day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency.

III. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket control number ''OPP–34154'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (OPP–34154). Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Pesticide.

Dated: November 30, 1998.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 98–32345 Filed 12–3–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–44650; FRL–6047–1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on Diglycidyl Ether of Bisphenol A (DGEBPA) (CAS No. 1675–54–3) and Phenol (CAS No. 108–95–2). These data were submitted pursuant to enforceable testing consent agreements/orders issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail:TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with procedures specified in section 4(d) of TSCA.

I. What are the details of the submissions?

Test data for DGEBPA were submitted by the Society of the Plastics Industry, Inc. Epoxy Resin Systems Task Group. The reports were submitted pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000. EPA received the data on September 29, 1998. The submission includes two final reports entitled 1) ''DGEBPA: Two–Year Dermal Chronic Toxicity/Oncogenicity Study in the Male B6C3F1 Mouse,'' and 2) ''DGEBPA: Two–Year Dermal Chronic Toxicity/Oncogenicity Study in Female Fischer 344 Rats.'' Also submitted was an independent pathology peer review of the ''DGEBPA: Two Year Dermal Chronic Toxicity/ Oncogenicity Study in Female F344 Rats.'' This peer review was sponsored by the Society of the Plastics Industry, Inc. Epoxy Resin Systems DGEBPA Task Force. This chemical is used primarily as the principal component in epoxy resins.

Test data for Phenol were submitted by the Phenol Regulatory Panel of the Chemical Manufacturers Association (CMA) pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000. EPA received the data on October 15, 1998. The submission includes a final report entitled ''A 13–Week Neurotoxicity Study of Phenol Administered in the Drinking Water to the Rat.'' This chemical is produced in substantial quantities and is used in numerous consumer products.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. How do I get additional information?

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44650). This record includes copies of the studies and peer review reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460. Requests for documents should be sent in writing to: Environmental Protection Agency, TSCA Nonconfidential Information Center (7407), 401 M St., SW., Washington, DC 20460 or fax: (202) 260–5069 or e–mail: oppt.ncic@epamail.epa.gov.

Electronic Availability:

Internet

Electronic copies of this document are available from the EPA Home Page at the Federal Register–Environmental Documents entry for this document under ''Rules and Regulations'' (http://www.epa.gov/fedrgstr/).

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: November 23, 1998.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–32202 Filed 12–3–98; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–98–21–D (Auction No. 21); DA 98–2394]

Wireless Telecommunications Bureau Announces Revised Pre-Auction Deadlines and Provides 902–928 MHz Band Deployment and Technical Information Compiled by the National Telecommunications and Information Administration

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: By public notice dated November 10, 1998, the Wireless Telecommunications Bureau (''Bureau'') postponed the commencement of the Location and Monitoring Service (''LMS'') auction to give potential bidders a reasonable opportunity to consider deployment and technical information compiled by the National Telecommunications and Information Administration (''NTIA'') regarding government primary users occupying the 902–928 MHz band. By this public notice, the Bureau makes the information compiled by NTIA available to the public. In addition, the Bureau announces revised pre-auction deadlines for the auction of 528 multilateration LMS licenses.

DATES: Commencement of the Location and Monitoring Service auction is scheduled for February 23, 1999.

FOR FURTHER INFORMATION CONTACT: Kenneth Burnley, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660; Kathryn Garland, Operations at (717) 338–2801; Bob Reagle, Operations at (202) 418–0660.

SUPPLEMENTARY INFORMATION: The following is a summary of a Public Notice released by the Wireless Telecommunications Bureau on November 25, 1998. The complete text of this Public Notice, including the deployment and technical information compiled by NTIA, is available in its entirety for inspection and copying during normal business hours in the Wireless Telecommunications Bureau Reference Center, 2025 M Street, N.W., Room 5608, Washington, D.C., 20554, and also may be retrieved from the FCC World Wide Web Auctions site at http://www.fcc.gov/wtb/auctions.

Synopsis of the Public Notice

1. By public notice, the Wireless Telecommunications Bureau (''Bureau'') postponed the commencement of the Location and Monitoring Service (''LMS'') auction to give potential bidders a reasonable opportunity to consider deployment and technical information compiled by the National Telecommunications and Information Administration (''NTIA'') regarding government primary users occupying the 902–928 MHz band. *See* ''Wireless Telecommunications Bureau Postpones December 15, 1998 Auction Date for 528 Multilateration Location and Monitoring Service Licenses; Commencement of the Auction Postponed to February 23, 1999,'' *Public Notice*, DA 98–2246 (rel. November 10, 1998), 63 FR 63,730 (November 16, 1998) (''*LMS Postponement Public Notice*'').

2. Deployment and technical information compiled by NTIA is now available. In addition, the window for filing the FCC Form 175 is now open and will remain open until 5:30 p.m. ET on January 25, 1999. All previously filed electronic applications will remain intact.

The critical dates for pre-auction milestones for the LMS auction have been rescheduled. The following are rescheduled dates of pre-auction milestones:

- January 25, 1999: FCC Form 175 Due by 5:30 p.m. ET.
- February 8, 1999: Upfront Payments Due to Mellon Bank.
- February 9, 1999: Remote Bidding Software Order Deadline.
- February 19, 1999: Mock Auction.
- February 23, 1999: Auction No. 21 Commences.

Those wishing to participate in the auction must: (1) submit a short form application (FCC Form 175) by 5:30 p.m. ET on January 25, 1999; (2) submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET on February 8, 1999; and (3) comply with all

provisions outlined in the Bidders Information Package.

Federal Communications Commission.

Amy Zoslov,

Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 98–32280 Filed 12–3–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Wednesday, December 9, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Report of the Audit Division on Clinton/Gore '96 Primary Committee, Inc.

Report of the Audit Division on Clinton/Gore '96 General Committee, Inc. and Clinton/Gore '96 General Election Legal and Accounting Compliance Fund.

Report of the Audit Division on the Dole for President Committee, Inc. (Primary).

Report of the Audit Division on the Dole/Kemp '96 and Dole/Kemp Compliance Committee, Inc. (General).

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–32453 Filed 12–2–98; 3:54 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1259–DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–1259–DR), dated November 6, 1998, and related determinations.

EFFECTIVE DATE: November 6, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 6, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from Tropical Storm Mitch on November 4–5, 1998 is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Paul Fay of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

Monroe County for Individual Assistance and Public Assistance.

All counties within the State of Florida are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–32289 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1259–DR]

Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1259–DR), dated November 6, 1998, and related determinations.

EFFECTIVE DATE: November 16, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 6, 1998:

Palm Beach County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 98–32290 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1258–DR]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1258–DR), dated November 5, 1998 and related determinations.

EFFECTIVE DATE: November 5, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 5, 1998 the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Kansas, resulting from severe storms and flooding beginning on October 30, 1998, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Carolyn J. Coleman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Kansas to have been affected adversely by this declared major disaster:

Butler, Cowley, and Sedgwick Counties for Individual Assistance.

All counties within the State of Kansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–32285 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1258–DR]

Kansas; Amendment No. 2 to the Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1258–DR), dated November 5, 1998 and related determinations.

EFFECTIVE DATE: November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 5, 1998:

Douglas County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32286 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1258–DR]

Kansas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA–1258–DR), dated November 5, 1998, and related determinations.

EFFECTIVE DATE: November 15, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 15, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32287 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1258–DR]

Kansas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA–1258–DR), dated

November 5, 1998, and related determinations.

EFFECTIVE DATE: November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas, is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 5, 1998:

Butler, Cowley, Neosho, Sedgwick, and Sumner Counties for Public Assistance (already designated for Individual Assistance).

Greenwood, Harper, and Saline Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers CCFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32288 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1254–DR]

Kansas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1254–DR), dated October 14, 1998, and related determinations.

EFFECTIVE DATE: November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 14, 1998:

Bourbon, Jackson, Leavenworth, Linn, and Wabaunsee Counties for Public Assistance (Leavenworth County already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32296 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1253–DR]

Missouri; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–1253–DR), dated October 14, 1998, and related determinations.

EFFECTIVE DATE: November 12, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 14, 1998:

Cedar County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32292 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1196–DR]

New York; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York (FEMA–1196–DR), dated January 10, 1998 and related determinations.

EFFECTIVE DATE: November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Marianne C. Jackson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Barbara T. Russell as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–32291 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1257–DR]

Texas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1257–DR), dated October 21, 1998, and related determinations.

EFFECTIVE DATE: November 6, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 21, 1998:

Atascosa, Brazoria, Galveston, Liberty, Matagorda, Nueces, and San Jacinto Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32293 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1257–DR]

Texas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1257–DR), dated October 21, 1998, and related determinations.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 21, 1998:

Blanco, Jefferson, Medina, and San Patricio Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32294 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1257–DR]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–1257–DR), dated October 21, 1998, and related determinations.

EFFECTIVE DATE: October 31, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 31, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–32295 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1255–DR]

Washington; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington (FEMA–1255–DR), dated October 16, 1998, and related determinations.

EFFECTIVE DATE: November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 19, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger ,

Division Director, Response and Recovery Directorate.

[FR Doc. 98–32284 Filed 12–3–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 10:00 a.m.—December 9, 1998.

PLACE: 800 North Capitol Street, N.W., First Floor Hearing Room, Washington, D.C.

STATUS: A portion of the meeting will be open to the public and the remainder of the meeting will be closed.

MATTER(S) TO BE CONSIDERED: The Open Portion of the meeting:

1. Proposed Rules (46 CFR) Implementing the Ocean Shipping Reform Act, relating to Ocean Transportation Intermediaries, Private Tariff Systems and Service Contracts.

The Closed Portion of the Meeting:

1. Brazilian Maritime Policies Affecting U.S.-Brazil Trades.

2. Consideration of the Failure of SeaLand Service, Inc. To Comply with Subpoenas Issued in Fact Finding Investigation No. 23.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 98–32445 Filed 12–2–98; 3:47 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, December 9, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 2, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–32398 Filed 12–2–98; 11:24 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EST), December 14, 1998.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the November 9, 1998, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Date: December 1, 1998.

John J. O'Meara,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 98–32399 Filed 12–2–98; 11:32 am]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request; Proposed Project

Title: National Study of Child Care for Low-Income Families.

OMB No.: New.

Description: The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) has intensified the need for information about child care for low-income families. Many policymakers, program operators, and others have emphasized that low-income families' access to adequate child care is essential to meet the broad goal set out in the Act—to enable families receiving public assistance to enter and remain in the workforce. PRWORA also consolidated a variety of Federal child care funds into a single block grant, the Child Care and Child Development Fund (CCDF), which gives the States broad discretion in establishing priorities for subsidy as well as levels. Faced with limited funding and a burgeoning need for child care, state policymakers are under enormous pressure to use child care funding as efficiently as possible. Their decision-making is hampered by lack of information about three important and interrelated issues: How the current set of policies and programs, for example including work requirements, child care subsidies and regulations governing child care, affects parents' employment and child care decisions; how significant shifts in welfare and other policies, as well as funding for child care, will affect the demand for and supply of child care at the community level; and the potential implications of an increased reliance of low-income families on family child care that may or may not be regulated or monitored.

A sample of key informants at the state and community levels including governor's policy staff, child care and welfare agency staff, child care licensing and monitoring staff, child care resource and referral agency staff, and advocacy group members, representatives of private organizations such as foundations or churches, will be asked about state child care and subsidy policies and how these policies are implemented at the local level. Additionally, they will be asked about the effect of these policies on the supply of child care. A sample of low-income families using non-parental child care will be asked about the types and cost of care used and the factors that influenced their choice of child care arrangements including the availability of child care subsidies. A sample of low-income parents using family child care will be asked about their experience with this care and how this care has affected their ability to work and to balance work and family life. Additionally, parents will be asked about their household characteristics on a voluntary basis. The family child care providers used by the sample of low-income parents will be asked about their views on child rearing and the role of the child care provider, the relationship with the parents served, and, on a voluntary basis, their household characteristics. A sample of preschool children using family child care will be observed in their child care setting. Focus groups with family child care providers and low-income parents will be used to investigate how child care subsidy policy has affected the supply and demand for child care in their communities.

ACF, working with Abt Associates and the National Center for Children in Poverty at Columbia University, will conduct the proposed data collection. Data will be collected at the three levels, with nested samples of counties within states and families and providers within counties. The first level is a sample of 17 states containing 25 counties that were selected to be a nationally-representative sample of counties with above average poverty rates. At the family level, data will be collected from two samples:

• A random sample of 5,000 low-income families with working parents and at least one child under age nine for whom they use non-parental child care, that will be selected in the 25 counties (200/county). This sample will be used to investigate the spectrum of child care options available to and the choices made by low-income families in the 25 counties.

• A sample of 650 low-income parents who are receiving, or who applied for, child care subsides, and are using family child care at the start of the study will be used to examine the experiences of low-income families with this important but rarely studied mode of child care. A random sample (130 families/county) will be selected from subsidy lists and subsidy waiting lists in a subsample of five of the 25 counties.

At the provider level, data will be collected from the 650 family child care providers linked to these 650 families.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Key Informant Interviews	170	2	1.00	113
Community Key Informant Interviews	250	2	1.00	167
Parent Focus Groups	250	2	1.5	250
Provider Focus Group	250	2	1.5	250
Community Survey (Screener)	64,474	1	0.08.5	1,719
Community Survey	5,000	1		833
In-Depth Study Parent Screener	2,172	1	0.081.25	58
In-Depth Study Parent Interview	650	6		1,625
In-Depth Study Student Interview	63	3	.33	21
In-Depth Study Family Child Care Provider Screener	1,458	1	.17	88
In-Depth Study Family Care In-Depth Study Care Provider Interview	650	6	.50	650

Estimated Total Annual Burden Hours: 5,774.

In Compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarify of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted with 60 days of this publication

Dated: November 30, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–32282 Filed 12–3–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Developmental Disabilities Council State Plan.

OMB No.: 0980–0162.

Description: Developmental Disabilities Councils (DD Councils) in each State is required under the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C., 6000 *et seq.*) to develop plans on a triennial basis and to review those plans at least annually. Each Council develops its plan as a basis for promoting systems change and capacity building in service systems for persons with developmental disabilities in the State. The State plan must be made available for public comment in the State and must be approved by the Governor of the State. After that it is submitted to the Department of Health and Human Services, which will use the information to ensure compliance of the State with requirements in the Act. The information in the State plan is also used as one basis for providing technical assistance, such as during site visits.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Three Year State Plan	55	1	130	7,150

Estimated Total Annual Burden Hours: 7,150.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: November 30, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–32283 Filed 12–3–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–1021]

Rohm and Haas Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Rohm and Haas Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of certain styrene-acrylic copolymers as components of coatings for paper and paperboard intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4632) has been filed by Rohm and Haas Co., 100 Independence Mall West, Philadelphia, PA 19106. The petition proposes to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of certain styrene-acrylic copolymers as components of coatings for paper and paperboard. The copolymers contain monomer units from styrene and methyl methylacrylate and may contain monomer units from butyl methacrylate, methacrylic acid, butyl acrylate, acrylic acid, and allyl methacrylate.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: November 10, 1998.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–32250 Filed 12–3–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98P–0425]

Medical Devices; Exemptions From Premarket Notification; Surgical Lamps

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing an order denying a petition requesting an exemption from the premarket notification requirements for surgical lamps. FDA is publishing this notice in accordance with procedures established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments (Pub. L. 94–295)), as amended by the Safe Medical Devices Act of 1990 (the SMDA (Pub. L. 101–629)), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to assure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device or is for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices) are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations, 21 CFR part 807, require persons who intend to market a new device to submit a premarket notification report (510(k)) containing information that allows FDA to determine whether the new device is ''substantially equivalent'' within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Pub. L. 105–115). Section 206 of FDAMA, in part, added a new section 510(m) to the act. Section 510(m)(1) of the act requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the act provides that, 1 day after date of publication of the list under section 510(m)(1), FDA may exempt a device on its own initiative or upon petition of an

interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance the agency issued on February 19, 1998, entitled ''Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff.'' That guidance can be obtained through the World Wide Web on the CDRH home page at ''http://www.fda.gov/cdrh'' or by facsimile through CDRH Facts-on-Demand at 1–800–899–0381 or 301–827–0111. Specify ''159'' when prompted for the document shelf number.

III. Petitions

On June 17, 1998, FDA received a petition requesting an exemption from premarket notification for surgical lamps from Getinge/Castle, Inc. On September 30, 1998 (63 FR 52275), FDA published a notice announcing that it had received three petitions, including the one from Getinge/Castle, Inc., requesting exemption from premarket notification for class II devices and providing an opportunity for interested persons to submit comments on the petitions by October 30, 1998. FDA received no comments. FDA has reviewed these petitions and, for the following reasons, has determined that surgical lamps do not meet the criteria for exemption described previously and is, therefore, issuing this order denying the petition to exempt these devices from the requirements of premarket notification. The other two petitions will be addressed separately in another issue of the **Federal Register**.

FDA has determined from its medical devices reporting (MDR) database that there is a risk of over-exposure to ultraviolet (UV) light from surgical lamps and there is a risk of surgical lamps falling on surgical personnel during use. FDA has recently completed a guidance document for surgical lamps entitled ''Guidance Document for Surgical Lamp 510(k)s.'' FDA is also aware of a draft standard from the International Electrotechnical Commission (IEC), IEC–60601–2–41, that would be applicable. FDA believes that the guidance and the draft standard would address the risks to health presented by surgical lamps. At some time in the future, FDA may adopt the guidance document and the IEC standard as special controls for surgical lamps. Without the guidance and the IEC standard as special controls, FDA believes that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of sunlamps.

Dated: November 23, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–32248 Filed 12–3–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0477]

Medical Devices; Reconditioners, Rebuilders of Medical Devices; Revocation of Compliance Policy Guide; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revoking Compliance Policy Guide (CPG) 7124.28 because application of current good manufacturing practice (CGMP) requirements to ''reconditioners/rebuilders'' of used medical devices does not comport with definitions in the quality system (QS) regulation or guidance in the final rule that applies CGMP requirements to ''manufacturers'' and ''remanufacturers.'' Because ''reconditioners/rebuilders'' are specifically excluded from the definition of ''manufacturer'' or ''remanufacturer'' in the QS regulation, guidance in the CPG on the applicability of registration, listing, and other statutory and regulatory requirements to ''reconditioners/rebuilders'' does not represent current agency thinking. In the advance notice of proposed rulemaking (ANPRM), published in the December 23, 1997, **Federal Register**, FDA announced its intention to consider identifying the used device market, for regulatory purposes, in terms of ''refurbishers,'' ''as-is remarketers,'' and ''servicers'' whose activities do not significantly change the safety, performance, or use of a device, and to examine alternative approaches for regulating these firms. Pending the issuance of a rule or guidance setting forth FDA's current position, CPG 7124.28 is being revoked to eliminate obsolete guidance and reduce industry burdens.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Walter W. Morgenstern, Center for Devices and Radiological Health (HFZ–305), 2094 Gaither Rd., Rockville, MD 20850, 301594–4699, ext. 102.

SUPPLEMENTARY INFORMATION:

I. Background

FDA issued CPG 7124.28, Reconditioners/Rebuilders of Medical Devices, on December 29, 1987. As revised in March 1995, it is currently found in Section 300.200 of the Compliance Policy Guides Manual. CPG 7124.28 identifies a ''reconditioner/rebuilder'' as a person or firm that acquires ownership of a used device and, for purposes of resale or commercial distribution, ''restores'' or ''refurbishes'' the device to the manufacturer's original or current specifications, or new specifications.

CPG 7124.28 provides that ''reconditioners'' or ''rebuilders'' must register under section 510 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360) and 21 CFR 807.20(a), and they are subject to the premarket notification requirements of 21 CFR 807.81. The CPG specifies label statements that must be displayed on restored or refurbished devices in accordance with 21 CFR 801.1 and, if appropriate, 21 CFR 801.109 or 809.10. The CPG also states that ''reconditioners'' or ''rebuilders'' are subject to biennial inspection requirements under the act, if they manufacture class II or class III devices, and to the medical device reporting (MDR) requirements in 21 CFR 803. The CPG further cautions that the resale of devices restored by ''reconditioners'' and ''rebuilders'' who do not comply with requirements cited in the CPG renders the restored devices adulterated under section 501(h) of the act (21 U.S.C. 351(h)), or misbranded under sections 502(a) or (f), or 510 of the act (21 U.S.C. 352(a) or (f), or 360), as appropriate.

The guidance in CPG 7124.28 represented the agency's current thinking, until publication of the CGMP/QS final rule in the **Federal Register** of October 7, 1996 (61 FR

52602), which codified the QS at 21 CFR 820. The guidance did not create or confer any rights for or on any person and did not operate to bind FDA or the public. An alternative approach may have been used if such approach had satisfied the applicable statute, regulations, or both.

II. Basis for Revoking CPG 7124.28

A. Guidance Concerning the Applicability of CGMP Requirements

CPG 7124.28 applies CGMP requirements to ''reconditioners/rebuilders'' who ''restore'' or ''refurbish'' used devices. The definition that the guidance provides for these entities is now considered obsolete and the application of CGMP's in the guidance is contrary to current agency thinking, as discussed in section II.A and II.B of this document.

The July 1995 ''Working Draft of the Current Good Manufacturing Practice (CGMP) Final Rule'' contained definitions for the terms ''refurbisher'' and ''servicing.'' It also included ''refurbishers'' and ''servicers'' within the definition of ''manufacturer.'' This ''working draft'' was made available for public comment (60 FR 37856, July 15, 1996), and it was discussed extensively in written comments, in public and industry testimony, and in recommendations of FDA's GMP Advisory Committee during meetings in August and September 1995. Comments on the ''working draft'' claimed that using the ''end-of-life'' characteristic of a device to distinguish a ''refurbisher's'' activities from ''servicing'' activities was confusing, unnecessary, and raised legal and liability issues (see CGMP/QS final rule (61 FR 52609, October 7, 1996). The concerns of cost, equity, and competitive concerns were also raised regarding the regulation of ''refurbishers,'' ''servicers,'' and ''third-party'' service organizations (61 FR 52604 and 52640). Under these concerns, the terms ''refurbisher,'' ''servicer,'' and ''servicing'' were not included in the final CGMP/QS regulation, as they relate to entities outside the control of the original device manufacturer, even though FDA believes that ''persons who perform such functions meet the definition of manufacturer'' (61 FR 52610). FDA elected to address the application of CGMP requirements to ''refurbishers'' and ''servicers'' in a separate rulemaking (61 FR 52610 and 52611).

The agency focused, instead, on used-device processors making significant modifications to finished devices. The new term ''remanufacturer'' was added to the final regulation, included within the meaning of ''manufacturer,'' and defined in 21 CFR 820.3(w) to mean ''any person who processes, conditions, renovates, repackages, restores, or does any other act to a finished device that significantly changes the finished device's performance or safety specifications, or intended use.'' As a result of this rulemaking, the guidance in CPG 7124.28 has become obsolete because its terminology and application of CGMP requirements do not conform with the terms and applicability of the current CGMP/QS regulation. The CPG applies CGMP requirements to ''reconditioners'' or ''rebuilders'' who acquire ownership of used devices and ''restore'' and/or ''refurbish'' the devices to meet the device manufacturer's original or current specifications, or new specifications, prior to reselling or remarketing the used devices. The only term used in this guidance that is used in the current regulation is ''restore.'' By virtue of acquiring ownership of the devices which they ''restore'' or ''refurbish,'' the ''reconditioners'' or ''rebuilders'' identified in CPG 7124.28 would consist almost exclusively of entities who operate outside the control of the original device manufacturer. As noted previously, the terms ''refurbisher'' and ''servicer,'' as they relate to such entities, are not found in the current regulation and their CGMP responsibilities are to be addressed by FDA in a separate rulemaking.

Thus, the guidance in CPG 7124.28 applies CGMP requirements to entities, i.e., ''reconditioners/rebuilders,'' whose definition is obsolete and whose definition contains a term, ''refurbishes,'' which the agency intends to consider defining in another context. Consequently, guidance in CPG 7124.28 applies CGMP's in a manner contrary to current agency thinking. For these reasons, then, and in conjunction with other used-device remarketing issues discussed in section II.B of this document. FDA is revoking rather than revising CPG 7124.28 in order to eliminate obsolete CGMP guidance, minimize confusion, and reduce attendant industry burdens.

B. Guidance Concerning the Applicability of Other Statutory and Regulatory Requirements

CPG 7124.28 applies registration, listing, premarket notification, labeling, and MDR reporting requirements to ''reconditioners'' or ''rebuilders'' of used devices. This portion of the guidance is likewise obsolete in applying statutory and regulatory requirements to a group of entities whose common definition is no longer considered relevant. Such guidance also does not represent current agency thinking, as discussed in section II.B of this document.

On the basis of industry concerns raised during CGMP rulemaking, FDA's knowledge of changes in the used-device market, and information on used-device ''remarketers'' and ''servicers'' obtained through the International Association of Medical Equipment Remarketers, FDA no longer believes that the processing, remarketing, or servicing of used devices should be characterized in terms of whether or not the processor acquires ownership of the device for purposes of resale or remarketing. FDA now believes that it may be more appropriate to identify and distinguish between the types of processing conducted on used devices on the basis of whether or not significant changes occur, or are made, in the performance or safety specifications or intended use of the finished device, as a result of the processing.

FDA has already incorporated its current thinking in the definition of ''remanufacturer'' that it added to the CGMP/QS regulation. The processing activities of a ''remanufacturer'' significantly change the safety, performance, or use of a finished device. In the ANPRM published in the December 23, 1997, **Federal Register** (62 FR 67011), FDA announced, and solicited public comment upon, its intention to further distinguish the used-device market, for regulatory purposes, in terms of processors whose activities do not significantly change the performance or safety specifications, or intended use of a finished device, in contrast to the activities of ''remanufacturers.'' FDA preliminarily identified the activities of certain such processors, and solicited public comment and input on the tentative definitions it drafted and presented in the ANPRM, identifying the activities of ''refurbishers,'' ''as-is remarketers,'' and ''servicers'' of used devices. Public comment was also solicited concerning whether FDA should define such processors, or other types of processors identified following public comment, through rulemaking or the issuance of guidance, under the agency's ''Good Guidance Practices'' (GGP) policy (62 FR 8961, February 27, 1997).

FDA also announced in the December 23, 1997, ANPRM its intention to reexamine its options in regulating remarketers and servicers of used devices. FDA currently believes that it may be appropriate for the agency to apply certain regulatory controls to certain used-device processors, using alternative regulatory approaches, if their processing activities do not result

in significant changes in the used device's safety or performance specifications, or intended use. Public comment and input were solicited concerning alternative regulatory approaches the agency might consider in applying regulatory controls upon the activities of ''refurbishers,'' ''as-is remarketers,'' and ''servicers,'' or other types of used-device processors identified following comments. As a consequence of these agency actions, the guidance in CPG 7124.28 concerning the applicability of registration, listing, and other statutory and regulatory requirements to ''reconditioners/rebuilders'' of used devices is obsolete and no longer represents current agency thinking. Pending FDA's issuance of a rule or guidance setting forth the agency's current position on these matters, FDA is revoking, rather than revising CPG 7124.28 in its entirety in order to eliminate obsolete guidance, minimize confusion, and reduce attendant industry burdens.

Dated: October 23, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–32249 Filed 12–3–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2025–N]

RIN 0938–AJ07

Medicare Program; Recognition of NAIC Model Standards for Regulation of Medicare Supplemental Insurance

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice describes changes made by the Balanced Budget Act of 1997 to section 1882 of the Social Security Act, which governs Medicare supplemental insurance. It also recognizes that the Model Regulation adopted by the National Association of Insurance Commissioners (NAIC) on April 29, 1998, as corrected and clarified by HCFA, is considered to be the applicable NAIC Model Regulation for purposes of section 1882 of the Social Security Act. The changes made by HCFA (1) correct a drafting error in section 12.B(2) of the Model that is inconsistent with Federal law, and (2) add a clarification that copayments for hospital outpatient department services under Part B of Medicare must be covered under the ''core benefits'' of a Medicare supplemental insurance policy in the same manner as coinsurance for those services. Finally, this notice prints as an addendum the full text of the NAIC Model Regulation, as corrected and clarified by HCFA.

DATES: Medicare supplemental insurance policies issued in any State must conform to the requirements of section 1882(s)(3) of the Social Security Act as of July 1, 1998, and to the standards contained in the revised NAIC Model Regulation as of the date the State adopts the revised standards, which generally must be no later than April 29, 1999.

FOR FURTHER INFORMATION CONTACT: Terese Klitenic (410) 786–1565.

SUPPLEMENTARY INFORMATION:

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I. Background

A. The Medicare Program

The Medicare program was established by Congress in 1965 with the enactment of title XVIII of the Social Security Act (the Act). The program provides payment for certain medical services for persons 65 years of age or older, disabled beneficiaries, and persons with end-stage renal disease. The Medicare program consists of two separate but complementary insurance programs, a hospital insurance program (Part A), which covers services furnished by hospitals, skilled nursing facilities, home health agencies and hospices; and a supplementary medical insurance program (Part B), which covers a wide range of medical services and supplies, including physicians' services, outpatient hospital services, outpatient physical and occupational therapy services, and home health services. Part B also covers certain drugs and biologicals that cannot be self-administered, diagnostic x-ray and laboratory tests, purchase or rental of durable medical equipment, ambulance services, prosthetic devices, and certain medical supplies.

While the Medicare program provides extensive hospital insurance benefits and supplementary medical insurance, it was not designed to cover the total cost of medical care for Medicare beneficiaries. Amounts payable under both Parts A and B are reduced by certain deductible and coinsurance amounts for which the beneficiary is responsible.

In 1998, the Part A inpatient hospital deductible is $764 ($768 for 1999) for each ''benefit period'' (the period beginning on the first day of hospitalization and extending until the beneficiary is no longer an inpatient of a hospital or skilled nursing facility for 60 consecutive days).

The Part B deductible is $100 for calendar years 1998 and 1999. Beneficiaries are also responsible for paying certain coinsurance amounts for covered items and services. For example, the coinsurance applicable to physicians' services under Part B is generally 20 percent of the Medicare-approved amount for the service. When beneficiaries receive covered services from physicians who do not accept assignment of their Medicare claims, the beneficiaries may also be required to pay amounts in excess of the Medicare approved amount (''excess charges''), up to a limit established under the Act.

There are a number of items and services that are not covered under either Part A or Part B; for example, custodial nursing home care, most dental care, eyeglasses, and most prescription drugs are not covered. Beneficiaries must pay the full cost of these items and services out-of-pocket or may purchase additional private insurance to help pay the costs.

Because Medicare does not cover the total cost of providing medical care, a

substantial number of Medicare beneficiaries have some type of private health coverage. This coverage may include Medicare supplemental insurance, employer group health plans, hospital indemnity insurance, nursing home or long term care insurance, and specified disease insurance.

B. Medicare Supplemental Insurance

Medicare supplemental insurance policies, also known as ''Medigap'' policies, are designed to fill specific gaps in the original Medicare ''fee-for-service'' benefit structure. (They are not needed, and would not be usable, if Medicare benefits are obtained through an HMO or other type of managed care arrangement.) Medigap policies typically provide coverage for some or all of the deductible and coinsurance amounts applicable to Medicare-covered services, and sometimes cover items or services that are not covered by Medicare.

Section 1882 of the Act prohibits the sale of Medigap policies that do not conform to Federal statutory requirements. The statute also incorporates by reference, as part of the statutory requirements, certain minimum standards established by the National Association of Insurance Commissioners (NAIC). These minimum standards, known as the ''NAIC Model Standards,'' are found in the ''NAIC Model Regulation to Implement the Individual Accident and Sickness Insurance Minimum Standards Act,'' initially adopted by the NAIC on June 6, 1979. See section 1882(g)(2)(A) of the Act. In particular, the Model Standards, as revised in 1992 under the Omnibus Budget Reconciliation Act of 1990, prescribed 10 benefit packages. Under section 1882, Medigap policies generally may not be sold unless they conform to one of the 10 benefit packages, which are designated as plans ''A'' through ''J.''

Section 1882(b)(1) of the Act also provided that Medigap policies issued in a State would be deemed to meet the Federal requirements if the State's program regulating Medicare supplemental policies provided for the application of standards at least as stringent as those contained in the NAIC Model Regulation, and requirements equal to or more stringent than those set forth in section 1882 of the Act.

States must amend their regulatory programs to implement all of the new Federal statutory requirements, and applicable changes to the Model standards. However, States maintain the authority to enact provisions that are more stringent than those that are incorporated in the NAIC Model Regulation or in the statutory requirements. See section 1882(b)(1)(A) of the Act. States that have received a waiver under section 1882(p)(6) may continue to authorize the sale of policies that contain different benefits than the 10 standardized benefit packages. Massachusetts, Minnesota, and Wisconsin have received waivers; however, the three waiver States must still make the Balanced Budget Act of 1997 (BBA) conforming amendments. In particular, these States are subject to the statutory guaranteed issue requirements with respect to all Medicare beneficiaries who meet the criteria in section 1882(s)(3) for guaranteed issue. The only difference in the waiver States is that section 1882(3)(C)(iv) specifies that the statutory references to benefit packages (that is, in most cases, benefit packages designated ''A'', ''B'', ''C'' or ''F'') are deemed to be references to comparable benefit packages offered in the State with the waiver.

As provided in section 1882(p)(4)(B) of the Act, any State may continue to approve the addition of new or innovative benefits to an otherwise approved standardized plan.

Under section 1882(p)(5) of the Act, while a State must approve the core Plan ''A'' for sale in the State, it does not have to permit any or all of the other nine plans to be sold in the State. Therefore, the State need not permit the sale of each type of standardized plan, so long as the core plan is offered. Moreover, a State need not approve the sale of high deductible Plans ''F'' and ''J'' simply because it also permits sale of the standard deductible versions of either of these two plans.

In addition, section 1882(d) makes it unlawful in some circumstances for Medigap and certain other health insurance policies to be sold to a Medicare beneficiary if the sale results in duplicate coverage.

Section 1882(g)(1) of the Act defines Medicare supplemental policies. This definition excludes policies offered by an employer to employees or former employees and policies or plans offered by a labor organization to members or former members. HMOs, and other managed care plans that contract with Medicare under section 1876 of the Act or under a demonstration authority, as well as Medicare+Choice plans offered by organizations that contract under Part C of Medicare (see following discussion) are also excluded from the definition of a Medicare supplemental policy.

II. Legislative Changes

BBA created a new Part C of Medicare, commonly known as Medicare+Choice. This allows Medicare eligible individuals to avail themselves of a wide range of managed care options. Under the new Medicare+Choice program, every individual entitled to Medicare Part A and enrolled under Part B, except for individuals with end-stage renal disease, may elect to receive benefits through either the existing Medicare fee-for-service program or a Part C Medicare+Choice plan. However, individuals choosing Medicare+Choice will not require the protections afforded under Medigap policies because their needs will be met under the Medicare+Choice program. Regulations for the new Part C Medicare+Choice program were published in a separate document on June 26, 1998 (63 FR 52610).

Section 4003(a)(1) of the BBA amended section 1882(d)(3)(A)(i) of the Act to provide that it is unlawful for a Medigap policy to be sold or issued to an individual who has elected to be enrolled in a Medicare+Choice plan when the seller has knowledge that the policy duplicates health benefits to which the individual is already entitled under Medicare+Choice or under another Medigap policy.

Section 4003(a)(3) of BBA also states that a Medicare+Choice plan is excluded from the definition of a Medicare supplemental policy.

Section 4031 of the BBA amended section 1882(s) of the Act, which governs guaranteed issue of Medigap policies. When an individual seeks to enroll in a specified Medigap policy within 63 days of the events described below, the issuer may not (1) deny or condition the issuance of a Medigap policy that is offered or available; (2) discriminate in the pricing of such a policy because of health status, claims experience, receipt of health care, or medical condition; or (3) impose a preexisting condition exclusion.

Involuntary Terminations of Coverage

For the following four classes of individuals, the specific policies subject to the guaranteed issue requirements are Medigap plans ''A'', ''B'', ''C'', or ''F'':

(a) Individuals enrolled under an employee welfare benefit plan that provides health benefits that supplement Medicare, if the plan terminates or ceases to provide all those benefits.

(b) Persons enrolled with a Medicare+Choice organization under a Medicare+Choice plan whose enrollment is discontinued under the following circumstances: (1) the organization's or plan's certification is terminated, or the organization has

discontinued providing the plan in the area where the person resides; (2) the individual is no longer eligible to remain in the plan because of a change in circumstances, including a move outside of the entity's service area, but not including nonpayment of premiums or disruptive behavior; or (3) the individual demonstrates that the organization substantially violated a material contract provision or materially misrepresented the plan's provisions in marketing the plan to the individual.

(c) Persons enrolled with an HMO or other organization that has a risk or cost contract under section 1876 of the Act; with a health care prepayment plan under section 1833 of the Act; with a similar organization operating under a demonstration project authority; or under a Medicare SELECT policy (a type of Medigap policy in which an individual's choice of providers is restricted in return for a lower Medigap insurance premium). However, this only applies if enrollment ceases for the reasons set forth in (b) above and, in the case of a SELECT policy, there is no applicable provision under State law for continuation of the coverage.

(d) Individuals enrolled under a Medigap policy if enrollment ceases because of: (1) Bankruptcy or insolvency of the issuer or because of other involuntary termination of coverage and there is no provision under applicable State law for the continuation of the coverage; (2) the issuer of the policy substantially violated a material provision of the policy; or (3) the issue materially misrepresented the policy's provisions in marketing the policy to the individual. See section 4031(a)(3) of BBA.

Free Look at Managed Care

For the following class of individuals, the specific policies subject to the guaranteed issue requirements are the Medicare supplemental policy under which the individual was most recently enrolled if it is still available, or if this policy is not available from the previous issuer, Medigap plans ''A,'' ''B,'' ''C,'' or ''F.'' The following criteria must be met for the individual to qualify for guaranteed issue under this category: The individual (1) was covered under a Medigap policy; (2) subsequently terminated the policy and enrolled with a Medicare+Choice organization, with an HMO or other organization that has a contract under section 1876 of the Act, with a similar organization operating under a demonstration project authority, or purchased a Medicare SELECT policy; and (3) terminates enrollment in the Medicare+Choice or other organization, or the Medicare SELECT policy, described in (2) within 12 months after enrolling. However, this provision applies only if the individual had never previously been enrolled with any organization or policy mentioned in (2) above.

For the five classes of Medicare beneficiaries described above, the guaranteed issue requirements protect ''individuals'' whose previous coverage has been terminated. Before the enactment of the BBA, beneficiaries had only one opportunity to purchase a Medigap policy on a ''guaranteed issue'' basis. This opportunity was only available to beneficiaries who were age 65 or over, *and* was available during the 6-month period following the date that they were *both* age 65 or over *and* enrolled in Medicare Part B. There was no guaranteed open enrollment provision for individuals under age 65. However, in contrast to both the general open enrollment provision of section 1882(s)(2)(A) and the new guaranteed issue provision in section 1882(s)(3)(B)(vi) (discussed below), which specifically state that the protected ''individual'' must be at least age 65, the guaranteed issue provisions in section 1882(s)(3)(B) (i) through (v) do not contain an age restriction. Therefore, the latter provisions apply by their terms both to individuals eligible for Medicare based on age, and those whose eligibility is based on disability or ESRD. All of these individuals who meet the requirements set forth in the BBA qualify for its guaranteed issue protections with respect to policies that are offered and available to new enrollees. (In some situations policies may not be available to beneficiaries under 65. In other situations, a policy designated ''B'', ''C,'' or ''F'' may not be available in a particular State.)

There is one additional class of beneficiaries who are entitled by the BBA amendments to a guaranteed issue Medigap policy. An individual who upon first becoming eligible for Medicare at age 65 enrolls in a Medicare+Choice plan, and later disenrolls from the plan within 12 months of the effective date of that enrollment, is entitled to guaranteed issue of *any* Medigap plan ''A'' through ''J'' under the same conditions described above (including that the individual must apply for the Medigap policy within 63 days of dropping the Medicare+Choice coverage, and may not be subject to a preexisting condition exclusion, or be subject to price discrimination based on health status).

Preexisting Condition Exclusion

Section 4031(b) of the BBA also limits the application of a preexisting condition exclusion for Medigap policies during the initial 6-month open-enrollment period for aged beneficiaries. Such an exclusion cannot be imposed on an individual who, on the date of application, had a continuous period of at least 6 months of health coverage defined as ''creditable coverage'' under title XXVII of the Public Health Service (PHS) Act, as added by title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). If the individual has less than 6 months coverage, the issuer must reduce the period of any preexisting condition exclusion by the aggregate of periods of ''creditable coverage'' applicable to the individual as of the enrollment date. The rules used to determine the reduction are based on rules used under section 2701 of the PHS Act.

The following information is provided for the convenience of the reader. A complete description of requirements under title XXVII of the PHS Act can be found at 45 CFR parts 144, 146, and 148. Under section 2701, a policy can only exclude coverage for a preexisting condition if medical advice, diagnosis, care, or treatment was recommended or received for the condition within the six months before the effective date of the Medigap policy.

HIPAA also added section 2701(c) of title XXVII of the PHS Act to define creditable coverage as coverage of the individual under any of the following: group health plan; health insurance coverage; Part A or B of Medicare; Medicaid; a medical care program of the Indian Health Service or a tribal organization; a State health benefits risk pool; a public health plan; the health care program for active military personnel; the Federal employees health benefit plan; and a health benefit plan under the Peace Corps Act. However, creditable coverage does not include policies consisting solely of coverage of excepted benefits, as described below. Creditable coverage must be continuous. This means the individual must have no breaks in coverage of greater than 63 days. If the break is greater than 63 days, a new period begins after the individual reacquires creditable coverage. See section 2701(c)(2) of the PHS Act.

An individual may demonstrate creditable coverage in several ways. First, group health plans, health insurance issuers, and certain other entities must furnish a certificate of creditable coverage after the coverage terminates. In some cases this will be when employment ends; in other cases it will be after exhaustion of ''continuation coverage'' under the Consolidated Omnibus Budget

Reconciliation Act of 1985 (Public Law 99–272) or under a similar State program. A certificate may also be obtained upon request by the individual. See section 2701(c) of the PHS Act. Creditable coverage can also be demonstrated if the individual attests to the existence of creditable coverage, and presents corroborating evidence (such as pay stubs with insurance deduction or explanation of benefits, or verification by a physician or former health care provider that the individual had health care coverage). The individual must cooperate in verifying the information.

Excepted benefits as defined in section 2791(c) of the PHS Act means benefits under one or more of the following: accident or disability income insurance; a supplement to liability insurance; workers' compensation insurance; liability insurance such as automobile medical payment insurance or general liability insurance; credit-only insurance; on-site medical clinics and other similar insurance coverage, under which benefits for medical care are secondary or incidental to other insurance benefits.

Other excepted benefits, if offered separately, include: Limited scope dental or vision benefits, long-term care, nursing home care, home health care, community-based care, or any combination of these. Other excepted benefits, if offered as independent, noncoordinated benefits, include specified disease or illness coverage and hospital indemnity, or other fixed indemnity insurance. Medicare supplemental insurance is also classified as an excepted benefit.

Long Term Care Insurance Policies

Section 4031(c) of the BBA also clarifies, through a technical amendment, that certain disclosure requirements apply only to long-term care insurance policies that do not coordinate with Medicare and Medicaid.

High Deductible Medigap Standard Policies

Section 4032 of the BBA adds two additional high deductible Medigap standard policies with benefit packages that are the same as Plans ''F'' and ''J.'' The high deductible amount is $1,500 in 1998 and 1999. Out-of-pocket expenses, in this instance, are expenses that would ordinarily be paid by a Medigap policy. These expenses include the Medicare deductibles for Parts ''A'' and ''B'' but do not include, in Plan ''J'', the plan's separate prescription drug deductible of $250 or, in Plans ''F'' and ''J,'' the plans'' separate foreign travel emergency deductible of $250.

For subsequent years, the high deductible amount will be increased by the percentage increase in the Consumer Price Index for all urban consumers (all items; U.S. city average) for the 12-month period ending with August of the preceding year, rounded to the nearest multiple of $10. The beneficiary is responsible for payment of all expenses up to this amount.

Treatment of Hospital Outpatient Department Copayment

Section 4031(f) of the BBA also specifies that ''copayment'' amounts provided for under section 1833(t)(5) of the Act with respect to hospital outpatient department services shall be treated under Medigap policies ''in the same manner as coinsurance with respect to such services.'' We have therefore clarified the Model by including a reference to coverage for copayments for hospital outpatient department services in section 8.B(5) of the Model, and in the cover page of the outline of coverage that immediately follows section 17.C(4) of the Model. For purposes of complying with Federal law, States must use this revised language.

III. Dates

The provisions added by section 4031 of the BBA have a number of different effective dates, as established in section 4031(d). There has also been confusion about the effective date of the guaranteed issue provisions related to Medicare+Choice plans.

Guaranteed Issue Provisions

Section 4031(a) of the BBA expanded the number of opportunities in which an individual can enroll in a Medigap policy on a ''guaranteed issue'' basis. It added section 1882(s)(3)(B), clauses (i) through (vi), to the Act to require that certain Medigap policies be offered to six categories of beneficiaries in specific circumstances. Section 4031(d)(1) of the BBA makes these provisions effective July 1, 1998.

Clause (ii) assures that individuals enrolled in Medicare+Choice plans are entitled to guaranteed issue of Medigap policies ''A,'' ''B,'' ''C,'' and ''F'' if ''there are circumstances permitting discontinuance of the individual's election of the [Medicare+Choice] plan under the first sentence of section 1851(e)(4).'' This language caused confusion because of its cross-reference to the Medicare+Choice provisions in section 1851(e)(4). The latter provision is a Medicare+Choice provision, not a Medigap provision. Under the Medicare+Choice rules, starting in the year 2002, beneficiaries who elect to enroll in a Medicare+Choice plan will be subject to a ''lock-in'' provision. This means that they will only be able to change their Medicare+Choice election under certain circumstances. With certain exceptions, other than during an annual open enrollment period, individuals will not be able to change to other Medicare+Choice plans, or return to original, fee-for-service Medicare, except as described in section 1851(e)(4). Therefore, a beneficiary will not need a Medigap policy unless he or she is permitted to return to original Medicare. It is our understanding that the NAIC drafting note following section 12.B(2) of the Model was simply trying to explain to a ''Medigap audience'' why the Medigap requirement in clause (ii) cross-references a Medicare+Choice provision that will not itself be effective until 2002.

However, as a matter of Federal law, the guaranteed issue provision of clause (ii) takes effect July 1, 1998; continues in effect through and beyond 2002, and applies to any individual whose Medicare+Choice election terminates under the ''circumstances'' specified in subparagraphs (A) through (D) of section 1851(e)(4).

Clause (ii) of section 1882(s)(3)(B) conditions the right to a guaranteed issue Medigap policy on the ''circumstances'' that would (beginning in 2002) permit a beneficiary to change a Medicare+Choice election. These circumstances are contained in subparagraphs (A) through (D) of the first sentence of paragraph (e)(4). The clearest indication that this refers to the ''circumstances'' described in subparagraphs (A) through (D) of section 1851(e)(4), without incorporating the date that appears in the introductory clause of section 1851(e)(4), is that clause (iii) contains a virtually identical reference to ''the circumstances that would permit discontinuance of an individual's election of coverage under the first sentence of section 1851(e)(4).'' Clause (iii) applies to termination of Medicare managed care contracts under section 1876 of the Act. These contracts include ''risk'' contracts under section 1876, which cease to exist as of December 31, 1998, because they will be replaced by Medicare+Choice contracts. Therefore, clause (iii) only makes sense if it is interpreted to refer to the ''circumstances'' described in subparagraphs (A) through (D) of section 1851(e)(4), without the incorporation of the 2002 date.

On October 16, 1998, the NAIC's Medicare Supplement Working Group issued a Memorandum to all NAIC

members stating that it had recognized an inconsistency in the Model Regulation. The drafting note that follows subsection 12B(2), as adopted on April 29, 1998, stated that the guaranteed issue provisions do not become effective until January 1, 2002, for a person in a Medicare+Choice organization whose contract terminates. As discussed above, HCFA has determined, subsequent to the adoption of the Model Regulation by the NAIC, that this was a drafting inconsistency in the Model and that the provision became effective on July 1, 1998 along with the rest of the provisions. The NAIC has begun the process of amending the Model Regulation to eliminate the drafting error. Therefore, the Model Regulation, as set forth below, contains the corrected language as it has been proposed by the NAIC. For purposes of complying with Federal law, States must use this corrected language.

Other Provisions

Preexisting Condition Exclusions

The limit on preexisting condition exclusions added by section 4031(b) applies to policies issued on or after July 1, 1998. See section 4031(d) of the BBA.

Long-Term Care Provision

The long-term care policy disclosure provision (section 4031(c) of the BBA) is effective July 1, 1997, as if included in HIPAA. See section 4031(d)(3) of the BBA. For purposes of disclosure, policies that coordinate with Medicare and other health insurance are not considered to provide benefits that duplicate Medicare.

Changes to Conform to Medicare+Choice

The changes made by section 4003 of the BBA became effective on August 8, 1997, the date of enactment of the BBA.

Dates Applicable to Action by the NAIC

Section 4031(e)(2) of the BBA specified that if, within 9 months of enactment of the BBA, the NAIC modified its ''Model Regulation'' to conform to the BBA amendments, then the revised regulation would apply for purposes of section 1882. The NAIC adopted the revised standards on April 29, 1998.

Dates Applicable to Actions by the States

Each State is required to change its statutes or regulations to conform its regulatory program to the revised standards set forth in the NAIC Model Regulation, in order for Medigap policies to continue to be sold in that State. This action generally must be taken within 1 year after the date of adoption of the revised NAIC standards, that is, by April 29, 1999. In general, a State will not be deemed out of compliance solely due to failure to make changes before that date. See section 4031(e)(1) of the BBA. The statute provides an exception for States that we identify as requiring new legislation to implement the standards but whose legislatures are not scheduled to meet in 1999 in a session at which these matters may be considered. See section 4031(e)(4)(B) of the BBA.

For States that fall within this exception, section 4031(e)(4)(B) of the BBA provides that a State will not be deemed out of compliance until the first day of the first quarter following the end of the first legislative session that begins on or after July 1, 1999. This section also provides that, in the case of a State that has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.

Accordingly, the standards in the Model Regulation apply to Medicare supplemental policies issued in a State on or after April 29, 1999, or an earlier date on which a State adopts the standards, unless the State of issuance has a legislature that does not meet during that timeframe.

Separate notification letters were sent to the States by HCFA regional offices. States should notify the regional offices by letter when the State law conforms to the NAIC model.

IV. Publication of List for Standardized Benefit Packages

We are publishing the list of standardized benefit packages, including Plans ''F'' and ''J,'' which will now be available in standard as well as high deductible forms. The following is a summary of the coverages available. This list of standardized Medicare supplemental benefit packages is contained in section 9.E of the revised Model Regulation adopted by the NAIC on April 29, 1998, which is reprinted at the end of this notice. Section 16 of the Model Regulation includes a chart that outlines the benefits covered in each of the 10 standardized Plans ''A'' through ''J.''

Because it is necessary to refer to more than one section of the NAIC Model Regulation to determine the content of each standardized benefit package, we are providing the following summary of the 10 packages.

Plan ''A'' (Core Benefit Plan) (NAIC Model Section 9.E.(1))

The Core Benefit Plan includes the following:

- Coverage for the Part A coinsurance amount for day 61 through day 90 of hospitalization in each Medicare benefit period.
- Coverage for the Part A coinsurance amount for each of Medicare's 60 non-renewable lifetime hospital inpatient reserve days used.
- After all Medicare hospital benefits are exhausted, coverage for 100 percent of the Medicare Part A eligible hospital expenses. Coverage is limited to a maximum of 365 days of additional inpatient hospital care during the policyholder's lifetime.
- Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood per calendar year.
- Coverage for the coinsurance amount for Part B services, or, in the case of hospital outpatient department services, the applicable copayment, (generally 20 percent of the approved amount) after the $100 deductible is met. (Note that Plan A provides no coverage for benefits described in paragraphs (1) through (11) of NAIC Model Section 8.C.: the Part A inpatient hospital deductible (in 1998, $764 for each Medicare benefit period; $768 in 1999); the Part B deductible ($100 each year); Part A coinsurance for post-hospital skilled nursing facility care; Part B charges in excess of Medicare-approved amounts; non-Medicare-covered prescription drugs, preventive services, at-home recovery services, or services received in a foreign country; or new or innovative benefits approved by the State insurance commissioner or by HCFA.)

Plan ''B'' (NAIC Model Section 9.E.(2))

- The core benefits; and
- The Part A inpatient hospital deductible.

Plan ''C'' (NAIC Model Section 9.E.(3))

- The core benefits;
- The Part A inpatient hospital deductible;
- The Part A coinsurance for post-hospital skilled nursing facility care for days 21 through 100 in a Medicare benefit period;
- The Part B annual deductible; and
- Eighty percent of charges for emergency care received in a foreign country during the first 60 days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum benefit of $50,000.

Plan ''D'' (NAIC Model Section 9.E.(4))

- The core benefits;

- The Part A inpatient hospital deductible;
- The Part A coinsurance for post-hospital skilled nursing facility care for days 21 through 100 in a Medicare benefit period;
- Eighty percent of charges for emergency care received in a foreign country during the first 60 days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum benefit of $50,000; and
- Services that are not covered by Medicare to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery, subject to limitations described in the NAIC Model.

Plan ''E'' (NAIC Model Section 9.E.(5))

- The core benefits;
- The Part A inpatient hospital deductible;
- The Part A coinsurance for post-hospital skilled nursing facility care for days 21 through 100 in a Medicare benefit period;
- Eighty percent of charges for emergency care received in a foreign country during the first 60 days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum benefit of $50,000; and
- Preventive health services not covered by Medicare, subject to a $120 maximum annual benefit.

Plan ''F'' (NAIC Model Section 9.E.(6))

- The core benefits;
- The Part A inpatient hospital deductible;
- The Part A coinsurance for post-hospital skilled nursing facility care for days 21 through 100 in a Medicare benefit period;
- The Part B annual deductible;
- One hundred percent of Part B excess charges (the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or State law, and the Medicare-approved Part B charge); and
- Eighty percent of charges for emergency care received in a foreign country during the first 60 days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum benefit of $50,000.

Plan ''F'' High Deductible (NAIC Model Section 9.E.(7))

The high deductible plan pays the same or offers the same benefits as Plan ''F'' after the beneficiary has paid a calendar year deductible ($1,500 in 1998 and 1999). Benefits from the high deductible Plan ''F'' will not begin until out-of-pocket expenses are equal to the deductible ($1,500). Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B but does not include the plan's separate foreign travel emergency deductible.

Plan ''G'' (NAIC Model Section 9.E.(8))

- The core benefits;
- The Part A inpatient hospital deductible;
- The Part A coinsurance for post-hospital skilled nursing facility care for days 21 through 100 in a Medicare benefit period;
- Eighty percent of Part B excess charges (80 percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or State law, and the Medicare-approved Part B charge);
- Eighty percent of charges for emergency care received in a foreign country during the first 60 days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum benefit of $50,000; and
- Services that are not covered by Medicare to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery, subject to limitations described in the NAIC Model Regulation.

Plan ''H'' (NAIC Model Section 9.E.(9))

- The core benefits;
- The Part A inpatient hospital deductible;
- The Part A coinsurance for post-hospital skilled nursing facility care for days 21 through 100 in a Medicare benefit period;
- Eighty percent of charges for emergency care received in a foreign country during the first 60 days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum benefit of $50,000; and
- Fifty percent of outpatient prescription drug charges not covered by Medicare, subject to a $250 calendar year deductible and a maximum $1,250 in benefits per calendar year.

Plan ''I'' (NAIC Model Section 9.E.(10))

- The core benefits;
- The Part A inpatient hospital deductible;
- The Part A coinsurance for post-hospital skilled nursing facility care for days 21 through 100 in a Medicare benefit period;
- One hundred percent of Part B excess charges (the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or State law, and the Medicare-approved Part B charge);
- Eighty percent of charges for emergency care received in a foreign country during the first 60 days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum benefit of $50,000;
- Services that are not covered by Medicare to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery, subject to limitations described in the NAIC Model Regulation; and
- Fifty percent of outpatient prescription drug charges not covered by Medicare, subject to a $250 calendar year deductible and a maximum $1,250 in benefits per calendar year.

Plan ''J'' (NAIC Model Section 9.E.(11))

- The core benefits;
- The Part A inpatient hospital deductible;
- The Part A coinsurance for post-hospital skilled nursing facility care for days 21 through 100 in a Medicare benefit period;
- The Part B annual deductible;
- One hundred percent of Part B excess charges (the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or State law, and the Medicare-approved Part B charge);
- Eighty percent of charges for emergency care received in a foreign country during the first 60 days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum of $50,000;
- Services that are not covered by Medicare to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery, subject to limitations described in the NAIC Model Regulation;
- Fifty percent of outpatient prescription drug charges not covered by Medicare, subject to a $250 calendar year deductible and a maximum $3,000 in benefits per calendar year; and
- Preventive health services not covered by Medicare, subject to a $120 maximum annual benefit.

Plan ''J''-High Deductible (NAIC Model Section 9.E.(12)

The high deductible plan pays the same or offers the same benefits as Plan ''J'' after a beneficiary has paid a calendar year deductible ($1,500 in 1998 and 1999). Benefits from the high deductible Plan ''J'' will not begin until

out-of-pocket expenses are equal to the deductible ($1,500). Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate prescription drug deductible, or the plan's separate foreign travel emergency deductible.

V. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, some insurance companies are considered to be small entities. Small entities are nonprofit organizations, local and municipal government entities, and entities defined by the Small Business Administration as small businesses (firms with fewer than 500 employees). Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Approximately 360 insurance companies offer Medigap policies. About half of the 360 insurance companies might be considered small entities.

All 50 States and the 360 insurance companies are affected by the revised standards described in this notice. Under these changes, insurers will now have to accept people in poorer health that the insurers could have rejected before. If there are delays before the insurance companies can raise rates to accommodate this change, or if the State does not let the insurance companies raise rates, there will be a cost to those companies. However, of the beneficiaries in poor health and meeting the criteria in the statute, we do not know how many of those who could have been rejected before will apply for Medigap insurance. As a result, we do not know the financial impact this may have on insurance companies selling Medigap insurance.

The costs of implementing the new NAIC standards will include the codifying of changes in State insurance law or regulation to comply with the changes, and the modifying of insurance policies and notifying of the insured of the additional protections included in the changes to the NAIC Model Regulation. Any costs attributable to the NAIC regulatory changes are essentially mandated by the States, the Congress, and insurance companies.

There are benefits from the revised standards for Medicare beneficiaries. The additional protections will afford them increased access to Medigap insurance while providing separate opportunities to take advantage of the new Medicare+Choice program. Additionally, Medicare beneficiaries who enroll in the Medicare+Choice program but wish to leave the program, in many instances, will have the opportunity to reenroll in a Medigap policy if they choose to return to the traditional Medicare fee-for-service program.

This notice itself does not impose any requirements or result in costs or benefits. The purpose of the notice is to merely inform the public of the revised standards.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this notice and the standards will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In addition, this notice and the standards have been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. We estimate that implementation of the new NAIC standards will not require the expenditure of more than $100 million by the private sector. Therefore, we are not required to prepare a cost-benefit analysis of private sector expenditures, since this notice is not a significant regulatory action within the meaning of the UMRA.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Section 1882 of the Social Security Act (42 U.S.C. 1395(ss)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 24, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act

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Section 1. Purpose

The purpose of this regulation is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosures in the sale of accident

and sickness insurance coverages to persons eligible for Medicare.

Section 2. Authority

This regulation is issued pursuant to the authority vested in the commissioner under [cite appropriate section of state law providing authority for minimum benefit standards regulations or the NAIC Medicare Supplement Insurance Minimum Standards Model Act].

Editor's Note: Wherever the term ''commissioner'' appears, the title of the chief insurance regulatory official of the state should be inserted.

Section 3. Applicability and Scope

A. Except as otherwise specifically provided in Sections 7, 12, 13, 16 and 21, this regulation shall apply to:

(1) All Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this regulation; and

(2) All certificates issued under group Medicare supplement policies which certificates have been delivered or issued for delivery in this state.

B. This regulation shall not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

Section 4. Definitions

For purposes of this regulation:

A. *Applicant* means:

(1) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits, and

(2) In the case of a group Medicare supplement policy, the proposed certificateholder.

B. *Bankruptcy* means when a Medicare+Choice organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

C. *Certificate* means any certificate delivered or issued for delivery in this state under a group Medicare supplement policy.

D. *Certificate form* means the form on which the certificate is delivered or issued for delivery by the issuer.

E. *Continuous period of creditable coverage* means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three (63) days.

F. (1) *Creditable coverage* means, with respect to an individual, coverage of the individual provided under any of the following:

(a) A group health plan;

(b) Health insurance coverage;

(c) Part A or Part B of Title XVIII of the Social Security Act (Medicare);

(d) Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under section 1928;

(e) Chapter 55 of Title 10 United States Code (CHAMPUS);

(f) A medical care program of the Indian Health Service or of a tribal organization;

(g) A State health benefits risk pool;

(h) A health plan offered under chapter 89 of Title 5 United States Code (Federal Employees Health Benefits Program);

(i) A public health plan as defined in federal regulation; and

(j) A health benefit plan under Section 5(e) of the Peace Corps Act (22 United States Code 2504(e)).

(2) *Creditable coverage* shall not include one or more, or any combination of, the following:

(a) Coverage only for accident or disability income insurance, or any combination thereof;

(b) Coverage issued as a supplement to liability insurance;

(c) Liability insurance, including general liability insurance and automobile liability insurance;

(d) Workers' compensation or similar insurance;

(e) Automobile medical payment insurance;

(f) Credit-only insurance;

(g) Coverage for on-site medical clinics; and

(h) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(3) *Creditable coverage* shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

(a) Limited scope dental or vision benefits;

(b) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and

(c) Such other similar, limited benefits as are specified in federal regulations.

(4) *Creditable coverage* shall not include the following benefits if offered as independent, noncoordinated benefits:

(a) Coverage only for a specified disease or illness; and

(b) Hospital indemnity or other fixed indemnity insurance.

(5) *Creditable coverage* shall not include the following if it is offered as a separate policy, certificate or contract of insurance:

(a) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;

(b) Coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code; and

(c) Similar supplemental coverage provided to coverage under a group health plan.

Drafting Note: The Health Insurance Portability and Accountability Act of 1996 (HIPAA) specifically addresses separate, noncoordinated benefits in the group market at PHSA § 2721(d)(2) and the individual market at § 2791(c)(3). HIPAA also references excepted benefits at PHSA §§ 2701(c)(1), 2721(d), 2763(b) and 2791(c). In addition, creditable coverage will be addressed in regulations issued by the Secretary pursuant to HIPAA.

G. *Employee welfare benefit plan* means a plan, fund or program of employee benefits as defined in 29 U.S.C. Section 1002 (Employee Retirement Income Security Act).

H. *Insolvency* means when an issuer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.

Drafting Note: If the state law definition of insolvency differs from the above definition, please insert the state law definition.

I. *Issuer* includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

J. *Medicare* means the ''Health Insurance for the Aged Act,'' Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

K. *Medicare+Choice plan* means a plan of coverage for health benefits under Medicare Part C as defined in [refer to definition of Medicare+Choice plan in Section 1859 found in Title IV, Subtitle A, Chapter 1 of P.L. 105–33], and includes:

(1) Coordinated care plans which provide health care services, including but not limited to health maintenance organization plans (with or without a point-of-service option), plans offered by provider-sponsored organizations,

and preferred provider organization plans;

(2) Medical savings account plans coupled with a contribution into a Medicare+Choice medical savings account; and

(3) Medicare+Choice private fee-for-service plans.

L. *Medicare supplement policy* means a group or individual policy of [accident and sickness] insurance or a subscriber contract [of hospital and medical service associations or health maintenance organizations], other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Section 1395 et. seq.) or an issued policy under a demonstration project specified in 42 U.S.C. § 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare.

Drafting Note: OBRA 1990 contained an exception from this definition for policies issued pursuant to an agreement under Section 1833 (42 U.S.C. 1395l) of the federal Social Security Act. The Social Security Act Amendments of 1994 eliminated the exemption for Section 1833 plans effective December 31, 1995. These plans, commonly known as health care prepayment plans (HCPPs), arrange for certain Part B services on a pre-paid basis. The federal law continues to authorize HCPP agreements. However, since they are now included in the federal definition of a Medicare supplement policy, HCPPs are subject to the requirements of this model, unless they are exempt under Section 3B. In states authorized for the Medicare Select program, these plans may be able to comply with Medicare supplement requirements.

M. *Policy form* means the form on which the policy is delivered or issued for delivery by the issuer.

N. *Secretary* means the Secretary of the United States Department of Health and Human Services.

Section 5. Policy Definitions and Terms

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless the policy or certificate contains definitions or terms which conform to the requirements of this section.

A. *Accident, accidental injury,* or *accidental means* shall be defined to employ ''result'' language and shall not include words which establish an accidental means test or use words such as ''external, violent, visible wounds'' or similar words of description or characterization.

(1) The definition shall not be more restrictive than the following: ''Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force.''

(2) The definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law.

B. *Benefit period* or *Medicare benefit period* shall not be defined more restrictively than as defined in the Medicare program.

C. *Convalescent nursing home, extended care facility,* or *skilled nursing facility* shall not be defined more restrictively than as defined in the Medicare program.

D. *Health care expenses* means expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

Expenses shall not include:

(1) Home office and overhead costs;

(2) Advertising costs;

(3) Commissions and other acquisition costs;

(4) Taxes;

(5) Capital costs;

(6) Administrative costs; and

(7) Claims processing costs.

E. *Hospital* may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined in the Medicare program.

F. *Medicare* shall be defined in the policy and certificate. Medicare may be substantially defined as ''The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended,'' or ''Title I, Part I of Public Law 89–97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof,'' or words of similar import.

G. *Medicare eligible expenses* shall mean expenses of the kinds covered by Medicare, to the extent recognized as reasonable and medically necessary by Medicare.

H. *Physician* shall not be defined more restrictively than as defined in the Medicare program.

I. *Sickness* shall not be defined to be more restrictive than the following:

''Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force.''

The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

Section 6. Policy Provisions

A. Except for permitted preexisting condition clauses as described in Section 7A(1) and Section 8A(1) of this regulation, no policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

B. No Medicare supplement policy or certificate may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

C. No Medicare supplement policy or certificate in force in the state shall contain benefits which duplicate benefits provided by Medicare.

Section 7. Minimum Benefit Standards for Policies or Certificates Issued for Delivery Prior to [insert effective date adopted by state]

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

Drafting Note: This section has been retained for transitional purposes. The purpose of this section is to govern all policies issued prior to the date a state makes its revisions to conform to the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508).

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting

condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

Drafting Note: States that have adopted the NAIC Individual Accident and Sickness Insurance Minimum Standards Model Act should recognize a conflict between Section 6B of that Act and this subsection. It may be necessary to include additional language in the Minimum Standards Model Act that recognizes the applicability of this preexisting condition rule to Medicare supplement policies and certificates.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

Drafting Note: This provision was prepared so that premium changes can be made based upon the changes in policy benefits that will be necessary because of changes in Medicare benefits. States may wish to redraft this provision so as to coincide with their particular authority.

(4) A ''noncancellable, ''guaranteed renewable,'' or ''noncancellable and guaranteed renewable'' Medicare supplement policy shall not:

(a) Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(b) Be cancelled or nonrenewed by the issuer solely on the grounds of deterioration of health.

(5) (a) Except as authorized by the commissioner of this state, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

(b) If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in Paragraph (5)(d), the issuer shall offer certificateholders an individual Medicare supplement policy. The issuer shall offer the certificateholder at least the following choices:

(i) An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

(ii) An individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Section 8B of this regulation.

Drafting Note: Group contracts in force prior to the effective date of the Omnibus Budget Reconciliation Act (OBRA) of 1990 may have existing contractual obligations to continue benefits contained in the group contract. This section is not intended to impair such obligations.

(c) If membership in a group is terminated, the issuer shall:

(i) Offer the certificateholder the conversion opportunities described in Subparagraph (b); or

(ii) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(d) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

Drafting Note: Rate increases otherwise authorized by law are not prohibited by this Paragraph (5).

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits.

B. Minimum Benefit Standards.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(3) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(4) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety percent (90%) of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(5) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B;

(6) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible [$100];

(7) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

Section 8. Benefit Standards for Policies or Certificates Issued or Delivered on or After [insert effective date adopted by state]

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after [insert effective date]. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

Drafting Note: States that have adopted the NAIC Individual Accident and Sickness Insurance Minimum Standards Model Act should recognize a conflict between Section 6B of that Act and this subsection. It may be necessary to include additional language in

the Minimum Standards Model Act that recognizes the applicability of this preexisting condition rule to Medicare supplement policies and certificates.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

Drafting Note: This provision was prepared so that premium changes can be made based on the changes in policy benefits that will be necessary because of changes in Medicare benefits. States may wish to redraft this provision to conform with their particular authority.

(4) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(5) Each Medicare supplement policy shall be guaranteed renewable.

(a) The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.

(b) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(c) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Section 8A(5)(e), the issuer shall offer certificateholders an individual Medicare supplement policy which (at the option of the certificateholder)

(i) Provides for continuation of the benefits contained in the group policy, or

(ii) Provides for benefits that otherwise meet the requirements of this subsection.

(d) If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(i) Offer the certificateholder the conversion opportunity described in Section 8A(5)(c), or

(ii) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(e) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

Drafting Note: Rate increases otherwise authorized by law are not prohibited by this Paragraph (5).

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(7) (a) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to assistance.

(b) If suspension occurs and if the policyholder or certificateholder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted (effective as of the date of termination of entitlement) as of the termination of entitlement if the policyholder or certificateholder provides notice of loss of entitlement within ninety (90) days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(c) Reinstitution of coverages:

(i) Shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Shall provide for coverage which is substantially equivalent to coverage in effect before the date of suspension; and

(iii) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

B. Standards for Basic (Core) Benefits Common to All Benefit Plans.

Every issuer shall make available a policy or certificate including only the following basic ''core'' package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(3) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of the Medicare Part A eligible expenses for hospitalization paid at the diagnostic related group (DRG) day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

(5) Coverage for the coinsurance amount (or, in the case of hospital outpatient department services, the copayment amount) of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible;

C. Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans ''B'' through ''J'' only as provided by Section 9 of this regulation.

(1) Medicare Part A Deductible: Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.

(3) Medicare Part B Deductible: Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(4) Eighty Percent (80%) of the Medicare Part B Excess Charges: Coverage for eighty percent (80%) of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(5) One Hundred Percent (100%) of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(6) Basic Outpatient Prescription Drug Benefit: Coverage for fifty percent (50%) of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(7) Extended Outpatient Prescription Drug Benefit: Coverage for fifty percent (50%) of outpatient prescription drug charges, after a $250 calendar year deductible to a maximum of $3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(8) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for eighty percent (80%) of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, ''emergency care'' shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(9) Preventive Medical Care Benefit: Coverage for the following preventive health services:

(a) An annual clinical preventive medical history and physical examination that may include tests and services from Subparagraph (b) and patient education to address preventive health care measures.

(b) Any one or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:

(1) Fecal occult blood test or digital rectal examination, or both;

(2) Mammogram;

(3) Dipstick urinalysis for hematuria, bacteriuria and proteinuria;

(4) Pure tone (air only) hearing screening test, administered or ordered by a physician;

(5) Serum cholesterol screening (every five (5) years);

(6) Thyroid function test;

(7) Diabetes screening.

(c) Influenza vaccine administered at any appropriate time during the year and tetanus and diphtheria booster (every ten (10) years).

(d) Any other tests or preventive measures determined appropriate by the attending physician.

Reimbursement shall be for the actual charges up to one hundred percent (100%) of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(10) At-Home Recovery Benefit: Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

(a) For purposes of this benefit, the following definitions shall apply:

(i) ''Activities of daily living'' include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(ii) ''Care provider'' means a duly qualified or licensed home health aide or homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(iii) ''Home'' shall mean any place used by the insured as a place of residence, provided that the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(iv) ''At-home recovery visit'' means the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four-hour period of services provided by a care provider is one visit.

(b) Coverage Requirements and Limitations.

(i) At-home recovery services provided must be primarily services which assist in activities of daily living.

(ii) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

(iii) Coverage is limited to:

(I) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment;

(II) The actual charges for each visit up to a maximum reimbursement of $40 per visit;

(III) $1,600 per calendar year;

(IV) Seven (7) visits in any one week;

(V) Care furnished on a visiting basis in the insured's home;

(VI) Services provided by a care provider as defined in this section;

(VII) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded;

(VIII) At-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight (8) weeks after the service date of the last Medicare approved home health care visit.

(c) Coverage is excluded for:

(i) Home care visits paid for by Medicare or other government programs; and

(ii) Care provided by family members, unpaid volunteers or providers who are not care providers.

(11) New or Innovative Benefits: An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies.

Drafting Note: The Omnibus Budget Reconciliation Act 1990, 42 U.S.C. § 1395ss(p)(7), does not prohibit the issuers of Medicare supplement policies, through an arrangement with a vendor for discounts from the vendor, from making available discounts from the vendor to the policyholder or certificateholder for the purchase of items or services not covered under its Medicare supplement policies (for example: discounts on hearing aids or eyeglasses).

Drafting Note: Use of new or innovative benefits may be appropriate to add coverage

or access to such benefits as prescription drugs, at-home recovery services and preventive medical care. Any such innovative benefit, however, should offer uniquely different or significantly expanded coverage.

Drafting Note: The NAIC discussed including inflation protection for prescription drugs, at-home recovery benefits, and preventive care benefits. However, because of the lack of an appropriate mechanism for indexing these benefits, NAIC has not included indexing at this point in time. However, NAIC is committed to evaluating the effectiveness of these benefits without inflation protection, and will revisit the issue. NAIC has determined that OBRA does not authorize NAIC to delegate the authority for indexing these benefits to a federal agency without an amendment to federal law.

Section 9. Standard Medicare Supplement Benefit Plans

A. An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic core benefits, as defined in Section 8B of this regulation.

B. No groups, packages or combinations of Medicare supplement benefits other than those listed in this section shall be offered for sale in this state, except as may be permitted in Section 8C(11) and in Section 10 of this regulation.

C. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans ''A'' through ''J'' listed in this subsection and conform to the definitions in Section 4 of this regulation. Each benefit shall be structured in accordance with the format provided in Sections 8B and 8C and list the benefits in the order shown in this subsection. For purposes of this section, ''structure, language, and format'' means style, arrangement and overall content of a benefit.

D. An issuer may use, in addition to the benefit plan designations required in Subsection C, other designations to the extent permitted by law.

Drafting Note: It is anticipated that if a state determines that it will authorize the sale of only some of these benefit plans, the letter codes used in this regulation will be preserved. The Guide to Health Insurance for People with Medicare'' published jointly by the NAIC and the Health Care Financing Administration will contain a chart comparing the ten possible combinations. In order for consumers to compare specific policy choices, it will be important that a uniform ''naming'' system be used. Thus, if only plans ''A,'' ''B,'' ''D,'' ''F'' and ''H'' (for example) are authorized in a state, these plans should retain these alphabetical designations. However, an issuer may use, in addition to these alphabetical designations, other designations as provided in Section 9D of this regulation.

E. Make-up of benefit plans:

(1) Standardized Medicare supplement benefit plan ''A'' shall be limited to the basic (core) benefits common to all benefit plans, as defined in Section 8B of this regulation.

(2) Standardized Medicare supplement benefit plan ''B'' shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible as defined in Section 8C(1).

(3) Standardized Medicare supplement benefit plan ''C'' shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible and medically necessary emergency care in a foreign country as defined in Sections 8C (1), (2), (3) and (8) respectively.

(4) Standardized Medicare supplement benefit plan ''D'' shall include only the following: The core benefit (as defined in Section 8B of this regulation), plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in an foreign country and the at-home recovery benefit as defined in Sections 8C (1), (2), (8) and (10) respectively.

(5) Standardized Medicare supplement benefit plan ''E'' shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical care as defined in Sections 8C (1), (2), (8) and (9) respectively.

(6) Standardized Medicare supplement benefit plan ''F'' shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Sections 8C (1), (2), (3), (5) and (8) respectively.

(7) Standardized Medicare supplement benefit high deductible plan ''F'' shall include only the following: 100% of covered expenses following the payment of the annual high deductible plan ''F'' deductible. The covered expenses include the core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Sections 8C (1), (2), (3), (5) and (8) respectively. The annual high deductible plan ''F'' deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan ''F'' policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan ''F'' deductible shall be $1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.

(8) Standardized Medicare supplement benefit plan ''G'' shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, eighty percent (80%) of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Sections 8C (1), (2), (4), (8) and (10) respectively.

(9) Standardized Medicare supplement benefit plan ''H'' shall consist of only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit and medically necessary emergency care in a foreign country as defined in Sections 8C (1), (2), (6) and (8) respectively.

(10) Standardized Medicare supplement benefit plan ''I'' shall consist of only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country and at-home recovery benefit as defined in Sections 8C (1), (2), (5), (6), (8) and (10) respectively.

(11) Standardized Medicare supplement benefit plan ''J'' shall consist of only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care and at-home recovery benefit as defined in Sections 8C (1), (2), (3), (5), (7), (8), (9) and (10) respectively.

(12) Standardized Medicare supplement benefit high deductible plan ''J'' shall consist of only the following: 100% of covered expenses following the payment of the annual high deductible plan ''J'' deductible. The covered expenses include the core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as defined in Sections 8C (1), (2), (3), (5), (7), (8), (9) and (10) respectively. The annual high deductible plan ''J'' deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan ''J'' policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be $1500 for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.

Drafting Note: A state may determine by statute or regulation which of the above benefit plans may be sold in that state. The core benefit plan must be made available by all issuers. Therefore, the core benefit plan must be one of the authorized benefit plans adopted by a state. In no event, however, may a state authorize the sale of more than 10 standardized Medicare supplement benefit plans (that is, 9 plus the core policy), plus the two (2) high deductible plans, at the same time.

Drafting Note: The Omnibus Budget Reconciliation Act of 1990 preempts state mandated benefits in Medicare supplement policies or certificates, except for those states which have been granted a waiver for nonstandardized plans.

Section 10. Medicare Select Policies and Certificates

A. (1) This section shall apply to Medicare Select policies and certificates, as defined in this section.

Drafting Note: This section should be adopted by states designated by the Secretary of Health and Human Services to participate in the Medicare Select Program. Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 (section 1882(t) of Title XVIII of the Social Security Act) authorized a three-year, fifteen-state program with states to be designated by the Secretary. Additional states may be authorized by future changes to federal law to apply the Medicare Select Program requirements to existing preferred provider arrangements.

(2) No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

B. For the purposes of this section:

(1) *Complaint* means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.

(2) *Grievance* means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.

(3) *Medicare Select issuer* means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.

(4) *Medicare Select policy* or *Medicare Select certificate* mean respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(5) *Network provider* means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

(6) *Restricted network provision* means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(7) *Service area* means the geographic area approved by the commissioner within which an issuer is authorized to offer a Medicare Select policy.

C. The commissioner may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 if the commissioner finds that the issuer has satisfied all of the requirements of this regulation.

D. A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the commissioner.

E. A Medicare Select issuer shall file a proposed plan of operation with the commissioner in a format prescribed by the commissioner. The plan of operation shall contain at least the following information:

(1) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

(a) Services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

(b) The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

(i) To deliver adequately all services that are subject to a restricted network provision; or

(ii) To make appropriate referrals.

(c) There are written agreements with network providers describing specific responsibilities.

(d) Emergency care is available twenty-four (24) hours per day and seven (7) days per week.

(e) In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This paragraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(2) A statement or map providing a clear description of the service area.

(3) A description of the grievance procedure to be utilized.

(4) A description of the quality assurance program, including:

(a) The formal organizational structure;

(b) The written criteria for selection, retention and removal of network providers; and

(c) The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.

(5) A list and description, by specialty, of the network providers.

(6) Copies of the written information proposed to be used by the issuer to comply with Subsection I.

(7) Any other information requested by the commissioner.

F. (1) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing the changes. Changes shall be considered approved by the commissioner after thirty (30) days unless specifically disapproved.

(2) An updated list of network providers shall be filed with the commissioner at least quarterly.

G. A Medicare Select policy or certificate shall not restrict payment for

covered services provided by non-network providers if:

(1) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and

(2) It is not reasonable to obtain services through a network provider.

H. A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

I. A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(1) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

(a) Other Medicare supplement policies or certificates offered by the issuer; and

(b) Other Medicare Select policies or certificates.

(2) A description (including address, phone number and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals and other providers.

(3) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized.

(4) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(5) A description of limitations on referrals to restricted network providers and to other providers.

(6) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

(7) A description of the Medicare Select issuer's quality assurance program and grievance procedure.

J. Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Subsection I of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

K. A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(1) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(2) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(3) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(4) If a grievance is found to be valid, corrective action shall be taken promptly.

(5) All concerned parties shall be notified about the results of a grievance.

(6) The issuer shall report no later than each March 31st to the commissioner regarding its grievance procedure. The report shall be in a format prescribed by the commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

L. At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

M. (1) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six (6) months.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

N. Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(1) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies and certificates available without requiring evidence of insurability.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

O. A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

Section 11. Open Enrollment

A. An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six (6) month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age.

B. (1) If an applicant qualifies under Subsection A and submits an application during the time period referenced in Subsection A and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the

issuer shall not exclude benefits based on a preexisting condition.

(2) If the applicant qualifies under Subsection A and submits an application during the time period referenced in Subsection A and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Secretary shall specify the manner of the reduction under this subsection.

Drafting Note: The Secretary has developed regulations pursuant to HIPAA regarding methods of counting creditable coverage, which govern the way the reduction is to be applied in Section 11B(2).

C. Except as provided in Subsection B and Section 23, Subsection A shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective.

Section 12. Guaranteed Issue for Eligible Persons

A. Guaranteed Issue—(1) Eligible persons are those individuals described in subsection B who apply to enroll under the policy not later than sixty-three (63) days after the date of the termination of enrollment described in subsection B, and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection C that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

B. Eligible Persons—An eligible person is an individual described in any of the following paragraphs:

(1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual;

Drafting Note: Paragraph (1) above uses the federal legislative language from the Balanced Budget Act of 1997 (P.L. 105–33) that defines an eligible person as an individual with respect to whom an employee welfare benefit plan terminates, or ceases to provide ''all'' health benefits that supplement Medicare. There was protracted discussion among the drafters about the interpretation of ''all'' in this context: if the employer drops some supplemental benefits, but not all such benefits, from its welfare plan, should the individual be eligible for a guaranteed issue Medicare supplement product? This question may become crucial to certain individuals depending on the benefits dropped by the employer. Federal legislative history appears to indicate the intention that the word ''all'' be strictly construed so as to require termination or cessation of all supplemental health benefits. States, however, can provide greater protections to beneficiaries and may wish to include, as eligible persons, individuals who have lost ''some or all'' or ''substantially all'' of their supplemental health benefits, to encompass situations where a change is made in an employee welfare benefit plan that reduces the amount of supplemental health benefits available to the individual. States that consider alternative language are reminded to consider the impact of issues such as plan changes that result in adverse selection, duplicate coverage, triggering the requirement for plan administrator notice (see Section 12D) and other issues.

(2) The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, and any of the following circumstances apply:

(i) The organization's or plan's certification [under this part] has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(ii) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856), or the plan is terminated for all individuals within a residence area;

(iii) The individual demonstrates, in accordance with guidelines established by the Secretary, that:

(I) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(II) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(iv) The individual meets such other exceptional conditions as the Secretary may provide.''

(3) (a) The individual is enrolled with:

(i) An eligible organization under a contract under Section 1876 (Medicare risk or cost);

(ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(iii) An organization under an agreement under Section 1833(a)(1)(A) (health care prepayment plan); or

(iv) An organization under a Medicare Select policy; and

(b) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under Section 12B(2).

Drafting Note: Section 3(a)(iv) above is not required if there is a provision in state law or regulation that provides for the continuation or conversion of Medicare Select policies or certificates.

(4) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(a) (i) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(ii) Of other involuntary termination of coverage or enrollment under the policy;

(b) The issuer of the policy substantially violated a material provision of the policy; or

(c) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

Drafting Note: The reference to ''insolvency of the issuer'' in Paragraph 4(a) above is not required if there is a provision in state law or regulation that provides for the continuation or conversion of Medicare supplement policies or certificates. The reference to ''substantially violated a material provision of the policy'' in Paragraph 4(b) above is expected to be amplified by the Secretary when federal regulations are issued pursuant to the Balanced Budget Act of 1997 (P.L. 105–33).

(5) (a) The individual was enrolled under a Medicare supplement policy

and terminates enrollment and subsequently enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, any eligible organization under a contract under Section 1876 (Medicare risk or cost), any similar organization operating under demonstration project authority, an organization under an agreement under section 1833(a)(1)(A) (health care prepayment plan), or a Medicare Select policy; and

(b) The subsequent enrollment under subparagraph (a) is terminated by the enrollee during any period within the first twelve (12) months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1851(e) of the federal Social Security Act); or

(6) The individual, upon first becoming eligible for benefits under part A of Medicare at age 65, enrolls in a Medicare+Choice plan under part C of Medicare, and disenrolls from the plan by not later than twelve (12) months after the effective date of enrollment.

Drafting Note: Federal law provides a guaranteed issue right to a Medicare supplement insurance product to individuals who enroll in Medicare Part B at age 65. States may wish to consider extending this right to other classes of individuals, such as those who postpone enrollment in Medicare Part B until after age 65 because they are working and are enrolled in a group health insurance plan.

C. Products to Which Eligible Persons are Entitled—The Medicare supplement policy to which eligible persons are entitled under:

(1) Section 12B(1), (2), (3) and (4) is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, or F offered by any issuer.

(2) Section 12B(5) is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Subsection C(1).

(3) Section 12B(6) shall include any Medicare supplement policy offered by any issuer.

Drafting Note: Under federal law, for states that are exempted from standardization and offer benefit packages other than Plans A through J, the references to benefit packages above are deemed references to comparable benefit packages offered in that state. Those states should amend the language accordingly.

D. Notification provisions—(1) At the time of an event described in Subsection B of this section because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Subsection A. Such notice shall be communicated contemporaneously with the notification of termination.

(2) At the time of an event described in Subsection B of this section because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Section 12A. Such notice shall be communicated within ten working days of the issuer receiving notification of disenrollment.

Drafting Note: States should ensure that educational and public information materials it develops related to Medicare includes a thorough description of the rights outlined in Section 12D.

Section 13. Standards for Claims Payment

A. An issuer shall comply with section 1882(c)(3) of the Social Security Act (as enacted by section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987 (OBRA) 1987, Pub. L. No. 100–203) by:

(1) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

(2) Notifying the participating physician or supplier and the beneficiary of the payment determination;

(3) Paying the participating physician or supplier directly;

(4) Furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;

(5) Paying user fees for claim notices that are transmitted electronically or otherwise; and

(6) Providing to the Secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

B. Compliance with the requirements set forth in Subsection A above shall be certified on the Medicare supplement insurance experience reporting form.

Section 14. Loss Ratio Standards and Refund or Credit of Premium

A. Loss Ratio Standards—(1)(a) A Medicare Supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

(i) At least seventy-five percent (75%) of the aggregate amount of premiums earned in the case of group policies; or

(ii) At least sixty-five percent (65%) of the aggregate amount of premiums earned in the case of individual policies;

(b) Calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for the period and in accordance with accepted actuarial principles and practices.

(2) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(3) For purposes of applying Subsection A(1) of this section and Subsection C(3) of Section 15 only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.

Drafting Note: Subsection A(3) replicates language contained in the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101–508). It allows direct mail group policies sold on an individual basis to meet the minimum loss ratio required of individual business (65%) rather than that required of group business (75%). The NAIC eliminated this concept from this regulation in 1987 (I Proceedings of the NAIC, pp. 651, 673

(1988)). At that time, NAIC required direct mail group business to meet the same loss ratio requirement as other group business, regardless of whether the business was sold on an individual basis. The NAIC encourages states to apply the 75% loss ratio to all group business. Although NAIC is restricted from making revisions to its models that are not in conformance with OBRA 1990, states are free to impose more stringent requirements than OBRA.

(4) For policies issued prior to [insert effective date from Section 24 of this model, the effective date of the states regulation implementing the requirements of OBRA 1990], expected claims in relation to premiums shall meet:

(a) The originally filed anticipated loss ratio when combined with the actual experience since inception;

(b) The appropriate loss ratio requirement from Subsection A(1)(a)(i) and (ii) when combined with actual experience beginning with [insert effective date of this revision] to date; and

(c) The appropriate loss ratio requirement from Subsection A(1)(a)(i) and (ii) over the entire future period for which the rates are computed to provide coverage.

Drafting Note: The appropriate loss ratio requirement from Subsection A(1)(a)(i) and (ii) for all group policies subject to an individual loss ratio standard when issued is 65 percent. States may amend Section 13A(4) to permit or require aggregation of closed blocks of business upon approval of the Health Care Financing Administration.

B. Refund or Credit Calculation—(1) An issuer shall collect and file with the commissioner by May 31 of each year the data contained in the applicable reporting form contained in Appendix A for each type in a standard Medicare supplement benefit plan.

(2) If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(3) For the purposes of this section, policies or certificates issued prior to [insert effective date from Section 24 of this model, the effective date of the states regulation implementing the requirements of OBRA 1990], the issuer shall make the refund or credit calculation separately for all individual policies (including all group policies subject to an individual loss ratio standard when issued) combined and all other group policies combined for experience after the [insert effective date of this amendment]. The first report shall be due by May 31, [insert (effective year + 2) of this amendment].

Drafting Note: Subsection B(3) implements the requirements of Section 171 of the Social Security Act Amendments of 1994 that require a refund or credit calculation for pre-standardized Medicare supplement policies, but only for experience subsequent to the date the state amends its regulation.

(4) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for thirteen-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

C. Annual filing of Premium Rates—An issuer of Medicare supplement policies and certificates issued before or after the effective date of [insert citation to state's regulation] in this state shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by policy duration for approval by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years.

As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the commissioner, in accordance with the applicable filing procedures of this state:

(1)(a) Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing.

(b) An issuer shall make premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(c) If an issuer fails to make premium adjustments acceptable to the commissioner, the commissioner may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this section.

(2) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

D. Public Hearings—The commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after the effective date of [insert citation to state's regulation] if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in a manner deemed appropriate by the commissioner.

Drafting Note: This section does not in any way restrict a commissioner's statutory authority, elsewhere granted, to approve or disapprove rates.

Section 15. Filing and Approval of Policies and Certificates and Premium Rates

A. An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner in accordance with filing requirements and procedures prescribed by the commissioner.

B. An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner.

C. (1) Except as provided in Paragraph (2) of this subsection, an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(2) An issuer may offer, with the approval of the commissioner, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

(a) The inclusion of new or innovative benefits;

(b) The addition of either direct response or agent marketing methods;

(c) The addition of either guaranteed issue or underwritten coverage;

(d) The offering of coverage to individuals eligible for Medicare by reason of disability.

(3) For the purposes of this section, a ''type'' means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.

D. (1) Except as provided in Paragraph (1)(a), an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this regulation that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.

(a) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer shall no longer offer for sale the policy form or certificate form in this state.

(b) An issuer that discontinues the availability of a policy form or certificate form pursuant to Subparagraph (a) shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(2) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(3) A change in the rating structure or methodology shall be considered a discontinuance under Paragraph (1) unless the issuer complies with the following requirements:

(a) The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.

(b) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential which is in the public interest.

E. (1) Except as provided in Paragraph (2), the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in [insert citation to Section 13 of NAIC Medicare Supplement Insurance Model Regulation].

(2) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

Drafting Note: It has come to the attention of the NAIC that the use of attained age rating in the determination of rates in Medicare supplement policies may result in situations to which a regulatory response is desirable. States should assess their Medicare supplement marketplace to determine whether a regulatory response is needed. The following provisions may be included as a new subsection to Section 14. The first option prohibits insurers from attained age rating as a methodology for setting rates. The second option does not prohibit the use of attained age rating but requires Medicare supplement insurers who do use attained age rating as a rate setting methodology to apply the age component to its rates annually. The effective date of the regulation should provide sufficient time for insurers to re-rate approved policy forms in accordance with Section 14A and for the insurance department to approve (according to its rate filing practices and procedures), such re-ratings prior to the effective date of the regulation.

Option 1

F. An issuer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued after the effective date of the amendment of this regulation based upon attained age rating as a structure or methodology.

Option 2

F. An issuer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued after the effective date of the amendment of this regulation based upon a structure or methodology with any groupings of attained ages greater than one year. The ratio between rates for successive ages shall increase smoothly as age increases.

Section 16. Permitted Compensation Arrangements

A. An issuer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

B. The commission or other compensation provided in subsequent (renewal) years must be the same as that provided in the second year or period and must be provided for no fewer than five (5) renewal years.

C. No issuer or other entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced.

D. For purposes of this section, ''compensation'' includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.

Section 17. Required Disclosure Provisions

A. General Rules—(1) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of the provision shall be consistent with the type of contract issued. The provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums

and any automatic renewal premium increases based on the policyholder's age.

(2) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(3) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as ''usual and customary,'' ''reasonable and customary'' or words of similar import.

(4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as ''Preexisting Condition Limitations.''

(5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(6) (a) Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration and in a type size no smaller than 12 point type. Delivery of the Guide shall be made whether or not the policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this regulation. Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application and acknowledgement of receipt of the Guide shall be obtained by the issuer. Direct response issuers shall deliver the Guide to the applicant upon request but not later than at the time the policy is delivered.

(b) For the purposes of this section, ''form'' means the language, format, type size, type proportional spacing, bold character, and line spacing.

B. Notice Requirements—(1) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificateholders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the commissioner. The notice shall:

(a) Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate, and

(b) Inform each policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) The notices shall not contain or be accompanied by any solicitation.

C. Outline of Coverage Requirements for Medicare Supplement Policies—(1) Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of the outline from the applicant; and (2) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name:

Notice: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued.''

(3) The outline of coverage provided to applicants pursuant to this section consists of four parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than twelve (12) point type. All plans A–J shall be shown on the cover page, and the plans that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(4) The following items shall be included in the outline of coverage in the order prescribed below.

[COMPANY NAME]
Outline of Medicare Supplement Coverage-Cover Page:
Benefit Plans _____ [insert letters of plans being offered]

Medicare supplement insurance can be sold in only ten standard plans plus two high deductible plans. This chart shows the benefits included in each plan. Every company must make available Plan ''A''. Some plans may not be available in your state.

Basic Benefits: Included in All Plans.

Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.

Medical Expenses: Part B coinsurance (generally 20% of Medicare-approved expenses), or, in the case of hospital outpatient department services, applicable copayments.

Blood: First three pints of blood each year.

A	B	C	D	E	F F*	G	H	I	J J*
Basic Benefits.	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
		Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
		Part B Deductible			Part B Deductible				Part B Deductible
					Part B Excess (100%)	Part B Excess (80%)		Part B Excess (100%)	Part B Excess (100%)
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency
			At-Home Recovery			At-Home Recovery		At-Home Recovery	At-Home Recovery
							Basic Drugs ($1,250 Limit)	Basic Drugs ($1,250 Limit)	Extended Drugs ($3,000 Limit)
				Preventive Care					Preventive Care

*Plans F and J also have an option called a high deductible plan F and a high deductible plan J. These high deductible plans pay the same or offer the same benefits as Plans F and J after one has paid a calendar year [$1500] deductible. Benefits from high deductible plans F and J will not begin until out-of-pocket expenses are [$1500]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but does not include, in plan J, the plan's separate prescription drug deductible or, in Plans F and J, the plan's separate foreign travel emergency deductible.

PREMIUM INFORMATION [Boldface Type]

We [insert issuer's name] can only raise your premium if we raise the premium for all policies like yours in this State. [If the premium is based on the increasing age of the insured, include information specifying when premiums will change.]

DISCLOSURES [Boldface Type]

Use this outline to compare benefits and premiums among policies.

READ YOUR POLICY VERY CAREFULLY [Boldface Type]

This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

RIGHT TO RETURN POLICY [Boldface Type]

If you find that you are not satisfied with your policy, you may return it to [insert issuer's address]. If you send the policy back to us within 30 days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.

POLICY REPLACEMENT [Boldface Type]

If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.

NOTICE [Boldface Type]

This policy may not fully cover all of your medical costs.

[For agents:]

Neither [insert company's name] nor its agents are connected with Medicare.

[For direct response:]

[insert company's name] is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security Office or consult ''*The Medicare Handbook*'' for more details.

COMPLETE ANSWERS ARE VERY IMPORTANT [Boldface Type]

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Review the application carefully before you sign it. Be certain that all information has been properly recorded.

[Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. No more than four plans may be shown on one chart. For purposes of illustration, charts for each plan are included in this regulation. An issuer may use additional benefit plan designations on these charts pursuant to Section 9D of this regulation.]

[Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the commissioner.]

PLAN A—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	Plan pays	You pay
Hospitalization*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[764]	$0	$[764] (Part A deductible)
61st thru 90th day	All but $[191] a day	$[191] a day	0
91st day and after:			
—While using 60 lifetime reserve days	All but $[382] a day	$[382] a day	0

PLAN A—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD—Continued

Services	Medicare pays	Plan pays	You pay
—Once lifetime reserve days are used:			
—Additional 365 days	0	100% of Medicare eligible expenses.	0
—Beyond the additional 365 days	0	0	All costs
Skilled Nursing Facility Care*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	0	0
21st thru 100th day	All but $[95.50] a day	0	Up to $[95.50] a day 3
101st day and after	0	0	All costs
Blood			
First 3 pints	0	3 pints	0
Additional amounts	100%	0	0
Hospice Care			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care.	0	Balance

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

PLAN A—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

Services	Medicare pays	Plan pays	You pay
Medical Expenses			
In or out of the hospital and outpatient hospital treatment, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	0
Part B Excess Charges (Above Medicare Approved Amounts.	0	0	All costs
Blood			
First 3 pints	0	All costs	0
Next $100 of Medicare Approved Amounts*	0	0	$100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
Clinical Laboratory Services			
Blood tests for diagnostic services	100%	0	0

PARTS A & B

Home Health Care			
Medicare approved services:			
—Medically necessary skilled care services and medical supplies.	100%	0	0
—Durable medical equipment First $100 of Medicare Approved Amounts*.	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

PLAN B—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	Plan pays	You pay
Hospitalization*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[764]	$[764](Part A deductible)	$0
61st thru 90th day	All but $[191] a day	$[191] a day	0

PLAN B—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD—Continued

Services	Medicare pays	Plan pays	You pay
91st day and after:			
—While using 60 lifetime reserve days	All but $[382] a day	$[382] a day	0
—Once lifetime reserve days are used:			
—Additional 365 days	0	100% of Medicare eligible expenses.	0
—Beyond the additional 365 days	0	0	All costs
Skilled Nursing Facility Care*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	0	0
21st thru 100th day	All but $[95.50] a day	0	Up to $[95.50] a day
101st day and after	0	0	All costs
Blood			
First 3 pints	0	3 pints	0
Additional amounts	100%	0	0
Hospice Care			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care.	0	Balance

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

PLAN B—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

Services	Medicare pays	Plan pays	You pay
Medical Expenses			
In or out of the hospital and outpatient hospital treatment, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $100 of Medicare Approved Amounts.*	$0	$0	$100 (Part B deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	0
Part B Excess Charges (Above Medicare Approved Amounts).	0	0	All costs
Blood			
First 3 pints	0	All costs	0
Next $100 of Medicare Approved Amounts.*	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
Clinical Laboratory Services			
Blood Test for Diagnostic Services	100%	0	0
PARTS A & B			
Home Health Care			
Medicare approved services:			
Medically necessary skilled care services and medical supplies.	100%	0	0
Durable medical equipment			
First $100 of Medicare Approved Amounts.*	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

PLAN C—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	Plan pays	You pay
Hospitalization*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[764]	$[764](Part A deductible)	$0

PLAN C—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD—Continued

Services	Medicare pays	Plan pays	You pay
61st thru 90th day	All but $[191] a day	$[191] a day	0
91st day and after:			
—While using 60 lifetime reserve days	All but $[382] a day	$[382] a day	0
—Once lifetime reserve days are used:			
—Additional 365 days	0	100% of Medicare eligible expenses.	0
—Beyond the additional 365 days	0	0	All costs
Skilled Nursing Facility Care*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	0	0
21st thru 100th day	All but $[95.50] a day	Up to $[95.50] a day	0
101st day and after	0	0	All costs
Blood			
First 3 pints	0	3 pints	0
Additional amounts	100%	0	0
Hospice Care			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for outpatient drugs and inpatient respite care.	0	Balance

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

PLAN C—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

Services	Medicare pays	Plan pays	You pay
Medical Expenses			
In or out of the hospital and outpatient hospital treatment, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $100 of Medicare Approved Amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	0
Part B Excess Charges (Above Medicare Approved Amounts).	0	0	All costs
Blood			
First 3 pints	0	All costs	0
Next $100 of Medicare Approved Amounts*	0	100 (Part B deductible)	0
Remainder of Medicare Approved Amounts	80%	20%	0
Clinical Laboratory Services			
Blood tests for diagnostic services	100%	0	0

PARTS A & B

Home Health Care			
Medicare approved services;			
—Medically necessary skilled care services and medical supplies.	100%	0	0
—Durable medical equipment First $100 of Medicare Approved Amounts*.	0	100 (Part B deductible)	0
Remainder of Medicare Approved Amounts	80%	20%	0

OTHER BENEFITS—NOT COVERED BY MEDICARE

Foreign Travel			
Not covered by Medicare:			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	0	0	0

PLAN C—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR—Continued

Services	Medicare pays	Plan pays	You pay
Remainder of Charges	0	80% to a lifetime maximum benefit of $50,000.	20% and amounts over the $50,000 lifetime maximum.

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

PLAN D—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	Plan pays	You pay
Hospitalization*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[764]	$[764] (Part A deductible)	0
61st thru 90th day	All but $[191] a day	$[191] a day	0
91st day and after:			
—While using 60 lifetime reserve days	All but $[382] a day	$[382] a day $0	0
—Once lifetime reserve days are used:			
—Additional 365 days	0	100% of Medicare eligible expenses.	0
—Beyond the additional 365 days	0	0	All costs
Skilled Nursing Facility Care*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	0	0
21st thru 100th day	All but $[95.50] a day	Up to $[95.50] a day	0
101st day and after	0	0	All costs
Blood			
First 3 pints	0	3 pints	0
Additional amounts	100%	0	0
Hospice Care			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for outpatient drugs and inpatient respite care.	0	Balance

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

PLAN D—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

Services	Medicare pays	Plan pays	You pay
Medical Expenses			
In or out of the hospital and outpatient hospital treatment, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	0
Part B Excess Charges (Above Medicare Approved Amounts).	0	0	All costs
Blood			
First 3 pints	0	All costs	0
Next $100 of Medicare Approved Amounts*	0	0	$100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
Clinical Laboratory Services			
Blood tests for diagnostic services	100%	0	0

PARTS A & B

Home Health Care			
Medicare approved services:			

PLAN D—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR—Continued

Services	Medicare pays	Plan pays	You pay
—Medically necessary skilled care services and medical supplies.	100%	0	0
—Durable medical equipment			
First $100 of Medicare Approved Amounts*	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
At-home recovery services—not covered by Medicare:			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan:			
—Benefit for each visit	0	Actual charges to $40 a visit.	Balance
—Number of visits covered (Must be received within 8 weeks of last Medicare Approved visit).	0	Up to the number of Medicare Approved visits, not to exceed 7 each week.	
—Calendar year maximum	0	1,600	
OTHER BENEFITS—NOT COVERED BY MEDICARE			
Foreign Travel—Not Covered by Medicare			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	0	0	250
Remainder of charges	0	80% to a lifetime maximum benefit of $50,000.	20% and amounts over the $50,000 lifetime maximum

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

PLAN E—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	Plan pays	You pay
Hospitalization*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[764]	$[764] (Part deductible	$0
61st thru 90th day	All but $[191) a day	$[191] a day	0
91st day and after:			
—While Using 60 lifetime reserve days	All but $[382] a day	$[382] a day	0
—Once lifetime reserve days are used:			
—Additional 365 days	0	100% of Medicare eligible expenses.	0
—Beyond the additional 365 days	0	0	All costs
Skilled Nursing Facility Care*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	0	0
21st thru 100th day	All but $[95.50] a day	Up to $[95.50] a day	0
101st day and after	0	0	All costs
Blood			
First 3 pints	0	3 pints	0
Additional amounts	100%	0	0
Hospice Care			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care.	0	Balance

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

PLAN E—MEDICARE (PART B)—MEDICAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	Plan pays	You pay
Medical Expenses			
In or out of the hospital and outpatient hospital treatment, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $100 of Medicare Approved Amounts [1]	$0	$0	$100 (Part B deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	0
Part B Excess Charges (Above Medicare Approved Amounts).	0	0	All costs
Blood			
First 3 pints	0	All costs	0
Next $100 of Medicare Approved Amounts [1]	0	0	$100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
Clinical Laboratory Services			
Blood tests for diagnostic service	100%	0	0
PARTS A & B			
Home Health Care			
Medicare approved services:			
Medically necessary skilled care services and medical supplies	100%	0	0
—Durable medical equipment First $100 of Medicare Approved Amounts [1].	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
OTHER BENEFITS—NOT COVERED BY MEDICARE			
Foreign Travel—Not Covered By Medicare			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	0	0	250
Remainder of charges	0	80% to a lifetime maximum benefit of $50,000.	20% and amounts over the $50,000 lifetime maximum
Preventive Medical Care Benefit—Not Covered by Medicare [2]			
Some annual physical and preventive tests and services such as: digital rectal exam, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare:			
First $120 each calendar year	0	120	0
Additional charges	0	0	All costs

[1] Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

[2] Medicare benefits are subject to change. Please consult the latest Guide to Health Insurance for People with Medicare.

PLAN F OR HIGH DEDUCTIBLE PLAN F—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	After you pay $1500 deductible,[2] plan pays	In addition to $1500 deductible,[2] you pay
Hospitalization [1]			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[764]	$[764] (Part A deductible)	$0
61st thru 90th day	All but $[191] a day	$[191] a day	0
91st day and after:			
While using 60 lifetime reserve days	All but $[382] a day	$[382] a day	0
Once lifetime reserve days are used:			
Additional 365 days	0	100% of Medicare eligible expenses.	0
Beyond the additional 365 days	0	0	All costs

PLAN F OR HIGH DEDUCTIBLE PLAN F—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD—Continued

Services	Medicare pays	After you pay $1500 deductible,[2] plan pays	In addition to $1500 deductible,[2] you pay
Skilled Nursing Facility Care [1]			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	0	0
21st thru 100th day	All but $[95.50] a day	Up to $[95.50] a day	0
101st day and after	0	0	All costs
Blood			
First 3 pints	0	3 pints	0
Additional amounts	100%	0	0
Hospice Care			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care.	0	Balance
MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR			
Medical Expenses			
In or out of the hospital and outpatient hospital treatment, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $100 of Medicare approved amounts [1]	0	100 (Part B deductible	0
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	0
Part B excess charges (Above Medicare approved amounts).	0	100%	0
BLOOD			
First 3 pints	0	All costs	0
Next $100 of Medicare approved amounts [1]	0	100 (Part B deductible	0
Remainder of Medicare approved amounts	80	20%	0
Clinical Laboratory Services			
Blood tests for diagnostic services	100%	0	0
PARTS A & B			
Home Health Care			
Medicare approved services:			
—Medically necessary skilled care services and medical supplies.	100%	0	0
—Durable medical equipment			
First $100 of Medicare approved amounts [2]	0	100 (Part B deductible	0
Remainder of Medicare approved Amounts	80%	20%	0
OTHER BENEFITS—NOT COVERED BY MEDICARE			
Foreign Travel—Not Covered by Medicare			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	0	0	250
Remainder of charges	0	80% to a lifetime maximum benefit of $50,000.	20% and amounts over the $50,000 life-time maximum

[1] A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

[2] This high deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year [$1500] deductible. Benefits from the high deductible plan F will not begin until out-of-pocket expenses are [$1500]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

PLAN G—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	Plan pays	You pay
Hospitalization*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[764]	$[764] (Part A deductible)	$0
61st thru 90th day	All but $[191] a day	$[191] a day	0
91st day and after:			
—While using 60 lifetime reserve days	All but $[382] a day	$[382] a day	0
—Once lifetime reserve days are used:			
—Additional 365 days	0	100% of Medicare eligible expenses.	
—Beyond the additional 365 days	0	0	All costs
Skilled Nursing Facility Care*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	0	0
21st thru 100th day	All but $[95.50] a day	Up to $[95.50] a day	0
101st day and after	0	0	All costs
Blood			
First 3 pints	0	3 pints	0
Additional amounts	100%	0	0
Hospice Care			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care.	0	Balance

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

PLAN G—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

Services	Medicare pays	Plan pays	You pay
Medical Expenses			
In or out of the hospital and outpatient hospital treatment, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	0
Part B Excess Charges (Above Medicare Approved Amounts).	0	80%	20%
Blood			
First 3 pints	0	All costs	0
Next $100 of Medicare Approved Amounts*	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
Clinical Laboratory Services			
Blood tests for diagnostic services	100%	0	0
PARTS A & B			
Home Health Care			
Medicare approved services:			
—Medically necessary skilled care services and medical supplies.	100%	0	0
—Durable medical equipment			
First $100 of Medicare Approved Amounts*	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
At-home recovery services—not covered by Medicare			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan:			
—Benefit for each visit	0	Actual charges to $40 a visit.	Balance

PLAN G—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR—Continued

Services	Medicare pays	Plan pays	You pay
—Number of visits covered (Must be received within 8 weeks of last Medicare Approved visit).	0	Up to the number of Medicare-approved visits, not to exceed 7 each week.	
—Calendar year maximum	0	1,600	
OTHER BENEFITS—NOT COVERED BY MEDICARE			
Foreign Travel			
Not covered by Medicare:			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	0	0	250
Remainder of Charges	0	80% to a lifetime maximum benefit of $50,000.	20% and amounts over the $50,000 lifetime maximum.

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

PLAN H—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	Plan pays	You pay
Hospitalization*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[764]	$[764] (Part A deductible)	$0
61st thru 90th day	All but $[191] a day	$[191] a day	0
91st day and after:.			
—While using 60 lifetime reserve days	All but $[382] a day	$[382] a day	0
—Once lifetime reserve days are used:			
—Additional 365 days	0	100% of Medicare eligible expenses.	0
—Beyond the additional 365 days	0	0	All costs
Skilled Nursing Facility Care*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	0	0
21st thru 100th day	All but $[95.50] a day	Up to $[95.50] a day	0
101st day and after	0	0	All costs
Blood			
First 3 pints	0	3 pints	0
Additional amounts	100%	0	0
Hospice Care			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care.	0	Balance

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

PLAN H—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

Services	Medicare pays	Plan pays	You pay
Medical Expenses			
In or out of the hospital and outpatient hospital treatment, such as Physi-cian's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	0
Part B Excess Charges (Above Medicare Approved Amounts).	0	0	All costs

PLAN H—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR—Continued

Services	Medicare pays	Plan pays	You pay
Blood			
First 3 pints	0	All costs	0
Next $100 of Medicare Approved Amounts*	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
Clinical Laboratory Services			
Blood tests for diagnostic services	100%	0	0
PARTS A & B			
Home Health Care			
Medicare Approved Services:			
—Medically necessary skilled care services and medical supplies.	100%	0	0
—Durable medical equipment			
First $100 of Medicare Approved Amounts*	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
OTHER BENEFITS—NOT COVERED BY MEDICARE			
Foreign Travel			
Not covered by Medicare—Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	0	0	250
Remainder of charges	0	80% to a lifetime maximum benefit of $50,000.	20% and amounts over the $50,000 lifetime maximum
Basic Outpatient Prescription Drugs—Not Covered by Medicare			
First $250 each calendar year	0	0	250
Next $250 each calendar year	0	50%—$1,250 calendar year maximum benefit.	50%
Over $2,500 each calendar year	0	0	All costs

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

PLAN I—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	Plan pays	You pay
Hospitalization*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[764]	$[764] (Part A deductible)	$0
61st thru 90th day	All but $[191] a day	$[191] a day	0
91st day and after:			
—While using 60 lifetime reserve days	All but $[382] a day	$[382] a day	0
—Once lifetime reserve days are used:			
—Additional 365 days	0	100% of Medicare eligible expenses.	0
—Beyond the additional 365 days	0	0	All costs
Skilled Nursing Facility Care*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	0	0
21st thru 100th day	All but $[95.50] a day	Up to $[95.50] a day	0
1st day and after	0	0	All costs
Blood			
First 3 pints	0	3 pints	0
Additional amounts	100%	0	0

PLAN I—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD—Continued

Services	Medicare pays	Plan pays	You pay
Hospice Care			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care.	0	Balance

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

PLAN I—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

Services	Medicare pays	Plan pays	You pay
Medical Expenses			
In or out of the hospital and outpatient hospital treatment, such as physi-cian's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $100 of Medicare Approved Amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	0
Part B Excess Charges (Above Medicare Approved Amounts).	0	100%	0
Blood			
First 3 pints	0	All costs	0
Next $100 of Medicare Approved Amounts*	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
Clinical Laboratory Services			
Blood test for diagnostic services	100%	0	0
PARTS A & B			
Home Health Care			
Medicare Approved Services:			
—Medically necessary skilled care services and medical supplies.	100%	0	0
—Durable medical equipment			
First $100 of Medicare Approved Amounts*	0	0	100 (Part B deductible)
Remainder of Medicare Approved Amounts	80%	20%	0
At-Home Recovery Services—Not Covered By Medicare—Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan:			
—Benefit for each visit	0	Actual charges to $40 a visit.	Balance
—Number of visits covered (Must be received within 8 weeks of last Medicare Approved visit).	0	Up to the number of Medicare-approved visits, not to exceed 7 each week.	
—Calendar year maximum	0	1,600	
OTHER BENEFITS—NOT COVERED BY MEDICARE			
Foreign Travel—Not Covered By Medicare			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	0	0	250
Remainder of charges	0	80% to a lifetime maximum benefit of $50,000.	20% and amounts over the $50,000 lifetime maximum
Basic Outpatient Prescription Drugs—Not Covered by Medicare			
First $250 each calendar year	0	0	250
Next $250 each calendar year	0	50%—$1,250 calendar year maximum benefit.	50%

PLAN I—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR—Continued

Services	Medicare pays	Plan pays	You pay
Over $2,500 each calendar year	0	0	All costs

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

PLAN J OR HIGH DEDUCTIBLE PLAN J—MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

Services	Medicare pays	After you pay $1500 deductible,** plan pays	In addition to $1500 deductible,** you pay
Hospitalization*			
Semiprivate room and board, general nursing and miscellaneous services and supplies:			
First 60 days	All but $[764]	$[764] (Part A deductible)	$0
61st thru 90th day	All but $[191] a day	$[191] a day	0
91st day and after:			
—While using 60 lifetime reserve days	All but $[382] a day	$[382] a day	0
—Once lifetime reserve days are used:			
—Additional 365 days	0	100% of Medicare eligible expenses.	
—Beyond the additional 365 days	0	0	All costs
Skilled Nursing Facility Care*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital:			
First 20 days	All approved amounts	0	0
21st thru 100th day	All but $[95.50] a day	Up to $[95.50] a day	0
101st day and after	0	0	All costs
Blood			
First 3 pints	0	3 pints	0
Additional amounts	100%	0	0
Hospice Care			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services.	All but very limited coinsurance for out-patient drugs and inpatient respite care.	0	Balance

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**This high deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year [$1500] deductible. Benefits from high deductible plan J will not begin until out-of-pocket expenses are [$1500]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate prescription drug deductible or the plan's separate foreign travel emergency deductible.

PLAN J OR HIGH DEDUCTIBLE PLAN J—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

Services	Medicare pays	After you pay $1500 deductible,** plan pays	In addition to $1500 deductible,** you pay
Medical Expenses			
In or out of the hospital and outpatient hospital treatment, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment:			
First $100 of Medicare Approved Amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	0
Part B Excess Charges (Above Medicare Approved Amounts).	0	100%	0
Blood			
First 3 pints	0	All costs	0
Next $100 of Medicare Approved Amounts.*	0	$100 (Part B deductible)	0
Remainder of Medicare Approved Amounts	80%	20%	0
Clinical Laboratory Services			
Blood tests for diagnostic services	100%	0	0

PLAN J OR HIGH DEDUCTIBLE PLAN J—MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR—Continued

Services	Medicare pays	After you pay $1500 deductible,** plan pays	In addition to $1500 deductible,** you pay
PARTS A & B			
Home Health Care			
Medicare Approved Services:			
—Medically necessary skilled care services and medical supplies.	100%	0	0
—Durable medical equipment First $100 of Medicare Approved Amounts*	0	100 (Part B deductible)	0
Remainder of Medicare Approved Amounts	80%	20%	0
At-home recovery services—not covered by Medicare—Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan:			
—Benefit for each visit	0	Actual charges to $40 a visit.	Balance
—Number of visits covered (Must be received within 8 weeks of last Medicare Approved visit).	0	Up to the number of Medicare Approved visits, not to exceed 7 each week.	
—Calendar year maximum	0	$1,600	
OTHER BENEFITS—NOT COVERED BY MEDICARE			
Foreign Travel—Not Covered by Medicare			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA:			
First $250 each calendar year	0	0	250
Remainder of charges	0	80% to a lifetime maximum benefit of $50,000.	20% and amounts over the $50,000 lifetime maximum
Extended Outpatient Prescription Drugs—Not Covered by Medicare			
First $250 each calendar year	0	0	250
Next $6,000 each calendar year	0	50%—$3,000 calendar year maximum benefit.	50%
Over $6,000 each calendar year	0	0	All costs
***Preventive Medical Care Benefit—Not Covered by Medicare			
Some annual physical and preventive tests and services such as: digital rectal exam, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare:			
First $120 each calendar year	0	120	0
Additional charges	0	0	All costs

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

**This high deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year [$1500] deductible. Benefits from high deductible plan J will not begin until out-of-pocket expenses are [$1500]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate prescription drug deductible or the plan's separate foreign travel emergency deductible.

***Medicare benefits are subject to change. Please consult the latest Guide to Health Insurance for People with Medicare.

D. Notice Regarding Policies or Certificates Which Are Not Medicare Supplement Policies.

(1) Any accident and sickness insurance policy or certificate, other than a Medicare supplement policy a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act (42 U.S.C. § 1395 *et seq.*), disability income policy; or other policy identified in Section 3B of this regulation, issued for delivery in this state to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds. The notice shall be in no less than twelve (12) point type and shall contain the following language:

''THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CONTRACT]. If you are eligible for Medicare, review the Guide

to Health Insurance for People with Medicare available from the company.''

(2) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in Subsection D(1) shall disclose, using the applicable statement in Appendix C, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

Section 18. Requirements for Application Forms and Replacement Coverage

A. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another Medicare supplement or other health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing such questions and statements may be used.

[Statements]

(1) You do not need more than one Medicare supplement policy.

(2) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

(3) You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

(4) The benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your policy will be reinstituted if requested within 90 days of losing Medicaid eligibility.

(5) Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB).

[Questions]

To the best of your knowledge,

(1) Do you have another Medicare supplement policy or certificate in force?

(a) If so, with which company?

(b) If so, do you intend to replace your current Medicare supplement policy with this policy [certificate]?

(2) Do you have any other health insurance coverage that provides benefits similar to this Medicare supplement policy?

(a) If so, with which company?

(b) What kind of policy?

(3) Are you covered for medical assistance through the state Medicaid program:

(a) As a Specified Low-Income Medicare Beneficiary (SLMB)?

(b) As a Qualified Medicare Beneficiary (QMB)?

(c) For other Medicaid medical benefits?

B. Agents shall list any other health insurance policies they have sold to the applicant.

(1) List policies sold which are still in force.

(2) List policies sold in the past five (5) years which are no longer in force.

C. In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

D. Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of the notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

E. The notice required by Subsection D above for an issuer shall be provided in substantially the following form in no less than twelve (12) point type:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE [Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to terminate existing Medicare supplement insurance and replace it with a policy to be issued by [Company Name] Insurance Company. Your new policy will provide thirty (30) days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement coverage. You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER, AGENT [BROKER OR OTHER REPRESENTATIVE]:

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement coverage because you intend to terminate your existing Medicare supplement coverage. The replacement policy is being purchased for the following reason (check one):

____ Additional benefits.

____ No change in benefits, but lower premiums.

____ Fewer benefits and lower premiums.

____ Other. (please specify)

---

1. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and

before you sign it, review it carefully to be certain that all information has been properly recorded. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

_____

(Signature of Agent, Broker or Other Representative)*

[Typed Name and Address of Issuer, Agent or Broker]

_____

(Applicant's Signature)

_____

(Date)

*Signature not required for direct response sales.

F. Paragraphs 1 and 2 of the replacement notice (applicable to preexisting conditions) may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.

Section 19. Filing Requirements for Advertising

An issuer shall provide a copy of any Medicare supplement advertisement intended for use in this state whether through written, radio or television medium to the Commissioner of Insurance of this state for review or approval by the commissioner to the extent it may be required under state law.

Drafting Note: States should examine their existing laws regarding the filing of advertisements to determine the extent to which review or approval is required.

Section 20. Standards for Marketing

A. An issuer, directly or through its producers, shall:

(1) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

(2) Establish marketing procedures to assure excessive insurance is not sold or issued.

(3) Display prominently by type, stamp or other appropriate means, on the first page of the policy the following:

"Notice to buyer: This policy may not cover all of your medical expenses."

(4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.

(5) Establish auditable procedures for verifying compliance with this Subsection A.

B. In addition to the practices prohibited in [insert citation to state unfair trade practices act], the following acts and practices are prohibited:

(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy or to take out a policy of insurance with another insurer.

(2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

C. The terms ''Medicare Supplement,'' ''Medigap,'' ''Medicare Wrap-Around'' and words of similar import shall not be used unless the policy is issued in compliance with this regulation.

Drafting Note: Remember that the Unfair Trade Practice Act in your state applies to Medicare supplement insurance policies and certificates.

Section 21. Appropriateness of Recommended Purchase and Excessive Insurance

A. In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

B. Any sale of Medicare supplement coverage that will provide an individual more than one Medicare supplement policy or certificate is prohibited.

Section 22. Reporting of Multiple Policies

A. On or before March 1 of each year, an issuer shall report the following information for every individual resident of this state for which the issuer has in force more than one Medicare supplement policy or certificate:

(1) Policy and certificate number, and

(2) Date of issuance.

B. The items set forth above must be grouped by individual policyholder.

Editor's Note: Appendix B contains a reporting form for compliance with this section.

Section 23. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates

A. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate for similar benefits to the extent such time was spent under the original policy.

B. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods for benefits similar to those contained in the original policy or certificate.

Drafting Note: Although NAIC is restricted from making revisions to its models that do not conform to the Omnibus Budget Reconciliation Act of 1990, states are encouraged to consider deletion of the words ''for similar benefits'' in Subsection A and the words ''for benefits similar to those contained in the original policy or certificate'' in Subsection B. States should eliminate Paragraphs (1) and (2) (applicable to preexisting conditions) of the replacement notice required by Section 16E.

Section 24. Separability

If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 25. Effective Date

This regulation shall be effective on [insert date].

Appendix A—Medicare Supplement Refund Calculation Form for Calendar Year_____

TYPE [1] _____

For the State of _____

NAIC Group Code _____
Address _____
Title _____
SMSBP [2] _____
Company Name _____
NAIC Company Code _____
Person Completing Exhibit _____
Telephone Number _____

Line		(a) Earned Premium [3]	(b) Incurred Claims [4]
1.	Current Year's Experience.		
	a. Total (all policy years)		
	b. Current year's issues [5]		
	c. Net (for reporting purposes = 1a–1b		
2.	Past Years' Experience (all policy years)		
3.	Total Experience (Net Current Year + Past Year)		
4.	Refunds Last Year (Excluding Interest)		
5.	Previous Since Inception (Excluding Interest)		
6.	Refunds Since Inception (Excluding Interest)		
7.	Benchmark Ratio Since Inception (*see worksheet for Ratio 1*)		
8.	Experienced Ratio Since Inception (*Ratio 2*) Total Actual Incurred Claims (line 3, col. b) ÷ Total Earned Prem. (line 3, col. a) – Refunds Since Inception (line 6).		
9.	Life Years Exposed Since Inception.If the Experienced Ratio is less than the Benchmark Ratio, and there are more than 500 life years exposure, then proceed to calculation of refund		
10.	Tolerance Permitted (obtained from credibility table)		

[1] Individual, Group, Individual Medicare Select, or Group Medicare Select Only.
[2] "SMSBP"=Standardized Medicare Supplement Benefit Plan—Use "P" for pre-standardized plans.
[3] Includes Modal Loadings and Fees Charged.
[4] Excludes Active Life Reserves.
[5] This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios".

MEDICARE SUPPLEMENT CREDIBILITY TABLE

Life Years Exposed	
Since Inception	Tolerance
10,000 + ...	0.0%
5,000–9,999	5.0%
2,500–4,999	7.5%
1,000–2,499	10.0%
500–999	15.0%
If less than 500, no credibility.	

REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR GROUP POLICIES FOR CALENDAR YEAR _____

TYPE [1] _____
SMSBP [2] _____
For the State of _____
Company Name _____
NAIC Group Code _____
NAIC Company Code _____
Address _____
Person Completing Exhibit _____
Title _____
Telephone Number _____

(a) [3]	(b) [4]	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o) [5]
Year	Earned Premium	Factor	(b)x(c)	Cumulative Loss Ratio	(d)x(e)	Factor	(b)x(g)	Cumulative Loss Ratio	(h)x(i)	Policy Year Loss Ratio
1		2.770		0.507		0.000		0.0000		0.46
2		4.175		0.567		0.000		0.000		0.63
3		4.175		0.567		1.194		0.759		0.75
4		4.175		0.567		2.245		0.771		0.77
5		4.175		0.567		3.170		0.782		0.80
6		4.175		0.567		3.998		0.792		0.82

(a)[3]	(b)[4]	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o)[5]
Year	Earned Premium	Factor	(b)x(c)	Cumulative Loss Ratio	(d)x(e)	Factor	(b)x(g)	Cumulative Loss Ratio	(h)x(i)	Policy Year Loss Ratio
7		4.175		0.567		4.754		0.802		0.84
8		4.175		0.567		5.445		0.811		0.87
9		4.175		0.567		6.075		0.818		0.88
10		4.175		0.567		6.650		0.824		0.88
11		4.175		0.567		7.176		0.828		0.88
12		4.175		0.567		7.655		0.831		0.88
13		4.175		0.567		8.093		0.834		0.89
14		4.175		0.567		8.493		0.837		0.89
15		4.175		0.567		8.684		0.838		0.89
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception: (l + n)/(k + m): ____

[1] Individual, Group, Individual Medicare Select, or Group Medicare Select Only.

[2] ''SMSBP'' = Standardized Medicare Supplement Benefit Plan—Use ''P'' for pre-standardized plans

[3] Year 1 is the current calendar year—1. Year 2 is the current calendar year—2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

[4] For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

[5] These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

Reporting Form for the Calculation of Benchmark Ratio Since Inception for Individual Policies for Calendar Year_____

Type[1] _____

SMSBP[2] _____

For the State of _____

Company Name _____

NAIC Group Code NAIC _____

Company Code _____

Address _____

Person Completing Exhibit _____

Title _____

Telephone Number _____

(a)[3]	(b)[4]	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o)[5]
Year	Earned premium	Factor	(b)×(c)	Cumulative loss ratio	(d)×(e)	Factor	(b)×(g)	Cumulative loss ratio	(h)×(i)	Policy Year Loss Ratio
1		2.770		0.442		0.000		0.000		0.40
2		4.175		0.493		0.000		0.000		0.55
3		4.175		0.493		1.194		0.659		0.65
4		4.175		0.493		2.245		0.669		0.67
5		4.175		0.493		3.170		0.678		0.69
6		4.175		0.493		3.998		0.686		0.71
7		4.175		0.493		4.754		0.695		0.73
8		4.175		0.493		5.445		0.702		0.75
9		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76
11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77
13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
15		4.175		0.493		8.684		0.725		0.77
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception: (l + n)/(k + m): ____

[1] Individual, Group, Individual Medicare Select, or Group Medicare Select Only.

[2] ''SMSBP'' = Standardized Medicare Supplement Benefit Plan—Use ''P'' for pre-standardized plans

[3] Year 1 is the current calendar year—1. Year 2 is the current calendar year—2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

[4] For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

[5] These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

Appendix B—Form for Reporting Medicare Supplement Policies

Company Name: _____
Address: _____
Phone Number: _____
Due March 1, annually

The purpose of this form is to report the following information on each resident of this state who has in force more than one Medicare supplement policy or certificate. The information is to be grouped by individual policyholder.

Policy and certificte #	Date of issuance

_____
Signature

_____
Name and Title (please type)

_____
Date

Appendix C Disclosure Statements

Instructions for Use of the Disclosure Statements for Health Insurance Policies Sold to Medicare Beneficiaries That Duplicate Medicare

1. Section 1882 (d) of the federal Social Security Act [42 U.S.C. 1395ss] prohibits the sale of a health insurance policy (the term policy includes certificate) to Medicare beneficiaries that duplicates Medicare benefits unless it will pay benefits without regard to a beneficiary's other health coverage and it includes the prescribed disclosure statement on or together with the application for the policy.
2. All types of health insurance policies that duplicate Medicare shall include one of the attached disclosure statements, according to the particular policy type involved, on the application or together with the application. The disclosure statement may not vary from the attached statements in terms of language or format (type size, type proportional spacing, bold character, line spacing, and usage of boxes around text).
3. State and federal law prohibits insurers from selling a Medicare supplement policy to a person that already has a Medicare supplement policy except as a replacement policy.
4. Property/casualty and life insurance policies are not considered health insurance.
5. Disability income policies are not considered to provide benefits that duplicate Medicare.
6. Long-term care insurance policies that coordinate with Medicare and other health insurance are not considered to provide benefits that duplicate Medicare.
7. The federal law does not preempt state laws that are more stringent than the federal requirements.
8. The federal law does not preempt existing state form filing requirements.
9. Section 1882 of the federal Social Security Act was amended in Subsection (d)(3)(A) to allow for alternative disclosure statements. The disclosure statements already in Appendix C remain. Carriers may use either disclosure statement with the requisite insurance product. However, carriers should use either the original disclosure statements or the alternative disclosure statements and not use both simultaneously.

[Original disclosure statement for policies that provide benefits for expenses incurred for an accidental injury only.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- Hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Other approved items and services

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.
✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Original disclosure statement for policies that provide benefits for specified limited services.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This Is Not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- Any of the services covered by the policy are also covered by Medicare

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Other approved items and services

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.
✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Original disclosure statement for policies that reimburse expenses incurred for specified diseases or other specified impairments. This includes expense-incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This Is Not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- Hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Hospice
- Other approved items and services

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.
✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Original disclosure statement for policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This Is Not Medicare Supplement Insurance

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits because Medicare generally pays for most of the expenses for the diagnosis and treatment of the specific conditions or diagnoses named in the policy.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Hospice
- Other approved items and services

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.
✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Original disclosure statement for indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This Is Not Medicare Supplement Insurance

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

Any expenses or services covered by the policy are also covered by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Hospice
- Other approved items and services

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.

✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Original disclosure statement for policies that provide benefits upon both an expense-incurred and fixed indemnity basis.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This Is Not Medicare Supplement Insurance

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- Any expenses or services covered by the policy are also covered by Medicare; or
- It pays the fixed dollar amount stated in the policy and Medicare covers the same event

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Hospice care
- Other approved items & services

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.

✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.

✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Original disclosure statement for other health insurance policies not specifically identified in the preceding statements.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This Is Not Medicare Supplement Insurance

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- The benefits stated in the policy and coverage for the same event is provided by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Hospice

- Other approved items and services

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.
✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Alternative disclosure statement for policies that provide benefits for expenses incurred for an accidental injury only.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.
✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Alternative disclosure statement for policies that provide benefits for specified limited services.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits under this policy.

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.
✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Alternative disclosure statement for policies that reimburse expenses incurred for specified diseases or other specified impairments. This includes expense-incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy. Medicare generally pays for most or all of these expenses.

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Hospice

- Other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.
✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Alternative disclosure statement for policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Hospice
- Other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.
✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Alternative disclosure statement for indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Hospice
- Other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.
✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Alternative disclosure statement for policies that provide benefits upon both an expense-incurred and fixed indemnity basis.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Hospice care
- Other approved items & services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.
✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Alternative disclosure statement for other health insurance policies not specifically identified in the preceding statements.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE—THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- Hospitalization
- Physician services
- Hospice
- Other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

✔ Check the coverage in **all** health insurance policies you already have.
✔ For more information about Medicare and Medicare Supplement insurance, review the Guide to Health Insurance for People with Medicare, available from the insurance company.
✔ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

Legislative History (All References Are to the Proceedings of the NAIC).

1980 Proc. II 22, 26, 588, 591, 593, 595–603 (adopted).
1981 Proc. I 47, 51, 420, 422, 424, 446–447, 470–481 (amended and reprinted).
1988 Proc. I 9, 20–21, 629–630, 652–654, 668–677 (amended and reprinted).
1988 Proc. II 5, 13, 568, 601, 604, 615–624 (amended and reprinted).
1989 Proc. I 14, 813–814, 836.4–836.26 (amended at special plenary session September 1988).
1989 Proc. I 9, 25, 703, 753–754, 757–760 (appendices amended at regular plenary session).
1990 Proc. I 6, 27–28, 477, 574–576, 580–599 (amended and reprinted).
1990 Proc. II 7, 16, 599, 656, 657 (adopted reporting form).
1992 Proc. I 12, 16–75, 1084–1085 (amended at special plenary session in July 1991).
1995 Proc. 1st Quarter 7, 12, 501, 575, 586, 592–615 (amended and most of model reprinted).
1995 Proc. 4th Quarter 11, 33, 889, 892 (amended).
1998 Proc. 1st Quarter (amended).

[FR Doc. 98–32103 Filed 12–3–98; 8:45 am]
BILLING CODE 4120–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health National Heart, Lung, and Blood Institute

Submission for OMB Review; Comment Request; Jackson Heart Study Participant Recruitment Survey

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information was previously published in the **Federal Register** on August 11, 1998, pages 42864–42865 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

PROPOSED COLLECTION: *Title:* Jackson Heart Study Participant Recruitment Survey, Type of Information Collection Request: NEW. *Need and Use of Information Collection:* This survey will be used as a planning tool for the upcoming NHLBI-sponsored Jackson Heart Study. Participation and retention of African-Americans in observational epidemiologic studies has been much lower than for white populations. Experience with recruitment and retention of African-Americans in Jackson, Mississippi, is derived from the ongoing ARIC (Atherosclerosis Risk In Communities) study. Initial response was very low, with a 47 percent

enrollment rate, and a 70 percent retention rate. The purpose of the proposed survey in this announcement, is to examine facilitators and barriers to long-term participation in observational studies by African-Americans. The findings will be incorporated with the input of the African-American community, into the recruitment and retention plan of the Jackson Heart Study. *Frequency of Response:* One-Time. *Affected Public:* Individuals or households. *Type of Respondents:* Adults ages 35–84. The annual reporting burden is as follows: Estimated Number of Respondents: 580; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .4069; and *Estimated Total Annual Burden Hours Requested:* 236. There are no Capital costs to report. There are no Operating or Maintenance Costs to report.

ESTIMATE OF HOUR BURDEN

Type of response	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Short Version	120	1	.0668	8
ARIC Participants	50	1	.2839	14
ARIC Drops Outs	50	1	.2839	14
Jackson Community	300	1	.3674	110
In-Depth Interview	60	1	1.5000	90
Total	580			236

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

DIRECT COMMENTS TO OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Charles R. MacKay, NIH Project Clearance Officer, 6701 Rockledge Drive, MSC 7730, Rockville, MD 20892–7730, or call non-toll-free number (301) 435–0978 or E-mail your request, including your address to: MacKayC@odrockm1.od.nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received by January 4, 1999.

Dated: November 23, 1998.

Donald P. Christoferson,

Executive Officer, National Heart, Lung, and Blood Institute.

[FR Doc. 98–32319 Filed 12–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Display Technique for Identifying LINE–1 Insertion Site Polymorphisms

G Swergold, F Sheen (FDA)
DHHS Reference No. E–285–97/1 filed 29 Sept 98 (claiming priority of U.S. Provisional 60/060,353 filed 29 Sept 97)
Licensing Contact: Charles Maynard, 301/496–7735 ext. 243

The invention is a novel method to detect frequent insertion site polymorphisms in the human genome. Much of the repetitive DNA of mammalian genomes consists of long interspersed sequences or elements (LINES). Typical mammalian genomes contain over 20,000 copies of one of these LINES called LINE–1. These sequences actually create new copies of themselves in new places in the genome, and contribute to the variation in DNA between individuals. The present invention is a powerful new method for the detection of LINE–1 insertion sites. This method allows the analysis of the DNA from an individual, yielding DNA fingerprint information as well as information useful for the understanding of genetic variation in a population.

Mice With A Fluorescent Marker For Interleukin-2 Gene Activation

H Gu, M Naramura, R Hu (NIAID)
DHHS Reference No. E–279–98/0
Licensing Contact: Jaconda Wagner, 301/496–7735 ext. 284

A complex scheme of events unfolds during an immune response and involves a variety of cell types and soluble factors. New tools are constantly needed to assess this scheme of events and help tease apart the roles of accessory, helper and effector cells. A mutant mouse strain has been developed, and it was generated by

replacing the interleukin–2 (IL–2) gene with a cDNA encoding the green fluorescent protein (GFP) from *A. victoria*. This unique modification should allow researchers to better monitor the early stages of T cell activation because IL–2 is one of a few cytokines that naive resting T cells can produce during primary T cell antigen receptor (TCR) stimulation. An additional benefit of using IL–2 is that IL–2 production, unlike cytokines such as interferon-gamma and interleukin-four, is restricted to activated T cells. This would therefore increase the specificity of this model, and it should decrease the extensive manipulation of cells that is currently necessary and minimize invasive protocols. This invention could be used as a screening assay for substances of immune modulators by manufacturers of a variety of products. It could provide a valuable research tool for the discovery genes and their products that induce the production of IL–2. Additionally, various T cell clones derived from these mice can be used as the sensitive tool to screen even trace amounts of pathogens, such as bacteria, in food.

Inhibitors Of Formation Of Transmissible Spongiform Encephalopathy-Associated Prion Protein By Porphyrins And Phthalocyanines

W Caughey, L Raymond, M Horiuchi, B Caughey (NIAID) Serial No. 60/096,148, filed 11 Aug 98

Licensing Contact: George Keller, 301/496–7735 ext. 246

The current invention provides for certain tetrapyrroles that specifically inhibit the conversion of protease-sensitive prion protein (PrP-sen) to the abnormal protease-resistant form (PrP-res) without apparent cytotoxic effects. These compounds represent a new class of inhibitors of PrP-res formation that are a source of therapeutic agents for transmissible spongiform encephalopathies or prion diseases. For more information, see Caughey, W. et al. (1998) Inhibition of Protease-Resistant Prion Formation by Porphyrins and Phthalocyanines, *Proc. Natl. Acad. Sci. USA* 95, 12117–12122.

Use Of Constitutive Transport Elements To Control The Host Range Of Retroviral Vectors

AL Ferris, SH Hughes (NCI) Serial No. 60/094,535 filed 29 Jul 98

Licensing Contact: Richard Rodriguez, 301/496–7056 ext. 287

The major host range determinant for retroviruses and for retroviral vectors is the envelope glycoprotein. However there is a second element, the constitutive transport element, or CTE, that also plays an important role in determining host range. In order to replicate, retroviruses must transport both spliced and unspliced RNAs from the nucleus to the cytoplasm. For simple retroviruses, transport of the unspliced RNA requires an interaction between the CTE—which is small element in the viral RNA—and host factors. The CTE of avian sarcome/leukosis viruses (ASLV) does not function in mammalian cells. As a consequence ASLV, and vectors derived from ASLV, will not replicate in mammalian cells even if the host/virus system is modified so that the entry of the ASLV into mammalian cells is efficient. This invention demonstrates how this barrier to viral replication is overcome by introducing sequences from an amphotropic murine leukemia virus (MLV) into a modified ASLV vector. The resulting vector can replicate in mammalian cells if the host cell/vector system is designed to provide compatibility between the envelope of the virus and the receptor on the host cell. The resulting ASLV vector should be useful for experimental applications both in cultured cells and in animal models. In addition to being able to extend the host range of retroviruses by modifying their CTEs, it is also possible to restrict their host range. A modified MLV virus that replicates only in avian cells, not in mammalian cells has been developed. This virus can be used to develop a new generation of safer MLV-based vectors. Therefore, this invention provides the advantages of being able to restrict or extend the ability of retroviral vectors to replicate in defined hosts by manipulating their CTEs. This will be useful in the development of a new generation of retroviral vectors that are both safer and more useful than those currently available.

Cloned Genomes Of Infectious Hepatitis C Virus And Uses Thereof

M Yanagi, J Bukh, S Emerson, R Purcell (NIAID) Serial No. 09/014,416, filed 27 Jan 98

Licensing Contact: George Keller, 301/496–7735 ext. 246

The current invention provides nucleic acid sequences comprising the genomes of infectious hepatitis C viruses (HCV) of genotype 1a and 1b. It covers the use of these sequences, and polypeptides encoded by all or part of sequences, in the development of vaccines and diagnostic assays for HCV and the development of screening assays for the identification of antiviral agents for HCV. Additional information can be found in Yanagi et al., (1997) *Proc. Natl. Acad. Sci., USA* 94, 8738–8743 and Yanagi et al., (1998) *Virology* 244, 151–172.

Chemokine Variants And Methods Of Use

T Oravecz, MA Norcross (FDA) Serial No. 60/067,033 filed 01 Dec 97

Licensing Contact: Carol Salata, 301/496–7735 ext. 216

This invention relates to a nucleotide and amino acid sequence of truncated RANTES (3–68) which is different from the wild type RANTES in two amino acid positions. CD26 is a leukocyte activation marker that possesses dipeptidyl peptidase IV (DPPIV) activity but whose natural substrates and immunological functions had not been previously defined. Several chemokines, including RANTES (regulated on activation, normal T expressed and secreted) are provided, which are substrates for human CD26. RANTES (3–68) retains the ability to stimulate CCR5 receptors and to inhibit the cytopathic effects of HIV–1. The invention provides methods for identifying compounds that affect DDPIV-mediated chemokine cleavage, methods for inhibiting HIV infection and treating individuals having or at risk of having HIV infection, methods for diagnosis and/or prognosis of individuals having a chemokine-associated disorder and methods for accelerating wound healing and angiogenesis, all based on the discovery of DPPIV-mediated cleavage of chemokines.

Infectious Papillomavirus Pseudoviral Particles

DR Lowy, JT Schiller, RB Roden (NCI) DHHS Reference No. E–032–96/1; PCT/US97/12115 filed 14 Jul 97, with priority to 17 Jul 96

Licensing Contact: Robert Benson, 301/496–7056 ext. 267

This invention describes pseudoviral particles of papillomavirus capsids encapsidating DNA useful for gene therapy and as vaccines. The pseudoviral particles are made by co-expressing the papillomavirus L1, L2 and E2 genes in a cell line along with a vector comprising the useful DNA and DNA containing E2 protein binding sites (E2BS). It is the discovery of the inventors that the presence of the E2BS containing DNA results in the encapsidation of the DNA. The encapsidated DNA can be a gene to replace a defective gene, or can encode an antigen, for gene therapy or immunization respectively. Since

papillomaviruses selectively multiply in epithelial cells, the capsids may be particularly useful for mucosal vaccines, and for delivering genes to epithelial tissues. The existence of many non-crossreacting serotypes of human papillomaviruses can be taken advantage of to eliminate the problem of immune rejection of a pseudoviral particle. The same gene or antigen encoding DNA can be incorporated in pseudoviral particles of different serotypes for multiple dosing. The inventors have demonstrated delivery of the neomycin resistance gene to mammalian cells with a BPV capsid encapsidating a vector consisting of the neomycin gene under control of a mammalian promoter and DNA containing E2 binding sites. Claimed are the pseudoviral particles, methods of making them, and methods of using them.

Method of Inhibiting The Activity of an Intracellular Constituent

MJ Mulligan-Kehoe (NCI)
U.S. Patent 5,702,892 issued 30 Dec 97; Serial No. 08/897,040 filed 18 Jul 97; Serial No. 09/096,889 filed 12 Jun 98
Licensing Contract: Marlene Shinn, 301/496–7056 ext. 285

Two combinatorial libraries of binding proteins have been engineered. The libraries were designed to genetically shuffle oligonucleotide motifs within the framework of the immunoglobulin heavy chain gene by random mutation of either the CDRI or CDRIII hypervariable regions. The Fd fragment of the heavy chain gene was then reconstructed such that it contained the randomized oligonucleotides in the hypervariable region, resulting in a collection of highly diverse sequences. The libraries of heavy chain proteins encoded by the array of mutated gene sequences potentially have all of the binding characteristics of an immunoglobulin while requiring only the heavy chain Fd protein.

The re-engineered heavy chain gene sequences were ligated into a M13-derived bacteriophage vector that permits expression of the binding proteins as fusion proteins with viral protein 8, which is expressed on the phage surface.

The claims of the patent application provide methods to screen the libraries, to identify the binding protein to a specific antigen and the gene for that specific protein, and to re-engineer the gene for intracellular expression in a eukaryotic cell. Inducible intracellular inactivation of glucose-6-phosphate dehydrogenase (G6PDH) has been demonstrated by in vivo expression of a gene construct encoding a binding protein selected from one of the libraries and specific for G6PDH. Removal of induction restored the enzyme activity.

The libraries of binding proteins, the screening methods, and the methods of inhibiting intracellular components claimed in the patent application provide powerful potential tools for cellular and molecular biology by affording the capability of binding/inactivating any protein of choice.

Amino Acid Sequencing Peptides and Methods for Their Use

DC Parmelee, S Sechi (NCI)
U.S. Patent 5,589,397 issued 31 Dec 96; Serial No. 08/739,819 filed 30 Oct 96
Licensing Contract: Manja Blazer, 301/496–7056 ext. 224

The present invention provides a novel internal standard for amino acid sequencing which consist of a peptide containing at least two different unnatural amino acid residues, such as ornithine, norvaline, norleucine and α-aminobutyric acid. The PTH-derivatives of these have retention times distinct from those of natural amino acids. This peptide can be sequenced simultaneously with an unknown peptide or protein without interfering with the analysis. Simultaneous sequencing of this standard provides information which allows for the determination of repetitive yields, lags, N-terminal blockage and discrimination between blank cycles caused by missed injection and blank cycles caused by faulty delivery of chemicals during the sequencing reactions.

Dated: November 30, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 98–32318 Filed 12–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: December 3, 1998.

Time: 2:00 PM to 3:00 PM.

Agenda: To review and evaluate contract proposals.

Place: NIH/NINDS, Federal Building, Room 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NINDS, National Institutes of Health, PHS, DHHS, Federal Building, Room 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32312 Filed 12–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAAA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance

with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Alcohol Abuse and Alcoholism, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAAA.

Date: January 8, 1999.

Open: 8:00 AM to 8:15 AM.

Agenda: To discuss administrative details.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Closed: 8:15 AM to 3:10 PM.

Agenda: To review and evaluate the neurochemistry and neuroendocrinology section.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: Benedict J. Latteri, Acting Deputy Director, Division of Intramural Clinical and Biological Research, National Institute on Alcohol Abuse and Alcoholism, 9000 Rockville Pike, Room 1B58, Building 31—MSC 2088, Bethesda, MD 20892–2088, 301–402–1227.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training: 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: November 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32313 Filed 12–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB–7 (J2).

Date: January 3–5, 1999.

Time: January 3, 1999, 7:30 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Marriott Hotel Portland, 1401 S.W. Front Avenue, Portland, OR 97201.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB–C J1(P).

Date: January 4–6, 1999.

Time: January 4, 1999, 7:30 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Airport Plaza Hotel, 1981 Terminal Way, Reno, NV 89502.

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32314 Filed 12–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Nat Inst of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel ZDK1 GRB–7 (J4).

Date: December 17, 1998.

Time: 3:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Natcher Building 45, Room 6AS 25F, 9000 Rockville Plke, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PHD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32315 Filed 12–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Develop Prevention Research Dissemination.

Date: December 15, 1998.

Time: 9:00 AM to 12:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, 10–42, Rockville, MD 20857, (301) 443–1644.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Measurement Modules for Prevention Interventions.

Date: December 15, 1998.

Time: 1:30 PM to 4:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, 10–42, Rockville, MD 20857, (301) 443–1644.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: November 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32316 Filed 12–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: December 14, 1998.

Time: 8:30 AM to 2:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Rommy L. Broadwater, PHD, Chief, Grants Review Branch, NIAMS, NIH, 45 Center Drive, Rm. 5AS25U, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS).

Dated: November 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–32317 Filed 12–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Drug and Alcohol Services Information System (DASIS) (OMB No. 0930–0106)—Revision—The DASIS consists of three related data systems: the National Master Facility Inventory (NMFI), the Uniform Facility Data Set (UFDS), and the Treatment Episode Data Set (TEDS). The NMFI includes all known substance abuse treatment facilities, and those substance abuse prevention facilities identified by State agencies. The UFDS is an annual survey of all facilities listed in the NMFI. The TEDS is a compilation of client-level admission data submitted by States on clients treated in facilities that receive State funds. Together, they provide information on the location, scope and characteristics of all known drug and alcohol treatment and prevention facilities in the United States, and the characteristics of clients receiving services. This information is needed to assess the nature and extent of these resources, to identify gaps in services, and to provide a database for treatment referrals.

A request for short-term (two year) OMB approval of DASIS activities is being prepared which will cover the ongoing and annual data collection activities described above as well as one-time data collections associated with a redesign of the UFDS survey.

The request for OMB approval will include the following changes in the ongoing DASIS activities:

TEDS: Voluntary reporting of discharge data will be added to the current reporting of admission data for those States that are able to provide linked admission and discharge records. The discharge data set will include the

following client-level data: Provider ID; Client ID; Co-dependent/Collateral flag; Services at discharge; Date of last contact; Date of discharge; and Reason for discharge, transfer, or discontinuance of treatment.

NMFI: The forms used by States to update information on facilities in the NMFI have been automated and will be available on the Internet through the DASIS home page. The on-line version of the update forms will include the following new items: Detoxification services (to be added to the checklist of services, FDA (Methadone) ID, EIN, Director's name and phone number, and facility FAX number.

UFDS: The UFDS survey will be shortened in 1999 so that resources can be redirected to a major revision of the questionnaire. Client counts, services provided (except for programs for special populations), and revenue data will not be asked. Sample augmentation activities, which involve searching directories and other sources for substance abuse treatment facilities not included in the NMFI, will not be conducted prior to the 1999 UFDS but will be conducted late in 1999 in preparation for the 2000 UFDS.

Possible changes to the 2000 UFDS questionnaire will be explored in 1999, including, for example, changing the reference date, revising questions on setting, treatment capacity, and revenue, and adding questions on current topics as needed. The proposed changes will be studied through small-scale focus groups and workshops with data users and substance abuse service providers, and through larger scale solicitations of comments and suggestions from States and pretests of revised forms with facilities.

Estimated annual burden for the ongoing and one-time activities is as follows:

Type of respondent and activity	Number of respondents	Responses per respondent	Hours per response	Total burden hours
States:				
TEDS Admission Data	52	4	[3]6	1,248
TEDS Discharge Data	13	4	[3]6	312
NFR Update [1]	56	128	0.08	573
Solicitation of Comments on UFDS revisions	56	1	.5	28
State Subtotal	56			2,161
Facilities:				
UFDS Questionnaire	17,000	1	.2	3,400
Augmentation Screening	5,000	1	.08	400
Pretests of UFDS revisions [2]	300	1	.75	225
Facility Subtotal	22,000			4,025
Total	22,056			6,186

[1] States forward to SAMHSA information they receive from facilities on changes in facility name, address, status, etc. This will now be done electronically.
[2] Two pretests of 100–150 facilities each are proposed.
[3] This includes time for reformatting data received from facilities and submitting it to SAMHSA.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 27, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–32307 Filed 12–3–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–38]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 25, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 98–31945 Filed 12–3–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use and Distribution of the Little River Band of Ottawa Indians Share of the Judgment Funds in Docket Nos. 18–E, 58 and 364 Before the Indian Claims Commission

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the plan for the use and distribution of the Little River Band of Ottawa Indians' share of the judgment funds awarded to

the Ottawa and Chippewa Indians of Michigan in Docket Nos. 18–E, 58 and 364 is effective as of September 28, 1998.

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, MS–4631–MIB, 1849 C Street, NW, Washington, D.C. 20240. Telephone number: (202) 208–2475.

SUPPLEMENTARY INFORMATION: The Michigan Indian Land Claims Settlement Act of December 15, 1997, 111 Stat. 2652, and section 3(b) of the Indian Tribal Judgment Funds Act, 25 U.S.C. 1403(b), requires that a plan be prepared and submitted to Congress for the use and distribution of Little River Band of Ottawa Indians' share of the funds awarded to the Ottawa and Chippewa Indians of Michigan before the Indian Claims Commission in Docket Nos. 18–E, 58 and 364. The plan for the use and distribution of the funds was submitted to Congress on June 3, 1998, by letters dated June 2, 1998. The receipt of the letters by the House of Representatives and the Senate was recorded in the Congressional Record published on June 9 and 11, 1998, respectively. The plan became effective on September 28, 1998, since a joint resolution disapproving it was not enacted. The plan reads as follows:

Plan

For the Use and Distribution of Little River Band of Ottawa Indians Judgment Funds, Dockets 18–E, 58 and 364

Section 1. Purpose and Definitions

1.01. *Purpose.* This 80/20 Plan has been developed as a result of the Indian Claims Commission dockets numbered 18–E, 58, and 364 and the passage of Public Law 105–143, cited as the ''Michigan Indian Land Claims Settlement Act'', which was passed on December 15, 1997, and provides for the division of judgment funds of the Ottawa and Chippewa Indians of Michigan. Pursuant to this law, the Little River Band of Ottawa Indians must submit a plan to the Secretary of Interior. The Secretary shall review the plan and discuss any problems of the plan with the Tribe. After this review, the plan shall be submitted to Congress prior to the distribution of any of these funds to the Tribe.

The 80/20 Plan was developed by the Tribe and approved by the Tribal members to meet the minimum standards necessary for the Secretary's approval. This plan also meets all of the criteria for approval of the Secretary and Congress, including:

(a) The needs and desires of any groups or individuals who are in a minority position, but who are also entitled to receive such funds, have been fully ascertained and considered;

(b) The interests of minors and other legally incompetent persons who are entitled to receive any portion of such funds as are subsequently distributed to them are and will be protected and preserved; provided, that such funds may be disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the minor or legal incompetent's health, education, welfare, or emergencies under a plan or plans approved by the Secretary and the tribal governing body of the Indian tribe involved;

(c) Any provision, including enrollment provisions, of the constitution, bylaws, rules, and procedures of such tribe which may affect the distribution or other use of such funds are in full accord with the principles of fairness and equity; and,

(d) A significant portion of such funds shall be set aside and programmed to serve common tribal needs, educational requirements, and such other purposes as the circumstances of the affected Indian tribe may justify, except not less than 20 per centum of such funds shall be so set aside and programmed unless the Secretary determines that the particular circumstances of the pertinent Indian tribe clearly warrant otherwise: provided, that in the development of such plan the Secretary shall survey past and present plans of the tribe for economic development, shall consider long range benefits which might accrue to the tribe from such plans, and shall encourage programming of funds for economic development purposes where appropriate.

Definitions

1.02. 80/20. The 80/20 Tribal Plan will be referred in this document as ''Tribal plan'' or ''plan''.

1.03. *Effective Date of the 80/20 Tribal Plan.* The effective date of the plan means the date that the plan is approved by Congress. Unless the plan is disapproved by Congress, the effective date of the plan shall be the sixtieth (60) day after formal submittal of the plan by the Secretary to the Congressional Committees (excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain). In the event that the plan is disapproved by either House, the effective date shall be the date the enabling legislation for the disposition of the judgment funds is enacted into law.

1.04. *Secretary of Interior.* The ''Secretary'' as used in this plan means the Secretary of Interior.

1.05. *Qualified Tribal member for one time per capita payments.* For purposes of determining eligibility for receiving a per capita payment under any Tribal plan for the use and distribution of the Little River Band of Ottawa Indians' share of the Dockets 18–E, 58, and 364 Judgment Funds, ''qualified Tribal member'' shall mean any individual who has applied for enrollment before 12:00 a.m. (midnight), Friday, January 30, 1998, and is duly enrolled in the Little River Band of Ottawa Indians in accordance with Article III of the interim Constitution and the Tribal Ordinance No. #94–1018–01 or Tribal Ordinance No. 97–200–01.

In order for any duly enrolled Tribal member to be entitled to the one time per capita payment, the member's application for enrollment must be received at the Tribal offices before 12:00 a.m. (midnight), Friday, January 30, 1998. If an applicant who timely files his/her application is denied enrollment and fails to appeal the decision, that person will lose his/her right to the one time per capita payment if he/she reapplies and becomes a duly enrolled member at a later date. All persons eligible for the one time per capita payments must be living as of the effective date of this plan. Any person who has received a distribution from another tribe pursuant to Dockets 18–E, 58, and 364 of the Indian Claims Commission shall not be eligible to receive the one time per capita payments from the Little River Band of Ottawa Indians.

1.06. *Minor qualified tribal member for one time per capita payments.* A minor qualified Tribal member for purposes of determining eligibility must fulfill all of the ''qualified tribal member'' requirements in Section 1.05 and must be under the age of 18 years as of the effective date of this plan.

1.07. *Incompetent qualified Tribal member eligible for one time per capita payments.* An incompetent qualified Tribal member for purposes of determining eligibility must fulfill all of the ''qualified tribal member'' requirements in Section 1.05 and must: (1) be declared incompetent by a court of competent jurisdiction; and, (2) have his/her legal guardian inform the Tribal Registrar in writing of the person's legal incompetence and provide evidence that he/she is the incompetent's legal guardian prior to the effective date of the plan.

1.08. *Incarcerated qualified Tribal member eligible for one time per capita payments.* An incarcerated qualified

Tribal member for purposes of determining eligibility for the one time per capita payments must fulfill all of the requirements in Section 1.05 and must: (1) inform the Tribal Registrar in writing of his/her incarceration and provide evidence that he/she is incarcerated prior to the effective date of the plan; and, (2) must notify the Tribal Registrar and execute a Power of Attorney, prior to the effective date, if he/she wishes to elect to have his/her per capita money held in trust until he/she is released from confinement. The Tribal Council shall develop appropriate forms and procedures to implement this Section.

1.09. *Qualified Tribal Members Eligible to Vote on Judgment Funds Proposals.* Each member who is duly enrolled in the Little River Band of Ottawa Indians by January 14, 1998, and has attained the minimum age of 18 years by January 14, 1998, shall be eligible to vote in the election of the judgment funds proposals, with the exception of incompetent persons who will not be allowed to vote, nor will any person be allowed to vote on his/her behalf. An incarcerated person shall be allowed to vote.

Section 2. Disbursement of Judgment Funds Following Effective Date

2.01. The Secretary shall disburse the Tribe's share of the judgment funds not later than 30 days after the effective date in accordance with Section 105 of the Michigan Indian Land Claims Settlement Act.

2.02. Notwithstanding any other provision of law, the United States shall have no trust responsibility for the investment, supervision, administration, or expenditure of any portion of the judgment funds, including the per capita payment aspects of the plan, after such funds are disbursed to the Tribe.

2.03. Within 10 business days after receipt of the Tribe's share of the judgment funds, the Tribal Council shall arrange to have eighty (80%) percent of the judgment funds deposited in a segregated account for the purpose of implementing the per capita payment aspects of the plan described in Section 3. Within 10 business days after receipt of the Tribe's share of the judgment funds, the Tribal Council shall arrange to have the twenty (20%) percent of the judgment funds programmed for land acquisition deposited in a segregated account for the purpose of implementing the land acquisition provisions described in Sections 4 and 5 of this plan.

Section 3. One Time Per Capita Payments to all Tribal Members

3.01. As compensation to the members of the Little River Band of Ottawa Indians for the delay in distribution of the judgment fund and to advance the current personal health, safety and welfare of qualified Tribal members, eighty (80%) percent of the Little River Band of Ottawa Indians' share of the judgment fund, shall be divided into equal shares and distributed to all qualified Tribal members, including minor qualified members, adult qualified members who are legally incompetent, and incarcerated members.

3.02. *How per capita payment will be made.* In order to fairly compensate all members of the Little River Band of Ottawa Indians, the per capita payment may be made in two payments. The first payment will be based on the completion of two separate rolls, which will be completed within 30 days after the effective date of this plan. One roll will list each duly enrolled qualified member. The second roll will list each applicant who filed his/her application by 12:00 a.m. (midnight), Friday, January 30, 1998, whose application is still pending. The number of persons on these two rolls will be added together and divided into the total per capita amount, which will equal the amount of the first check that each duly enrolled member will receive. The balance remaining, if any, after all eligible applications have been processed and the appeals time has run shall be divided by the total number of qualified tribal members enrolled from the two rolls described above and distributed to such qualified tribal members in a second payment. A more detailed explanation of this process is outlined in Appendix 1.

3.03. (a) In the event that a member of the Little River Band of Ottawa Indians, who is eligible for payment under this section, should die after the effective date of this plan and prior to the one time payment distribution, that individual's one time payment shall be provided to the member's heirs at law.

(b) In the event that a minor, incompetent or incarcerated person should die while his/her money is in trust, that money shall be distributed to the member's heirs at law.

3.04. *Establishment of Trust Accounts for Minor and Incompetent Tribal Members.* In order to provide for the current and future safety and well being of qualified Tribal members under this section who are minors and fulfill the requirements of Section 1.06, have been declared incompetent by a court of competent jurisdiction and whose legal guardian has fulfilled the requirements of Section 1.07, and incarcerated individuals who have fulfilled the requirements of Section 1.08, the per capita benefit for such qualified tribal members shall be placed in a private trust account by the Tribal Council, and:

(a) The trust shall have segregated accounts for each qualified minor, incompetent, and incarcerated, members based on his/her per capita share, and

(b) The trust agreement shall specifically provide that the investment policy to be followed is that of preserving the trust corpus and of obtaining the highest interest rates current money markets can safely provide. The trust agreement must further provide that maturity dates of investments cannot exceed the period of the trust and that only the following types of investment shall be made: United States Treasury obligations; Federal agency obligations; repurchase/resell agreements; United States Treasury bills; Bankers' acceptance, provided the assets of the issuing bank exceed $1 billion or the issuing bank pledges full collateral; Certificates of deposit, provided the assets of the issuing bank exceed $1 billion or the issuing bank pledges full collateral; Commercial paper, provided it is rated prime-2 by Moody or A–2 by Standard and Poor or is obligation of a company with outstanding unsecured debt rated AA by Standard and Poor.

3.05. *Release of funds regarding legal incompetents.*

(a) Upon the petition of the legal guardian of the beneficiary, trust assets shall be distributed to the beneficiary in any amounts as the Tribal Court determines appropriate for the beneficiary's health, welfare or economic security, including his/her support, maintenance, and education.

(b) The Tribal Court may require that the petitioning guardian submit receipts of expenditures made on behalf of the beneficiary before any disbursements are made, and shall require that the petitioning guardian account to the Tribal Court or trustee for any expenditures made from distributions from the trust or trusts.

(c) The Tribal Court may, at its discretion, authorize the trustee or trustees to establish a regular monthly distribution from the trust for the beneficiary.

3.06. *Release of funds regarding minors.*

(a) All assets accumulated in the trust for the benefit of a minor qualified tribal member shall be distributed at such time as the beneficiary reaches the age

of 18, upon application of the beneficiary, providing sufficient evidence of eligibility, approved by the Tribal Council.

(b) Prior to the time the beneficiary reaches the age of (18), and upon the petition of a parent(s), legal guardian(s) of the minor, or an emancipated minor, the Tribal Court shall make distributions from the trusts in such amounts as deemed necessary in the best interests of the minor, for the minor's support, health, education, or welfare to the parents, legal guardians, fiduciaries, emancipated minor, or to persons having the control and custody of the minor.

(c) The Tribal Court may require that the petitioning parent or legal guardian submit receipts of expenditures made on behalf of the minor before any disbursements are made, and shall require that the petitioning parent or guardian provide an accounting to the Tribal Court or trustee for any expenditures made from distributions from the trust or trusts.

3.07. *Release of funds to incarcerated person.* Upon the petition of an incarcerated person, trust assets shall be distributed to such incarcerated person during his/her incarceration in any amounts as the Tribal Court determines appropriate for such incarcerated person's health, welfare or economic security, or that of such member's family, including support, maintenance, and education.

3.08. The interest of each beneficiary shall be accounted for separately by the trustee, and a trust account statement shall be available at least semiannually to the parent or legal guardian of the beneficiary.

3.09. In order to further the policies and goals underlying the contribution of per capita benefits into trust for minors, legally incompetent persons, and incarcerated persons, it is the intent of the Tribal Council to seek a private letter ruling from the Internal Revenue Service regarding the tax treatment of income earned on the trust benefits concerning the deferred per capita payments to minors, legally incompetent persons, and incarcerated persons.

3.10. The Little River Band of Ottawa Indians shall notify the member if any part of the payments are subject to Federal income taxation at such time as the benefits are paid to the member from the trust, or distributed to the member pursuant to a deferred annual payment distribution plan consistent with any private letter ruling from the Internal Revenue Service, and make any withholding of income tax from and reporting of such payments as may be required under the Internal Revenue Code.

3.11. Except for the members for whom per capita payments are being placed in trusts, the per capita payments for any qualified tribal member shall be mailed to the last known address of the member on file with the Little River Band of Ottawa Indians' Tribal Registrar. The burden of registration with the Office of the Tribal Registrar is with the member to ensure that the Tribal Registrar has the member's correct and current address. Per capita payments returned to the Little River Band as undeliverable shall be maintained by the Little River Band and deposited into an interest-bearing escrow account. The member shall have 365 days to claim the returned payment. If the returned benefits are not claimed within that time period, the benefits shall revert back to the Little River Band of Ottawa Indians and shall be deposited in the Reservation Restoration Trust established in Section 4 of this Plan.

Section 4. Allocation for Land Acquisition

4.01. From the twenty percent (20%) of the Little River Band of Ottawa Indians' share of the judgment funds reserved for Tribal purposes, the sum of $1,500,000 shall be allocated for the acquisition of land to increase tribal land holdings or to pay the principal balance of loans owing on properties owned by the Tribal government. The Tribal Council shall use the funds allocated under this section for the acquisition of specific properties or for the purposes identified in the Tribe's Reservation Restoration Plan—Phase I (adopted February 9, 1997), and shall give priority to acquisition of lands for economic development purposes or to pay the principal balance and any accrued interest on loans owing on such properties. If funds are available by May 1, 1999, Tribal Council shall also purchase the properties described in Exhibit 2–A of Appendix C of the Ludington Pumped Storage Project Settlement Agreement—Courts and Non-FERC Agencies, a copy of which is attached and incorporated herein by reference. If the options described above have expired, the Tribal Council shall give priority to the acquisition of lands for economic development purposes and for the development of Tribal Housing and Community Facilities. Upon acquiring any land, the Tribal Council may sell or exchange such lands for equal value, or may request that the United States hold the land in trust for the Little River Band of Ottawa Indians.

Section 5. Reservation Restoration Trust Fund

5.01. The Tribal Council shall establish an irrevocable, nonexpendable trust to be known as the ''Reservation Restoration Trust Fund.'' In order to promote the accomplishment of the goals defined in the Little River Band of Ottawa Indians' Reservation Restoration Plan, the remaining balance in the Little River Band of Ottawa Indians' share of the judgment fund following allocation of the one time per capita payments to all members and the Initial Allocation for Land Acquisition shall be placed in the ''Reservation Restoration Trust Fund''.

5.02. *Investment.* Monies paid into the Reservation Restoration Trust Fund pursuant to this section, as well as income from investment, shall be invested in high quality corporate, government, or government agency bonds, including commercial or financial company paper, which is rated in one of the two highest ratings by a nationally recognized rating agency; and time deposits or repurchase agreements with any bank or trust company organized under the laws of any state of the United States, or national banking association, provided that such time deposits or repurchase agreements do not exceed at any one time in the aggregate lot of the total of the capital and surplus of such bank or trust company or national banking association, and such bank or trust company or national banking association has a combined capital and surplus of at least $15,000,000.

5.03. Not later than 60 days after receipt of the funds distributed to the Little River Band of Ottawa Indians pursuant to this Act, the Tribal Council shall deposit into the Reservation Restoration Trust Fund the principal, which shall consist of:

(a) The initial portion of the judgment funds described above;

(b) Such other funds which the Tribal Council chooses to add to the Reservation Restoration Trust Fund.

5.04. The Tribal Council shall be the trustee of the Reservation Restoration Trust Fund and shall administer the Reservation Restoration Trust Fund in accordance with this section. The Tribal Council may retain or hire a professional trust manager and may pay the prevailing market rate for such services. Such payment for services shall be made from the current income accounts of the trust and charged against earnings of the current fiscal year.

5.05. Ninety percent of the earnings generated by the Reservation

Restoration Trust Fund may be used annually and shall be used exclusively for the acquisition of specific properties, or for the purposes, identified in the Tribe's Reservation Restoration Plan. There shall be an annual review of the plan to update it for purposes of identifying the priorities of properties in consultation with the Land Acquisition Committee. Upon acquiring any land, the Tribal Council may request that the United States hold the land in trust for the Little River Band of Ottawa Indians. The remaining earnings, after payment to the trust manager and the independent certified public accountant, shall be added to the principal of the Reservation Restoration Trust Fund.

5.06. The Tribal Council shall maintain the Reservation Restoration Fund on an annual basis, which includes:

(a) Maintaining ten percent (10%) of the annual earnings generated by the Reservation Restoration Trust Fund, after payments to the trust manager and independent certified public accountant in the Reservation Restoration Fund;

(b) Using any portion of the ninety percent of the earnings that was not used in one year, in any subsequent year thereafter; and,

(c) Depositing any other funds which the Tribal Council chooses to add to the Reservation Restoration Trust Fund.

5.07. The principal of the Reservation Restoration Trust Fund shall not be expended for any purpose, including but not limited to, per capita payments to members of the Little River Band of Ottawa Indians.

5.08. The Reservation Restoration Trust Fund shall be maintained as a separate account, which shall be audited at least once during each fiscal year by a certified public accountant who shall prepare a report on the results of such audit. Such report shall be a public document, and shall be available for inspection by any member of the Little River Band of Ottawa Indians.

5.09. Notwithstanding any other provision of law, the approval of the United States of any payment from the Reservation Restoration Trust Fund shall not be required and the United States shall have no trust responsibility for the investment, supervision, administration, or expenditure of funds from the Reservation Restoration Trust Fund.

Section 6.Tribal Sovereign Immunity

6.01. Nothing in this plan shall provide, or be interpreted to provide, a waiver of the sovereign immunity from suit of the Little River Band of Ottawa Indians or any of its governmental officers and/or agents.

6.02. Nothing in this plan shall create a duty of financial obligation on the part of the Little River Band of Ottawa Indians or any of its officers and/or agents to provide judgment fund distribution payments to an individual who alleges that he/she did not receive a per capita distribution check; provided, however, that the Little River Band of Ottawa Indians must show:

(a) The individual's name does not appear on any of the rolls authorized under this plan; or

(b) The individual's name: (i) appeared on one of the rolls authorized under this plan; and, (ii) a copy of the per capita check is returned by the Tribal Administration as proof of distribution to the last known address of the individual entitled to a per capita check.

This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Dated: November 19, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–32301 Filed 12–3–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Plan of Operations and Environmental Assessment for Proposed 3–D Seismic Survey; Seismic Exchange, Incorporated, Big Thicket National Preserve, Hardin and Jasper, Texas

Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations, Part 9, Subpart B, that the National Park Service has accepted a Plan of Operations from Seismic Exchange, Incorporated for Three Dimensional Seismic Survey within Big Thicket National Preserve, Hardin and Jasper Counties, Texas.

The Plan of Operations and corresponding Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice. Both documents can be viewed during normal business hours at the Office of the Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, Texas. Copies can be requested from the Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, TX 77701.

Dated: November 23, 1998.

Richard R. Peterson,

Superintendent, Big Thicket National Preserve.

[FR Doc. 98–32239 Filed 12–3–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Record of Decision for the General Management Plan for the Sitka National Historical Park, Alaska

AGENCIES: National Park Service, Interior.

ACTION: Notice of Availability of the Record of Decision for the General Management Plan for the Sitka National Historical Park, Alaska.

SUMMARY: The National Park Service (NPS) announces the availability of the Record of Decision (ROD) for the General Management Plan for the Sitka National Historical Park, Alaska.

The National Park Service will implement the proposed action (alternative 1) as described in the Draft and Abbreviated Final General Management Plan/Environmental Impact Statements as the selected alternative. This plan will achieve a high-quality, diverse visitor experience consistent with the mandate and mission of the NPS and the purpose and significance of the park. New management strategies, social science methods, and interpretive tools will be used to improve the management of visitor use, especially during the days of peak demand. For better visitor distribution, visitors will be encouraged to move beyond the visitor center and the nearby Totem Trail into less frequently visited areas, such as the fort site, the battleground, and the Russian Memorial. By funding and implementing comprehensive research and interpretive programs, the NPS will place increased emphasis on the park's cultural resources and on the purpose and significance of the park.

A Notice of Intent to prepare an environmental impact statement (EIS), published in the **Federal Register** in May 17, 1995 (60 FR 26455), formally initiated the National Park Service planning and EIS effort for the park. A draft and final plan and EIS were prepared. The final plan and abbreviated EIS describe and analyze the environmental impacts of a proposed action and three other action alternatives. A no-action alternative also was evaluated.

The Record of Decision (ROD) documents the decision of the Department of the Interior, National Park Service, regarding the Sitka National Historical Park. This ROD briefly discusses the background of the planning effort, states the decision and discusses the basis for it, describes other alternatives considered, specifics the environmentally preferable alternative, identifies measures adopted to minimize potential environmental harm, and summarizes the results of public involvement during the planning process.

ADDRESSES: Copies of the ROD are available on request from: Superintendent, Sitka National Park, 106 Metlakatla Street, P.O. Box 738, Sitka, Alaska 99835.

FOR FURTHER INFORMATION CONTACT: Superintendent, Sitka National Historical Park, 106 Metlakatla Street, P.O. Box 738, Sitka, Alaska 99835. Phone (907) 747–6281.

Dated: November 24, 1998.

Robert D. Barbee,

Regional Director, Alaska.

[FR Doc. 98–32238 Filed 12–3–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–6]

Ronald J. Riegel, D.V.M., Revocation of Registration

On January 28, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Ronald J. Riegel, D.V.M. (Respondent) [1] of Ostrander, Ohio, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AR1930254, and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 824(a)(2) and (a)(4), because he was convicted of a felony related to controlled substances and because his continued registration would be inconsistent with the public interest.

By letter dated February 12, 1997, Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Columbus, Ohio on August 13, 1997, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and the Government introduced documentary evidence. After the hearing, Government counsel submitted proposed findings of fact, conclusions of law and argument. On March 27, 1998, Judge Randall issued her Opinion and Recommended Ruling, recommending that Respondent's DEA registration be revoked. On April 17, 1998, the Government filed exceptions to the Opinion and Recommended Ruling of the Administrative Law Judge, and on May 28, 1998, Judge Randall transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, except as specifically noted below, the Opinion and Recommended Ruling of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

Respondent is a veterinarian who has been licensed to practice in Ohio for approximately 18 years. His DEA Certificate of Registration, that is the subject of these proceedings, expired on April 30, 1997, and he did not submit an application for renewal of this registration. Before reaching the merits of this case, it must be determined whether DEA has jurisdiction to revoke this registration since it has expired with no renewal application being filed.

After the hearing in this matter, the Government filed a Motion for Appropriate Relief on September 3, 1997, arguing that the Administrative Law Judge has no jurisdiction over this matter since Respondent's registration expired before resolution of the issues raised in the Order to Show Cause. The Government further argued that since DEA has not received a renewal application for the registration, ''there is no registration to either suspend or revoke under 21 U.S.C. § 824.'' The Government requested that Judge Randall issue a ruling allowing Respondent an opportunity to submit an application for registration which would then be considered based upon the record in these proceedings, or in the alternative if no such application is submitted, to terminate the proceedings based upon a lack of jurisdiction. Respondent did not file a response to the Government's motion.

On November 7, 1997, Judge Randall issued a Memorandum and Order regarding the jurisdictional issue. As Judge Randall noted, there is nothing in the Controlled Substances Act or its implementing regulations that specifically addresses the status of a registration that expires before the resolution of show cause proceedings where no renewal application has been filed. The Administrative Procedure Act (APA) applies to show cause proceedings, and 5 U.S.C. 558(c) provides that ''[w]hen the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.'' However, the APA does not specifically address what happens to a registration when no renewal application has been filed.

Pursuant to 21 CFR 1301.36(i), a registration will be automatically extended past its expiration date and continue in effect until a final decision is made regarding the registration if a renewal application is filed at least 45 days before the expiration of the registration. The regulation also provides that:

> The Administrator may extend any other existing registration under the circumstances contemplated in this section even though the registrant failed to apply for reregistration at least 45 days before expiration of the existing registration, with or without request by the registrant, if the Administrator finds that such extension is not inconsistent with the public health and safety.

Here, no specific findings were made to extend Respondent's registration past the expiration date and therefore, 21 CFR 1301.36(i) does not apply to extend the registration in this proceeding.

As Judge Randall noted, in a prior DEA decision, the then-Administrator addressed facts somewhat similar to the ones at issue in this proceeding. See *Park and King Pharmacy*, 52 FR 13,136 (1987). In that case, the pharmacy's Certificate of Registration expired by its own terms after the Order to Show Cause was issued but before a final order had been issued. No renewal application had been submitted, and instead the pharmacy was sold while the show cause proceeding was pending final agency action. The then-Administrator disagreed with the Administrative Law Judge's finding that the pharmacy's registration terminated pursuant to 21 CFR 1301.62 (now 21 CFR 1301.52) as a result of the sale of the pharmacy, and that the show cause proceeding was moot. In addition, the then-Administrator found that:

[1] The Order to Show Cause indicated that Respondent was an ''M.D.'', however Respondent identified himself as a ''D.V.M.'' in his request for a hearing and the facsimile of Respondent's DEA Certificate of Registration, which was introduced at the hearing as a Government exhibit, also indicates that Respondent is a ''D.V.M.''

The practice of the Drug Enforcement Administration, as well as its predecessor agency, since the implementation of the Controlled Substance[s] Act has been to maintain registrations on a day-to-day basis pending resolution of administrative proceedings seeking to revoke such registrations. The Respondent in this matter possessed a viable DEA registration when he received the Order to Show Cause which initiated the proceedings. That registration remained in effect, on a day-to-day basis, following its nominal expiration date on March 31, 1986. The same administrative ''hold'' that prevented the registration from expiring also prevented the Respondent from renewing the registration. Accordingly, the Administrator concludes that neither the nominal expiration date on the face of the Respondent's registration nor his inability to file a renewal application have any effect upon the matter pending before the Administrator. *Id.*

As Judge Randall noted, the same rationale that applied in *Park and King Pharmacy* would seem to apply in this case. ''At the time the Order to Show Cause was issued, the Respondent held a viable Certificate of Registration. The order placed an 'administrative hold' on that certificate, and likewise placed it in a day-to-day category. The respondent's unilateral action of failing to file a renewal application would not change the status of the registration.''

However, Judge Randall expressed concern that neither the regulations nor *Park and King Pharmacy* provide any authority for placing an ''administrative hold'' on a registration that expires with no renewal application being filed in the midst of a show cause proceeding. As Judge Randall noted, ''[t]o the contrary, the regulations tell the registrant to file a renewal application within a specified time to preserve his registration status.''

But Judge Randall concluded that in light of the decision in *Park and King Pharmacy*, she does not have the authority to terminate these proceedings, because to do so would ''unilaterally change agency policy without giving this Respondent notice of such a change and an opportunity to comply.'' Therefore, Judge Randall denied the Government's motion, concluding that ''consistent with DEA precedent, the Respondent's DEA Certificate of Registration is currently being maintained on a day-to-day basis, that this proceeding is not rendered moot by the Respondent's failure to file a renewal application, and that jurisdiction still rests with this forum to complete these show cause proceedings.''

The Acting Deputy Administrator agrees with Judge Randall's decision not to terminate the proceedings and to forward this matter to the Acting Deputy Administrator. However, the Acting Deputy Administrator is troubled by the decision in *Park and King Pharmacy*. Other than the statement that it has been DEA's practice, no authority was cited in the final order for the position that an expired registration can still be revoked if no renewal application has been filed. The Acting Deputy Administrator can find nothing in the statute or regulations nor any other notice to the public that a registration is extended past its expiration date on a day-to-day basis pending final resolution where no renewal application has been submitted. To the contrary, both the APA and 21 CFR 1301.36(i) specifically state that a registration is extended on a day-to-day basis *if a timely renewal application is filed*. Consequently, it is reasonable for a registrant to assume that its registration would no longer be subject to adverse action once it expires and no application for renewal has been filed regardless of whether an Order to Show Cause has been issued or not.

Therefore, the Acting Deputy Administrator finds no authority to support the then-Administrator's conclusion in *Park and King Pharmacy* that the registration was maintained on a day-to-day basis past the expiration date even though a renewal application had not been filed. If a registrant has not submitted a timely renewal application prior to the expiration date, then the registration number expires and there is nothing to revoke. Accordingly, the Acting Deputy Administrator agrees with the Government's initial position that this matter is moot because there is no viable registration to revoke.

However, as Judge Randall noted in her November 7, 1997 Memorandum and Order, since Respondent has participated in a hearing, it would be unfair to now terminate the proceedings without resolution based upon a deviation from past agency precedent. In fact the Government did not even argue until several weeks after the hearing that Respondent did not have a viable registration. ''Such a deviation mid-case, without notice and opportunity to comply with the changed procedure, specifically prejudices this Respondent.'' Therefore, the Acting Deputy Administrator will address the merits of this case to determine whether Respondent's registration should be revoked.

The Acting Deputy Administrator finds that in January 1995, a cooperating individual who was renting a house from Respondent provided DEA with a vial of etorphine, a Schedule II controlled substance, claiming to have obtained it from Respondent. Etorphine is a strong tranquilizer used on large animals. It is also used illegally on race horses.

On April 5, 1995, DEA and local authorities monitored and tape recorded a meeting between the cooperating individual and Respondent during which the cooperating individual paid Respondent $500 for a previously obtained vial of etorphine. At the hearing in this matter, Respondent acknowledged receiving $500 from the cooperating individual, but testified that the payment was for rent owed to him by the cooperating individual.

After the initial transaction, Respondent returned to the cooperating individual's residence that same day with a vial of etorphine that he had apparently retrieved from his residence. According to Respondent, the cooperating individual had told him the day before during a telephone conversation that the cooperating individual had stored a bottle of etorphine in Respondent's veterinary clinic and that Respondent could sell it and keep the money from the sale as a rent payment. Respondent also testified that during the initial meeting on April 5, the cooperating individual had indicated that he wanted the vial returned to him because he had located a buyer for the etorphine. Therefore, Respondent acknowledged handing a bottle of etorphine to the cooperating individual on April 5, but denied that it was from his office stock. Respondent testified that he returned the vial to the cooperating individual because he was afraid of him.

According to Respondent he had a telephone conversation with the cooperating individual sometime between April 5 and 13, 1995, during which the cooperating individual indicated that he would give Respondent $1,500 that had been obtained from the sale of the etorphine acquired on April 5. Thereafter, on April 13, 1995, during a monitored and recorded meeting, the cooperating individual gave Respondent $1,500 for the bottle of etorphine obtained on April 5.

Respondent testified that in June of 1995, the cooperating individual's dog developed a cough which did not get better with prescribed antibiotics. According to Respondent, the cooperating individual then requested some Vicodin, a Schedule III controlled substance, stating that it had worked for his sister's dog. Respondent testified that, ''[f]inally, because I am so busy and everything, and just to get him off my back, I called in a prescription, but I am suspicious of him by this time.'' Respondent indicated that in light of his suspicions, he called in a prescription

for hydrocodone, the generic for Vicodin, because he ''felt [the cooperating individual] could not resell or, you know, do anything with [it].''

On July 13, 1995, the cooperating individual was observed by investigators giving Respondent $75. Respondent admitted at the hearing to accepting $75 from the cooperating individual, but testified that the money was for rent that the cooperating individual owed him.

As a result of this investigation, Respondent was charged criminally. Following a jury trial, the Court of Common Pleas of Delaware County, Ohio entered judgment on February 23, 1996, finding Respondent guilty of one count of Aggravated Trafficking, for activities involving etorphine, and one count of Trafficking in Drugs, for activities involving hydrocodone, both felony offenses in violation of Ohio state law.

On February 9, 1994, the Ohio Veterinary Medical Licensing Board (Board) issued an order suspending Respondent's license to practice veterinary medicine for six months. The Board's order was based on a finding that Respondent had permitted a ''graduate animal technician to administer treatment and care to and to perform surgeries on patients while in his employ.'' Following the rejection of Respondent's appeal of the Board's order, the suspension was effective from September 12, 1995 to March 12, 1996. By notice dated May 16, 1996, the Board initiated another administrative action against Respondent's veterinary license, however, there is no evidence in the record regarding the resolution of that action.

Pursuant to 21 U.S.C. 824(a), ''A registration pursuant to section 823 of this title to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant—* * * (2) has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State, relating to any substance defined in this subchapter as a controlled substance. * * *''

In addition, pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal of such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16,422 (1989).

It is undisputed that Respondent was convicted on February 23, 1996, in the Court of Common Pleas of Delaware County, Ohio of two felony counts relating to controlled substances. Therefore, grounds exist to revoke Respondent's DEA registration under 21 U.S.C. 824(a)(2).

Next, the Acting Deputy Administrator considers whether Respondent's continued registration would be inconsistent with the public interest. Regarding factor one, in 1994, Respondent's veterinary license was suspended for six months based upon a finding that he had allowed a graduate technician to perform surgery and care for patients in violation of Ohio law. The Board again initiated proceedings against Respondent's license in May 1996; however, there is no evidence in the record regarding the resolution of those proceedings. Therefore, based upon the record before him, the Acting Deputy Administrator finds that Respondent possesses a valid state license.

Factors two and four, Respondent's experience in dispensing controlled substances and his compliance with applicable laws relating to controlled substances, are clearly relevant in determining the public interest. There is some dispute regarding the circumstances surrounding Respondent's providing the cooperating individual with the bottle of etorphine and the prescription for hydrocodone. But even if the Acting Deputy Administrator were to accept Respondent's version of events, there is still cause for concern regarding Respondent's continued registration.

Respondent admitted at the hearing that he gave the cooperating individual the bottle of etorphine on April 5, 1995, knowing that the cooperating individual intended on selling it. Respondent indicated that he did so out of fear. The Acting Deputy Administrator agrees with Judge Randall's conclusion that ''[i]f accepted as true, the Respondent's demonstrated susceptibility to coercion puts the public at risk of controlled substance diversion.'' Regarding the hydrocodone prescription, Respondent stated that he issued the prescription ''because I am so busy and everything, and just to get him off my back,'' despite his suspicion of the cooperating individual.

However as Judge Randall noted, Respondent was convicted of aggravated trafficking in etorphine and trafficking in drugs, to wit hydrocodone, and it is not proper to look behind these convictions. Therefore, the Acting Deputy Administrator concludes that there was no legitimate medical purpose for the hydrocodone prescription in violation of 21 U.S.C. 841(a)(1), 21 CFR 1306.04 and Ohio law, and Respondent distributed the etorphine in violation of 21 U.S.C. 841(A)(1) and Ohio law.

As to factor three, it is undisputed that Respondent was convicted of two felony offenses relating to controlled substances.

Regarding such other conduct as may threaten the public health and safety, the Acting Deputy Administrator is deeply troubled by Respondent's conduct if one assumes, as Respondent suggests, that he was merely returning the cooperating individual's bottle of etorphine to him on April 5, 1995. As Respondent admitted, he knew that the cooperating individual intended on selling the etorphine, yet Respondent did not notify DEA or the local authorities. Instead, he just gave this potentially lethal medication to the cooperating individual because he was afraid of him. As Judge Randall concluded, ''[s]uch behavior is a direct threat to the public safety and is not the action of a responsible registrant.''

The Acting Deputy Administrator concludes that the Government has presented a *prima facie* case for revocation of Respondent's DEA Certificate of Registration. Further, the Acting Deputy Administrator concurs with Judge Randall's conclusion that rather than presenting any mitigating evidence, ''the Respondent continues to fail to take responsibility for his actions, to show any remorse for his controlled substance convictions, or to give any assurance that he will not participate in such activities in the future.'' The Acting Deputy Administrator concludes

that Respondent's continued registration would be inconsistent with the public interest and therefore grounds exist to revoke his DEA registration pursuant to 21 U.S.C. 824(a)(4).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AR1930254, previously issued to Ronald J. Riegel, D.V.M., be, and it hereby is revoked. This order is effective January 4, 1999.

Dated: November 27, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–32225 Filed 12–3–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS 1938–98]

Filing of Applications and Petitions for Treaty Trader and Treaty Investor (E) and Alien Entrepreneur (EB–5) Classification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of location of filing petitions and applications.

SUMMARY: This notice announces that the Immigration and Naturalization Service (Service) is directing all petitions and applications related to classification as a treaty trader (E–1), treaty investor (E–2), or alien entrepreneur (EB–5) to be filed at the newly defined jurisdictional areas of either the Texas Service Center or the California Service Center. This action is necessary to provide more effective monitoring and control of these often complex, time-consuming adjudications.

DATES: This notice is effective December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Katharine Auchincloss-Lorr, Adjudications Officer, Immigration and Naturalization Service, 425 I Street, NW, Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

What Change is the Service Announcing Through the Publication of This Document?

Until this time, treaty trader and treaty investment applications and alien entrepreneur petitions have been processed at the four Service Centers located in California, Vermont, Texas, and Nebraska. With the publication of this notice, pursuant to 8 CFR 103.1 and 103.2, the Service is consolidating all petitions and applications relating to classification as a treaty trader (E–1), treaty investor (E–2), and alien entrepreneur (EB–5) at two Service Centers, namely those in Texas and California.

Why is the Service Changing the Location for Processing E–1 and E–2 Applications and EB–5 Petitions?

By consolidating these applications and petitions at the Texas and California Service Centers, the Service will ensure that the procedures related to the adjudication of these highly technical requests for immigration benefits are more uniform, consistent, and streamlined. Quality control and other necessary program oversight functions may be more readily undertaken as necessary. The Service can more easily ensure that the officers adjudicating these cases are appropriately trained and experienced in the relevant areas of regulatory trade, investment, financial, and economic policy and analysis, and that they have access to the additional expertise necessary in particularly complex matters.

How Will the Public Benefit From These Changes?

These petitioners and applicants will receive more comprehensive and effective adjudication of their requests for benefits. These adjudications will be performed only by trained and skilled adjudicators, familiar with these complex financial and economic requirements and the issues involved. Consolidation will enable the Service to respond more effectively to any procedural concerns and to provide prompt adjudication.

What Petitions and Forms are Involved?

The petitions and applications involved in this change of filing location include applications for extension or change of status of nonimmigrant classification to treaty trader (E–1) and treaty investor (E–2) status which are processed on Form I–129; petitions for alien entrepreneur classification, which are filed on Form I–526, and; petitions to remove conditions at the end of the 2 year period of conditional residence, which are filed on Form I–829.

What are the Mailing Addresses for These New Filing Locations?

The current mailing addresses for these petitions and applications are as follows: for the California Service Center, 24000 Avila Road, 2nd floor (P.O. Box 10526), Laguna Niguel, California 92607–0526; for the Texas Service Center, P.O. Box 852135, Mesquite TX 75185–2135.

Is This Change in Location a Change in Service Center Jurisdiction?

The Nebraska and Vermont Service Centers will no longer have jurisdiction over E–1, E–2, and EB–5 matters. The Texas and California Service Centers will have jurisdiction over these matters.

Effective [Insert date of publication in the **Federal Register**], petitions for immigrant investor classification which have been filed pursuant to § 204.6(b) with the Service Center having jurisdiction over the area in which the new commercial enterprise is or will be principally doing business, will be filed with: (1) The Texas Service Center if the new commercial enterprise is located, or will principally be doing business, in the areas previously covered by the Vermont and Texas Service Centers; (2) the California Service Center if the new commercial enterprise is located, or will principally be doing business, in the areas previously covered by the California and Nebraska Service Centers.

The same change will occur with regard to applications for extension of stay or change of status into E–1 or E–2 classification which are filed pursuant to the instructions on Form I–129 with the Service Center with jurisdiction over the location of employment.

What Will Happen to My Application or Petition if I Already Filed It at Another Service Center?

During the first 60 days following the effective date of this Notice, the Service Centers in Vermont and Nebraska will forward in a timely fashion to the Service Centers in Texas and California, as appropriate, any of these applications and petitions which have been inadvertently filed with the Service Centers in Vermont or Nebraska. In order to facilitate this transition, applicants and petitioners will be provided a notice at the time of filing at Vermont or Nebraska advising them that their application or petition is being forwarded to the correct service center, either Texas of California, for initial processing. When applications or petitions are forwarded from the Vermont or Nebraska Service Centers, they will be receipted and filed when they arrive at the Texas or California Service Centers, After the 60-day transition period, applications and petitions related to classification as treaty trader (E–1), treaty investor (E–2),

or alien entrepreneur (EB–5) filed inadvertently at the Vermont or Nebraska Service Centers will be returned with a notice that directs the petitioner or applicant to mail the petition or application directly to the Texas or California Service Center, as appropriate, for processing.

Dated: November 13, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–32237 Filed 12–3–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1201]

RIN 1121–ZB37

Announcement of the Availability of Training and Technical Assistance To Replicate a Drug Prevention Program as Identified by the Office of Juvenile Justice and Delinquency Prevention

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), Justice.

ACTION: Notice of availability of training and technical assistance.

SUMMARY: Announcement of the availability of OJJDP-funded training and technical assistance to replicate a drug prevention program.

DATES: The due date for receipt of applications is specified in the Program Announcement.

ADDRESSES: Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: General information about application procedures and copies of the Program Announcement (discusses the nature and purpose of the program and describes application requirements and deadlines) and the Application Kit (includes application forms and instructions that apply to all OJJDP funding opportunities) are available from OJJDP's Juvenile Justice Clearinghouse (ordering and contact information is found in the Background section). Specific questions about the Program Announcement and related requirements should be directed to the Program Manager referenced in the Program Announcement.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Fiscal Year 1998 Appropriations Act, Pub. L. 105–119, 111 Stat. 2440 (November 26, 1997).

Background

Applicants will receive training and technical assistance to replicate Life Skills Training, a drug abuse prevention program. Prospective applicants should contact the Juvenile Justice Clearinghouse (JJC) for copies of the Program Announcement and Application Kit by calling 800–638–8736. To request that a copy be mailed to you, select option 2 or 3, and ask for SL 255 for the Program Announcement and SL 254 for the Application Kit. To have the Program Announcement faxed to you, call 800–638–8736 and select option 1 to reach JJC's fax-on-demand service, then choose option 2, and enter 9046. The Program Announcement and the Application Kit are also available on the Internet at www.ncjrs.org/ojjhome.htm; see Grants and Funding or New Initiatives sections.

Dated: December 1, 1998.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 98–32351 Filed 12–3–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 30, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ({202} 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for, ESA, MSHA, OSHA Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Representative Fee Request.

OMB Number: 1215–0078 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit; Individuals or household.

Number of Respondents: 14,000.

Estimated Time Per Respondent: 20 to 90 minutes.

Total Burden Hours: 10,000.

Total Annualized Capital/startup Costs: 0.

Total Annual (operating/maintaining): 17,150.

Description: Individuals filing for compensation benefits with the Office of Workers' Compensation Programs (OWCP) may be represented by an attorney or other representative. The representative is entitled to request a fee for services under 20 CFR 10.145 (Federal Employees' Compensation Act) and 20 CFR 702.132 (Longshore and Harbor Workers' Compensation Act). The fee must be approved by the OWCP before any demand for payment can be made by the representative.

Agency: Employment Standards Administration.

Title: The Black Lung Provider Enrollment Form.

OMB Number: 1215–0137 (extension).

Agency Number: CM–1168.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 4,000.

Estimated Time Per Respondent: Three to seven minutes.

Total Burden Hours: 300.

Total Annualized Capital/startup Costs: 0.

Total Annual (operating/maintaining): 1,400.

Description: ESA's Division of Coal Mine Workers' Compensation (DCMWC) is responsible for maintaining a list of authorized treating physicians and medical facilities in the area of a miner's residence and for payment of certain medical bills and services provided to the miner under the Black Lung Benefits Act. This form is sent to and completed by new providers who wish to participate in providing medical services to miners. The information provided is used by DCMWC to create a data base identifying medical providers by name, address, and billing information, and the type of medical service they will provide.

Agency: Employment Standards Administration.

Title: Request for Information on Earnings, Dual Benefits, Dependents and Third Party Settlements.

OMB Number: 1215–0151 (revision).

Frequency: Annually.

Affected Public: Individuals or household.

Number of Respondents: 50,000.

Estimated Time Per Respondent: 20 minutes.

Total Burden Hours: 16,666.

Total Annualized Capital/startup Costs: 0.

Total Annual (operating/maintaining): $17,500.

Description: The Department of Labor is seeking approval to revise this information collection to include a question asking if the respondent has ever been convicted of a fraud related offense in connection with the application or receipt of worker's compensation benefits. It also asks whether the respondent has been incarcerated for any period during the last 15 months for any felony offense. These additional questions are necessitated by 5 U.S.C. 8148(a), which provides that an individual convicted of any violation related to fraud in the application for, or receipt of, any compensation benefit, forfeits (as of the date of such conviction) any entitlement to such benefits for any injury occurring on or before the date of conviction. Also, 5 U.S.C. 8148(b)(1) requires that no Federal compensation benefit can be paid to any individual for any period during which such individual is incarcerated for any felony offense.

Agency: Occupational Safety and Health Administration.

Title: Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment (29 CFR part 1915)

OMB Number: 1218–0011 (extension).

Frequency: Varies (Daily, On Occasion).

Affected Public: Business or other for-profit; Not for-profit institutions; Federal Government; State, local or tribal.

Number of Respondents: 82,560.

Estimated Time Per Respondent: Varies from 2 minutes to 5 minutes.

Total Burden Hours: 136,403.

Total Annualized Capital/startup Costs: 0.

Total Annual (operating/maintaining): 0.

Description: The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The information collection requirements contained in the standard on Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment (29 CFR part 1915) are necessary for the protection of employees exposed to hazardous atmospheres in shipyard employment. Hazardous atmospheres, whether toxic, flammable or oxygen deficient/enriched, are found throughout shipyard employment, in shipbuilding, ship breaking, repair and land side activities. Before employees can work in spaces that may contain hazardous atmospheres, the spaces must be inspected and often tested to determine atmospheric contents. In some situations, the testing is done by a Marine Chemist, Coast Guard Authorized Person, or certified industrial hygienist and a hot work certificate is issued and posted. To make sure the atmosphere in a space remains safe for workers, retesting is required. In the vast majority of situations, a Shipyard Competent Person (SCP) will test the space, record and maintain the results and post instructions for the workers to follow prior to or during work in the space. The SCP must also retest as necessary to maintain safe conditions.

Employees who must enter spaces that may contain hazardous atmospheres must be certified that they have received training and a record of the certification maintained by the employer.

Employers and employees are unable to recognize, flammable or oxygen deficient/enriched atmospheres in spaces without first testing to determine that hazardous conditions exist. By requiring employers, under 29 CFR 1915.7, to ensure that employees have the ability and knowledge to recognize, test for, and remove these hazards and to specifically assign certain duties to these employees, OSHA is reducing the incidence of accidents caused by hazardous atmospheres within shipyard employment, including but not limited to, vessels and vessel sections.

Agency: Occupational Safety and Health Administration.

Title: Control of Hazardous Energy Sources (Lockout/Tagout) (29 CFR 1910.147).

OMB Number: 1218–0132 (extension).

Frequency: Varies (Initially, Yearly, On Occasion).

Affected Public: Business or other for-profit; Not for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 462,340.

Estimated Time Per Respondent: Varies from 15 seconds to 2.5 hours.

Total Burden Hours: 818,098.

Total Annualized Capital/startup Costs: 0.

Total Annual (operating/maintaining): 0.

Description: The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The collections of information contained in the standard on the Control of Hazardous Energy Sources (Lockout/Tagout) are needed to reduce injuries and deaths in the workplace that occur when employees are engaged in maintenance, repair, and other service related activities requiring the control of potentially hazardous energy. The employer will use the information in the procedures he or she develops to provide employees with a clear understanding of uniform and safe methods for the application and removal of energy control measures involving work on machines or equipment, thereby reducing accident probability. In addition, the information will be used by employers to enable them to pinpoint methods and operations currently in use that may require additional attention. The failure to provide and maintain access to this information will significantly impair the

Occupational Safety and Health Administration's effort to control or reduce injuries and fatalities in the workplace that are associated with these activities and conditions.

Agency: Occupational Safety and Health Administration.

Title: Electrical Standards for Construction (29 CFR part 1926, Subpart K).

OMB Number: 1218–0130 (revision).

Frequency: Initially, On Occasion.

Affected Public: Business or other for-profit; Not for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 278,500.

Estimated Time Per Respondent: Varies from .02 to .17 hour.

Total Burden Hours: 53,001.

Total Annualized Capital/startup Costs: 0.

Total Annual (operating/maintaining): 0.

Description: The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

In the Electrical Standards for Construction (29 CFR part 1926, Subpart K), the written description of the Assured Equipment Grounding Conductor Program (AEGP) required by 1926.404(b)(1)(iii) allows employers, employees, and OSHA compliance officers to determine how the requirements of the standard are being met, including the method of recording tests. For example, the employer's written program might specify the use of yellow tape to color code every tool and cord set. By referring to the written program, OSHA compliance officers and other persons can easily determine if the employer is complying with the program.

The posting of warning signs enables employees to avoid accidental contact of electrical equipment used on construction sites. Contact with unguarded live electrical parts, especially at high voltage, can be hazardous to employees.

The tagging of controls, equipment and circuits its intended to prevent the inadvertent reactivation of the controls, equipment and circuits while they are being serviced.

Agency: Occupational Safety and Health Administration.

Title: Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h)).

OMB Number: 1218–0143 (extension).

Frequency: Varies (Initially, Yearly, On Occasion).

Affected Public: Business or other for-profit; Not for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 0.

Estimated Time Per Respondent: Varies from .02 to .17 hour.

Total Burden Hours: 1.

Total Annualized Capital/startup Costs: 0.

Total Annual (operating/maintaining): 0.

Description: The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The collections of information contained in the Presence Sensing Device Initiation (PSDI) standard are considered essential for ensuring the safety of employees using presence sensing devices. The requirement for affixing test rod instructions label to the presence sensing device—1910.21(h)(10)(I)—enhances the proper and essential device testing. Because operator safety depends on the PSDI safety system, conforming with the equipment testing and checking requirements is absolutely essential for worker safety.

The requirements for certification/validation 1910.217(h)(11)(I) through (vi), (13), and Appendices A and C—ensure that the design, installation, and ongoing maintenance of the safety system is objectively evaluated for conformance with all applicable requirements of the section. The section further requires notification of unplanned incidents such as component failures and accidents which could impair the continuing safety of the system. For employees, employers, OSHA compliance and consultation personnel, insurance authorities, and others involved to be able to recognize easily that the system meets OSHA standards, the press must be labeled to affirm validation/certification. Submitting copies of accident reports to the validation organization is necessary to assure that the validation organization will have knowledge of field experience in this mode of press operation and will be able to incorporate any lessons learned from the accidents into the certification/validation program provisions.

Because this rule permits a mode of operation which previously was prohibited, OSHA believes it is especially essential to verify that this method does not compromise worker safety. The certification/validation program provides a method to ensure that the press and related equipment are properly arranged and that the installation does not become degraded over time. It should be noted that although OSHA uses the term ''certification'' for this process, it should not be confused with the use of the word as addressed in the Office of Management and Budget (OMB) implementing regulations for the Paperwork Reduction Act, to reflect a minimal information collection method. The word ''certification'' in this rulemaking is based on the American National Standard ANSI Z31.1.1.–1987, and is nationally recognized as describing a broad, comprehensive, well-defined program for ensuring product or material conformance with established standards.

OSHA believes the burden for this information collection request is minimal as employers have not incurred any paperwork to comply with the standard because they have not elected to use PSDI features on their power presses. OSHA is requesting one hour approval from OMB in the event an employer may wish to use a PSDI, which will trigger the collection of information requirements.

Agency: Mine Safety and Health Administration.

Title: Refuse Piles and Impounding Structures, Recordkeeping and Reporting Requirements.

OMB Number: 1219–0015 (Extension).

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Estimated Time Per Respondent: 128 hours.

Number of Respondents: 12,768.

Total Burden Hours: 96,688.

Total Annualized Capital/startup Costs: 0.

Total Annual (operating/maintaining): $0.

Description: Requires coal mine operations submit to MSHA an annual status report and certification on impoundments and hazardous refuse piles; and to keep records of the results of weekly examinations and instrumentation monitoring impounds.

Agency: Mine Safety and Health Administration.

Title: Records of Tests and Examinations of Personnel Hoisting Equipment.

OMB Number: 1219–0034 (extension).

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 360.

Estimated Time Per Respondent: 96 hours.

Total Burden Hours: 34,460.

Total Annualized Capital/startup Costs: $0.

Total Annual (operating/maintaining): $0.

Description: Coal mine operators are required to test and inspect the personnel hoisting system to ensure that the system remains safe to operate. Any deficiencies found are to be recorded, corrected and, a record made and maintained for one year.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–32255 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,498 and NAFTA–02347]

Kunkle Foundry Company, Incorporated, Andrews, Indiana; Notice of Negative Determination on Reconsideration

On August 26, 1998, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Regiser** on September 10, 1998 (63 FR 48525).

The Department initially denied TAA to workers of Kunkle Foundry because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The Department conducted a survey of major customers of the subject firm. None of the respondents indicated any imports of bronze castings. The workers at the subject firm were engaged in employment related to the production of bronze castings.

The petitioner asserted that subject firm production of bronze castings had been shifted to Mexico and imported into the U.S.

On reconsideration, the department requested that the subject firm provide additional information about the disposition of certain castings. After discussions with company officials and officials with companies with whom the castings have been out-sourced, the department has found that the out-sourced castings are being manufactured in New Jersey and Texas and not in Mexico.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Kunkle Foundry Company, Incorporated, Andrews, Indiana.

Signed at Washington, DC, this 12th day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32275 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of November, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–34,971; Zilog, Inc., Nampa, ID

TA–W–35,059; Textron Turf Care & Specialty Products, Racine, WI

TA–W–34,883; Corning, Inc., Corning Metals Shop, Corning, NY

TA–W–34,914; Arlee Home Fashions, Houston, MO

TA–W–34,843; Smith Tool, Ponca City, OK

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–35,112; Reliability, Inc., Durham, NC

TA–W–34,980; Ogden Atlantic Design Co., Charlotte, NC

TA–W–34,960; The Warren Group., Secaucus, NJ

TA–W–34,950; Kidz Klothz Group, Inc., New York, NY

TA–W–35,097; Wallet Works, Horse Cave, KY

TA–W–35,096; US Technologies, Sewell, NJ

TA–W–35,119; Tri State Associated Wholesale Grocer, El Paso, TX

TA–W–35,118; Institute for Scientific Information, Cherry Hill, NJ

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–34,915; Syntec Industries, Inc., Rome, GA

TA–W–34,998; PCC Merriman, Hingham, MA

TA–W–35,039; Reese Enterprises, Inc., Acme Metal Products, Plymouth, PA

TA–W–35,083 & A; Union Apparel, Inc., Norvelt, PA & Perfect Cutting Co., Inc., Norvelt, PA

TA–W–34,927; Siemens Westinghouse Power Corp., Winston-Salem, NC

TA–W–34,795; National Textiles L.L.C., Morganton, NC

TA–W–34,862; Rexair, Inc., Cadillac, MI

TA–W–34,784; Thorn Apple Valley, Frederick Fresh Pork Div., Detroit, MI

TA–W–35,095; McCulloch Corp., Lake Havasu City Warehouse, Lake Havasu City, AZ

TA–W–34,906; Fairchild Semiconductor, South Portland, ME

TA–W–34,847; Technaflow, Inc., Vancouver, WA

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each

determination references the impact date for all workers of such determination.

TA–W–34,920; Customer Service Dept., Fruit of The Loom, Bowling Green, KY: July 29, 1997.
TA–W–34,990; Sinary Limited, New York, NY: August 21, 1997.
TA–W–34,922; Zeneca Specialties, Mount Pleasant, TN: August 17, 1997.
TA–W–35,040 & A; The Clarks Companies, NA, Kennett Square, PA: November 27, 1998 and Manufacturing Shoe Plant, Franklin, WV: September 25, 1997.
TA–W–35,032; TRW/BDM-Petroleum Technologies, Bartlesville, OK: September 15, 1997.
TA–W–35,079; General Electric Industrial Systems, Erie, PA: August 1, 1998.
TA–W–35,093; Dash America, Okie Apparel Plant, Hugo, OK: July 28, 1997.
TA–W–35,025; Sportknit, Inc., Albertson, NC: September 17, 1997.
TA–W–34,718 & A; NACCO Materials Handling Group, Inc., Yale Materials, Flemington, NJ & Hyster Co., Danville, IL: June 18, 1997.
TA–W–34,106; Farah USA, Inc., El Paso, TX December 9, 1996.
TA–W–35,056; Halliburton Energy Service, Headquartered in Houston, TX and Operating at Various Locations in The Following States: A; AK, B; AL, C; AR, D; CA, E; FL, F; IL, G; IN, H; KS, I, LA, J; MI, K; MS, L; NM, M; ND, N; OH, O; OK, P; PA, O; TX, R; VA, S; WY: September 4, 1997.
TA–W–35,058; UCAR Corp., Clarksburg, WV: September 24, 1997.
TA–W–35,072 & A; Lone Star Steel Co., Lone Star, TX and T&N Lone Star Warehouse, Lone Star, TX: September 29, 1997.
TA–W–35,065; Cape Cod Sportswear Co., Inc., New Bedford, MA: September 24, 1997.
TA–W–35,110; M.I. Phoenix, Inc., New Bedford, MA: October 6, 1997.
TA–W–35,026; Big C Corp., Red Boiling Springs, TN: September 17, 1997.
TA–W–35,106; OPT Industries, Inc., Phillipsburg, NJ: September 28, 1997.
TA–W–35,086; North Star Steel Texas, Inc., Beaumont, TX: September 29, 1997.
TA–W–35,033; Anvil Knitwear, Inc., Whiteville, NC: September 17, 1997.
TA–W–35,027; Trico Products Corp., Buffalo, NY: September 1, 1997.
TA–W–35,122; Pafer Huichita El Paso, Inc., El Paso, TX: October 2, 1997.
TA–W–34,974; Essex Manufacturing Co., Fall River, MA: September 3, 1997.
TA–W–34,985; Bernstein & Sons Shirt Corp., Utica, MS: September 1, 1997.
TA–W–35,137; Adams USA, Inc., Monterey, TN: October 12, 1997.
TA–W–35,037; Sandy Shaw, Inc., New York, NY: September 16, 1997.
TA–W–35,142; Tri-Clover, Inc., AN Alfa Laval Co., St. Charles, MO: October 16, 1997.
TA–W–35,008; DSI Staff Connxions, Workers Employed at Thomson Consumer Electronics Rebuild Center, El Paso, TX: September 28, 1997.
TA–W–35,022; Armtex, Inc. Dye & Finishing Plant & Finished Goods Warehouse, Pilot Mountain, NC: September 11, 1997.
TA–W–34,893; Gintex LTD (Formerly MAS Cutting), Pittston, PA: August 10, 1997.
TA–W–35,024; Todd Products Corp., Brentwood, NY: September 15, 1997.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of November, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–02509; National Textiles, L.L.C., Morganton, NC
NAFTA–TAA–02663; National Fruit Products Co., Inc., Kent City Plant, Kent City, MI
NAFTA–TAA–02617; PCC Merriman, Hingham, MA
NAFTA–TAA–02627; Spalding Sports Worldwide, Chicopee, MA
NAFTA–TAA–02658; Cape Cod Sportswear Co., Inc., New Bedford, MA
NAFTA–TAA–02612; Essex Manufacturing Co., Fall River, MA
NAFTA–TAA–02685 & A; Union Apparel, Inc., Norvelt, PA and Perfect Cutting Co., Inc., Norvelt, PA
NAFTA–TAA–02672 & A; Lone Star Steel Co., Lone Star, TX and T&N Lone Star Warehouse, Lone Star, TX
NAFTA–TAA–02695; Textron Turf Care & Specialty Products, Racine, WI
NAFTA–TAA–02678; Hamlin, Inc., Subsidiary of Breed Technologies, Gwinn, MI
NAFTA–TAA–02629; Sportknit, Inc., Albertson, NC
NAFTA–TAA–02522; Thorn Apple Valley, Frederick Fresh Port Div., Detroit, MI
NAFTA–TAA–02650; Woodwork Corp of America, A Subsidiary of DBA Products Co., Merrill, WI
NAFTA–TAA–02606; Zilog, Inc., Nampa, ID
NAFTA–TAA–02651; Vulcan-Brunswick Bowling Pin Co., Antigo, WI

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–02603; Ogden Atlantic Design Co., Charlotte, NC

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–02587; Gintex, Ltd. Formerly MAS Cutting, Pittston, PA: August 10, 1997.

NAFTA–TAA–02686; Welco Lumber Co., Marysville, WA: October 20, 1997.
NAFTA–TAA–02556; Cross Creek Apparel, Carthage, NC: October 5, 1997.
NAFTA–TAA–02689; Pafer Huichita El Paso, Inc., El Paso, TX: October 21, 1997.
NAFTA–TAA–02712; Halliburton Energy Services, Casper, WY: October 29, 1997.
NAFTA–TAA–02696; Tri-Clover, Inc., An Alfa Laval Flow Co., St. Charles, MO: October 20, 1997.
NAFTA–TAA–02675; Adams USA, Inc., Monterey, TN: October 15, 1997.
NAFTA–TAA–02634; Todd Products Corp., Brentwood, NY: September 15, 1997.
NAFTA–TAA–02664; North Star Steel Texas, Inc., Beaumont, TX: October 8, 1997.
NAFTA–TAA–02677; General Electric, Industrial Systems, Erie PA: July 20, 1998.
NAFTA–TAA–02632; General Electric Co., Power Systems Engineering Drafting Operations & Power Systems Information Management Services Group, Fitchburg, MA: August 25, 1997.
NAFTA–TAA–02575; Zeneca Specialties, Mount Pleasant, TN: August 18, 1997.

I hereby certify that the aforementioned determinations were issued during the month of November, 1998. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 20, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32266 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,607]

Berg Electronics Group, Incorporated, RF Division A/K/A Specialty Connector, Franklin, Indiana; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on July 27, 1998, applicable to workers of Berg Electronics Group, RF Division located in Franklin, Indiana. The notice was published in the **Federal Register** on August 7, 1998 (63 FR 42434).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers produce radio frequency (RF) connectors. The company has provided information showing that workers of Berg Electronics have had their wages reported under the unemployment insurance (UI) tax account for the former owner, Specialty Connector. Accordingly, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Berg Electronics who were adversely affected by increased imports.

The amended notice applicable to TA–W–34,607 is hereby issued as follows:

All workers of the RF Division of Berg Electronics Group, Incorporated, also known as Specialty Connector, Franklin, Indiana, who became totally or partially separated from employment on or after May 20, 1997 through July 27, 2000, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 19th day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32265 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,136]

BWD Automotive of Alabama, Selma, Alabama; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 26, 1998 in response to a worker petition which was filed on behalf of workers and former workers at BWD Automotive of Alabama, located in Selma, Alabama (TA–W–35,136).

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA–W–35,078).

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 3rd day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32262 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 14, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 14, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 9th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 11/9/1998]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
35,175	Electronic Components (Co.)	Tucson, AZ	10/27/1998	Circuit Board Assemblies.
35,176	Household Products, Inc (Co.)	Asheboro, NC	10/22/1998	Household Consumer Products.
35,177	Elg Metals, Inc (Wkrs)	McKeesport, PA	10/26/1998	Stainless Steel Scrap.
35,178	Clar Mar, Inc (Co.)	Cherryville, NC	10/27/1998	Ladies' Sportswear.
35,179	Spartan Mills (Wkrs)	Cheshee, SC	03/03/1998	Woven Apparel Fabrics.
35,180	TYK America, Inc (Wkrs)	Irvona, PA	10/26/1998	Bricks for Steel Mills.
35,181	Nortel—Wireless Network (Wkrs)	Morrisville, NC	10/20/1998	Digital Wireless Telephone Systems.
35,182	PL Subsidiary (Co.)	Dublin, GA	10/21/1998	Denim Blue Jeans.
35,183	Lincoln Brass Works, Inc (Wkrs)	Waynesboro, TN	10/20/1998	Brass Valves for Gas Grills.
35,184	LeBlanc, Inc (Co.)	Sioux City, IA	10/19/1998	Communication Towers and Accessories.
35,185	Allegheny Ludlum Steel (USWA)	Pittsburgh, PA	10/23/1998	Silicon Steel.
35,186	Westinghouse Air Brake (Wkrs)	Foster City, CA	10/26/1998	Pipe Fittings.
35,187	Fruit of The Loom (Wkrs)	Bowling Green, KY	09/08/1998	Administrative, Management, Clerical etc.
35,188	Greif Brothers Corp (Wkrs)	Westfield, MA	10/17/1998	Paper.
35,189	Rexnord Chain (USWA)	Indianapolis, IN	10/26/1998	Chain Products.
35,190	Highlander Apparel, Inc (Wkrs)	Carthage, TN	10/25/1998	Denim and Twill Men's Shirts.
35,191	Allied Signal Laminate (Wkrs)	Pendleton, SC	10/26/1998	Copper Clad Laminate.
35,192	Rockwell Seminconductor (Co.)	Colorado Spring, CO	10/28/1998	Semiconductor Chips.
35,193	Dealers Manufacturing (Co.)	Portage, WI	10/27/1998	Re-Manufactured Automotive Parts.
35,194	Aplex Industrial (Wkrs)	Midland, TX	10/28/1998	Centrifical Pumps.
35,195	Bulk Pack, Inc (Co.)	Denison, TX	10/29/1998	Bulk Containers.
35,196	Monarch Machine Tool (Co.)	Cortland, NY	10/28/1998	Vertical Machining Centers.
35,197	Frank 1x and Sons (Co.)	Charlottesville, VA	10/23/1998	Greige Goods.
35,198	Northern Cheyenne Pine (Wkrs)	Ashland, MT	10/26/1998	Lumber.
35,199	Hercules, Inc (Co.)	Parlin, NJ	10/21/1998	Nitrocellulose.
35,200	Nabors Drilling USA (Wkrs)	Kilgore, TX	10/22/1998	Oil, Gas Drilling.
35,201	Quebecor Printing (Wkrs)	Providence, RI	10/24/1998	Print, Bindery of Books, Maps, Posters.
35,202	U.S. Steel (USWA)	Braddock, PA	11/02/1998	Hot Rolled Sheet.

[FR Doc. 98–32256 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,935]

Fairchild Semiconductor, West Jordan, Utah; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 21, 1998 in response to a worker petition which was filed on August 10, 1998 on behalf of workers at Fairchild Semiconductor, West Jordan, Utah.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 16th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32267 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,820]

General Electric Company, Power Systems Plant, Fitchburg, Massachusetts; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of October 30, 1998, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers of the subject firm. The determination was signed on September 17, 1998, and published in the **Federal Register** on October 9, 1998 (63 FR 54494).

Subsequent to the issuance of the determination the company provided additional information with respect to company imports and lost bids that merits the Department's reinvestigation of the initial determination.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 12th day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32260 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II,

Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 14, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 14, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C. this 2nd day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 11/02/1998]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
35,141	Gilbert and Bennett Mfg (Comp)	Cardey, MI	10/21/1998	Cedar Post, Rails, Cedar Mulch.
35,142	Tri-Clover, Inc (Comp)	St. Charles, MO	10/16/1998	High Purity Fittings.
35,143	Savage Zinc, Inc (Wrks)	Thorn Hill, TN	10/16/1998	Mine Zinc Concentrate.
35,144	Schlumberger Oilfield (Wrks)	Youngsville, LA	10/13/1998	Oil and Gas Exploration and Drilling.
35,145	Schlumberger Oilfield (Wrks)	Duncan, OK	10/01/1998	Oil and Gas Exploration and Drilling.
35,146	Detroit Steel Products (Wrks)	Morristown, IN	10/20/1998	Suspension Systems for Trucks.
35,147	Fashions by Gariffo (UNITE)	New York, NY	10/08/1998	Coats, Suits, Jackets.
35,148	Martin-Decker Totco (Wrks)	Williston, ND	10/20/1998	Rent Computers to Montor Rigs.
35,149	Wolverine World Wide (Comp)	Rockford, MI	10/16/1998	Tanned Pigskin for Shoes, Boots.
35,150	America Lantern (Wrks)	McKenze, TN	09/10/1998	Outdoor Residential Lighting.
35,151	Carr Lowrey Glass (GMP)	Baltimore, MD	10/18/1998	Glass Containers for Lotions, Perfumes.
35,152	Buster Brown Apparel (Comp)	Chilhowie, VA	10/19/1998	Children's Apparel.
35,153	Tiger Accessories, Inc (UNITE)	Bay Shore, NY	10/09/1998	Belts.
35,154	Len-Jeff, Inc. (UNITE)	Kulpmont, PA	10/16/1998	Ladies' Dresses.
35,155	Rocky Mount Instruments (Comp)	Rocky Mount, NC	10/15/1998	Digital Electronic Organs.
35,156	Pluma, Inc (Comp)	Martinsville, VA	10/15/1998	Knitting, Cutting Fleece and Jersey.
35,157	Tultex (Comp)	Martinsville, VA	10/09/1998	Fleece Pants, Crewneck Shirts, Shorts.
35,158	Quickie Mfg/Assembly Serv (Comp)	El Paso, TX	10/21/1998	Household Cleaning Tools.
35,159	Komatsu Silicon America (Wrks)	Hillsboro, OR	10/15/1998	Silcon Ingots and Wafers.
35,160	Golden Books Family (UAW)	Sturtevant, WI	10/06/1998	Children's Story Brooks.
35,161	Weatherford Enterra (Wrks)	Andrews, TX	10/13/1998	Oilwell Services.
35,162	Thomaston Mills, Inc (Comp)	Griffin, GA	10/05/1998	Yarn.
35,163	Ametek-March Electric (IAMAW)	Cambridge, OH	10/20/1998	Small Electric Motors.
35,164	Tickle Me (Wrks)	Long Island Cty, NY	10/21/1998	Children's Clothing.
35,165	L and D Ladies Bottom (Wrks)	Brooklyn, NY	10/13/1998	Ladies' Skirts and Pants.
35,166	Leybold Vacuum Products (Wrks)	Export, PA	10/14/1998	Dry Vacuum Pumps.
35,167	Tyrolit North America (Wrks)	Westboro, MA	10/16/1998	Grinding Wheels.
35,168	Nortel, Incorporated (Wrks)	Nashville, TN	10/21/1998	Re-Build Telephone Sets.
35,169	Jayo Neckwear (UNITE)	Bethlehem, PA	10/23/1998	Neckwear, Ties.
35,170	ELG East Coast, Inc (Wrks)	McKeesport, PA	10/23/1998	Scrap Metal Processor.
35,171	Walbro Corp (UAW)	Cass City, MI	10/23/1998	Engine Components (Carburetors).
35,172	National Oilwell (Wrks)	McAlester, OK	10/22/1998	Pump Liners.
35,173	Jockey International (Wrks)	Mt. Sterling, KY	10/20/1998	Men's and Ladies' Underwear.
35,174	Northwestern Steel (Comp)	Sterling, IL	10/20/1998	Wire Products.

[FR Doc. 98–32257 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Levi Strauss and Company; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 7, 1997, applicable to workers of Levi Strauss and Company, located in El Paso, Texas. The notice was published in the **Federal Register** on September 17, 1998 (62 FR 48888). The certification was subsequently amended to include subject firm workers at various facilities and offices and contract workers at facilities where the subject firm's workers had been previously certified.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations occurred at two companies; El Paso Physical Therapy Services and J and L Enterprises, performing contract services for Levi Strauss's previously certified production facilities; the Pellicano Finishing Facility, El Paso, Texas and the Amarillo Finishing Plant, Amarillo, Texas. Based on this new information, the Department is amending the certification to cover workers at El Paso Physical Therapy Services, El Paso, Texas and J and L Enterprises, Amarillo, Texas.

The intent of the Department's certification is to include all workers of

Levi Strauss and Company who were adversely affected by increased imports.

The amended notice applicable to TA–W–33,513 is hereby issued as follows:

All workers of Levi Strauss and Company, including Dockers and contract workers at the following facilities, who became totally or partially separated from employment on or after May 13, 1996 through August 7, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA–W–33,513 Goodyear Cutting Facility, El Paso, Texas
TA–W–33,513A Pellicano Finishing Facility including El Paso Physical Therapy Services, 11460 Pellicano, El Paso, Texas
TA–W–33,513F Amarillo Finishing Plant, 4724 24th St., NE including J and L Enterprises, 11601 Wade, Amarillo, Texas.

Signed at Washington, DC this 17th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32264 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,479 and TA–W–34,479A]

Nabors Drilling USA, Incorporated Williston, North Dakota and Operating at Various Locations in Montana; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 26, 1998 applicable to workers of Nabors Drilling USA, Incorporated, Williston, North Dakota (TA–W–34,479). The notice was published in the **Federal Register** on July 31, 1998 (63 FR 40935).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers provide contract drilling services in the crude oil and natural gas industry. New information provided by the company shows that some workers separated from employment at Nabors Drilling USA, Incorporated, Williston, North Dakota had their wages reported under a separate unemployment insurance (UI) tax account for Nabors Drilling USA operating at various locations in the State of Montana. Based on these findings, the Department is amending the certification to include workers of Nabors Drilling USA, Incorporated operating at various locations in the State of Montana.

The intent of the Department's certification is to include all workers of Nabors Drilling USA, Incorporated who were adversely affected by increased imports.

The amended notice applicable to TA–W–34,479 is hereby issued as follows:

All workers of Nabors Dirlling USA, Incorporated, Williston, North Dakota (TA–W–34, 479) and operating at various locations in Montana (TA–W–34,479A), who became totally or partially separated from employment on or after April 14, 1997 through June 26, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC. this 18th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32268 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,884]

Pioneer Finishing Duro Industries, Fall River, Massachusetts; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Pioneer Finishing, Duro Industries, Fall River, Massachusetts. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–34,884; Pioneer Finishing, Duro Industries, Fall River, Massachusetts (November 18, 1998)

Signed at Washington, D.C. this 18th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32273 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,398; TA–W–34,398C; TA–W–34,398D; TA–W–34,398E; TA–W–34,398F and TA–W–34,398G]

Semitool, Incorporated: Kalispell, Montana; Semitool—Southwest, Tempe, Arizona; Semitool—California, San Jose, California; Western Regional Office, Wilsonville, Oregon; Central Regional Office, Dallas, (Richardson), Texas; and Eastern Regional Office, Orlando, Florida; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 28, 1998, applicable to all workers of Semitool, Incorporated located in Kalispell, Montana. The notice was published in the **Federal Register** on June 22, 1998 (63 FR 33958).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations occurred at Semitool—Southwest, Tempe, Arizona; Semitool—California, San Jose, California; Western Regional Office, Wilsonville, Oregon; Central Regional Office, Dallas, (Richardson), Texas; and the Eastern Regional Office, Orlando, Florida. Workers at these locations provide administrative and customer support services for Semitool's wafer processing equipment production facilities including Kalispell, Montana.

The intent of the Department's certification is to include all workers of Semitool, Incorporated who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of Semitool, Incorporated; Semitool—Southwest, Tempe, Arizona; Semitool—California, San Jose, California; Western Regional Office, Wilsonville, Oregon; Central Regional Office, Dallas, (Richardson), Texas; and the Eastern Regional Office, Orlando, Florida.

The amended notice applicable to TA–W–34,398 is hereby issued as follows:

All workers of Semitool, Incorporated, Kalispell, Montana (TA–W–34,398); Semitool—Southwest, Tempe, Arizona (TA–W–34,398C); Semitool—California, San Jose, California (TA–W–34,398D); Western Regional Office, Wilsonville, Oregon (TA–W–

34,398E); Central Regional Office, Dallas, (Richardson), Texas (TA–W–34,398F); and the Eastern Regional Office, Orlando, Florida (TA–W–34,398G) who became totally or partially separated from employment on or after March 14, 1997 through May 28, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 18th day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32269 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,907]

Sweet-Orr & Company, Dawsonville, Georgia; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Sweet-Orr & Company, Dawsonville, Georgia. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–34,907; Sweet-Orr & Company, Dawsonville, Georgia (November 18, 1998)

Signed at Washington, DC this 18th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32272 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,089]

TransTexas Gas Corporation, Houston, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 28, 1998, in response to a petition filed on the same date on behalf of workers at TransTexas Gas Corporation, Houston, Texas.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 9th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32261 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Equal Employment Opportunity in Apprenticeship and Training; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506 (c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the collection of the information regarding registered apprenticeship programs under Title 29 CFR Part 30 (Equal Employment Opportunity in Apprenticeship and Training).

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 2, 1999.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Anthony Swoope, Director, Bureau of Apprenticeship and Training, 200 Constitution Ave., NW, Room 4649, Washington, DC, 20210; E-mail Internet address: aswoope@doleta.gov; Telephone number: (202) 219–5921 (this is not a toll-free number); Fax number: (202) 219–5011 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The National Apprenticeship Act of 1937 authorizes and directs the Secretary of Labor ''to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Office of Education under the Department of Health, Education, and Welfare * * *. ''Section 2 of the Act authorizes the Secretary of Labor to ''publish information relating to existing and proposed labor standards of apprenticeship,'' and to ''appoint national advisory committees * * *.'' (29 U.S.C. 50a).

Title 29 CFR Part 30 sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and recognized State apprenticeship agencies. These policies and procedures apply to recruitment and selection of apprentices, and to all conditions of employment and training during apprenticeship. The procedures provide for review of apprenticeship programs, for registering apprenticeship programs, for processing complaints, and for deregistering noncomplying apprenticeship programs. This part also provides policies and procedures for continuation or withdrawal of recognition of State agencies which register apprenticeship programs for Federal purposes.

II. Current Actions

Recordkeeping and data collection activities regarding registered apprenticeship are by-products of the registration system. Organizations which apply for apprenticeship sponsorship enter into an agreement with the Federal Government or cognizant State government to operate their proposed programs consistent with 29 CFR Part 30. Apprenticeship sponsors are not required to file reports regarding their apprentices other than individual registration and update information as an apprentice moves through their program.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: 29 CFR Part 30, Equal Employment Opportunity in Apprenticeship and Training.

OMB Number: 1205–0224.

Agency Number: ETA 9039.

Recordkeeping: Apprenticeship sponsors are required to keep accurate records on the qualifications of each applicant pertaining to determination of compliance with these regulations. Records must be retained, where appropriate, regarding affirmative action plans and evidence that qualification standards have been validated. State Apprenticeship Councils are also obligated to keep adequate records pertaining to determination of compliance with these regulations. All of the above records are required to be maintained for five years. If this information was not required, there would be no documentation that the apprenticeship programs were being operated in a nondiscriminatory manner. Many apprenticeship programs are 4 years or more in duration; therefore, it is important to maintain the records for at least 5 years.

Section	Total respondents	Frequency	Total responses	Average time per response	Burden
Summary of Burden for 30 CFR Part 29					
Sec. 30.3	112	1-time	112	½ hour	56
Sec. 30.4	1,336	1-time	1,336	1 hour	1,336
Sec.30.5	3,964	1-time basis/applicant	3,964	½ hour	1,982
Sec. 30.6	50	1-time	50	5 hours	250
Sec. 30.8	41,480	1-time	41,480	1 minute	691
Sec. 30.8	30	1-time/program	20,740	5 minutes	1,728
Sec. 30.11	41,480	1-time	41,480	Hand-out	
ETA 9039	50	1-time	50	½ hour	25
Sec. 30.15	30	1-time	Completed		
Sec. 30.19	30	varies			
Total			109,212		6,068

Total Burden Cost (Capital/Start-up) = 0.

Total Burden Cost (Operation/Maintenance) = 0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 30, 1998.

Anthony Swoope,

Director, Bureau of Apprenticeship and Training.

[FR Doc. 98–32254 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request if filed in writing with the Acting Director of OTAA not later than December 14, 1998.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than December 14, 1998.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W. Washington, D.C. 20210.

Signed at Washington, D.C. this 18th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Arrow—Ace Die Cutting (UPWU)	Bronx, NY	11/02/1998	NAFTA–2,715	Casings, textiles.
Courtland Manufacturing (Co.)	Appomattox, VA	11/03/1998	NAFTA–2,716	Ladies and girls apparel.
Delta Woodside Industries (Co.)	Decatur, TN	11/02/1998	NAFTA–2,717	Cut and sew fleece.
Tri State Wholesale Associated Grocers (Wkrs).	El Paso, TX	10/23/1998	NAFTA–2,718	Wholesale distributor.
Assembly Services—Quickie (Co.)	El Paso, TX	10/23/1998	NAFTA–2,719	Sewing of garments.
Clarion Mfg Corp of America (Wrks)	Walton, KY	10/30/1998	NAFTA–2,720	Car Stereos.
Champion Products (Comp)	Dunn, NC	11/06/1998	NAFTA–2,721	T-Shirts, Sweatshirts.
Dan River, Inc (Wrks)	Springdale, NC	11/06/1998	NAFTA–2,722	Woven Apparel Fabrics.
Romart, Inc ( )	Scranton, PA	11/10/1998	NAFTA–2,723	Men's Coats and Jackets.
Matel (UPWU)	Ft. Wayne, IN	11/06/1998	NAFTA–2,724	Battery ride on toys.
U.S. Steel Mining (UMWA)	Pineville, WV	11/09/1998	NAFTA–2,725	Metalurgical coal.
Avery Dennison (Wkrs)	Quakertown, PA	11/10/1998	NAFTA–2,726	Pressure sensitive material.
Kinross Delamar Mining (Co.)	Jordan Valley, OR	11/10/1998	NAFTA–2,727	Gold.
Hubbell Lighting (Co.)	Christiansburg, VA	11/12/1998	NAFTA–2,728	Lighting fixtures.
Belden Wire and Cable (Co.)	Franklin, NC	11/12/1998	NAFTA–2,729	Electrical power cords.
Fresenius Medical Care (Co.)	McAllen, TX	11/12/1998	NAFTA–2,730	Venous and arterial, bloodlines and connector.
Anvil Knitwear (Wkrs)	Mullis, SC	11/12/1998	NAFTA–2,731	Sewing of knitwear.
Siemens Energy and Automation (Wkrs).	Little Rock, AR	11/16/1998	NAFTA–2,732	Electric motors.
Saldan Bindery (Co.)	Brooklyn, NY	11/13/1998	NAFTA–2,733	Filing supplies, expanding envelopes.

[FR Doc. 98–32258 Filed 12–3–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–2666]

Becton Dickinson DIFCO Laboratories, Detroit, Michigan; Notice of Termination of Investigation

Pursuant to Section 250(a) of the Trade Act of 1974, as amended, an investigation was initiated on September 22, 1998, in response to a petition filed on behalf of workers at Becton Dickinson, DIFCO Laboratories located in Detroit, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 18th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32274 Filed 12–3–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02439]

Berg Electronics Group, Incorporated, RF Division, A/K/A Specialty Connector, Franklin, Indiana; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA-Transitional Adjustment Assistance on July 27, 1998, applicable to workers of Berg Electronics Group, RF Division located in Franklin, Indiana. The notice was published in the **Federal Register** on August 7, 1998 (63 FR 42435).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers produce radio frequency (RF) connectors. The company has provided information showing that workers of Berg Electronics have had their wages reported under the unemployment insurance (UI) tax account for the former owner, Specialty Connector. Accordingly, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by the shift in production to Mexico.

The amended notice applicable to NAFTA–02439 is hereby issued as follows:

All workers of the RF Division of Berg Electronics Group, Incorporated, also known as Specialty Connector, Franklin, Indiana who became totally or partially separated from employment on or after June 5, 1997 through July 27, 2000, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC this 19th day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32276 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02090]

Farah USA, Incorporated, Savane International Corporation, El Paso, Texas; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on February 25, 1998, applicable to all workers of Farah USA, Incorporated located in El Paso, Texas. The notice was published in the **Federal Register** on March 16, 1998 (63 FR 12838).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of prototype garments. New information received from the company shows that Savane International Corporation is the parent firm of Farah USA, Incorporated located in El Paso, Texas. The company also reports that some workers separated from employment at Farah USA, Incorporated had their wages reported under a separate unemployment insurance (UI) tax account for Savane International Corporation, also located in El Paso, Texas. Based on these findings, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Farah USA, Incorporated who were adversely affected by the shift of production to Mexico.

The amended notice applicable to NAFTA–02090 is hereby issued as follows:

All workers of Farah USA, Incorporated, Savane International Corporation, El Paso, Texas who became totally or partially separated from employment on or after December 9, 1996 through February 25, 2000 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 20th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32263 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02430]

J.L. Clark Tube Division, Downers Grove, Illinois; Notice of Negative Determination Regarding Application for Reconsideration

By application dated September 24, 1998, the petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for NAFTA-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notice applicable to workers of the subject firm located in Astoria, Oregon, was signed on August 11, 1998 and was published in the **Federal Register** on August 28, 1998 (63 FR 46073).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The NAFTA–TAA petition filed on behalf of workers of J.L. Clark, Tube Division, Downers Grove, Illinois, producing collapsible aluminum tubes was denied because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of Section 250 of the Trade Act, as amended, were not met. There were no company or customer imports of collapsible aluminum tubes from Mexico or Canada, nor was there a shift in production from the workers' firm to Mexico or Canada.

In support of the application for reconsideration, the petitioner asserts that the subject firm was purchased by a Canadian firm, and the sale included the customer list of the subject firm. Further, the petitioner asserts that the firm which acquired the subject firm is now producing the metal tubes in Canada and providing them to the former domestic customers of the subject firm. The company which acquired J.L. Clark Tube Division was contacted and has stated that they did not purchase the customer list, only the equipment and working capital. In addition, the company which acquired J.L. Clark Tube Division has stated that neither it nor any related company manufactures collapsible aluminum tubes, such as those previously manufactured in Downers Grove, at any of their facilities outside the U.S. and imports such tubes into the U.S.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 10th day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32259 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–13–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—02480]

Kodak Polychrome Graphics Anitec Division, Binghamton, New York; Notice of Revised Determination on Reconsideration

On August 14, 1998, the Department issued Negative Determinations Regarding Eligibility to apply for TAA and NAFTA–TAA, applicable to workers and former workers of Kodak Polychrome Graphics, Anitec Division, Binghamton, New York. The notice was published in the **Federal Register** on September 10, 1998 (63 FR 48525).

By letter of September 25, 1998, the petitioners requested administrative reconsideration regarding the Department's denial of NAFTA–TAA for

workers of the subject firm. Workers at Kodak Polychrome Graphics are engaged in employment related to the production of film. The petitioners claim that the investigation did not fully examine the impacts of imports from Mexico and insisted that the situation at the subject facility was similar to another facility closed by the parent company whose workers were certified eligible to apply for NAFTA–TAA (NAFTA–02351). After discussions with officials of the parent company, it is determined that there has been a shift of production to Mexico with resulting imports into the U.S.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that were increased imports from foreign sources including Mexico or Canada, of articles like or directly competitive with those produced by the subject firm. In accordance with the provisions of the Trade Act, I make the following certification:

All workers of Kodak Polychrome Graphics, Anitec Division, Binghamton, New York engaged in employment related to the production of film who became totally or partially separated from employment on or after June 15, 1997 through two years from the issuance of this revised determination are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C. this 19th day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32271 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01807, 01807A, and 01807F]

Levi Strauss and Company; Goodyear Cutting Facility and El Paso Field Headquarters, 1440 Goodyear, El Paso, Texas; Pellicano Finishing Facility, Including El Paso Physical Therapy Services, 11460 Pellicano, El Paso, Texas; Amarillo Finishing Plant, 4724 24th St., NE., Including J and L Enterprises, 11601 Wade, Amarillo, Texas; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on August 7, 1997, applicable to workers of Levi Strauss and Company, located in El Paso, Texas. The notice was published in the **Federal Register** on September 17, 1997 (FR 48889). The certification was subsequently amended to include subject firm workers at various facilities and offices and contract workers at facilities where the subject firm's workers had been previously certified.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations occurred at two companies; El Paso Physical Therapy Services and J and L Enterprises, performing contract services for Levi Strauss's previously certified production facilities; the Pellicano Finishing Facility, El Paso, Texas and the Amarillo Finishing Plant, Amarillo, Texas. Based on this new information, the Department is Amending the certification to cover workers at El Paso Physical Therapy Services, El Paso, Texas and J and L Enterprises, Amarillo, Texas.

The intent of the Department's certification is to include all workers of Levi Strauss and Company who were adversely affected by increased imports.

The amended notice applicable to NAFTA 01807 is hereby issued as follows:

All workers of Levi Strauss and Company, including Dockers and contract workers at the following facilities, who became totally or partially separated from employment on or after May 13, 1996 through August 7, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

NAFTA 01807 Goodyear Cutting Facility, El Paso, Texas.

NAFTA 01807A Pellicano Finishing Facility, including El Paso Physical Therapy Services, 11460 Pellican, El Paso, Texas.

NAFTA 01807F Amarillo Finishing Plant, 4724 24th St., NE, including J and L Enterprises, 11601 Wade, Amarillo, Texas.

Signed at Washington, D.C. this 17th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–32270 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 27a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The Prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used

in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or government agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

None

Volume II:

None

Volume III:

None

Volume IV:

None

Volume V:

None

Volume VI:

None

Volume VII:

None

General Wage Determination Publication

General Wage Determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and Related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each Volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 1st day of December 1998.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–32277 Filed 12–3–98; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Reinstate, With Change, an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and Request for Comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by February 2, 1999 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 306–1125 x 2017; or send email to splimpto@nsf.gov. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Impact of Industry-Engineering Research Center (ERC) Interaction and Effectiveness of ERC-Trained Industrially Employed Engineers.

OMB Number: 3145-0153.

Expiration Date of Approval: July 31, 1995.

Type of Request: Intent to seek approval to reinstate, with change, an information collection for three years.

Abstract: ''Outcomes and Impacts of the State/Industry-University Cooperative Research Centers (S/IUCRC) Program''.

Proposed Project: NSF's Directorate for Engineering established the S/IUCRC Program in 1990. The Program was build on a model established by NSF's Industry/University Cooperative Research Centers (I/UCRC) Program. NSF's Division of Engineering Education and Centers (EEC) is seeking to identify (1) the extent to which the S/IUCRC Program has achieve goals not shared with the I/UCRC program; (2) lessons learned for continuous improvement of Program performance; and (3) lessons that can inform planning of future NSF-state partnerships.

To achieve these objectives, data will be collected from representatives from organizations that have been members of the nine oldest S/IUCRCs (award cohorts 1991 and 1992) about the results in their organization of involvement with the center. Data will NOT be used to evaluate individual centers, but, rather, to study the Program as a whole. To isolate the unique effects of the distinctive features of the S/IUCRC Program, the project will also include collection of similar data from organization representatives to 20 of the I/UCRCs as well (there are over 50 I/UCRCs). The I/UCRC data will be compared with the S/IUCRC data to enable identification of results from the S/IUCRC Program that emanate from the latter Program's distinctive elements.

Use of the Information: The resulting information will be used to look at program-wide patterns of outcomes and impacts on organizations that are members of both types of centers.

Lessons learned will be used for continuous performance improvement in the presently funded S/IUCRCs. In addition, lessons about the characteristics that facilitate state-NSF partnerships will be prepared for use in future planning of state-NSF partnerships.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes hours per response.

Respondents: Individuals.

Estimated Number of Responses per Form: 560.

Estimated Total Annual Burden on Respondents: 187 hours (560 respondents at 20 minutes per response).

Frequency of Responses: One time.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: December 1, 1998.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 98–32308 Filed 12–3–98; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Proposed rule, ''Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information'' (10 CFR Part 31.5).

3. *The form number if applicable:* Not Applicable.

4. *How often is the collection required:* Annually, on occasion.

5. *Who will be required or asked to report:* General licensees who possess devices using certain quantities of specific radionuclides.

6. *An estimate of the number of responses:* 6,000 annually for initial verification; 25 annually for extension request; 100 annually for miscellaneous one-time requests.

7. *An estimate of the number of additional hours needed annually to complete the requirement or request:* It will take approximately 2000 hours annually to respond to initial verification requests. The extension requests will take approximately 12½ hours annually, and the special, additional requests will take approximately 50 hours annually. The total number of additional hours needed annually to complete the requirement would be approximately 2062 hours.

8. *The average burden per response is:* General licensees—20 minutes. Extension request—30 minutes. Special requests—30 minutes.

9. *An indication of whether Section 3504(h), Pub. L. 96–511 applies:* Applicable.

10. *Abstract:* The proposed rule would add an explicit requirement to Section 31.5 that general licensees respond within 30 days to requests from the NRC, or other time specified in the request, for information concerning products that they have received for use under a general license. The NRC intends to use this provision primarily to institute a registration and accounting system for the devices containing certain quantities of specific radionuclides that present a higher risk (compared to other generally licensed devices) of exposure to the public or property if a device were lost. The proposed rule is intended to ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material and can account for their devices. Better awareness on the part of these licensees of their responsibilities would help to ensure that they comply with the requirements for proper handling and disposal of generally licensed devices and should help reduce the potential for incidents that could result in unnecessary radiation exposure to the public as well as contamination of property.

Submit, by January 4, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected.

4. How can the burden of the collection of information be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room 2120 L Street NW. (lower level), Washington, DC. The proposed rule is or has been published in the **Federal Register** within several days of the publication date of this **Federal Register** Notice. Instructions for accessing the electronic OMB clearance package for the rulemaking have been appended to the electronic rulemaking. Members of the public may access the electronic OMB clearance package by following the directions for electronic access provided in the preamble to the titled rulemaking. Comments and questions should be directed to the OMB reviewer by January 4, 1999: Erik Godwin, Office of Information and Regulatory Affairs (3150–0016), NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 5th day of November 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–32251 Filed 12–3–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Duke Energy Corporation (the licensee) to withdraw its March 31, 1997, application, as supplemented February 9 and June 17, 1998, for proposed amendments to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, for the Oconee Nuclear Station, Unit Nos. 1, 2, and 3,

located in Oconee County, South Carolina.

The proposed amendments would have revised the facility technical specifications pertaining to High Pressure Injection System Operability.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on April 23, 1997 (62 FR 19828). By letter dated November 4, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendments dated March 31, 1997, as supplemented February 9 and June 17, 1998, and the licensee's letter dated November 4, 1998, which withdrew the application for license amendment. The above 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 local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Dated at Rockville, Maryland, this 30th day of November 1998.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–32252 Filed 12–3–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549

Extension:

Form S–6, File No. 270–181, OMB Control No. 3235–0184

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Form S–6—For Registration under the Securities Act of 1933 of Securities of Unit Investment Trusts Registered on Form N–8B–2. Unit investment trusts offering their securities to the public are required by two separate statutes to file registration statements with the Commission. They are required to register their securities under the Securities Act of 1933 (''1933 Act''), and to register as investment companies under the Investment Company Act of 1940 (''1940 Act'').

Form S–6 is used for registration under the 1933 Act of the securities of any unit investment trust registered under the 1940 Act on Form N–8B–2.[1] A separate registration statement under the 1933 Act must be filed for each series of units issued by the trust. Form S–6 consists of two parts. Part I contains the prospectus and Part II consists of a list of exhibits and financial information and contains other information required in the registration statement but not required to appear in the prospectus.

Section 10(a)(3) of the 1933 Act (15 U.S.C. 77j(a)(3)) provides that when a prospectus is used more than nine months after the effective date of the registration statement, the information therein shall be as of a date not more than sixteen months prior to such use. Unit investment trusts file post-effective amendments to their registration statements on Form S–6 in order to update their prospectuses. As a result, most unit investment trusts update their registration statements on Form S–6 on an annual basis in order that their sponsors may continue to maintain a secondary market in the units.

The purpose of the registration statement on Form S–6 is to provide disclosure of financial and other information that investors may use to make informed decisions regarding the merits of the securities offered for sale. To that end, unit investment trusts must furnish to investors a prospectus containing pertinent information set forth in the registration statement. Without the registration requirement, this material information would not necessarily be available to investors. The Commission reviews registration statements filed on Form S–6 to ensure adequate disclosure is made to investors.

Each year approximately 3,600 investment companies file a Form S–6. The Commission estimates that preparing Form S–6 requires a unit investment trust to spend approximately 35 hours so that the total burden of preparing Form S–6 for all affected investment companies is 126,000 hours. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information on Form S–6 is mandatory. The information provided on Form S–6 is not kept confidential. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 30, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32325 Filed 12–3–98; 8:45 am]

BILLING CODE 8010–01–M

[1] Form N–8B2 is the form used for registration statements filed by unit investment trusts under the 1940 Act. The form requires that certain material information about the trust, its sponsor, its trustees, and its operation be disclosed. The registration on Form N–8B–2 is a one-time filing that applies to the first series of the unit investment trust as well as any subsequent series that is issued by the sponsor.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23575; File No. 812–11182]

Great-West Life & Annuity Insurance Company, et al.

November 25, 1998.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for approval under Section 26(b) of the Investment Company Act of 1940 (''1940 Act'').

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of shares of the American Century VP International Fund for shares of the Montgomery Variable Series: International Small-Cap Fund.

APPLICANTS: Great-West Life & Annuity Insurance Company (''GWL&A''), First Great-West Life & Annuity Insurance Company (''FGWLA''), Variable Annuity-1 Series Account of GWL&A (the ''GWL&A Account''), Variable Annuity-1 Series Account of FGWLA (the ''FGWLA Account'') (together, with the GWL&A Account, the ''Accounts'')

and Charles Schwab & Co., Inc. (''Schwab'').

FILING DATE: The application was filed on June 11, 1998, and amended and restated on September 18, 1998, and amended on November 24, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 21, 1998, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Jorden Burt Boros Cicchetti Berenson & Johnson, LLP, 1025 Thomas Jefferson Street, N.W., Suite 400 East, Washington, D.C. 20007–0805, Attention: Tom Mira, Esq.

FOR FURTHER INFORMATION CONTACT: Martha Peterson, Attorney, or Mark Amorosi, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 5th St., N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. GWL&A, a stock life insurance company organized under the laws of Colorado, is principally engaged in offering life insurance, annuity contracts, and accident and health insurance and is admitted to do business in the District of Columbia, Guam, Puerto Rico, and all states of the United States except New York. GWL&A is wholly owned by The Great-West Life Assurance Company, which is a subsidiary of Great-West Lifeco, Inc., an insurance holding company ultimately controlled by Power Corporation of Canada.

2. FGWLA, a stock life insurance company organized under the laws of New York and a wholly owned subsidiary of GWL&A, is principally engaged in the sale of life insurance, accident and health insurance, and annuities, and is admitted to do business in the states of New York and Iowa.

3. The GWL&A Account and the FGWLA Account are separate accounts of GWL&A and FGWLA, respectively, which act as funding vehicles for certain group and individual flexible premium variable deferred annuity contracts (''the Schwab Contracts''). Each account is a unit investment trust (''UIT'') and has filed a registration statement on Form N–4 for the purpose of registering GWL&A Account and the FGWLA Account, respectively, under the 1940 Act and the Schwab Contracts as securities under the Securities Act of 1933, as amended.

4. Schwab is the principal underwriter and distributor of the Schwab Contracts. Schwab is registered with the Commission under the Securities Exchange Act of 1934, as amended, as a broker/dealer and is a member of the National Association of Securities Dealers, Inc.

5. The Schwab Contracts are flexible premium annuity contracts which may be issued under retirement plans which qualify for federal tax benefits under Section 408 of the Internal Revenue Code (the ''Code'') as individual retirement accounts and under other retirement plans which do not qualify under the Code. The Schwab Contracts currently offer twenty-five investment divisions each of which invests exclusively in one of the corresponding portfolios (the ''underlying portfolios'') of fourteen open-end management investment companies.

6. The Schwab Contracts do not have either contingent deferred or front-end sales loads. No sales charge applies to the transfer among investment divisions offered in the Schwab Contracts. Under the Schwab Contracts there are no limits on the number of transfers a Contract owner can make. There is a $10 fee for each transfer in excess of twelve in any calendar year. The Schwab Contracts have an annual contract fee of $30. This charge is currently waived for Contracts with an annuity account value of at least $50,000, but may also be waived for Contracts under certain sponsored arrangements. These charges will not be affected by the transfer.

7. All of the Schwab Contracts expressly reserve Schwab's, FGWLA's, and GWL&A's right, both on their own behalf and on behalf of the Accounts to eliminate investment divisions, combine two or more investment divisions, or substitute one or more underlying portfolios for others in which its investment divisions are invested or for a new underlying portfolio.

8. Schwab, FGWLA, and GWL&A, on their own behalf and on behalf of the Accounts, propose to exercise their contractual right to eliminate the Montgomery Variable Series: International Small-Cap Fund (hereinafter the ''Eliminated Portfolio'') as a funding option under the Schwab Contracts. By way of sticker, the Schwab Contract prospectuses will disclose the proposed substitution for several months prior to the date on which the substitution will be scheduled to occur (''the Automatic Selection Date''). These stickers will be mailed to all Contract owners and will advise Schwab Contract owners of their ability to transfer Contract values allocated to the Eliminated Portfolio to the remaining investment division(s) of their choice or remain in the Eliminated Portfolio for an automatic substitution on the Automatic Selection Date. The Eliminated Portfolio has not accepted additional premium payments (i.e., new money or transfers) since June 30, 1998.

9. The proposal would result in a reduction in the number of variable investment options and corresponding portfolios available under all Schwab Contracts from twenty-five to twenty-four.

10. Montgomery Variables Series and its investment adviser, Montgomery Asset Management, LLC (collectively, ''Montgomery'') intend to cease offering shares of the Eliminated Portfolio, due to the small amount of assets and the corresponding absence of economies of scale. Montgomery has indicated that the small size of the Eliminated Portfolio makes the Eliminated Portfolio difficult to manage successfully and makes it difficult to comply with diversification requirements applicable to variable insurance products and to mutual funds under the Code and the 1940 Act.

11. As of the Automatic Selection Date, all Contract values allocated to the Eliminated Portfolio will be reallocated automatically to the American Century VP International Fund (the ''American Century International Fund''). The substitution will take place at relative net asset value with no change in the amount of any Contract owner's contract value or in the dollar value of his or her investment in such Contract. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or FGWLA's or GWL&A's obligations under the Contract be altered in any way. In addition, Contract owners will not incur any fees or expenses in connection with the proposed

substitutions, including legal, accounting and other fees and expenses. The proposed substitutions will not cause the contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions.

12. The investment objective of the Eliminated Portfolio is to seek capital appreciation by investing primarily in equity securities of companies outside the United States having total market capitalization of less than $1 billion, sound fundamental values, and potential for long-term growth at a reasonable price.

13. The investment objective of the American Century International Fund is to seek capital growth by investing primarily in securities of foreign companies that meet certain fundamental and technical standards of selection and have, in the opinion of the investment manager, potential for appreciation. The American Century International Fund will invest primarily in common stocks (defined to include depository receipts for common stock and other equity equivalents) of such companies.

14. Applicants represent that the total expenses of the American Century International Fund are currently 1.50%, which is less, absent the current waiver of such fees and expenses by Montgomery, than the total operating expenses of the Eliminated Portfolio. The Eliminated Portfolio has not borne any expenses due to the fact that Montgomery has waived all fees and absorbed all expenses in light of the very small asset base of the Portfolio. Applicants represent that if the substitution is not approved, Montgomery may ultimately be forced to cease absorbing the Eliminated portfolio's operating expenses, which would mean an effective annual fee rate of 1.50%.

15. The Contract owners will receive a confirmation of the Substitution transaction. The confirmation will contain a reminder of the Contract owner's ability to effect one transfer from the American Century International Fund without incurring any charges and such transfer will not be counted as one of the twelve free transfers permitted in a calendar year so long as the transfer is made within 30 days of the effective date of the Substitution.

16. No sales load deductions or transfer charges will be assessed in connection with any transfers among the investment divisions because of the substitution. For purposes of the $10 fee charged for each transfer in excess of twelve in any calendar year the proposed substitution will not count as a transfer.

Applicant's Legal Analysis and Conditions

1. Sections 26(b) of the 1940 Act provides that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.'' Section 26(b) of the 1940 Act also provides that the Commission shall issue an order approving such substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the substitution of shares of the American Century VP International Fund for shares of the Montgomery Variable Series: International Small-Cap Fund.

3. Applicants represent that the purposes, terms, and conditions of the substitution are consistent with the protections for which Section 26(b) was designed and will not result in any of the harms which Section 26(b) was designed to prevent

4. Applicants maintain that the American Century VP International Fund has investment objectives and policies which are consistent with those of the Eliminated Portfolio and which are sufficiently similar so as to continue to fulfill the Contract owners' objectives and risk expectations. Applicants state that any Contract owner who does not want his or her assets allocated into the American Century International Fund would be able to transfer assets to any one of the other investment divisions, available under their Schwab Contract, without charge. Such transfers could be made prior to or after the Automatic Selection Date.

5. The Substitution will be effected at net asset value in conformity with Section 22 of the 1940 Act and Rule 22c–1 thereunder. Contract owners will not incur any fees or charges as a result of the transfer of account values from any Portfolio. There will be no increase in the Contract or separate account fees and charges after the Substitution. In addition, the Substitution is designed to avoid any adverse federal income tax impact to the Contract owners.

6. The substitution will be effected by redeeming shares of the Eliminated Portfolio on the Automatic Selection Date at net asset value and using the proceeds to purchase shares of the American Century International Fund at net asset value on the same date. Contract owners will not incur any fees or charges as a result of the transfer of account values from the Eliminated Portfolio. All contract values will remain unchanged and fully invested.

Conclusion

In light of the foregoing facts and representations, Applicants believe that the requested relief to allow the proposed substitution meets the applicable standards for an order under Section 26(b) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32326 Filed 12–3–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of December 7, 1998.

An open meeting will be held on Monday, December 7, 1998, at 10:00 a.m., in Room 6600. A closed meeting will be held on Monday, December 7, 1998, following the 10:00 a.m. open meeting. A closed meeting will be held on Tuesday, December 8, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Monday, December 7, 1998, at 10:00 a.m., will be:

The Commission will hear oral argument in an appeal by Jacob Wonsover from an administrative law

judge's initial decision. For further information, contact John Zecca at (202) 942–0950.

The subject matter of the closed meeting scheduled for Monday, December 7, 1998, following the 10:00 a.m. open meeting, will be:

Post argument discussion.

The subject matter of the closed meeting scheduled for Tuesday, December 8, 1998, at 10:00 a.m., will be:

Institution and settlement of injunctive action.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 1, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–32363 Filed 12–1–98; 4:29 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40708; File No. SR–CBOE–97–58]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Capital and Margin Requirements for Joint Back Office Arrangements

November 25, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 27, 1998, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') Amendment No. 1 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to establish margin and net capital requirements for Joint Back Office (''JBO'') participants and clearing firms. Under the provisions of Regulation T promulgated by the Board of Governors of the Federal Reserve System (''Federal Reserve Board''),[3] a clearing broker may extend good faith financing to an owner of the clearing broker who is either a broker-dealer or an exchange member. These financing relationships are referred to as ''JBO arrangements.''

The text of the proposed rule change, as amended, is available at the Office of the Secretary, the Exchange, and at the Commission.

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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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

1. Purpose

a. *Background.* The Exchange filed its JBO proposal with the Commission on October 23, 1997, shortly after the New York Stock Exchange (''NYSE'') submitted its own JBO filing.[4] Notice of the Exchange's proposal was issued on December 10, 1997.[5] Among other matters, the Exchange's JBO filing proposes minimum financial standards for JBO participants and for the firms which clear JBO accounts.

[3] *See* 12 CFR 220. Regulation T is entitled ''Credit by Brokers and Dealers'' and was issued by the Federal Reserve Board pursuant to the Act.

[4] The NYSE's JBO filing, SR–NYSE–97–28, was filed with the Commission on October 2, 1997, and notice of its filing was issued on December 29, 1997. *See* Securities Exchange Act Release No. 39497 (Dec. 29, 1997), 63 FR 899 (Jan. 7, 1998). The NYSE filed Amendment No. 1 to its JBO filing on May 21, 1998, and Amendment No. 2 on September 28, 1998. Notice of Amendment Nos. 1 and 2 was issued on November 25, 1998. *See* Securities Exchange Act Release No. 40709 (Nov. 25, 1998).

[5] *See* Securities Exchange Act Release No. 39418 (Dec. 10, 1997), 62 FR 66154 (Dec. 17, 1997).

In its 1996 amendments to Regulation T, the Federal Reserve Board directed the securities self-regulatory organizations (''SROs'') to develop appropriate standards for JBO participants and their clearing firms.[6] The Exchange anticipates that all SROs will implement uniform standards for JBO arrangements. The NYSE formed a member firm subcommittee to develop appropriate standards for JBO participants and their clearing firms. The NYSE member firm subcommittee proposed that clearing firms maintain a minimum of $25 million in tentative net capital. The Exchange urged that an alternative standard be provided for options market-maker clearing firms to accommodate the JBO activities of the clearing firms' options market-maker clients. The compromise standard of $10 million net capital was agreed upon and incorporated into the JBO filings submitted by the Exchange and the NYSE.

Although at that time not all Exchange options market-maker clearing firms needed to maintain the $10 million level of capital to cover the haircut and financing needs of their market-maker and JBO clients, it was believed their actual capital needs would grow to exceed the $10 million standard by the time the Commission approved the Exchange's JBO proposal. While the capital needs of options market-marker clearing firms have in fact grown, they do not in all instances consistently satisfy the $10 million level.[7] As a result, the Commission received a number of comment letters from Exchange member firms that expressed concern over the $10 million standard.

b. *Amendment No. 1.* In response to the concerns of its members, the Exchange seeks to amend its JBO filing

[6] *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (Apr. 26, 1996), 61 FR 20386 (May 6, 1996).

[7] The Exchange has represented that all Exchange options market-maker clearing firms currently maintain net capital sufficient to meet the proposed $7 million net capital standard. However, fluctuations in a clearing firm's net capital may occur due to changes in daily net deductions for the options market-maker and JBO participant accounts carried. Many clearing firms maintain revolving subordinated loan arrangements in order to cover such potential capital swings. According to the Exchange, there is a one time charge to establish such a facility of approximately $10,000 per $1 million (1%). The cost to maintain such a facility, undrawn, approximates $10,000 per year per $1 million (1%), or $28 per day. The cost to draw down such a facility approximates $95,000 per year per $1 million of drawn funds (at 1% over an 8½% prime), or $264 per day. Drawn down revolving subordinated debt may be repaid beginning the following day, with the term of the loan not to exceed 1 year. The Exchange believes these costs do not appear to be excessively burdensome to clearing firms that carry the accounts of JBO participants.

to reduce from $10 million to $7 million, the proposed net capital requirement for JBO clearing firms. The Exchange also proposes to allow options market-maker clearing firms, that elect to operate under this alternative standard, to be permitted to maintain net capital of less than $7 million for a period not to exceed three consecutive business days. Immediate notice to the Exchange would be required when a JBO clearing firm's net capital drops below the $7 million requirement, or its tentative net capital drops below the $25 million requirement. In addition, such a clearing firm would be subject to prohibitions against the withdrawal of equity capital and prohibitions against reduction, prepayment, and repayment of subordination agreements as specified in the commission's net capital rule.[8]

The Exchange believes the proposed ''three business day'' provision is consistent with other provisions of the Commission's net capital rule.[9] The provision would make allowances for fluctuations in net capital resulting from daily changes in market-maker and JBO participant related clearing firm capital charges. The Exchange believes this provision will permit clearing firms to avoid unnecessary and inadvertent violations of the margin requirement at certain times such as options expiration week when capital needs are more volatile.

If approved, the proposal would provide JBO participants and clearing firms already conducting JBO business at the time of the Commission's approval six months to implement such changes. The proposed rule change would be applied within thirty calendar days of the Commission's approval for all other Exchange members seeking to engage in such JBO businesses.

In addition, the Exchange seeks to amend its JBO proposal to specify that, should the equity in a JBO participant's account fall below $1 million and the deficiency is not eliminated within five business days, the account shall lose its JBO status. Thereupon, the clearing member carrying the account would be required to apply the standard Regulation T and Exchange Rule 12.3 *customer* margin requirements. This provision mirrors the JBO proposal presented by the NYSE.

As currently amended, both the Exchange's and the NYSe's JBO filings contain provisions which, for the purpose of net capital computation, require the member organization carrying the account of a JBO participant to deduct from net worth any amount by which the equity in a JBO participant's account is below the haircuts required by the Commission's net capital rule. However, the NYSE's requirements for JBO arrangements, which are proposed to be set forth within its margin rule (NYSE Rule 431), would permit, for certain specified securities, a lesser amount to be deduced in lieu of the Exchange Act Rule 15c3–1 haircut on such securities.[10] The proposed alternative deduction is the NYSE's maintenance margin requirement for the specified securities when held in ''exempt accounts.'' [11] The Exchange's JBO filing does not incorporate an alternative deduction because, unlike the NYSE, the Exchange has not promulgated special maintenance margin requirements for exempt accounts, and for particular securities held in those accounts. However, Exchange member organizations that also are members of the NYSE can elect to be bound by the margin rules of the NYSE as permitted under Exchange Rule 12.11.[12] By electing to be bound by NYSE margin rules, organizations that are members of both the Exchange and the NYSE may avoid a violation of the Exchange's rules if they wish to utilize the alternative deduction proposed by the NYSE. At this time, the Exchange is not proposing rules to implement specialized maintenance requirements as an alternative to the haircut deduction for the organizations that are members of the Exchange only. The Exchange believes that special, lower maintenance margin requirements would not be critical to most of its member firms because the JBO accounts they carry do not have a concentration in the specified securities.

The Exchange believes the revised capital requirements for JBO clearing firms and the delayed date of effectiveness for existing JBO businesses, as proposed by Amendment No.1, are responsive to the concerns raised by its members.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[13] in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest. The Exchange further believes its proposal is designed to ensure the reasonableness of JBO arrangements as directed by the Federal Reserve Board in its recent amendments to Regulation T.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

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 Exchange consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[8] The commission's net capital rule, ''Net Capital Requirements for Brokers or Dealers,'' is designated as Rule 15c3–1. *See* 17 CFR 240.15c3–1(e) and 17 CFR 240.15c3–1d(b).

[9] The Commission's net capital rule requires that the ratio of options market-maker gross deductions to adjusted net capital not exceed 10:1 for a period of more than three consecutive business days. *See* 17 CFR 240.15c3–1.

[10] Under the NYSE's JBO proposal, the alternative deduction would apply to transactions in securities covered by paragraphs (e)(2)(F) and (e)(2)(G) of NYSE Rule 431. The Commission notes that the NYSE has submitted a separate rule filing, SR–NYSE–98–14 (''Related Filing''), that would revise the types of securities included in paragraphs (e)(2)(F) and (e)(2)(G) of NYSE Rule 431 to include: exempted securities, mortgage related securities, major foreign sovereign debt securities, highly rated foreign sovereign debt securities, and investment grade debt securities. The Commission has published notice of the NYSE's Related Filing but has not taken any dispositive action on the proposal. *See* Securities Exchange Act Release No. 40278 (July 29, 1998), 63 FR 41882 (Aug. 5, 1998).

[11] The Related Filing proposes to adopt a new paragraph (a)(13) to NYSE Rule 431 that would define an ''exempt account'' as: a member organization; non-member broker-dealer; ''designated account;'' or any person having a net worth of at least $40 million. The Related Filing also proposes to revise existing paragraph (a)(3) of NYSE Rule 431 to define a ''designated account'' as the account of: (i) a bank; (ii) a savings association; (iii) an insurance company; (iv) an investment company; (v) a state or political subdivision thereof; or (vi) a pension or profit sharing plan.

[12] Exchange Rule 12.11 specifies that in lieu of meeting the Exchange's margin requirements, a member firm may elect to be bound by the initial and maintenance margin requirements of the NYSE. If such an election is made, the member firm is bound to comply with the NYSE's margin rules as though they were part of the Exchange's rules.

[13] 15 U.S.C. 78f(b)(5).

[14] *See* note 6 *supra.*

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–58 and should be submitted by December 28, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32329 Filed 12–3–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40717; File No. SR–MSRB–97–15]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Relating to Rules G–11, on Sales of New Issue Municipal Securities During the Underwriting Period, G–12, on Uniform Practice, and G–8, on Books and Records

November 27, 1998.

I. Introduction

On December 23, 1997, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules G–11, on sales of new issue municipal securities during the underwriting period, G–12, on uniform practice, and G–8, on books and records. Notice of the proposed rule change appeared in the **Federal Register** on April 21, 1998.[3] The Commission received two comment letters concerning the proposed rule change.[4]

The MSRB received one comment letter concerning the proposed rule change.[5] On August 18, 1998, the Board submitted Amendment No. 1 to Rule G–11(g)(i) of the proposed rule change on sales of new issue municipal securities during the underwriting period. Notice of Amendment No. 1 appeared in the **Federal Register** on September 29, 1998.[6] The Commission received one comment letter concerning Amendment No. 1.[7] This order approves the proposed rule change and Amendment No. 1.

II. Description of the Proposal and Amendment No. 1

The proposed rule change requires the managing underwriter of a syndicate to maintain a record of all issuer syndicate requirements; requires the managing underwriter to complete the allocation of securities within 24 hours of the sending of the commitment wire; requires the managing underwriter to disclose to syndicate members all available designation information; requires the managing underwriter to disclose to members of the syndicate, in writing, the amount of any portion of the take-down that is directed to each member of the syndicate by the issuer; and shortens the deadline for payment of designations to 30 calendar days after the issuer delivers the securities to the syndicate.

Amendment No. 1 retains the requirement of the proposed change to Rule G–11(g)(i) to complete the allocation of securities within 24 hours of the sending of the commitment wire. It further provides that, if the bond purchase agreement (''BPA'') is not yet signed or if the award has not been made at the time allocations are made, the allocations are subject to the signing of the BPA or the award of bonds. The purchaser must be informed of this fact.

Issuer syndicate requirements

Issuer requirements involving syndicate formation, order review, designation policies and bond allocations have become much more prevalent in the municipal securities market. Such requirements are significant because they help to determine which dealers, and ultimately which investors, obtain the bonds. As issuer syndicate requirements can affect the functioning of the syndicate, and at times the final costs to the issuer of the new issue, the records of such requirements should be maintained so that any problems or concerns regarding the functioning of the syndicate arising from these requirements can be identified and addressed and the information must be provided to syndicate members and others, upon request.

The proposed rule change amends Rules G–8(a)(viii) and G–11(f) to require the managing underwriter to maintain a record of all issuer syndicate requirements. If the requirements are in a published guideline, the guideline should be maintained by the dealer and supplemented by a statement of any additional requirements that arise prior to settlement. If the requirements are not in published form, the managing underwriter must create a written detailed statement of the requirements and maintain the statement in its records. The managing underwriter must provide a copy of the published guideline or underwriter prepared statement of issuer syndicate requirements to syndicate members prior to the first offer of any securities by the syndicate. Syndicate members must furnish this summary promptly to others, upon request. In addition, the managing underwriter must provide the

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[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Rel. No. 39873 (April 14, 1998), 63 FR 19775.

[4] Letters from George Brakatselos, Vice President, The Bond Market Association, to Secretary, Securities and Exchange Commission, dated May 12, 1998 (''TBMA Letter No. 1'') and David B. Levy, Director & Associate General Counsel, Capital Markets Division, SalomonSmithBarnery, to Secretary, Securities and Exchange Commission, dated May 13, 1998 (''Salomon Letter'').

[5] Letter from Mark Page, Deputy Director and General Counsel, Office of Management and Budget and John White, Deputy Comptroller for Public Finance, New York City Comptroller's Office, City of New York, to Terry L. Atkinson, Chairman, MSRB, dated June 5, 1998 (''HYC Letter''). The Board concurred with the NYC Letter that Rule G–11(g)(1) should not be interpreted to required that a bond purchase agreement (''BPA'') be signed within 24 hours of the sending of the commitment wire. As the Board would not meet again before August 1998, it consented to an extension for Commission action until August 31, 1998. Letter from Ronald W. Smith, Senior Legal Associate, MSRB, to Mignon McLemore Esq., Division of Market Regulation, SEC, dated June 26, 1998.

[6] Securities Exchange Act Rel. No. 40456 (September 22, 1998), 63 FR 51976 (''Amendment No. 1'').

[7] Letter from Sarah M. Starkweather, Vice President and Associate General Counsel, The Bond Market Association, to Jonathan G. Katz, Secretary, SEC, dated October 19, 1998 (''TBMA Letter No. 2'').

issuer with a copy of any such statement for its review.

Disclosure of designation information

The proposed rule change amends Rule G–11(g) to require that the managing underwriter disclose to syndicate members all available designation information within 10 business days following the date of sale and all information with the sending of the designation checks.

Payment of designations

The proposed rule change amends Rule G–12(k) to move the deadline for payment of designations from 30 business days following delivery of the securities to the customer to 30 calendar dates after the issuer delivers the securities to the syndicate.

Disclosure of take-down

A small number of issuers are ''setting aside,'' or holding back, at their discretion, a portion of the take-down [8] to direct to syndicate members. As this issuer ''set-aside'' is part of the take-down, it should be disclosed to syndicate members in the same manner as customer designations. The proposed rule change amends Rule G–11(g) to require the managing underwriter to disclose to members of the syndicate, in writing, the amount of any portion of the take-down that is directed to each member of the syndicate by the issuer. Such disclosure must be made by the later of 15 business days following the date of sale or three business days following receipt by the managing underwriter of notification of such set-asides by the issuer.

Allocation of securities

The proposed rule change amends Rule G–11(g) to require the managing underwriter to complete the allocation of securities within 24 hours of the sending of the commitment wire. This amendment attempts to address delays in allocations of securities which may be the result of issuers and financial advisors failing to review orders and proposed allocations in a timely fashion. In case where there is a delay in allocation, investors may find it difficult to finalize their portfolio positions when their orders remain unfilled for as long as two or more days after the end of the order period. Moreover, during volatile market conditions, delays in allocations hurt the prospect for a successful underwriting.

[8] The *takedown* is normally the largest component of the spread, similar to a commission, which represents the income derived from the sale of securities.

Amendment No. 1

The proposed rule change requiring the managing underwriter to complete the allocation of securities within 24 hours of the sending of the commitment wire implies that the BPA will be signed prior to the completion of the allocation. It is possible that allocations may be completed (and investors notified of these allocations) prior to the signing of the BPA. Amendment No. 1, therefore, revises the proposed rule change to include this exception in the rule language.

III. Summary of Comments

The Commission received two comment letters [9] concerning the proposed rule change and one comment letter [10] concerning Amendment No. 1. The Commission requested and received a response to these comments from the MSRB.[11] The MSRB received one comment letter from New York City.[12] In response to issues raised in this letter, the MSRB submitted Amendment No. 1 to the Commission.[13]

TBMA strongly opposed the proposed amendments which would require the managing underwriter to maintain and, where applicable, record all issuer requirements involving syndicate formation, order review, designation policies, and bond allocations.[14] Any requirement that would result in underwriters spending substantial amounts of time preparing documents and obtaining issuer approvals is neither productive nor practical.[15] TBMA suggested that ''issuers seeking to impose their requirements on syndicates must take the initiative to enunciate such requirements, in writing, and publish them so they are available to all who are involved, or considering becoming involved, in a syndicate for that issuer.'' [16]

According to the Board, ''managing underwriters currently take issuer direction on syndicate matters and release such information to the syndicate members.'' [17] Thus, the proposed amendments are essentially codifying current syndicate practices.[18] The Commission agrees with the Board that the additional requirements should not be unduly burdensome to the managing underwriter, as they are codifying existing practices. The Commission notes that dealers can address other issuer problems through contract.

TBMA also opposed the amendment to Rule G–11(g). The amendment not only established a time limit for completing the allocation of securities, it also urged issuers and their financial advisors to review orders and proposed allocations as soon as possible so as not to delay dissemination of information to investors.[19] While TBMA supports prompt completion of the allocation, it strongly opposed the amendment because, as drafted, the lead manager's compliance would be wholly dependent upon the timely performance of financial advisors and issuers.[20] TBMA noted that it generally opposes any attempts by the MSRB to modify the behavior of entities that are not directly regulated by the MSRB through the regulation of the dealer community.[21] ''A municipal securities dealer should not be faced with a possible violation of MSRB rules where compliance by the dealer is dependent upon a specific action of an unregulated entity.'' [22] This places the dealer in the untenable position of being charged with a violation of MSRB rules through no fault of its own.[23]

The Board determined to adopt the proposed rule change as drafted, because it will assist investors by greatly facilitating the allocation process.[24] According to the MSRB, delays in allocations can adversely affect investors' portfolio positions and the underwriting.[25] By placing a time limit on the allocation of the securities, the Board believes underwriters will ensure compliance with the proposal by either including a provision in the BPA or otherwise reaching an agreement with issuers, that allocations must be completed within the 24 hour timeframe.[26] ''If issuers or financial advisors wish to review orders and proposed allocations, they will have to

[9] *See* note 4 *supra.*

[10] *See* note 7 *supra.*

[11] Letter from Ron W. Smith, Senior Legal Associate, MSRB, to Mignon McLemore, Attorney, Division of Market Regulation, SEC, dated June 10, 1998 (''MSRB Letter''). The TBMA's second letter was received after the MSRB Letter. The Commission believes the MSRB's letter sufficiently addresses both TBMA letters, because TBMA's second letter reiterates much of its submission.

[12] *See* note 5 *supra.*

[13] *See* note 6 *supra.*

[14] TBMA Letter No. 1 at 1.

[15] *Id* at 1–2.

[16] *Id* at 2.

[17] MSRB Letter at 1.

[18] *Id.*

[19] TBMA Letter No. 1 at 2.

[20] *Id.*

[21] *Id. See also* Salomon Letter at 1.

[22] *Id.*

[23] *Id. See also* Salomon Letter at 1 (stating that municipal securities dealers should neither be forced to ''police'' the activities of unregulated entities nor be faced with regulatory sanctions for activities that are beyond their direct control).

[24] MSRB Letter at 2.

[25] *Id.*

[26] *Id.*

do so within 24 hours.'' [27] The Commission believes that any unnecessary delay in distribution securities, once the BPA has been executed, can disadvantage syndicate members and ultimately, investors. Thus the Commission supports the shortened timeframe in which syndicate managers must complete the allocation of securities.

In its second letter, TBMA reiterated its opposition to the proposed rule change.[28] However, TBMA did agree with the specific proposal in Amendment No. 1 which provides that allocations completed prior to execution of the BPA would be made subject to execution of that agreement.[29] As the TBMA's positions remain unchanged, the MSRB's response sufficiently addresses the issues raised in the second letter.

Salomon generally opposed the proposed rule change for reasons similar to those stated by TBMA.[30] Specifically, Salomon believed that syndicate members would be the economic beneficiaries of these changes and senior managers would bear the cost.[31] According to Salomon, the cost of doing business in municipal securities has increased while the revenue generated by the business has decreased.[32] Moreover, each time the syndicate requirements are modified, the senior managers expend significant amounts of resources to ensure their systems are in compliance.[33]

In its response, the Board stated that it was concerned that syndicate members (and ultimately customers) have information regarding issuer requirements to help frame orders.[34] Requiring the dissemination of this information to syndicate members helps ensure that managers are ''following the rules'' of the syndicate so that, if there are any problems regarding the economics of the deal, they can be corrected prior to settlement or when the syndicate monies are distributed.[35] The Board recognizes that syndicate managers may incur additional costs complying with these requirements, however, it believes the benefits of disclosure to syndicate members of important information on syndicate operations outweigh such costs.[36] The Commission believes that the benefits of increased disclosure (*e.g.*, investor protection, market transparency, and equal access to the municipal securities market) outweigh costs that may be incurred as a result of the proposed rule change. Thus, the Commission supports the proposed rule change.

Salomon strenuously objects to the proposal that syndicate managers disclose to syndicate members information relating to designations.[37] Salomon contends that because it and similarly-situated firms provide a full range of services to issuers and investors and they spend significant resources to maintain the infrastructure to provide those services, designations are the way they realize a return on the investment in that infrastructure.[38] Moreover, it is Salomon's view that the proposals run counter to the interest of investors.[39] According to Salomon, information concerning designations is competitive, confidential information that should be known only to the beneficiary of the designation and the syndicate manager (in its capacity as bookrunner of the underwriting) and should only be disclosable by the investor.[40]

The Board disagrees that investors would object to the disclosure of designation information.[41] The amendment does not require that the identity of the investors providing the designations be disclosed, only that the total amount of the designations for each dealer be disclosed.[42] The Board believes that all syndicate members have the right to the disclosure of all designation information.[43] The MSRB believes that the proposed rule change will help ''assure syndicate members of equitable distribution of the economics of the deal pursuant to syndicate requirements.''[44]

The Commission reiterates its position that it supports more disclosure in the municipal securities markets. The Commission respects investors' right to choose the firms with which to do business as well as syndicate members' rights to accept designations. The Commission believes, however, that the amount of the designation each member receives should be disclosed to prevent fraudulent and manipulative practices in the municipal securities market. According to the Board, confidentiality is preserved because only the total amount of the designations is disclosed, thus investors will ''be free to designate any firm without fear of reprisal or pressure from other syndicate members.'' The Commission, therefore, supports this proposed rule change.

IV. Discussion

The Commission believes the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder.[45] Specifically, the Commission believes that approval of the proposed rule change is consistent with Section 15B(b)(2)(C) [46] of the Act. This proposed rule change should help protect investors and the public interest through its enhanced disclosure and recordkeeping requirements which are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

The Commission believes the proposal, which requires managing underwriters to maintain and where necessary, create records of issuer requirements, is a reasonable requirement to impose on a syndicate manager of a new issue of municipal securities. A syndicate manager has the primary responsibility for conducting the affairs of the syndicate. Thus, it is appropriate to require the syndicate manager to be responsible for the recordkeeping concerning syndicate activities. The Commission recognizes that these managers could experience an increase in costs attempting to comply with these requirements. However, syndicate managers are allowed to recover expenses for administrative tasks performed for the benefit of the syndicate. Further, resolving accounting discrepancies or other syndicate disputes would be less cumbersome and time-consuming if accurate records have

[27] *Id.*
[28] TBMA Letter No. 2 at 1–2.
[29] *Id.* at 2.
[30] Salomon Letter at 1.
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] MSRB Letter at 2.
[35] *Id.*
[36] *Id.*
[37] Salomon Letter at 2.
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] MSRB Letter at 2.
[42] *Id.*
[43] *Id.*
[44] *Id.*

[45] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. The proposed rule change should improve efficiency in recordkeeping and information dissemination because the syndicate manager must now maintain a record of issuer requirements. Competition in the marketplace should also benefit as designation information will be available to all members of the syndicate, thus making collusion in the municipal securities market more difficult. The proposal shortens the deadline for payment of designations which should decrease the time it takes for firms to receive revenue which should benefit capital formation. 15 U.S.C 78c(f).

[46] Section 15B(b)(2)(C) requires the Commission to determine that the Board's rules are 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 municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

been maintained and are readily accessible.

The Commission believes the proposal, requiring managing underwriters to disclose all available designation information, should encourage competition among dealers for other designations in subsequent underwritings. The proposal should not result in fixed pricing because only the designation amounts are being revealed. Investors will still be able to designate any firm they choose, because the investors' identities will remain confidential. Furthermore, disclosure of all designation information should prevent delays in disseminating full designation payments to members because designation information must be made available to syndicate members within ten business days following the date of sale. This requirement should, therefore, help ensure members receive the full designation credit they have earned.

The Commission also supports shortening the deadline for payment of designations from 30 business days following delivery of the securities to the customer to 30 calendar days after the issuer delivers the securities to the syndicate. The shortened deadline should prevent syndicate mangers from unnecessarily delaying payment of designations to syndicate members.

The Commission agrees that an issuer ''set-aside'' is part of the take-down and, therefore, should be disclosed to syndicate members in the same manner as customer designations. This proposed rule change should act as a deterrent to fraudulent activity because disclosure of take down information including each dealers' percentage must be made by the later of 15 days following the date of sale or three business days following receipt by the managing underwriter of notification of any set-asides by the issuer. Furthermore, timely disclosure of this information will allow dealers to verify the accuracy of the information and, where necessary, address any discrepancies before settlement.

The Commission supports the proposed rule change and Amendment No. 1 concerning the allocation of securities. The proposed rule change required that the managing underwriter complete the allocation of securities within 24 hours of the sending of the commitment wire. In its letter to the MSRB, NYC contended that the proposed rule change erroneously assumed that a BPA would be signed prior to the completion of the allocation.[47] the NYC letter suggested that the allocation may be completed (and investors be given notice of the allocations) prior to the signing of the BPA.[48] In response, the MSRB amended its proposal to include that any allocations made prior to the signing of the BPA in a negotiated offering or the official award of the bonds in a competitive sale must be subject to execution of a BPA or the award, as appropriate. Furthermore, investors must also be notified of this fact.[49]

In cases where the BPA is signed before the commitment wire is sent, the Commission believes 24 hours should give the senior syndicate manager enough time to complete the allocation of securities. The Commission understands that there are occasions, however, when a deal is so complex that it takes longer than 24 hours after the commitment wire is sent to complete the process (*e.g.*, production and verification of final numbers, final sizing of the bond sale) so that a BPA may be signed. The Commission, therefore, supports the amended language which recognizes this exception,[50] but protects investors by requiring full disclosure of the deal's status. Thus, investors will be aware that the deal could be subject to market fluctuations or may not even be finalized.

V. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 15B(b)(2)(C).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[51] that the proposed rule change and Amendment No. 1 (SR–MSRB–97–15), are hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[52]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32324 Filed 12–3–98; 8:45 am]

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[47] NYC Letter at 1.

[48] *Id.* at 2.

[49] Amendment No. 1 at 51977.

[50] In these situations, the Commission notes that senior syndicate managers should consult the MSRB's rules and interpretations concerning the sending of confirmations prior to the signing of the BPA or the date of the award. Amendment No. 1 at 51977.

[51] 15 U.S.C. 78s(b)(2).

[52] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34–40711; File No. SR–NYSE–98–34)]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Rule 104.10 By Deleting the Odd-Lot Exception

November 25, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 1998, the New York Stock Exchange, Inc. (''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II,and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend NYSE Rule 104.10(6)(i) by eliminating paragraph (C), which provides an exception to the Floor Official approval requirement for specialist purchases and sales on destabilizing ticks to offset positions acquired by the specialist in executing odd-lot orders on the same day.

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 NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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

1. Purpose

NYSE Rule 104 governs specialists' dealings in their specialty stocks. In particular, NYSE Rule 104.10(6) describes the manner in which a specialist may liquidate or increase his

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

or her position in a specialty stock. In general, the rule requires such transactions to be effected ''in a reasonable and orderly manner'' in relation to the overall market. The rule also requires the market in the particular stock and the adequacy of the specialist's position to meet the reasonably anticipated needs of the market. NYSE Rule 104.10(6)(i)(A) provides that a specialist may liquidate a position by selling stock on a direct minus tick or by purchasing stock on a direct plus tick (destabilizing ticks), only if the transaction is reasonably necessary in relation to the specialist's overall position in the stock and if Floor Official approval is obtained. Floor Official approval provides an independent review of these destabilizing transactions for compatibility with the reasonableness test.

NYSE Rule 104.10(6)(i)(C) provides an exception to the Floor Official approval requirement for specialist purchases and sales on destabilizing ticks to offset position acquired by the specialist in executing odd-lot orders on the same day. Odd-lot orders are executed throughout the day in the odd-lot system against the specialist in that stock. Periodically, the specialist receives an automated notification of the net amount of odd lots that have been executed against his or her position. The specialist can then offset these odd-lot transactions by buying or selling for his or her own account.

The basis for the exception was that these odd-lot offsets would not have an impact on the market as a whole. However, there has been a marked increase in the volume of odd-lot transactions in the last several years [3] and, as a result, an increase in specialist offset transactions. The Exchange believes that odd-lot offsets should be treated as other liquidating transactions and be netted with round lot transactions. All destabilizing transactions would require Floor Official approval pursuant to Exchange Rules.[4] Therefore, the Exchange is proposing to delete the exception for odd-lots in paragraph (C).

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section 6(b)(5) of the Act [5] in that the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 self-regulatory organization consents, the Commission will:

(A) by order approve the 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, including whether the proposal is consistent with the Act. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–34 and should be submitted by December 28, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32323 Filed 12–3–98; 8:45 am]

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[3] Odd-lot volume exceeded 1 billion shares on the NYSE in 1997, an 87% increase from 1994. Telephone conversation between Agnes Gautier, Vice President, Market Surveillance, NYSE, and Robert B. Long, Attorney, Division of Market Regulation, Commission, on October 23, 1998.

[4] *See* Letter from Agnes Gautier, Vice President, Market Surveillance, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated November 20, 1998.

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40709; File No. SR–NYSE–97–28]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 1 and 2 to Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Capital and Margin Requirements for Joint Back Office Arrangements

November 25, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 21, 1998, and September 28, 1998, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') Amendment Nos. 1 and 2, respectively, to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on Amendment Nos. 1 and 2 to the proposed rule change for interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend Exchange Rule 431, ''Margin Requirements,'' to establish margin and net capital requirements for Joint Back Office (''JBO'') arrangements among broker-dealers. The proposed rule change also relates to: (i) net capital computations for members carrying proprietary accounts of other broker-dealers; (ii) net capital computations for members carrying the accounts of approved specialists or market makers; and (iii) control and restricted securities.

The text of the proposed rule change, as amended, is available at the Office of the Secretary, the Exchange, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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

1. Purpose

On October 2, 1997, the Exchange filed its JBO proposal with the Commission. Notice of the proposal was issued on December 29, 1997.[3] The Exchange submitted Amendment No. 1 to the JBO filing on May 21, 1998, and Amendment No. 2 on September 28, 1998.

a. *The Original JBO Filing.* The Exchange's proposed rule change would amend Exchange Rule 431 to establish capital, margin, and other requirements for JBO arrangements among broker-dealers. Regulation T, issued by the Board of Governors of the Federal Reserve System (''FRB''), permits a broker-dealer to ''effect or finance transactions of any of its owners if the [broker-dealer] is a clearing and servicing broker or dealer owned jointly or individually by other [broker-dealers].'' [4] The Exchange's proposal would provide regulatory requirements for such JBO arrangements.

Under the Exchange's original proposal, a member organization carrying and clearing, or carrying JBO accounts would be required to: (i) provide written notification to the Exchange prior to establishing a JBO arrangement, (ii) maintain minimum tentative net capital [5] of $25 million, or maintain minimum net capital of $10 million if engaged in the primary business of clearing options market-maker accounts,[6] (iii) maintain a written risk analysis methodology for assessing the amount of credit extended to participating broker-dealers, and (iv) deduct from net capital, the ''haircut'' requirements pursuant to the Commission's net capital rule (Exchange Act Rule 15c3–1) [7] in excess of the equity maintained in the accounts of participating broker-dealers.

Furthermore, JBO participants would be required to be registered broker-dealers subject to Exchange Act Rule 15c3–1, and would be required to maintain an ownership interest in the JBO pursuant to Regulation T. Exclusive of their ownership interest in the JBO arrangement, JBO participants would be required to maintain a minimum liquidating equity of $1 million. If the liquidating equity fell below $1 million, the JBO participant would be required to eliminate the deficiency within five business days or would become subject to the margin requirements under other provisions of Exchange Rule 431.

b. *Amendment No. 1.* Amendment No. 1 proposes revisions that are designed to incorporate certain proposed maintenance margin requirements for non-equity securities, which are the subject of another recent Exchange filing, SR–NYSE–98–14 (''Related Filing'').[8] The Exchange's proposed rule change, as originally filed, requires that the Commission's net capital rule haircuts be used when a member organization computes its capital charges for Rule 431 purposes. However, in the Related Filing, the Exchange proposes margin requirements for non-equity securities for broker-dealer proprietary accounts which are less than the Commission's net capital rule haircut requirements. The Exchange believes it is necessary to maintain consistency between the Exchange's JBO filing and the Related Filing by incorporating into the JBO filing the most recently proposed margin requirements. Therefore, Amendment No. 1 incorporates the requirements proposed in the Related Filing.

The Exchange's JBO filing specifies certain regulatory requirements for establishing and maintaining JBO arrangements. Among them is the requirement that each JBO participant maintain in its account minimum net liquidating equity of $1 million. Amendment No. 1 clarifies the margin requirements that become operative when the equity in the account of a JBO participant falls below the prescribed levels. Specifically, if the amount of equity in a JBO participant's account drops below the $1 million minimum, the participant no longer will be an eligible JBO participant unless the necessary minimum equity is reestablished in the JBO account within the required number of days (*i.e.*, 5 business days). Amendment No. 1 clarifies that JBO participants who lose their JBO eligibility would not be considered ''exempted borrowers'' (as defined in Regulation T) and therefore would be subject to the margin account requirements for customers set forth in Regulation T. In addition, such participants would be subject to the maintenance requirements pursuant to the other provisions of Rule 431.

Amendment No. 1 also requests that the revisions relating to Control and Restricted Securities be subject to separate consideration and review by the Commission, apart from the broader proposal relating to JBO arrangements and broker-dealer accounts, as well as the changes proposed in Amendment No. 1. The Exchange believes that bifurcating the consideration of the revisions regarding Control and Restricted Securities, on which no comments were received, would allow them to become effective more quickly than if they were considered together with all of the other modifications proposed in the JBO filing and Amendment No. 1.

c. *Amendment No. 2.* The Exchange notes that the Chicago Board Options Exchange, Incorporated (''CBOE'') has also submitted a proposed rule change to establish margin and net capital requirements for JBO clearing firms and participants.[9] The CBOE's proposal, which is similar to the Exchange's JBO filing, originally proposed capital requirements of $25 million and $10 million. In response to the publication of the CBOE's JBO filing in the **Federal Register**, the Commission received several comment letters from members

[3] *See* Securities Exchange Act Release No. 39497 (Dec. 29, 1997), 63 FR 899 (Jan. 7, 1998).

[4] *See* 12 CFR 220.7(c). Regulation T is entitled ''Credit By Brokers and Dealers'' and was issued by the FRB pursuant to the Act.

[5] As discussed in the Exchange's Interpretation Handbook, the term ''tentative net capital'' generally refers to net capital before the application of ''haircuts'' and undue concentration charges on securities and options positions. *See* NYSE Interpretation Handbook, Section I(c)(2)(vi)(M)(04), ''Tentative Net Capital.''

[6] Under the proposed rule change, clearance of option market maker accounts would be deemed a broker-dealer's primary business if a minimum of 60% of the aggregate deductions in the ratio of gross options market maker deductions to net capital (including gross deductions for IBO participant accounts) are options market maker deductions.

[7] *See* 17 CFR 240.15c3–1, ''Net Capital Requirements for Brokers or Dealers.''

[8] The Commission has published notice of the Related Filing but has not taken any dispositive action on the proposal. *See* Securities Exchange Act Release No. 40278 (July 29, 1998), 63 FR 41882 (Aug. 5, 1998).

[9] The CBOE's JBO filing, SR–CBOE–97–58, was filed with the Commission on October 27, 1997, and notice of its filing was issued on December 10, 1997. *See* Securities Exchange Act Release No. 39418 (Dec. 10, 1997), 62 FR 66154 (Dec. 17, 1997). The CBOE filed Amendment No. 1 to its JBO filing on July 27, 1998. Notice of Amendment No. 1 was issued on November 25, 1998. *See* Securities Exchange Act Release No. 40708 (Nov. 25, 1998).

of the CBOE. The CBOE members contended that the proposed $10 million net capital requirement for certain JBO clearing firms, whose primary business consists of clearance of options market makers' accounts, was too high.

As a result of discussions with other self-regulatory organizations such as the CBOE, as well as deliberations among the JBO subcommittee of the Exchange's Rule 431 Committee, the Exchange seeks to lower the proposed net capital requirement for member organizations carrying and clearing, or carrying JBO accounts from $10 million to $7 million. This modification is consistent with the revisions which the CBOE recently proposed for its JBO filing.[10] Under Amendment No. 2, the $7 million net capital requirement only would be available to member organizations whose primary business consists of the clearance of options market maker accounts. Consequently, the proposal's $25 million tentative net capital requirement would continue to apply to all other member organizations carrying and clearing, or carrying JBO accounts. The Exchange believes the revised level of $7 million will continue to require capital sufficient to satisfy safety and soundness concerns.

Amendment No. 2 also includes new provisions relating to member organizations that carry and clear, or carry JBO accounts that will require: (i) prompt written notification to the Exchange when such a member organization's tentative net capital or net capital, whichever may apply, falls below prescribed standards; and (ii) that appropriate action be taken, within three business days, to resolve any such capital deficiency. Failure to correct such deficiencies within the allotted period will preclude the JBO carrying and clearing, or carrying member organization from accepting new transactions pursuant to the JBO arrangement. The Exchange believes these requirements are consistent with provisions of the Commission's net capital rule that generally deal with net capital deficiencies.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act[11] in that it is designed to promote just and equitable principles of trade, and protect the investing public. The Exchange further believes the proposed rule change is consistent with the rules and regulations of the Board of Governors of the Federal Reserve System that are intended to prevent the excessive use of credit for the purchase or carrying of securities, in accordance with Section 7(a) of the Act.[12]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change. The Exchange notes, however, that the CBOE received written comments regarding its companion JBO filing. Item II(A)(1)(c) above includes the Exchange's response to the issues raised in the comment letters submitted to the CBOE.

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 Exchange consents, the Commission will:

(A) by order approve the 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 Amendment Nos. 1 and 2, including whether the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–97–28 and should be submitted by December 28, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32328 Filed 12–3–98; 8:45 am]

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[10] *Id.*

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78g(a).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40712; File No. SR–NYSE–98–30]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Customer Account Transfer Contracts

November 25, 1998.

I. Introduction

On September 28, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to customer account transfer contracts.

The proposed rule change was published for comment in the **Federal Register** on October 27, 1998.[3] One comment in support of the proposed rule change was received. This order approves the proposal.

II. Description of the Proposal

NYSE proposes to amend Exchange Rule 412, which regulates the transfer of customer accounts from one member organization to another, and the rule's stated interpretation. Transfers of customer accounts are generally effected through the Automated Account Transfer Service (''ACATS'') which is administered by the National Securities

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40571 (October 19, 1998), 63 FR 57347 (File No. SR–NYSE–98–30).

Clearing Corporation (''NSCC''). The ACATS system is currently being redesigned to allow for quicker and more efficient transfers of customer accounts. The purpose of the proposed rule change is to amend Rule 412 to reflect these upgrades.

Currently, the ACATS system and Exchange Rule 412 provide for a seven day cycle to transfer a customer account. The proposed amendments would reduce this cycle to six days by streamlining the asset review portion of the transfer period from two days to one day. It is anticipated that ACATS system changes will become operational on January 25, 1999. Therefore, the Exchange represents that the proposed rule change will become effective in accordance with the effective date of the ACATS system changes.

In addition, the Exchange proposes to amend an interpretation to Exchange Rule 412 to eliminate one of the enumerated reasons for which a member organization may reject or take exception to an account transfer request. The Proposed amendment deletes the ''Account Type Mismatch'' reject code, due to its limited usefulness arising from inconsistencies among member organizations in defining account types.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).[4] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[6] The proposed amendment does this by reducing the time allowed for transferring customer accounts.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–98–30) is approved.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32330 Filed 12–3–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40710; File No. SR–PCX–97–49]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to Proposed Rule Change by the Pacific Exchange, Inc. Relating to Capital and Margin Requirements for Joint Back Office Arrangements

November 25, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 8, 1998, the Pacific Exchange, Inc. (''Exchange'' or ''PCX'') filed with the Securities and Exchange Commission (''Commission'') Amendment No. 1 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend its proposed rule change regarding Joint Back Office (''JBO'') arrangements to: (i) reduce the net capital requirements for certain member organizations carrying and clearing, or carrying JBO accounts from $10 million to $7 million; (ii) add notification requirements for JBO clearing firms in the event their tentative net capital or net capital fall below prescribed levels; and (iii) require member organizations carrying JBO accounts to margin such accounts in accordance with customer margin requirements if the JBO participants fail to maintain minimum liquidating equity of $1 million in their JBO accounts for more than five business days.

The text of the proposed rule change, as amended, is available at the Office of the Secretary, the Exchange, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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

1. Purpose

a. *Background.* On December 18, 1997, the Exchange filed with the Commission a proposal establishing margin and net capital requirements for member organizations that carry and clear, or carry JBO accounts. Notice of the Exchange's proposal was issued on February 18, 1998.[3] Under the proposal, a member organization that carries and clears, or carries JBO accounts would be required to maintain minimum tentative net capital of $25 million, except that a member organization whose primary business consisted of the clearance of options market-maker accounts could carry JBO accounts provided that it maintained minimum net capital of $10 million.

The Exchange notes that its JBO rule filing is similar to the JBO rule filings submitted to the Commission by the New York Stock Exchange (''NYSE'') and the Chicago Board Options Exchange (''CBOE'').[4] The NYSE and CBOE recently submitted amendments to their JBO rule filings which propose to reduce the capital requirements for JBO clearing firms from $10 million to $7 million; add notification requirements for JBO clearing firms in the event their tentative net capital or net capital falls below prescribed levels; and require the application of customer margin requirements to JBO participants if such participants do not maintain

[3] See Securities Exchange Act Release No. 39680 (Feb. 18, 1998), 63 FR 9622 (Feb. 25, 1998).

[4] The NYSE's JBO filing, SR–NYSE–97–28, was filed with the Commission on October 2, 1997, and notice of its filing was issued on December 29, 1997. *See* Securities Exchange Act Release No. 39497 (Dec. 29, 1997), 63 FR 899 (Jan. 7, 1998). The CBOE's JBO filing, SR–CBOE–97–58, was filed with the Commission on October 27, 1997, and notice of its filing was issued on December 10, 1997. *See* Securities Exchange Act Release No. 39418 (Dec. 10, 1997), 62 FR 66154 (Dec. 17, 1997).

sufficient equity in their JBO accounts.[5] Amendment No. 1 to the Exchange's proposal is consistent with these revisions proposed by the NYSE and CBOE.

b. *Amendment No. 1.* The Exchange seeks to amend its JBO rule filing to allow a member organization to carry and clear, or carry JBO accounts provided that the member organization's net capital, as computed pursuant to Exchange Act Rule 15c3–1,[6] does not fall below $7 million for a period in excess of three consecutive business days. This revision modifies the Exchange's original proposal which required a carrying and clearing, or carrying member organization to maintain minimum net capital of $10 million.

The Exchange further proposes to require JBO clearing members to provide immediate telegraphic or facsimile notice to the Exchange if the clearing member determines that its tentative net capital or net capital has fallen below the prescribed levels. In addition, such clearing member will be subject to the prohibitions against withdrawal of equity capital set forth in Exchange Act Rule 15c3–1(e), and must observe the prohibitions against reduction, prepayment, and repayment of subordination agreements set forth in Exchange Act Rule 15c3–1d(b), as if such member's net capital were below the minimum standards specified by each of those sections.

Finally, the Exchange proposes to require carrying member organizations to margin JBO accounts in accordance with the customer margin requirements of Regulation T [7] when such JBO accounts lack sufficient minimum liquidating equity (*i.e.*, $1 million) for a period of more than five business days.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[8] in general, and further, the objectives of Section 6(b)(5),[9] in particular, in that it is designed to perfect the mechanisms of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

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 Exchange consents, the Commission will:

(A) By order approve the 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 Amendment No. 1, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, 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 persons, 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 Pubic Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–97–49 and should be submitted by December 28, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–32327 Filed 12–3–98; 8:45 am]

BILLING CODE 8010–01–M

[5] The NYSE filed Amendment No. 1 to its JBO filing on May 21, 1998, and Amendment No. 2 on September 28, 1998. Notice of Amendment Nos. 1 and 2 was issued on November 25, 1998. *See* Securities Exchange Act Release No. 40709 (Nov. 25, 1998). The CBOE filed Amendment No. 1 to its JBO filing on July 27, 1998. Notice of Amendment No. 1 was issued on November 25, 1998. *See* Securities Exchange Act Release No. 40708 (Nov. 25, 1998).

[6] The Commission's net capital rule, ''Net Capital Requirements for Brokers or Dealers,'' is designated as Commission Rule 15c3–1. *See* 17 CFR 240.15c3–1.

[7] Regulation T is entitled ''Credit by Brokers and Dealers'' and was issued by the Board of Governors of the Federal Reserve System pursuant to the Act. *See* 12 CFR 220.

[8] 15 U.S.C. 78F(B).

[9] 15 U.S.C. 78F(B)(5).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 2943]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 ''C'' Street NW, Washington, D.C., December 10–11, 1998, in Conference Room 1406. Prior notification and a valid photo are mandatory for entrance into the building. One day before the meeting the public must notify Gloria Walker, Office of Historian (202–663–1124) providing their date of birth, social security number and telephone number.

The Committee regrets the short notice due to difficulty in securing a conference room but will meet in open session from 9:00 a.m. through 12:00 p.m. on the morning of Thursday, December 10, 1998. The remainder of the Committee's sessions from 1:45 p.m. on Thursday, December 10, 1998 until 5:00 p.m. on Friday, December 11, 1998 will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions involving consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail *pahistoff@panet.us-state.gov*).

Dated: November 30, 1998.

William Z. Slany,

Executive Secretary.

[FR Doc. 98–32390 Filed 12–2–98; 11:34 pm]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4819]

Vessel and Port Control Measures to Address Year 2000 (Y2K)-Related Problems

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard requests comments on possible actions and control measures to minimize the occurrence and effect of potential Year 2000 (Y2K)-related equipment and system malfunctions aboard vessels, at port facilities, and at Marine Terminals. Malfunctions and failures of date sensitive automation and computer processes can potentially halt critical domestic and international maritime operations. Possible measures to address this risk include rigorous equipment and systems testing on vessels and at facilities, Y2K assessments and certification, and closing or restricting access to U.S. ports.

DATES: Comments must reach the Docket Management Facility on or before March 4, 1999.

ADDRESSES: You may mail your comments to the Docket Management Facility, (USCG–1998–4819), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, please contact Mr. John Hannon, Project Manager, Office of Compliance, Commandant (G–MOC–2), U.S. Coast Guard Headquarters, telephone 202–267–1464. For questions on viewing material in the docket, contact Dorothy Walker, Chief, Documentary Services, Department of Transportation, telephone 202–366–9329. For questions on Y2K issues, contact the Coast Guard at 1–800–368–5647.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to respond to this notice by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify the docket number (USCG–1998–4819) and the specific section of this notice to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES**. If you want acknowledgment of receipt of your comments, enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will open a 90-day comment period for response to this notice. To ensure widest dissemination of this notice, the Coast Guard will publish a summary article in our Marine Safety Newsletter, and post it on our Marine Safety Regulations web site at http://www.uscg.mil/hq/g-m/regs/current.html.

The Coast Guard does not plan public meeting(s) concerning this notice. You may request a public meeting by writing to the Docket Management Facility at the address under **ADDRESSES**. The request should include the reasons why a meeting would be beneficial. If we determine that the opportunity for oral presentations will be helpful, we will hold a public meeting at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Our society's dependence on automation and computer technology is increasing exponentially. The maritime industry incorporates automation and computer technology into almost every aspect of its business operations. Automation is used for many shipboard systems such as main propulsion, boilers, auxiliary systems, power generation, position fixing navigation systems, communications, radar, steering systems, cargo systems, and bilge/ballast controls. Automation is also used at facilities in cranes, on shoreside equipment, and in loading or unloading operations. Despite current regulations for equipment and systems testing, the potential technological malfunctions associated with the year 2000 (Y2K) problem could disrupt maritime operations. To counter this potential problem, the Coast Guard is considering using existing authority to implement more restrictive control measures to ensure port, vessel, facility and environmental safety.

What is the ''Y2K problem''? The Y2K problem is based on the widespread computer industry practice of using 2 digits instead of 4 to represent the year in databases, software applications, and hardware microchips. Certain systems will face difficulty in the year 2000 when that year is represented as ''00.'' Unable to differentiate ''00'' from the year 1900, computer programs and systems aboard ships and at port facilities could malfunction or completely shut down.

How could the Y2K problem potentially affect the maritime industry? Computer programs for engine automation systems that monitor the time between required engine maintenance are a good example of the Y2K problem. If these programs misread ''00'' as the year 1900 instead of 2000, they may interpret that 100 years has passed since the last engine maintenance was performed and respond by shutting down systems to avert damage to the engine. Temporary loss of main engine operation at sea on a calm day with no other ships in sight may only prove inconvenient. However, the unexpected loss of a ship's propulsion in a narrow or crowded waterway could result in a serious casualty. Facilities and marine terminals are also at risk from Y2K-related problems. Systems that use time as a function of measurement such as fire detection systems, cargo tracking software, process flow controls (oil, gas, and chemical), temperature controls and alarms are most vulnerable. For example, system sensors could cause an automatic shutdown response that could in turn trigger some other fail-safe response down stream. In such a case, a release of hazardous materials could occur when overpressure safeguards react to the sudden closure of a valve against the flow of gas or liquid.

How will the Coast Guard address potential Y2K-related problems? Existing Coast Guard regulations include requirements for commercial vessel operators to conduct periodic equipment and systems tests, as well as inspections of safety, navigation and pollution prevention equipment and systems. For example, Title 33 Code of Federal Regulations (CFR) part 164 requires certain vessels to conduct arrival and departure tests to ensure the proper operation of vital navigation equipment and systems. Title 33 CFR 156.170(c)(5) requires similar testing for facilities to ensure operating or indicating equipment properly perform their intended functions. Such tests help detect malfunctions or failures of

equipment and systems regardless of the cause.

Other existing regulations give the Coast Guard broad authority to control operations in the event of hazardous circumstances. For example, 33 CFR part 160, subpart B, allows District Commanders and Captains of the Port to control vessel and waterfront facility operations to ensure safety and environmental protection.

We do not plan to address Y2K issues through new regulations. Rather, our goal is to use existing authority to respond to Y2K risks with a sufficient level of control to prevent casualties.

Y2K problems are unique and harder to detect than mechanical failures. Rigorous testing and inspections are critical elements to help detect problems. However, rigorous testing may not disclose all problems. Recent experience with Y2K testing indicates that tests conducted without manually advancing internal clocks in systems to the year 2000 are ineffective. From now until June 2000, it is critically important that vessel and facility operators conduct thorough operational tests and inspections. Officers in Charge of Marine Inspection (OCMIs) and Captains of the Port (COTPs) will ensure compliance with existing testing and inspection requirements during boardings and inspections.

OCMIs and COTPs may also take all necessary action as authorized under 33 CFR part 160, subpart B, to restrict or control the movement of vessels and operation of waterfront facilities experiencing equipment or system malfunctions or failures posing safety or environmental hazards. This reactive approach is consistent with current Coast Guard policy. However, as part of contingency planning efforts, we are considering implementing more restrictive vessel and facility operating controls during peak Y2K risk periods. For example, a COTP could require vessel movement controls such as tug escorts for certain vessels, prohibit loading and unloading operations, or close or restrict access to a port for a period of time. We are very interested in your feedback regarding what level of control we should exert over vessels and port facilities to minimize or eliminate Y2K-related casualties.

What are maritime organizations and agencies doing to address the Y2K problem? The International Maritime Organization (IMO) published two Circulars that address Y2K issues: Marine Safety Committee (MSC) Circular 804 entitled ''Impact of the Year 2000 on Software Systems,'' and MSC circular 868 entitled ''Addressing the Year 2000 Problem.'' These circulars are available for inspection in the docket (USCG–1998–4819) at the address under **ADDRESSES** or on the Internet at http://dms.dot.gov. Both circulars contain advisory information to increase awareness of the potential programming malfunctions associated with date sensitivity and the possible effects on shipboard computers, automation and system controls. The IMO circulars also invite member governments to bring the Y2K problem to the attention of the maritime community.

In keeping with IMO's initiative, we are taking active steps to increase Y2K awareness in the maritime industry. The goal is to encourage owners and operators to evaluate each ship and facility to ensure that shipboard systems and system applications function properly in the year 2000.

The Coast Guard's outreach and coordination efforts include:

1. Distributing an informational brochure on maritime-related Y2K issues during vessel boardings and facility inspections;

2. Maintaining a toll free number (1–800–368–5647) for questions on the Y2K problem;

3. Maintaining and continually updating the Marine Safety Program's Y2K web site (www.uscg.mil/hq/g-m/Y2k.htm) with current Y2K information;

4. Sponsoring and attending industry gatherings to explain our Y2K concerns and listening to industry responses; and

5. Publishing the Coast Guard's Y2K enforcement policy in a later notice in the **Federal Register**.

What can the maritime industry do to help? Industry members are encouraged to assess applicable programs and systems as soon as possible to identify and correct any potential Y2K problems. Conducting assessments now may prevent casualties and potential operational shutdowns later.

You can also help by providing any information and supporting data that would help us evaluate the magnitude of the Y2K threat and the associated risk of malfunction for individual systems, vessels, waterfront facilities, and other maritime areas. In addition, it is extremely important to share relevant Y2K information with other ports, owners, and operators.

Finally, we need your help in answering the following questions, although comments on other issues addressed in this document are also welcome. In responding to a question, please explain your reasons for each answer, and follow the instructions under *Request for Comments* above.

1. Can the equipment and systems tests required under current regulations detect Y2K-related problems? Will aggressive application and enforcement of these regulations sufficiently minimize or eliminate Y2K-related problems?

2. What specific standards or requirements should industry use for Y2K assessments? Are these standards reliable?

3. Should the Coast Guard exempt vessels and facilities that can provide evidence of correcting any Y2K problems from any Y2K-related port movement or operational controls?

4. Should the Coast Guard accept Y2K compliance certification from a third party such as a class society, insurance company, government, or technology company as proof of having corrected Y2K problems? If so, who?

5. Given the diverse characteristics of individual ports, should the local Captain of the Port or District Commander determine the level of Y2K controls to impose in the port area, if any? Will having different requirements in each port create confusion? Should the Coast Guard implement a uniform national program? Should there be national Y2K control standards supplemented with some limited local authority?

6. Who should the Coast Guard coordinate with at the local level in developing Y2K contingency measures? Local governments? Citizen groups? Industry?

7. Should the Coast Guard consider suspending all port operations for a period of time? If so, for how long?

8. If the Coast Guard does impose Y2K-related port and vessel controls, short of a port shutdown, what additional safety measures should we require? For example, we could require tug escorts, additional manning, emergency steering and anchoring teams on watch, manual backups for all critical automated systems, and crew drills.

9. Should vessels required to comply with the International Safety Management (ISM) Code include Y2K contingencies in their Safety Management System?

10. Are there any other potential Y2K-related issues that could affect maritime operations (such as potential problems with communications systems)?

Dated: November 27, 1998.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–32223 Filed 12–3–98; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 568X)]

CSX Transportation, Inc.—Abandonment Exemption—in Franklin County, PA

On November 16, 1998, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a portion of its line of railroad known as the Baltimore Service Lane, Lurgan Subdivision, extending between milepost BAV–20.5 at 4th Street and milepost BAV–22.4 at Commerce Street in Chambersburg, a distance of 1.9 miles in Franklin County, PA. The line traverses U.S. Postal Service Zip Code 17201 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 5, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than December 24, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub–No. 568X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001; and (2) Charles M. Rosenberger, 500 Water Street—J150, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before December 24, 1998.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: November 23, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–32105 Filed 12–3–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the CDFI Program—Core Component and Intermediary Component; Extension of Application Deadline

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of extension of application deadline.

SUMMARY: On October 26, 1998, the Community Development Financial Institutions Fund (hereafter referred to as the ''Fund'') published in the **Federal Register** a notice of funds availability (''NOFA'') for the Community Development Financial Institutions (''CDFI'') Program Core Component (63 FR 57222) and is currently extending the application deadline for the CDFI Program Core Component from January 21, 1999 to February 4, 1999. Also, on October 26, 1998, the Fund published in the **Federal Register** a NOFA for the CDFI Program Intermediary Component (63 FR 57224) and is now extending the application deadline for the CDFI Intermediary Component from January 19, 1999 to February 2, 1999.

DATES: The application deadline for the CDFI Program Core Component is extended from January 21, 1999 to February 4, 1999. The deadline for receipt of a Core Component application is 6 p.m. EST on February 4, 1999.

The application deadline for the CDFI Program Intermediary Component is extended from January 19, 1999 to February 2, 1999. The deadline for receipt of an Intermediary Component application is 6 p.m. EST on February 2, 1999.

Applications for the respective CDFI Program Components that are received in the offices of the Fund after said dates and times will be rejected and returned to the sender. Applications sent electronically or by facsimile will not be accepted.

ADDRESSES: Applications shall be sent to: Awards Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Core/Intermediary Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, (202) 622–8662. (This is not a toll free number.) Applications and other information regarding the Fund and its programs may be downloaded from the Fund's website at http://www.treas.gov/cdfi.

SUPPLEMENTARY INFORMATION: On October 26, 1998, in the **Federal Register**, the Fund published a NOFA for the CDFI Program Core Component (63 FR 57222) and a NOFA for the CDFI Program Intermediary Component (63 FR 57224). The CDFI Program Core Component NOFA announced the availability of up to $50 million for program awards and specified an application deadline of January 21, 1999. The CDFI Program Intermediary Component NOFA announced the availability of up to $7.5 million for program awards and specified an application deadline of January 19, 1999.

This Notice extends the application deadline for the CDFI Program Core Component from January 21, 1999 to February 4, 1999. This Notice also extends the application deadline for the CDFI Program Intermediary Component from January 19, 1999 to February 2, 1999. All applications must be received

in the offices of the Fund by 6 p.m. EST on the respective application due dates.

The Fund is extending the application deadlines for the CDFI Program Core and Intermediary Components because of unforeseeable delays in the printing of application forms and packets. The Fund has determined that potential applicants need more time between attending the various outreach workshops, receiving official versions of the CDFI Program application materials, and the due dates for those materials. So that potential applicants have sufficient time to complete their CDFI Program applications, the Fund is extending the application deadlines to ensure a minimum of eight weeks application preparation time from the date of availability of the application forms and packets.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4718; 12 CFR part 1805.

Dated: November 30, 1998.

Maurice A. Jones,

Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.

[FR Doc. 98–32205 Filed 12–3–98; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Customs Service

Renewal of the Generalized System of Preferences

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: The Generalized System of Preferences (GSP) is a renewable preferential trade program that allows the eligible products of designated developing countries to directly enter the United States free of duty. The GSP program expired on June 30, 1998, but has been renewed, effective October 21, 1998, with retroactive effect to July 1, 1998, by a provision in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277. This document provides notice to importers that Customs will begin processing refunds on all duties paid, with interest from the date the duties were deposited, on GSP-eligible merchandise that was entered on July 1, 1998, through October 20, 1998, and that Customs will accept claims for GSP duty-free treatment for merchandise entered, or withdrawn from a warehouse, for consumption on or after October 21, 1998, through June 30, 1999, the provision's current sunset date.

DATES: Customs began the processing of refunds on duties paid—with interest as set forth in this document—on October 27, 1998.

FOR FURTHER INFORMATION CONTACT: For general operational questions:

Formal entries—John Pierce, 202–927–1249

Informal entries—William Kotlowy, 202–927–1364

Mail entries—Robert Woods, 202–927–1236

Passenger Claims—Michael Perron, 202–927–1325

For specific questions relating to ABI processing: James Halpin, Office of Information and Technology, 202–927–7128.

Questions from filers regarding ABI transmissions should be directed to their ABI client representatives. Persons with other questions regarding this notice may contact John Pierce, Trade Agreements, 202–927–1249.

SUPPLEMENTARY INFORMATION:

Background

Section 501 of the Trade Act of 1974 (the 1974 Act), as amended (19 U.S.C. 2461), authorizes the President to establish a Generalized System of Preferences (GSP) to provide duty-free treatment for eligible articles imported directly from designated beneficiary countries. Pursuant to 19 U.S.C. 2465, as amended by section 981(a) of Pub. L. 105–34, 111 Stat. 902, duty-free treatment under the GSP program expired on June 30, 1998.

On October 21, 1998, the President signed into law the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277. Section 1011 of the ''Tax and Trade Relief Extension Act of 1998'' (within Division J of that Appropriations Act) provides for the extension of GSP duty-free treatment to eligible articles from designated beneficiary countries that are entered, or withdrawn from a warehouse, for consumption on or after October 21, 1998, through June 30, 1999. Section 1011 also provides for the refund of any duty paid with respect to entries made after June 30, 1998, through October 20, 1998, to which duty-free treatment would have applied, provided that a request for liquidation or reliquidation is filed with Customs by April 19, 1999, (*i.e.*, within 180 days after the date of enactment of the Appropriations Act) and contains sufficient information to enable Customs to locate the entry or to reconstruct the entry if it cannot be located.

Recognizing the impact that retroactive renewal and consequent numerous reliquidations will have on both importers and Customs, Customs developed a mechanism to facilitate refunds (see, **Federal Register** Notice of June 16, 1998, 63 FR 32911) that began the processing of refunds on October 27, 1998. Customs expects the processing of refunds to take from four to eight weeks for certain formal Automated Broker Interface (ABI) entries. If refunds are not received within the specified time, importers are advised to direct inquiries regarding the status of their refunds to the appropriate Customs port of entry.

Duty-Free Entries

Effective October 21, 1998, filers again will be entitled to file GSP-eligible entries without the payment of estimated duties.

Refunds With Interest

A. Formal Entries

Customs will liquidate or reliquidate all affected entries and refund any duties deposited for items qualifying for GSP. Field locations shall not issue GSP refunds except as instructed to do so by Customs Headquarters.

If an ABI entry was filed with payment of estimated duties using the Special Program Indicator (SPI) for the GSP (the letter ''A'') as a prefix to the tariff number, no further action by the filer is required; filings with the SPI ''A'' will be treated as conforming requests for refunds.

Non-ABI filers who either did or did not request a refund by using the SPI ''A'' must request a refund in writing from the Port Director at the port of entry by April 19, 1999. The letter may cover either single entries or all entries filed by an individual filer at a single port. To expedite refunds, Customs recommends the following information be included in each letter:

1. A statement requesting a refund, as provided by section 1011 of the ''Tax and Trade Relief Extension Act of 1998;''

2. The entry numbers and line items for which refunds are requested; and

3. The amount requested to be refunded for each line item and the total amount owed for all entries.

Interest on duties deposited will be paid, pursuant to section 505 of the Tariff Act of 1930, as amended (19 U.S.C. 1505), based on the quarterly Internal Revenue Service interest rates used to calculate interest on refunds of Customs duties as follows:

July 1, 1998—July 31, 1998—7%

August 1, 1998—August 31, 1998—7%

September 1, 1998—September 30, 1998—7%

October 1, 1998—October 20, 1998—7%

B. Informal Entries

Refunds with interest on informal entries filed via ABI on a Customs Form 7501 with the SPI ''A'' will be processed in accordance with the procedures discussed above.

C. Mail Entries

The addressees must request a refund of GSP duties and return it, along with a copy of the CF 3419A, to the appropriate International Mail Branch (address listed on bottom right hand corner of CF 3419A). It is essential that a copy of the CF 3419A be included as this will be the only means of identifying whether GSP products have been entered and estimated duties and fees have been paid.

D. Baggage Declarations and Non-ABI Informal Refunds

If travelers/importers wrote a statement directly on their Customs declarations (CF 6059B) or informal entries (CF 363 or CF 7501) requesting a refund, no further action by the traveler/importer will be required; the statement will be treated as a conforming request for refunds. Failing to request a refund in this manner will not preclude a traveler/importer from otherwise making a timely request in writing, as described above for non-ABI filers.

Dated: November 24, 1998.

Peter J. Baish,

Acting Assistant Commissioner, Field Operations.

[FR Doc. 98–32321 Filed 12–3–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Denial of Domestic Interested Party Petition; Petitioner's Desire to Contest Decision Concerning Tariff Classification of Textile Costumes

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of petitioner's desire to contest decision on domestic interested party petition.

SUMMARY: In July 1997 a petition was filed by a domestic manufacturer of textile costumes regarding the tariff classification of imported textile costumes. The petition was filed pursuant to section 516, Tariff Act of 1930, as amended, seeking to have all textile costumes classified as wearing apparel in chapters 61 and 62 of the Harmonized Tariff Schedule of the United States (HTSUS).

On July 22, 1998, Customs denied the Domestic Interested Party Petition and affirmed that the four textile costumes in question were classified as festive articles in subheading 9505.90.6090 (now 9505.90.6000), HTSUS, because they were found to be flimsy, nondurable, and not normal articles of wearing apparel. Pursuant to 19 CFR 175.24, Customs is now providing notice of this decision and also providing notice of the receipt of petitioner's desire to contest this decision.

DATES: December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textiles Branch (202–927–1009).

SUPPLEMENTARY INFORMATION:

Background

Classification of Costumes

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRIs taken in order. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

Heading 9505, HTSUS, includes articles which are for ''Festive, carnival, or other entertainment.'' However, Note 1(e), chapter 95, HTSUS, excludes articles of ''fancy dress, of textiles, of chapter 61 or 62'' from chapter 95. The ENs to 9505, state, among other things, that the heading covers:

(A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

* * * *

(3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (not being articles of postiche-heading 67.04), and paper hats. However, the heading excludes fancy dress of textile materials, of chapter 61 or 62.

On November 15, 1994, Customs issued HQ 957318, stating that it had determined to classify as festive articles in subheading 9505.90.6090, HTSUS, costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being normal articles of apparel.

Filing of Domestic Interested Party Petition

On June 2, 1997, in response to the domestic manufacturer's request, Customs issued a decision, Headquarters Ruling (HQ) 959545, determining that four costume sets and their accessories would be classified under subheading 9505.90.6090, HTSUS, which provides for ''Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other: Other'' (effective August 1, 1997, the provision was amended and now reads as follows: 9505.90.6000, HTSUS, ''Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other,'' which provides for duty-free entry under the general column one rate of duty).

In July 1997, and in accordance with the procedures of 19 U.S.C. 1516, and 19 CFR Part 175, a domestic interested party petition was filed on behalf of an American manufacturer of textile costumes. The petitioner contends that virtually identical costumes to those manufactured by petitioner are being imported into the United States and some of these textile costumes are being erroneously classified by Customs under subheading 9505.90.6090, HTSUS, as ''Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other: Other.'' The provision is duty free under the general column one rate. The petitioner claims that all imported textile costumes should be classified as wearing apparel in chapters 61 or 62, HTSUS, and are therefore dutiable and may be subject to quota and visa restraints. Petitioner asserts that all textile costumes are excluded from classification under subheading 9505.90.6090, HTSUS, pursuant to Note 1(e), Chapter 95.

Notice of the domestic interested party petition was published in the **Federal Register** on December 22, 1997 (62 FR 66891). The notice invited written comments on the petition from interested parties. The comment period closed on February 20, 1998, and Customs received 767 comments.

Of the comments received against Customs position, 128 followed a form letter where the individual identified herself or himself as a member of the domestic costume industry. There were 625 comments submitted by individuals on various form letters. The comments

received in support of Customs position were submitted on behalf of several trade associations and various U.S. importers of Halloween costumes, non-seasonal dress-up sets, toys, gifts, housewares, or novelties.

Decision on Petition and Notice of Petitioner's Desire To Contest

In HQ 961447, dated July 22, 1998, Customs denied the Domestic Interested Party Petition and affirmed the classification determinations set forth in HQ 959545, dated June 2, 1997, in which four textile costumes were classified as festive articles in subheading 9505.90.6090 (now 9505.90.6000), HTSUS, because they were found to be flimsy, nondurable, and not normal articles of wearing apparel. HQ 961447 rejected the arguments contained in the 516 Petition that all imported costumes made of textiles should be classified under Chapters 61 and 62, HTSUS, as items of apparel.

In correspondence dated July 23, 1998, the domestic manufacturer filed written notice of the desire to contest Customs decision in HQ 961447. The notice to contest Customs decision also designated ports at which the merchandise is being imported into the United States and at which the petitioner desires to protest.

Authority

This notice is published in accordance with section 175.24, Customs Regulations (19 CFR 175.24), and 19 U.S.C. 1516.

Drafting Information

The principal author of this document was Ann Segura Minardi, Textiles Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Raymond W. Kelly,

Commissioner of Customs.

Approved: November 4, 1998.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–32322 Filed 12–3–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 1065–B and Schedule K–1

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1065–B, U.S. Return of Income for Electing Large Partnerships, and Schedule K–1, Partner's Share of Income (Loss) From an Electing Large Partnership.

DATES: Written comments should be received on or before February 2, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 1065–B, U.S. Return of Income for Electing Large Partnerships, and Schedule K–1, Partner's Share of Income (Loss) From an Electing Large Partnership.

OMB Number: 1545–1626.

Form Number: Form 1065–B and Schedule K–1.

Abstract: Internal Revenue Code Section 6031 and Regulation section 1.6031–1 requires partnerships to file a return. Internal Revenue Code sections 771–777, enacted by the Taxpayer Relief Act of 1997, allow large partnerships to elect to file a simplified return which requires fewer items to be reported to partners. Form 1065–B is used for this purpose.

Current Actions: There are no changes being made to the form at this time.

Affected Public: Business or other for-profit organizations, and farms.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 432,563.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 24, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–32226 Filed 12–3–98; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register

Vol. 63, No. 233

Friday, December 4, 1998

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.

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

Correction

In notice document 98–30604, beginning on page 63731, in the issue of Monday, November 16, 1998, make the following corrections:

1. On page 63733, in the first column, in footnote number 4, in the fourth line ''Rule'' should read ''Rule.''.

2. On the same page, in the second column, in the third full paragraph, in the fourth line from the bottom, ''perform'' should read ''performed''.

3. On page 63734, in the second column, in the eighth line, ''of'' should read ''for'' and ''that'' should read ''the''.

4. On the same page, in the same column, in the first full paragraph, in the third line, ''because'' should read ''Because''.

5. On the same page, in the same column, in paragraph 5., in the 13th line, ''pursuant'' should read ''pursuing''.

6. On the same page, in the same column, in paragraph 5., in the seventh line from the bottom, ''decision'' should read ''decisions''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–52]

Establishment of Class E Airspace; Duluth St. Mary's Hospital Heliport, MN

Correction

In rule document 98–30586, appearing on page 63601, in the issue of Monday, November 16, 1998, make the following correction:

§ 71.1 [Corrected]

On page 63601, in the third column, in § 71.1, in the heading **AGL MN Duluth St. Mary's Hospital Heliport, MN [New]**, between ''**MN**'' and ''**Duluth**'' add ''**E5**''.

BILLING CODE 1505-01-D

Friday
December 4, 1998

Part II

Securities and Exchange Commission

17 CFR Part 200, et al.

The Regulation of Securities Offerings and of Takeovers and Security Holder Communications; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 202, 210, 228, 229, 230, 232, 239, 240 and 249

[Release No. 33–7606A; 34–40632A; IC–23519A; International Series Release No. 1167A; File No. S7–30–98]

RIN 3235–AG83

The Regulation of Securities Offerings

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is proposing to modernize and clarify the regulatory structure for offerings under the Securities Act of 1933 while maintaining investor protection. The proposals cover five major topics: Registration system reform; communications around the time of an offering; prospectus delivery requirements; integration of private and public offerings; and periodic reporting under the Securities Exchange Act of 1934.

Under the proposals, larger seasoned issuers could offer securities at any time as long as they file a registration statement before sale. Other seasoned issuers could do the same when they make offerings to relatively sophisticated or informed investors. The Commission staff would not review these registration statements before effectiveness. Those issuers and their underwriters would designate the effective dates and have complete control over when they offer and sell in those registered offerings. Their communications to the market and to investors, while governed by antifraud and civil liability provisions, would no longer be limited based on the filing or effectiveness of their registration statements.

The proposals also would provide predictability to medium-sized seasoned issuers that register offerings. The registration statements they file to raise capital would become effective when they designate. Those registration statements would not be subject to pre-effective review by the Commission staff. Seasoned companies of any size would benefit from the proposals as well. We would allow them to incorporate Exchange Act disclosure in registration statements earlier than the current rules permit. To provide greater certainty to small and medium-sized issuers planning a registered offering, we also are proposing new communication rules. One rule would provide that communications made by or for such an issuer more than 30 days before the registration statement is filed would not be treated as offers. Other proposed rules would guide those issuers as to the types of communications that we permit within that 30-day period.

Our proposals also would give issuers of all sizes and their underwriters greater freedom to communicate with investors in writing during the offering process. The proposed exemptive rules would allow use of any document (not just the traditional prospectus) at any time during an offering by a larger seasoned issuer or an offering to sophisticated or informed investors by a smaller seasoned issuer. Those ''free writing'' communications would be subject to antifraud and civil liability provisions. In all other offerings, the proposed exemptions would allow an issuer and underwriter the same flexibility after the issuer has filed a registration statement. The free writing proposals would allow use of documents tailored specifically for the investors reading them. Other proposed revisions would increase investor access to analyst research reports. We would allow their distribution around the time of an offering in more cases than permitted today.

The proposals affecting prospectus delivery in registered offerings would re-focus those requirements for the benefit of investors. Delivery of a prospectus or a term sheet would be required before investors make their investment decisions rather than at the time a sale is confirmed.

The proposals addressing the integration of offerings would provide flexibility for issuers that have difficulty assessing the extent of market interest in a planned offering. Those revisions would enable an issuer to change an unregistered private offering into a registered public offering, or vice versa, after it commences the offering. Small companies that begin a registered public offering would still have the option to make an unregistered, exempt offering to qualified buyers even though they broadly solicited potential investors.

Finally, we are proposing various revisions to expedite and expand some of the disclosure required in periodic reports filed under the Exchange Act. Investors would have more timely access to company disclosure.

DATES: You should send us your comments so that they arrive at the Commission by April 5, 1999.

ADDRESSES: You should send 3 copies of your comments to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C., 20549. You also may submit your comments electronically to the following electronic mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–30–98; this file number should be included in the subject line if you use electronic mail. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. We will post electronically submitted comment letters on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Anita Klein at (202) 942–2980, Julie Hoffman, Joseph Babits, Patricia Miller or Rani Doyle at (202) 942–2900, or, with respect to small business issuer aspects, John Reynolds at (202) 942–2950, Division of Corporation Finance, U.S. Securities and Exchange Commission, Washington, D.C. 20549.[1]

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[1] The Commission also wishes to recognize the contributions to this release of Jennifer Bethel.

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I. Executive Summary

Through the Securities Act registration system, issuers and underwriters reach out to the public and sell securities. The registration system provides investors with the dual benefits of: full and fair disclosure (or effective remedies if there is faulty disclosure), and freely tradeable securities. Registration also benefits the markets at large by providing everyone with access to the most up-to-date information about the company making the offering. This disclosure is significant both to the market, for accuracy in pricing, and to the individual investor, for determining the suitability of the investment. Today's proposals are based on a recognition that investors will receive these benefits of registration only if the Commission continues to make the registration system flexible enough to be a viable alternative in the capital markets of today and the future.

A. Registration System Reforms

Our reforms to the registration system are designed to make registration more attractive to issuers without compromising investor protection. We believe that registration benefits all participants: issuers, by lowering their cost of capital; investors, by enhancing disclosure and providing remedies; and the marketplace, by increasing depth and liquidity.

In 1990, the Commission adopted Rule 144A which permits unregistered sales to and by qualified institutional buyers (''QIBs'').[2] Since then, this institutional market, which exists virtually side-by-side with the public market, has expanded significantly. Recent data illustrates the size of this parallel market: in 1997, Rule 144A offerings comprised 17% of all offerings on a dollar basis, including 21% of all equity and 16% of all debt.[3] In some types of securities, the Rule 144A market has become predominant. In 1997, 76% of the high-yield debt, 72% of the convertible investment grade debt, and 10% of the non-convertible investment grade debt were issued for the Rule 144A market.[4]

Our proposed reforms seek to apply the issuer advantages of offering securities in the private and Rule 144A markets—timing and disclosure flexibility—to the public market. We believe that, as a result, more offerings will be registered.

We propose to create a three-tiered registration system for offerings consisting of: Form A, Form B and Form C. Form A offerings generally would be those made by smaller or unseasoned companies. Form B offerings would be those made by larger, seasoned, well-followed issuers and those made to relatively informed or sophisticated investors. Form C offerings would relate to business combinations or exchange offers. Today the Commission also is publishing a companion release regarding the regulation of takeovers, including tender offers, mergers and other extraordinary transactions. You should read that release for a detailed discussion of the regulation of business combinations and exchange offers registered on Form C.[5]

[2] ''Qualified institutional buyers'' is defined in Securities Act Rule 144A(a)(1), 17 CFR 230.144A(a)(1). Even though some proportion of the Rule 144A securities are eventually registered, the investor benefits of registration are not maximized. It is not uncommon for securities sold in Rule 144A transactions to end up in the public market because they are registered for resale or exchanged for registered securities in ''*Exxon Capital*'' transactions (named after the Commission staff interpretive letter sanctioning the practice).

[3] Securities Data Corp's *New Issues* Database. Virtually all of that market share has moved to the Rule 144A market in the last 5 years. Rule 144A is not available for securities listed on a national securities exchange or quoted on a U.S. automated inter-dealer quotation system.

[4] Non-convertible investment grade debt is eligible for short-form registration under our current system, whereas the other two categories are not.

[5] Exchange Act Release No. 40633 (Nov. 3, 1998).

1. Contents of Prospectuses

Current requirements strictly mandate the content of an offering prospectus. Because we believe that larger seasoned issuers attract a large market following and operate in an efficient market, we are considering providing them with a larger measure of flexibility to craft disclosure about their offerings. We are asking for comment on two alternative proposals for Form B offerings. The first, while requiring all material transactional disclosure, would limit the itemized requirements for such disclosure. The second would continue to require all itemized transactional disclosure. Under both proposals, we would continue to mandate that issuers incorporate by reference the current itemized company information in their periodic reports. Thus, we would maintain the same standards for information about the company while we seek comment on the level of freedom to allow the issuer and the underwriter when crafting information about the offering itself.

Where the issuer or its representative uses disclosure to promote sales in the offering, it would have to file that disclosure, which would be subject to civil liability provisions prohibiting material misstatements and omissions. This ''inclusive prospectus'' approach would reflect the reality that investment decisions in these offerings would be based on more than the information contained in a single disclosure document.

By shifting some itemized disclosure requirements to materiality-based requirements, as one of our proposals would permit, we seek to discourage drafters from just routinely providing the boilerplate transactional disclosure that some have suggested the standardized disclosure items have evoked. This alternative would re-focus drafters on analyzing and including the information particular to that deal that is material to investors. More focused disclosure could result.

On the other hand, under our alternative proposal, all current transactional disclosure requirements specified in Regulation S–K that are in Form S–3 and/or Form F–3 would continue to apply. This alternative would provide investors with more certain core transactional information.

Under either proposal, issuers and third party participants such as underwriters and auditors would continue to ensure the quality of disclosure due to both market pressures and their legal responsibility to do so. We believe that analysts and the financial press, among others, also will

test the accuracy of disclosure by larger, seasoned issuers.[6] By allowing issuers some more freedom to craft their transactional disclosure and communicate with investors in Form B offerings for which there is evidence of an efficient market, we also hope to reduce selective disclosure by allowing access to more information.

We are considering the same alternative approaches to disclosure in offerings limited to sophisticated investors and in offerings to investors with a pre-established relationship with the issuer. Historically, we have given issuers more flexibility in these types of offerings on the theory that these purchasers are able to fend for themselves.

For smaller issuers or unseasoned issuers of any size, we believe that the current strict itemization of transactional information in the prospectus remains important to the dissemination of adequate offering information. Some of those issuers would have little experience with crafting offering disclosure and the same market scrutiny is not present. We would therefore maintain all current itemized offering disclosure requirements in Form A. We would, however, allow more freedom for seasoned smaller issuers to rely on their periodic reports for disclosure about their companies in an offering. In the case of business combinations and exchange offers on Form C, we would maintain the itemized requirements for transactional disclosure.

2. Timing of Registration

Under the revised registration system, issuers would have complete flexibility in timing the registration of Form B offerings. By operation of rule, those registration statements would become effective at the issuer's discretion, either immediately upon filing or at whatever later date and time the issuer chooses. The staff would not review these registration statements before the offering or take action to make the registration statement effective. Form B registration statements would be screened by the Commission staff shortly after receipt by the Commission to determine whether the offering was eligible for registration on Form B and whether the disclosure raises any ''red flags'' concerning the antifraud provisions of the federal securities laws. Therefore, the only timing constraint for Form B offerings would be the statutory requirement that the registration statement must be effective before the first sale. We are not proposing to exempt issuers from that requirement because, among other reasons, filing of a final prospectus would ensure prompt disclosure to the market about the offering.

We would continue to require that issuers registering offerings on Form A file a registration statement before making their first offer. The Commission staff would continue to review all initial public offerings and selectively review repeat offerings by smaller, unseasoned issuers. We would, however, allow seasoned medium-sized issuers to control the timing of registration in their Form A offerings. We also would allow certain other Form A issuers that incorporate recent Exchange Act reports that have been fully reviewed by the Commission staff to control the timing of their offerings. Those filings, like Form B offerings, would be screened (but not reviewed) by the staff shortly after receipt.

We believe that this increased flexibility in the timing of registration will encourage issuers to register more offerings and thus extend the investor protection benefits of registration to more purchasers. Further, although offerings by these issuers that we would not review under the proposed system are currently subject to staff review, these reforms essentially mirror current practice with respect to review of what would be Form B-type filings and recently examined Form A-type filings.

3. Underwriter Guidance

In connection with the proposed registration system, we would add a new provision to the Securities Act rule concerning due diligence. That rule currently lists circumstances to consider in deciding whether a person has met the ''reasonable investigation'' and ''reasonable ground for belief'' standards that apply in defending against liability under Section 11 of the Securities Act. The new provision would cover only certain Form B offerings completed on an expedited basis and would expand upon the existing guidance in the rule to reflect current practices.

4. Small Business Issuers

For purposes of registration and reporting, we are proposing to revise the definition of ''small business issuer'' to increase the number of companies qualifying as small business issuers. We would raise the annual revenues ceiling from $25 to $50 million and remove the public float limitation. We propose to update the definition to reflect significant economic and market changes that have occurred in the six years since we adopted the definition. Also, our successful experience with the small business disclosure system indicates that we could classify companies with higher revenues as small business issuers while at the same time maintaining investor protection. To provide small businesses with greater flexibility in raising capital, we also propose to delay the time at which they must pay registration fees, allow earlier incorporation by reference of their Exchange Act reports and allow increases in the size of their offerings in an expedited fashion.

B. Easing Restrictions on Communications

Our proposals would loosen the strict controls that exist today on communications to investors and the market around the time of an offering. Our intent in proposing the communications reforms is to ensure that investors and the market have greater access to more timely information, which we believe is the foundation of investor protection. We are not proposing any diminution in the remedies that would be available to investors in the event of defective disclosure made by or on behalf of an issuer around the time of an offering.

1. Issuer Communications

The extent to which we would ease communications by the issuer or deal participants depends on the type of offering. For Form B offerings, we would allow oral and written communications in any format at any time regardless of whether the offering is imminent or ongoing. Of course, the antifraud provisions and civil liability provisions of the securities laws would apply to those communications and provide the necessary investor protections.

In Form A offerings on the whole, we have less reason to assume that plentiful, thoroughly scrutinized issuer information is available. A barrage of sales-related communications could affect prospective investors, especially if those communications are the only ones publicly available. The greatest need for investor protection in that case would occur before the investor has access to reliable, balanced prospectus disclosure. Thus, for these offerings, we propose to maintain the prohibition on offers prior to filing a registration statement. Once the issuer's prospectus is on file with

[6] We recognize that analysts, especially so-called ''sell-side'' analysts, have inherent conflicts of interest. There is a risk that impartiality may be compromised when their firms seek to participate in the issuers' distributions. We believe, nevertheless, that analysts in general, and the expanding ''buy side'' analysts in particular, are in a unique position to gather and analyze information about issuers. They represent an undeniably significant method of corporate disclosure and dissemination.

the Commission, however, our proposals would lift existing restrictions on written communications for Form A offerings because an investor would be able to test the sales materials against the registration statement. Moreover, our proposals on prospectus delivery would ensure timely delivery, not just access, to this more balanced information.

For the period before filing the registration statement, we propose to create greater certainty about the timing and scope of remaining restrictions on communications. We are aware that the restrictions on communications before a filing have been criticized as unclear. This is especially true due to the recent increased use of the Internet. Consequently, we are proposing a bright-line rule that would define the 30 days immediately before filing the registration statement as the period during which communications would be limited due to the upcoming offering. In addition, our proposed rules provide that, even during that 30-day limited communications period, issuers could disclose factual business information and regularly released forward-looking information. Our proposals also would permit issuers to announce limited offering information during the 30-day period without indicating whether the offering will be registered or exempt.

2. Safe Harbors for Research Reports

For Form B offerings and many Schedule B offerings by foreign governments, the proposals would allow analysts to publish research reports without any interruption due to the registered offering. For other offerings, we propose expanded safe harbors to make it easier for analysts to report about foreign government issuers and smaller, unseasoned companies. We also are proposing to expand those safe harbors to address the distribution of research reports in connection with Regulation S and Rule 144A offerings.

C. Prospectus Delivery Reforms

To provide investors with the maximum benefit from prospectus disclosure, the proposals re-focus prospectus delivery requirements on when the prospectus is needed most: before investors make an investment decision. Where we would require that offering participants deliver prospectus information earlier, we would allow them to decide whether or not to deliver a final prospectus. Where they do not deliver a final prospectus, we would require that they tell investors where they can obtain it free of charge.

In Form B offerings, we would not require that offering participants deliver a full prospectus. We would, however, require earlier delivery of a ''securities term sheet'' outlining the key features of the securities. Delivery of that securities term sheet would precede the investment decision—when the investor gives its oral or written commitment to purchase. We also are considering, as an alternative for Form B offerings, requiring delivery of a prospectus containing all mandated transactional information listed in Subpart 500 of Regulation S–K that would be contained in a short-form registration statement today.

In Form A offerings by unseasoned issuers (issuers that have registered their initial public offerings within the past year), underwriters and dealers participating in the offering would have to deliver a preliminary prospectus at least 7 days before the date of pricing. In all other Form A offerings, issuers, underwriters and participating dealers would have to deliver a preliminary prospectus at least 3 days before the date of pricing. These requirements would ensure that investors that are offered securities of smaller, unseasoned issuers have more time in which to assess the disclosure. Issuers and other participants in Form A offerings also would have to inform investors no later than 24 hours before pricing about any material change that has occurred since they delivered prospectuses.

D. Public and Private Offering Flexibility

Today's capital markets can change quickly. Companies, especially small businesses, may find that the desirability of making a public offering versus a private offering can change just as quickly. Current rules prevent most companies from changing their minds in a timely fashion once they have started an offering one way. Our proposals would remove most of those impediments. Under the proposed safe harbor, if an issuer started to register a public offering but then decided to abandon it, the issuer could withdraw the registration statement and either wait 30 days to sell privately or sell privately sooner and accept a higher liability standard for written disclosure provided to purchasers.

Similarly, if an issuer started a private offering but then decided to abandon it, the issuer could file a registration statement for a public offering immediately unless it had offered the securities to persons that would not have been eligible to buy in a private offering under Securities Act Section 4(2). In that event, the issuer would have to wait for 30 days after abandoning the private offering to file its registration statement.

This safe harbor would be particularly useful to small issuers. It would allow a small private company to ''test the waters'' for a public offering of its securities through this mechanism. Doing so would not prevent the small issuer from selling privately if it finds too few investors to make it worthwhile to become a public company. Similarly, small issuers that find more investor interest than expected could change from a private offering to a registered public offering.

E. Periodic Reporting

We are proposing several changes to Exchange Act disclosure requirements, some of which the Advisory Committee on Capital Formation and Regulatory Processes recommended. These changes would require issuers to report annual and quarterly financial results sooner, to make and update risk factors disclosure in their Exchange Act reports, to accelerate the due dates for some Form 8–K reports and to expand the events about which Form 8–K requires a report. The changes also would require persons signing Exchange Act filings to indicate that they have reviewed the disclosure and, to their knowledge, the registration statement or report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. These Exchange Act disclosure reforms would provide key investor protections in a further streamlined registration process. Additionally, if the proposed registration system is adopted, the Commission envisions shifting staff resources to the review of Exchange Act filings.

II. History of Registration Under the Securities Act

The Securities Act and the regulations thereunder have long provided the foundation for a capital-raising system of unparalleled integrity, fairness, and liquidity. The regulatory scheme seeks to ensure that investors receive full and fair disclosure with respect to securities offerings by issuers and their affiliates.

The Securities Act was adopted in response to the activities culminating in the 1929 market crash.[7] President

[7] The Securities Act was the first of six securities statutes to be enacted during the 1933–1940 period. The other five acts include: the Securities Exchange Act of 1934, Pub. L. No. 73–291, 48 Stat. 881 (1934) (codified as amended at 15 U.S.C. §§ 78a–78kk (1994, Supplemented 1996)); the Public Utilities Holding Company Act of 1935, Pub. L. No. 74–333, 49 Stat. 803 (1935) (codified as amended at 15 U.S.C. §§ 79–79z–6 (1994, Supplemented 1996)); the Trust Indenture Act of 1939, Pub. L. No. 76–253, 53 Stat. 1149 (1939) (codified as amended at

Franklin D. Roosevelt articulated the underlying philosophy of regulating securities offerings which continues today:

[t]here is * * * an obligation upon us to insist that every issue of new securities to be sold in interstate commerce shall be accompanied by full publicity and information, and that no essentially important element attending the issue shall be concealed from the buying public.[8]

Congress has made relatively few broad-reaching amendments to the Securities Act since its inception. In administering the statute, we strive to be responsive to changing markets and capital-raising practices. Over the years, the Commission has interpreted the statute through rules and regulations to give continuing life to the original statute.

A. Evolution of the Registration System

Modern efforts at reforming registration stem in part from a commentary on Securities Act regulation published in 1966. In his article, ''Truth in Securities,'' Milton H. Cohen theorized that the:

Combined disclosure requirements of these statutes would have been quite different if the 1933 and 1934 Acts * * * had been enacted in opposite order, or had been enacted as a single, integrated statute* * *.[9]

Cohen argued for a coordinated disclosure system having as its basis the continuous disclosure system of the Exchange Act with the Securities Act disclosure requirements built upon it.[10] The Commission soon thereafter instituted a study, chaired by Commissioner Francis M. Wheat, to examine disclosure to investors.[11] The Wheat Report, published in 1969, recommended expanded periodic disclosure under the Exchange Act and the coordination of the disclosure requirements of the Securities Act and the Exchange Act.[12]

The Commission followed up on the Wheat Report by adopting a short-form Securities Act registration statement. That registration statement permitted incorporation by reference of Exchange Act reports by larger issuers and in specified types of offerings.[13] This approach allowed companies to avoid reiterating in their registration statements the company disclosure contained in annual and other periodic reports.

In 1977, the Commission adopted Regulation S–K, which began the effort to establish a single set of disclosure requirements for issuers under both the Securities Act and the Exchange Act.[14] That effort was substantially completed with the adoption of the ''Integrated Disclosure System'' in 1982.[15] The Commission's integrated disclosure system eliminated overlapping and unnecessary disclosure required by the Securities Act and the Exchange Act.

The Commission also adopted the modern-day ''shelf registration'' system in connection with the integrated disclosure system.[16] That permits registration of securities offerings that are conducted on a delayed basis sometime after the effective date.[17] In 1992, the Commission extended short-form and shelf registration to smaller issuers and new offerings, including asset-backed securities offerings.[18] The Commission also permitted registration of shelf offerings without requiring that the amount of securities be allocated upon registration to specific classes of the issuer's securities. This approach permitted issuers to decide as late as the point of sale which of its securities to use.

Another significant change in the registration system occurred with the Commission's adoption in 1990 of Rule 144A.[19] Rule 144A provides a safe harbor from registration for resales of restricted securities to QIBs. By creating certainty about when registration is not required in these transactions, the Commission enhanced the attractiveness of alternatives to registration of securities.[20]

B. Review of the Capital Formation Process

Both within and outside the Commission, debate periodically has centered on the Securities Act and the best way to regulate the securities offering process. Over the years, industry participants, academics and Commission members have voiced opinions that there are strains in the regulatory framework and have called for changes. Their proposed solutions have ranged from minor rule changes to the abolition of the Commission.

There also has been recent discussion about the extent to which the regulatory system requires an overhaul in the face of the ever-changing market and offering practices.[21] Factors identified as causing strain in the current regulatory regime include:

1. Technological developments in the field of electronic communications; [22]

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15 U.S.C. §§ 77aaa–77bbbb (1994, Supplemented 1996)); the Investment Company Act of 1940, Pub. L. No. 76–768, 54 Stat. 789 (1940) (codified as amended at 15 U.S.C. §§ 80a–1–80a–64 (1994, Supplemented 1996)); and the Investment Advisors Act of 1940, Pub. L. No. 76–768, 54 Stat. 847 (1940) (codified as amended at 15 U.S.C. §§ 80b–1–80b–21 (1994, Supplemented 1996)).

[8] H.R. Rep. No. 85, 73d Cong. 1st Sess., at 1–2 (1933).

[9] Cohen, ''*Truth in Securities'' Revisited*, 79 Harv. L. Rev. 1340, 1341 (1966).

[10] *Id.* at 1342.

[11] *Disclosure to Investors—A Reappraisal of Administrative Policies Under the 1933 and 1934 Acts*, Report and Recommendations to the SEC from the Disclosure Policy Study (Mar. 27, 1969) [hereinafter ''Wheat Report''].

[12] The securities bar also acted upon the ideas in Cohen's article. The American Law Institute commissioned several industry experts, led by Professor Louis Loss, to combine all six federal statutes into one comprehensive code, American Law Institute, Federal Securities Code (1980) (the ''ALI Code''). *See also* Loss, *The American Law Institute's Federal Securities Code Project*, 25 Bus. Law. 27 (1969). Upon its completion ten years later in 1980, the Commission and many in the securities industry expressed support for the ALI Code. *See* Securities Act Release Nos. 6242 (Sept. 18, 1980) [20 S.E.C. 1483 (1980)] and 6377 (Jan. 21, 1982) [24 S.E.C. Docket 788 (1961)] (releases stating and reaffirming support for the ALI Code). *See also* Coffee, *Re-Engineering Corporate Disclosure: The Coming Debate Over Company Registration*, 52 Wash. & Lee L. Rev. 1143, 1145 (1995). The ALI Code was in turn presented to Congress. Congress, however, took no action with respect to the ALI Code.

[13] Securities Act Release No. 5117 (Dec. 23, 1970) [36 FR 777].

[14] Securities Act Release No. 5893 (Dec. 23, 1977) [42 FR 65554]. As originally adopted, Regulation S–K contained only two items: ''Description of Business'' and ''Description of Property.''

[15] Securities Act Release No. 6383 (Mar. 3, 1982) [47 FR 11380]. In that release, the Commission stated that ''in reliance on the efficient market theory'' Form S–3 would allow for maximum use of incorporation by reference [47 FR at 11382].

[16] Temporary Rule 415 was adopted in March of 1982. Securities Act Release No. 6383 (Mar. 3, 1982). In November of 1983, the Commission announced the adoption of a revised shelf registration rule. Securities Act Release No. 6499 (Nov. 17, 1983) [48 FR 52889].

[17] *See* Securities Act Release No. 6499 (Nov. 17, 1983) and Securities Act Rule 415, 17 CFR 230.415. Short-form registration is used for delayed shelf offerings.

[18] Securities Act Release No. 6964 (Oct. 22, 1992) [57 FR 32461].

[19] Securities Act Release No. 6862 (Apr. 23, 1990) [55 FR 17933].

[20] According to Securities Data Co., the deal value of Rule 144A private placements in 1997 was $254.4 billion, approximately $83 billion of which was raised by foreign issuers. Tibbitts, *Private Placement Volume Explodes as Structured Deals Rule 144A Market*, Investment Dealers' Digest, Feb. 2, 1998. The amount of non-convertible bonds issued in the Rule 144A market in the first quarter of 1998 ($30 billion) is almost equal to the entire amount (equity, preferred and debt) placed in the Rule 144A market from its inception in 1990 to the end of 1992 ($31 billion).

[21] *Compare* Merrill Lynch comment letter (Oct. 31, 1996) (''[W]e believe that what the registration process needs today is a tune up, not an overhaul.'') *with* American Bar Ass'n comment letter (Dec. 11, 1996) (''[T]he time has come to recognize that the current jury-rigged system requires fundamental reforms.''). These letters are available for inspection and copying in the Commission's public reference room. Refer to File No. S7–19–96.

[22] *See, e.g., Report to the Congress: The Impact of Recent Technological Advances on the Securities Markets*, (Sept. 1997). That Report, like all Commission reports issued after 1996, is available on the Commission's Internet web site (http://www.sec.gov).

2. The gradual erosion of traditional distinctions between public and private offerings; [23]

3. Novel financing instruments, methods of capital-raising and risk management initiatives; [24] and

4. Regulatory initiatives that reduce other market risks, such as the T+3 clearance and settlement system.[25]

III. Recent Reform Initiatives

The Commission has been cognizant of the call for change in the regulatory framework governing the capital formation process. For the last several years, the Commission has been actively reevaluating the current registration system. Recent Commission steps in that process have included: the March 1996 Report of the Task Force on Disclosure Simplification (the ''Task Force''); the July 1996 Report of the Commission-impaneled Advisory Committee on the Capital Formation and Regulatory Processes (the ''Advisory Committee''); and the Commission's Securities Act Concept Release in July 1996 (the ''Concept Release'').[26]

A. Task Force Report

The Commission's Task Force was organized in August 1995 to conduct a broad-based review of existing disclosure requirements to identify outdated or unnecessary requirements that clutter the regulatory framework. That review encompassed the forms and rules relating to: capital-raising transactions; periodic reporting pursuant to the Exchange Act; proxy solicitations and tender offers; and beneficial ownership reports under the Williams Act. The goal was to simplify the disclosure process, consistent with investor protection, by eliminating unnecessary requirements.[27] In its March 1996 report, the Task Force recommended that the Commission eliminate or modify a quarter of the rules and half the forms. To this end, the Commission has abolished 45 rules and 6 forms.[28]

B. The Advisory Committee on Capital Formation

The Advisory Committee was established in 1995 by the Commission and chaired by then-Commissioner Steven M.H. Wallman. The Advisory Committee's objective was to evaluate the efficiency and effectiveness of the regulatory process relating to public offerings of securities, secondary market trading, and corporate reporting. After 18 months of study, the Advisory Committee published a report in 1996 calling for reform. Its primary recommendation was that the Commission further its integrated disclosure system by implementing a ''company registration'' concept first envisioned by the ALI's Federal Securities Code. The report advocated refocusing the registration system on registration not of transactions, but of companies, with greater reliance on periodic disclosure than prospectus disclosure. The Advisory Committee suggested that the Commission implement the concept as a pilot program for larger companies.

C. The Commission's Concept Release

In light of diverse developments in the markets and the work of the Advisory Committee and Task Force, the Commission published the Concept Release on offering regulation in July 1996. In the Concept Release, the Commission announced that it was reexamining the application of the Securities Act and the rules thereunder to securities offerings. The Concept Release sought comment on the best methods for eliminating unnecessary obstacles to capital formation while improving the quality and timing of disclosure and, therefore, investor protection. The Commission focused its questions in the Concept Release on broad concepts underlying Securities Act regulation. They included:

- Whether investors are receiving all material information in a timely manner in the offering process;
- Whether limitations on the use of written communications other than the statutory prospectus during the offering process ought to be eased;
- Whether the speed of takedowns of securities under the Commission's shelf registration system results in procedures that do not adequately inform the market;
- Whether the role of independent gatekeepers in the offering process needs to be reconfigured to work in conjunction with issuers' quick access to capital; and
- Whether the periodic disclosure under the Exchange Act needs improvement.

The Commission also asked questions in the Concept Release about the Advisory Committee's company registration idea and suggestions about regulatory reform that had been made by others. The Commission received 55 comment letters in response to its requests.[29]

D. The National Securities Markets Improvement Act

Following the publication of the Concept Release, the National Securities Markets Improvements Act of 1996 (''NSMIA'') was enacted.[30] This legislation was designed to update the securities laws to promote investment, decrease the cost of capital, and encourage competition. To this end, Congress granted the Commission for the first time general exemptive authority under the Securities Act.[31] In order to exercise our new exemptive authority, NSMIA requires us to find that such action is ''necessary or appropriate in the public interest and consistent with the protection of investors.'' [32] That exemptive authority gives the Commission substantial additional flexibility in administering the Securities Act. Congress believed that this additional flexibility would allow the Commission to adopt more easily new approaches to registration and disclosure in order to promote efficiency, competition and capital formation.[33]

After the enactment of NSMIA, the Commission began to study possible reform of the regulatory structure for offerings even more broadly. For the past two years, the Commission staff has researched and studied the existing regulatory system and possible improvements that could be made to it. Some of our proposals rely upon our new exemptive authority.

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[23] *See, e.g.*, Keller, *Securities Act Concepts: The Private/Public Offering Dichotomy and Proposals for Reform*, Mass. Continuing Legal Educ., 15 Ann. Bus. & Sec. L. Conf. (Oct. 31, 1997).

[24] Seligman, *The Obsolescence of Wall Street: A Contextual Approach to the Evolving Structure of Federal Securities Regulation* 93 Mich. L. Rev. 649, 666–72 (1995). *See also* Securities Act Release No. 7386 (Jan. 31, 1997) [62 FR 6044].

[25] *See, e.g.*, Securities Act Release No. 7168 (May 11, 1995) [60 FR 26604].

[26] Securities Act Release No. 7314 (July 31, 1996) [61 FR 40044].

[27] The Task Force met with issuers, investor groups, underwriters, accounting firms, lawyers, and others who participate daily in the capital markets. The Task Force reported that none of the participants suggested wholesale deregulation, and virtually all emphasized the importance of the Commission's basic regulatory goals to preserve orderly markets. *See* Task Force Report at pp. 1–6.

[28] Securities Act Release No. 7300 (May 31, 1996) [61 FR 30397] and Securities Act Release No. 7431 (July 18, 1997) [62 FR 39755]. These releases are available on the Commission's Internet web site (http://www.sec.gov).

[29] Those letters and a summary of them may be read and copied at the Commission's Public Reference Room, 450 Fifth Street N.W., Washington, D.C. 20549. Refer to File No. S7–19–96.

[30] Pub. L. No. 104–290, 104th Cong., 2d. Sess. (1996).

[31] *See* Section 28 of the Securities Act, 15 U.S.C. § 77z–3.

[32] 15 U.S.C. § 77z–3.

[33] H.R. Rep. No. 104–622, 104 Cong. 2d Sess. at (1996).

IV. Scope of the Proposals

The Commission is proposing a variety of revisions to the current regulatory structure for securities offerings.[34] While many revisions address problems identified by offering participants, the overall goal of the proposed reforms is to make the registration system more workable for issuers and underwriters and more effective for investors in today's capital markets. In the last decade, the Commission has seen the results of a registration structure that has been perceived as having too much rigidity to comport with the realities of modern global markets. Sellers have used to their fullest extent available methods of offering without registration. Increasingly, they have tried to create new ways around registration strictures. They also have stretched the boundary between registered and exempt offerings in seeking to acquire the benefits of both. Where registration has taken place, too many offerings have been accomplished with a divergence between the disclosure about the transaction in the registration statement and the disclosure actually used to convince investors to buy.

A large share of the stress on the registration structure in recent years has stemmed from the issuers' and underwriters' need to raise capital on a schedule that they can control. Our proposals seek to fulfill that need through the registration system where consistent with investor protection. In addition, the speed at which offerings are accomplished today, and the limitations on communications imposed by the statute, have called into question whether investors are being informed in a timely manner. Rather than continuing the statute's ''exclusive prospectus'' approach to disclosure, our proposals take an ''inclusive'' approach to disclosure. We seek to ensure that material information is within the reach of investors when they need it most. We also seek to lessen the gap in offerings done quickly between the disclosure about the offering actually being used to sell the securities and the disclosure that is filed with the Commission in a registration statement. Overall, the revisions should create a more flexible registration system under which public offerings proceed with benefits to both buyers and sellers.

Our proposals are primarily focused on the structure of the regulation of offerings; they are not primarily focused on the contents of disclosure requirements. In the process of considering structural reform, however, the Commission has recognized that it needs to study whether the specific disclosure that is mandated both in Exchange Act periodic reports and Securities Act registration statements should be re-focused to serve the investing public better. As a result, the Commission's reform work is not done. The next step in our ongoing process will be to revisit the quantity and quality of required disclosure.

V. Proposals Altering the Securities Act Registration Process

A principal premise of the existing Securities Act registration system is that a prospectus containing mandated disclosure should be virtually the exclusive written document used to offer the securities. In the years since adoption, especially with the recent explosion of information technology, this exclusivity premise is less a reality than a theory, at least for certain offerings and issuers. We believe that it is time to recognize that a different approach would be better for those offerings.

For larger seasoned issuers, communications made around the time of a typical registered offering, whether or not part of a traditional prospectus, provide the basis for investment decisions in the offering. Those issuers are well followed by the market and the important statements that they make are quickly disseminated and considered by investors even when the issuers are not making an offering. When they are making an offering, any communication those issuers and other offering participants make is of even greater interest to the markets. For those issuers, therefore, we propose a transformation from the ''exclusive'' prospectus approach to the ''inclusive'' prospectus approach as a means of facilitating informed investment decisions. That approach would embrace as part of the registration system all information used by or on behalf of the issuer during the offering period that would be material to an investor in the offering. All investors in the offering would receive or have access to such information as well as the required material company and transactional disclosure. The proposed system would maintain investor protection by subjecting this information to the antifraud and civil liabilities provisions of the Securities Act and the Exchange Act.

For most offerings by smaller or unseasoned issuers, and in business combinations and exchange offers, we would primarily rely on the current mandated prospectus to provide written offering communication to investors, although there too we would allow them more freedom to communicate in any medium by means other than the prospectus.[35]

The proposed system would have three main registration forms: Form A for smaller issuers and larger unseasoned issuers, Form B for larger seasoned issuers and offerings to relatively well-informed or sophisticated investors, and Form C for business combinations and exchange offers. Both domestic and foreign issuers would use each of these Forms.[36] Small business issuers would continue to be permitted to use Form SB–1 and revised Form SB–2 for their offerings and would have to use new Form SB–3 for business combinations and exchange offers.

The new forms reflect our understanding of when investors need more, or less, mandated disclosure and when investors benefit from access to information from more than one source. In addition, the proposed divisions of issuers and offerings would create a system that more accurately reflects when an efficient market exists and when an issuer has a significant market following. The new system also would enhance the use of Exchange Act disclosure to satisfy Securities Act disclosure requirements.

A. Form B Offerings

1. How Form B Works

a. Registration Statement Contents

At the time of effectiveness, a Form B registration statement would consist of:

- A cover page with a calculation of registration fee table;
- A prospectus that contains:

—Offering information;
—The registrant's Exchange Act reports, via incorporation by reference;
—A foreign private issuer's Item 18 reconciliation (or Item 17, as applicable) to U.S. GAAP (if not already in an incorporated report);[37]

[34] The proposals do not purport to affect any rules or regulations imposed by self-regulatory organizations in connection with securities offerings.

[35] *See* Section VII. of this release regarding proposed changes in the regulation of offering communications.

[36] While disclosure for foreign private issuers currently is made through a separate set of registration forms, we believe that it would be simpler to formulate a single set of forms for both foreign and domestic issuers. In doing so, foreign private issuers registering on Form A would be subject to the same disclosure requirements as they are currently. In Form B, foreign private issuers would have at least as much flexibility as domestic issuers. Through designations on the front of the registration forms, it will be possible to track the use by foreign private issuers regardless of whether they register on the same forms as domestic issuers.

[37] *See* Items 17 and 18 of Form 20–F.

—The securities term sheet; [38]
—Undertakings to provide investors upon their request, and free of charge, with information incorporated by reference but not delivered.
- Signatures;
- Selected exhibits: [39]

—Any instrument that defines the rights of the security holders (incorporated by reference if previously filed);
—Consents; [40]
—Statement of eligibility of trustee, where applicable (Form T–1);
—Legal opinions; and
—A representation that underwriters concur with the issuer's designated effective date.[41]

Form B issuers would be required to deliver promptly a prospectus, free of charge, to any investor who requests it. In addition to that obligation, Form B issuers would be required to deliver a securities terms sheet.[42]

i. Company Disclosure

Investors, as always, will obtain company information from a variety of sources such as the Internet, television, newspapers and radio. They also may acquire company information from securities analysts or the company itself. While there are many possible sources of information about Form B issuers that investors can access today,[43] one reliable source is the information that issuers make public through filing their Exchange Act reports with the Commission. Investors can rely on this information because it is subject to the regulatory and antifraud provisions of the federal securities laws as well as subject to review by the staff of the Commission. This structure compels issuers to come forward with information about their businesses that they might not choose to make public otherwise.

The proposed registration system takes account of this source of information by providing that an issuer must incorporate by reference into its effective registration statement on Form B:

1. Its latest annual report [44] filed under the Exchange Act; and [45]

2. Any Exchange Act reports filed since the end of the fiscal year covered by its latest annual report.[46]

Issuers that use Forms S–3 or F–3 currently must incorporate their Exchange Act reports into those Forms. The 12-month reporting requirements under those Forms, however, do not assure that an issuer incorporates an annual report into either of those registration statements because annual reports are not due until three months (or 6 months, for foreign private issuers) after the end of a company's fiscal year. In addition to this information, issuers would be required to disclose in their Form B registration statements updated company information that describes material changes not reflected in any Exchange Act reports incorporated by reference.

ii. Transactional Disclosure

We are seeking comment on two alternatives on Form B transactional disclosure. The first would mandate the inclusion of ''offering information'' that includes some of the traditional items of transactional disclosure. This alternative would allow issuer discretion as to materiality and applicability of other traditional items of transactional disclosure. The second alternative would simply mandate that issuers set forth in Form B the items of transactional disclosure required today. Both alternatives would require that the registrant file any offering information disclosed by or on behalf of the issuer (including by the underwriter or participating dealer) during the offering period.[47] Under the first proposal, the registrant would file offering information as part of the prospectus in the effective registration statement.[48] ''Offering information'' consists of:

- The amount of securities being offered; [49]
- Material changes in the issuer's affairs since the end of the latest fiscal year that are not reflected in incorporated Exchange Act reports;
- The information required by Item 504 of Regulation S–K regarding use of proceeds;
- The information about underwriter's discounts and commissions required by Item 501(b)(3) of Regulation S–K;
- Information about the risks of the offering of the type described in Item 503 of Regulation S–K;
- Information concerning who is selling the securities of the type described in Item 507 of Regulation S–K;
- Material information about the terms of the securities offered as required by Item 202 of Regulation S–K, unless capital stock is to be registered and securities of the same class are registered pursuant to Section 12 of the Exchange Act;
- All information regarding the transaction that is material, which may include where applicable, but is not limited to:

—Information about dilution of the type described in Item 506 of Regulation S–K;
—Information about the determination of the offering price of the type described in Item 505 of Regulation S–K;
—Information about the plan of distribution of the type described in Item 508 of Regulation S–K;
—Ratio of earning to fixed charges, as described in Item 503 of Regulation S–K;

- Any offering information disclosed by or on behalf of the issuer during the offering period,[50] other than information communicated orally; and
- Offering information communicated orally that the issuer chooses to file.

This alternative could provide registrants, and those acting on their

[38] *See* Section VIII.C.4.a. of this release for a discussion of this securities term sheet and delivery requirements relating to it.

[39] *See* proposed revisions to Item 601 of Regulation S–K, 17 CFR 229.601.

[40] *See infra* note 73 for a discussion of consents of auditors in delayed shelf registration statements.

[41] *See* Sections V.A.1.d. and V.B.2.a. of this release for a discussion of this underwriter concurrence.

[42] We discuss prospectus delivery obligations for Form B issuers at Section VIII.C.4.a. of this release.

[43] We also believe our proposal to free communications by Form B registrants, discussed below, would spur diverse public discourse about the merits of the issuer and its offering, all of which would be open to the public investor.

[44] We do not, however, permit incorporation by reference of annual reports on Form 40–F. *See* General Instruction I.B.7. of proposed Form B.

[45] Financial statements included in the Form must be no older than permitted in the age of financial statements requirements of Regulation S–X. *See* Rules 3–12 and 3–19 of Regulation S–X, 17 CFR 210.3–12 and 210.3–19. Foreign issuers using Form B would be required to reconcile to U.S. GAAP any financial statements either incorporated by reference into or set forth in the Form. We would require reconciliation in accordance with Item 17 or Item 18 of Form 20–F under the same standards used today.

[46] The proposed system would not permit Form B registrants to incorporate by reference any Exchange Act report filed after the end of the offering period. For delayed shelf offerings, each takedown would have its own separate offering period.

[47] We would not permit a Form B registrant to file information that had not been disclosed during the offering period. *See* Form B ''Information Required in the Prospectus that is Part of the Effective Registration Statement,'' paragraph 1.(c), and proposed Securities Act Rule 172(e), 17 CFR 230.172(e). Information communicated orally during that period could be reduced to writing and filed as part of the registration statement if the registrant so chooses.

[48] Information communicated orally would not have to be filed and would be subject to section 12(a)(2) liability.

[49] Under Rule 457(a), 17 CFR 230.457(a), a number of securities may be registered. Under Rule 457(o), 17 CFR 230.457(o), a dollar amount may be registered. The registrant may choose between these two alternatives in a typical capital-raising offering.

[50] For purposes of this Form, ''offering period'' means the period beginning 15 days in advance of the first offer made by or on behalf of the issuer in connection with the offering and ending when the offering is completed.

behalf, more flexibility to craft a selling document shaped by their particular offering, the market demands for information, and the requirements to provide material information to investors. We believe the greater freedom may allow issuers to cut some boilerplate disclosure and to omit non-material disclosure from the prospectus. We solicit comment, however, with regard to whether issuers would use that freedom to accomplish those objectives. At the same time, the Form's requirements should ensure investor protection by requiring issuers to disclose all material offering information in the prospectus that is part of the effective Form B. We solicit comment on this point.

We solicit comment on whether traditional transactional line items not included in Form B should be retained. If so, which of the items? Conversely, should we permit Form B issuers to craft their transactional disclosure based on what they believe is material information, and what the market and investors would demand, rather than based on traditional transactional line items? If so, should we limit that flexibility to a narrower class of Form B issuers, such as those with a minimum public float of $750 million or $1 billion?

The second alternative would mandate that issuers disclose in Form B all the information required by the Regulation S–K transactional disclosure items currently required in Form S–3 and/or Form F–3. In addition to the information that would be required by the first alternative, this alternative would require the registrant to provide further information in accordance with Regulation S–K.[51] Should Form B include as mandated itemized information all of the topics listed under that requirement? Should mandated itemized disclosure be a different subset of the Regulation S–K information currently required in Form S–3 and/or Form F–3?

b. Free Writing Materials

For Form B issuers, written information[52] disclosed during the ''offering period'' would be classified as either ''offering information'' or ''free writing'' materials.[53] The ''offering period'' with respect to a Form B offering would be defined as the period beginning 15 days before the first offer made by or on behalf of the issuer and ending at the time of completion of the offering. ''Free writing'' materials would include all written information disclosed by or on behalf of the issuer during the offering period, other than ''offering information,'' factual business communications[54] and limited notices of proposed offerings.[55] Free writing could include, but would not be limited to, sales literature and selling documents that include forward-looking information.[56] A document that contains both offering information and ''free writing'' would be treated as ''free writing,'' if the offering information was filed as part of the issuer's registration statement. If the offering information was not filed as part of the issuer's registration statement, the document, including the ''free writing'' portion, would be treated as offering information and would be required to be filed as part of the registration statement.

The registrant would file, at the same time it files its Form B registration statement, the free writing materials it disseminated before filing its Form B.[57] It would file free writing materials used after the filing of its Form B at the time of first use.[58] The registrant would not file free writing materials as part of the effective registration statement, nor would it have to file information in the effective registration statement as free writing materials.[59]

Given the significance of the offering period, should the Commission require the registrant to state on the front cover page of the registration statement the date of the first offer in connection with the offering being registered? Should the Commission require free writing materials to be filed at the time of their first use since investors might prefer access to them as they make their investment decisions?

c. Time of Filing

A registrant could file a registration statement on Form B at any time before the first sale of the securities.[60] Issuers wishing to file immediately before sale could do so.[61] Because issuers may wish to price Form B offerings before filing and because many offerings are currently priced after hours, we would allow registrants to file Form B registration statements with the Commission after hours via EDGAR or facsimile until 10:00 p.m.[62] Issuers would pay the filing fee under the same procedures used today by issuers filing Rule 462(b) registration statements after hours via facsimile.[63]

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[51] That additional information would be: certain portions of Item 501 of Regulation S–K (forepart of registration statement and outside front cover page of prospectus); Item 502 of Regulation S–K (inside front and outside back cover pages of prospectus); certain portions of Item 503 of Regulation S–K (prospectus summary and address and telephone number); Item 509 of Regulation S–K, where applicable (interests of named experts and counsel) and Item 510 of Regulation S–K, where applicable (disclosure of Commission position on indemnification for Securities Act liabilities).

[52] For these purposes, ''written'' includes all information disseminated otherwise than orally and therefore would include electronic communications and other future uses of changing communications technology.

[53] If a document includes offering information, whether or not it also contains free writing, it would be treated as an offering information document for all purposes unless that offering information is otherwise included in the registration statement.

[54] ''Factual business communications'' would be defined in proposed Securities Act Rule 169, 17 CFR 230.169.

[55] *See* proposed revisions to Securities Act Rule 135, 17 CFR 230.135.

[56] Section 12(a)(2) would apply to free writing materials (and to all oral statements made by or on behalf of the issuer during the offering period).

[57] *See* proposed Securities Act Rule 425(b)(2), 17 CFR 230.425(b)(2). As proposed, Rule 425 would describe the materials that would not have to be filed. They consist of:

1. Any factual business communication (as defined in proposed Rule 169) regardless of when it is made;

2. Any research report used in reliance on Rules 137, 138 or 139;

3. Any information used in connection with an offering under Form S–8;

4. Any information used in connection with an offering on Form B under a dividend or interest reinvestment plan;

5. Any information used in connection with a direct stock purchase plan; or

6. Any information filed or to be filed as part of an effective registration statement.

For purposes of proposed Rule 425, ''direct stock purchase plan'' refers to a registrant-sponsored plan pursuant to which the registrant offers registered common stock for cash to only its existing common stock holders (''plan participants'') and in which there is no underwriter participation. The common stock registered pursuant to the plan may either be newly issued or purchased by the registrant for the account of plan participants at prices not in excess of current market prices at the time of purchase, or at prices not in excess of an amount determined under a pricing formula specified in the plan and based on average or current market prices at the time of purchase.

[58] *See* proposed Securities Act Rule 425(b), 17 CFR 230.425(b).

[59] *See* proposed Securities Act Rule 425, 17 CFR 230.425.

[60] *See* Section VII of this release for a discussion of the restrictions on communications that are being eliminated for Form B offerings.

[61] Because Form B offerings would not have to be filed until the time of first sale, the payment of registration fees would also be delayed until the time of first sale.

[62] *See* proposed revisions to Securities Act Rules 110(d) and 402, 17 CFR 230.110(d) and 230.402. In the usual case, a registrant may file a registration statement in paper format only until 5:30 p.m. It may file on EDGAR between 5:30 p.m. and 10:00 p.m., but those registration statements are treated as if they were filed the following day. Form B registration statements filed after hours via EDGAR would be treated as filed the same day. *See* proposed revisions to Rule 13 of Regulation S–T, 17 CFR 232.13. We also have proposed revisions to Securities Act Rule 111(b), 17 CFR 230.111(b), to allow for special fee payment procedures for Form B filings made after hours.

[63] *See* Securities Act Rule 111, 17 CFR 230.111. That procedure is described in detail in Securities Act Release No. 7168 (May 11, 1995).

d. Becoming Effective

A Form B and any amendment to a Form B would be effective by operation of rule at the issuer's discretion to give issuers maximum flexibility.[64] The issuer would simply select one of three choices on the cover page:

(1) Effective upon filing;

(2) Effective _____ (date and time specified by the issuer); or

(3) effective as specified in a later amendment to the registration statement.[65] The Commission staff would not have to take action for the registration statement to become effective.

In most underwritten offerings under the current registration system, the Commission requires that a request for effectiveness of a registration statement be made by the underwriters in addition to the issuer.[66] Both underwriters and issuers are subject to liability under Section 11 for the disclosure in an effective registration statement. A request for effectiveness is therefore an acknowledgment by each requester that it is aware of its obligations under the Securities Act.[67]

Because the issuer would have complete control over effectiveness by controlling the filing, we would include in Form B a requirement that the issuer obtain and file as an exhibit evidence of the managing underwriters' or principal underwriters' concurrence with the issuer's designation of effectiveness.[68] The issuer would have to obtain that concurrence before it files the Form B registration statement in which it requests either immediate effectiveness or effectiveness at a specified date.

Would the requirement to file the evidence of the underwriters' concurrence as an exhibit to Form B be unnecessarily burdensome? Alternatively, should we require the issuer to represent in the registration statement that it obtained the underwriters' concurrence, but not require it to file the concurrence, and require it to retain the concurrence for 5 years? Should we require that the issuer obtain the concurrence, but not require that the concurrence be evidenced in writing? Would an oral concurrence provide the issuer and the underwriters with sufficient assurance of agreement and protection against misunderstanding?

e. Delayed Shelf Offerings and Form B

Form B would provide much the same flexibility to issuers that delayed shelf registration on Forms S–3 and F–3 has provided,[69] and those benefits would be available to approximately the same issuers.[70] Unlike current shelf registration, however, issuers using Form B would not need to file a base or core prospectus to be able to offer and sell at will. Base prospectuses today, particularly those used for unallocated delayed shelf registration statements, tend to describe in the broadest of terms the many different types of securities and offerings that might be done off the shelf. Thus, in offerings off the shelf, the key offering disclosure is usually filed in the Rule 424 prospectus supplement. Form B would allow an issuer to avoid writing transactional disclosure that covers ''everything but the kitchen sink'' and simply file whatever transactional disclosure it gives to investors at the time of the offering.

There are also other Form B benefits as compared to the current delayed shelf system. First, the Form B registration statement would not be subject to pre-effective staff review. Under the existing delayed shelf system, the Form S–3 or F–3 containing the core prospectus is subject to the staff's selective pre-review. Second, issuers may have less concern about market overhang effects on its stock price under Form B.[71] Under the current system, an issuer wishing to put equity securities on the shelf has to include them in the registration statement even before it intends to offer those securities. Under the proposed system, a registrant need only file a Form B registration statement before sale. The absence of a filing that signals an upcoming offering well before the time it can be completed may be welcomed by issuers, but may be of concern to secondary market participants.[72]

Another advantage for issuers in Form B as compared to existing shelf registration relates to fees. In shelf registration today, an issuer must file the base prospectus and pay the full filing fee at that time, even though it may not take down securities from the shelf until much later. An issuer using Form B other than for delayed offerings would pay upon filing but generally that would not occur until sale. There would be no need to register more than is needed for that offering at that time.

We believe that the way Form B operates would largely eliminate the incentive for a registrant to set up a delayed shelf registration statement. We recognize, however, that some issuers are accustomed to doing shelf takedowns and do so on a frequent basis. As proposed, a registrant wishing to file some preliminary information could still do so on Form B and either become effective then and file the remaining disclosure concerning the offering in a post-effective amendment or delay effectiveness of the Form B until the rest of the information is available. The issuer could designate when those post-effective amendments become effective. The current delayed shelf does not require directors and officers to sign the Rule 424(b) supplements filed for each takedown.[73] Under the proposal, registrants may use a power of attorney to avoid the inconvenience of obtaining multiple signatures upon the filing of a pre-effective or post-effective amendment. We also would provide in delayed shelf offerings that when the persons signing a Form B do not appoint a person to

[64] *See* proposed Securities Act Rule 462(f)(1) and (f)(2), 17 CFR 230.462(f)(1) and 230.462(f)(2).

[65] The later amendment could amount to no more than a cover page on which the registrant would check the appropriate box to designate immediate effectiveness or a specified effective date.

[66] *See* Securities Act Rule 461(a), 17 CFR 230.461(a). The Rule requires the managing underwriters, or if there are no managing underwriters, the principal underwriters, to join in the issuer's request for acceleration of a registration statement.

[67] *See* Securities Act Rule 461(a), 17 CFR 230.461(a).

[68] *See* proposed Form B ''Exhibits'' section and proposed revisions to Item 601 of Regulation S–K. Evidence of concurrence could be, for example, in a writing from the underwriter to the issuer or an electronic message to that effect.

[69] For convenience, we refer to Rule 415(a)(1)(x), 17 CFR 230.415(a)(1)(x), offerings as delayed shelf offerings or shelf offerings in this release. Other types of Rule 415 shelf offerings, such as continuous offerings, generally are unaffected by the proposed system.

[70] Our research indicates that, of the 379 existing issuers who utilized the equity and unallocated shelf registration system between calendar year 1993 to the third quarter of 1996, only 37 would be ineligible to use new Form B under the public float/ADTV tests (the tests are described at Section V.B.2.a. of this release). Of those, 23 issuers appear to be REITs. The 37 that are eliminated would be able to use Form B for offerings to QIBs and offerings of investment grade securities, among others.

[71] For a discussion of market overhang effects, see Securities Act Release No. 6383, (Mar. 16, 1992) (adopting integrated disclosure system and unallocated shelf registration rules).

[72] *See* Section XVII of this release for a solicitation of comment regarding the effect this proposal would have on the secondary market.

[73] Under the current system, auditors do not provide consents for prospectus supplements. They consent to inclusion of the financial statements in the registration statement and also consent at the time of filing most post-effective amendments. Subsequently filed Forms 10–K that are incorporated by reference include the auditor's consent to inclusion of the financial statements to update the shelf. Under the proposed system, post-effective amendments will be more common because transactional information will be filed in that manner.

The consents of auditors are not required today with respect to the filing of prospectus supplements and certain post-effective amendments to shelf registration statements. The Commission similarly would not require an auditor's consent for post-effective amendments that amount to prospectus supplements and have no bearing on the financial statements.

sign via a power of attorney, a signature on a post-effective amendment by an authorized representative of the registrant shall be deemed to constitute signature by the persons signing the original filing unless otherwise specified in the amendment.[74]

Delayed shelf offerings on Form B would, however, improve upon the Form S–3/F–3 shelf registration system in two ways that would enhance investor protection. First, we would provide clearly in Form B that any transactional disclosure used in connection with a Form B offering is within the effective registration statement. With Form B, transactional information disclosed to investors before the end of the offering period would have to be filed either as part of the effective registration statement or on a post-effective amendment that becomes effective whenever the issuer wishes before the time of sales. That information would be within the scope of Section 11 under the Securities Act. That transactional disclosure would include information filed under Rule 424 as prospectus supplements to shelf registration statements today. We also would provide clearly in Form B that historical and forward-incorporated Exchange Act reports would be part of the effective registration statement. That information also would be within the scope of Section 11. We recognize that certain commentators have questioned whether Section 11 applies to Rule 424 information [75] and forward-incorporated Exchange Act reports.[76] While we believe that under existing law such Section 11 liability applies, and do not accept the views of those commentators on these issues, we recognize that an explicit statement in the proposed Form would serve to eliminate any uncertainty practitioners may believe exists.

The other change to the way delayed shelf would operate relates to the time of filing with the Commission information about the offering off the shelf. Today, that information may be filed pursuant to Rule 424 up to two business days after the earlier of pricing of the securities or first use of the prospectus supplement. Under the proposed registration system, we would require that Form B issuers file this information as part of the effective registration statement by the time of sale.[77] We believe that both investors and the market are better served by having this disclosure filed promptly. Moreover, because the transactional information that may be filed as part of the Form B registration statement includes only information about which investors have been informed before committing to purchase the securities, there is less reason to contemplate a filing after the sale takes place. In addition, the Commission is aware that some investors trading in shelf registrants' securities after a takedown and before the filing have been troubled by the absence of disclosure during that period. We have concerns that some investors are aware of the shelf takedowns while others become aware days later when notice is filed with the Commission. Although a two-business-day wait may not have been considered a material delay at the outset of modern shelf registration, it appears to be one in today's market framework. Eliminating this delay would support our goal of reducing the risks of selective disclosure.

We solicit comment on whether there is a continued need for a delayed shelf concept under Form B. Do registrants see advantages to delayed registration on Form B over and above what would be allowed on Form B without that concept? Does the delayed shelf concept needlessly complicate the system? Is there a reason to retain the two-year limitation on the amount registered? Would concerns about market overhang keep issuers from taking advantage of any extension? Should we limit the extension to 3 or 4 years? Would issuers benefit more if we remove completely any restrictions on the amount of securities that issuers could register for a delayed shelf? What if we extended the possible life of a shelf registration statement to 6, 7 or 10 years? Would issuers register securities to be offered over those periods of time?

2. Offerings Eligible for Registration on Form B

An issuer may register on Form B only offerings that fit in one of the following categories.

a. Offerings by Larger Seasoned Issuers

Given the envisioned disclosure and delivery aspects of Form B, we believe that only those issuers with a demonstrated market following should be eligible to use Form B to register primary and secondary offerings of any type to the general public. The current threshold for short-form registration (Forms S–3 and F–3) is a public float of $75 million. Based on our research, we believe that the most accurate measurement to attain the goal of choosing issuers for which there is an efficient market is a combination of public float of the issuer's common equity securities [78] and average daily trading volume (''ADTV'') of the issuer's equity securities.[79] We propose that an issuer able to use Form B should *either* have:

- A public float of $75 million or more *and* an ADTV of $1 million or more; [80] *or*
- A public float of $250 million or more.[81]

Thus, if an issuer has a public float of less than $250 million then it must have an ADTV of at least $1 million in addition to a public float of $75 million.

In determining these thresholds, we considered, among other things, the level of analysts coverage that would result at different public float and ADTV thresholds. Our research indicates that companies that meet the proposed combined public float/ADTV test would have an average of 14 analysts following them.

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[74] *See* Signatures section of Form B and proposed revisions to Securities Act Rule 471, 17 CFR 230.471. *See* also Section XI.C. of this release, the discussion of the proposal to require management to certify that to management's knowledge, the filings they sign contain no material misstatement or omission.

[75] For example, the Advisory Committee expressed the belief that Section 11 may not apply and recommended that the Commission address this potential lapse in application of Securities Act protections. *See* Advisory Committee Report at p. 28.

[76] *See, e.g.*, Johnson and McLaughlin, Corporate Finance and the Federal Securities Laws 2d ed. 508–09 (1997). *But see* proposed revisions to Item 512 of Regulation S–K, 17 CFR 229.512.

[77] *See* proposed revisions to Rule 424(b)(2), 17 CFR 230.424(b)(2).

[78] Public float is the aggregate market value of the issuer's outstanding voting and non-voting common equity held by non-affiliates of the issuer. 17 CFR 228.10(a)(1). We used market capitalization information as a proxy for public float figures. Public float information is less readily available and would require a determination of the equity interests of affiliates of a company in order to derive it from market capitalization data.

[79] Our research showed that a public company's market capitalization, public float and ADTV are closely and positively associated with the number of analysts that follow firms. Combination tests of ADTV and either market capitalization or public float are more closely associated with the speed of price discovery than any of those tests alone. The proposed tests would preclude lesser followed companies from Form B registration eligibility. We use a similar combination in Regulation M. *See* Exchange Act Rules 100–105, 17 CFR 242.100–242.105.

[80] Our research indicates that, just taking into account ADTV levels, 4% of the companies with an ADTV of $1 million or more would have fewer than 3 analysts covering them. Our research also indicates that, just taking into account market capitalization, 14% of the companies with market capitalizations of $75 million or more would have fewer than 3 analysts covering them.

[81] Our research indicates that 5% of the companies that have market capitalizations of $250 million or more have fewer than 3 analysts covering them. On average, companies of this size have 15 analysts covering them.

We looked at analyst coverage not because we believe that analysts create market following or because we believe that analysts statements are wholly accurate and unbiased or because we believe that all investors would have access to or rely upon analysts reports. Instead, we looked to analyst coverage because we believe that the number of analysts that cover companies that fit a certain profile is indicative of the level of investor interest in companies within the profile. Like news organizations, analysts tend to cover companies that are of interest to their customers.[82]

For purposes of Form B, issuers would be required to measure their ADTV during the three full calendar months (or any 90 consecutive calendar days ending within 10 calendar days) immediately preceding the filing of the registration statement. They would measure their public float as of the end of their last fiscal quarter. While the alternative stand-alone public float test of $250 million may be used by both domestic and foreign issuers to qualify for Form B eligibility, we propose it primarily for the benefit of large foreign issuers whose shares trade principally on foreign markets.[83] In comparison to current Form S–3 and F–3 public float levels, 1,175 fewer companies would be eligible to register on Form B due to size.[84] Those companies, and even smaller ones, would, however, be eligible to register on Form B under other criteria discussed below, such as when offering only to QIBs or offering investment grade securities.

In addition to the public float/ADTV criteria, Form B would be available only to issuers that have a history of reporting under the Exchange Act. The reporting history would ensure that issuers have been reporting long enough so that adequate information about them is publicly available. It also gives issuers enough time to adjust to the disclosure requirements applicable to reporting companies. We propose a one-year reporting history requirement coupled with the requirement that the issuer have filed at least one annual report. Because annual reports are due months after the end of a fiscal year, simply requiring that Form B issuers have a one-year reporting history would not necessarily ensure that all issuers using the Form had prepared and filed at least one annual report.[85] We believe the annual report requirement would provide benefits to investors, due to the fact that they would have more Exchange Act information to use in evaluating the issuer and also because the issuer would have more reporting experience. In addition, an issuer would not qualify to use Form B unless it had filed all Exchange Act reports due and had filed all of its reports on a timely basis in the 12 months immediately before the filing.[86]

We request your comment on this proposal. Should the $75 million threshold used in conjunction with the ADTV threshold be higher (*e.g.*, $100 million, $150 million, $200 million or $250 million)?[87] Should the ADTV test used with the public float test be higher (*e.g.*, $1.5 million or $2 million)?[88] Should the ADTV test be lower (*e.g.*, $750,000)?[89] Should we raise the proposed stand-alone public float test of $250 million (*e.g.*, to $300 million, $350 million, $400 million or $450 million)? Should we lower the stand-alone public float test (*e.g.*, to $200 million)?[90] Should we raise the one-year and one annual report reporting requirement to two years?[91] Is there any reason why the ADTV/public float test thresholds should be consistent with the thresholds used for the actively-traded security exception in Rule 101(c)(1) of Regulation M? Instead of worldwide volume, which is used in Regulation M, would U.S. market volume, as proposed, be a better indicator of market following by U.S. investors? Unlike Regulation M and the proposals, should ADTV be calculated solely on the basis of trading conducted on the NYSE, AMEX or Nasdaq-NMS so as to exclude microcap companies?[92]

b. Offerings to QIBs

As the Commission determined in adopting Rule 144A, larger institutional investors, or QIBs as denominated in the rule, are presumed to be sophisticated securities investors.[93] Their investing experience and size purportedly puts them in a position to insist upon as much information as would be provided by registration.[94] Also, their size, which may be viewed as signifying buying and bargaining power, should allow them to demand from issuers protective covenants and restrictions. In other words, their sophistication enables them to fend for themselves.[95] Rule 144A applies both with respect to securities of

[82] Both issuers and investors suggest that multiple analysts are necessary to provide the public with broad, relatively unbiased information about a company. We obtained information concerning analyst coverage from Nelson Publications, publisher of Nelson's Directory of Investment Research (1996). The research that we conducted considered the number of analyst firms that follow a company rather than the number of individual analysts. In proposing thresholds, we have considered that not all analysts contained in that listing would be actively following the issuer at all times. Thus, we have chosen thresholds that provide a significant number of analysts following the issuer. Where an issuer has significant analyst following and the market operates efficiently with respect to price discovery, we believe it is fair to assume some level of investor awareness of company information. It is also fair to assume that investors would have access to multiple sources of information about a company, making short-form registration and elimination of communications restrictions appropriate.

[83] ADTV is measured for purposes of Form B on U.S. trading markets only. We believe that provides a better measure of U.S. market following than world-wide ADTV for these purposes. To avoid creating a test that would disproportionately exclude well followed foreign issuers with little or no U.S. trading market, we provide the alternative $250 million float test without an ADTV component.

[84] Of these companies, only 13 have taken advantage of unallocated shelf registration. This eligibility criteria includes 801 more issuers than were eligible to register securities on Form S–3 when the Commission lowered the public float requirements from $150 million to $75 million in 1992. *See* Securities Act Release No. 6943 (July 16, 1992) [57 FR 32461].

[85] Form S–3 currently requires simply a one-year reporting history. Form F–3 requires a one-year reporting history and also imposes a requirement that the registrant previously filed an annual report on Form 20–F.

[86] Issuers also would be required to be in compliance with our EDGAR rules. These timeliness and EDGAR requirements currently apply to offerings registered on short-form registration statements on Forms S–3 and F–3.

[87] At the $100 million market capitalization level, our research indicates that 5% of the companies have fewer than 3 analysts covering them. At $150 million, 5% have fewer than 3 analysts; at $200 million, 5% have fewer than 3 analysts; and at $250 million, 5% have fewer than 3. At the $100 million threshold, an average of 14 analysts follow the company. At $150 million, the average increases to 15, at $200 million the average increases is 15, and at $250 million the average is 16.

[88] Our research indicates that companies with an ADTV between $1 million and $2.5 million have an average of 8 analysts following them.

[89] Our research shows that 33% of companies with an ADTV of less than $1 million have no analyst following.

[90] Companies with a market capitalization of at least $200 million have an average of 14.5 analysts following them.

[91] We studied the impact of extending the reporting history by additional years and found no resulting statistically significant improvement in price discovery or analyst following.

[92] *See* Section V.A.2.g. of this release for a discussion relating to microcap companies.

[93] Securities Act Release No. 6862 (Apr. 23, 1990). Rule 144A provides a safe harbor from the registration requirements of the Securities Act for resales of restricted securities to QIBs as defined in Securities Act Rule 144A(a)(1), 17 CFR 230.144A(a)(1).

[94] In many instances, issuers prepare materials that are almost identical in presentation and substance to registration statements. *See, e.g.*, McGeehan, *Money Raised in Private Placement of Issues Doubles as Companies Take Advantage of SEC's Rule 144A''* Wall St. J., Jan. 2, 1998, at 38, col. 1.

[95] *See* Securities Act Release No. 6808 (Oct. 25, 1988) [53 FR 50038] Section IV.A.1. (institutional investors possess sufficient knowledge and experience in financial and business matters, and so are capable of evaluating the risks of an investment and are less in need of the protections of registration); *see also* Securities Act Release No. 6839 (July 11, 1989) [54 FR 30076], Section II.B.

reporting companies and non-reporting companies.[96]

If QIBs can fend for themselves in unregistered transactions involving securities of both reporting and non-reporting companies, they certainly should be able to fend for themselves at least as easily in connection with an offering by a public company registered on Form B. Moreover, when QIBs fend for themselves in Form B offerings, they will share the benefit of the disclosure they acquire with the rest of the investing public through the filing of that disclosure. To encourage registration of offerings that otherwise would be made in reliance on Rule 144A, we propose to extend Form B for registration of offerings made solely to QIBs, as defined in Rule 144A, where the QIBs are purchasing for their own accounts or for the accounts of other QIBs.[97] Those offerings could be made where the issuer has been a reporting company for at least one year, has filed at least one annual report under Section 13(a) of the Exchange Act and is current and timely in fulfilling its reporting requirements.

i. Advantages of Registered Offerings

Domestic issuers and foreign issuers that are already reporting would have the same key advantage under Form B registration that they find today in making Rule 144A offerings: they would find it just as easy to time their offerings because the issuer would control when its registration statement becomes effective and it need only file before the first sale. We believe issuers and investors would realize two significant benefits from registration of securities that otherwise would be sold only in reliance on Rule 144A:

1. Unlike Rule 144A, securities fungible with those that are listed on exchanges or quoted on NASDAQ could be offered and sold under Form B registration.

2. Unlike Rule 144A securities, the securities generally would be freely resalable because they would be covered by a registration statement. Because the securities would not be restricted, some QIBs that otherwise would be subject to limitations on the amount of restricted securities they may hold would be permitted to purchase these registered securities freely.[98]

ii. Limitations on QIB Purchases

Because the securities registered on Form B would not be restricted securities, there is some chance that investors and issuers would arrange to use the Form where the offering is not truly a QIB-only offering but instead is a distribution to the public using a QIB as a conduit.[99] We therefore would provide that certain QIBs would be ineligible to purchase under a Form B QIB-only offering. Dealers and investment advisers would be excluded from those offerings. Those purchasers do not generally purchase securities for their own investment. Dealers are in the business of selling securities. Moreover, the size threshold in Rule 144A for dealers is significantly lower than the thresholds for other QIBs. Given those factors, we believe the risk of indirect distribution by QIBs in those categories is sufficient to warrant precluding their participation. Should other QIB groups be excluded? If so, which ones?

Furthermore, issuers and QIBs that attempt to effect an indirect public distribution of securities through a QIB-only offering on Form B would violate Section 5 absent an applicable exemption. The transaction that the issuer would register under this provision of Form B would be its sale of securities to QIBs, not a sale to the public. If the securities do not come to rest with the QIBs and the QIBs are mere conduits for sales to the public, the offering would be ineligible for registration on Form B.[100] If a QIB purchases and effects a distribution, it will be acting as an underwriter as defined in Section 2(a)(11) of the Securities Act. Its transaction would not be registered and likely would not be exempt and therefore would be illegal.

iii. QIB Definition

The current general QIB test, which was established with the adoption of Rule 144A, is whether the institution, acting for its own account or for that of other QIBs, in the aggregate owns and invests on a discretionary basis at least $100 million of securities of non-affiliates.[101] The QIB threshold differs for dealers and banks, savings associations and equivalent institutions. We solicit comment on whether the thresholds for defining ''qualified institutional buyer'' for purposes of Form B and Rule 144A should be revised upward in light of the length of time since Rule 144A was adopted and the changes that have occurred in the markets since then.[102]

Taking into account only inflation since 1990, use of the $100 million threshold today would have been the same as if the Commission in 1990 had approved a 144A threshold of $81 million dollars.[103] Taking into account only market changes since 1990, our use of the $100 million QIB threshold today is equivalent to us adopting in 1990 a threshold of only $29.2 million.[104] Thus, taking into account market changes, the $100 million 1990 threshold would translate to approximately $240 million today. Even with some adjustments, therefore, we believe more entities would qualify as QIBs today than could have qualified at the time we adopted Rule 144A in 1990.

We solicit comment on whether one should have to own and invest on a discretionary basis at least $125, $150 or $200 million in securities of non-affiliated issuers to qualify as a QIB. We also solicit comment on whether we

[96] When the issuer of the securities to be resold under Rule 144A is neither a reporting company nor exempt from reporting under Exchange Act Rule 12g3–2(b), availability of the Rule is conditioned on the right of the current or prospective holder of the issuer's securities to obtain specific information from the issuer. *See* Rule 144A(d)(4), 17 CFR 230.144A(d)(4).

[97] An issuer that wishes to register an offering on Form B made solely to QIBs may offer or sell only to persons it reasonably believes are QIBs. The Division of Corporation Finance has interpreted the filing of a registration statement as a general solicitation. The filing of a Form B registration statement could, in and of itself, be viewed as a general solicitation and therefore as making offers to non-QIBs. Therefore, under the proposals, the Division would reconsider the issue regarding filing as a general solicitation for the purposes of QIB-only Form B offerings.

[98] The fact that Rule 144A, 17 CFR 230.144A, offerings are frequently conditioned on the issuer's promise to register the offering with the Commission within three to six months evidences the attraction of holding registered securities even for QIBs.

[99] This kind of indirect distribution would deprive the ultimate public purchasers of the liability protections of Securities Act registration.

[100] Securities Act Rule 401(g), 17 CFR 230.401(g), states that any registration statement or amendment is deemed to be filed on the proper form unless the Commission objects to the form before the effective date. The rule thus requires the Commission and the registrant to resolve disputes about form eligibility before effectiveness. We recently have proposed to amend Rule 401(g) to exclude from its scope all registration statements and post-effective amendments that become effective automatically upon filing. *See* Securities Act Release No. 7506 (Feb. 17, 1998) (63 FR 9648). In this release we propose to expand that exclusion to cover all registration statements in which the registrant could designate the effective date. *See* proposed revisions to Rule 401(g), 17 CFR 230.401(g). This change would eliminate the presumption existing today that an effective Securities Act registration statement is on the appropriate form and therefore aid the Commission staff in asserting that securities are offered and sold in violation of Section 5 if anyone attempts to use QIBs as conduits in connection with a QIB-only Form B offering.

[101] *See* Securities Act Rule 144A(a)(1), 17 CFR 230.144A(a)(1). *See also* Securities Act Release No. 6862 (Apr. 23, 1990); Securities Act Release No. 6806 (Oct. 25, 1988) [53 FR 44016].

[102] In 1997, companies raised approximately $254 billion through 144A offerings. This figure represents a 94% increase from 1996 and a 250% increase from 1995. McGeehan, *supra*, n. 94, at 38, col. 1.

[103] This figure is based on changes in the consumer price index between January 1, 1990 and January 1, 1998.

[104] This figure is based on increases in the S&P 500 between January 1, 1990 and January 1, 1998.

should increase the $10 million eligibility requirement for dealers acting for their own accounts or for the accounts of other QIBs. Should it be raised to $15, $20 or $25 million? Should we increase the net worth test for banks, savings associations and equivalent institutions? If so, should it be raised from $25 to $30, $35 or $50 million in order for them to qualify as QIBs? [105] Should a net worth test be applied to those institutions at all?

Are upward revisions necessary to provide continued assurance that QIBs are sophisticated investors with some ability to require appropriate disclosure from the sellers? If so, should they be based on inflation only or should we revise them in accordance with market-related measures?

We also request your comment on whether we should expand the eligibility standards for Rule 144A QIB status. If so, what categories of entities should we make eligible as QIBs? For example, should we permit certain state pension funds to qualify as QIBs if they meet the current thresholds in Rule 144A?

iv. Other Reporting and Non-Reporting Issuers

In light of the sophistication of QIB purchasers, we solicit comment about whether we should extend Form B to issuers subject to the Exchange Act reporting requirements that do not satisfy a one-year and one annual report reporting history. If we were to extend Form B in that way, an issuer could choose to register not long after registering for the first time another offering under the Securities Act or a class of securities under the Exchange Act. Even in that event, however, the issuer would have filed virtually the same company information in its prior registration statement that it otherwise would file in its periodic reports. That information, like periodic reports, could be incorporated into its Form B registration statement. In the case of offerings made only to QIBs, is a year of seasoning as a reporting company going to provide significant investor protections that the QIBs themselves could not attain? Alternatively, should we increase the reporting requirement to two years for offerings to QIBs on Form B by issuers that do not meet the public float/ADTV threshold?

Non-reporting foreign issuers that currently make Rule 144A offerings would not be eligible for Form B even for QIB-only offerings. We solicit comment concerning whether the largest non-reporting foreign issuers (*e.g.*, those with a public float over $500 or $750 million) should be permitted to use Form B to register offerings to QIBs of investment grade securities. These issuers would be required to reconcile their financial statements to conform to U.S. GAAP. This alternative would allow large foreign issuers to enter the U.S. markets in a registered context rather than through Rule 144A, and would give the initial investors freely tradeable securities.[106]

By registering, those companies would become reporting issuers. We would require reconciliation of their financial statements in the Form B registration statement. Also, because these issuers would not have Exchange Act reports to incorporate by reference, we would require that they disclose in the Form B registration statement the company information set forth in Regulation S–K. Under those circumstances, would allowing foreign issuers the opportunity to register investment grade securities on an expedited basis encourage them to enter the U.S. registration and reporting system? Would they be unlikely to register even on that basis due to the reporting and disclosure requirements, or for other reasons? Should we preclude non-reporting foreign issuers from registering even investment grade QIB-only offerings on Form B absent staff review?

c. Offerings to Certain Existing Security Holders

We propose to extend Form B to smaller issuers that do not meet the Form's public float and ADTV threshold eligibility requirements for registration of offerings to certain existing shareholders. Under the proposed registration system, those issuers, which otherwise would be required to use Form A, may use Form B to register: rights offerings; offerings of securities pursuant to a dividend or interest reinvestment plan; offerings of common stock to existing common stock holders, such as under a direct stock purchase plan; offerings of securities upon exercise of either outstanding transferable options or outstanding transferable warrants; and offerings of securities upon conversion of outstanding convertible securities.

Current short-form registration statements, Forms S–3 and F–3, may be used in some, but not all, of these cases.[107] The Commission extended Forms S–3 and F–3 for registration of these kinds of offerings based on the premise that, despite the issuers' inability to meet the eligibility requirements and the possibility they may not be well known or widely followed by the market, these offerings would be directed to specific investors that previously invested in the issuer's securities and could therefore be expected to follow the issuer or to receive information from the issuer. Similarly, we propose to allow issuers that do not meet proposed Form B's public float and ADTV tests to register these and similar offerings on Form B as long as they meet the reporting requirements of the proposed Form and the transactional requirements described below.

i. Dividend or Interest Reinvestment Plans

As early as 1977, we began relaxing registration requirements for dividend or interest reinvestment plans (''DRIPs'').[108] We currently allow all issuers to use short-form registration for securities offered pursuant to their DRIPs even if they do not meet the Forms' public float tests.[109] These registration statements become effective automatically upon filing without staff review.[110]

Under the proposed registration system, we seek both to maintain the relaxed regulatory approach to registration of DRIP offerings and to prevent abuses of the registration system's investor protections.[111] We therefore would extend Form B for DRIP offerings of seasoned issuers that do not otherwise meet the Form's eligibility requirements if:

1. The issuer has not discontinued or suspended dividend payments on the securities held by DRIP participants;

2. The DRIP securities registered on Form B are offered only to existing security holders that have held the issuer's securities for at least 2 months;

[105] *See* Securities Act Rule 144A(a)(ii) and (a)(vi), 17 CFR 230.144A(a)(ii) and (a)(vi).

[106] Through 1992, foreign issuers accounted for about 30% of the 144A market. *See, e.g.*, Bostwick, *The SEC Response to Internationalization and Institutionalization: Rule 144A Merit Regulation of Investors*, 27 Law and Policy in Int'l. Bus. 423 (Winter 1996); Devere, *144A Deal Volume Surges in Dynamic Second Quarter*, 62 Investment Dealer's Digest 13 (July 22, 1996).

[107] *See* Instruction I.B.4. to Forms S–3 and F–3.

[108] *See* Securities Act Release No. 5923 (Apr. 11, 1978) [43 FR 16677].

[109] Most DRIPs are registered on Form S–3. For purposes of this discussion, we will refer to Form S–3 rather than Forms S–3 and F–3.

[110] Securities Act Release No. 6964 (Oct. 22, 1992).

[111] Some issuers have been known to register DRIP offerings on Form S–3 as a pretext for making what are basically primary offerings to the public. Some issuers otherwise ineligible to use Form S–3 have registered DRIPs on the Form to raise amounts of capital that, in the worst cases, exceed the issuer's public float at the commencement of the offering.

3. The dollar amount of the DRIP securities registered on Form B represents no more than 15% of the issuer's public float when aggregated with the dollar amount of securities previously registered by the issuer on Form B pursuant to any offering directed solely to common security holders, including a DRIP, within the 12 months before the start of, and during, the current offering; and

4. The shareholder purchases in any 12-month period no more than the smaller of 100% of the value of the issuer's securities owned by the shareholder at the start of the 12-month period, or 5% of the total offering amount, except that any shareholder may purchase up to $10,000 of securities in any 12-month period.

We would preclude issuers from using DRIPs to sell securities directly to participants at a time when the issuer has discontinued or suspended dividend payments on the DRIP securities. A purchase is not merely a dividend reinvestment when the company is not paying dividends. This is consistent with the Division's current interpretation.[112]

We also would set a limit on the amount of DRIP securities an issuer may register on Form B equal to an aggregate of 15% of the issuer's public float within the 12 months before the start of and during the offering.[113] Under this proposal, issuers could make several DRIP offerings on Form B over the course of a 12-month period as long as the total amount registered within that period did not exceed 15%.[114] While Form B would cover the offering of securities by a smaller issuer to its existing shareholders, if such an issuer uses its shareholders merely as conduits to distribute the securities to the public, the offering would not be eligible for Form B. If a shareholder purchases to effect a public distribution, it would be considered an underwriter and its sale would not be considered registered. To avoid the potential use of Form B in these conduit situations, we propose to restrict the amount of securities that may be purchased by any one shareholder and its affiliates. This provision, in addition to the 15% limitation, would protect against an unregistered distribution to the public.

Our proposal would limit the amount that an existing shareholder may purchase in any 12-month period. It could purchase the smaller of: 100% of the value of the issuer's securities it owns at the start of the 12-month period; or 5% of the total offering amount. A shareholder would have to aggregate its securities purchases and ownership with those of its affiliates. The shareholder also would have to count its purchases in all Form B offerings to existing security holders within the 12-month period. Any one shareholder and its affiliates would be able to purchase at least $10,000 of the issuer's securities in any 12-month period in Form B offerings to existing security holders, despite the percentage tests. For example, where a shareholder owned $5,000 of the issuer's securities at the start of a 12-month period, it would be able to purchase $10,000 of securities in the subsequent 12-month period in all Form B registered offerings to existing security holders.

Finally, the Commission notes that investor eligibility to participate in a DRIP is often based on ownership of a certain amount of the issuer's securities. In many cases, ownership of just one share or even a partial share worth as little as $25 qualifies a person for participation in a DRIP. The Commission is concerned that where there may be little public information about an issuer and the investor does not have a significant ownership interest in the securities of an issuer, the investor may not have access to adequate issuer information or have the inclination to follow the issuer and its business.[115] To help ensure that investors have a chance to learn about the issuer before deciding whether to participate in its DRIP, the Commission proposes to provide that small issuers may not use Form B to register their DRIPs unless the DRIP is limited to investors who have held securities of the issuer for at least two months.

Should the proposed 15% threshold be lowered to 5% or 10%, or raised to 20%? Would the shareholder purchase limitations adequately protect against unregistered distributions to the public? Should the percentage limitations be lower (*e.g.*, 75% of the securities owned at the start or 2% of the total offering) or higher (*e.g.*, 150% of the securities owned at the start or 10% of the total offering)? Should the $10,000 minimum purchase amount during any 12-month period be lower (*e.g.*, $5,000) or higher (*e.g.*, $20,000)? Should we lengthen the 12-month measurement period to two years? Should the two-month ownership period before participation be longer (*e.g.*, 3, 4, 5 or 6 months) or should it be shorter (*e.g.*, one month) or eliminated completely? Finally, would the holding period requirement make it overly burdensome for issuers to determine who is eligible to participate in the DRIP?

ii. Offerings to Existing Common Stock Holders

For the same reasons we would permit small issuers to register on Form B securities issued pursuant to DRIPs, rights offerings, or in connection with convertible securities and exercise of transferable warrants, we would permit smaller issuers to use Form B to register offerings of common stock to existing common stock holders, without regard to whether the offering was pursuant to an ongoing plan. This proposal represents an extension of our current approach to offerings to existing security holders and reflects, in part, our recognition that more and more companies offer securities to existing security holders through direct stock purchase plans (''DSPPs'').

To register on Form B, these offerings would have to meet the following conditions:

1. The securities registered on Form B are offered only to existing common stock holders that have held the issuer's common stock for at least two months;

2. The dollar amount of the securities registered on Form B represents no more than 15% of the issuer's public float when aggregated with the dollar amount of securities previously registered by the issuer on Form B pursuant to any offering directed solely to common security holders, including under DRIPs, within the 12 months before the start of, and during, the current offering; and

3. The shareholder purchases in any 12-month period no more than the smaller of 100% of the value of the issuer's common stock owned by the shareholder at the start of the 12-month period, or 5% of the total offering amount, except that any shareholder may purchase up to $10,000 of common stock in any 12-month period.

[112] *See* The Division of Corporation Finance Manual of Publicly Available Telephone Interpretations (July 1997), available on our web site (http://www.sec.gov).

[113] Based on our research of DRIP offerings made during the last year, the 15% limit should not affect the amount of securities that the vast majority of issuers register for offerings pursuant to DRIPs. We specify this threshold in the instructions to proposed Form B.

[114] The issuer would refer to its most recently filed Form 10–K to determine its public float for calculating how much it may register on Form B. This limitation also may allow issuers to avoid market overhang problems that may be associated with registering at one time a large amount of securities to be offered over a long period.

[115] Securities Act Rule 405, 17 CFR 230.405, defines the term dividend or interest reinvestment plan and states that such plans may allow participants to contribute additional cash amounts for the purchase of securities offered under the DRIP. Accordingly, once an issuer registers a DRIP, it may offer securities to participants in addition to or even in lieu of those purchased by the reinvestment of dividends or interest.

We propose the first two conditions for the same reasons we propose them in connection with DRIPs. Just as with DRIPs, we seek to prevent small companies otherwise ineligible to use Form B from being overly-aggressive in labeling a sale to the public as a sale to existing shareholders. Therefore, we impose these conditions. The first condition requires issuers to aggregate all their offerings of common stock to existing security holders, including those under DRIPs, to determine how much common stock they may register on the Form B for offerings to existing common stock holders. We believe the condition is appropriate because it would inhibit smaller issuers from circumventing the 15% public float mechanism designed to prevent smaller issuers from using DRIPs to raise excessive amounts of capital through a short-form registration statement that they would otherwise be ineligible to use.[116] These common stock offerings raise concerns similar to offerings under DRIPs. We therefore propose to add the same kind of common stock shareholder purchase limitation as proposed for DRIP offerings registered on Form B.

The Commission believes this proposal will make it easier for smaller issuers to publicly offer securities to its existing shareholders. The proposal also may benefit investors because extending Form B for offerings pursuant to DSPPs may encourage issuers to register them.

We solicit your comment on this proposal. Should we narrow or expand the offering thresholds? Would the shareholder purchase limitations adequately protect against unregistered distributions to the public? Should the purchase limitations be the same as used in DRIP offerings or should they be lower or higher? Is two months a sufficient amount of time to ensure that investors would have time to familiarize themselves with the issuer? Is it a sufficient period of time to ensure the offering is truly one to existing shareholders and not simply an offering to the public at large? Should we have a minimum ownership requirement to ensure that investors have reason to keep informed about the company? If so, how much? Would a $1,000, $2,000, $5,000 or $10,000 threshold be appropriate? Should we apply a minimum ownership requirement to DRIPs as well? If so, should the threshold be the same as for offerings of common stock to common stock holders?

We are proposing to make Form B available for offerings to existing common stock holders of smaller issuers, in part, because we assume that those investors are following those issuers. Therefore, those investors would not need delivery of company information. Is our assumption correct that an existing common stock holder is likely to follow the issuer? Would it be more appropriate to move such offerings to Form A but permit small issuers to designate the effective date of their Form A registration statement? What additional costs, if any, would issuers incur as a result of requiring them to use Form A for these offerings, with the ability to designate their effective dates, instead of Form B?

iii. Convertible Securities, Transferable Warrants and Rights Offerings

In 1972, we adopted amendments to our short-form registration statement to provide that seasoned issuers could use Form B to register securities to be offered upon the conversion of outstanding convertible securities and upon the exercise of outstanding transferable warrants.[117] In 1978, we adopted, in the ''nature of an experiment,'' short-form registration to register rights offerings to existing shareholders.[118] We determined not to require that issuers of rights offerings, or of the other kinds of offerings to existing shareholders, meet the newly adopted eligibility standards applied to primary offerings by large, seasoned companies.[119] When we adopted Form S–3, we explained that offerees in offerings to existing shareholders pursuant to rights offerings, exercises of convertible securities, exercises of transferable warrants and dividend or interest reinvestment plans did ''not need the additional assurances of wide information dissemination provided by the test for primary offerings'' because they already owned securities of the issuer and could be presumed to follow the issuer through corporate communications and Exchange Act reports.[120]

We believe that reasons that have historically supported a streamlined and relaxed approach to offerings by smaller seasoned issuers to existing shareholders would support extending the availability of proposed Form B to smaller reporting issuers that make offerings of securities pursuant to: rights offerings,[121] conversion of outstanding convertible securities and exercise of transferrable warrants.[122] Those issuers would continue to realize the benefits of short-form registration for offerings to existing shareholders that had already made a decision to invest in the issuer. At the same time, the reporting requirement of Form B would ensure the public availability of at least 12 months of public information about the issuer.

We seek your comment on this proposal. Do any of these three types of offerings present risks that should result in exclusion from Form B? Is there any reason to preclude such issuers from using Form B? Should we restrict availability of Form B to smaller issuers that have sent at least a glossy annual report to their shareholders [123] within the twelve months before making their offering to existing shareholders? Is that requirement useful in light of the fact that the warrants or convertible securities are transferable, and therefore the shareholders to whom the issuer

[116] Many issuers offer securities to existing security holders through DSPPs to qualify those holders to participate in their DRIPs. Depending on the circumstances, the two plans could work in the same ways and provide holders with the same benefits. Accordingly, at this time, we believe it is appropriate to limit the amount of securities a small issuer can register under either offering when registering them on Form B—no matter how the offering is characterized.

[117] *See* Securities Act Release No. 5265 (June 27, 1972) [37 FR 15989].

[118] Securities Act Release No. 5879 (Nov. 2, 1977) [42 FR 58677].

[119] Securities Act Release No. 5923 (Apr. 11, 1978) [43 FR 16672]; Securities Act Release No. 5931 (May 15, 1978) [43 FR 21661].

[120] Securities Act Release No. 6331 (Aug. 6, 1981) [46 FR 41902].

[121] In situations where securities underlying rights may be acquired by new investors because, for instance, the rights are transferable, an issuer may not use short-form registration unless it meets the eligibility requirements for a primary offering on the form. *See, e.g.*, Securities Act Release No. 6943 (July 16, 1992). Our proposals would not alter this position. Accordingly, smaller issuers would be ineligible to use Form B to register securities underlying rights that may be acquired by new investors. We also would preclude smaller issuers from using Form B to register securities underlying rights that were not taken up by existing shareholders and that would be offered on a ''standby'' basis to new investors.

[122] Form B would not be available for the issuance of securities pursuant to a conversion of a convertible security or the exercise of a transferable warrant if the issuance of such securities could occur within one year of the company's issuance of the convertible security or transferable warrant. If the underlying security is issuable within one year of the company's issuance of the convertible security or transferable warrant, the underlying security would be part of the offering of the convertible security or transferable warrant. Consequently, the underlying securities must be registered with the convertible security or transferable warrant. In that case, unless the issuer is eligible to use Form B to register the convertible security or transferable warrant, it would not be eligible to register the underlying security on Form B. *See* The Division of Corporation Finance Manual of Publicly Available Telephone Interpretations, Section A.9. (July 1997).

[123] Throughout this release, all references to ''annual report'' or ''Exchange Act annual report'' refer to the annual report filed under Section 13(a) of the Exchange Act, generally on a Form 10–K or 20–F. All references to the ''glossy annual report to security holders'' or ''the annual report to security holders'' refer to the annual report filed under Rule 14a–3, 17 CFR 240.14a–3.

would send that information may not be the same persons who exercise or convert? Are we correct in continuing to believe that existing investors would follow the issuer and keep informed of its business? Or, to ensure investor follow-up, should we limit Form B for offerings to existing security holders that hold a minimum amount or value of the issuer's securities (*e.g.*, $2,000)?

Under current requirements, an issuer may not use Form S–3 to register securities pursuant to DRIPs, upon exercise of outstanding rights or transferable warrants, or upon conversion of outstanding convertible securities unless it has sent an annual report[124] within the 12 months preceding the filing of the Form S–3 to all record holders of those outstanding or DRIP securities.[125] Foreign private issuers registering such offerings on Form F–3 are not subject to any prior information delivery requirement.[126] We have not included a prior delivery requirement in the proposed system. These issuers would be ineligible to use Form B unless they had already filed with the Commission at least one annual report.[127]

We solicit comment on whether to impose any information delivery requirement on smaller issuers that would use Form B to register securities issuable in connection with these kinds of securities offerings. Is it fair to assume that security holders would have adequate information about an issuer they already invested in if the issuer were not required to deliver annual report information to security holders? Should we require them to provide existing security holders with more information than would be required under current rules (*e.g.*, information in an annual report on Form 10–K or 20–F)?

In connection with this proposal, are there any reasons to continue to distinguish domestic issuers from foreign private issuers? Should we require foreign private issuers making these kinds of offerings to deliver information to their existing security holders? If so, should they be required to deliver the same kind of information required by Form 20–F, or should we allow them to deliver the level of information required by Rule 14a–3?

iv. Exercise of Outstanding Transferable Options

We propose to allow smaller seasoned issuers to use Form B to register offerings to existing security holders of securities issuable upon exercise of outstanding transferable options. Issuer options are like warrants in that they entitle the holder to buy or sell securities at a fixed price, during a specified period in the future. In deciding whether to buy the option, an investor speculates about the future value of the security underlying the option. An option holder then either trades the option on the basis of the premium price, exercises it or lets it lapse.

If an option holder has already made one investment decision about the underlying securities before exercising the option, we believe it is fair to presume that the holder has access to information about the issuer. (In the case of employee options, the employee may have simply received a grant of options.) To at least the same extent as existing shareholders, we believe that such investors may be expected to follow the issuer closely through corporate communications or Exchange Act reports. Therefore, we propose to extend Form B to smaller seasoned issuers for registration of securities issuable upon exercise of options.

As in the case of conversions of convertible securities and exercises of transferable warrants, if the underlying security is issuable within one year of the company's issuance of the option, the underlying security would be part of the offering of the option. Consequently, the underlying securities must be registered with the option. In that case, unless the issuer is eligible to use Form B to register the option, it would not be eligible to register the underlying security on Form B.[128]

We seek comment on this proposal. Would allowing Form B registration for option exercises by smaller companies otherwise ineligible for Form B result in indirect distributions of common stock to the public? Does their ineligibility to use Form B for this purpose if exercisable within a year avoid that possibility? Should we preclude Form B registration for exercises of options by dealers to avoid the possibility of issuers entering into options with underwriters as a means to effect a delayed distribution by issuers that would be ineligible for delayed shelf registration?

For domestic issuers that would use Form B for offerings to existing shareholders, should we, following Form S–3's current requirements, extend the Form only if within the 12 months preceding the filing on Form B the issuer sent out material company and financial information to all its existing shareholders to whom it would extend the Form B offering?[129] If so, would investors need more or less information than what Form S–3 currently calls for in order to make an informed investment decision?[130] Would 6 months be more appropriate because it would be more timely? What information, if any, should foreign companies using the Form be required to have provided? Would this registration option render Form S–8 unnecessary for exercises of employee stock options? Should we continue to require issuers to register employee stock option exercises on Form S–8 in light of the fact that employees may not have made an investment decision when acquiring the options?

d. Non-Convertible Investment Grade Securities

Today, companies that do not meet the public float requirement of Form S–3 may nevertheless register an offering of non-convertible investment grade securities on that Form. When the Commission adopted Form S–3 in 1982, we indicated that Form S–3 was appropriate for the registration of investment grade securities because investors purchase those securities on the basis of their interest rate and credit rating.[131] The Commission continues to believe that investors rely on a security's credit rating, although investors may well seek more than just

[124] Form S–3 states that the material that issuers must deliver to existing security holders must include the information required by Rule 14a–3(b), 17 CFR 240.14a–3(b). The information required under that Rule is most frequently included in companies' glossy annual reports, and is less detailed than the information required in an annual report filed under cover of Form 10–K. Form S–3 also states that management-related information need only be delivered to existing security holders who may be issued common stock in connection with their exercises or conversions of securities or participation in a DRIP.

[125] *See* General Instruction I.B.4. of Form S–3.

[126] *See* General Instruction 1.B.4. of Form F–3. Foreign private issuers, however, are not permitted to use Form F–3 for these kinds of offerings if any of the securities are to be offered or sold in a standby or similar underwriting arrangement.

[127] Smaller issuers of securities under these kinds of offerings, whether domestic or foreign, would not be eligible to use Form B unless they: were seasoned (subject for at least 12 months to the reporting requirements of Section 12 or 15(d)); were timely in meeting their reporting obligations; and had filed at least one annual report under the Exchange Act. *See* General Instruction I.B. of proposed Form B.

[128] *See* The Division of Corporation Finance Manual of Publicly Available Telephone Interpretations, Section A.9. (July 1997).

[129] Prior delivery of specific information to existing shareholders is not currently required on Form F–3.

[130] *See* General Instruction I.B.4. of Form S–3, citing to Rule 14a–3(b) of the Exchange Act, 17 CFR 249.13a–3(b), and Items 401, 402 and 403 of Regulation S–K, 17 CFR 229.401–229.403.

[131] Securities Act Release No. 6383 (Mar. 3, 1982).

rating information in order to evaluate the investment.

Given the historical precedent of using investment grade rating as an eligibility criterion for Form S–3 registration, we are proposing to allow non-convertible investment grade securities offerings to be registered on Form B by issuers that have been reporting under the Exchange Act for at least a year, have filed at least one annual report and are current and timely in filing those reports. We solicit comment, however, regarding whether we should continue to have a registration system in which Form eligibility turns solely on a credit rating, particularly in the case of Form B. A credit rating is one organization's judgment about the likelihood of default. That judgment is not a guarantee of no risk. Rather than allowing use of Form B on the sole basis of an investment grade rating for the securities being offered, should we provide for registration of those securities on Form A with its mandated transactional disclosure but allow for effectiveness of those Form A filings upon demand?

e. Market Making Transactions by Affiliated Broker-Dealers

When a broker-dealer that is an affiliate of an issuer [132] engages in market making transactions in that issuer's securities, registration under the Securities Act is required.[133] The registration requirement arises under the statute due to either of two reasons. First, in the definition of ''underwriter'' under the Securities Act, the term ''issuer'' includes any person affiliated with the issuer.[134] Because of the affiliation between the broker-dealer and the issuer, the broker-dealer itself is considered an issuer. Thus, the exemption from Securities Act registration for persons other than ''issuers, underwriters and dealers'' would not be available.[135]

The second reason registration is required flows from the definition of ''dealer'' under the Securities Act. The Securities Act exempts from registration most securities transactions by dealers.[136] ''Dealer,'' as defined under the Securities Act, means any person that engages in transactions in ''securities issued by another person.'' [137] If an issuer and its broker-dealer are affiliated, the broker-dealer would be considered to be an issuer. Hence, if it engages in a transaction in the issuer's securities, its transaction would not be in securities ''issued by another person.'' Thus, the affiliated broker-dealer is not a ''dealer'' under the Securities Act and the dealer's exemption is not available. Absent an exemption, registration under the Securities Act is required by Section 5.

In accordance with Section 5, therefore, the broker-dealer must prepare and deliver ''market making prospectuses'' in market making transactions in securities of its affiliates. This prospectus discloses the affiliation between the issuer and broker-dealer, explains the use of the prospectus in offers and sales by the affiliated broker-dealer in market making activities, and provides information about the issuer.

We have recognized that prospectus delivery in market making transactions imposes a burden on affiliated broker-dealers.[138] We seek to reduce that burden while maintaining investor protection. By allowing registration of these transactions on Form B, we would preserve the benefits for investors of registration, but alleviate much of the burden.[139]

Certain other transactions are proposed to be allowed on Form B because of the nature of the purchasers, such as their financial sophistication or their pre-existing knowledge of the issuer. Because of their nature, these purchasers appear to have less need for prospectus delivery. Purchasers in market making transactions, on the other hand, may not have prior issuer knowledge or financial sophistication. Despite this difference, however, purchasers in market making transactions should not be adversely affected by registration on Form B. Buyers in this situation, like most buyers in the secondary markets, are likely to have made their investment decisions before contact with the market maker.

We propose to permit registration of ordinary market making transactions by affiliated broker-dealers on Form B only if the issuer is a reporting company under the Exchange Act.[140] That criterion would assure that information about the registrant is publicly available. We also would include two requirements to be sure that the transactions by affiliated broker-dealers are bona fide market making transactions. First, the broker-dealer must engage in the transactions only in its ordinary capacity as a market maker.[141] Second, the securities must be outstanding securities that the broker-dealer did not acquire directly from the issuer or an affiliate of the issuer or indirectly by arrangement with those parties. Market making transactions that do not meet these requirements could not be registered on Form B.

We request your views on this aspect of Form B eligibility. Should market making transactions by affiliated broker-dealers be permitted on Form B? If not, why should they be excluded? Are there reasons prospectus delivery should be retained for all market making transactions? Are the registrant requirements appropriate and adequate? Are there additional restrictions that would further ensure that only bona fide market making transactions are registered on Form B? Should the Commission consider extending Form B for this purpose to non-reporting foreign private issuers whose securities are traded in designated offshore markets and who claim the exemption from registration under Rule 12g3–2(b)? Should we more specifically define the

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[132] A broker-dealer is considered an affiliate of the issuer when the broker-dealer controls, or is controlled by, the issuer or when the broker-dealer and the issuer are under common control. *See* Rule 405 of Regulation C, 17 CFR 230.405. The determination of control is based on the facts and circumstances of the particular situation.

[133] Market-making transactions are principal transactions. A principal transaction is a transaction in which the broker-dealer purchases or sells for its own account, rather than the account of another party.

[134] Section 2(a)(11) of the Securities Act defines the term ''underwriter'' to mean ''any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, * * * or participates or has a participation in the direct or indirect underwriting of any such undertaking. * * * As used in this paragraph the term ''issuer'' shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.'' 15 U.S.C. § 77b(a)(11).

[135] *See* Section 4(1) of the Securities Act, 15 U.S.C. § 77d(1).

[136] *See* Section 4(3) of the Securities Act, 15 U.S.C. § 77d(3).

[137] Section 2(a)(12) of the Securities Act defines the term ''dealer'' to mean ''any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.'' 15 U.S.C. § 77b(a)(12).

[138] The Task Force recommended elimination of the affiliated broker-dealer's prospectus delivery obligation in ''regular way'' market making transactions in outstanding securities of a Section 12 reporting company. Task Force Report at p. 42.

[139] *See* Sections VIII.C.3. and VIII.C.4.a. of this release for a discussion of when prospectus information must be delivered in Form B offerings.

[140] The same disqualifications that would apply to other types of offerings on Form B also would apply for registration of market making transactions. *See* Section V.A.2.g. of this release.

[141] Section 3(a)(38) of the Exchange Act defines the term ''market maker'' to mean ''any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.'' 15 U.S.C. § 78c(a)(38).

types of market making transactions permitted? Should the Commission exempt all market making transactions from prospectus delivery requirements, or exempt certain market making transactions from the registration requirements entirely?

f. Small Business Issuers

Most small business issuers that file Exchange Act reports provide disclosure based upon Regulation S–B. These issuers would be allowed to register certain offerings on Form B. If they meet the seasoned reporting requirements of Form B, they would be able to register on Form B offerings to certain existing security holders, offerings of non-convertible investment grade securities, offerings solely to QIBs and market making transactions.

A small number of reporting small business issuers provide non-financial statement disclosure based on Form 1–A, instead of Regulation S–B.[142] The Form 1–A disclosure requirements are generally less extensive than those of Regulation S–B. These issuers are called ''transitional small business issuers.'' [143] These companies continue to provide non-financial statement disclosure based on Form 1–A in their Exchange Act reports.

Proposed Form B would not be available for transitional small business issuers.[144] We believe that these issuers should be excluded from using the Form for several reasons. First, the disclosure in their Exchange Act reports would be less detailed than disclosure provided by other Exchange Act reporting companies. Second, these issuers are likely to have less experience in preparing disclosure documents. Third, we believe that the disclosure document should be subject to possible staff review. Consequently, automatic effectiveness should be unavailable for these offerings.

We request your comments on our treatment of small business issuers under proposed Form B. Should Form B be available for small business issuers? If not, why not? Should we expand the Form to permit offerings by transitional small business issuers? If so, what types of offerings should they be allowed to conduct under the Form?

g. Form B Disqualifications

Given the freedom and flexibility provided to issuers that would register their offerings on Form B, we do not believe that all issuers that would meet the Form's reporting and other eligibility requirements would necessarily be suited to use the Form. We believe certain events and circumstances justify disqualification of otherwise eligible offerings from registration on Form B, no matter under which category of Form B offerings it would be eligible. For those offerings, investors need the additional protections that come with registration on other forms: mandated transactional disclosure standards; stricter prospectus delivery requirements; possible staff review; and greater Commission control over effectiveness.

Under our proposal, the disqualifications generally would fall into four categories. The first category would include issuers whose offerings have been identified as potential vehicles for fraudulent and manipulative schemes that harm investors.[145] Blank check companies [146] and companies offering penny stock [147] would fall into this category. The second category would include issuers that appear more likely to face potentially significant liquidity problems, such as issuers that recently defaulted on material indebtedness. An issuer that is the subject of a ''going concern'' opinion from its independent auditor also would fall into this category, as would an issuer that recently was involved in a bankruptcy or insolvency proceeding.

We also believe that an issuer should be disqualified from the privilege of using Form B if it abuses the registration system or other federal securities laws. The third category of Form B ineligible issuers would therefore include those issuers that within five years before the date of filing a Form B were found to have violated provisions of the federal securities laws or that were convicted of securities fraud or business-related fraud or perjury.[148] It also would include issuers with executive officers, directors, general partners or nominees to such positions, or issuers using underwriters, that have done the same.

The issuers in these three categories have historically been viewed as unsuited to short-form registration or ineligible for certain disclosure-related relief. For instance, the Commission has repeatedly stated its belief that penny stock and blank check offerings give rise to disclosure abuses.[149] In addition, Congress determined not to extend the safe harbors for forward-looking statements to: issuers of blank check and penny stock securities offerings; issuers previously convicted of certain felonies and misdemeanors; and, issuers that are subject to a decree or order involving a violation of the securities laws.[150] Accordingly, we believe it is appropriate to preclude such issuers from registering their offerings on Form B.

The fourth category of issuers that we would disqualify from use of Form B would include issuers that fail to cooperate in good faith with the Commission's selective review system for Exchange Act reports. If the issuer has failed to resolve the Commission's staff's comments on an Exchange Act report that the issuer would be incorporating by reference into its Form B, we would not permit that issuer to use Form B.

We seek comment on these proposals. Should other categories of issuers also be precluded from using Form B? For example, is there any reason we should disqualify certain entities from using Form B, such as partnerships, limited liability companies or direct participation investment programs? On the other hand, should any of the issuers noted in the four categories be permitted to use Form B? Should any of them be permitted to use Form B, but not be permitted to designate the effective time? Should we extend the look-back periods used to disqualify issuers in any other category to coincide

[142] Form 1–A is the Form used to qualify securities under Regulation A, an exemption from registration under the Securities Act. Form 1–A contains two offering circular models, Model A and B, plus other parts. These offering circular models and Part F/S of Form 1–A provide the disclosure requirements for offering circulars used in Regulation A offerings.

[143] Transitional small business issuers are companies that either initially registered a securities offering on Form SB–1 under the Securities Act or initially registered on Form 10-KSB under the Exchange Act and provided certain Form 10-KSB disclosure based on the Form 1–A non-financial statement disclosure requirements.

[144] This approach is consistent with our approach under the proposed changes to Form SB–2 and proposed new Form SB–3. Proposed Form SB–2 and SB–3 would not permit incorporation by reference by transitional small business issuers.

[145] *See, e.g.,* Securities Act Release No. 7006 (July 2, 1993) [58 FR 37445].

[146] Securities Act Rule 419(a)(2), 17 CFR 230.419(a)(2), defines blank check company.

[147] Exchange Act Rule 3a51–1, 17 CFR 240.3a51–1, defines penny stock.

[148] *See* General Instruction I.B.6.(g) and (h) of Proposed Form B, 17 CFR 239.5.

[149] *See, e.g.,* Securities Act Release No. 7024 (Oct. 25, 1993) [58 FR 58099] (the Commission stated that Congress found blank check companies to be common vehicles for fraud and manipulation in the penny stock market, and concluded that the Commission's disclosure-based regulation and review of such offerings protects investors); Securities Act Release No. 7393 (Feb. 20, 1997) [62 FR 9276] (blank check and penny stock issuers would be ineligible to use proposed rule providing for delayed pricing because of ''prior substantial abuses'').

[150] Section 27A of the Securities Act, 15 U.S.C. § 77z-2, and Section 21E of the Exchange Act, 15 U.S.C. § 78u-5.

with the five-year look-back for issuers which have violated the law?

More recently the Commission has identified offering abuses associated with very small capitalization issuers.[151] We solicit comment on whether issuers more likely to be identified with microcap fraud should be disqualified from using Form B even though they do not fall into the blank check/penny stock category or the prior violations category. If we were to disqualify issuers more likely to engage in microcap offering fraud, how would we define such a category? What issuer or offering characteristics would be inclusive enough to meet our goal of preventing abuse but exclusive enough to avoid improperly stigmatizing smaller issuers that are not involved in fraud?

Would disqualification from Form B use on the basis of a ''going concern'' opinion from the issuer's independent auditor cause undue pressure to be placed on auditors not to issue those opinions? Should the Commission replace that disqualification with one dependent on whether the issuer had: (1) net losses or negative cash flows from operations for two or more of the past three annual fiscal periods; or (2) a deficit in net worth at the date of the most recent balance sheet?

h. Secondary Offerings

As proposed, registrants would not be able to register an offering on Form B without meeting other eligibility criterion simply because it is a secondary offering. Whether an equity offering is a primary or secondary one, the investment is in the securities of the issuer and it is the issuer's disclosure that is relevant to investors. In either offering, the issuer prepares the disclosure. The primary difference is that the issuer does not receive the proceeds in the secondary offering. Considered only from an investor's viewpoint, the same disclosure would be needed regardless of whether the issuer or an affiliate is selling the securities.

For some time, however, we have made a distinction in eligibility for short-form registration between primary and secondary offerings.[152] To register secondary offerings, issuers do not need to meet the Form S–3 or F–3 public float test. By allowing short-form registration for secondary offerings, we have inadvertently provided an incentive for issuers not to register primary sales and to distribute to the public indirectly through third parties. Some registrants have been particularly aggressive about casting what are actually primary distributions as secondary offerings by selling shareholders in order to use current short-form registration. This practice threatens the integrity of the registration process by permitting registrants to do indirectly what they would be precluded from doing directly. Given the attractions of Form B, we would expect that practice to continue if we were to allow secondary offering registration on Form B. We would avoid that abuse by not allowing registration of secondary offerings on Form B unless other offering eligibility criteria were met.

In 1981, we proposed to apply the same public float test for both primary and secondary offerings in Form S–3. Commenters were concerned that applying the additional float requirement to secondary offerings would adversely affect venture capital companies and their investors. In light of that concern, we chose to distinguish the two types of offerings in Form S–3. The proposed registration system, however, has several advantages over the existing system that could ease any concerns regarding venture capitalists. For example, under the eligibility requirements for use of Form B, a company may register its initial offering of common stock to the venture capitalists on Form B that are existing common stockholders of the company. We also would make Form B available for any offering to venture capitalists who are QIBs. Form B offerings could be completed as quickly as today's private offerings, because Form B would not be subject to staff pre-review and could be effective upon filing if the issuer chooses. Because Form B would permit companies to register their initial offerings to venture capitalists, as opposed to first completing a private placement and then registering those securities for a secondary offering, special treatment of secondary offerings for the sake of venture capitalists would no longer be needed.[153]

Registrants would register secondary offerings not eligible for Form B under the proposed system on Form A which is described in detail below. Form A, unlike Form S–1 today, would permit companies to incorporate their Exchange Act filings by reference. Consequently, it should take a company less time to prepare its registration statement on Form A as compared to Form S–1 today. Additionally, the Commission is proposing to provide some Form A companies with the ability to designate the effective dates of their registration statements.[154] Where applicable, the company's registration statement, therefore, would be effective significantly sooner than under the current system.[155]

We are proposing to treat primary and secondary offerings the same on Form B. Thus, secondary offerings by affiliates[156] would need to qualify under the same public float/ADTV, QIB-only, existing shareholders, or investment grade eligibility criteria. Affiliates stand in the shoes of the issuer and should get no different or better treatment. Because issuers and others have relied upon the historical distinction between secondary and primary offerings, however, we solicit comment regarding whether the secondary nature of offerings by non-affiliates should be added as a separate eligibility criterion on new Form B.

Similarly, we are proposing to revise Form S–8 treatment of secondary offerings.[157] Currently, affiliates and others may register on Form S–8 resales of control or restricted securities acquired pursuant to an employee benefit plan. The resale prospectus on Form S–8 must meet the requirements of Part I of Form S–3 or Form F–3. For the same reasons that we are not proposing special eligibility for secondary offerings on Form B, we propose to eliminate special eligibility for secondary (i.e., resale) offerings on Form S–8. Whether an offering is primary or secondary is of little importance to most investors. Investors tend to base their investment decision on an issuer's disclosures. Accordingly, we believe amending Form S–8 would further investor protection.

Comment is solicited with respect to elimination of S–3 level registration of

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[151] *See, e.g.*, Securities Act Release No. 7505 (Feb. 17, 1998) [63 FR 9632] (adopting amendments to Regulation S (17 CFR 230.901–905)); Exchange Act Release No. 39670 (Feb. 17, 1998)[63 FR 9661] (proposing amendments to Exchange Act Rule 15c2–11 (17 CFR 240.15c2–11)).

[152] *See* Securities Act Release No. 5265 (June 27, 1972).

[153] Under this proposal, unlike in a registered secondary offering, venture capitalists would generally not be subject to the prospectus delivery requirements.

[154] *See* proposed revisions to Securities Act Rule 462, 17 CFR 230.462.

[155] The holding period of Rule 144(d), 17 CFR 230.144(d), also is much shorter today than it was in 1981, thus making private placements more attractive as an alternative to registration than they were in 1981. We recently proposed to narrow the definition of ''affiliate.'' Consequently, Rule 144 would be available to most venture capitalists. Securities Act Release No. 7391 (Feb. 20, 1997) [62 FR 9246].

[156] For purposes of this discussion, we assume that the narrower definition of ''affiliate'' proposed by the Commission in 1997 would apply. We have not proposed that narrower definition in this release because we already have proposed it.

[157] Form S–8 would be largely unaffected by the proposed registration system. For example, no additional filing or delivery requirements would be added for Form S–8.

secondary offerings on Form S–8. Are there compelling reasons to retain that treatment in an employee benefit context that would not apply in other secondary offerings?

B. Form A Offerings

Form A would be the basic form for registration under the Securities Act.[158] It would be available for any offering for which no other Form is authorized or prescribed. Initial public offerings and smaller reporting issuers' offerings ineligible for another form would be registered on Form A. Many of the offerings that issuers would register today on Form S–1, F–1, S–2 and F–2 would be registered under the proposed system on Form A. Just as in the case of Forms B and C, both domestic and foreign filers would use Form A.[159]

1. Structure of Form A

In keeping with current Securities Act registration forms, there are two parts to Form A: information included in the prospectus (Part I) and information not included in the prospectus (Part II).

a. Part I—Information Required in the Prospectus

Part I of Form A requires the following three categories of information: (1) standard disclosure on the cover and back pages of the prospectus and registration statement; (2) transactional information; and (3) company information. All issuers registering on Form A would set forth the first two types of information directly in the prospectus. Some Form A issuers would incorporate by reference their company information, while others would set forth that information directly in the prospectus.

i. Cover Pages

All issuers using Form A must comply with Items 501, 502 and 503 of Regulation S–K relating to information on the front cover page of the registration statement, the cover pages of the prospectus and in the summary and risk factors sections, among others. This is the same requirement as in current Forms S–1, F–1, S–2 and F–2.

ii. Transactional Information

All issuers using Form A also must provide information regarding:

- Summary risk factors and ratio of earnings to fixed charges;
- Use of proceeds;
- Determination of offering price;
- Dilution;
- Selling security holders;
- Plan of distribution;
- Description of securities;
- Interests of named experts and counsel; and
- The Commission's position on indemnification for Securities Act liabilities.

Again, this is the same information that is required in current Forms S–1, F–1, S–2 and F–2.

iii. Company Information

Depending on whether the issuer is ''seasoned'' or not, it must present company-related disclosure either in full in the prospectus or incorporate it by reference into the prospectus that is part of the effective registration statement.

(A) ''Seasoned'' Form A Issuers

For purposes of Form A, ''seasoned'' issuers would be:

- Issuers that have been reporting under the Exchange Act for at least 24 months, if they have a public float of $75 million or more; and
- Issuers that have been reporting under the Exchange Act for at least 24 months and have filed at least two annual reports.

Issuers that are ''seasoned'' would be eligible to incorporate their previously filed Exchange Act reports by reference unless they meet any of the disqualifications contained in General Instruction II.B. of the Form.[160]

A Form A registrant would incorporate by reference into the prospectus and deliver, along with the prospectus, its latest annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act and either deliver or include in the prospectus the information in Part I of Form 10–Q or 10–QSB for the most recent fiscal quarter. The registrant must deliver the information required by this option with the first prospectus it sends. It need not deliver that information with any subsequent prospectus it sends to the same person.

Issuers relying on this option would not have to reiterate company information in the prospectus, although they would have to deliver those incorporated reports with the preliminary prospectus.[161] The Form A eligibility requirements for incorporation by reference would reduce the length of time a registrant must be reporting. Under current Forms S–2 and F–2, a registrant must have a thirty-six month reporting history before it may incorporate by reference.[162] We solicit comment on whether the seasoning test for incorporation by reference on Form A should be shortened (*e.g.*, to where the issuer has been reporting under the Exchange Act for 12 months and has filed at least one annual report).

If a company incorporates by reference, investors would be required to review more than one document to obtain all the material information. We solicit comment as to whether this increases the analytical burden on investors. Additionally, does incorporation by reference of documents containing historical disclosure tend to obscure recent material information about the company? Would it be better for investors if incorporation by reference was limited to the most recent annual report with all subsequent information included in the prospectus? Today, some small issuers that are not well known to investors may include, for marketing purposes, information in their prospectuses that also is contained in the documents they have incorporated by reference. Is incorporation by reference useful for such small companies? Is incorporation by reference necessary in light of technological advances in financial printing? Does incorporation by reference reduce an issuer's cost of registration if the incorporated documents are required to be delivered to investors? If so, by how much are costs reduced?

Current Forms S–2 and F–2 give a registrant two options for complying with the disclosure requirements of the Form when incorporating by reference. If the registrant elects to deliver the prospectus together with its Exchange Act reports incorporated by reference in the registration statement, it must provide in the prospectus updating financial information and describe any material changes in its affairs not previously disclosed in an incorporated and delivered Exchange Act report. If the registrant does not elect to deliver its incorporated Exchange Act reports together with the prospectus, it must

[158] Form A also may be used to register concurrently under Section 12(b) or 12(g) of the Exchange Act. *See* Section VI. of this release for a discussion of concurrent Exchange Act registration.

[159] U.S. registrants must provide all information required by the Items of the Form except where the Item expressly identifies the requirement as applying only to foreign registrants. Similarly, foreign registrants must provide all information required by the Items of this Form except where the Item expressly identifies the requirement as applying only to U.S. registrants.

[160] Section 11 would apply to all documents incorporated by reference in Form A.

[161] For a discussion of Form A prospectus delivery obligations, see Sections VIII.C.3. and VIII.C.4.b. and e. of this release.

[162] Those forms are available for smaller seasoned issuers, but are rarely used. In 1996, only 102 Forms S–2 were filed and only three Forms F–2 were filed.

provide abbreviated company information in the prospectus itself.[163] Proposed Form A would permit only the first option of providing company information when incorporating—a registrant may incorporate company information into its prospectus and deliver its Exchange Act reports together with the prospectus.[164] Otherwise, it could not incorporate and must set forth the full company disclosure required in a Form A, just like an unseasoned Form A company.

Current Form S–2 permits issuers to choose to incorporate and deliver their glossy annual and quarterly reports to security holders in lieu of incorporating and delivering their Exchange Act annual and quarterly reports. Proposed Form A would require issuers to incorporate and deliver their latest Forms 10–K and 10–Q, because those reports must contain more extensive disclosure about the company.[165] We solicit comment on whether Form A seasoned issuers should be given the option to incorporate and deliver their glossy annual and quarterly reports to shareholders in lieu of their reports on Forms 10–K and 10–Q, with the additional provisions that those glossy annual and quarterly reports are incorporated by reference in their entirety (and are therefore subject to Section 11 liability under the Securities Act) and are filed with the Commission before their use in the Form A.

In certain circumstances, current Forms S–2 and F–2 permit registrants that are majority-owned subsidiaries but do not meet the Form eligibility requirements to register on those Forms instead of Form S–1 or F–1 if their parent satisfies certain requirements. This provision allows both the parent and the majority-owned subsidiary to register the offering on one form and incorporate by reference. Proposed Form A would not provide a similar option to those majority-owned subsidiaries. Given that Form A encompasses both seasoned and non-seasoned issuers and that incorporation by reference on Form A would be available after 24 months, as opposed to the current 36-month requirement, we believe there would be little reason to extend the ability to incorporate by reference to majority-owned subsidiaries any sooner.

(B) ''Unseasoned'' Issuers

In initial public offerings and offerings by all other issuers that are not ''seasoned,'' we would require that the registrant provide company information in the prospectus. The content of the company information in the registration statement would remain the same as it is in current Forms S–1 and F–1. We would not permit these issuers to incorporate by reference any Exchange Act reports.

b. Part II—Information Not in the Prospectus

Just as in Forms S–1, F–1, S–2 and F–2, Part II of proposed Form A would require the following information in the registration statement but not in the prospectus that is delivered to investors: expenses of issuance and distribution, indemnification of directors and officers, recent sales of unregistered securities, exhibits and undertakings.

2. Timing of Form A Offerings

a. Seasoned Issuers

Many commenters on the Concept Release noted that issuers would benefit from greater certainty of the time schedule of staff review. For example, a fixed offering schedule would promote efficiency in marketing efforts and the management of deal flow. We believe that we can achieve greater certainty in the timing of staff review without compromising investor protection. Proposed revisions to Securities Act Rule 462[166] would provide for effectiveness of registration statements and post-effective amendments of seasoned issuers on Form A whenever they request if:

1. The registrant's public float is or exceeds $75 million; or

2. The Exchange Act annual report incorporated into the Form A recently has been reviewed fully by the Commission staff and has been amended in accordance with the staff's comments, if so requested.[167]

In addition to the reporting history requirement, issuers in all cases must be subject to the Exchange Act reporting requirements, current in filing their Exchange Act reporting requirements and timely in filing their Exchange Act reports during the last 12 months in order to be seasoned. A seasoned issuer that meets one of these criteria may choose when it wants its registration statement on Form A to be effective.[168] The front cover of the Form would include three boxes, one of which the issuer would check to designate the date and time of effectiveness of the Form. Like Form B issuers, these seasoned Form A issuers may elect that the filing become effective: immediately upon filing, at the date and time specified on the front cover, or as specified in a later amendment. Even if an issuer met either of those criteria, the proposal would preclude it from designating the effectiveness of its Form A if the issuer fits the profile of any issuer disqualified in Form A from the provisions in the Form for incorporation by reference and automatic effectiveness.[169]

The basis of the public float test is to provide medium-sized seasoned issuers with certainty about the timing of their registered offerings. We believe that issuers would be more inclined to register their offerings if they knew they could take advantage of market windows or realize a need for quick capital by relying on Form A's provisions for automatic effectiveness.

The $75 million public float criteria is the same float level required in our current short-form registration statements (Forms S–3 and F–3). Our research indicates that approximately 1175 companies that are currently eligible to use those short-form registration statements would be ineligible to use Form B, at least with respect to offerings requiring the issuer to satisfy the public float/ADTV threshold. Those 1175 companies generally would be able to avail themselves of Form A's provisions for automatic effectiveness if they had reported under the Exchange Act for at least 24 months. We propose the $75 million float requirement to ensure that the only registration statements on Form A that could become automatically

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[163] This disclosure is less comprehensive than what would be required on Form S–1 or F–1 today. It includes information regarding: the registrant's business, the registrant's common equity securities, management's discussion and analysis, changes in and disagreements with accountants on accounting and financial disclosure and market risk. Financial statements and other financial information, including selected financial data and supplementary financial information are also required to be presented in the prospectus.

[164] The disclosure required by seasoned Form A registrants includes a description of any material change in the registrant's affairs that is not already described in a filing with the Commission, incorporated by reference into Form A and delivered to investors.

[165] A small business issuer may choose to register an offering on Form A rather than on Form SB–2 and incorporate and deliver its reports on Forms 10–KSB and 10–QSB. A small business issuer that registers an offering under Form A but that does not incorporate its Exchange Act reports must provide the company disclosure called for by Form A based on either Regulation S–K or Form 20–F (if a Canadian small business issuer).

[166] 17 CFR 230.462.

[167] Form A would not permit incorporation by reference of any Exchange Act report or other filing if the staff reviewed the filing and any comments remain unresolved.

[168] While these registration statements will not be reviewed by the staff, any request for confidential treatment regarding information required to be included in the registration statement may be received by the staff. Therefore, any request for confidential treatment should be submitted a reasonable period before the registration statement's designated effective date.

[169] *See* General Instruction II.B of proposed Form A and Section V.B.1.a.4. of this release.

effective are those filed by issuers with some market following resulting from their size and at least 24 months experience filing Exchange Act reports.

The basis of the recently reviewed test is that the staff will have reviewed the bulk of the issuer's disclosure. Pursuant to this test, any seasoned Form A issuer may designate effectiveness where it incorporates by reference into its Form A an annual report filed under Section 13(a) or 15(d) for its most recently completed fiscal year[170] that has been reviewed fully by the Commission staff and the issuer has responded satisfactorily to the staff's comments.[171] As discussed in greater detail below, the staff of the Division of Corporation Finance would consider requests that the staff review their Exchange Act reports.[172] Because issuers may request that the staff review their Exchange Act annual reports before registering on Form A, this mechanism would allow an issuer further flexibility in controlling the timing of its registered offering.

We solicit your comment on this proposal. Should we permit these registration statements on Form A to become effective per the issuer's discretion? Is the $75 million float too high? Should it be lowered to $60 million? Or should it be raised to $100 million or $200 million? Would the proposal to allow a Form A issuer incorporating a fully reviewed annual report provide particular flexibility in light of the proposal that the staff would review Exchange Act reports upon request to the extent it is able? Should the power to designate effectiveness when the staff has reviewed the issuer's annual report be limited to offerings of a class of securities the issuer has registered previously? Should there be any time frame within which the staff would have to review the report, for example, within three or six months before the offering? Should we exclude offerings of certain securities from that treatment? If so, what types of securities?

Because the proposed rules provide these issuers with complete control over effectiveness of their filings, we would require that the issuer obtain evidence of the managing underwriters' or principal underwriters' concurrence with its designation of effectiveness.[173] The issuer would have to file the evidence of concurrence as an exhibit to Form A.

Would a requirement to file the concurrence be unnecessarily burdensome? Alternatively, should we require the issuer to obtain the underwriters' concurrence, but not require that the concurrence be evidenced in writing? Would an oral concurrence provide the issuer and the underwriters with sufficient assurance of agreement and protection against misunderstanding? Should we require that the issuer represent in the registration statement that it obtained the concurrence, not require filing, and require that the issuer retain the written concurrence for five years?

b. Unseasoned Issuers

The timetable for effectiveness of registration statements filed by issuers making their initial public offerings or by issuers who do not meet the ''seasoned'' eligibility requirements of General Instruction II. of Form A would be similar to the filings on Forms S–1 and F–1 today. All registration statements would be reviewed on a similar time table as current Forms S–1 and F–1 and the registration statement would become effective pursuant to a request for acceleration after the issuer addresses staff comments.

3. Solicitation of Comments on Definition of Form A Seasoned Issuer

We use the same definition of seasoned issuer under Form A for purposes of permitting incorporation by reference of Exchange Act reports and timing of registration statement effectiveness, with one exception discussed below. We distinguish between issuers with a public float of $75 million or more and issuers with a public float of less than $75 million. Issuers with public floats of $75 million or more must have reported under the Exchange Act for 24 months or more. Issuers with smaller public floats must have reported for 24 months or more and filed at least two annual reports. For purposes of determining effectiveness (but not incorporation by reference), issuers with smaller public floats also must incorporate an Exchange Act annual report that was reviewed fully by Commission staff and amended for any staff comments. An issuer also must meet other conditions to be seasoned for purposes of incorporation by reference and timing of effectiveness.

We solicit comment regarding the reporting history of companies with a public float of $75 million or more. Is 24 months the proper reporting history to permit companies with that amount of public float to determine the timing of their effectiveness? Would a 12-month reporting history be sufficient in this regard? Similarly, is 24 months the proper reporting history to permit these companies to incorporate by reference Exchange Act periodic reports? Would a 12-month reporting history be sufficient in this regard? For each of these purposes (*i.e.*, timing of effectiveness and incorporation by reference), should we add an annual report filing requirement to the 24- or 12-month reporting periods? Finally, for each of these purposes, we have proposed that the company be timely in filing its Exchange Act reports for the most recent 12 months. Is this sufficient evidence of providing timely information to the market? Would a longer period, such as 24 months, be more appropriate?

We also solicit comment regarding the reporting history of companies with a public float of less than $75 million. Is 24 months of Exchange Act reporting and the filing of at least two annual reports the proper reporting history to permit companies with that amount of public float to determine the timing of their effectiveness? Would 12 months of Exchange Act reporting and the filing of at least one annual report be sufficient in this regard? Similarly, is 24 months of Exchange Act reporting and the filing of at least two annual reports the proper reporting history to permit these companies to incorporate by reference Exchange Act periodic reports? Would 12 months of Exchange Act reporting and the filing of at least one annual report be sufficient in this regard? For each of these purposes, should we simply require either a 24- or 12-month reporting history, without regard to how many annual reports had been filed by the registrant? Finally, for each of these purposes, we have proposed that the company be timely in filing its Exchange Act reports for the most recent 12 months. Is this sufficient evidence of providing timely information to the market? Would a longer period, such as 24 months, be more appropriate? For purposes of timing of effectiveness, should we require that the Exchange Act annual report incorporated by reference be reviewed fully by Commission staff and satisfactorily amended for any staff comments?

4. Disqualification for Seasoned Form A Companies

As noted, Form A would permit smaller, reporting issuers to incorporate

[170] *See* proposed revisions to Securities Act Rule 468(f)(1)(iv), 17 CFR 230.468(f)(1)(iv).

[171] Because Form A would not permit issuers to incorporate any Exchange Act report if any Commission staff comments on it are unresolved, issuers could only take advantage of this provision if the review of their annual report was completed.

[172] *See* Section XII.B. of this release.

[173] *See* proposed Form A, Item 21 and proposed revisions to Item 601 of Regulation S–K, 17 CFR 229.601.

by reference their Exchange Act reports and to have greater control over their effectiveness time schedule. We do not believe that all issuers that would meet proposed Form A's reporting and other eligibility requirements would necessarily be suited to incorporate by reference their company information or have expedited effectiveness. We believe certain events and circumstances justify disqualification of otherwise eligible issuers from taking advantage of those benefits on Form A. We propose to use the same factors that disqualify otherwise eligible issuers from using Form B.[174] As we do with Form B issuers, we solicit comment on whether we should lengthen the ''look-back'' periods we propose to use to disqualify Form A issuers from designating the effective date of their registration statements or incorporating by reference. If so, should the periods be independent of or match those in Form B?

5. Real Estate Companies

Real estate entities that formerly registered on Form S–11 would now register on Form A, unless they meet the eligibility requirements of another form. Disclosure specifically required by Form S–11 instead has been added to Regulation S–K.[175] Real estate entities that formerly provided such disclosure on Forms S–11 or S–4 would continue to be required to provide such disclosure on Forms A and C, respectively.

These proposed disclosure requirements of Regulation S–K have been drafted in plain English and would codify certain staff practices regarding disclosure by real estate entities. These practices include disclosing:

1. When finite life entities intend to sell their properties;

2. The securities rating assigned by a nationally recognized statistical rating organization (''NRSRO'') to any securities in which the registrant has invested;

3. Any cross default or cross collateralization provisions in mortgages; and

4. Information about subsidiaries, such as operating partnerships.

Additionally, to provide uniformity on how registrants calculate occupancy rates, the Commission is proposing to require real estate entities to disclose occupancy rates as a percentage of rentable square footage or units.[176] Finally, the new disclosure requirements of Regulation S–K would omit disclosure currently required by Item 35 of Form S–11, as it appears no longer applicable to most real estate companies.

We also propose to amend Forms 10 and Form 10–K to codify the staff's practice of requiring real estate entities to disclose:

- Operating and financing activities;[177]
- Real estate and other investment activities;[178] and
- A description of real estate and operating data.[179]

We also are proposing in certain offerings by real estate entities to eliminate the Guide 5 recommendation that a registrant supplementally provide the Commission staff, before use, sales materials it intends to furnish to investors.[180] The Commission staff would no longer pre-review the sales materials in cases where an issuer has the power to designate the effective date of its registration statement or when the Commission staff has notified the issuer that it will not be reviewing its registration statement. The benefits provided by the ability to designate effectiveness would be significantly diminished if the issuer nevertheless had to delay its offering until the Commission staff had pre-reviewed its sales materials. Similarly, there would be little benefit to investors from Commission staff pre-review of sales materials where the staff would not also review the issuer's registration statement. Proposed Rule 425 generally would require issuers and offering participants to file sales materials used in an offering. We request comment as to whether the Guide 5 recommendation to provide the Commission staff with sales materials supplementally should be eliminated for all offerings because sales materials generally would be filed under proposed Rule 425.

C. Applicability of Civil Liability Provisions to Offerings Registered on Proposed Forms A and B

The proposals provide a liability structure that depends on the content of materials, as well as the manner and time in which materials are used. The following discussion describes this liability structure.

1. Form A Offerings

A Form A offering either may involve, or must involve, the following materials used in connection with the offer or sale of securities:

- The Form A registration statement, including the prospectus;
- If the issuer is seasoned, the Exchange Act reports that it incorporates by reference into its registration statement;
- Free-writing materials, but only after the issuer files the Form A registration statement;
- A prospectus contained in a post-effective amendment to the Form A registration statement; and
- Prospectus supplements that the issuer uses after effectiveness of the Form A registration statement for shelf offerings.

The liability that applies to each of these types of materials is as follows.

Section 11 liability would attach to the effective Form A registration statement, including the prospectus in it.[181]

A Form A registrant relying on incorporation by reference would have to incorporate into the registration statement its last annual report filed under Section 13(a), and all Exchange Act reports that it files under Section 13(a) thereafter up to the date of effectiveness. Section 11 liability would attach to all information in those incorporated reports. [182] Section 11 also would attach to any Exchange Act report filed after the effective date that the issuer incorporates by reference through filing a post-effective amendment.[183]

A Form A registrant using free writing materials after it files its registration statement would file those materials in accordance with Rule 425. Section 12(a)(2) liability would attach to all free writing materials the registrant uses, whether or not they are filed under Rule 425 as required.

A Form A registrant could make additions or revisions to the prospectus by filing a post-effective amendment to the registration statement. The

[174] *See* General Instruction II.B. of proposed Form A, 17 CFR 239.4. For a discussion of the nature of and reasons behind the disqualifications, *see* Section V.A.2.g. of this release.

[175] *See* proposed Items 1101—1113 of Regulation S–K, 17 CFR 229.1101—229.1113.

[176] *See* proposed Item 1107 of Regulation S–K, 17 CFR 229.1107.

[177] *See* proposed Item 1105 of Regulation S–K, 17 CFR 229.1105.

[178] See proposed Item 1106 of Regulation S–K, 17 CFR 229.1106.

[179] *See* proposed Item 1107 of Regulation S–K, 17 CFR 229.1107.

[180] *See* proposed revisions to Guide 5, referenced in 17 CFR 229.801(e).

[181] Section 12(a)(2) liability also would attach to any information in the registration statement that is part of a prospectus. Section 12(a)(2) also would attach to any oral communication used to offer or sell the securities.

[182] The filed Exchange Act reports would also be subject to Section 18 liability. *See* Section XI.A.3 of this release for a discussion of Section 18 of the Exchange Act.

[183] A Form A issuer may not incorporate Exchange Act reports filed after the effective date except through a post-effective amendment. Forward incorporation is not available on Form A.

prospectus in a post-effective amendment becomes the prospectus in the registration statement. [184] Accordingly, Section 11 would attach to any prospectus (and any other information) included in a post-effective amendment to Form A.

As proposed, Form A registrants would not be permitted to undertake delayed shelf offerings of securities under Rule 415. Those registrants could, however, undertake other shelf offerings, such as continuous offerings. In those offerings, the registrant could use prospectus supplements to change the prospectus in the registration statement after effectiveness. Because prospectus supplements are not set forth in post-effective amendments, it has been argued that Section 11 liability does not attach to them. It is our view that these supplements are part of that prospectus and Section 11 liability applies to the information in them.

All of the materials described above would be subject not only to the civil liability provisions of the Securities Act, but also to the antifraud provisions of the Securities Act and the Exchange Act. The proposals would have no effect on the applicability of those provisions.[185]

Rule 167 defines any communication made more than 30 days before filing in a Form A-registered offering as not being an offer to sell or offer to buy securities for purposes of Section 5(c) of the Securities Act. Because of this definition, neither Section 11 nor Section 12(a)(2) of the Securities Act would attach to these communications. However, these definitions do not affect the application of the anti-fraud provisions of the Exchange Act or the Securities Act. For example, any communication ''in connection with the purchase or sale'' of a security would be subject to Exchange Act Section 10(b), regardless of Rule 167. Similarly, any ''offer or sale of any security'' would be subject to Securities Act Section 17(a).

2. Form B Offerings

In a Form B-registered offering, the liability provisions would apply to written disclosures as follows:

- Section 11 would apply to all information in the registration statement, including: [186]
- The term sheet,
- Offering information used during the offering period,[187]
- The Exchange Act reports incorporated by reference into the registration statement,
- Material updates to the disclosure in the incorporated Exchange Act reports, and
- All other information included in the registration statement, including exhibits;
- Section 12(a)(2) liability would always apply to ''free-writing'' materials that are used during the offering period, including regularly released forward-looking information;
- Section 12(a)(2) liability may apply to factual business communications during the offering period;
- Section 17(a) liability would apply to any communication that constitutes an offer of a security, regardless of whether that offer was made during the offering period; and
- Exchange Act Section 10(b) liability would apply to any communication in connection with the purchase or sale of a security, regardless of whether that communication was during the offering period.

a. Section 11

Section 11 liability would attach to all information in the Form B registration statement. Offering information that is used during the offering period must be filed as part of the registration statement. Offering information used in the period beginning 15 days before the first offer and ending with the filing of the registration statement must be filed with that registration statement. Because the offering period runs through the completion of the offering, all offering information—including pricing information—used after filing of the registration statement would have to be filed as an amendment to the Form B registration statement.

A Form B registrant must incorporate by reference into the registration statement its last annual report filed under Section 13(a), and all Exchange Act reports that it files thereafter up to the date of effectiveness of the registration statement. A Form B registrant also must incorporate by reference into the registration statement all Exchange Act reports it files between effectiveness of the Form B registration statement and the completion of the offering.

A Form B registrant must inform potential investors of material updates to its Exchange Act reports. The registrant would accomplish this through the use of offering information that is filed as part of the effective Form B registration statement.

b. Section 12(a)(2)

Section 12(a)(2) liability would always apply to free writing materials that are used during the offering period. Among other communications, regularly released forward-looking information would be included in this category of information.[188]

Free writing materials used during the offering period would have to be filed in accordance with Rule 425. Free writing materials used in the period beginning 15 days before the first offer and ending with the filing of the registration statement must be filed under Rule 425. Because the offering period runs through the completion of the offering, free writing materials used after filing of the registration statement also must be filed under Rule 425. Section 12(a)(2) liability would attach to all free writing materials the registrant uses, whether or not they are filed under Rule 425 as required.

While factual business communications are not ''free writing'' materials,[189] Section 12(a)(2) may still apply to those communications during the offering period if they are made to offer securities.

c. Section 17(a) and Exchange Act Section 10(b)

Section 17(a) liability would apply to any communication in the offer or sale of a security, regardless of whether that communication was made during the offering period. Exchange Act Section 10(b) liability would apply to any communication in connection with the purchase or sale of a security, regardless

[184] *See* Securities Act Section 11(a), 15 U.S.C. § 77k(a), and Item 512(a)(2) of Regulation S–K, 17 CFR 229.512(a)(2).

[185] *See* Exchange Act Section 10(b), 15 U.S.C. § 78j(b), Exchange Act Rule 10b–5, 17 CFR 240.10b–5 and Securities Act Section 17(a), 15 U.S.C. § 77q(a).

[186] Section 12(a)(2) liability also would attach to any information in the registration statement that is part of a prospectus and to any oral communication used to offer or sell the securities.

[187] The offering period would begin 15 days before the first offer is made and end at the completion of the offering.

[188] Proposed Securities Act Rule 168, 17 CFR 230.168, would define ''regularly released forward-looking information'' and exempt it from the prohibition on pre-filing offers in Section 5(c). This exemption would be more significant for Form A-registered offerings, because all pre-filing offers in connection with offerings registered on Form B would be exempt from Section 5(c) under proposed Securities Act Rule 166, 17 CFR 230.166. Regularly released forward-looking information must be filed under proposed Securities Act Rule 425, 17 CFR 230.425.

[189] Proposed Securities Act Rule 169, 17 CFR 230.169, would define ''factual business communications'' and exempt them from the prohibition on pre-filing offers in Section 5(c). This exemption would be more significant for Form A-registered offerings, because all pre-filing offers in connection with offerings registered on Form B are exempt from Section 5(c) under proposed Securities Act Rule 166, 17 CFR 230.166. Proposed Securities Act Rule 425, 17 CFR 230.425, would state that registrants need not file ''factual business communications,'' regardless of when they are made.

of whether that communication was during the offering period.

Rule 167 defines any communication made more than 30 days before filing in a Form A-registered offering as not being an offer to sell or an offer to buy the securities being offered under the registration statement. Rule 167 has a similar treatment for communications made before the offering period in a Form B-registered offering. Because of this rule, neither Section 11 nor Section 12(a)(2) would attach to these communications. Rule 167 does not, however, affect the application of Section 17(a) or Exchange Act Section 10(b) to these communications.

D. Form C Offerings

1. Use of Form C

Under the proposed system, business combinations and exchange offers would be registered exclusively on proposed Form C.[190] Proposed Form C would permit all offerings that were available on Forms S–4 and F–4. One form would be available for both domestic and foreign issuers.[191] A registrant must use Form C, or SB–3 if a small business issuer, to register an offering under the Securities Act that is:

1. A business combination transaction of the type specified in Rule 145(a);

2. A merger in which the applicable law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired;

3. An exchange offer for securities of the issuer or another entity;

4. A public reoffering or resale of any securities acquired pursuant to this registration statement; or

5. More than one of the kinds of transactions listed in paragraphs 1. through 4. registered on one registration statement.

[190] Small business issuers, however, would register business combinations and exchange offers on proposed Form SB–3. For an explanation of Form SB–3, *see* Section V.E.4. of this release. A small business issuer's disclosure requirements would not differ substantially from Form S–4 today. Form C would thus provide no additional benefits to small business issuers than Form SB–3 and, for tracking purposes, small business issuers would be barred from using Form C. A small business issuer may, of course, provide more information on Form SB–3 than required by the small business disclosure regime.

[191] U.S. registrants must provide all information required by the Items of the Form except where the Item expressly identifies the requirement as applying only to foreign registrants. Similarly, foreign registrants must provide all information required by the Items of this Form except where the Item expressly identifies the requirement as applying only to U.S. registrants.

2. Relationship with Exchange Act Rules

Like Forms S–4 and F–4, the proposed Form C prospectus may serve as the proxy or information statement used in connection with the proposed transaction. Form C would be deemed to meet the informational and filing requirements of the proxy or information statement rules under Section 14 of the Exchange Act and Regulations 14A and 14C.

In a companion release, the Commission is also proposing changes to the Exchange Act and Williams Act regulatory scheme applicable to extraordinary transactions, including the rules under Sections 13(e), 14(a), 14(c), 14(d) and 14(e).[192] For a more complete discussion of the rationale behind the extraordinary transactions proposals, you also should read that Release.

3. Timing of Form C

As proposed, a Form C registration statement would be subject to Commission staff review and would become effective in the same manner that Forms S–4 and F–4 become effective today. Although some Form C registration statements would be filed by large seasoned issuers acquiring large seasoned companies, we have not proposed automatic effectiveness for Form C under the theory that the market is not informed at the time of filing about the pro forma effects of the transaction. We solicit comment, however, regarding whether all registration statements filed on Form C (except Rule 13e–3 and roll-up transactions) should become effective automatically upon filing or on an expedited schedule (*e.g.*, 20 days after filing). Should Form C registration statements filed by Form B-eligible companies become effective automatically upon filing, similar to the Form B registration statement? Should Form C registration statements become effective automatically or on an expedited schedule if the company to be acquired would meet the Form B public float/ADTV test? What if both the registrant and the company being acquired would meet that test? Should Form A registrants eligible to determine the timing of effectiveness of a Form A registration statement also be able to control timing of their Form C registration statements? Are there any categories of offerings on Form C that should be granted automatic or expedited effectiveness, such as exchange offers?

[192] *See* Exchange Act Release No. 40633 (Nov. 3, 1998).

4. Structure of Form C

In keeping with other Securities Act registration forms, there are two parts to Form C: information included in the prospectus (Part I) and information not included in the prospectus (Part II).

a. Part I—Information Required in the Prospectus

Like current Forms S–4 and F–4, Part I is divided into four sections: information about the transaction, information about the registrant, information about the company being acquired, and voting and management information.

i. Information About the Transaction

The first section requires the disclosure of information about the proposed transaction. In addition to other information, this section requires a prospectus summary, a summary of the material features of the proposed transaction and a presentation of pro forma financial information.[193] This section is designed to elicit material information about a transaction that should be presented in a prospectus subject to Securities Act liabilities which is delivered to investors. We solicit comment on whether Form B-eligible registrants should be required to comply with the mandated disclosure requirements for transactional information as described in this section or whether these registrants should be permitted somewhat more freedom to develop their own transactional disclosure, much as they would on Form B.

ii. Information About the Registrant

The second section mandates the disclosure regarding the information required about the registrant and prescribes different levels of information required to be presented in the prospectus incorporated by reference, depending on which Securities Act form the registrant could use in making a primary offering of its securities. Current Forms S–4 and F–4 apply different levels of registrant disclosure based on the registrant's

[193] Other information required by this section include: a description of material contacts between the registrant and the company being acquired; information required for reofferings by persons deemed to be underwriters; disclosure regarding the interests of named experts and counsel; and disclosure of the Commission's position on indemnification for Securities Act liabilities.

Real estate entities would be required to provide additional information specific to that industry. That information includes disclosure regarding: risk factors; the organization; tax treatment; certain relationships and related transactions; selection, management and custody of investments; conflict of interest policy and limitations of liability.

eligibility for Forms S–1, S–2, S–3, F–1, F–2 and F–3. Proposed Form C continues this approach and reflects the proposed re-tiering of the registration forms.

(A) Form B Eligible Registrants

If the registrant meets the registrant eligibility requirements of General Instruction I.B. and the public float/ADTV test of Form B, it may elect to satisfy company disclosure requirements through incorporation by reference. The registrant would provide substantially the same information that a Form S–3 or F–3 eligible issuer currently provides on Forms S–4 and F–4:

1. A description of any material change in the affairs of the registrant that is not already described in a filing with the Commission which is incorporated by reference into the Form C;

2. Incorporation by reference of its latest annual report filed in accordance with Section 13(a) or 15(d) of the Exchange Act and any other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year; and

3. Under certain circumstances, incorporation by reference of the description of capital stock contained in an Exchange Act registration statement.[194]

(B) Seasoned Form A Registrants

If the registrant meets the eligibility requirements for incorporation by reference in Form A, it may elect to comply with the incorporation by reference option in Form C.[195] A registrant choosing this option must incorporate by reference into the prospectus and deliver with the prospectus its latest annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act and either deliver or include in the prospectus the information in Part I of Form 10–Q or 10–QSB for the most recent fiscal quarter. The registrant must deliver the information required by this option with the first prospectus it sends. As with Form A, it need not deliver that information with any subsequent prospectus it sends to the same person.

The disclosure required from seasoned Form A registrants would also include a description of any material change in the registrant's affairs that is not already described in a filing with the Commission and incorporated by reference into Form C.

Unlike current Form S–4, Form C would not permit delivery of a company's glossy annual or glossy quarterly report to security holders in lieu of delivery of a Form 10–K or Form 10–Q report. Just as we are soliciting comment on whether to provide the option to incorporate and deliver a company's glossy annual and quarterly report in lieu of a company's Form 10–K and Form 10–Q for ''seasoned'' companies filing on Form A, we solicit comment on whether we should provide this option for seasoned Form A companies filing on Form C.

(C) All Other Registrants

All registrants ineligible for Form C's two incorporation by reference options would disclose in the registration statement the same information as current Forms S–4 and F–4 require of Forms S–1 and F–1 registrants. In addition, real estate entities would disclose the information required by the following proposed items of Regulation S–K: Item 1105, Operating and financing activities; Item 1106, Real estate and other investment activities; and Item 1107, Description of real estate and operating data.

iii. Information About the Company Being Acquired

Similar to current Forms S–4 and F–4, proposed Form C would require presentation of disclosure about the company being acquired in the registration statement. Presentation of disclosure could be made under the same options that would be available to the registrant. Thus, a company to be acquired would refer to the ''Information About the Registrant'' section to determine whether and how it could incorporate by reference.

Forms S–4 and F–4 give non-reporting companies to be acquired a choice about the amount of disclosure that they provide. They may either provide the full company information required by reporting companies[196] or provide abbreviated company information which only non-reporting companies are permitted to provide.[197] Form C proposes different disclosure requirements than on current Forms S–4 and F–4. Form C would require a non-reporting company to provide the same non-financial disclosure as a reporting company[198] but would not require the company to provide the full financial statement disclosure that a reporting company would have to provide.[199] We solicit comment on what non-financial disclosure should be required by non-reporting companies. Would the requirement to provide the same information as reporting companies be unduly burdensome on these companies? If so, what information should be required by non-reporting companies?

iv. Voting and Management Information

Form C would require issuers to present much the same information in the Form C prospectus as they would be required to present in Forms S–4 and F–4 today. If either the registrant or the company to be acquired is soliciting proxies, consents or authorizations, Form C would require information about: the meeting, the vote required for approval, revocability of proxy, dissenters' rights, persons making the solicitation, persons with substantial interest in the matter and voting securities of principal holders.

Whether or not proxies, consents or authorizations are being solicited, and in the case of exchange offers, Form C would require information concerning voting securities and the principal holders of such shares with respect to all directors and executive officers of both entities. Form C would require information about directors and executive officers of the surviving or acquiring company, certain relationships and related transactions and executive compensation. If eligible to incorporate by reference, the registrant or the company to be acquired could incorporate this information into the prospectus in lieu of presenting the information in the prospectus.

[194] The description of capital stock must be incorporated only if capital stock is being registered and securities of the same class are registered under Section 12 of the Exchange Act, and such stock is either listed for trading or admitted to unlisted trading privileges on a national securities exchange or bid and offer quotations for such stock are reported in an automated quotations system operated by a national securities association.

[195] See Sections V.B.1.a.iii.(A) and V.B.4. of this release regarding Form A issuers eligible to incorporate by reference. Section 11 would apply to all documents incorporated by reference in Form C.

[196] *See* Item 17(a) of Form S–4 and Item 17(a) of Form F–4.

[197] *See* Item 17(b) of Form S–4 and Item 17(b) of Form F–4.

[198] Form S–4 does not require non-reporting companies to be acquired to provide the information required by Item 102 of Regulation S–K (description of property), Item 103 of Regulation S–K (legal proceedings) or Item 304(a) of Regulation S–K (changes in and disagreements with accountants on accounting and financial disclosure). Form C would require both reporting and non-reporting companies to provide this information. Similarly, Form F–4 does not require non-reporting companies to be acquired to provide the information required by Item 2 of Form 20–F (description of property), Item 3 of Form 20–F (legal proceedings), Item 6 of Form 20–F (exchange controls) and Item 7 of Form 20–F (taxation). Form C would require both reporting and non-reporting companies to provide this information.

[199] *See* Items 18(c) and 21(b) of proposed Form C, 17 CFR 239.6. For a more complete discussion of this proposal, *see* Exchange Act Release No. 40633 (Nov. 3, 1998).

b. Part II—Information Not Required in the Prospectus

Just as in Form S–4 and F–4, Part II of proposed Form C would require, in the registration statement but not in the prospectus that is delivered to shareholders, information about indemnification of directors and officers, exhibits and undertakings.

5. General Instruction G. of Form S–4

Proposed Form C would not include any instruction to parallel General Instruction G. of Form S–4 regarding the formation of bank or savings and loan holding companies. This General Instruction is part of Form S–4, but is no longer needed in the business combination form because Congress has amended the Securities Act.[200] Section 3(a)(12) exempts from registration the vast majority of those transactions eligible for General Instruction G.[201] In those limited situations in which an offering regarding the formation of a bank or saving and loan holding company falls outside of the Section 3(a)(12) exemption, the registrant may still register the transaction on any form appropriate to the registrant and transaction. In addition, Staff Accounting Bulletin 50, which permits abbreviated financial statements, would still be available in this transaction.

6. Small Business—Business Combinations

Small business issuers would not be permitted to register an offering involving a business combination on Form C. Instead, we are proposing a new form, Form SB–3, which is a small business combination form.[202] Due to the necessary different requirements of larger domestic and foreign issuers and those issuers in the small business reporting regime, the use of two forms is necessary for business combinations to provide clarity for the registrant as to the requirements of the particular offering.

In the event that a registrant filing on Form C is registering an acquisition of a company that is reporting pursuant to the small business issuer regime, the small business issuer need only provide the information in the registration statement that it would be required to provide if the offering was registered on Form SB–3.

E. Small Business Issuers

1. Small Business Issuers' System

In 1992 and 1993, we adopted special registration forms under the Securities Act for smaller issuers: Forms SB–1 and SB–2.[203] We also adopted special forms for these issuers to use in registering and reporting under the Exchange Act.[204] The disclosure requirements of those forms are less extensive than the ones that apply to larger issuers.

The small business issuer registration and reporting systems were designed to facilitate capital-raising by small businesses and reduce their costs in complying with the federal securities laws. A small business issuer generally is any issuer with less than $25 million in revenues and a public float of less than $25 million.[205]

2. Re-defining ''Small Business Issuer''

Since the Commission adopted the ''small business issuer'' definition in 1992, economic and market changes have occurred. While annual inflation rates have remained low, the nation's economy has experienced significant growth. Revenue levels of most public companies increased substantially, and their market capitalizations rose even more dramatically. This growth in revenues and market capitalization levels has effectively reduced the percentage and number of public companies qualifying as small business issuers.[206] Many companies that would have met the definition of small business issuer in 1992 now do not qualify as small business issuers even though they remain relatively small. These companies must satisfy the more extensive disclosure requirements of Regulation S–K and S–X in preparing their registration statements and periodic reports.

We have had six years of successful experience with the small business issuer disclosure system. Our experience indicates that small business issuers have incurred less cost, time and burden in preparing disclosure documents based on the streamlined disclosure requirements. The system has improved their access to capital and increased their competitiveness against larger companies without reducing investor protection. For these reasons, we are proposing to redefine ''small business issuer'' by revising the criteria in the definitions.[207]

We are proposing to raise the revenues test to $50 million and eliminate the public float test. As a result, 1100 more public companies would meet that revenues test than satisfy the current $25 million revenues test today.[208] The $50 million revenues test also would reinstate the percentage of public companies that met the revenues test in 1992.[209] While the percentages remain constant, 500 more public companies would meet the $50 million revenues test than met the $25 million revenues test in 1992.

Our proposal would aid non-reporting companies with revenues between $25 and $50 million that plan to register initial public offerings under the Securities Act or propose to register a class of securities under the Exchange Act. Also, reporting companies that are small business issuers would be able to remain in the small business disclosure system until their revenues grow to $50 million.[210]

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[200] Riegle Community Development and Regulatory Improvement Act, Pub. L. No. 103–325, Title III, § 320, 108 Stat. 2225 (1994) amending § 3(a) of the Securities Act (15 U.S.C. § 77c(a)).

[201] Transactions in which the rights and interests of security holders in the holding company are not ''substantially the same'' as those in the bank or savings and loan association before the transaction are not exempted from registration by Section 3(a)(12) but would have satisfied General Instruction G. of Form S–4.

[202] *See* Section V.E.4. of this release for a discussion of proposed Form SB–3.

[203] Securities Act Release No. 6949 (July 30, 1992) [57 FR 36442] (adopting Form SB–2) and Securities Act Release No. 6996 (Apr. 28, 1993) [58 FR 26509] (adopting Form SB–1).

[204] These Exchange Act forms are: Form 10–SB (the form used to register a class of securities under the Exchange Act); Form 10–KSB (the annual report form); and Form 10–QSB (the quarterly report form). We also revised the requirements for annual reports to security holders and proxy and information statements of small business issuers. *See* 17 CFR 240.14a–3(b), Note to Small Business Issuers; 17 CFR 240.14c–3(a)(2), Note to Small Business Issuers; and 17 CFR 240.14a–101, Note G—Special Note for Small Business Issuers.

[205] 17 CFR 230.405. Other conditions also must be met. The issuer must be either a U.S. or Canadian issuer and must not be an investment company under the Investment Company Act of 1940. In addition, if the issuer is a majority-owned subsidiary of another company, the parent also must be a small business issuer.

[206] In 1992, we indicated that 42% of public companies had revenues of less than $25 million and 63% had market capitalizations under $25 million. Securities Act Release No. 6924 (Mar. 20, 1992) [57 FR 9768]. Today, these percentages have fallen to 31% and 24%, respectively. (This data is derived from a Compustat database for 9,698 public reporting companies as of June 24, 1998.) While about 3,600 public companies met the $25 million revenues test in 1992, only about 3,000 public companies meet that test today. Our analysis necessarily excludes private companies as information for them is not generally available.

[207] *See* proposed revisions to Securities Act Rule 405, 17 CFR 230.405; Exchange Act Rule 12b–2, 17 CFR 240.12b–2; and Item 10 of Regulation S–B, 17 CFR 228.10.

[208] Currently, almost 4,100 public companies have revenues below $50 million.

[209] Approximately 42% of public companies met the $25 million revenues test in 1992. The same percentage would meet the $50 million test today.

[210] Currently, reporting companies that are not in the small business disclosure system are able to use that system only if they meet the revenues and public float tests for two consecutive years. *See* 17 CFR 228.10(a)(2)(iv). We would alter that treatment for purposes of the transition from the $25 million thresholds to the $50 million threshold. Under our proposals, we would allow a reporting company to switch to the small business issuer disclosure system immediately in the first year after the proposals become effective if it had revenues of less

We would eliminate the public float test from the small business issuer definition. The small business system is designed to simplify and reduce the cost of raising capital for start-up, developing and small businesses. We believe that the size of a company's revenues may be a more indicative measure of whether a company needs the benefits of the small business system than a combined revenues and public float test. While the public float test for small businesses may be correlated with the size of a company's operations, it can, at times, penalize those small businesses that the market believes to have promising prospects. The elimination of the public float test also would simplify the regulatory scheme. Accordingly, we propose that a company that has less than $50 million in revenues would qualify as a small business issuer regardless of the size of its public float.

We request your comments on the proposed revised definition of small business issuer.[211] Should the proposed revenues level be higher (such as $60 or $70 million) or lower (such as $45 or $40 million)? Why? Should the public float test be retained? If retained, should it also be set at $50 million or should it be retained at $25 million or increased to $60 or 70 million? Should another measure, such as assets level or market capitalization, be used to define small business issuers? If another measure is used, what dollar level would be appropriate and why?

We are not proposing to change the time period over which revenues would be considered. Under the current definition, a non-reporting company would look at the amount of its revenues during its last fiscal year (and public float as of a date within 60 days before filing its registration statement). A reporting company would look at its revenues (and public float) as the end of its last two consecutive fiscal years. We would continue to apply this approach. Thus, a private company filing either an initial public offering under the Securities Act or registering a class of securities under the Exchange Act would look to its revenues during the its last fiscal year. A public reporting company that is in the small business disclosure system would be required to leave the system if it had revenues over $50 million in each of its last two consecutive fiscal years. A public reporting company which is not in the small business disclosure system would have to earn less than $50 million revenues in each of its last two consecutive fiscal years before it would be permitted to switch to the small business system. We solicit your comments as to whether a revenues test based on a longer time period, such as three years, or an average annual revenues test based on a three-year period, would be better.

3. Proposed Changes to Form SB–2

We propose changes to Form SB–2 to permit seasoned small business issuers to incorporate their previously filed Exchange Act reports by reference.[212] In most cases, the Exchange Act disclosure would satisfy the company disclosure requirements of Form SB–2. By delivering previously prepared documents, the small business issuer would avoid the expense, time and effort required in recreating this disclosure. Those issuers would continue to include the same information about the offering, such as use of proceeds and plan of distribution disclosure, in the prospectus.[213] We believe there is no compelling reason to preclude the small business issuer from incorporating by reference to the same extent as a Form A issuer. If we extend this option to small business issuers, they will not need to leave the less extensive small business disclosure system in order to enjoy the benefits of incorporation by reference.[214]

a. Conditions for Using Incorporation by Reference

The conditions for using incorporation by reference in Form SB–2 would be the same as those in Form A. By using the same criteria, we would treat equally all seasoned Exchange Act reporting companies that are not using Form B, regardless of their size. To use incorporation by reference, the small business issuer would have to have been subject to the Exchange Act reporting requirements for at least a twenty-four-month period and have filed all required reports on a timely basis during the twelve months just before filing the Form SB–2.[215] Likewise, the issuer also must have filed at least two Exchange Act annual reports.

Small business issuers would be subject to the same disqualifications applicable to Form A and Form B issuers relating to the issuer's financial condition, past violation of laws or status as a blank check or penny stock company.[216] In addition, a small business issuer that used the less extensive Regulation A narrative disclosure requirements in its latest annual report on Form 10–KSB would not be allowed to incorporate its Exchange Act reports by reference. We solicit comment on whether we should extend any of Form SB–2's disqualification provisions' ''look-back'' periods.[217]

Similarly, we are not proposing to permit transitional small business issuers registering on Form SB–1 to use incorporation by reference.[218] We believe it is important that issuers experience at least one cycle of reporting under a comprehensive (as opposed to a significantly streamlined) disclosure regime before graduating to a short-form approach.

We solicit your views regarding whether incorporation by reference should be available to small business issuers. Should their smaller size preclude them from using incorporation by reference? Should we impose additional conditions on small business issuers regardless of what form they use given their smaller size? Should we shorten the reporting history requirement (*e.g.*, to twelve months or twelve months and the filing of one annual report)? Does it take a longer period for those issuers to adjust to the reporting requirements and produce the expected Exchange Act disclosure? Should there be additional disqualifications? For example, should a Form SB–2 issuer not be able to incorporate by reference if a material retroactive restatement of its financial statements or a material disposition of assets is not reflected in its latest

than $50 million for its last two fiscal years. That transition would be allowed even if the issuer's revenues for those years exceeded the current $25 million threshold or the issuer exceeded the current public float test in those years.

[211] *See* proposed Item 10(a)(1) of Regulation S–B, 17 CFR 228.10(a)(1).

[212] Section 11 would apply to all documents incorporated by reference in Form SB–2.

[213] The offering disclosure requirements are contained in proposed Form SB–2, Items 1–10 and 14.

[214] Form S–2 currently permits incorporation by reference for small business issuers that meet certain requirements. *See* General Instruction II.C. of Form S–2. The proposed changes to Form SB–2 would preserve this option for these issuers. While small business issuers would be eligible to use Form A, use of that Form would involve compliance with Regulation S–K rather than reliance on the small business issuer disclosure system.

[215] *See* proposed Form SB–2, General Instruction D.

[216] *See* Sections V.A.2.g., V.B.1.a.iii.(A) and V.B.4. of this release which discuss the disqualification provisions for Form A and Form B issuers. The disqualification provisions for those Forms are the same as we propose under Form SB–2.

[217] *See* General Instruction E.2. of proposed Form SB–2, 17 CFR 239.10.

[218] Form SB–1 is available for certain small business issuers that register no more than $10 million of securities during any continuous twelve-month period. Form SB–1 permits these issuers to provide the non-financial statement disclosure required under Regulation A, 17 CFR 230.251–263. These narrative disclosure requirements are less extensive than those of Regulation S–B, which governs the disclosure in Form SB–2.

Exchange Act annual report, even if that information is set forth in the prospectus?

b. How to Incorporate by Reference

Under the proposals, a small business issuer choosing to incorporate by reference must incorporate its latest Exchange Act annual report and all Exchange Act reports filed after the end of the fiscal year covered by that form.[219] It would not be permitted to incorporate Exchange Act forms filed after the effective date of the registration statement.

The issuer must list in the prospectus that is part of the effective registration statement all of the reports that are incorporated by reference.[220] As part of the effective registration statement, all incorporated portions of these reports would be subject to Section 11. If an issuer wanted to incorporate an Exchange Act report filed after effectiveness of the Form SB–2, it would have to file a post-effective amendment to incorporate it into that prospectus.

A small business issuer would have to state in the SB–2 prospectus that it will provide to investors any report that it is incorporating by reference but not providing with the prospectus.[221] It also must identify the reports that it files with or submits to the Commission and describe how investors may obtain those reports.[222]

Small business issuers would have to update the company information in the prospectus if material changes occur after the end of the fiscal year covered by the annual report and are not reported in the Form 10–QSB delivered with the prospectus.[223] In addition, the small business issuer would have to include financial statements of businesses acquired or to be acquired or real estate operations acquired or to be acquired, and pro forma financial information, if that information is required by Regulation S–B[224] and was not in the latest annual report.[225]

Comment is requested on the manner of incorporation of Exchange Act reports. Should issuers be permitted to incorporate reports filed after effectiveness of the Form SB–2 provided that they are deemed incorporated into the prospectus that is part of the effective registration statement?

c. Delivery of Exchange Act Reports

A small business issuer would have to provide copies of its recent Exchange Act reports with the delivered prospectus when it incorporates by reference in the Form SB–2. It must deliver to investors a copy of its latest Exchange Act annual report and state in the prospectus that it is accompanied by that annual report.[226] It also would have to deliver its Form 10–QSB for its most recent fiscal quarter[227] or include that information in the prospectus. Those that choose to deliver the Form 10–QSB would have to state in the prospectus that it is accompanied by that Form.

The issuer would have to deliver the Exchange Act annual report and the Form 10–QSB with the prospectus delivered to investors under proposed Securities Act Rule 172. If the issuer delivers another prospectus to the same investor later on in the offering, it would not have to re-deliver the Exchange Act reports.[228]

Our proposals require delivery of the small business issuer's full Exchange Act annual report rather than an abbreviated glossy annual report to security holders. We believe that most small business issuers are not generally followed by the investment community and the information that they report is not widely disseminated. Because a typical annual report to security holders provides less information to investors than an annual report, we believe the latter would aid investors more.[229] For example, an annual report to security holders does not include complete information about management, executive compensation, security ownership and transactions with related parties. We would require that the issuer deliver this disclosure, which is included in the Exchange Act annual report, with the prospectus.[230]

We solicit comment on these delivery requirements. Should we expand the delivery requirements to require delivery not just of the annual report and most recent Form 10–QSB but also any other Form 10–QSB or Form 8–K filed since the end of the fiscal year covered by the annual report? Should we narrow the delivery requirements? For example, should we allow small business issuers to deliver their annual reports to security holders instead of their Exchange Act annual report disclosure?

d. Other Changes to the Forms

In addition to amending Form SB–2 to permit incorporation by reference, we are rearranging that Form in order to accommodate the new provisions. Also, we are proposing correcting and technical changes to Form SB–2.[231]

4. Form SB–3

a. Use and Timing of Form SB–3

Small business issuers would register business combinations and exchange offers on proposed Form SB–3, rather than Form C. Under the present system, small business issuers must use Form S–4 for these transactions. A General Instruction to the Form lists the Items of Form S–4 with which small business filers are not required to comply. It also lists those Items of other forms that the

[219] *See* proposed Form SB–2, Items 11 and 12. A small business issuer that was in the small business disclosure system during its last fiscal year would incorporate its annual report on Form 10–KSB. A reporting company that entered the small business disclosure system after the close of its latest fiscal year would be allowed to incorporate its annual report on Form 10–K or 20–F for its latest fiscal year.

Small business issuers, like larger registrants, have the option of satisfying certain Exchange Act annual report requirements by incorporating portions of their glossy annual reports to security holders under Rule 14a–3 or 14c–3, 17 CFR 240.14a–3 or 240.14c–3, or definitive proxy or information statements filed under Regulations 14A or 14C. *See,* for example, Form 10–KSB, General Instruction E. If a registrant's Exchange Act annual report incorporates from those documents, the incorporated portions also will become part of the Form SB–2 through incorporation of the Exchange Act annual report.

[220] *See* proposed Form SB–2, Item 12(a).

[221] *See* proposed Form SB–2, Item 12(b). The issuer would have to:

(i) Disclose that the information will be provided without cost upon oral or written request; and

(ii) Name the contact person who should receive the request.

[222] *See* proposed Form SB–2, Item 12(c).

[223] *See* proposed Form SB–2, Item 11(e).

[224] 17 CFR 228.310(c)–(e). Item 310(c) requires the financial statements of certain businesses acquired or to be acquired. If those financial statements are required, pro forma financial information also must be provided under Item 310(d). Item 310(e) requires financial information about certain real estate operations acquired or to be acquired.

[225] *See* proposed Form SB–2, Item 11(d).

[226] *See* proposed Form SB–2, Item 11(a). An issuer that incorporates sections of its glossy annual report to security holders or definitive proxy or information statement into its Form 10–KSB also would have to deliver those portions together with the prospectus.

[227] *See* proposed Form SB–2, Item 11(c). If, however, the report for the most recent fiscal quarter is not due before the effective date of the Form SB–2, the issuer would deliver the quarterly report for the fiscal quarter immediately before that one. It could also elect to deliver the later Form 10–QSB even though it is not yet due to be filed under Exchange Act rules.

[228] *See* proposed revisions to Form SB–2, Note to Item 12.

[229] The annual report to security holders of small business issuers must contain the information required by Rule 14a–3(b), 17 CFR 240.14a–3(b). This includes financial statements, changes in and disagreements with accountants, management's discussion and analysis or a plan of operations, a brief description of business, basic management information and market prices for the issuer's common equity and related information. 17 CFR 240.14a–3(b) and 17 CFR 240.14c–3(b).

[230] For similar reasons, we do not propose that small business issuers deliver a quarterly report to security holders instead of the most recently filed Form 10–QSB.

[231] General Instruction A.3. would be revised because it repeats General Instruction A.2. General Instruction B.1. would be amended to remove the reference to Form SR, which was eliminated in September 1997. *See* Securities Act Release No. 7431 (July 18, 1997).

registrant must comply with in lieu of the Form S–4 Items. We are proposing a separate form for small business issuers to simplify and streamline their disclosure requirements when they register a business combination or exchange offer transaction.

Only registrants that are small business issuers under Rule 405 would be allowed to use proposed Form SB–3. Form SB–3 would be available for the same types of transactions as proposed Form C and current Form S–4.[232] Form SB–3 may serve as the proxy or information statement used in the proposed transaction, like Form C. A Form SB–3 would be subject to Commission staff review and would become effective in the same manner as Form S–4 today.

b. Structure of Form SB–3

In keeping with other Securities Act registration forms, there are two parts to Form SB–3: information included in the prospectus (Part I) and information not included in the prospectus (Part II).

i. Part I—Information Required in the Prospectus

The Part I information of Form SB–3 would be the same as the Part I information required by Form C. It would consist of four sections: information about the transaction, information about the registrant, information about the company being acquired, and voting and management information.

(A) Information About the Transaction

The registrant would have to provide the same information about the transaction as a registrant on Form C would.

(B) Information About the Registrant

This section details the disclosure requirements that apply to the registrant. It includes three different disclosure formats, based upon the level of disclosure that the small business issuer would have to provide in a primary offering. We are proposing this approach with the larger issuers on Form C as well.

(1) Transitional Small Business Issuers

Certain small business issuers provide non-financial statement disclosure in their Exchange Act reports based on Form 1–A.[233] Those disclosure requirements are less detailed than the Regulation S–B requirements, which apply to all other small business issuers. Form S–4 now permits these registrants to provide the same non-financial statement disclosures as they would on Form 1–A, so long as the registrants provided the information required by Form 1–A in their most recent Form 10–KSB. Proposed Form SB–3 would preserve this option. This alternative would be available only if the registrant would be eligible to use Form SB–1. Form SB–3 requires the registrant to supplement the Form 1–A non-financial information with disclosure required by certain items of Regulation S–B. Also, the registrant would have to provide the financial statements called for by Item 310 of Regulation S–B.

(2) Seasoned Small Business Issuers

A registrant that would be able to incorporate by reference from its Exchange Act reports under the proposed changes to Form SB–2 also would be able to incorporate by reference its Exchange Act reports under proposed Form SB–3. Just like seasoned Form A issuers on Form C, if the registrant chooses this option, it must incorporate by reference into the prospectus, and deliver with the prospectus, its latest Exchange Act annual and quarterly reports. Like proposed Form C, Form SB–3 would not permit delivery of a company's glossy annual report to security holders or a quarterly report to security holders.

(3) All Other Small Business Issuers

Registrants that are not transitional small business issuers or seasoned small business issuers would have to provide the same registrant information they are required to by Form S–4 today. A transitional small business issuer or a seasoned small business issuer also may elect to comply with this disclosure format.

(C) Information About the Company Being Acquired

Proposed Form SB–3 would require the same information required by current Form S–4 and that would be required by proposed Form C. If the company being acquired is a small business issuer, information for that company would be provided under the same three options available to the registrant on Form SB–3. If the company being acquired is not a small business issuer, information for that company would be the same as if it were the registrant on Form C.

(D) Voting and Management Information

This section of proposed Form SB–3 would mandate disclosure the same as that required by Form S–4 and proposed Form C. If the registrant or company being acquired is eligible to incorporate by reference, this information also may be incorporated.

ii. Part II—Information Not Required in the Prospectus

Proposed Form SB–3 would require information about indemnification of directors and officers, exhibits and undertakings to be provided in Part II of the registration statement, as required by Form S–4 and proposed Form C.

C. Request for Comments

We request your comments on proposed Form SB–3. Do you believe that a separate form for small business issuers registering a business combination or exchange offer is necessary? Would it be better to include small business issuers on proposed Form C? We propose to allow a small business issuer's acquisition of a company that is not a small business issuer on Form SB–3. Is this appropriate or should those transactions be filed on Form C?

5. Small Business Issuers that Become Reporting Companies

Another way in which we would ease capital formation for small business issuers is to solve a dilemma that arises at times when they seek to register an offering for the first time. Generally, small business issuers have made exempt offerings of securities before they first register an offering. Sometimes those offerings are made under Rule 504 of Regulation D under the Securities Act.[234] Rule 504 states that an issuer subject to the reporting requirements of Section 13 or 15(d) may not rely on the Rule.

That prohibition on reliance by reporting companies has raised registration concerns for companies that issue convertible securities or warrants in compliance with Rule 504 and afterwards become reporting companies.[235] If their convertible securities or warrants remain

[232] *See* Section V.D.1. of this release for a discussion of the transactions required to be registered on Form C.

[233] Non-reporting companies use Form 1–A to qualify securities offered under Regulation A, an exemption from registration under Section 3(b) of the Securities Act.

[234] 17 CFR 230.504. That Rule provides an exemption from registration for securities offerings not exceeding $1,000,000 within a 12-month period.

[235] An issuer may become an Exchange Act reporting company in a number of ways. Usually, companies become subject to the reporting requirements either because they register an offering of securities under the Securities Act, they register a class of securities under the Exchange Act before listing or quotation, or they exceed the number of holders and assets tests in Exchange Act Section 12(g).

outstanding at the time they become reporting companies, the ongoing offer and sale of the underlying securities would no longer be covered by Rule 504. Sometimes a reporting issuer can rely on another exemption with respect to the continuing offer and the sale of the underlying securities.[236] If not, the reporting issuer can face the difficult situation of having no exemption and being unable to register the offering of the underlying securities because it has offered the securities before filing a registration statement.[237]

We are concerned that an issuer would lose the Rule 504 exemption for the underlying securities in these circumstances solely because the issuer has become a reporting company. In fact, holders of convertible securities or warrants may benefit from that transition. They may have access to more information about the issuer if it is a reporting company. Greater access to information always assists investors that have to make investment decisions.

Accordingly, we propose to revise Rule 504 to provide that the status of the issuer as a reporting company does not prevent it from relying on the Rule for the issuance of securities underlying convertible securities and warrants that it previously offered in compliance with the Rule when it was not a reporting company.[238] If the issuer becomes unable to rely on Rule 504 for any reason other than the fact that it became a reporting company, Rule 504 would not be available.

Under this proposal, a reporting company would be able to rely on Rule 504 only for the conversion or exercise of securities if they were offered pursuant to Rule 504. Thus, before the issuer became subject to the reporting requirements, the convertible securities or warrants would have to have been:

1. Immediately convertible or exercisable; or

2. Convertible or exercisable within a year.

We solicit comment on this change to Rule 504. We seek comment about whether we should permit a reporting company to rely on Rule 504 for the offer and sale of securities underlying convertible securities or warrants regardless of when they become convertible or exercisable. For example, should Rule 504 apply to the offer and sale of underlying securities if the issuer becomes a reporting company one year after issuing warrants under Rule 504 that were not exercisable for three years?

Are there reasons to limit reliance on the Rule to a certain period of time after the issuer becomes a reporting company? Should we not allow an issuer to rely on the Rule for the exercise or conversion if the issuer sold the warrants or convertible securities when it could have foreseen that it was about to become a reporting company? For example, should we extend Rule 504 to securities underlying warrants and convertible securities only if the issuer sold them more than six months (or three months) before becoming a reporting company?

6. Small Business Issuer Registration Fees

We also seek to ease the registration process for small business issuers in recognition of unique difficulties they may face due to their size. We are proposing rule revisions that would permit small business issuers filing on small business registration statement forms to delay payment of the Commission registration statement filing fee until shortly before effectiveness.[239] These issuers often face substantial liquidity problems due to their smaller size. The cost of preparing and filing a registration statement is a relatively expensive endeavor for many small business issuers. Those costs may deplete the issuer's liquid resources. By delaying fee payment, these issuers will have extra time, at least for this portion of the offering expenses, to generate funds to pay the fees. This should help ease registration for these issuers.[240]

The amount of securities that a small business issuer is able to sell in a registered offering may not be determined until well after the public offering begins and the issuer can assess investor interest. It is not uncommon that small business issuers have to scale back the amount of its offering. If the issuer were not required to pay the fee until shortly before effectiveness, it would more likely be able to pay only the fee on the amount of securities that will be sold in the offering.

Under the proposals, a small business issuer that wishes to delay fee payment would have to include a Rule 473(a) delaying amendment in its registration statement. It also would have to include an undertaking in the registration statement to pay the fee no later than the day on which it submits a request for acceleration of effectiveness of the registration statement. If a small business issuer files a pre-effective amendment stating that the registration statement shall thereafter become effective under Section 8(a) of the Securities Act (deleted the delaying amendment), it would have to pay the fee no later than the date the amendment is filed. If no fee is paid at that time, the pre-effective amendment would not be considered filed. Where a small business issuer makes an initial filing of a registration statement without the Rule 473(a) delaying amendment, it must pay the registration fee in order for the registration statement to be considered filed. If no fee is paid at that time, the registration statement would not be deemed filed.

We request your comments on this proposed rule change. Should fee payments by small business issuers be delayed until shortly before effectiveness? If not, why not? Should this alternative be available to all small business issuers or only some category of those issuers, such as non-reporting small business issuers? Should this option be allowed for registration statements filed by blank check companies, blind pool companies, or other issuers? Should this option be allowed for all issuers that file on a registration form that is not effective at the issuer's discretion, whether or not the issuer is a small business issuer?[241] Would the Commission staff be inundated with filings by persons who were not necessarily sincere about going forward with offerings? If so, should we require a good faith down payment of the filing fee?

F. MJDS Issuers

In 1991, the Commission adopted rules and forms to create a multijurisdictional disclosure system (''MJDS'') with Canada. The

[236] Under many circumstances, the Section 3(a)(9) exemption would be available for the issuance of securities pursuant to a conversion. Section 3(a)(9) does not generally apply, however, to the exercise of warrants because the exemption is for exchanges by the issuer of securities with its existing security holders and is not available where a commission or remuneration is paid or given directly or indirectly for soliciting the exchange.

[237] Offers of the underlying securities occur upon issuance of the convertible security or warrant where convertible or exercisable within one year. Also, offers of the underlying securities continue until the conversion or exercise has occurred or the conversion or exercise period has ended.

[238] See proposed revisions to Securities Act Rule 504(a), 17 CFR 230.504(a).

[239] *See* proposed revisions to Securities Act Rule 456, 17 CFR 230.456.

[240] Until recently, the Commission has had little flexibility to change the timing of registration fee payments under the Securities Act. Section 6(b)(2) of the Securities Act, 15 U.S.C. § 77f(b)(2), provides that registration fees must be paid when a registration statement is filed. That section also says that a registration statement will not be deemed filed unless the fee has been paid. 15 U.S.C. § 77f(c). NSMIA revised Section 4(e) of the Exchange Act, 15 U.S.C. § 78d(e), to allow the Commission flexibility to specify the time that fee payments are due relative to filings with the Commission.

[241] For example, Schedule B and the following Forms would not always become effective at the issuer's discretion: A, C, F–8, F–9, F–10 and F–80.

Commission's purpose was to facilitate cross-border securities offerings and periodic reporting by eligible Canadian issuers.[242] The MJDS allows eligible Canadian issuers to satisfy registration and reporting requirements under the Securities Act and the Exchange Act by providing the Commission with disclosure documents prepared under Canadian securities law. At the time the Commission adopted the MJDS, Canada's securities administrators adopted a parallel multijurisdictional disclosure system for U.S. issuers. Together, the systems provide that issuers in the United States and Canada are principally subject to the specific disclosure requirements of only their home country when making securities offerings in the other country.

The MJDS may be used only for certain kinds of transactions,[243] and only by issuers that meet the issuer eligibility requirements related to those transactions. Issuer eligibility requirements under the MJDS vary depending on the transaction being registered. One requirement is that an issuer have a minimum public float. To register an exchange offer or business combination under the MJDS, an issuer must have a public float of (CN) $75 million (Canadian dollars).[244] To use the MJDS to register an offering of investment grade securities or to register any securities offering by a larger issuer, the issuer must have a public float of at least (US) $75 million.[245] Registration under the Exchange Act also may be accomplished under the MJDS by a Canadian issuer if it has a public float of at least (US) $75 million. The minimum float requirements were designed so that the MJDS would be used by issuers that were well-known and widely followed by the market.[246] Those issuers are the same type we would allow to use proposed Form B for any offering. We are therefore proposing to replace the public float tests under the MJDS with the same public float/ADTV thresholds proposed for Form B.[247]

A Canadian foreign private issuer that meets the other issuer eligibility criteria under the MJDS therefore would be eligible to use it if:

1. Its public float is (US) $75 million or more and the ADTV of its equity securities is $1 million or more; or

2. The issuer's public float is (US) $250 million or more.

With the combined public float/ADTV test, some issuers may find that the proposed thresholds are more difficult to satisfy than the current MJDS public float test. The proposed thresholds also would have an effect on issuers seeking to register an exchange offer or a business combination because the float would be measured in U.S. dollars instead of Canadian dollars. Because the other public float requirements under the MJDS are measured in U.S. dollars, the proposal would have less of an impact on those transactions.

Despite the possibility that the new eligibility thresholds may preclude some Canadian issuers from using the MJDS, we believe that the reasons that support the proposed thresholds for Form B issuers, as explained above, also support the proposed thresholds for MJDS issuers. Accordingly, we propose to revise the public float tests in Forms F–8, F–9, F–10, F–80, and 40–F to conform to the proposed public float/ADTV thresholds for Form B.

We solicit your comment on this proposal. Should we continue to express the proposed public float/ADTV requirements for business combinations and exchange offers in Canadian dollars rather than in U.S. dollars? Would the higher proposed thresholds allow too few Canadian companies to use the MJDS system? Should the proposed revisions apply to some but not all of the MJDS forms? If so, which ones?

The proposals in this release also would affect MJDS issuers in another way. Form B requires that the issuer previously have filed at least one annual report on Form 10–K or Form 20–F and have registered an offering of securities under the Securities Act using a form other than those, such as the MJDS Securities Act forms, that become effective automatically upon filing. As a result of these requirements, Canadian issuers who file annual reports on Form 40–F or whose previous offerings have been registered under the Securities Act on MJDS forms will not be eligible to use Form B. If we permitted a Canadian issuer to use filings under MJDS as the basis for Form B eligibility, the issuer could access our markets both initially and on a continuing basis without the Commission staff ever reviewing any of its disclosure documents. Thus, we propose to exclude MJDS forms in determining eligibility. Consequently, Canadian issuers would need to plan in advance which registration or reporting forms to use under the Securities Act and the Exchange Act, because they would not be able move back and forth between the MJDS and non-MJDS systems as easily as is currently possible. We solicit comment on this aspect of Form B. In addition, in view of the fact that Form B will provide some of the same benefits as the MJDS, in terms of ease of access to the market, should some or all of the MJDS forms be eliminated in favor of the system proposed in this release? If only some MJDS forms should be eliminated, which ones?

G. Foreign Government Issuers

Proposed Rule 462 would permit certain seasoned foreign government issuers that file registration statements on Schedule B to designate the date and time of the effectiveness of their registration statements by checking a box on the cover page of their Schedules.[248] The issuer could designate that the registration statement be effective automatically upon filing, upon any date and time it specifies, or as designated in a later amendment. Registration statements filed in reliance on the Rule would not be subject to Commission review.

Rule 462 would only be available to foreign government issuers that were registering on Schedule B an offering of at least $250 million that also was underwritten on a firm commitment basis.[249] These issuers also would be required to have a history of registering under the Securities Act. To use Rule 462, a foreign government issuer would have to have registered an offering under the Securities Act within the three most recent years.

The prior registration requirements would guarantee that some public information would be available before a foreign government issuer could rely on the Rule. It also would give the issuer an opportunity to become comfortable with the registration process and disclosure standards of the federal securities laws.

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[242] Securities Act Release No. 6902 (June 21, 1991) [56 FR 30036].

[243] Generally, the transactions permitted under the MJDS include: issuance of securities upon exercise of rights offered to existing shareholders; issuance of securities pursuant to an exchange offer or business combination requiring shareholder vote; issuance of investment grade debt or preferred securities; and securities offerings by larger issuers.

[244] Issuer exchange offers do not require a minimum public float.

[245] That float test is not applicable for offerings of non-convertible investment grade securities.

[246] When the Commission last revised the public float thresholds in the MJDS, we specifically noted that the MJDS public float test was meant to parallel the Form S–3 public float test. Securities Act Release No. 7025 (Nov. 3, 1993) [58 FR 62028].

[247] The proposed revisions would not add a public float requirement for any transaction registered under the MJDS that does not currently require one.

[248] *See* proposed Securities Act Rule 462(f)(1) and (f)(2), 17 CFR 230.462(f)(1) and 230.462(f)(2).

[249] For a delayed shelf offering, the $250 million would be measured based on what is registered at the outset, not what is offered in any single takedown.

The basis for extending automatic effectiveness to these issuers rests on the concept that offerings by seasoned, well-known issuers attract market, analyst and investor attention and recognition. We believe that most investors and analysts would have familiarity with these foreign governments due to their nature and size. The firm commitment underwritten $250 million offering criteria should ensure that their offering also attract significant market, analyst and investor attention. We believe the prior filing requirement would ensure that these issuers had some experience with registration under the Securities Act. These factors would result, we believe, in the generation and dissemination of current public information about the foreign government issuers and their offerings. In this respect, they would be similar to the classes of issuers to which we would extend Form B. We are therefore proposing that, like Form B issuers, these Schedule B issuers may designate the effectiveness of their registration statements.

We seek comment on this proposal. Should we raise the proposed effectiveness rule's offering threshold to something around $500 million or lower it to something around $150 million? Should we require that a foreign government issuer have registered an offering under the Securities Act within 5 years rather than within three years? Should we allow any filing by a foreign sovereign government issuer, other than its initial registered offering, to be effective immediately upon filing? Should other non-financial factors affect the foreign government issuer's ability to designate the effectiveness of its registration statement?

H. Exxon Capital Transactions

If the Commission decides to adopt these proposals, the staff of the Division of Corporation Finance would repeal the line of interpretive letters concerning *Exxon Capital* exchange offers.[250] These interpretive letters allow issuers to sell certain securities in a private offering and shortly thereafter register an offering of substantially identical securities in exchange for those securities privately placed. Issuers use this procedure, in part, because it allows them to avoid the delay associated with registration. Since July 1, 1998, more than one-third of all initial public offerings have been *Exxon Capital* exchanges.

Under these interpretive letters, investors that participate in the exchange may resell their new securities without complying with registration or prospectus delivery requirements of the Securities Act. Prior to these letters, privately placed securities could be registered only for resale, which provides investors with the protection of prospectus delivery requirements and subjects the sellers to the liability provisions of Sections 12(a)(2) and 17(a) of the Securities Act and, if deemed underwriters, Section 11 of the Securities Act.[251]

These proposals would create a registration system that captures the speed and flexibility associated with private offerings while retaining the benefits of registration for investors. Private placements would no longer be an issuer's main choice when needing to complete an offering quickly. Delays commonly associated with registration would no longer exist for Form B issuers and for medium size Form A issuers. Their registration statements would not be subject to prior staff review. Moreover, if such an issuer chooses, its registration statement could be effective upon filing.

The proposed registration system does not exclude the small issuer from these benefits. Small issuers that do not meet the public float requirement of Form B or the float level on Form A to allow control over effectiveness would be able to use Form B to register an offering if they sell only to QIBs. Given the nature of the purchasers contemplated in the *Exxon Capital* line of letters, allowing small issuers to register sales to QIBs on Form B would allow those issuers much of the same flexibility the *Exxon Capital* structure gives them today.

Elimination of this line of interpretive letters would eliminate the ability of these smaller issuers to rely on the *Exxon Capital* line of interpretive letters for sales to non-QIBs. This limitation seems appropriate, as it aligns with our views regarding registered offerings by these issuers to QIBs and the need for additional protections for non-QIBs in offerings by these smaller issuers. Accordingly, we concur with the belief of the Division of Corporation Finance that the *Exxon Capital* line of interpretive letters should be repealed upon adoption of reforms to the registration system. Comment is solicited with regard to whether the *Exxon Capital* line of letters should be repealed sooner or regardless of whether any reform to the registration statement is adopted.

I. The Offset of Filing Fees and Other Technical Changes to the Calculation of Filing Fees

In 1995, the Commission expanded Rule 429[252] to provide a mechanism for issuers to offset the payment of a registration statement filing fee with fees that were previously paid.[253] The amount available for use as an offset under Rule 429 equals the portion of the filing fee previously paid that is associated with any unsold securities registered on an earlier registration statement. Once a filing fee has been used as an offset, those unsold securities on the earlier registration statement are deemed deregistered. This change has proved to be beneficial to issuers.

Rule 429, however, also provides for the use of a combined prospectus for multiple offerings. At times, the combination of fee offset procedures and combined prospectus procedures in the same rule has resulted in confusion as to whether an issuer is offsetting fees or is combining prospectuses. To avoid that confusion, we propose to move the fee offset procedures into Rule 457, which currently deals with fee payment.[254]

We also propose revisions to the fee offset procedures to allow issuers to offset filing fees on more occasions. Currently, fee offset is not possible if the issuer withdraws the earlier registration statement. Under the proposals, we would allow issuers to offset a registration statement filing fee in the same manner regardless of whether it withdraws the registration statement. To assist the Commission in tracking the payment of filing fees and allow for more accurate estimates of future filing fee payments, the proposals would provide that any offset must occur within five years of the completion or termination of the initial registration statement.

We also are proposing to amend Rule 457 to codify certain staff interpretations as follows:

(i) No additional filing fee would be required to be paid for a resale offering of securities, where such securities were received and a filing fee was paid, in connection with a registered offering involving an exchange, reclassification or recapitalization;[255]

[250] *See, e.g., Exxon Capital Holdings Corp.* (May 13, 1988); *Morgan Stanley & Co. Inc.* (Mar. 27, 1991); *Mary Kay Cosmetics, Inc.* (June 5, 1991); *Shearman & Sterling* (July 2, 1993); *Brown & Wood LLP* (Feb. 5, 1997).

[251] The basic premise underlying the *Exxon Capital* line of interpretive letters is that the securities exchanged in reliance on those letters would remain in the institutional investor secondary market.

[252] 17 CFR 230.429.

[253] Securities Act Release No. 7168 (May 11, 1995).

[254] *See* proposed Rule 457(p), 17 CFR 230.457(p).

[255] *See* proposed Rule 457(f)(5), 17 CFR 230.457(f)(5).

(ii) We would not require payment of a filing fee for the registration of an indeterminate amount of securities to be offered solely for market making purposes by an affiliate of the issuer;[256] and

(iii) In offerings by selling security holders, the issuer may calculate the filing fee using the total aggregate dollar amount to be offered, rather than setting forth the number of securities and information based on that just as in offerings where issuers are selling.[257]

J. Solicitation of Comments Regarding Offerings of Asset-Backed Securities Offerings

Currently, issuers (*i.e.*, trusts or other limited purpose entities) and registrants (*i.e.*, sponsors, servicers or depositors) may register an offering of investment grade asset-backed securities on Form S–3 whether or not they are subject to the Exchange Act's reporting requirements. Form S–3 does not require an issuer or registrant of investment grade asset-backed securities to have been reporting under the Exchange Act because asset-backed securities are valued primarily on the pool of assets chosen, not on an issuer or registrant's limited operations.[258] Moreover, historical Exchange Act reports filed by the issuer or registrant of asset-backed securities generally are viewed as of little assistance to investors since such reports would reflect the results of a different pool of assets than those backing the securities being offered. Investors of asset-backed securities often look to a nationally recognized statistical rating organization's (NRSRO) ratings when making their investment decisions.

As proposed, neither Form B nor Form A is designated for use in registering offerings of asset-backed securities.[259] The Commission staff is engaged in an ongoing project to consider development of disclosure and registration requirements specifically related to asset-backed securities. The Commission staff intends to develop proposals with respect to asset-backed securities offerings in connection with that project. To gather more information, we solicit comment about the treatment of these types of offerings in relation to the proposals in this release.

Overall, should treatment of asset-backed securities offerings be the same as or similar to treatment of Form A offerings or Form B offerings? Should we continue to distinguish asset-backed securities on the basis of whether or not they are investment grade securities? Should offerings of investment grade asset-backed securities be treated more like Form B offerings and other asset-backed securities offerings be treated more like Form A offerings? Should we require that one or more NRSROs have rated the securities?

Should the Commission give registrants in some asset-backed offerings greater freedom to craft disclosure about the offering without binding them to all of the itemized disclosure in Regulation S–K? If so, how should the mandated items differ from the ones mandated in Form B? Should the Commission craft a separate regulation setting forth mandated asset-backed offering disclosure items? Should communications restrictions applicable before filing a registration statement and during the registration process be more akin to those applicable to offerings on Form A, Form B or neither?

Should the Commission preserve staff review for all asset-backed offerings or are there categories of such offerings that the Commission need not review for the purpose of investor protection? Should the Commission allow the registrant to control effectiveness in any category of asset-backed offerings? Should delivery requirements with respect to asset-backed offerings resemble delivery obligations of Form A offerings, Form B offerings or neither?

VI. Concurrent Exchange Act Registration

We are proposing to permit an issuer to register concurrently both an offering under the Securities Act and a class of securities under the Exchange Act on Form A, Form B, Form C, Form SB–1, Form SB–2, Form SB–3 and Schedule B.[260] A reporting company can register a class of securities under the Exchange Act on a short-form registration statement: Form 8–A.[261] Form 8–A requires a description of the registrant's securities and the filing as exhibits of documents defining the rights of security holders.[262] Current rules require companies that are registering both an offering of securities under the Securities Act and a class of securities under the Exchange Act to file two forms: the Securities Act registration statement and the Form 8–A. Because the proposed Securities Act forms should contain all of the necessary information, we propose to eliminate the Form 8–A filing requirement when the registrant files one of those Securities Act registration statements at that time.[263]

To allow concurrent registration, those registration Forms would have boxes on the facing page for registrants to check to indicate that Exchange Act registration should be concurrent. The registrant would include the title of the class of securities to be registered and the exchange or market on which the securities are to be listed or traded. We also are proposing a new rule to permit foreign governments and their political subdivisions that register securities offerings on Schedule B to register concurrently under the Exchange Act.[264] If these issuers seek concurrent Exchange Act registration, they must include the same paragraph and table on the facing page of their Schedule B registration statements that appear on the Securities Act registration statements for which we will have adopted forms.

We request comment on these concurrent registration proposals. Are there offerings for which concurrent registration should not be available because the securities description in the Securities Act registration statement would not be adequate?[265]

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[256] *See* proposed Rule 457(q), 17 CFR 230.457(q).

[257] *See* proposed Rule 457(o), 17 CFR 230.457(o).

[258] *See* Securities Act Release 6964 (October 22, 1992) [57 FR 56248].

[259] Form S–3 has permitted the registration of investment grade asset-backed securities since 1992. *See* Securities Act Release No. 6964 (Oct. 22, 1992).

[260] The Commission's Task Force recommended concurrent registration in its Report. Task Force Report at p. 86. We first proposed concurrent registration in May 1996 as part of the Phase Two proposals to implement certain recommendations contained in the Report. Exchange Act Release No. 37263 (May 31, 1996) [61 FR 30405]. When we adopted several of the Phase Two proposals in July 1997, we indicated that we would continue to consider the matter in our efforts to streamline the registration process. Exchange Act Release No. 38850 (July 18, 1997) [62 FR 39755]. That release adopted a companion proposal which revised Rule 12d1–2, 17 CFR 240.12d1–2, to permit automatic effectiveness of the Form 8–A as of the effective time of the Securities Act registration statement relating to the same class of securities. We continue to believe that concurrent registration would be beneficial for registrants and are now reproposing it. *See* proposed Exchange Act Rule 12d1–2, 17 CFR 240.12d1–2.

[261] We also permit an issuer registering an initial public offering to use Form 8–A even though it is not a reporting company until after effectiveness of the Securities Act registration statement.

[262] The securities description must provide the information called for by either Item 202 of Regulation S–K or Regulation S–B, as applicable, 17 CFR 229.202 and 17 CFR 228.202. An issuer can incorporate by reference into Form 8–A information that is contained in other filings made with the Commission.

[263] We also propose a revision to clarify that Form 8–A is available for reporting companies only if they are current in their reporting. *See* proposed revisions to General Instruction A of Form 8–A.

[264] *See* proposed Securities Act Rule 499, 17 CFR 230.499.

[265] In the 1996 proposing release, we did not propose to allow concurrent registration for

Continued

VII. Communications During the Offering Process

The Securities Act restricts the types of offering communications that a registrant may use during the time it is engaged in a registered public offering of its securities.[266] The level of restrictions depends on the period during which the communications occur. The Securities Act creates three distinct periods in the registered offering process. The first period occurs before a registrant files a registration statement with the Commission and is commonly called the ''pre-filing period.'' The second period starts with the filing of the registration statement and ends with the effectiveness of that registration statement and is commonly called the ''waiting period.'' The third period follows the effective date of the registration statement. That period is commonly called the ''post-effective period.''

During the pre-filing period, the Securities Act prohibits the registrant from making any interstate offers or sales of the securities.[267] During the waiting period, the registrant may make certain types of offers (but not sales). Offers made in writing, by radio or by television must conform to the information requirements of Section 10 of the Securities Act. Thus, the Securities Act prohibits the use of supplemental sales literature (''free writing'') during the waiting period. Generally, issuers and underwriters make written offers during the waiting period by means of a preliminary prospectus which must be filed with the Commission. Person-to-person oral offers also are allowed during this period and, unlike widely disseminated communications such as radio or television broadcasts, do not have to satisfy the informational requirements of Section 10. During the post-effective period, the registrant may use any materials to offer the securities [268] but only if it delivers the final prospectus before or with those materials.[269] It also may sell the securities.

Congress designed these limitations so that the prospectus would be the primary means for investors to obtain information during the waiting period regarding an offering of securities. Congress' goal was to prevent high pressure sales practices and to provide investors with an opportunity to become familiar with the investment being offered.[270] In fact, the Securities Act originally prohibited both oral and written offers during the waiting period.[271] While that prohibition succeeded in limiting high pressure sales practices, it also limited the time in which investors could become familiar with the investment so as to make an unhurried decision regarding the merits of the securities.[272] That limitation ultimately was revised by Congress in 1954 in favor of permitting certain offers during the waiting period.[273]

The statutory regulation of communications during the pre-filing and waiting periods has not changed since those 1954 amendments. Our capital markets, however, have changed significantly. For example, there have been major advancements in technology and communication media since 1954. There have been many more offerings of increasingly complex and synthetic or hybrid securities. The trends towards globalization of securities markets and multinationalization of issuers and offerings have continued. Among others, these changes have increasingly created conflicts between communications mechanisms to which markets have become accustomed and the restrictions placed by the Securities Act on communications around the time of a registered offering.

The Commission continues to believe that the Securities Act goals of preventing high pressure sales practices and providing investors with the time and opportunity to familiarize themselves with investment opportunities continue to be important today. We believe, however, that the means by which to effectuate those goals can be shaped to facilitate capital formation better and to provide more information on a more timely basis to investors. We do not believe it is appropriate to unnecessarily hinder communications when allowing them would provide benefits to investors and issuers as well as reflect current practices and realities.

A. Issuer Communications Relating to a Registered Offering

1. The Pre-Filing Period

a. Form B Registrants

Today, the largest public companies are followed by numerous analysts that actively seek new information on a continual basis.[274] Unlike smaller and less mature companies, large public companies tend to have a regular dialogue with investors and market participants through the press and other media. Companies in which there is a wide interest are called upon to release *more* information about their activities more often than is expected of lesser-known companies. The markets also absorb information disclosed about these companies at a rapid rate.[275]

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securities to be offered and sold on a delayed basis under Rule 415(a)(1)(x), 17 CFR 230.415(a)(1)(x), because of concerns about whether an adequate description of the securities would be contained in the Exchange Act registration statement.

[266] Those acting on behalf of the registrant (such as an underwriter) are subject to the same restrictions as the registrant.

[267] Securities Act Rule 135, 17 CFR 230.135, allows an issuer to notify the public of a proposed offering as long as the contents of the notice do not exceed the limited items specified in the rule.

[268] These materials are still subject, of course, to the antifraud and civil liability provisions of the statute.

[269] Final prospectuses must satisfy the informational requirements of Section 10(a) of the Securities Act.

[270] H.R. Rep. No. 85, 73rd Cong., 1st Sess. 3 (1933).

[271] Section 2(a)(3) of the Securities Act originally made no distinction between offers and sales. The term sale was defined to include any: ''offer to sell,'' ''offer for sale,'' ''attempt or offer to dispose of, or solicitation of an offer to buy.'' Consequently, Section 5(a) of the Securities Act prohibited at that time both interstate offers and sales of securities before a registration statement became effective. *See also* S. Report No. 1036, 83rd Cong. 2d Sess. 4 (1954).

[272] *Hearings on S. 2846 Before the Subcomm. of the Senate Comm. on Banking and Currency*, 83rd Cong., 2d Sess. 23 (1954) (statement of Ralph H. Demmler, Chairman of the Securities and Exchange Commission). The regulators soon realized the importance of providing investors with information during the waiting period. The Federal Trade Commission (which administered the Securities Act before the creation of the Commission in 1934) published its view in 1933 that it was permissible for issuers and underwriters to disseminate circulars during the waiting period if they described a security in the same manner a Section 10 prospectus would. *See* Securities Act Release No. 70 (Nov. 6, 1933) [11 FR 10948]; Securities Act Release No. 464 (Aug. 19, 1935) [11 FR 10953]. In 1946, the Commission adopted Rule 131, 17 CFR 230.131, which expressly permitted the use of a preliminary prospectus or ''red herring.'' *See* Securities Act Release No. 3177 (Dec. 6, 1946) [11 FR 14260]. *See also* Securities Act Rules 430 and 430A, 17 CFR 230.430 and 230.430A.

[273] The 1954 amendments were intended to codify practices with regard to communications during the waiting period and finally resolve concerns that dissemination of preliminary information during the waiting period would breach the prohibition against offers. *See Hearings Before the H.R. Comm. on Interstate and Foreign Commerce*, 83rd Cong., 1st Sess. 66 (1953) (statement of Richard B. McEntire, Commissioner of the Securities and Exchange Commission). *See also* H.R. Rep. No. 1542, 83rd Cong., 2d Sess. 7 (1954).

[274] For example, companies with a $250 million or higher market capitalization have, on average, 15 research analyst firms following them.

[275] A staff study on the market's absorption of information found that the speed of price discovery is positively associated with companies' market capitalizations, public floats and ADTVs. The staff found that combination tests of ADTV and either public float or market capitalization are more closely associated with the speed of price discovery than tests of only public float, only market capitalization or only ADTV. *See* Eligibility Requirements for Firms Receiving Preferred Registration Status in the Registration and Disclosure Reform Proposal (April 30, 1997).

Technological innovations that permit instantaneous communications are a driving force behind this decade's securities market.

Given the abundance of readily accessible information about large, seasoned public companies, any communications made by them while in the process of registering an offering are less likely to have a significant impact by conditioning the market or stimulating interest in a proposed offering.[276] Accordingly, we are proposing to remove the restrictions on offering communications by those companies during the pre-filing period.[277] We are proposing an exemption to provide that offers may be made in the pre-filing period.[278]

For a large, seasoned company to rely on the proposed exemption for any offering, it must have filed all of its periodic reports under the Exchange Act for at least one year on a timely basis and have filed at least one annual report. It also must have either:

1. A public float with a market value of at least $250 million; or

2. A public float with a market value of at least $75 million and the average daily trading volume for its equity shares of at least $1 million.

These mirror the eligibility criteria for Form B registration by large well-followed issuers discussed earlier.

The proposed registration system also contemplates use of Form B for offerings by smaller issuers that do not meet Form B's public float and ADTV eligibility tests. Those offerings would be limited to: offerings solely to QIBs;[279] offerings to certain existing shareholders;[280] offerings of investment grade securities; offerings of certain investment grade asset-backed securities; and offerings in connection with market making transactions. We propose to treat these Form B issuers in the same manner as we would treat large seasoned issuers that would register their offerings on Form B. Accordingly, their ability to offer registered securities also would not be contingent on the prior filing of the registration statement for the offering.[281]

These offerings would be directed mainly to existing shareholders of the issuer, such as under a DRIP, or to investors that, because of their status, have unique access to information about the issuer, such as a QIB. Offerees that have an existing connection with, or a prior investment in, the issuer could be presumed to follow the issuer in order to monitor their investment. [282]

In the case of DRIPs, the participant already has made an investment decision about the issuer—to participate in the DRIP—thus, the investor would be likely to obtain information about the issuer both on its own and from the issuer. We believe the investors in these Form B offerings, due to their experience or nature, would be less susceptible than other investors to pre-filing hype about a new offering by the issuer.[283] Thus, the investor protection concerns that are associated with the prohibition against offers before the registration statement is filed are lessened.

Similarly, investors that are able to obtain information because they are able to influence the issuer to provide them with it, such as QIBs, may not need the protections that would flow from a prohibition of pre-filing communications. If an issuer makes statements about an upcoming offering before it files its Form B for the offering, the QIB is more likely than other investors to be in a position to insist that the issuer explain any information the issuer disseminated before filing. It also would be sophisticated enough to recognize the value of waiting until it has a prospectus before making an investment decision.

Moreover, the free communications proposal would not extend to any issuer that had not previously registered with the Commission. We also would require that the issuer be reporting in a timely manner for at least the one year before filing an offering on Form B. The reporting requirements would serve the purpose of ensuring that material information about the issuer would be publicly available. An investor could use that, and whatever other information it may gather, to gauge any communications by the issuer before the registration statement filing.

We solicit comment on the proposal to allow Form B registrants to communicate freely before filing a registration statement. Is Form B the proper standard or should the treatment be limited only to some subset of Form B offerings, such as those meeting the public float/ADTV tests? For these purposes, should a minimum average daily trading volume also be required for companies with a public float of at least $250 million? Should companies be subject to the reporting requirements for a longer period of time, such as two years?

Does the likelihood of market conditioning based on pre-filing communications depend upon the security being issued or the transaction being registered? Does the likelihood of market conditioning depend on the trading market for the securities? If so, should the issuer's trading market be an element of the test for when pre-filing communications restrictions are lifted? Should the nature of the securities offered affect whether pre-filing communications should be restricted in any manner? If offering materials are used before filing a registration statement, should certain information be required to be disclosed therein?

While Section 5 of the Securities Act prohibits both offers to sell and solicitations of offers to buy a security before a registration statement is filed, Section 2(a)(3) of the Act exempts preliminary negotiations or agreements between the issuer and any underwriter, and among underwriters. During that period, negotiation of the financing may proceed, but steps may not be taken to form a selling group. Dealers may not make offers to buy the securities and underwriters and issuers may not offer to sell them to dealers during that period. Congress created this limitation in part to limit the pressure it believed could be brought to bear on dealers to rush their orders.[284] Congress also expressed its concern that market participants would overstimulate the demand for a company's securities and then pressure that company to issue

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[276] The Commission has long interpreted ''offer to sell'' broadly to encompass pre-filing publicity efforts that may not be phrased expressly in terms of an offer but condition the market or stimulate interest in the offering. *See* In the Matter of Loeb, Rhodes & Co., 38 SEC 843 (1959) and In the Matter of First Maine Corp., 38 SEC 882 (1959).

[277] Rules 101 and 102 of Regulation M, 17 CFR 242.101 and 242.102, would continue to prohibit inducements to purchase securities that are the subject of a distribution during any applicable restricted period.

[278] *See* proposed Securities Act Rule 166, 17 CFR 230.166. Prospectuses used in reliance on this Rule during the period beginning 15 days before the first offer and ending with the offering completion would be filed under proposed Rule 425, 17 CFR 230.425.

[279] *See* Securities Act Rule 144A(a)(1), 17 CFR 230.144A(a)(1).

[280] We propose that Form B allow registration of five kinds of offerings to existing shareholders, including: offerings of securities upon exercise of rights or conversion of convertible securities; offerings pursuant to dividend or interest reinvestment plans; offerings to existing common stock holders; and offerings of securities issuable upon exercise of transferable warrants or options. These offerings, and why we propose they be registered on Form B, are discussed in more detail in Section V.A.2.c. of this release.

[281] *See* proposed Securities Act Rule 166(a), 17 CFR 230.166(a).

[282] *See* General Instruction I.B.4. of Form S–3.

[283] Under the proposed Form B, generally, a small issuer would not be permitted to make offerings to an existing security holder unless the investor held securities of the issuer for at least a two-month period. We set this requirement to ensure that the investor would have adequate time to assess its investment and determine whether to sell, hold or buy the issuer's securities.

[284] *See* H.R. Rep. No. 85, 73rd Cong., 1st Sess. 3 (1933).

such securities.[285] Consequently, Section 5 also prevents all pre-filing marketing of public offerings by underwriters and dealers.

Under our proposal, before the filing of a Form B, dealers could make offers to buy, and issuers and underwriters could make offers to sell to dealers. Underwriters and dealers could market the securities before the filing of the Form B. Comment is requested on these aspects of the communications proposals. In today's markets, could issuers and underwriters unduly pressure dealers to accept an allotment of securities without the opportunity to scrutinize the registration statement? Similarly, could underwriters and dealers unduly pressure corporations to issue securities by marketing a company's securities before the issuer wished it to happen? If so, what other safeguards would protect against undue pressure?

b. Foreign Governments

We also propose to allow a seasoned foreign government issuer to communicate freely before filing a registration statement for an offering of securities that exceeds $250 million and that is underwritten on a firm commitment basis.[286] We would deem a foreign government issuer to be seasoned if one year has passed since the date of effectiveness of its initial public offering.[287] We believe that, generally, there is abundant public information, investor awareness and market following relating to seasoned foreign government issuers that make large public offerings. At and around the time of such an offering, sufficient market coverage appears virtually assured. Therefore, we propose to allow large and seasoned foreign government issuers to freely communicate during the pre-filing period.

Smaller offerings by unseasoned foreign government issuers may not attract significant market attention. Such an issuer should limit its pre-filing communications to avoid situations where the only public information available about the issuer or its offering before it files its registration statement is the information that the issuer disseminated for purposes of the offering. When the catalysts for public dissemination of information from sources like analysts or other securities experts are missing, we believe the best way for us to protect investors is to limit the communications of unseasoned foreign government issuers that make smaller offerings in the same way we would limit the communications of Form A issuers. If a foreign government issuer is registering its initial public offering or is registering an offering of securities that is less than $250 million or that is not being underwritten on a firm commitment basis, the issuer would be subject to the same 30-day limited communications period applicable to Form A registrants.[288] Smaller unseasoned foreign government issuers may rely on safe harbors to make announcements during that period, such as factual business information[289] or Rule 135 offering notices.[290]

c. All Other Registrants

Under existing regulations, not all public communications by an issuer are prohibited before and during a registered offering. The line between communications that are permissible and those that are not, however, is not always easy to perceive. Over the years, the Commission has attempted to address this issue in several releases.

In 1969, the Commission stated that, while a company is ''in registration'': disclosure of a material event would ordinarily not be subject to restrictions under Section 5 of the Securities Act if it is purely factual and does not include predictions or opinions.[291]

The release qualified that guidance, however, by stating that ''[a]lthough the matters discussed herein reflect the policies and practices which the staff of the Commission will follow, they do not represent rules of the Commission. Accordingly, these interpretations are subject to change based on experience in their application. * * *''

Two years later, the Commission published another release on communications.[292] That release stated, in the context of companies refusing to answer legitimate inquiries, that ''the practice of non-disclosure of factual information by a publicly held company on the grounds that it has securities in registration'' [293] is not justified by securities laws or Commission policy. In the same release, however, the Commission indicated that neither a company in registration nor persons acting on its behalf ''should instigate publicity for the purpose of facilitating the sale of securities'' in the offering. The Commission also noted that:

[t]he determination of whether an item of information or publicity could be deemed to constitute an offer—a step in the selling effort—in violation of Section 5 must be made by the issuer in the light of all the facts and circumstances surrounding each case.[294]

Given the generality of the statements made by the Commission through the years, and the difficulty of applying a ''facts and circumstances'' test that will be viewed by others in hindsight, cautious legal counsel today often judge it wiser to advise clients to apply significant restrictions on communications. In practice, they appear reluctant to rely on the Commission's general statement of 30 years ago allowing disclosure of material factual information during the course of a registered offering.[295] In the absence of Commission rules, the Commission's (or the staff's) statements have been viewed as providing only vague, general guidance. Securities law practitioners generally see applying that guidance as a practical problem. Many companies appear to be following the practice of shutting off communications of all types for the sake of eliminating the risk of being questioned about possible illegal offers and experiencing a delay in their offering. Those companies that wish to continue communications face the cost of seeking legal advice and review of virtually any communication during the period.[296]

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[285] *See* H.R. Rep. No. 85, 73rd Cong., 1st Sess. 2 (1933).

[286] We propose the $250 million offering threshold as a proxy for size. The firm commitment underwriting requirement would provide greater assurance that the offering would proceed in an orderly fashion. And underwriting participation in the offering signals greater market interest in the offering and the presence of other investor protections due to the underwriters' gatekeeping function. As with Form B issuers, we believe the seasoning requirement would ensure a certain level of publicly available information.

[287] *See* proposed Securities Act Rule 166(a), 17 CFR 230.166(a).

[288] Proposed Securities Act Rule 167, 17 CFR 230.167, would provide that communications before the beginning of the 30-day period would not, for registration purposes, be deemed to be either an offer to sell or an offer to buy as long as the issuer takes reasonable steps to prevent further public dissemination of the information during the 30-day limited communications period. The rule would apply equally to unseasoned foreign sovereigns and all foreign political subdivisions that must observe the 30-day limited communications period.

[289] *See* proposed Securities Act Rule 169, 17 CFR 230.169.

[290] *See* proposed revisions to Securities Act Rule 135, 17 CFR 230.135.

[291] Securities Act Release No. 5009 (Oct. 7, 1969) [34 FR 16870].

[292] Securities Act Release No. 5180 (Aug. 6, 1971) [36 FR 16506].

[293] The term ''in registration'' was used to mean the time starting before the filing of the registration statement and ending with the date the issuer ''reaches an understanding with a broker-dealer that is to act as managing underwriter until the end of the aftermarket prospectus delivery period applicable to dealers.'' *Id.*

[294] *Id.*

[295] Among other results, issuers sometimes refrain from distributing routine reports to shareholders concerning the company during the quiet period. *See Quiet, Please,* Investor Relations, Dec. 1997, at 49.

[296] For example, the Commission understands that legal counsel have advised issuers that all press

This difficulty of discerning the breadth and length of the limitations on communications is why we are proposing safe harbor rules for registrants other than Form B and Schedule B issuers we discussed above. The safe harbors should help to encourage open communication. Our proposed solution is two-fold.

i. Bright-Line Communications Safe Harbor

The Commission seeks first to address uncertainty about whether communications made long before the filing of a registration statement will be viewed in hindsight as illegal offers. We believe that uncertainty has led to a chilling of issuer communications for a longer period before filing than is necessary for investor protection. The uncertainty also unnecessarily complicates the task of those planning the capital-raising process. We see little benefit to continuing it. We believe the purpose of prohibiting offers before a registration statement is filed, which we discussed above, can be fulfilled without the attendant uncertainty costs.

Accordingly, we propose a safe harbor for all communications made by or on behalf of any issuer that take place during a specified period before it files a registration statement.[297] In offerings registered on Form B, an issuer, and those acting on behalf of the issuer, may freely communicate before the offering period begins (*i.e.*, 15 days in advance of the first offer). For business combinations registered on Forms C, SB–3, F–8, F–80 or F–10 (when F–10 is used in connection with a business combination transaction), the offerors may freely communicate before the first communication related to the offering (except for communications, among the participants in the offering).[298] For all other offerings, an issuer, and those acting on the issuer's behalf, may freely communicate at any time before the 30-day period before the date of filing the registration statement. Under the safe harbor, the issuer, underwriter and participating dealer must take all reasonable steps within their control to prevent further distribution or re-publication of the communication during those periods in which free communication is not permitted. We recognize that once a person makes information public it is no longer in full control over whether others will use that information at a later point in time. For example, an issuer may issue a press release on the 40th day before filing a registration statement on Form A and a monthly magazine that is published on the 29th day before filing may see fit to make reference to it. We would not view it as outside this safe harbor if the magazine published that information on the 29th day through no efforts of, or arrangement with, the issuer. If, however, the CEO or some other representative of the issuer gave an interview on the 40th day before filing without getting assurance that the interview article would not be published during the 30-day period, that communication would be outside the safe harbor.

In addition, if an issuer places information on its Internet web site during a period in which it may freely communicate, we would view it as outside the safe harbor if it fails to remove information from its web site during the limited communications period, if the communication is not covered by one of the other proposed safe harbors discussed below (*e.g.*, for factual business information or regularly released forward-looking information). An issuer may not circumvent the bright-line communications safe harbor by arranging for a third party to disseminate information on its behalf during the limited communications period. For example, if an agent or third party acting on behalf of the issuer posts information on a web site that does not fall within a safe harbor, we would view the posting as outside the bright-line communications safe harbor.[299]

We recognize that there is a risk in creating a bright-line test. Some issuers and underwriters could decide to make all of their selling efforts before the bright-line period when a prospectus is not available. We propose to mitigate that risk through the prospectus delivery requirement (discussed below) that, regardless of when the selling efforts occur, investors will have time to review the balanced, accurate disclosure about the investment.[300] We also mitigate that risk in offerings not registered on Form B and not involving business combinations through the use of a 30-day limited communications period. The 30 days will operate as a ''cooling off'' period with respect to any communications made to investors. We solicit comment, however, regarding whether a longer period, such as 90 days or 60 days or 45 days, would mitigate the risk further while still providing a useful dividing line between communications likely to be undertaken as part of the sales effort and those that serve other purposes. Conversely, would a shorter period of time, such as 20 days, adequately serve that function? Are there other risks or benefits of creating a bright-line test?

Would the condition that all reasonable steps be taken within the 30 days by the issuer, underwriter or dealer to prevent further distribution or re-publication be adequate to ensure that there is a ''cooling off'' period? Should we build in an automatic longer prospectus delivery period before pricing when issuers or others participating in the offering fall outside a safe harbor by communicating during the 30-day period? The proposed safe harbor would cover communications of any sort. Should we provide that the safe harbor does not apply to communications discussing the offering itself? Should we require that offering materials used more than 30 days in advance of filing a registration statement be filed with the Commission in the same way as free writing materials?[301] If so, should we require filing of such information if disseminated within 40, 50 or 60 days before the issuer files its registration statement?

ii. Communications Safe Harbor

While defining the pre-filing period during which these issuers must be concerned about the nature of their communications should help lessen uncertainty, we believe further proposals would do so even more. As the Commission stated almost three decades ago, ''[the] flow of normal corporate news, unrelated to a selling effort for an issue of securities, is natural, desirable and entirely consistent with the objectives of disclosure to the public which underlies

releases, speeches to groups, product advertisements, announcements of developments, responses to inquiries by those who report to the public, changes in advertising policy, and public statements first be cleared by legal counsel during this period.

[297] *See* proposed Securities Act Rule 167, 17 CFR 230.167. The bright line safe harbor would apply only to registered offerings. Accordingly, the safe harbor would not permit issuers to avoid the prohibition on general solicitation when conducting a private offering or avoid the Section 4(2) requirement that the ''transaction not involve any public offering.'' *See* 15 U.S.C. § 77d(2).

[298] For a discussion of other ''free communication'' provisions applicable to business combinations, *see* Exchange Act Release No. 40633 (Nov. 3, 1998).

[299] This position parallels advice we gave regarding third party web site postings in the context of offshore Internet offerings. *See* Securities Act Release No. 7516 (Mar. 23, 1998) [63 FR 14806], Sections III.D. and IV.D.

[300] An issuer could not use the Section 10 prospectus at a point more than 30 days before filing and then fail to file it as part of the registration statement because it is not ''an offer.'' The registration statement would be materially deficient absent the prospectus.

[301] *See* proposed Securities Act Rule 425, 17 CFR 230.425.

the federal securities laws.'' [302] We are proposing therefore to exempt factual business communications from communications restrictions.[303] In addition, in offerings by reporting companies, we propose an exemption from communications restrictions for regularly released forward-looking information.[304] We solicit comment on whether we should extend the limited communications period. Should it be 45, 50, 60 or 90 days in length?

(A) Factual Business Communications

For purposes of these proposals, ''factual business communications'' would include:

—factual information about the issuer or some aspect of its business;
—advertisement of the issuer's products or services;
—factual business or financial developments with respect to the issuer;
—dividend notices;
—factual information required to be set forth in any Exchange Act report the issuer is required to file; and
—factual information communicated in response to unsolicited inquiries from stockholders, analysts, the press and others with a legitimate interest in the issuer's affairs.

Factual business communications would not include information about the registered offering itself or forward-looking information. Information about the offering would continue to be limited to that which is permitted to be published under Securities Act Rule 135.[305]

(B) Regularly Released Forward-Looking Information

We also propose a safe harbor for reporting companies that are accustomed to releasing forward-looking information to the markets so that those communications are not discouraged during the limited communications period 30 days before a registration statement is filed.[306] The safe harbor would exempt the dissemination of that information from the Section 5 restrictions on offers in the pre-filing period if the issuer is subject to the reporting requirements of Section 13(a) of the Exchange Act. In order to come within the safe harbor, the issuer must have customarily released this type of information in its ordinary course of business for the last two fiscal years (and any portion of a fiscal year) immediately before the communication. The time, manner and form in which the information is released must be consistent with past practice.[307] The categories of forward-looking information that would be covered by the safe harbor are:

1. Projections of the issuer's revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;
2. Statements about the issuer management's plans and objectives for future operations, including plans or objectives relating to the products or services of the issuer;
3. Statements about the issuer's future economic performance of the type contemplated by the management's discussion and analysis of financial condition and results of operation described in Item 303 of Regulation S–K or Item 9 of Form 20–F; and
4. Assumptions underlying or relating to any of the information described in paragraphs (1), (2) and (3).[308]

We recognize that projections have historically been viewed as the type of communication that would be particularly troublesome in the period before a registration statement is filed.[309] For that reason, we propose to exclude these statements from the proposed safe harbor for factual business communications. We also, however, wish to encourage, where consistent with investor protection, the voluntary disclosure of forward-looking information. Given its value to investors, analysts, investment advisers and other securities professionals, the release of forward-looking information should not be constrained in circumstances that do not require constraint. Thus, where that information is regularly released by the issuer, we would presume that it is not being released around the time of the offering solely as a method of hyping the securities. Accordingly, we propose the safe harbor.

We solicit comment on the safe harbor for this forward-looking information. Are there other categories of forward-looking information that should be added to the list of exempted communications? Should any of the categories proposed in the exemption be deleted?

(C) Notice of Proposed Offerings

As part of lifting communications restrictions, we propose to merge current Securities Act Rules 135 and 135c.[310] The resulting rule, Rule 135, would provide issuers with a communications safe harbor for limited notice of their proposed offerings or business transactions. We propose to remove the reference found in current Rule 135 that specifically states that issuers may not name the underwriters of its proposed offering in any notice published in reliance on the Rule. The proposed rule clearly pronounces that these notices may not include information beyond the subjects enumerated in the rule. Because the proposed rule does not include a provision that would allow issuers to name their underwriters, their Rule 135 notices may not name their underwriters. We solicit comment as to whether there are reasons to retain the specific prohibitions in the rule.

New Rule 135 would not require issuers to announce whether the offering would be public or private. Consequently, an issuer would not have to commit early on whether it is planning a registered or exempt offering. Thus an issuer may find more flexibility in assessing market demand through publication of the Rule 135 notice. Proposed Rule 135 also would provide specifically that an issuer may issue a statement to correct inaccurate accounts or misstatements about its offering. An issuer's correction may not, however, include more information than would be needed to remedy the inaccuracy.

2. Communications During the Waiting Period

Restrictions on communications during the waiting period differ according to the form the communication takes. During the waiting period, oral offers may be made without content restrictions other than due to liability concerns. Written offers, however, must have Section 10 contents or they cannot be used. This distinction

[302] Securities Act Release No. 5009 (Oct. 7, 1969).

[303] *See* proposed Securities Act Rule 169, 17 CFR 230.169.

[304] *See* proposed Securities Act Rule 168, 17 CFR 230.168.

[305] We propose to revise Rule 135, 17 CFR 230.135, to permit issuers to use it whether they plan to make a registered or private offering. *See* Section VII.A.1.c.ii.(C) of this release for a discussion of the proposed revisions to Rule 135.

[306] *See* proposed Securities Act Rule 168, 17 CFR 230.168.

[307] This information generally would have to be filed with the Commission under proposed Securities Act Rule 425, 17 CFR 230.425.

[308] These are essentially the same categories of statements that are defined as forward looking statements under Securities Act Section 27A(i)(1). In light of the offering context, we omitted the category of ''statements by an underwriter or participating dealer assessing any of the itemized information.''

[309] Until the 1970s, the Commission prohibited disclosure of forward-looking information. In 1979, the Commission adopted a safe harbor for release of forward-looking information. *See* Securities Act Release No. 5362 (Feb. 2, 1973) [38 FR 7220]; Securities Act Release No. 6084 (June 25, 1979) [44 FR 38810]; *see also* Wheat Report, *supra* note 11, at 94; Securities Act Release No. 5180 (Aug. 16, 1971).

[310] *See* proposed revisions to Securities Act Rule 135, 17 CFR 230.135.

appears to do little to enhance investor protection or facilitate the capital formation process. One can argue that it creates an incentive for issuers and underwriters to omit information or to provide it in a manner that is not readily available to investors for later reference. For instance, sellers may choose to omit matters that are not easily understood orally, or they may present that information orally anyway despite the risk that investors will have a less than perfect understanding of it. Issuers and their agents are known to deliberately provide some information during the waiting period only orally, and also limit the audience to avoid those communications being considered broadcasted. Perhaps the best example of how this current regulatory structure negatively affect investors is the ''road show'' structure. It is common for issuers and underwriters to conduct ''road show'' presentations during the waiting period for selected broker-dealers and large institutional investors. While these road shows are valuable to some investors because they provide a forum for investors' questions, their value is curtailed because of the limited audience invited to attend and the fact that issuers and underwriters do not allow participants to retain materials used during the presentation (other than the preliminary prospectus). These restrictions raise concerns regarding selective disclosure of material information. They also raise concerns about whether investors have been informed as well as they might have been absent those restrictions.[311]

We believe that the waiting period should be a time of open dialogue between the registrant and its potential investors, provided that the registrant is accountable for the accuracy and completeness of its communications. The medium in which disclosure is made should not be dictated by the regulatory structure but, rather, by the needs of investors.

Under the proposal, we would allow companies to make offers and disseminate offering information during the waiting period in any form without each communication having to meet the informational requirements of Section 10.[312] This would permit issuers to prepare presentations and disclose information in a variety of formats, available to all investors. [313] Through these changes, the Commission seeks to have sellers augment the information available to investors and thereby enhance investors' knowledge of the company and its securities.[314]

Our communications proposals logically contemplate that larger seasoned issuers, including issuers eligible to use Form B and larger, seasoned foreign government issuers, that would have no pre-filing communications restrictions would also be able to freely communicate after filing a registration statement.[315] While generally there may be very limited post-filing marketing periods for these issuers because no registration statement need be filed until the time of sale, some may choose to file earlier. Proposed Rule 165 therefore would permit those issuers to engage in post-filing free writing if they:

1. Comply with the preliminary prospectus delivery requirements in proposed Rule 172;

2. File free writing materials under proposed Rule 425; and

3. File a final prospectus meeting the requirements of Section 10(a) before the first sale.

Smaller issuers that would be likely to market the securities during the waiting period may also engage in post-filing free writing under the same proposed conditions. All free writing materials and term sheets, whether used by large or small issuers, would have to include a prominent legend advising investors to read the other disclosure documents filed with the Commission before making an investment decision. The legend also would describe how the investor could get copies of this information for free from the Commission's web site and explain which documents an investor could get for free from the issuer.[316] Although free writing material would be required to be filed, it would not be required to be delivered. We believe that the filing requirement enhances investor protection by reducing selective disclosure. For example, road show materials not generally available to individual investors today would be available to the broader market on a real-time basis after the registration statement is filed.[317] We solicit comment as to whether investors would have an increased analytical burden in collecting and evaluating various free writing materials.

In light of the free writing that would be granted by the proposed rules, we propose to revise Securities Act Rule 134 to narrow its application to investment companies. The Rule 134 safe harbor would not be needed by other issuers. The proposed Rule 134 amendments would not make substantive changes to the content of the Rule.[318] We are, however, revising the Rule to make it more understandable. For example, the legends informing investors how to obtain more complete information about a fund would be simplified and combined into one legend. The amendments also would clarify that an investment company may identify its secretary, treasurer and any vice-president, in addition to its president, in a Rule 134 advertisement.[319] Finally, to reflect changes made by NSMIA, legend text referring to state registration of securities would be deleted.[320]

We request comment regarding whether a legend substantially similar to that required to appear in Rule 482 advertisements used with a profile should be required for Rule 134 advertisements that are used with a

[311] *See, e.g.*, Pratt, *The IPO Information Gap; Retail Investors are Always the Last to Know as Institutions Get Key Data Despite SEC Ban*, Investment Dealers' Digest, May 18, 1992, at 14. *See also* Seely, *In I.P.O.'s, the More Data the Better*, N.Y. Times, April 26, 1992, § 3, at 13, col. 2.

[312] *See* proposed Securities Act Rule 165, 17 CFR 230.165. Any prospectus disseminated in reliance on this Rule would be subject to Section 12(a)(2) of the Securities Act and would be filed under proposed Securities Act Rule 425, 17 CFR 230.425.

[313] For example, the Division of Corporation Finance has issued a line of no-action letters that permitted issuers and underwriters to conduct road show presentations over the Internet and through other electronic media. Access to these road shows presentations, however, has been restricted by the sponsor to institutional investors, investment advisers, broker-dealers, security analysts and others that customarily would attend the live presentation. *See* Staff no-action letters *Private Financial Network* (Mar. 12, 1997); *Net Roadshow, Inc.* (July 23, 1997); and *Bloomberg L.P.* (Oct. 22, 1997). We request comment on whether video road shows should be deemed free writing and therefore would be required to be filed under these proposals.

[314] The proposals also include modifications to various rules as a result of the restrictions on offering communications being lifted. Securities Act Rule 431, 17 CFR 230.431, permits an issuer that has been subject to the reporting requirements of the Exchange Act for more than 36 months to distribute a summary prospectus after it has filed the related registration statement. Our proposal to permit the use of ''free writing'' materials during the waiting period for all issuers would allow issuers to create and use summary prospectuses without complying with the strictures of Rule 431. Accordingly, we are proposing to eliminate Rule 431.

[315] *See* proposed Securities Act Rule 165, 17 CFR 230.165.

[316] *See* proposed revisions to Securities Act Rule 421, 17 CFR 230.421.

[317] For Form B offerings, road show materials used before the registration statement is filed would not be required to be filed until the registration statement is.

[318] We noted in our release adopting amendments to Form N–1A that we intend to re-evaluate fund advertising rules in the future. *See* Investment Company Act Release No. 23064 (Mar. 23, 1998) [68 FR 13916, 13936].

[319] *See* paragraph (a)(3)(ii) and (a)(3)(x) of the proposed amendments to Securities Act Rule 134, 17 CFR 230.134.

[320] NSMIA, Section 102(a) (exempting certain securities offerings from state regulation).

profile.[321] Are funds likely to use Rule 134 advertisements with a profile? Should such disclosure be permissive or mandatory?

B. Filing Under EDGAR

Communications filed under Rule 425 would be filed electronically, via the EDGAR system, to the same extent that the registration statements to which the communications relate are required to be filed under EDGAR.[322] In some cases, issuers may wish to communicate with investors through multimedia prospectuses. These multimedia prospectuses may be presented in the form of videos, CD–ROMs, streamed video or audio files that can be played over the Internet. Currently, EDGAR is not able to accept multimedia prospectuses. Instead, companies using multimedia prospectuses file a transcript of the material on EDGAR.[323]

We have awarded a contract to modernize EDGAR, which will enable filers to enhance the appearance of their documents by using graphics and different fonts. The system, however, may not be able to accommodate multimedia materials. We are considering whether some of these media could be included in the new system. Some of the factors we are considering include: security; development and maintenance costs of a system that will accept these media; costs of database storage; how these materials should be disseminated to the public; whether investors would have as ready access to these materials as to the current electronic filings; how to meet the archival requirements for storage of electronic documents; wide divergence in industry standards for most multi-media formats; how to assure that filed documents continue to be readable in the future, since applications that can present these media may change or even disappear over time.

If at adoption EDGAR is unable to accept multimedia prospectuses, we would require that a transcript of the presentation be filed.[324] Additionally, we would require that the issuer file five copies of the multimedia prospectus in the form used, so that we may make it available through our public reference rooms. We solicit comment on this approach and alternative approaches to the dissemination of multimedia prospectuses. For example, rather than have the issuer file five copies of the multimedia prospectus, should we require that the issuer include an address in the transcript where the multimedia prospectus can be obtained in its original form? Should we require that a summary of the multimedia prospectus be filed through EDGAR instead of a transcript?

C. Technology Implications of the Communications Proposals

The proposed communications rules would enable issuers and market participants to take significantly greater advantage of the Internet and other electronic media to communicate and deliver information to investors.[325] Most notably, the proposals would permit all issuers, underwriters and their representatives to communicate during the waiting period with potential investors without having to conform their communications to the informational requirements of Section 10 of the Securities Act.[326] Accordingly, after filing a registration statement, any issuer or underwriter could take full advantage of innovative media technology in stylizing its free writing materials. In that period, issuers and underwriters could use the Internet and other electronic media to, among other things:

- Conduct electronic roadshows to institutional and retail investors without the use of password protection;
- Use electronic mail to answer investors questions about the company and its offering; and
- Conduct ''chat room'' discussions or post messages on bulletin boards about its offering with potential investors.[327]

For offerings registered by well-followed, large issuers on Form B, the issuers and underwriters could use the Internet and other media for those purposes both before and after filing a registration statement.[328] The ability to communicate before filing would allow issuers to use the Internet and other electronic media to determine investors' interest in a proposed public offering well before committing significant resources to its completion.

The 30-day bright-line test would help smaller companies that have been concerned about when in relation to an offering they should monitor or limit their Internet use. They would know they have freedom to disseminate information on it at any time except during the 30 days just before filing their registration statements.[329]

The proposed safe harbor for factual business communications made within the 30 days before filing a registration statement would provide smaller issuers with more certainty when determining what information may be posted on their Internet Web sites during those 30 days.[330]

Proposed Form B also would provide issuers with more flexibility in crafting transactional disclosure in their prospectuses. This additional flexibility also should allow issuers to take greater advantage of innovations in media technology.

The Commission also is proposing to require issuers to identify their web site addresses and provide an e-mail contact on the cover page of every registration statement under the Securities Act. This requirement would make this information more accessible to investors, as well as ease investors' electronic communications with companies.

D. Research Reports [331]

Investors acquire useful information regarding companies from sources other than Commission-mandated disclosure. One such source is analysts' research reports. As the Commission has long acknowledged and the Supreme Court recognized in *Dirks* v. *SEC*,[332] analysts

[321] Rule 482(a)(3)(ii), 17 CFR 230.482(a)(3)(ii), requires Rule 482 advertisements that are used with a profile under Rule 498 (''Profile'') to include a conspicuous statement that indicates that information is available in the Profile about the investment company, the procedures for investing in the investment company and the availability of the investment company's prospectus.

[322] Foreign private issuers are not required to file on EDGAR.

[323] *See* Rule 304 of Regulation S–T, 17 CFR 232.304.

[324] Like today, issuers also would have to include a fair and accurate description of any graphical information presented that otherwise is not disclosed in the transcript.

[325] In October 1995, the Commission published its first interpretive release regarding the use of electronic media. At that time, the Commission noted its belief that the use of electronic media ''enhances the efficiency of the securities markets by allowing for the rapid dissemination of information to investors and financial markets.'' Securities Act Release No. 7233 (Oct. 5, 1995) [60 FR 53458]. The procedural requirements discussed in that release regarding notice, access and evidence of delivery would continue to be applicable under the proposed system. *See also* Securities Act Release No. 7288 (May 9, 1996) [61 FR 24644]. More recently, the Commission has provided additional guidance with regard to the use of Internet web sites in the offering of securities offshore. *See* Securities Act Release No. 7516 (Mar. 23, 1998).

[326] *See* proposed Rule 165, 17 CFR 230.165.

[327] In the near future, the Commission intends to address specific technological issues that arise in the offering process. These issues exist under the current offering framework as well as the framework proposed in this release. Further guidance on these activities may be provided in that release.

[328] *See* proposed Rule 166, 17 CFR 230.166.

[329] *See* proposed Rule 167, 17 CFR 230.167.

[330] *See* proposed Rule 169, 17 CFR 230.169.

[331] For convenience, we use the terms ''research reports'' and ''reports'' in this section to cover not only formal reports published by analysts but also the broad range of analyst communications about issuers, whether or not formalized in a report. Rules 137, 138 and 139, 17 CFR 230.137, 230.138 and 230.139, refer to publication of ''information, opinions or recommendations.'' For purposes of this release we use the term ''research'' generically to cover all of those.

[332] 463 U.S. 646, 658–59 (1983).

fulfill an important function by keeping investors informed. They digest information from Exchange Act reports and other sources, actively pursue new company information, put all of it into context, and act as conduits in the flow of information by publishing reports explaining the effect of this information to investors.[333] They also express opinions and recommendations about investment in issuers' securities. Unlike small investors, analysts can arrange to interact with key company insiders and ask them pertinent questions. Where analysts are acting independently and objectively, investors gain from the publication of their insights.

Analyst reports, however, also potentially can be misused to hype a company's securities. Because they could do so under the guise of providing objective, independent analysis, they could unduly influence investors. Often, firms that employ analysts and publish their research reports also act, or may act, as underwriters in connection with the offerings of companies that are the subject of the reports. Research by a broker or dealer about an issuer that proposes to register a public offering, or has registered an offering, may constitute an offer of those securities.[334] This is particularly true when the broker-dealer is to participate in the distribution as an underwriter or selling group member.

The Commission recognized both possible uses of analyst research reports—for hyping as well as for enhancing the free flow of information—when it adopted Rules 137, 138 and 139 under the Securities Act. Those safe harbor rules describe circumstances in which a broker-dealer may publish research in and around the time of a registered offering without concerns about violating Section 5 through making an illegal offer or using a non-conforming prospectus. In those rules, the Commission struck a balance between its concern about hyping and its concern for current information by restricting the situations in which the three safe harbors would apply.[335]

Commenters on the Concept Release asked the Commission to minimize the scope of restrictions on research in order to reflect rapid advances in communications technology and globalization of the markets, among other developments.[336]

1. Proposals in Connection With Registered Offerings

When a company is making a registered offering, investors particularly seek current information about the issuer and its securities. In general, we propose to allow investors to receive as much current information as possible with respect to companies that are in registration, where consistent with investor protection. This is true especially where the largest companies are involved. The narrowness of the current rules regarding research causes some analysts' research to be barred at a point at which investors may seek current research reports the most. The result is that investors may rely on research that does not reflect material changes or current data.

In addition, the narrower rules put U.S. investors at a relative disadvantage because analyst firms may determine that current law would not allow them to give investors the current research that is distributed to investors outside the United States. While larger U.S. investors find out about research distributed offshore and arrange to receive it, the same cannot be said with assurance about smaller U.S. investors. Because of the benefits of analyst research, the proposals overall would create broader exemptions to allow publication of research in more instances around the time of an offering. This approach would allow investors to judge for themselves the value of the analysts' opinions set forth in those reports.

a. Rule 137

When a broker or dealer is not otherwise participating in a distribution of securities, and does not propose to participate in a distribution, it is guided by Rule 137.[337] That rule provides that research may be published by the broker or dealer in the regular course of its business where it is not receiving consideration of any kind from persons with an interest in the securities being registered. Rule 137 protects the broker or dealer from being considered an ''underwriter'' by virtue of its publication.[338] It provides a safe harbor only with respect to reporting companies.

The release proposing Rule 137 in 1969 explained that ''[t]he need for such a rule is primarily evidenced in connection with actively traded securities of issuers concerning which adequate information is available to the public.'' [339] While the need for a safe harbor in 1969 may have been confined to reporting companies, it no longer appears to us that the need is so confined. Not all actively traded securities are issued by reporting companies, particularly in light of the market interest in securities of foreign issuers.

We propose to expand Rule 137 to cover non-reporting companies.[340] We also propose to delete the condition in Rule 137 that the broker or dealer publish the report in the regular course of its business. As expanded, Rule 137 would provide a safe harbor with respect to registrants, such as foreign government issuers, that are less likely to be reporting under the Exchange Act. The new rule also would allow a broker or dealer to commence research coverage on private companies planning to make registered offerings, even where it had never before published a research report concerning that company. Where a broker or dealer is not connected to the registrant's distribution, we perceive limited risk that it will use its research about the registrant or its securities to hype the market for the securities being distributed. While the broker or dealer may seek to cover the registrant for purposes of attracting underwriting business from the registrant in the future, that motive for coverage is universal and is not limited to the distribution period. Investors should factor in that incentive when analyzing any research report. We do not believe the risk of analysts creating reports that are positively skewed to attract future business outweighs the benefits to

[333] Investors benefit from being informed on an ongoing basis via analysts about particular securities and issuers. For instance, issuers' forward-looking information is disseminated indirectly through analyst reports. Analysts communicate with issuer representatives and then reflect their understanding about likely future results in the reports or updates they publish. The market's expectations of an issuer's future earnings can be gradually altered by issuers leading analysts away from incorrect predictions; less volatility in stock price would result.

[334] *See* Sections 2(a)(3) and 5 of the Securities Act, 15 U.S.C. §§ 77b(a)(3), 77e.

[335] These releases are discussed in Chiappinelli, *Gun Jumping: The Problem of Extraneous Offers of Securities*, 50 U. Pitt. L. Rev. 457, 505–07 (1989).

[336] *See, e.g.*, comment letters, in File No. S7–19–96, from the American Bar Ass'n (Dec. 11, 1996), Merrill Lynch (Oct. 31, 1996), Morgan Stanley (Dec. 9, 1996), PSA The Bond Market Ass'n (Nov. 8, 1996), Shearman & Sterling (Dec. 13, 1996) and the Securities Industry Ass'n (Nov. 13, 1996).

[337] Even if the distribution of research constitutes an offer, a dealer may rely on Section 4(3) of the Securities Act which provides an exemption from registration for dealers that are not acting as underwriters. Section 4(3) is not available, however, during certain defined periods shortly after the commencement of an initial offering of a security or the effective date of a registration statement. It is during those periods that reliance on Rule 137, 17 CFR 230.137, may matter most.

[338] Rule 137, 17 CFR 230.137, provides that a broker or dealer satisfying the rule will not be ''participating'' in the offering for purposes of the definition of ''underwriter'' in Securities Act Section 2(11).

[339] Securities Act Release No. 5010 (Oct. 7, 1969) [34 FR 18130].

[340] *See* proposed revisions to Securities Act Rule 137, 17 CFR 230.137. The proposed rule would not cover blank check companies, shell companies and companies making offerings of penny stock.

investors from having persons independent of the issuer and the underwriter publish their views about the investment opportunity at a time when investors would especially look for information. We solicit comment on the relative risks and benefits of this approach.

We also solicit comment regarding our proposal to remove the ''regular course of business'' condition in Rule 137. To avoid concerns that research preparation, absent that condition, would be an unusual activity for that broker or dealer, should it be replaced with a narrower requirement that the person who prepares the research must be employed by the broker or dealer to prepare research in the normal course of his or her duties? Would those concerns be lessened if we required that the person who prepares the research must be a registered person? Should other restrictions be imposed on who prepares the research? Should we mandate the manner in which the broker-dealer discloses the identity and affiliation of those who prepare research?

b. Rule 138

Rule 138 permits a broker or dealer participating in a distribution of one type of an issuer's securities to publish research confined to another type of the issuer's securities if it publishes or distributes the research in the ordinary course of its business. For example, a dealer distributing non-convertible debt may publish under Rule 138 research solely relating to the common stock of that issuer. A dealer distributing convertible debt could publish research limited to the issuer's non-convertible, non-participating preferred securities under Rule 138. When we proposed Rule 138 in 1969, we noted that the markets for non-convertible senior securities and common stock differ significantly. There is less opportunity to condition the market when a broker or dealer is underwriting one and reporting on the other.[341] In addition, the investment conditions with respect to common stock and senior securities are significantly different.[342]

Rule 138 is not available, however, for offerings by any type of issuer. The offering must relate to securities of an issuer that: has been reporting for 3 years (Form S–2 or F–2 issuers); has been reporting for one year and has a public float of $75 million (S–3 or F–3 issuers); or is a foreign private issuer that has a public float of $75 million and a one-year trading history on a designated offshore securities market. In addition, the research must be published by the broker or dealer in the regular course of its business.

Unlike Rule 137, which focuses on whether the broker or dealer becomes an underwriter by publishing research, the Rule 138 safe harbor relates specifically to those who are acting as underwriters. The Rule was designed to address the concern that the publication would violate Section 5. A broker or dealers' research could be viewed as an unlawful offer if it occurs before the filing of a registration statement. The publication could also be a non-conforming prospectus [343] because the contents will not have the disclosure required by Section 10 of the Securities Act. Rule 138 therefore provides that publication of research under the Rule will not be considered:

—An offer during the pre-filing period, which would violate Securities Act Section 5(c); or

—a distribution of a ''prospectus'' that does not conform to the requirements of Section 10, which would violate Securities Act Section 5(b)(1).[344]

Under the proposed registration system, offers may be made during the pre-filing period with respect to Form B offerings.[345] In addition, prospectuses used in connection with Form B offerings need not conform to the requirements of Section 10.[346] Thus, a broker or dealer would not need the relief that Rule 138 provides in connection with Form B offerings.[347]

Further, in registered business combinations, any communications before the first communication related to the offering, other than communications among participants, would not constitute an offer for the purposes of Section 5(c), provided that the parties take reasonable steps to prevent distribution of such communication after the announcement but before filing a registration statement. Thus, a broker or dealer would not need the relief that Rule 138 provides in connection with registered business combination transactions.

Brokers and dealers would only rely on Rule 138 to a limited extent with respect to other registered offerings. In other offerings, a proposed rule would provide that communications made more than 30 days before the registration statement is filed would not constitute offers.[348] Research materials distributed during that period would not constitute prospectuses.[349] Thus, even in the absence of the Rule 138 safe harbor, underwriters and participating dealers would have no Section 5 concerns about publishing research reports during that period. Similarly, after a registration statement is filed, offers may be made and a proposed rule would provide that prospectuses do not have to conform to Section 10 disclosure standards.[350] Thus, underwriters and participating dealers would have no Section 5 concerns about publishing research reports during that period. Thus, an underwriter or participating dealer's Section 5 concerns about research reports would be limited to the 30-day period before filing a registration statement.

We propose to expand Rule 138 to cover research reports relating to securities of virtually all companies subject to the Exchange Act reporting requirements, rather than just larger foreign and domestic issuers with a one-year reporting history and other issuers with a 3-year reporting history.[351] Where Exchange Act reports are available, investors will have another source for information against which to compare the analyst's report. The only reporting issuers' securities that we would not cover are those that have historically posed certain risks of abuse. They include: blank check companies,

[341] Securities Act Release No. 5010 (Oct. 7, 1969). The release noted specifically that the market for senior securities is largely institutional and that ''the investment conditions with respect to common stock and the senior securities of established corporations are significantly different.'' See also Securities Act Release No. 6492 (Oct. 6, 1983) [48 FR 46801].

[342] *See* Securities Act Release No. 5010 (Oct. 7, 1969).

[343] A ''prospectus'' is defined in Section 2(a)(10) of the Securities Act to include any notice, circular, advertisement, letter or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security.

[344] Rule 138, 17 CFR 230.138, exempts the research covered by its terms from constituting an ''offer to sell'' for purposes of Securities Act Section 5 or an ''offer for sale'' for purposes of Securities Act Section 2(a)(10).

[345] *See* proposed Securities Act Rule 166, 17 CFR 230.166.

[346] *See* proposed Securities Act Rule 165(a), 17 CFR 230.165(a).

[347] Rule 138, 17 CFR 230.138, currently contains an instruction that the Rule's safe harbor is available when an issuer plans to file, files or has an effective shelf registration statement that includes both non-convertible securities and equity securities. See Securities Act Release No. 7132 (Feb. 1, 1995) [60 FR 6965]. Under the proposed registration system this instruction would not be needed because these shelf offerings would be Form B offerings.

[348] *See* proposed Securities Act Rule 167, 17 CFR 230.167.

[349] In order for a communication to be a ''prospectus'' as defined in Section 2(a)(10) of the Securities Act, the communication must either offer a security or confirm the sale of a security. Research reports do not confirm the sale of a security and proposed Rule 167, 17 CFR 230.167, would provide that they are not prohibited offers.

[350] *See* proposed Securities Act Rule 165(b), 17 CFR 230.165(b).

[351] *See* proposed revision to Securities Act Rule 138, 17 CFR 230.138.

shell companies and companies making offerings of penny stock.

We are not proposing that the Rule be limited to companies that have been reporting for a specific period of time. Companies generally become subject to the Exchange Act reporting requirements through registering under either the Securities Act or the Exchange Act and provide current disclosure in connection with that event. We solicit comment, however, regarding whether companies covered by Rule 138 should have to have a specified reporting history (*e.g.*, 6 months or a year).

We are not currently proposing that Rule 138 be expanded to cover non-reporting companies other than foreign private issuers that would satisfy the public float/ADTV thresholds of Form B measured on a worldwide basis and whose equity securities trade on a designated offshore securities market.[352] As the Commission explained in 1994 when it proposed to expand Rule 138 to cover certain non-reporting foreign private issuers with an offshore trading history, there is a stream of corporate information available in the marketplace about those foreign private issuers due to their nature, even though they are not filing reports with the Commission.[353] The same stream of information is not available about other non-reporting companies.

Comment is solicited with regard to the application of the proposed Rule 138 safe harbor to research reports regarding non-reporting issuers. Should we require the non-reporting foreign private issuers to have a specified trading history on a designated offshore securities market, as Rule 138 does today? If so, should that trading history be set at one year as in current Rule 138, or some shorter period (*e.g.*, 6 months)? Should we expand the safe harbor to cover cases where the issuer has issued debt in a public offering, but then terminated its status as a reporting company, if the broker or dealer is publishing research reports with respect to those debt securities? Are there reporting companies with respect to which Rule 138 should not apply?

c. Rule 139

Rule 139 permits a broker or dealer participating in a distribution of securities by a larger, seasoned issuer or a larger foreign private issuer publicly traded abroad to publish research concerning the issuer or any class of its securities, if that research is in a publication distributed with reasonable regularity in the normal course of its business. Rule 139 also provides a safe harbor in those situations for distributions by smaller seasoned issuers, if the broker or dealer complies with additional restrictions on the nature of the publication and the opinion or recommendation expressed in it.

Like Rule 138, Rule 139 was developed to create a safe harbor from Section 5 for a person acting as an underwriter for the issuer. It ensures that the research does not constitute an offer during the period before filing, or constitute a non-conforming prospectus.[354] Unlike Rule 138, this Rule covers the situation where the broker or dealer's report covers the same securities that it is selling on the issuer's behalf in the registered offering.

The greatest potential for blurring the objective analyst role and the underwriting role occurs when the analyst firm is publishing research directly about the security it is underwriting. The Commission has recognized that risk in the past by attaching more restrictions to the publication of research reports under the circumstances in Rule 139.

i. Form B and Schedule B Offerings

In the case of Form B offerings, we believe that the fact that many analysts would be covering the issuer, and that the investors would be relatively informed already, justifies allowing research to be published around the time of an offering without applying Section 5 restrictions. Thus, the proposed communications rules allow research reports to be a part of the mix of information that investors may see around the time of a Form B registered offering regardless of who publishes those reports.[355] Accordingly, the Rule 139 safe harbor would not be needed in those cases.

We would provide the same freedom for a research report published around the time of an offering by a seasoned foreign government issuer that is registering an offering of securities that exceeds $250 million and that is underwritten on a firm commitment basis.[356] Because the proposed communications rules would provide that offers may be made before filing of such a registration statement, an underwriter or participating dealer would not have to be concerned about research during that period.[357] Similarly, because prospectuses relating to offerings by those foreign government issuers would not have to satisfy the requirements of Section 10, underwriters and participating dealers would not have to be concerned about publishing research once a Schedule B registration statement is filed.[358] The same would be true in a registered business combination in the period prior to the first communication about the transaction (other than among offering participants).

ii. All Other Offerings

As discussed in connection with Rule 138, in all other offerings, underwriters and participating dealers would have no Section 5 concerns about publishing research more than 30 days before the filing of a registration statement or after a registration statement is filed.[359] Thus, an underwriter or participating dealer would rely on Rule 139 to address its Section 5 concerns about research reports only during the 30-day period before the filing of a registration statement.

In offerings by these issuers, we have some concern that, absent restrictions, research reports published before the filing of a registration statement might evolve into selling documents distributed at a time when no prospectus is available. With appropriate restrictions, we generally believe that research should be able to continue during that time period. The proposed delivery rules would ensure that investors will have time to consider the prospectus disclosure before making a final investment decision.

iii. Focused Reports

Proposed Rule 139 would continue to provide for two categories of reports, broad industry-related reports and reports more focused on the issuer and its securities.[360] The companies about which brokers may prepare those two

[352] ''Designated offshore securities market'' is defined in Rule 902(b) of Regulation S, 17 CFR 230.902(b).

[353] *See* Securities Act Release No. 7120 (Dec. 13, 1994) [59 FR 31038].

[354] Rule 139, 17 CFR 230.139, exempts the research from constituting an ''offer to sell'' for purposes of Securities Act Section 5 or an ''offer for sale'' for purposes of Securities Act Section 2(a)(10).

[355] *See* proposed Securities Act Rule 166, 17 CFR 230.166, and proposed Securities Act Rule 165(a), 17 CFR 230.165(a). As in the case of Rule 138, 17 CFR 230.138, brokers and dealers would not have a need to rely on Rule 139, 17 CFR 230.139, in connection with Form B offerings.

[356] By ''seasoned'' we mean that the foreign government issuer's offering takes place one year or more after the effective date of its initial public offering.

[357] *See* proposed Securities Act Rule 166, 17 CFR 230.166.

[358] *See* proposed Securities Act Rule 165(a), 17 CFR 230.165(a).

[359] *See* proposed Securities Act Rule 167, 17 CFR 230.167, and proposed Securities Act Rule 165(b), 17 CFR 230.165(b).

[360] *See* proposed Securities Act Rule 139, 17 CFR 230.139.

categories of reports, however, would change. Where reporting issuers are making the offering, we would not continue to limit the focused issuer reports under the Rule to issuers that meet the Form S–3 or F–3 minimum float/investment grade and reporting history. Instead, the proposed Rule would allow those reports in offerings of any type of securities by any size issuer that has a one-year reporting history.[361]

In addition, the proposed Rule would allow for focused reports relating to offerings by foreign government issuers that are registering on Schedule B for the first time as long as the issuer is registering on Schedule B an offering of more than $250 million on a firm commitment underwritten basis. We recognize that because of the nature of foreign government issuers, significant amounts of information likely would be available about them even though they may not have registered before in this country. We solicit comment regarding our extension of the focused reports safe harbor to these foreign government offerings. Should we do so only if the foreign government issuer has previously issued securities in a public offering or if the broker or dealer was reporting on the issuer regularly before the filing?

One of the conditions that currently applies to focused research reports under Rule 139 is that the reports are distributed with reasonable regularity in the normal course of business. We propose to eliminate the ''reasonable regularity'' part of that condition but retain a requirement that the report be distributed in the broker or dealer's ordinary course of business. Where the issuer has been reporting under the Exchange Act for more than a year, investors will have public disclosure to refer to in weighing the contents of a focused research report. The same would be true of a large, well-followed foreign issuer even if it is not reporting in the United States. The condition that the broker or dealer be distributing the report as part of its ordinary course of business (*i.e.*, it has a history of distributing similar focused reports on other issuers or securities) should allay concern about hyping as well. We solicit comment about the elimination of the reasonable regularity condition. Are there any reasons we should retain the condition? Should we instead substitute a bright-line test that indicates more clearly just how long a broker or dealer must have been reporting about the issuer or its securities and with what frequency? If so, how long and how often?

iv. Consideration to Expand Rule 139 to IPOs and Offerings by Unseasoned Issuers

We also solicit comment on whether to expand the focused reports aspect of Rule 139 to initial registered offerings and repeat offerings by large unseasoned issuers where research reports are published by brokers or dealers that have been following the issuers in the ordinary course of their business.[362] Large issuers, even those that have not been reporting for a full year, may generate significant market and analyst attention. In some cases, the same would be true in initial registered offerings.

In cases involving repeat offerings by large unseasoned reporting companies, we believe it is possible that investors may benefit if research reports concerning these large companies were available around the time of their offerings. On the other hand, we see merit in limiting dissemination of research reports about unseasoned companies. A limitation helps ensure that the market is not mislead by subjective reports that are not balanced by regulated public disclosure made over a period of time. Given the risk of use of research reports as sales materials in the case of initial registered offerings and other offerings within a year of effectiveness, we would envision a safe harbor applying only if the research reports were required to be filed with the Commission in connection with the offering.

What limitations should we consider if we were to extend the Rule 139 focused reports safe harbor to IPOs? Should we limit extension to companies initially offering more than a certain dollar amount of securities? If so, at what level should we set the minimum offering amount: $250 million; $500 million; $600 million? Should we set other conditions? If so, what kinds?

Do these same considerations apply to unseasoned reporting companies? Does the proposed Form B public float/ADTV criteria provide a good model for qualifying companies that should be able to rely on this aspect of Rule 139? Should we differentiate unseasoned reporting companies listed on a national securities exchange from ones that are not listed?

Should we condition any extension of Rule 139 to cover focused reports about these companies on the broker or dealer having a specified history of following the company (*e.g.*, two years)? Should we extend it only if the report was prepared by a broker or dealer that had issued research reports about the company before the time it announced its registered offering?

Should we require that issuers file any research report prepared in reliance on any further extension of Rule 139 as part of their registration statements or as prospectus supplements? A filing requirement would assure that all investors would have equal access to the report, in furtherance of our goals to reduce selective disclosure whenever possible. If such reports are not filed, should issuers and underwriters be required to inform investors of the reports' availability and undertake to provide the reports upon request?

v. Industry-Related Reports

We also would extend the industry-related report safe harbor. Instead of applying only to offerings of issuers that meet the Form S–3 or F–3 minimum float/investment grade and reporting history, we would extend it to all issuers, regardless of size or reporting history. Where the report is not truly focused on the issuer of the securities, which the existing conditions ensure, there appears to be little risk of a report that is distributed regularly being distributed for the purpose of hyping the security. Even if the purpose of the broker-dealer's distribution was hyping, that type of report is unlikely to have that effect, regardless of whether the issuer is reporting or not. We solicit comment, however, concerning whether the contents of such a report under the proposed safe harbor should be further limited with respect to non-reporting companies.

We also propose to alter one of the conditions of the existing industry-related report safe harbor. We would eliminate the requirement that the report not contain a more favorable recommendation than the one made in the last publication by the broker or dealer about the issuer or its securities. That condition controls the recommendation being made by the analyst, not just the format in which it is made. While we recognize the risk involved in lifting that constraint, we believe it is possible to address the hyping concern by disclosure rather than by prohibiting a broker or dealer from stating what may be a legitimate change in its opinion. Our proposed Rule would provide simply that, when a broker or dealer wishes to make a more favorable recommendation than it made in the past, it also must disclose

[361] We would continue to allow research concerning large foreign exchange-traded issuers that are not reporting if the Form B public float/ADTV threshold is satisfied.

[362] For purposes of this discussion, a large company would be one that would meet the public float/ADTV tests in Form B.

in the report the last two opinions or recommendations it published while not participating in a distribution by the issuer.[363] Because the broker or dealer also must disclose its role in the distribution, investors will be aware of the potential conflict of interest and can judge the current recommendation accordingly.

As revised, Rule 139 also would require that the broker or dealer reporting on unseasoned or non-reporting issuers have distributed such reports with ''reasonable regularity.'' We solicit comment regarding the need to retain the reasonable regularity requirement for unseasoned or non-reporting issuers. We also solicit comment as to whether it is necessary that projections for unseasoned or non-reporting issuers have been published with reasonable regularity.

vi. Section 17(b)

Section 17(b) of the Securities Act requires disclosure of any compensation received or expected to be received, directly or indirectly, form an issuer, underwriter or dealer for the publication or communication of information that describes a security.[364] Brokers and dealers are reminded that compensation received from an issuer that could be attributed to the preparation of a research report should be prominently disclosed.

2. Proposals and Interpretation in Connection With Regulation S and Rule 144A Offerings

Where an issuer is offering securities outside the United States in reliance on Regulation S, it and those acting on its behalf are required to refrain from making ''directed selling efforts'' in the United States and must ensure that the transaction is an ''offshore transaction.'' ''Directed selling efforts'' is defined to encompass activities that are done for the purpose of, or could reasonably be expected to have the effect of, conditioning the market in the United States for the securities being offered under the Regulation. To satisfy the offshore transaction condition, no offer may be made to a person in the United States.

A broker or dealer acting as an underwriter on behalf of an issuer in connection with a Regulation S offering may wish, around the same time, to publish or distribute in the United States its regular analysts' research reports that cover the issuer, its securities or its industry. In that event, questions arise regarding whether those actions would conflict with the prohibition against directed selling efforts or the offshore transaction condition.[365] The concern stems from the analysis that those actions could be viewed as conditioning the market, which would constitute directed selling efforts, or offering the securities in the United States, which is prohibited under the ''offshore transaction'' requirement.

Similarly, when a broker or dealer is selling securities in reliance on Rule 144A, it is subject to the condition that it may not make offers to persons other than those it reasonably believes are QIBs. Where it distributes research about the issuer around the time of the Rule 144A transaction, it may be viewed as making offers to persons that receive it, including those who are not QIBs.

We are concerned that these blanket restrictions have resulted in brokers and dealers withholding regularly published research that they have not prepared with a view towards promoting the offering to investors. We therefore have proposed amendments to Regulation S and Rule 144A. They provide that research may be published or distributed under new terms set forth in Rules 138 and 139 notwithstanding the Regulation S prohibition against directed selling efforts and offshore transaction requirements or the requirement that Rule 144A offers be limited to QIBs.

In Rule 139, we would add an exemption in connection with these unregistered offerings. It would be limited to issuers about whom a broker or dealer may prepare focused reports (that is, seasoned issuers, larger foreign issuers and foreign government issuers).[366] We are not proposing to create a Rule 139 exemption for reports on small or unseasoned issuers making Regulation S or Rule 144A offerings. We solicit comment, however, concerning whether the proposed Rule 139 exemption for industry-type reports in registered offerings should be extended on equivalent terms to Regulation S or Rule 144A offerings.

With one exception, we propose to apply the same conditions in the Rule 138 and 139 exemptions for Regulation S and Rule 144A transactions that we would apply in connection with registered offerings. The additional condition would be that research could be published only in a publication that the broker or dealer distributes with reasonable regularity. We believe that restriction is appropriate given that our goal in these unregistered offerings is to allow for the continuation of research that the broker or dealer has regularly published, not the commencement of research. We solicit comment with regard to whether the research safe harbors for Regulation S and Rule 144A offerings should contain additional safeguards. Conversely, should only Rule 139 contain the reasonable regularity requirement for these offerings? We also solicit comment on whether a bright-line test should replace the ''reasonable regularity'' requirement. If so, what publication intervals should the safe harbor substitute for the reasonable regularity requirement (*e.g.*, annual or quarterly publication)? Would a bright-line test provide sufficient flexibility to cover differing practices among brokers and dealers?

In its 1990 release adopting Regulation S, we stated that research reports of the nature described in Rule 139(b) would not be deemed to constitute directed selling efforts in offerings by reporting companies.[367] Those reports are limited to ones that are not focused solely on the issuer or its securities but are more akin to industry reports. In addition, those reports are limited in how much prominence they can give to the issuer and whether they can provide a more favorable recommendation than last issued. In the same release, we warned brokers and dealers involved in Regulation S offerings by non-reporting companies to exercise greater caution in publication of research. As a result, it generally has been viewed as not appropriate for participating brokers or dealers to publish research of the nature described in Rule 138 and Rule 139(a) while an issuer is conducting an offering under Regulation S.

The Commission believes that this interpretation currently limits the distribution of regularly published research reports by brokers and dealers. The Commission, therefore, is expressing the view today that brokers and dealers may publish and distribute research reports as described in current Rule 138 or Rule 139 without such

[363] If the broker or dealer has not made recommendations on two such occasions in the past, it may so state and provide its last recommendation.

[364] In adopting Section 17(b), Congress intended to address the ''evils of the 'tipster sheet' as well as articles in newspaper[s] or periodicals that purport to give an unbiased opinion but which opinions in reality [were] bought and paid for.'' H.R. Rep. No. 85, 73rd Cong., 1st Sess. 24 (1933).

[365] *See, e.g.*, Braverman, *U.S. Legal Considerations Affecting Global Offerings of Shares in Foreign Companies*, 17 J. of Int'l. L. & Bus. 30, 79 (1996).

[366] *See* proposed revisions to Securities Act Rules 138(b), 17 CFR 230.138(b); 139(b), 17 CFR 230.139(b); 144A(d)(1)(i), 17 CFR 230.144A(d)(1)(i); and Rule 902 (c)(3)(viii) and (h)(4) of Regulation S, 17 CFR 230.902 (c)(3)(viii) and (h)(4).

[367] Securities Act Release No. 6863 (Apr. 24, 1990) [55 FR 18306, 18311–12].

reports being deemed to constitute directed selling efforts.

3. Research and Proxy Solicitation

We also are proposing to codify a Commission staff position [368] that the publication or distribution of research under the conditions set forth in Rules 138 and 139 is permitted in connection with a registered securities offering that is subject to the proxy rules under the Exchange Act.[369] The new rule would provide that distribution of research in accordance with Rule 138 or 139 would be an exempt solicitation for purposes of the proxy rules.[370]

Recently adopted Exchange Act Regulation M also contemplated dissemination of research by distribution participants and their affiliates during the pendency of a distribution of securities if the conditions of Exchange Act Rule 138 or 139 are met.[371] Codification of the staff's position would further harmonize the treatment of research under the Securities Act and Exchange Act rules. We solicit comment on whether the proposed revisions would change analysts' approach to publishing research reports on ongoing business combinations.

VIII. Prospectus Delivery

A. Congressional History

Congress intended that the prospectus provide investors with ''the means of understanding the intricacies of the transaction. * * *'' [372] From the outset of the Securities Act, therefore, Section 5 has required an issuer to send the investor a final prospectus no later than the time of sale. [373] When Congress recognized that the final prospectus would not always be available to investors at the time they make their investment decisions,[374] it amended the Securities Act in 1954 to allow for the use of the preliminary prospectus. As the House Committee on Interstate and Foreign Commerce explained:

[h]ow the investor might have accurate information at the time it is useful to him is a problem that long has been recognized. The proposed amendment offers an approach to its solution in that it provides for the use of a processed document, or preliminary prospectus, prior to the effective date of the registration statement.[375]

While Congress permitted the use of preliminary prospectuses, it did not lift its mandate that final prospectuses be delivered. Thus, while the issuer has the option to deliver prospectus information to the investor before it makes its investment decision, the Act only requires that a final prospectus be delivered to investors prior to or with the confirmation. Because the confirmation arrives at the end of the offering process, investors' investment decisions generally have been made before the time of final prospectus delivery.

B. Commission History

In the face of Congress' decision to treat the two kinds of prospectuses in that manner, the Commission's approach to preliminary prospectus delivery has been measured. Immediately after the adoption of the 1954 amendments, the Commission adopted Securities Act Rule 460.[376] Rule 460 states that the Commission may consider whether preliminary prospectuses have been adequately distributed before accelerating the effectiveness of a registration statement.[377]

In 1969, the Commission expressed its concern that investors were not receiving the necessary disclosure to make informed investment decisions in offerings by first time issuers.[378] The Commission emphasized that ''the investing public should be aware that many such offerings of securities are of a highly speculative character and that the prospectus should be carefully examined before an investment decision is reached.'' [379] Accordingly, the Commission stated that, before accelerating the effectiveness of a registration statement for a first time issuer, it would consider whether the issuer had taken reasonable steps to send to investors a preliminary prospectus at least 48 hours before the mailing of confirmations.

The Commission formalized that 48-hour requirement in offerings by new issuers in 1982 when it amended Exchange Act Rule 15c2–8.[380] Rule 15c2–8 requires a broker or dealer, in connection with offerings by first time issuers, to deliver a copy of the preliminary prospectus to anyone expected to purchase in the offering. They must deliver the prospectus at least 48 hours before sending a confirmation. Rule 15c2–8 also requires that a broker or dealer take reasonable steps to comply promptly with any written request for a preliminary or final prospectus. Additionally, under the rule, brokers and dealers must make copies of the preliminary and final prospectus available to their sales associates that are expected to solicit orders for such securities.[381]

C. Prospectus Delivery Proposals

The Commission continues to believe that delivery of information to investors plays an integral role in their protection. In recognition of the importance of the prospectus to investors, we recently adopted rules that require the use of plain English in the prospectus.[382] Among other benefits, the use of plain English eliminates arcane, unnecessarily complex and incomprehensible language from key sections of the prospectus. We adopted these rules in order to allow investors to understand the intricacies and risks of an offering better when making their investment decisions. If the plain English prospectus reaches investors only after they have made their investment decisions, the full benefit is not realized.

1. Adequacy of Current Rules

Under current market practices, the Commission is concerned that Rule 460 and Rule 15c2–8 do not provide adequate assurance that all investors who need it will have sufficient time to consider the prospectus disclosure before making their investment decisions. Our concern about the adequacy of current rules is multifold.

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[368] *See* Staff no-action letter *Merrill, Lynch, Pierce, Fenner & Smith, Inc.* (Oct. 24, 1997).

[369] *See* proposed Exchange Act Rule 14a–1(l)(2)(v), 17 CFR 240.14a–1(l)(2)(v).

[370] *See* Exchange Act Rule 14a–2(a)(7), 17 CFR 240.14a–2(a)(7).

[371] Exchange Act Rule 101(b)(1), 17 CFR 242.101(b)(1).

[372] H.R. Rep. No. 85, 73rd Cong., 1st Sess. 8 (1933).

[373] A final prospectus is a prospectus that conforms to Section 10(a) of the Securities Act, 15 U.S.C. § 77(j)(a).

[374] H.R. Report No. 1542, 83rd Cong., 2d Sess., 12 (1954).

[375] *Id.*

[376] 17 CFR 230.460; Securities Act Release No. 3519 (Oct. 11, 1954) [19 FR 6727].

[377] Under Section 8(a) of the Securities Act, the Commission must give ''due regard to the adequacy of the information respecting the issuer theretofore available to the public * * *'' before accelerating the effectiveness of a registration statement. 15 U.S.C. § 77(h)(a).

[378] Securities Act Release No. 4968 (Apr. 24, 1969) [34 FR 7235].

[379] Securities Act Release No. 4968, 34 FR at 7235.

[380] 17 CFR 240.15c2–8; Securities Act Release No. 6383 (Mar. 3, 1982) [47 FR 11380]. In the 1980 Rule 15c2–8 proposing release, the Commission noted that a preliminary prospectus delivery requirement may be appropriate for all issuers and solicited comment on extending it to every offering. Securities Act Release No. 6276 (Dec. 23, 1980) [46 FR 78]. Commenters expressed concern that such an extension would create an artificial waiting period that would impose an undue burden on an issuer's ability to tap favorable securities markets. *See* Securities Act Release No. 6338 (Aug. 6, 1981) [46 FR 42042].

[381] In the 1969 release proposing Rule 15c2–8, the Commission expressed its concern that salespersons were offering newly issued securities without seeing a copy of the preliminary prospectus. Exchange Act Release No. 8710 (Oct. 7, 1969) [34 FR 17034].

[382] Securities Act Release No. 7497 (Jan. 28, 1998) [63 FR 6370].

First, Rule 460 does not mandate delivery of preliminary prospectus information. Second, delivery of the preliminary prospectus information under Rule 15c2–8 covers only initial public offerings. While preliminary prospectus disclosure is essential in those offerings, investors' need for that disclosure before making investment decisions is not confined to those offerings.

Third, because Rule 15c2–8 measures the timing of delivery from the date of confirmation and uses only a 48-hour period, we are concerned that the Rule does not ensure a sufficient amount of time for investors to consider fully the intricacies of an offering. For example, in the typical marketed underwritten offering today, investors appear to make their investment decisions on or before the ''circle date.'' This is the point at which investors are asked to ''firm up'' their orders in anticipation of pricing. On the circle date, an investor is asked to represent orally whether it will or will not purchase in the offering. The underwriter ''circles'' those indications of interest in its book that represent an affirmative response. The underwriters rely on these commitments in reaching final price and volume terms with the issuer. As a matter of practice, the investing public treats itself as committed at this point in time.[383] The circle date or dates in an offering can occur days before pricing. Confirmations are sent to investors after pricing occurs. While issuers and underwriters can always choose to deliver preliminary prospectuses earlier than required, and sometimes do under current practices, the 48-hour delivery period in the Rule may not effectively guarantee that investors receive prospectuses when they need them most.[384]

A fourth reason for concern that existing rules may not be sufficient relates to the fact that the Rule only applies to brokers and dealers. As the use of electronic media to make offerings becomes more prevalent, issuers may increasingly choose to offer their stock directly to the public.[385] Issuers are not subject to Rule 15c2–8's delivery obligation.[386] In current offerings not involving a broker or dealer, Rule 15c2–8 has no effect on prospectus delivery.

2. Prospectus Delivery and Developments in Communications

Investors' need for adequate time to review the preliminary prospectus may be particularly enhanced in marketed deals under the proposed system. Under today's proposals, we would permit the distribution of sales materials in addition to the preliminary prospectus. This may result in investors receiving much more sales literature in marketed offerings. In turn, investors may require more time with a preliminary prospectus in hand to evaluate all the materials they have. Providing investors with preliminary prospectuses sufficiently before their investment decisions would allow them to consider both the supplemental sales literature and the disclosure contained in the preliminary prospectus.

In the 29 years since the Commission first formulated the 48-hour delivery period, advances in technology, changes in practices and regulatory developments have profoundly altered the transmission of prospectus information. Today, in a matter of minutes, issuers can disseminate documents across the country and to the far corners of the world. Many issuers have Internet web sites that provide investors with instantaneous access to their financial reports and other company information. Electronic delivery of prospectuses is becoming more common, as companies and investors become more familiar with that medium.[387] Broker-dealers already make trade settlement information in connection with securities offerings available electronically on a real-time basis to institutional customers.[388] Print media also has seen its share of technological advancements. In those 29 years, we have moved from typewriters and typesetting to everyday use of computers. Today, a prospectus can be printed in a fraction of the time it took when the 48-hour period was formulated. In addition, regulatory changes such as shelf registration, unallocated shelf registration and, as proposed today, Form B registration have allowed and would allow issuers and underwriters to take advantage of any favorable changes in the securities markets quickly.

3. Final Prospectus Delivery Exemption

We believe that requiring delivery of only a final prospectus at the time of sale does not completely fulfill the Securities Act goal of protecting investors through disclosure in all offerings. In firm commitment underwritten offerings, the final prospectus invariably arrives after the investor has made its investment decision. While delivery of final prospectuses in those offerings may be useful to investors who are considering litigation or resale, it does little to fulfill the prophylactic goals of the Securities Act. As Professor Louis Loss noted, ''[a] prospectus that comes with the security does not tell the investor whether or not he should buy. It tells him whether he has acquired a security or a lawsuit.'' [389]

In addition, because the Securities Act requires delivery of a final prospectus before or at the same time the confirmation is sent, the successful completion of the clearance and settlement process is contingent on prompt completion and delivery of the final prospectus. Broker-dealers sometimes experience practical difficulties in trying to comply with the current T+3 settlement cycle. In some cases, Exchange Act 10b–10 confirmations have had to be delayed in order to await completion of the final prospectus.[390] Any future shortening of the settlement cycle would simply exacerbate those difficulties.

The cost of delivery of a final prospectus, where it is otherwise readily available to the public,[391] may exceed

[383] According to offering participants with whom the staff spoke, the ''law of the Street'' operates to require an investor either to purchase the securities it orally committed to buy on the circle date or harm its reputation by breaking its commitment. To break the commitment made on the circle date also is to risk exclusion from future offerings.

[384] Arguments have been made to the staff that providing for delivery in these marketed deals at such a late point in the offering process would still be effective because underwriters will allow their favored customers, even then, to back out of the trade without repercussions. We are concerned that reliance on that practice would disadvantage smaller investors and not reflect current offering practices.

[385] *See* Grant, *Small Firms Take Direct Route to Stock Offerings,* USA TODAY, Apr. 29, 1979, at 4b; Kollar, *Do-it-Yourself Public Offerings; The Internet Gives a New Dimension to an Old Financing Vehicle,* Investment Dealers' Digest, Mar. 24, 1997 at 4; Barlas, *Floating Stock on the Web; The Next Wave?,* Investor's Daily, Feb. 5, 1998, at A9.

[386] Rule 15c2–8, 17 CFR 240.15c2–8, would apply if the issuer itself is a broker or dealer.

[387] *See* Bagley & Tomkinson, *Internet Is Seeing Its Share of Securities Offerings,* The Nat'l L.J., Feb. 2, 1998, at C3; Weisul, *The New Plumbing on Wall Street; Forget the Hype: The Internet is Now Being Used by Securities Firms to Solve Workaday Problems,* Investment Dealers' Digest, Jun. 23, 1997, at 10.

[388] *See, e.g.,* Depository Trust Company's Institutional Delivery System User Manual at 1 (1994). Electronic messages containing the key information about the trade made in the offering are often sent earlier so that the clearance and settlement process may begin. Paper confirmations are then mailed later.

[389] Loss, Fundamentals of Securities Regulation 93 (1988).

[390] *See* the comment letters, in File No. S7–19–96, from the American Bar Association (Dec. 11, 1996), Merrill Lynch (Oct. 31, 1996), Morgan Stanley (Dec. 9, 1996), PSA The Bond Market Association (Nov. 8, 1996) and the Securities Industry Association (Nov. 13, 1996).

[391] Domestic issuers file final prospectuses with the Commission electronically via EDGAR. The filings are available on a real-time basis through

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any marginal benefit to investors. To provide investors with the maximum benefit from the prospectus, our proposals would re-focus prospectus delivery requirements on a point in time before investors have made their investment decisions. Accordingly, the Commission is proposing to create a new exemption from the Securities Act requirement to deliver a final prospectus.[392] The Commission is not proposing to change the final prospectus delivery requirement in Exchange Act Rule 15c2–8(d).[393] That rule requires all brokers or dealers that participate in a distribution of securities registered under the Securities Act to take reasonable steps to comply promptly with the written request of any person for a copy of the final prospectus. The broker or dealer must comply with such request until the expiration of the applicable 40-day or 90-day period under Section 4(3) of the Securities Act. We solicit comment on whether, as a condition to the exemption, issuers, like brokers and dealers,[394] should be required to provide to a purchaser upon request, and free of charge, a copy of the final prospectus.

a. Conditions to the Exemption

As a condition to the exemption, we would require that issuers, brokers and dealers tell investors, by the time investors receive their confirmations of sale, where they can acquire the information that constitutes the final prospectus free of charge.[395] We also would require as a condition the delivery of preliminary prospectus information in accordance with the Commission's new rule.[396]

Comment is solicited with respect to the notification condition. Given the availability of the final prospectus in all cases via the Commission's Internet web site or the Commission's Public Reference Room, is there a need to tell investors where to find it? Should the notification instead state that the registrant will provide promptly a copy of the final prospectus upon request? Would the proposals shift too heavy a burden to investors by requiring them to take action to obtain a final prospectus rather than to receive it automatically? Is the burden on investors enough that, despite EDGAR, we should continue to require final prospectus delivery?

b. Business Combinations and Exchange Offers

We are not planning to exempt offerings registered on the Securities Act forms for business combinations and exchange offers from the final prospectus delivery requirement.[397] These offerings differ from the other offerings registered under the Securities Act because the proxy rules and tender offer rules in conjunction with state law impose informational and delivery requirements in those transactions. The information contained in the final prospectus therefore would be delivered regardless of Securities Act requirements. In order to ensure consistency among the various rules and regulations applicable to these business combinations and exchange offers, the final prospectus delivery requirement would remain intact.

In addition to the Section 5(b)(2) requirement for final prospectus delivery, Forms S–4 and F–4 require the registrant, if it or the company to be acquired incorporates any documents into the prospectus, to deliver a prospectus no later than 20 business days before the date of the meeting or, if no meeting is held and proxies are solicited, 20 days before the corporate action or transaction is effected. This time period was established by the Commission in 1984 to address investors' need for sufficient time to acquire the documents incorporated by reference and, presumably, consider them.[398] Since 1984, we have witnessed the advent of EDGAR, the Internet and other sources of filed information. The Commission no longer believes that a 20-day time period is needed for that purpose. All of the documents that would be incorporated into proposed Form C would be available through the Commission's Internet web site, as well as other sources, before the time the registration statement becomes effective. We propose to eliminate the 20-day period. We solicit comment, however, on whether we should retain a set period and, if so, how long that period should be. Would delivery under the requirements applicable to these offerings not ensure sufficient time to obtain and consider the disclosure without one?

c. Rule 434 Final Prospectus Delivery Method

In 1995, the Commission adopted Rule 434[399] to ease the burden of prospectus delivery within the new T+3 settlement cycle.[400] At that time, four investment firms and the Securities Industry Association (SIA) had expressed concern that there would be insufficient time to mass print and mail final Section 10(a) prospectuses in a T+3 settlement cycle. Rule 434 provides that delivery of a final prospectus may be made in multiple documents at different intervals in the offering process.

Rule 434 allows issuers and other offering participants to meet their prospectus delivery requirement by delivering a preliminary prospectus and a term sheet or abbreviated term sheet before or at the time of sale. The information contained in the preliminary prospectus, confirmation and term sheet or abbreviated term sheet must in aggregate meet the informational requirements of Section 10(a). Therefore, only the Section 10(a) information not previously delivered to investors would have to appear in the term sheet or abbreviated term sheet. Consequently the term sheet or abbreviated term sheet could be printed and mass mailed quicker than the final integrated prospectus.[401]

As discussed earlier, the Commission is proposing to re-focus the prospectus delivery requirements on a point in time before investors have made their investment decision. If the proposed registration system is adopted, issuers and offering participants largely will be exempt from the requirement to deliver a final prospectus at the time of sale. Therefore, the printing and mailing of a final prospectus in time to meet the T+3 settlement cycle would not be required. Accordingly, the Commission is proposing to repeal Rule 434 for issuers other than investment companies as its purpose and usefulness to issuers and offering participants under the proposed registration system would be limited. The proposals do not exempt investment companies from the requirement to deliver a final prospectus at the time of sale. The

various services and after a 24-hour delay at the Commission's web site (http://www.sec.gov).

[392] *See* proposed Securities Act Rule 173, 17 CFR 230.173. This Rule would not apply in the case of offerings on Forms C, SB–3, F–8, F–80 or F–10 (when that Form is used in a business combination transaction) or offerings of investment company securities.

[393] 17 CFR 240.15c2–8(d).

[394] *See* 17 CFR 240.15c2–8(a).

[395] *See* proposed Securities Act Rule 173(c), 17 CFR 230.173(c). In the case of Form B offerings, investors will be notified through the term sheet of where they can acquire this information.

[396] *See* proposed Securities Act Rule 172, 17 CFR 230.172.

[397] These Forms would include Forms C, SB–3, F–8, F–80 and F–10 (when that Form is used in a business combination transaction).

[398] Securities Act Release No. 6578 (Apr. 23, 1985) [50 FR 18990].

[399] 17 CFR 230.434.

[400] Securities Act Release No. 7168 (May 11, 1995).

[401] It appears, however, that most issuers and participants continued to deliver the integrated final Section 10(a) prospectus at the time of sale. Since September of 1996, only four (non-investment company) issuers have filed term sheets or abbreviated term sheets.

Commission therefore is proposing to retain Rule 434 for closed-end funds and unit investment trusts, which are currently covered by the Rule. We request comment on whether Rule 434 should be retained for these categories of investment companies.

4. Delivery of Preliminary Prospectus Information

Under the proposed registration system, we seek to ensure that high quality disclosure is delivered to investors when they need it most—before they make their investment decisions.[402] The proposed prospectus delivery requirements, like the current prospectus delivery requirements, do not contemplate that an issuer demonstrate that the investors actually received the prospectus. The issuer would have to take steps to ensure that the means it chooses to deliver the prospectus would reasonably result in delivery to the issuer by a certain date. As with other reforms, what prospectus information is required to be delivered, and when, will depend upon the nature of the issuer and offering.[403]

a. Form B Offerings

In all offerings of securities on Form B, we propose to mandate the delivery of transactional information before the investment decision.[404] We seek comment on two alternative proposals. Under the first proposal, we would mandate delivery of a securities term sheet. The securities term sheet would: (1) itemize the material terms of the securities in summary format; (2) identify a contact person to whom questions and requests for final documents may be directed; (3) name any person other than the issuer that is selling the securities and briefly identify any material relationship between such person and the issuer within the past three years; and (4) include a legend advising investors to read, before making an investment decision, the documents the issuer files with the Commission. We would require that the securities term sheet be delivered to investors before they make their investment decisions and be on file with the Commission before the first sale. Delivery of other information would not be mandated in proposed Rule 172 for Form B offerings.

Under the second proposal, we would require delivery of a prospectus containing all transactional disclosure currently required in Form S–3/F–3. That prospectus would have to be on file before first sale. Just like the first proposal, delivery of other information would not be mandated in proposed Rule 172.

We ask for comment on what kind of information should be mandated in the term sheet or prospectus. For example, should the term sheet include all ''offering information'' [405] filed in Form B offerings? Should the term sheet be more like a profile prospectus? Should mandated term sheet disclosure be a different subset of offering information? If so, should the term sheet include only categories of transactional information that must be disclosed in every Form B registration statement (*e.g.*, use of proceeds, changes in the registrant's affairs, etc.)? Should the term sheet include any of the categories of disclosure that must be included in the Form B filing if applicable (*e.g.*, transactional risk factors, dilution, etc.)? Should we require that the term sheet be written in plain English? Should we require in the prospectus fewer items of mandated disclosure? If so, which items should be excluded?

Similarly, should material changes in the issuer's affairs not previously reported be required on either the term sheet or the prospectus? Would there already be sufficient information available to investors and the market regarding certain securities such that delivery of a securities term sheet or prospectus would be unlikely to enhance investor protection significantly? Should we require delivery of a securities term sheet or prospectus in any Form B offering, regardless of whether or not the class of securities was previously registered?

b. Offerings by Small or Unseasoned Issuers

Delivery of information contained in the prospectus is especially important when the registrant is a new or relatively new public company. In those cases, there is comparatively little information available about the company. Due to the general lack of familiarity by investors with companies that are smaller or unseasoned, it is important that prospectus information be delivered early enough for investors to have sufficient time to assess the disclosure and, if necessary, seek further information in light of it. In these situations, we would not limit the requirement to deliver a preliminary prospectus to non-reporting companies, as Rule 15c2–8 does today. We are proposing to require the delivery of a Section 10 prospectus for all filings of small or unseasoned offerings.[406] The timing aspect of the delivery requirement would be dependent upon whether the offering was the registrant's initial public offering (or registered within a year of the registrant's initial public offering). If so, we propose to require that a Section 10 prospectus be delivered in a manner reasonably designed to be received by each investor no later than 7 calendar days before the date of pricing in a firm commitment underwritten offering. In a best efforts offering, or direct public offering, we would mandate delivery in a manner reasonably designed to be received by each investor no later than 7 calendar days before the investor signs a subscription agreement or other document in which it commits to purchase securities. For more seasoned issuers,[407] we would require that the prospectus (and any incorporated reports) be delivered so as to arrive at least 3 calendar days before the date of pricing, or the date the investor signs a subscription agreement or other document in which it commits to purchase the securities, as applicable.

We solicit comment on whether we should require earlier prospectus delivery. Should we mandate delivery, for example, at 10 or 15 days (rather than 7 days) and 5 or 10 days (rather than 3 days) before the date of pricing or commitment to purchase? We solicit comment on whether the proposed 7 and 3 day delivery dates are shorter or longer than the dates by which issuers typically deliver red herring prospectuses under the current system. Would the proposal alter current delivery practices in offerings of the type that would be made on Form A or

[402] *See* proposed Securities Act Rule 172, 17 CFR 230.172, and proposed revisions to Exchange Act Rule 15c2–8, 17 CFR 240.15c2–8.

[403] If it chooses to, the issuer, underwriting or participating broker or dealer may deliver a final prospectus in lieu of the preliminary prospectus, so long as the delivery of the final prospectus satisfies the required time frame.

[404] A preliminary prospectus could be used to satisfy this obligation if an issuer so chooses. If a preliminary prospectus is delivered, delivery of a securities term sheet would not be required. Absent consent by the investor to electronic delivery, the issuer or underwriter would be required to send a paper copy of the securities term sheet.

[405] *See* Section V.A.1.a.ii. of this release for a discussion of what constitutes ''offering information.''

[406] This requirement would encompass all filings on Forms A, SB–1, SB–2, F–7, F–9, F–10 (not involving a business combination) and certain Schedule B offerings. These proposals do not contemplate that issuers must satisfy their prospectus delivery requirements by using any specific method of delivery. Whether issuers satisfy delivery requirements electronically or in more traditional ways, they would be required to deliver the prospectus in a manner reasonably designed to result in delivery by the applicable date.

[407] For purposes of this delivery requirement, seasoned issuers are those whose initial public offerings took place one year or more before the effective date of the registration statement for the current offering of securities.

the small business issuer system? If so, how?

Because information would be delivered to the investor before the transaction is declared effective and sold, material changes to the transaction or the company information may arise that were not disclosed in the preliminary prospectus delivered to investors. If investors are not otherwise informed about those changes, the information must be set forth in a document sent in a manner reasonably designed to be delivered to each investor at least 24 hours before the pricing of securities or the date the investor signs a subscription agreement or otherwise commits to purchase the securities.[408] Should we instead require delivery of material change information in 36 or 48 hours?

c. Foreign Government Issuers

We propose to exempt foreign government issuers[409] from the final prospectus delivery requirements and require them to deliver prospectus information under Rule 172 for the same reason we propose that treatment for other issuers: to provide more timely and efficient dissemination of information to investors.

Foreign government issuers are exempt from the reporting requirements under the Exchange Act unless they list their securities on a U.S. exchange.[410] Therefore, the proposed prospectus delivery requirements would serve a significant function in ensuring that investors have the information about foreign governments they need, at the time they need it, to make an informed investment decision. As in the case of corporate issuers, however, delivery may be needed more or less depending on the issuer and the offering. We believe that investors would need less time to review the prospectus information for a new offering by a seasoned issuer than it would that of an unseasoned one.

When a foreign government issuer makes an initial registered offering in the United States, it files a Schedule B with the Commission. The Schedule is publicly available, and in many cases contains much more information than is mandated.[411] Investors can access this information through the Commission at any time after the registration statement becomes publicly available. Depending on the nature of the offering and the issuer, analysts may cover the issuer and disseminate information about it and its offerings. For purposes of prospectus delivery, therefore, we would define ''seasoned'' foreign government issuers as those that already have registered a public offering on Schedule B. In the absence of a reporting history, we believe that is the best measure of seasoning.

Under proposed Rule 172, foreign government issuers would be divided into two categories: (1) larger seasoned issuers; and (2) smaller/unseasoned issuers. Larger seasoned issuers would consist of those that:

- Had registered an initial public offering with the Commission that was declared effective more than one year before the registration of its current offering on Schedule B; and
- Are registering an offering of securities in excess of $250 million that is being underwritten on a firm commitment basis.

All other foreign government issuers would be within the smaller/unseasoned category.

Large seasoned foreign government issuers that registered their offerings on Schedule B would be treated like Form B registrants for purposes of prospectus information delivery requirements. We would mandate the delivery of a term sheet describing the material terms of the security being offered. We also would require that the term sheet be on file with the Commission before the first sale.[412] These foreign government issuers would have to send the term sheet by means that would reasonably result in delivery to the investor before it makes a binding investment decision.

Foreign government issuers in the smaller/unseasoned category would be treated like Form A registrants. A foreign government issuer, regardless of size, registering its initial public offering on Schedule B (or registering within 1 year of it) would be included in the smaller/unseasoned category. That issuer would be treated like an issuer registering its initial public offering on Form A. Thus, we would require it to send a prospectus that satisfies the requirements of Section 10 of the Securities Act, by means reasonably designed so that the investor receives the prospectus at least 7 days before:

- The date of pricing the securities (for offerings underwritten on a firm commitment basis); or
- The date the investor signs a document that commits it to purchase the securities or otherwise commits to purchase (for offerings underwritten on a best efforts basis and non-underwritten offerings).

A seasoned foreign government issuer registering an offering of less than $250 million or registering an offering that is not underwritten on a firm commitment basis would be treated the same as a seasoned small issuer on Form A. It would have to deliver a prospectus 3 days before the date of pricing or the date an investor commits to purchase, as applicable.

We solicit comment on the prospectus delivery proposals as they relate to foreign government issuers. For unseasoned foreign governments, should we mandate prospectus delivery earlier than 7 days? Would 10 or 15 days be a better measure of time needed to digest the information and do any follow up inquiries. For other foreign government issuers in the smaller/unseasoned category, should we mandate prospectus delivery earlier than 3 days? Would 5 or 10 days be a better measure? For seasoned Schedule B issuers making smaller offerings or offerings not done on a firm commitment underwritten basis, should we mandate prospectus delivery earlier than 3 days? Would 5 or 10 days be a better measure? Should our definitions of ''seasoned'' for offerings by foreign government issuers require that the issuer have made its initial public offering more than 1 year earlier? Would two years earlier be a better test? Should we raise the offering threshold (*e.g.*, to $400 or $500 million) or lower it (*e.g.*, to $100 or $150 million)?

As we do regarding the term sheet required for Form B offerings, we solicit comment on whether the term sheet for Schedule B offerings should include information in addition to the material terms of the securities.

d. Canadian MJDS Issuers

We also would require earlier delivery with respect to offerings on Forms F–7, F–8, F–9, F–10 and F–80—the registration statements used in connection with the MJDS. Under the proposed registration system, issuers

[408] For example, an issuer could choose to have the brokers tell investors orally about the changes when they call to determine if investors will commit to purchase.

[409] Securities Act Rule 405, 17 CFR 230.405, defines ''foreign government'' to mean the government of any foreign country or the government of any political subdivision of a foreign country.

[410] Section 15(d) of the Exchange Act expressly states that it does not apply to foreign government issuers. Section 12(g) of the Exchange Act applies only to issuers of equity securities, and foreign government issuers never issue equity. Accordingly, Section 12(b) is the only section under the Exchange Act that imposes a reporting requirement on foreign government issuers.

[411] Typically, the registration statements will include information about the issuer's country, form of government, economy, monetary system, public finance and national debt. Foreign government issuers disclose this additional information for marketing purposes and due to concern about the antifraud provisions of the federal securities laws. *See* Greene & Adee, *The Securities of Foreign Governments, Political Subdivisions and Multinational Organizations*, 10 N.C.J. of Int'l L. and Com. Reg. 1 (Winter 1985).

[412] *See* proposed Securities Act Rule 230.493A, 17 CFR 230.493A.

that register offerings under the MJDS, other than business combinations and exchange offers, also would be required to comply with proposed Rule 172.[413] We believe this requirement would be especially useful to U.S. investors who may need more time to familiarize themselves with the disclosure that Canadian companies prepare pursuant to the requirements of Canadian securities regulation, which would likely differ somewhat from disclosure generally prepared under U.S. federal securities laws.

Issuers that register on MJDS Forms F–7, F–9 or F–10 (when that form does not involve a business combination) would be required to deliver a Section 10 prospectus under the proposed Rule. The delivery periods would mirror those applicable to Form A offerings. Seasoned issuers making offerings underwritten on a firm commitment basis would be required to deliver the prospectus to investors at least 3 days before the pricing date. For offerings underwritten on a best efforts basis, seasoned issuers would be required to deliver the prospectus to investors at least 3 days before the investor commits to purchase the securities. Unseasoned issuers would be required to deliver the Section 10 prospectus at least 7 days before the date of pricing or the date an investor commits to purchase, depending on the type of underwriting. Because there would be less public information available for unseasoned issuers, the proposed Rule calls for them to give investors more time to read the prospectus.

Comment is solicited with regard to these delivery obligations. Would the 7-day or 3-day delivery requirement provide investors with sufficient time to consider the issuer's disclosure? Should MJDS issuers be required to deliver sooner than proposed? Would 10 or 15 days (instead of 7) or 5 or 10 days (instead of 3) be better measures? Should we provide that MJDS issuers eligible to register on Form B be treated for purposes of delivery the same as Form B issuers, even though they rely on Canadian disclosure requirements? Is there any reason to differentiate the business combinations and exchange offers on MJDS forms from those on Form C or Form SB–3 with respect to the delivery requirements?

[413] Business combinations and exchange offers on Form F–8, F–80, and F–10 (when that Form is used in a business combination transaction) like business combinations on Forms C and SB–3, would not be subject to proposed Rule 172, 17 CFR 230.172, preliminary prospectus delivery. Instead, due to the nature of the transactions, they would continue to be subject to the final prospectus delivery obligations of Section 5. The timing of that delivery would be dependent on state law.

e. Effectiveness and Prospectus Delivery

In determining whether to accelerate effectiveness of registration statements, Section 8(a) of the Securities Act provides that the Commission consider whether there has been available adequate and understandable public information about an issuer and its offering. If not, the Commission may determine that it is not in the public interest to accelerate effectiveness of the registration statement. Under the proposed registration system, we would consider whether an issuer complied with its prospectus delivery obligations in evaluating any request for acceleration. We propose to amend Securities Act Rule 461 to reflect the consideration of compliance with delivery obligations under proposed Rule 172.[414]

f. Secondary Offerings

The proposed prospectus delivery requirements also would apply to registered secondary offerings made by selling security holders. We believe this is appropriate because most registered secondary offerings would be made in a manner that is similar to registered primary offerings. We solicit comment regarding whether it is appropriate to apply the same delivery requirements to all secondary offerings made by selling security holders that we apply to primary offerings made by the issuer. If not, why not, and how should they differ?

Are certain types of registered secondary offerings conducted in a sufficiently different manner from registered primary offerings that the delivery requirements are either not necessary or not appropriate? In particular, should the same delivery requirements apply to non-underwritten secondary sales into an existing trading market?

5. Aftermarket Prospectus Delivery

For a specified period of time after a registration statement becomes effective, the Securities Act requires dealers to deliver a final prospectus to persons who buy those securities. This aftermarket delivery obligation applies to all dealers, whether or not they participated in the offering itself.[415] The obligation arises because Section 5 applies to the dealer's transactions. The exemption generally relied upon by dealers, Section 4(3) of the Securities Act, is not available during a 40-day or 90-day period after the later of the effective date of a registration statement or the first bona fide offer of the security.[416] Thus, the aftermarket delivery period is defined primarily by the length of time Section 4(3) is unavailable.[417]

[414] *See* proposed Securities Act Rule 461(b)(2)(i), 17 CFR 230.461(b)(2)(i).

[415] The obligation is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments.

a. Background of Aftermarket Prospectus Delivery

An exemption from registration for dealers is not available during those periods because Congress determined to mandate that information be delivered to investors by all dealers while the securities are ''in the stream of distribution.'' [418] Congress deemed protection of investors in the aftermarket important because: those investors are likely to be less sophisticated than the ones able to purchase in the initial sale, they frequently purchase at a higher price than the price of the initial offering, and they are solicited or influenced by the same selling efforts as the initial purchasers.[419] The Section 4(3) period was created to distinguish between transactions during distributions and ordinary trading transactions.[420]

Initially, Congress provided for a one-year aftermarket prospectus delivery period during which all dealers were obligated to deliver a prospectus. In 1954, Congress shortened the period to 40 days because it determined that distributions were completed well before the one-year period. [421] In 1964, Congress extended the 40-day period to 90 days for those transactions where no securities of an issuer had previously

[416] The 90-day delivery period in Section 4(3) applies for securities of issuers that have not previously registered under the Securities Act. The 40-day delivery period in Section 4(3) applies to securities of issuers that previously registered under the Securities Act.

[417] As discussed below, Securities Act Rule 174, 17 CFR 230.174, modifies the statutory delivery obligation.

[418] *See* S. Rep. No. 1036, 83rd Cong., 2d Sess. 7 (1954) (statement of Dr. Edward T. McCormick, former Commissioner of the Securities and Exchange Commission and then-current president of the American Stock Exchange).

[419] *See* S. Rep. 379, 88th Cong., 1st Sess. 28 (1963).

[420] The primary purpose of Section 4(3) was to exempt from the scope of Section 5 ''transactions by a dealer in securities not connected by time and circumstances with [the] distribution of a new offering.'' H.R. Rep. No. 85, 73rd Cong., 1st Sess. 6 (1933). The bright-line test Congress adopted was considered less ambiguous and less subject to ''easy evasion'' than any attempt to establish criteria distinguishing dealer activities which are distributive from those which are merely incidental to ordinary trading. Throop and Lane, *Some Problems of Exemption Under the Securities Act of 1933*, 4 L. & Contemp. Problems 89, 120 (1937).

[421] 1954 Amendments to the Securities Act of 1933, Pub. L. No. 83–577, 68 Stat. 683 (1954).

been sold pursuant to an earlier effective registration statement.[422] At the same time, Congress gave the Commission the power to shorten the 40-day and 90-day delivery period by rule, regulation or order.

In response to the 1964 legislative action, the Commission promptly shortened the aftermarket delivery period for some offerings via the adoption of Rule 174.[423] Since 1964, the Commission has amended aftermarket delivery obligations in Rule 174 four times.[424]

Current Rule 174 exempts from aftermarket prospectus delivery any transaction relating to securities of a reporting company.[425] If the transaction relates to securities of a non-reporting company that will be listed on a national securities exchange or quoted on an electronic inter-dealer quotation system, current Rule 174 sets an aftermarket delivery period of 25 days.[426] For offerings by blank check companies, Rule 174 sets an aftermarket prospectus delivery period of 90 days after the funds are released from the escrow or trust account.[427] Where a registration statement relates to offerings to be made from time to time, Rule 174 provides that there is no aftermarket delivery requirement once the initial periodexpires.[428]

[422] Securities Act Amendments of 1964, Pub. L. No. 88–467, 78 Stat. 580 (1964). Congress extended the period for two reasons. First, it viewed 90 days as a ''more realistic appraisal of the time during which the distribution process continues in the case of many new issuers.'' *See* S. Rep. No. 379, 88th Cong., 1st Sess. 28 (1963). Second, it wished to protect investors from the ''hot issue'' allure characterized by a ''seemingly insatiable appetite'' for new issues with ''rapid rises in the prices of such securities to premiums over the initial offering.'' *Id*.

[423] Securities Act Release No. 4749 (Dec. 23, 1964) [29 FR 19099].

[424] Securities Act Release No. 4886 (Nov. 29, 1967) [32 FR 17933] (exempting securities registered on new Form S–7 from the prospectus delivery requirements of Section 4(3)); Securities Act Release No. 5101 (Nov. 19, 1970) [35 FR 18130] (eliminating the aftermarket delivery requirement for securities of reporting issuers); Securities Act Release No. 6763 (Apr. 4, 1988) [53 FR 11841] (reducing the aftermarket delivery requirement for securities issued in initial public offerings that are exchange-listed or quoted on an automated inter-dealer quotation system) and Securities Act Release No. 6932 (April 4, 1992) [57 FR 18037] (adopting a longer delivery requirement for securities of blank check companies).

[425] 17 CFR 230.174(b).

[426] 17 CFR 230.174(d). In establishing the 25-day period, the Commission considered how long it took for the market to be stabilized and to disseminate information. The Commission also studied the daily trading volume and relative prices changes in the aftermarket. Securities Act Release No. 6763 (Apr. 4, 1988).

[427] 17 CFR 230.174(g).

[428] 17 CFR 230.174(c).

b. Aftermarket Underwriter Activities

In practice, aftermarket activities by underwriters occur in connection with offerings both by reporting and non-reporting companies. For example, the Commission's Office of Economic Analysis surveyed aftermarket underwriter short covering in 236 offerings completed between May and July 1997.[429] Short covering occurs when the underwriter creates a short position in the offering that it covers by exercising the over-allotment option, by purchases in the aftermarket or by a combination of the two.

In its survey, the Commission examined the frequency of short covering. Of the 236 offerings, underwriters in 54% of the initial public offerings and 73% of the non-initial public offerings covered short positions in the aftermarket.[430] Of those initial public offerings, 42% had underwriters still covering short positions 10 days after the offering. That percentage dropped to 13% at 25 days after the offering. Of the non-initial public offerings in which short position were taken, 28% had underwriters who were still covering short positions 10 days after the offering. That percentage dropped to 10% at 25 days after the offering.[431]

c. Recent Case Law Relating to Aftermarket Delivery Obligations

Since the *Gustafson* v. *Alloyd Co.*[432] decision by the Supreme Court, several federal district courts have concluded that the end of the prospectus delivery obligation also marks the end of the distribution for purposes of civil liability provisions under the Securities Act. Those decisions tie together the obligation to deliver a prospectus in the aftermarket with the existence of investor remedies in the aftermarket.

In *Gustafson*, the Supreme Court stated that ''the liability imposed by Section 12[(a)](2) * * * cannot attach unless there is an obligation to distribute the prospectus in the first place (or unless there is an exemption).'' [433] District courts have interpreted this dicta to mean that Section 12(a)(2) protections apply only where there is an obligation under Section 5 (read in conjunction with Section 4(3) and Rule 174) to deliver a prospectus.[434] Some courts have extended that reasoning by analogy to Section 11 as well.[435]

Under the current delivery requirements, that interpretation could result, and in some cases has resulted, in findings that Section 11 and Section 12(a)(2) protections do not extend to the entire distribution because Rule 174 creates an exemption from the prospectus delivery aspect of Section 5. We believe such an outcome is inconsistent with the investor protection provisions of the Securities Act and therefore seek to eliminate any potential confusion that could arise from Commission rules relating to prospectus delivery obligations.

d. Aftermarket Prospectus Delivery Proposals

We propose to continue the principle of applying a prospectus delivery obligation to transactions in the aftermarket. The concerns about aftermarket purchasers that caused Congress to apply Section 5's investor protections arguably remain just as valid today. We want to ensure that investors are suitably informed and protected in the aftermarket. When we adopted Rule 174, we intended simply to express when prospectus delivery was needed.[436] We did not intend to delineate when the remedies provisions

[429] Of the 236 offerings studied, 114 were initial public offerings and 122 were primary, non-initial public offerings.

[430] As a result of the findings of this research, the Commission also reviewed the frequency of short covering based on differing criteria, such as average daily trading volume, market capitalization, and proceeds of the offering, to determine if there were other factors indicative of aftermarket activity. The Commission found no statistically significant deviations resulting from the various objective criteria selected. *Frequency of Aftermarket Price Stabilization*, Memorandum of the Commission's Office of Economic Analysis (July 24, 1998).

[431] *Id*.

[432] 513 U.S. 561 (1995).

[433] *Id*. at 564.

[434] *Stack* v. *Lobo*, 903 F. Supp. 1361 (N.D. Cal. 1995)(characterizing *Gustafson* as imposing ''prospectus liability only when the issuer is required to distribute a prospectus'' and applying the civil liability provisions based on the 25-day period created by Rule 174 for IPOs); *Agryropoulous* v. *Mednet*, 1997 U.S. Dist. LEXIS 10497 (C.D. Cal. 1997) (citing *Gustafson* for the holding that ''[S]ection 12(a)(2) imposes prospectus liability only when the issuer is required to distribute a prospectus'') and *Gannon* v. *Continental Ins. Co.*, 920 F. Supp. 566 (D.N.J. 1996) (interpreting *Gustafson* to preclude liability under Section 12(a)(2) ''for anything other than a stock purchase on an initial offering''). *See also Levitin* v. *A Pea in the Pod*, 1997 U.S. Dist. LEXIS 4985 (N.D. Tex. 1997) (reasoning ''[a]ny redistribution of * * * stock within the statutory [mandatory prospectus delivery] period...takes on the characteristics of a new offering'' and thus liability attaches).

[435] *See, e.g., In Re WRT Energy Securities Lit.*, 1997 U.S. Dist. LEXIS 14009 at *21 (S.D.N.Y. 1997); *Gould* v. *Harris*, 929 F. Supp. 353 (C.D. Cal. 1996); *Murphy* v. *Hollywood Enter. Corp.*, 1996 WL 393662 at *3 (D. Or. 1996); *Gannon* v. *Continental Ins. Co.*, 920 F. Supp. 566 (D.N.J. 1996) and *Stack*, 903 F. Supp. at 1361.

[436] Securities Act Release No. 4749 (Dec. 23, 1964).

in the Securities Act would or would not apply.

While we believe it is appropriate overall to continue to apply a prospectus delivery obligation in the aftermarket, we also recognize that the world of accessible investment information has changed in many respects since Congress last amended that obligation in 1964. We believe it is time to reassess how this particular delivery obligation may be satisfied. While the *Gustafson* Court stated that a prospectus delivery obligation must exist in order to apply Section 12(a)(2), Section 12(a)(2) does not speak to the method by which that obligation could be satisfied. Physical delivery of a prospectus would not necessarily be required for purposes of the section.

Today, prospectuses are readily available during the aftermarket period through our Internet web site as well as other electronic sources. The Commission realizes that some investors are technologically sophisticated and are just as able as dealers to download the final prospectus from the Internet. We also recognize, however, that there are still many investors who do not have the capacity to obtain information in that manner. Given that the final prospectus delivery obligation in the aftermarket truly protects investors primarily after they have made their initial investment decisions, we believe that obligation could be satisfied through a means other than physical delivery.

We propose to revise Rule 174 so that the prospectus delivery obligation would be satisfied if a final prospectus[437] is on file with the Commission and the dealer notifies each investor, before or at the same time it receives a confirmation, where it may promptly acquire, free of charge from the issuer, final prospectus information. For example, the dealer could notify investors that they can download a final prospectus in electronic form from our web site and request it in paper format by calling the dealer at the listed number. The notice may be in the form of a legend on the confirmation sent by the dealer under Exchange Act Rule 10b–10.

The proposed Rule would maintain the twin goals of the aftermarket prospectus delivery that Congress created: informing investors and preserving investor remedies throughout the stream of distribution of securities. By directing investors to a web site where they are able to view and print the final prospectus, and by allowing investors to request physical delivery of a final prospectus, the Commission would ensure investor awareness of the availability of information in the aftermarket. At the same time, the burden on dealers would be minimized to only those cases where investors seek a paper prospectus.

We propose to apply the Section 5 prospectus delivery obligation for transactions by all dealers for a period of 25 calendar days after the later of: the effective date of the registration statement, or the first date on which the security was bona fide offered to the public.[438] The aftermarket delivery obligation would apply regardless of whether the offering is an initial public offering or a repeat offering. The frequency and nature of the underwriter trading behavior demonstrates that aftermarket distributive activities are clearly not confined to offerings that are initial public offerings.[439]

The intent of Section 4(3) and Rule 174 was to provide Securities Act protection during the entire stream of distribution. Given our research and understanding of practices, we believe it is possible to set an appropriate delivery obligation period at 25 days for both initial public offerings and repeat offerings. The single period for all offerings would simplify compliance for dealers and provide a bright-line by which investors could set their expectations. Thus, the market should benefit from the clear definition of aftermarket transactions. While distributive activities continue in some offerings beyond that period, we believe the vast majority do not. We solicit comment, however, regarding whether the period should be shorter (*e.g.*, 20 days) or longer (*e.g.*, 30 days) or vary according to some other aspect of the offering.

We also solicit comment on whether dealers that were not members of the underwriting syndicate for an offering of a reporting company should have a prospectus delivery requirement. Would the cost of compliance by notification under proposed Rule 174 for those dealers be greater than the benefit of an informed aftermarket?

6. Proposed Repeal of Rule 153

Under the proposed prospectus delivery regime, Securities Act Rule 153 would not be necessary.[440] Rule 153 addresses delivery of final prospectuses in transactions between brokers taking place over a national securities exchange. The Rule states that the Section 5 delivery obligation of a final prospectus before or with a security will be satisfied if the issuer or underwriter delivers the final prospectus to the exchange. The Rule contemplates that these prospectuses will then be taken or copied by the members of the exchange that are on the buy side of the transaction and delivered to the beneficial purchaser.[441] The Rule is limited in that it applies only to transactions between members of a national securities exchange and only where the transaction was effected on that exchange.[442] The Rule is not applicable for transactions on an automated quotation system.

Based on our staff's discussions with exchanges and market participants, it appears that Rule 153 is not relied on (or rarely relied on) to accomplish prospectus delivery. There are two explanations for this. First, Rule 153 is narrow in scope and therefore does not apply to many transactions. Second, from a procedural standpoint, an underwriter finds it easier to mail prospectuses to all purchasers rather than differentiating among them.

Under the proposed aftermarket prospectus delivery system, Rule 153 would not be necessary. As we propose to revise Rule 174, dealers would have a prospectus delivery requirement for transactions relating to a registered security for a period of twenty-five calendar days after the later of: the effective date of the registration statement, or the first date on which the security was bona fide offered to the public. That delivery obligation would be deemed satisfied, however, if a final prospectus is on file with the

[437] We would provide that the prospectus on file may omit price-related information in reliance on Securities Act Rule 430A, 17 CFR 230.430A, which deems that information to be part of the effective registration statement upon filing.

[438] Proposed revisions to Rule 174, 17 CFR 230.174, would retain some of the provisions of current Rule 174: (1) we would continue to apply a 90-day prospectus delivery obligation to securities of blank check companies; (2) we would retain the provision that Rule 174 does not shorten the prospectus delivery obligation with respect to securities covered by any registration statement that was the subject of a stop order under Section 8(a) of the Act; and (3) we would retain the provision expressing the our authority to set a different aftermarket delivery obligation in a particular case, as appropriate.

[439] We have considered but rejected an outright exemption of dealers' transactions from the aftermarket prospectus delivery obligation. Among the reasons for doing so is the risk that it could have the unintended effect of limiting remedies for purchasers in aftermarket transactions. We believe that result would frustrate the legislative and Commission intent to protect investors who buy throughout the distribution period, including the aftermarket part of it.

[440] 17 CFR 230.153.

[441] Some commentators have questioned whether in practice the re-delivery to the purchaser would occur. *See, e.g.*, Johnson & McLaughlin, *supra* note 76, at 548–49.

[442] *See In the Matter of Hazel Bishop Inc.*, Securities Act Release No. 4371 (June 7, 1961) [40 S.E.C. Docket 718 (1961)].

Commission and each investor is notified where it can obtain the final prospectus information that satisfies Section 10(a). Thus, in the limited situations under the proposed system in which Rule 153 might apply, delivery is satisfied through another mechanism. We therefore propose to repeal Rule 153.

7. Record Keeping of Prospectus Delivery

We solicit comment on whether the Commission should, by rule, specifically require broker-dealers to keep records of their distribution of information relating to an offering of securities under the Securities Act.[443] For example, should the Commission require a broker-dealer to keep records on each offering regarding where and how prospectuses, term sheets and free writing material were disseminated? Should the Commission limit such a rule only to managing or principal underwriters or should the rule apply to every broker-dealer? Should records be required concerning prospectuses only, or should the records reflect all information distributed? Should this requirement be limited to the ''offering period'' only or should it extend through the aftermarket delivery time period required by the proposed amendment to Rule 174? Should this requirement be limited only to those offerings that become effectively automatically?[444] How long should these records be required to be kept? Is two years a long enough period? Is six years too long?

To enable easier tracking of compliance, should we require issuers that make offerings (other than Form B offerings) that are underwritten on a firm commitment basis disclose the pricing date? Should it be disclosed in the first quarterly report they would be required to file after the offering or in another Exchange Act report (*e.g.*, a Form 8–K)?

[443] The Commission would promulgate such a rule under Section 17 of the Exchange Act.

[444] The Act requires the Commission, in ruling upon requests for acceleration of the effective date of a registration statement, to consider whether adequate information is available to the public. *See* Securities Act Section 8(a). The Commission gives guidance as to what constitutes adequate information in Rule 460, 17 CFR 230.460. Many issuers provide the Commission with a description of their effort to satisfy the guidance set forth in Rule 460 in their requests for acceleration of the registration statement. Requests for acceleration are submitted pursuant to Securities Act Rule 461, 17 CFR 230.461. Under the proposals, in Form B offerings and certain offerings on Form A, underwriters and issuers would no longer submit to the Commission a request for acceleration.

IX. The Role of Underwriters

A. Legislative Shaping of the Underwriters' Role

In passing the Securities Act in 1933, Congress was acting on its concern that misleading disclosure and high pressure sales tactics had overstimulated investors' demand for securities.[445] Congress' remedy was to require that investors get complete and truthful information regarding the offered securities. To help ensure that result, Congress deliberately placed underwriters within the scope of the liability provisions.[446] Congress recognized that underwriters occupied a unique position that enabled them to discover and compel disclosure of essential facts about the offering. [447] Congress believed that subjecting underwriters to the liability provisions would provide the necessary incentive to ensure their careful investigation of the offering.[448]

Congress' goal was not to have underwriters act as insurers of an issuer's securities.[449] Accordingly, Congress provided underwriters and others with a ''due diligence'' defense. An underwriter is not liable under Section 11 for the non-expertised portions of the registration statement if, after reasonable investigation, it had reasonable grounds to believe (and did believe) that the statements in the registration statement ''were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading.* * *'' [450]

B. Case Law Interpretation of the Underwriters' Role

In the past, the courts also have recognized the important role underwriters play in the offering process. As the U.S. Court of Appeals for the Second Circuit noted, ''[n]o greater reliance in our self-regulatory system is placed on any single participant in the issuance of securities than upon the underwriter.* * *'' [451] Accordingly, courts have found that underwriters must conduct an investigation ''reasonably calculated to reveal all of those facts [that] would be of interest to a reasonably prudent investor.'' [452] As the courts have noted, it is impossible to have a rigid rule defining what is a reasonable investigation or how far an underwriter must go in order to verify an issuer's statements.[453]

C. Commission Interpretation of the Underwriters' Role

We, too, have provided guidance with regard to underwriter due diligence. In 1982, as part of a comprehensive program to integrate the disclosure requirements of the Securities Act and the Exchange Act, we adopted Rule 176.[454] Rule 176 identifies circumstances relevant in determining whether a person's conduct satisfies the due diligence standard in Section 11.[455] They are:

1. The type of issuer;
2. The type of security;
3. The type of person;
4. The office held when the person is an officer;
5. The presence or absence of another relationship to the issuer when the person is a director or proposed director;
6. Reasonable reliance on officers, employees and others whose duties should have given them knowledge of the particular facts;
7. For underwriters, the type of underwriting arrangement, the role as

[445] During the 1920s, $25,000,000,000 in securities (half of all those issued) proved to be worthless. H.R. Rep. No. 85, 73rd Cong., 1st Sess. 2 (1933) (hereinafter H.R. Rep. No. 85).

[446] Congress placed some of the responsibility for investors' losses on the securities industry. The House of Representatives' Committee on Interstate and Foreign Commerce noted that ''the flotation of such a mass of essentially fraudulent securities was made possible because of the complete abandonment by many underwriters and dealers in securities of those standards of fair, honest and prudent dealing that should be basic to the encouragement of investment. * * *'' H.R. Rep. No. 85 at 2.

[447] *ABA Committee on Federal Regulation of Securities, Report of Task Force on Sellers' Due Diligence and Similar Defenses Under the Federal Securities Laws*, 48 Bus. Law. 1185, 1191 (May 1993).

[448] H.R. Rep. No. 85 at 5.

[449] H.R. Rep. No. 152, 73rd Cong., 1st Sess. 26 (1933). In order to remove any uncertainty with regard to the standard of reasonableness Section 11(c) of the Securities Act was amended in 1934 to replace the term ''fiduciary'' with the common law definition of the duty of a fiduciary. H.R. Rep. No. 1383, 73rd Cong., 2d Sess. (1934). *See also Escott, et al* v. *Barchris Construction Corp.*, 283 F. Supp. 643, 697 (S.D.N.Y. 1968) (''In order to make the underwriters' participation in this enterprise of any value to the investors, the underwriters must make some reasonable attempt to verify the data submitted to them.'').

[450] 15 U.S.C. § 77(k)(b)(3). For expertised portions of the registration statement, an underwriter need only show that it had no reasonable ground to believe, and did not believe, that the statements in the registration statement were untrue or omitted to state a material fact. *Id.*

[451] *Chris-Craft Industries, Inc.* v. *Piper Aircraft Corp.*, 480 F.2d 341, 370 (2d Cir. 1983).

[452] *See, e.g., Feit* v. *Leasco Data Processing Equipment*, 332 F. Supp. 544, 582 (E.D.N.Y. 1971).

[453] *Barchris*, 283 F. Supp. at 643.

[454] 17 CFR 230.176.

[455] The rule applies to persons other than the issuer. In the adopting release for Rule 176, the Commission acknowledged that there are other circumstances beyond those enumerated in the rule which may bear upon the reasonableness of an underwriter's investigation. *See* Securities Act Release No. 6383 (Mar. 3, 1982).

underwriter, and the availability of information with respect to the registration; and

8. Where a fact or document is incorporated by reference, whether the person had any responsibility for the fact or document when filed.

We wrote this list in a general way to apply to virtually any kind of offering and to apply to any person that could claim a due diligence defense.

We adopted Rule 176 to provide guidance to courts assessing the reasonableness of an investigation under the integrated disclosure system. [456] At that time, we expressly rejected the consideration of competitive timing and pressures when evaluating the reasonableness of an underwriter's investigation.[457]

In proposing Rule 176, we also discussed techniques available to underwriters that would allow them to expedite their due diligence investigations.[458] We stated that an underwriter could develop a ''reservoir of knowledge,'' before an offering, by carefully reviewing a company's Exchange Act filings, analysts' reports, and by attending the company's meetings with analysts and brokers. This ''reservoir of knowledge'' would enable the underwriter to complete its due diligence investigations more quickly, because it would already be familiar with the company.

D. Proposed Guidance on Underwriter Due Diligence

The registration system we are proposing, among other things, would allow more reporting issuers to register capital faster and more efficiently. Consequently, underwriters may experience marginal additional timing pressures in conducting their due diligence investigations. Under those circumstances, underwriters must take care not to allow competitive pressures and issuers' demands for speed to lessen their due diligence investigations. We have been advised that firms currently underwriting expedited offerings by reporting issuers perform a reasonable investigation despite the very short period between when they are named the underwriter and when the offering is commenced. They reportedly use a combination of real-time and anticipatory due diligence practices. Those practices should work as well in connection with expedited offerings under the proposed registration system.

We believe that a court would, of its own accord, take into account all of the facts and circumstances that affect the ability of the underwriter to conduct a reasonable investigation or develop reasonable grounds for belief. Nevertheless, a rule that provides guidance with respect to expedited offerings by reporting companies could help those involved in the due diligence process and those assessing its adequacy. We believe we can identify several due diligence practices for those offerings that, if present, may be indicative of a ''reasonable investigation'' under Section 11 and ''reasonable care'' under Section 12(a)(2).

Accordingly, we are proposing to expand Rule 176.[459] First, we are proposing that Rule 176 address the reasonable care standard of Section 12(a)(2) as well as the reasonable investigation standard of Section 11. While Section 11 requires a more diligent investigation than Section 12(a)(2), any practices or factors that would be considered favorably under Section 11 also should be considered as favorably under the reasonable care standard of Section 12(a)(2).[460]

We also are proposing to add subsection (i) to the Rule. It would identify six due diligence practices that the Commission believes would enhance an underwriter's due diligence investigation when conducting an expedited offering. The Commission believes the courts should view these practices as positive factors when evaluating an underwriter's due diligence defense, though these practices in no way constitute an exclusive list or serve as a substitute for a court's analysis of all relevant circumstances. The absence of one or more of these practices, apart from the underwriter's review of the registration statement and inquiry into facts or circumstances that raise concerns about the adequacy or accuracy of the disclosure, should not be considered definitive in reaching a conclusion about the adequacy of the underwriter's investigation.

Subsection (i) would apply only to offerings of equity and non-investment grade debt securities that were marketed and completed in fewer than five days. Additionally, the proposed guidance would require that the issuer have registered the offering on Form B. These expedited offerings require the underwriter to perform the bulk of its due diligence on a compressed time schedule. For offerings conducted on a longer time schedule, the Commission believes that no additional guidance is required. For every offering, including expedited offerings, the courts would examine all the relevant circumstances. The six practices that the courts should consider as positive factors in expedited offerings are:

1. Whether the underwriter reviewed the registration statement and conducted a reasonable inquiry into any fact or circumstance that would cause a reasonable person to question whether the registration statement contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading;

2. Whether the underwriter discussed the information contained in the registration statement with the relevant executive officer(s) of the registrant (including, at a minimum, the chief financial officer (''CFO'') or chief accounting officer (''CAO'') or his or her designee) and the CFO or CAO (or his or her designee) certified that he or she has examined the registration statement and that to the best of his or her knowledge, it does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading;

3. Whether the underwriter received a Statement on Auditing Standards (''SAS'') No. 72 comfort letter from the issuer's auditors;

4. Whether the underwriter received a favorable opinion from issuer's counsel opining that nothing has come to its attention that has caused it to believe that the registration statement contains an unfair or untrue statement or omits to state a material fact;

5. Whether the underwriter employed counsel that, after reviewing the issuer's registration statement, Exchange Act filings and other information, opined that nothing came to its attention that would lead it to believe that the registration statement contains an untrue statement or omits to state a material fact; and

6. Whether the underwriter employed and consulted a research analyst that:

(i) Has followed the issuer or the issuer's industry on an ongoing basis for at least the 6 months immediately before the commencement of the offering; and

[456] The integrated disclosure system (and later shelf registration) allowed issuers to complete registered offerings faster than previously possible. Underwriters expressed concern that those accelerated time schedules would increase pressure on them to expedite their due diligence investigations. *See* Securities Act Release No. 6335 (Aug. 6, 1981) [46 FR 42015]. *See also Feit,* 332 F. Supp. at 582. The Commission stated that the integrated disclosure system was not designed to modify the responsibility of underwriters and others to make a reasonable investigation. *See also* Securities Act Release No. 6499 (Nov. 17, 1983).

[457] Securities Act Release No. 6335 (Aug. 6, 1981).

[458] Securities Act Release No. 6335 (Aug. 6, 1981). These techniques were not codified as part of the rule but ''were presented to help facilitate the development of procedures compatible with integrated approach to registration.'' *See* Securities Act Release No. 6383 (Mar. 3, 1982).

[459] See proposed revisions to Securities Act Rule 176, 17 CFR 230.176.

[460] If our proposed expansion of Securities Act Rule 176, 17 CFR 230.176, is adopted as proposed, we envision providing additional guidance in the adopting release as to the difference between the reasonable care standard of Section 12(a)(2) and the reasonable investigation standard of Section 11.

(ii) Has issued a report on the issuer or its industry within the 12 months immediately before commencement of the offering.

The Advisory Committee on Capital Formation also recommended expanding the factors listed in Rule 176.[461] We solicit comment on whether one of those factors, a management report to the audit committee of the board regarding procedures established to assure accurate and complete Exchange Act disclosure, be included in Rule 176 as a basis for underwriter due diligence.[462]

1. Proposed Practices Reflect Current Practice

Various underwriters and issuers have identified to the Commission staff potential elements of current due diligence investigations for expedited offerings. All of the six practices identified in the proposal reportedly are being used to some degree by most underwriters for those offerings. For example, even in the speediest of offerings, an underwriter interested in establishing that it had done a reasonable investigation would: read the disclosure, talk about it with management of the issuer, document management's conclusion about its adequacy, and follow up on matters of concern that arise in connection with its inquiry. An underwriter doing a due diligence investigation in an expedited offering may seek assurance from third parties involved in the offering that they have not discovered inadequacies in the disclosure. Thus, they may arrange for opinions from both the issuer's counsel and their own. Additionally, underwriters may arrange for a SAS 72 comfort letter from the issuer's auditor. Though we believe that underwriters' reliance on representations by third parties may, depending on the circumstances, be a factor in considering an underwriter defense in expedited offerings, in every instance we believe it is appropriate for underwriters to review the registration statement and make reasonable inquires about any suspicious statements or omissions. For that reason, we have indicated that a court could consider dispositive an underwriter's failure to do so. We request comment on whether reliance on third party representations alone could satisfy an underwriter's obligation.

2. The Role of Analysts

An underwriter will sometimes employ its research analysts to help it conduct its due diligence investigation. We believe it is appropriate to recognize that research analysts working for an underwriter can play an important role in facilitating the due diligence process in expedited offerings. A research analyst that follows an issuer's industry would likely be aware of the risks and prospects of an issuer's business. An analyst is employed to search out and analyze not only the Commission filings but also any other information that is available about the issuer and its industry. While an analyst may not have the same degree of access to issuer information as an underwriter performing long-term due diligence, he or she generally has regular contact with the issuer or companies in the issuer's industry. As a result, the analyst would have acquired the necessary ''reservoir of information'' about the issuer that helps fulfill due diligence requirements in expedited offerings.

Firms acting as underwriters in expedited offerings generally do so when they are already conducting a form of ''due diligence'' year round via their in-house analysts. Because of their analysts' prior work, these underwriters have less to do immediately before the offering.[463] While some brokerage firms may have ''walled off'' analysts from the underwriting side of their businesses, that no longer appears to be uniformly the case at the time where an analyst's knowledge can be instrumental in expediting the due diligence process.[464]

In this respect, we recognize that, in limited and controlled circumstances, cooperation between analysts and underwriters can be useful. The proposed system perceives the utility of a ''one-way'' wall between analysts and underwriters of the same firm, whereby information from the analysts who have a ''reservoir of information'' is available to the underwriters for purposes of Rule 176. We still would expect brokerage firms to maintain a wall between analysts and underwriters to prevent any flow of information from the underwriter to the analyst that would result in selective disclosure.

3. Other Due Diligence Practices

The Commission also wishes to solicit comment on a number of other due diligence practices that are currently being conducted or discussed by underwriters.

a. Disclosure Review by an Issuer's Independent Accountants

The role of the accountant in a due diligence investigation cannot be overlooked. Accountants are often the people most familiar with an issuer's financial standing and prospects. They play a vital role in the protection of investors. As noted earlier, underwriters also rely on accountants in performing their due diligence investigation. Underwriters often will request a SAS 72 comfort letter from an issuer's independent auditors as part of their due diligence investigation. Additionally, some issuers have their accountants conduct a SAS 71 review of their quarterly financial statements. We believe that this additional review of an issuer's quarterly financial statements augments compliance with our rules and regulations. Consequently, we request comment as to whether we should add to the proposed practices the fact that an independent accountant performed a timely review under SAS 71 of an issuer's quarterly financial information.

Recently, the American Institute of Certified Public Accountants (''AICPA'') issued a Statement on Standards for Attestation Engagements No. 8 (''SSAE 8''). The SSAE 8 contemplates that an accountant may perform either an examination or a review of an issuer's management's and discussion and analysis (''MD&A'') disclosure. The examination is intended to result in the accountant's expression of an opinion as to whether:

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[461] *See* Advisory Committee Report at 65–70. That Committee primarily suggested that compliance with both mandatory and voluntary ''disclosure enhancements'' recommended in its Report be added as factors for underwriters. In addition to the management report to the audit committee, those included:

—Senior management certification to the Commission regarding disclosure in Exchange Act reports;

—Reviews by outside professionals including:

—SAS 71 review by company's auditors

—SAS 72 comfort letter

—SAS 37 subsequent events procedures

—Rule 10b–5 opinion letter

—Existence of a disclosure review committee of the board of directors;

—The extent of access to analysts; and

—The size of the offering.

[462] *See* Section XI.A.4. of this release regarding Exchange Act disclosure.

[463] While the rule contemplates that the analyst has been following the issuer or its industry as part of its employment responsibilities for a period of time, the rule does not require that the analyst be employed by the underwriter for that entire period. The fact that an analyst moves from one analyst position to another should not be relevant where the analyst's coverage of the issuer continues.

[464] While we recognize the varying practices with respect to maintaining a wall between the analyst and underwriting sides of the brokerage firm, we do not suggest that brokerage firms should remove or lower those walls. Although we recognize the helpful role analysts perform in facilitating due diligence, we also recognize the wisdom of maintaining legitimate walls between analysts and underwriters that work for the same brokerage firm and share an interest in the same issuers. *See, e.g.*, *AutoZone Holders Sold Stock in June After Goldman, Analysts Talked Up Issue*, Wall St. J., Jan. 15, 1997 at C1.

1. The issuer MD&A disclosure contains the required elements of Item 303 or Regulation S–K or Item 303 of Regulation S–B;

2. The historical financial information included in the MD&A is accurately derived from the issuer's financial statements; and

3. The issuer's underlying information, determinations, estimates and assumptions provide a reasonable basis for the disclosures contained in the MD&A.[465]

We believe that a SSAE opinion may further our disclosure goals and help obtain greater compliance with our rules. Therefore, we also solicit comment as to whether a SSAE 8 review should be added to the proposed practices.

b. Disclosure Review by an Independent Qualified Professional

We also request comment as to whether to include as one of the proposed practices an underwriter's review of a favorable report issued by a qualified independent professional to the issuer after the professional conducted a year-end disclosure review. The purpose of the qualified independent professional's review would be for the professional to assess the disclosure in the annual report the issuer is drafting before the issuer files it under the Exchange Act.[466] Although this practice is not common today, we believe it could enhance the quality of Exchange Act disclosure that is typically incorporated by reference into registration statements in connection with expedited and other offerings. In the event that a qualified independent professional completed such a review, a reasonable underwriter should be allowed to factor that in when figuring out what steps it needs to take in its due diligence.

We anticipate that such a disclosure review generally would occur independent of the offering process during the period after the end of the issuer's fiscal year but before it has filed its annual report. In the course of the review, the professional would read all of the issuer's Exchange Act reports for the year, as well as last year's annual report, to assist it in evaluating the quality of the Exchange Act annual report not yet filed by the issuer for the year just ended. The qualified independent professional also would perform a reasonable investigation.[467] It would have to issue its report before the commencement of the offering in order for the underwriters to place reasonable reliance on the report.

To issue a favorable report, the professional would have to state that, after reading those reports and doing a reasonable investigation, it believes that the disclosure in the non-expertised portions of the annual report to be filed is true and there were no omissions of material facts. As to the expertised portions (including the audited financial statements), the professional would have to state that it does not believe that the disclosure is untrue or there was an omission to state a material fact.

We also request comment as to whether certain qualifications should be required of the independent professional. While we anticipate that different professions could perform the disclosure review, should such a review be limited to only certain professions such as the legal or accounting profession? Would we need to provide guidance as to what would constitute an adequate disclosure review? Would there be a sufficient number of qualified professionals willing to undertake such a review? Since these professionals would be subject to liability, would this prevent a market for such services from developing? Would issuers be willing to pay for such a review?

Besides this proposed practice and the liability provisions of the Acts, are there more direct or better ways to enhance the underwriters' due diligence role with respect to an issuer's Exchange Act reports? If so, what are they?

E. Interpretation of the Guidance

While we believe that the due diligence practices we propose to add to Rule 176 would enhance an underwriter's investigation, these practices should not be viewed as mandatory. We also are not suggesting that some or all of these practices are the exclusive way to establish adequate due diligence, even in an expedited offering. The absence of any one or more of the practices in a particular case, except for the underwriter's review of the registration statement and inquiry into facts or circumstances that raise concerns about the adequacy or accuracy of the disclosure, should not be considered definitive in reaching a conclusion about the adequacy of due diligence efforts.[468] Each offering is unique, and therefore the underwriter must evaluate the surrounding circumstances and then choose the appropriate due diligence practices.

F. Investment Grade Debt Offerings

The proposed guidance would not apply to offerings of investment grade debt. Issuers that offer investment grade debt under a medium term note program may conduct frequent offerings. Consequently, underwriters' due diligence is usually performed periodically rather than with each offering of investment grade debt. Periodic due diligence normally would not be completed under the same time pressures associated with an expedited offering of equity or non-investment grade debt securities. We solicit comment, however, as to whether investment grade debt offerings should be included in the proposed amendments to Rule 176. If so, are there certain due diligence practices that would not be applicable to investment grade debt? Are there specific due diligence practices that are performed only with regard to investment grade debt offerings? Should these practices be added to Rule 176? Would these practices allow for due diligence to be performed on an offering-by-offering basis? Would additional guidance regarding investment grade debt offerings be useful to the courts?

G. Requests for Comment on the Proposed Guidance

The Commission requests comment on the proposed amendment to Rule 176. Because the courts already consider the surrounding circumstances of the offering when determining whether an underwriter's investigation was reasonable, would adding these practices to Rule 176 materially assist courts in evaluating due diligence efforts? Would adding them assist underwriters in crafting their due diligence practices? Would any of the proposed practices cause some underwriters, such as those that do not employ analysts, to suffer unfair competitive disadvantages?

Are there other due diligence practices that should be included in the proposed amendment? Are any of the practices not relevant to consider in assessing an underwriter's due diligence? Should the extent to which an underwriter has very recently underwritten another offering for the same issuer be explicitly identified as a relevant circumstance?

[465] Statement on Standards for Attestation Engagement No. 8, American Institute of Certified Public Accountants.

[466] This annual report would be incorporated into the registration statement prepared for the offering.

[467] We envision this investigation as akin to the type of reasonable investigation an underwriter would undertake if the disclosure were contained in a Securities Act registration statement.

[468] We have reflected this position in proposed revisions to Rule 176, 17 CFR 230.176.

Should the proposed 5-day marketing period be shortened (*e.g.*, to two or three days) or lengthened (*e.g.*, to five business days)? Should the proposed guidance be limited to offerings that are underwritten on a firm commitment basis? Should the proposed guidance be expanded to cover offerings that are registered on Form A, particularly those for which the underwriter designates effectiveness? Will the proposed changes provide an incentive for underwriters and issuers to complete their offerings earlier than today? Do we need to define when an offering is considered first marketed? In general, we solicit comment on whether the proposed practices, separately or as a package, provide underwriters with sufficient guidance to enable them to perform adequate due diligence investigations. Are the proposals too lenient to serve that purpose? Should we add other practices to proposed Rule 176(i) to direct underwriters who participate in these offerings better? On the other hand, are the proposals overly burdensome?

H. Liability Safe Harbor

Several commenters on the Concept Release suggested that reform is needed to ensure that an underwriter's exposure to liability under Section 11 mirrors its ability to affect disclosure.[469] In expedited offerings, they argued, there is little time to conduct due diligence immediately before commencement. As a result, some commenters suggested that underwriters be protected from liability through a safe harbor in those offerings.[470] We are not proposing such a safe harbor from potential liability. To grant one to underwriters would be to lessen significantly their incentive to test the quality of the issuer's disclosure in such offerings. We recognize the value that underwriters add to the disclosure process. In our view, investors require that protection. In addition, like the courts and past Commissions, we do not believe that it would be possible to craft a single, finite list of steps that will, without fail, constitute a reasonable investigation in every set of circumstances in many different offerings. We believe our proposal to include specific guidance in Rule 176 about expedited offerings will aid underwriters considering how to conduct due diligence in those circumstances and assist in the event a court needs to assess those steps.

X. Integration of Registered and Unregistered Offerings

A. The Integration Doctrine

The integration doctrine reaches all the way back to 1933.[471] Put simply, integration is the process of combining separate transactions in securities as part of the same offering for purposes of analyzing whether the registration provisions of the Securities Act apply. It is what prevents an issuer from evading registration by artificially splitting what is in reality a single offering to make it appear that an exemption applies when no exemption for that offering was ever intended. When separate transactions are integrated into one offering, that offering must have an exemption from registration. If no exemption is available, then the transaction, if not registered, would be in violation of Section 5 of the Securities Act. Thus, integration is a concept that upholds the policies underlying both the registration system and the exemption system in the Securities Act.

The integration doctrine is not always easy for securities law practitioners to apply to offerings. The analysis generally is dependent on considering all the particular facts and circumstances for each offering. Over the years, however, the Commission has given guidance. In 1962, the Commission issued a release that established a framework for analyzing whether offerings should be integrated.[472] The five-factor test established in that release continues to apply today.[473] In addition, the Commission has created a number of safe harbors from integration in order to simplify the analysis in particular cases.[474] The application of the integration doctrine also has been the subject of staff interpretive letters.[475]

B. Rule 152

In 1935, the Commission adopted Rule 152.[476] It provides a safe harbor from integration when an issuer makes a private offering pursuant to Securities Act Section 4(2) and then decides to make a public offering and/or file a registration statement. The rule states that Section 4(2) shall be deemed to apply to transactions that did not involve any public offering at the time even though the issuer decides subsequently to make a public offering and/or file a registration statement.

Rule 152 has not been considered a model of clarity. Over the years, the scope of Rule 152 has been a matter of some uncertainty and the subject of Commission staff no-action letters. For example, questions have been raised about: whether the safe harbor is available to both completed private offerings and abandoned private offerings, whether the safe harbor is available when the registered offering was contemplated at the time of the private offering, and under what circumstances an offering is considered completed for purposes of the safe harbor.[477]

C. Proposed Safe Harbors for Completed and Abandoned Offerings; Related Rule Proposals

The integration doctrine and Rule 152 have received a great deal of attention in recent years from securities law practitioners. Their interest has reflected their clients' demand for speed in the offering process. One area in which frequent questions arise with respect to integration is the combination of private and public offerings.[478]

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[469] *See, e.g.*, comment letters, in File No. S7–19–96, from Merrill Lynch (Oct. 31, 1996), Morgan Stanley (Dec. 9, 1996) and the Securities Industry Ass'n (Nov. 13, 1996).

[470] *See, e.g.*, comment letters, in File Number S7–19–96, from Cleary, Gottlieb, Steen & Hamilton (Dec. 27, 1996) and Merrill Lynch (Oct. 31, 1996).

[471] *See* Securities Act Release No. 97 (Dec. 28, 1933).

[472] *See* Securities Act Release No. 4552 (Nov. 6, 1962) [27 FR 11316].

[473] The five factors are:

1. Are the offerings part of a single plan of financing?

2. Do the offerings have the same general purpose?

3. Are the offerings of the same class of securities?

4. Are the offerings being made at or about the same time?

5. Are the securities being sold for the same type of consideration?

These factors also are noted in Rule 502 of Regulation D, 17 CFR 230.502. The Commission has stated that any of the factors can be determinative. Securities Act Release No. 4552 (Nov. 6, 1962).

[474] For example, Rule 502(a), 17 CFR 230.502(a), provides that offers and sales made more than 6 months before the start of an offering under Regulation D or more than 6 months after the completion of an offering under Regulation D will not be integrated with the Regulation D offering if there were no non-Regulation D offers and sales of that class of securities (other than through employee benefit plans) during that period. *See also* Rule 147(b)(2), 17 CFR 230.147(b)(2), which provides a similar safe harbor for exempt intrastate offerings; Rule 251(c), 17 CFR 230.251(c), which provides a similar safe harbor under Regulation A for small offerings by non-reporting issuers; Rule 701(b)(6), 17 CFR 230.701(b)(6), which contains a non-integration provision in connection with exempt offerings to employees and consultants under compensation plans.

[475] *See, e.g.*, Staff interpretive letters *Squadron, Ellenoff, Pleasant and Lehrer* (Feb. 28, 1992) and *Black Box Inc.* (June 26, 1990).

[476] *See* Securities Act Release No. 305 (Mar. 2, 1935). *See also* Securities Act Release No. 4761 (Feb. 5, 1965) [30 FR 2022].

[477] *See, e.g.*, Staff interpretive letters *Quad City Holdings, Inc.* (Apr. 8, 1993); *Vulture Petroleum Corp.* (Feb. 2, 1987); *Verticom Inc.* (Feb. 12, 1986).

[478] Integration issues may relate to two or more private offerings, as well. Neither current nor proposed revisions to Rule 152, 17 CFR 230.152, addresses these issues.

We propose to revise Rule 152 to clarify and expand the integration safe harbor.[479] First, the rule would address the circumstances under which a completed unregistered private offering would not be integrated with a subsequent registered offering. Second, the rule would set conditions under which an unregistered private offering that has been abandoned may be followed by a registered offering. Third, the rule would provide a safe harbor for issuers that wish to abandon a registered offering and follow it with an unregistered private offering. Fourth, the rule would codify some of the staff positions taken with respect to integration and registration of resales. Finally, the exempt offerings covered by the rule would be expanded to include other types of unregistered private offerings in addition to Section 4(2) offerings.

We also are proposing related rule changes. Proposed Rule 159 would codify a current staff position concerning lock-up agreements before business combinations.[480] Rule 477 would be revised to facilitate withdrawals of registration statements.[481]

1. Completed Offerings

a. Issuer Transactions

Through revising Rule 152, we hope to avoid persistent interpretive questions concerning whether Section 5 problems arise if a private offering was completed within 6 months before the filing of a registration statement.[482] As proposed, if the private offering is completed before the registration statement is filed, the private offering would not be integrated with the registered offering regardless of the length of time between the two offerings.

The proposed rule would define the circumstances under which an offering would be considered completed for purposes of the safe harbor. An offering would be completed where all purchasers have fully paid the purchase price for the securities in the private offering. If certain conditions are met, an offering will be considered completed even if the purchase price for the securities has not been fully paid. For this exception to apply, the transaction may not be subsequently re-negotiated. These conditions require that the purchaser be unconditionally obligated to pay for the securities. We would qualify that requirement to permit conditional obligations to purchase the securities as long as the obligation depends on a condition that is not within the direct or indirect control of any purchaser. Also, the purchase price in the private offering must be fixed and not contingent upon market prices around the time of the registered offering. This ensures that the purchaser assumes the market risk.

A private offering may involve the offer and sale of convertible securities or warrants. These securities are generally convertible or exercisable into a class of underlying securities (*e.g.*, common stock) over a period of time. While these securities are convertible or exercisable, the issuer, in effect, is conducting an offering of the underlying securities. During this time period, the issuer may file a registration statement under the Securities Act. The offering of the underlying securities concurrently with the registered offering has generated uncertainty about whether the offerings should be integrated. To address these concerns, we propose to expand the Rule 152 safe harbor to protect the offering of the underlying securities from integration with the registered offering. As proposed, the offering of the underlying securities would be considered completed when the offering of the convertible securities or warrants is completed.

A special approach would apply to a private offering made before an initial public offering where the private offering does not raise capital for the issuer but is conducted only to modify the issuer's capital structure. For this approach to apply, the private offering must not be a roll-up transaction under Rule 901(c) of Regulation S–K. When these conditions are satisfied, the private offering would not be integrated with the later registered offering.

We request your comments on our proposed safe harbor for completed offerings. Is our definition of completed offerings clear, especially those offerings where payment for the securities has not been made? Should other conditions be added for these offerings?

b. Resale Transactions

We would clarify in Rule 152 that it is permissible for an issuer to register the resale of securities that were originally sold by the issuer in a completed bona fide private offering. The private offering would be considered completed if the proposed conditions discussed above are met. An offering would be considered completed even though payment for the securities has not been made, or the securities have not been issued, when the registration statement for the resales is filed. Under this approach, payment for the securities may be made following filing or effectiveness of the registration statement for the resales. Also, the payment obligation may be conditioned upon effectiveness of the registration statement, assuming the purchasers have no control over that condition.

We would exclude from the safe harbor resales by affiliates of the issuer or a broker-dealer that has purchased directly from the issuer or an affiliate. In these transactions, there are questions as to whether the offering is a true resale transaction or a primary offering by the issuer. This determination may be made only after examining the facts and circumstances of each individual situation. Because of this uncertainty, we do not propose to extend the safe harbor for these resale offerings.

For purposes of this provision, the definition of ''affiliate'' would have the same meaning as that term has under Rule 144.[483] We have proposed to change the definition of affiliate under Rule 144.[484] If the Rule 144 definition is changed, the new definition also would apply to Rule 152.

We request your views on the safe harbor for resale offerings. Should the safe harbor cover resale offerings by affiliates? If it should, what conditions should be imposed to assure that the resales are bona fide secondary transactions and not part of a primary distribution? Should the Rule 144 definition of affiliate be used or would some subset of the persons that fall within that definition be more appropriate? If so, what?

c. Lock-up Agreements

The use of lock-up agreements in business combinations has become common. As part of the negotiations for these combinations, the acquiring party usually requires that management and principal security holders of the company to be acquired commit to vote for the acquisition. These so-called ''lock-up'' agreements are made when the acquisition agreement is finalized, before any action by the public security holders. These agreements could be

[479] *See* proposed revisions to Securities Act Rule 152, 17 CFR 230.152.

[480] *See* proposed Securities Act Rule 159, 17 CFR 230.159.

[481] *See* proposed revisions to Securities Act Rule 477, 17 CFR 230.477.

[482] The 6-month time period is found in Rule 502(a) of Regulation D, 17 CFR 230.502(a). Offers and sales within 6 months of the start or end of a Regulation D offering must be analyzed under the five-factor test to determine whether those offers and sales should be considered part of the Regulation D offering.

[483] Rule 144(a)(1), 17 CFR 230.144(a)(1), defines an affiliate of an issuer as a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such issuer.

[484] See Securities Act Release No. 7391 (Feb. 28, 1997) [62 FR 9246].

considered investment decisions under the Securities Act. If they are, the offers and sales of securities were made to persons who entered into those agreements before the business combination is presented to the non-affiliated security holders for their vote. Under this reasoning, those offers and sales could not be included in the registration statement for the offering to the persons not entering into lock-up agreements.

In recognition of the legitimate business reasons underlying the practice, the staff has permitted the registration of offers and sales under certain circumstances where lock-up agreements have been signed. We propose a rule that codifies this position.[485] Our proposed rule would allow registration of those offers and sales when:

(i) The lock-up agreements involve only executive officers, directors, affiliates, founders and their family members, and holders of 5% or more of the voting equity securities of the company being acquired;

(ii) The persons signing the agreements own less than 100% of the voting equity securities of the company being acquired; and

(iii) Votes will be solicited from shareholders of the company being acquired who have not signed the agreements and who would be ineligible to purchase in an offering under Section 4(2) or 4(6) of the Securities Act or Rule 506 of Regulation D.

The first condition would assure that the only persons who signed the agreements were insiders with access to corporate information who arguably would not need the protections of registration and prospectus disclosure. The last two conditions would make certain that registration under the Securities Act is required to accomplish the business combination. Where no vote is required or 100% of the shares are locked up, no investment decision would be made by non-affiliated shareholders and the transaction would have been completed via the lock-up agreement. If the non-affiliated shareholders were able to purchase under one of the private offering exemptions from registration, the entire transaction would be more akin to a private placement and registration of only resales would follow from that characterization.

We request your comments on proposed Rule 159. Should registration be permitted for securities under lock-up agreements? If no, why not? Are the proposed conditions sufficient or are different or additional conditions needed? Should some specified percentage lower than 100% (*e.g.*, 75%) be used? Would it matter what percentage had been locked up if a significant number of shareholders had not been? Should the proposed rule, which applies to lock-ups in connection with mergers and similar transactions, also apply to lock-ups in connection with tender offers? If so, would different conditions be appropriate?

2. Abandoned Offerings

An ongoing private offering may be abandoned by an issuer for any of a number of reasons. After commencement of a private offering, the issuer may discover that interest in the securities is soft and it is unable to sell the amount of securities it needs to sell. On the other hand, the issuer may encounter substantial interest from investors and wish to increase the size or scope of the offering. In the latter situation, the issuer may decide to switch the offering from a private one to a registered one.

Likewise, a registered offering may be abandoned for various reasons. For example, the issuer and its underwriter may discover after filing the registration statement that there is less investor interest than required to complete the registered offering successfully. The issuer may encounter delays in getting the registration statement effective and need funding on a more expedited basis. Changes in the market may make a registered offering less attractive.

a. Private to Public

Under Section 5 of the Securities Act, offers may not be made in registered offerings before filing a registration statement. Thus, an issuer generally is unable to begin a private offering by making offers and then decide to make the offering a registered one.

Under the proposed registration system, Form B issuers would have no difficulty beginning an offering as a private one and completing it as a registered public offering. Because the issuer would not be required to file a Form B until the time of sale, and offers could be made before filing, the transition from a unregistered offering to a registered offering would not have the same regulatory consequences as it does today.

Form A and other issuers, however, would not have the same freedom to proceed with offers in the absence of a filed disclosure document. [486] Thus, the same issues that exist today under the registration system would need to be addressed for those issuers. We propose to expand Rule 152 to permit Form A issuers to abandon an ongoing private offering and then conduct a public offering under the following conditions:

1. The issuer notifies all offerees in the private offering that the private offering is abandoned;

2. No securities were sold in the private offering;

3. Neither the issuer nor any person acting on its behalf offered the securities in the private offering by any form of general solicitation or general advertising; [487]

4. The issuer does not file the registration statement until at least 30 days after it notifies all offerees of abandonment if securities had been offered in the private offering to any person ineligible to purchase in an offering in accordance with Section 4(2), Section 4(6) or Rule 506; and

5. The issuer either files any selling materials used in the private offering as part of the registration statement or it informs all private offerees that the filed prospectus replaces the prior selling materials and any indications of interest are rescinded.

These conditions would assure that persons offered the securities in the private offering are treated the same as offerees and purchasers in the registered offering. The prohibition against sales would make sure that all purchasers have the protections of Section 11 liability. The prohibition on any public offers in the private offering and the 30-day waiting period (if applicable) would protect against issuers who had no intention of making a private offering abusing the safe harbor by making public offers before filing the registration statement containing the full and balanced disclosure. Because only Form B issuers are granted that freedom under the proposed communications rules, we would not want that distinction eroded by persons through the integration safe harbor. The 30-day waiting period also would be consistent with our communications proposals in that 30 days measures the limited communications period before a public offering.

The notification condition in the safe harbor would assure that all private offerees are aware of the abandonment of the private offering. Offerees in the private offering would receive the benefit of Section 11 liability on any selling materials used in the private offering where the issuer files those materials as part of the registration

[485] *See* proposed Securities Act Rule 159, 17 CFR 230.159.

[486] Issuers registering offerings on the small business issuer forms (*i.e.*, Forms SB–1, SB–2 and SB–3) would face the same issues as issuers registering on Form A. They would receive the same treatment for this purpose.

[487] These terms would have the same meanings as used in Rule 502(c) of Regulation D, 17 CFR 230.502(c).

statement. If the issuer chooses not to do that, those offerees would be informed that they should rely on the prospectus for the registered offering instead of the earlier selling materials.

Assuming the 30-day waiting period does not apply, if all of these conditions are met, the issuer need not wait before filing the registration statement. We request your comments on this safe harbor. Are the conditions adequate to assure full protection of investors? Are different or additional conditions needed? Is the 30-day waiting period sufficiently long to provide a disincentive to abuse of the safe harbor or should it be longer (*e.g.*, 45 or 60 days)? Would a company be able to condition the public market for its securities through beginning a private offering under this mechanism despite the 30-day waiting period? Should the offering materials used in the private offering always have to be filed either under proposed Rule 425 or as part of the effective registration statement?

b. Public to Private

The filing of a registration statement for a specific securities offering constitutes a general solicitation for that offering.[488] Thus, when an issuer wishes to convert an offering begun as a registered public offering into a private offering, or follow it soon after abandonment with a private offering, it is doubtful that a private offering exemption would be available. In addition, public offers under the registration statement may have been made to persons who would be ineligible to buy in the private offering. Issuers currently in this situation must wait a full six months to be certain that the public offering under the registration statement would not be integrated with the private offering. We are proposing a safe harbor that would shorten or eliminate that wait.

An issuer, especially a private company or a small business issuer, may not know whether investors will be interested in its securities. Expecting that investors will be interested, these issuers may undergo the time and expense of preparing and filing a registration statement under the Securities Act. During the public offering period, they may discover only limited investor interest. Faced with soft investor interest, these issuers may have to abandon the registered offering, but they still may need funding. Our proposal would eliminate integration concerns and permit these issuers to offer and sell securities in the private offering to persons eligible to buy under the private offering exemption even if they expressed interest as a result of public offers in the registered offering.[489] Thus, issuers faced with a soft market will receive at least some benefits from the time and expense incurred while pursuing registration.

We propose a safe harbor that would permit switching from a public offering (started either by the filing of a registration statement or begun under Form B before filing a registration statement) to an unregistered private offering if the following conditions are met:

1. If a registration statement has been filed, the issuer withdraws it under Rule 477;
2. If no registration statement has been filed (*i.e.*, Form B), the issuer notifies all offerees in a public offering that it is abandoning the public offering;
3. No securities were sold in the public offering;
4. Where the issuer first offers the securities in the private offering more than 30 days after abandonment or withdrawal, the issuer notifies each purchaser in the private offering that the offering is not registered, the securities are restricted, and that investors do not have the protections of Section 11 of the Securities Act; and
5. Where the issuer first offers the securities in the private offering 30 or fewer days after abandonment or withdrawal of the public offering, the issuer and any underwriter agree to accept liability for material misstatements or omissions in the offering documents used in the private offering under the standards of Section 11 and Section 12(a)(2) of the Securities Act.

The notification requirement for public offerings begun under Form B would assure that offerees are made aware of the termination of the public offering. If a registration statement has been filed, it must be withdrawn in order to end the public offering. Because the withdrawal of the registration statement is public information, it would signal to offerees that the public offering has been terminated.

If the private offering is begun more than 30 days after abandonment or withdrawal of the public offering, the intervening time period should reduce concerns that offerees in the private offering would be influenced by the public offering. Offerees in the private offering likely will discount any offering materials they may have received in the public offering due to this passage of time. Instead, they are more likely to rely on the private offering documents. We would require that the issuer notify purchasers in the private offering that the offering is not registered, the securities would be restricted securities and that they do not have the benefits of Section 11 liability. This disclosure requirement plus the intervening time period would assure that investors do not confuse the securities they are buying in the private offering with those offered in the public offering.

An issuer may need funding immediately and may not be able to wait more than 30 days. We would provide an option for companies that need to raise capital within the 30-day period. The reduced time period between the public offering and the private offering raises more investor protections concerns, however, about the lingering effects of the public offering. Offerees in the private offering may still be influenced by the public offering. In addition, we do not want issuers to use the integration safe harbor merely as a mechanism to avoid the prohibition on general solicitation and general advertising. Allowing an immediate switch from registered to private would encourage that abuse, absent some disincentives.

We propose as a condition that an issuer and any underwriter involved in the private offering enter into a binding agreement to apply Section 11 liability standards for any material misstatements or material omissions in the private offering materials with respect to any investor who purchases in the private offering within 30 days following the end of the public offering. These investors, who are likely to have been influenced by the public offering, should have the protections of Section 11 liability. We also would provide that investors who purchase in the private offering more than 30 days after the public offering ends would have the benefit of Section 12(a)(2) standards for liability for any material misstatements or material omission in the private offering materials.

Are the proposed conditions adequate to assure that investors in the private offering are fully protected? Should different or additional conditions be required? Is a 30-day time period adequate or should the time period be longer (*e.g.*, 45 or 60 days)? Should we permit private offerings to start within the 30-day period at all?

3. Definition of Private Offering

Rule 152 currently provides a safe harbor only for transactions under Section 4(2) of the Securities Act. There are other exemptions under the Securities Act which prohibit public

[488] *See* Division of Corporation Finance, Current Issues and Rulemaking Outline available on the Commission's web site (http://www.sec.gov).

[489] While the proposed revisions would provide for no integration, the subsequent private offering must satisfy all of the conditions of the relevant exemption to proceed on that basis.

offers. Section 4(6) [490] prohibits advertising or public solicitation in any transaction under that section. Rule 506, [491] which was adopted under Section 4(2), prohibits offers or sales by any form of general solicitation or advertising. These exemptions also have other requirements, in addition to the ban on public offers.

We propose to expand the private offerings covered by Rule 152 to include offerings under the Section 4(6) exemption and to specify in the Rule that it applies to the Rule 506 exemption. This would provide consistent treatment for Securities Act exemptions for private offerings. We request your views on the expansion of Rule 152 to these additional private offering exemptions. Are there reasons to continue to exclude either of these two exemptions?

Rule 505 of Regulation D,[492] unlike Rule 506, permits sales to persons who are neither accredited nor financially sophisticated.[493] Because these persons may purchase in Rule 505 offerings, we have not included those offerings in Rule 152. We solicit comment, however, as to whether sufficient protections exist under the proposed safe harbor to justify inclusion of Rule 505 offerings.

D. Proposed Changes to Rule 477

Rule 477 of Regulation C [494] contains the procedures to be followed by a registrant in order to withdraw a registration statement or an amendment filed under the Securities Act. The Commission must find that the withdrawal is consistent with the public interest and investor protection and affirmatively act to consent to the withdrawal. This finding requirement involves staff review of the withdrawal request and the time necessary for that review. The time needed for that review can vary. For a limited number of registration statements, the withdrawal request is deemed granted upon filing where the registration statement has not become effective.[495]

We propose to revise the rule to facilitate withdrawal of registration statements, particularly in light of the effect of withdrawals under proposed Rule 152. We would allow registration statements to be withdrawn automatically upon filing the request. The proposed changes would permit quick withdrawals for registration statements. These changes would expedite the use of proposed Rule 152 in switching from a registered public offering to a private offering and provide predictability in other cases.

We request your comments on the proposed change to Rule 477. Should we permit fewer types of registration statements to be withdrawn automatically upon filing? Should the rule be changed only to permit automatic withdrawal of any Form B registration statement, or any Form A registration statement where the registrant is eligible to incorporate by reference and become effective on an expedited basis? Should it be changed so that for all other registration statements, an application for withdrawal would become effective automatically ten days after filing, unless we grant the withdrawal earlier or notify the registrant during the ten-day period that the application will be reviewed? Are there reasons to limit the classes of registration statements that may be withdrawn automatically?

XI. Proposals Relating to Exchange Act Disclosure

To improve Exchange Act disclosure, we propose revisions to enhance the quality and timeliness of information in the periodic reports filed by domestic reporting companies.[496] Investors trading in the secondary markets look to Exchange Act reports for information. Moreover, seasoned issuers that file registration statements under the Securities Act incorporate information from their Exchange Act reports into their Securities Act filings. Investors buying in public offerings therefore also rely on Exchange Act disclosure. As we provide for further reliance on Exchange Act disclosure, we are particularly cognizant of the need to evaluate whether and how it can better serve investors.

Under our proposals, we would extend risk factor disclosure to Exchange Act reports, expand the items of disclosure required to be reported on Form 8–K and add a provision for voluntary reporting of information on Form 6–K. We also would require top management that sign Exchange Act registration statements and reports to certify that they have reviewed the disclosure in them and that they know of no untrue statement of a material fact or omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. In addition, we would require issuers to identify their web site addresses, if any, and an e-mail address, if any, on the cover page of all registration statements and Exchange Act reports. This requirement would make this information more accessible to investors, as well as ease investors' electronic communications with public companies.

Companies frequently issue press releases as a means of disseminating corporate information. In the case of quarterly and annual financial results, we are concerned that this manner of disclosure provides uneven results: some investors may learn of the information, others may not; some investors may have quicker access to the information than others. One of the purposes of the Commission's reporting system is to provide a single source where all investors can expect to find material company disclosure. To even the flow of disclosure to investors, we believe that companies should file material financial information that they may currently be making public only by press release.

We also note reports that corporate managers make conference calls after issuing press releases in order to ''clarify'' the information.[497] We are concerned that these conference calls exacerbate the problem of uneven disclosure, especially in the short-

[490] 15 U.S.C. § 77d(6). Section 4(6) exempts a transaction that does not exceed $5 million, if offers or sales are made to only accredited investors and other conditions are met. Accredited investor is defined in Rule 501(a) of Regulation D, 17 CFR 230.501(a).

[491] 17 CFR 230.506. The Commission adopted Rule 506 to provide a safe harbor as to what type of offering would not be considered a public offering for purposes of Section 4(2). An issuer complying with Rule 506 is certain that it is conducting a valid Section 4(2) offering.

[492] 17 CFR 230.505. Rule 505 provides an exemption for offerings up to $5 million within a twelve-month period, if certain conditions are met. This exemption was created by the Commission under Section 3(b) of Securities Act, 15 U.S.C. § 77c(b).

[493] Generally speaking, these investors must be limited to 35.

[494] 17 CFR 230.477.

[495] Rule 477(b), 17 CFR 230.477(b), currently permits this procedure for registration statements on Form F–2, relating to a dividend or interest reinvestment plan, or on Form S–4 complying with General Instruction G. of that Form.

[496] Some of these proposed revisions were suggested in substance by the Advisory Committee. While the Advisory Committee envisioned them as operating only where a company was part of a company registration pilot system, we believe implementing these improvements makes sense for all issuers regardless of whether they are concurrently registering an offering. The proposals relating to Exchange Act disclosure do not precisely follow the suggestions of the Advisory Committee. However, they emphasize the significance of Exchange Act reporting and would provide investors with a more current and fuller stream of information. That end corresponds with the Advisory Committee's goals.

[497] See, e.g., Frankel, et al., An Empirical Examination of Conference Calls as a Voluntary Disclosure Medium (Dec. 1996) (unpublished manuscript) (U. of Mich. Bus. Sch.) [hereinafter Conference Call Study]. This study noted that companies typically hold conference calls with analysts because of the declining relevance of historical financial data.

term.[498] This practice widens the information gap between large and small investors. Large investors, particularly institutional ones, may be on the conference call, or they frequently hire analysts that participate in conference calls and often obtain more detailed information about a company's earnings before the information is widely disseminated. While we believe analysts perform a valuable public function in filtering and passing on company information, we believe the small investors are the last to realize the benefits of this function. We think this is especially true when companies do not file with the Commission material information they issue in press releases or communicate by conference calls to analysts.[499]

When there is a significant time lag between the occurrence of a material event and the reporting of that event, or the determination of the quarterly or annual results and the reporting of them, there is a greater chance that selected investors will learn about the information before others.[500] We seek to minimize the gap of information between all investors. One way to do that is to require the quicker filing of material company information with the Commission. Although this will not eliminate entirely the information gap, it will decrease the amount of time during which there is a trading advantage. By requiring companies to speed their reporting of material information such as earnings announcements and other financial data, we hope to decrease the information gap between the ''have'' and ''have-not'' investors. Accordingly, we propose to shorten the due dates for material event reports and to accelerate the reporting of annual and quarterly selected financial data.

A. Annual and Quarterly Reports

1. Risk Factor Disclosure

Most Securities Act registration statements currently require an analysis of the risks associated with an investment in a company's securities.[501] Item 503 of Regulation S–K[502] describes that required disclosure as a ''discussion of the most significant factors that make the offering speculative or risky.'' The Commission promulgated this requirement because it assists investors in comprehending more fully whether the securities present an appropriate level of risk for them as an investment.

We propose to extend risk factor disclosure to Exchange Act registration statements[503] and periodic reports[504] of all issuers. The proposal would require issuers to articulate concisely the most significant risk factors relating to the company's future financial performance. This disclosure would be equally valuable whether investors are purchasing securities in a registered offering or trading in the secondary markets. Through the proposal, the Commission would ensure that timely disclosure about these types of risks does not depend on whether a public company decides to register an offering.

The annual disclosure specifically would consist of an itemization of the most significant factors with respect to the public company's business, operations, industry or financial position that may have a negative impact on its future financial performance. A foreign government issuer would set forth the most significant risk factors with respect to its financial position and the most significant country risks that are unlikely to be known or anticipated by investors.[505] The proposal would require that the issuer briefly explain how each risk affects it.

For public companies filing quarterly reports, we also are proposing that material changes in risk factor disclosure be reported quarterly. The company would disclose in the quarterly report only material risk factors that either:

1. Were not included in the later of the registrant's most recent Securities Act registration statement or Exchange Act periodic report; or
2. Had changed since the date of that registration statement or periodic report.

Foreign private issuers are not required to file reports on a quarterly basis under the Exchange Act; therefore, those companies would update their risk factors disclosure on an annual basis unless they choose to do so more frequently.[506]

A reporting company may incorporate risk factor disclosure into its Securities Act registration statement from its Exchange Act periodic reports. This Exchange Act disclosure may satisfy in whole or in part the risk factor disclosure required in the Securities Act registration statement. Where that is true, a registrant need not reiterate that risk factor disclosure in its Securities Act registration statement.[507]

Securities Act Rule 421(d) requires issuers to write and design their risk factor disclosure in registration statements using plain English principles. Where risk factor disclosure in Exchange Act reports currently is incorporated by reference into Securities Act registration statements, the Commission staff has advised issuers that the Exchange Act risk factor disclosure must comply with Rule 421(d). Under the proposals, registrants may more frequently incorporate Exchange Act risk factor disclosure into their Securities Act registration statements. In light of that, we are proposing an Exchange Act rule parallel to Rule 421(d) that would clarify that plain English requirements apply to Exchange Act risk factor disclosure.[508]

We seek comment on the proposals relating to risk factor disclosures for quarterly and annual reports. Should we require risk factor disclosure about specific matters that are in addition to those referred to in Item 503 of Regulation S–K? If so, what are they?

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[498] See Remarks by Arthur Levitt, Chairman of the Securities and Exchange Commission, A Question of Integrity: Promoting Investor Confidence by Fighting Insider Trading (Feb. 27, 1998), available on the Commission's web site (http://www.sec.gov).

[499] The Conference Call Study states that company managers often provide ''detailed segment data'' during the course of a conference call that is not available in the press release. They also make more forward-looking statements than in the press release. Conference Call Study supra note 497, at 9.

[500] See, e.g., Trading Picks Up During Conference Calls, Evidently leaving Small Investors on Hold, Wall St. J., Mar. 6, 1998, at C2; Small Investors Angered by Growth of After-Hours Profits Reports, Wall St. J., Jan. 21, 1997, at C1; The Price of Great Expectations, Wash. Post, Jan. 23, 1997, at E1.

[501] See, e.g., Forms F–1, F–2, F–3, F–4, S–1, S–2, S–3, S–4 and S–11. To provide uniformity, we also would mandate risk factor disclosure in Securities Act registration statements of foreign governments and their political subdivisions. Those are virtually the only Securities Act registration statements that do not currently mandate this disclosure. Because those investments are not free from risk, investors should benefit from a risk analysis by those issuers as well.

[502] 17 CFR 229.503.

[503] The Exchange Act registration forms affected are: Forms 10, 10–SB and 18. Form 20–F registration statements already require risk factor disclosure. See Item 1(b) of Form 20–F.

[504] The Exchange Act periodic reports affected are: Forms 20–F, 10–Q, 10–QSB, 10–K, 10–KSB and 18–K. The Advisory Committee suggested the use of risk factor disclosure in Form 10–K, with updates in Form 10–Q for any material change in the risk disclosure. Advisory Committee Report at Appendix B, p. 57.

[505] The forms used by foreign governments and their political subdivisions are Schedule B under the Securities Act and Forms 18 and 18–K under the Exchange Act.

[506] We are proposing to amend Form 6–K to create an Item by which foreign private issuers would identify information they are filing under that Form at their option that is not based on foreign requirements.

[507] In a Securities Act registration statement, the risk factors disclosure sometimes focuses on aspects of the particular security or the particular transaction that is the subject of the registration statement, in addition to company risk factors. The risk factor disclosure that issuers would include in Exchange Act reports would relate only to the risks that could affect the company's future financial performance. Thus, given the somewhat differing focus, the risk factor disclosure may vary.

[508] See proposed Exchange Act Rule 12b–24, 17 CFR 240.12b–24.

2. Due Dates for Annual Reports of Foreign Private Issuers

Reporting companies that are foreign private issuers are required to file annual reports on Form 20–F.[509] These reports are due within six months after the end of fiscal year.[510] Like domestic issuers, foreign private issuers issue press releases containing their annual results before the due dates of their annual reports filed with the Commission. In fact, given the longer due date, they may do this far more frequently than domestic issuers.[511]

For the same reasons we propose to accelerate the reporting of annual results for domestic issuers through adding a Form 8–K filing, we also propose to accelerate the due date for annual reports of foreign private issuers. We propose that a foreign private issuer be required to file its annual report on Form 20–F within 5 months after its fiscal year end. Although that due date would remain significantly longer than the due date for annual reports of domestic companies, it would shorten the gap between the two. In light of the variety of foreign law requirements for annual reports, a gradual decrease in due dates for annual reports appears preferable. We believe foreign reporting companies should be able to prepare annual reports within 5 months or less without an undue increase in cost. We also propose to change the filing period for the transition report that must be filed after a foreign private issuer changes its fiscal year. We would reduce the time period for filing this report from six to five months.[512] We would not change the present three-month filing period where the transition period does not exceed six months and the issuer elects to file the abbreviated transition report.[513]

We seek comment on this proposal. Should we accelerate the due date to 4 months? How would the 4-month or 5-month due date compare to foreign requirements to report annual results?

3. Treating Quarterly Information as ''Filed''

Under current Exchange Act rules,[514] the financial information required by Part I of Form 10–Q and Form 10–QSB is deemed not to be ''filed.'' [515] Part I information is therefore not subject to liability under Section 18 of the Exchange Act.[516] Those rules originated in 1955 when the Commission proposed to require semi-annual reporting of certain financial information for the first time.[517] At that time, the Commission determined that semi-annual reports should be deemed not to be filed for purposes of Section 18 because interim earnings figures included in those reports would often be based on ''reasonable estimates * * * or certain assumptions.'' [518]

Since 1955, the Commission has taken a few steps to expand periodic financial reporting. In 1970, we required that public companies file quarterly financial information on Form 10–Q.[519] In 1981, we expanded the information required by Form 10–Q to include disclosure of management's discussion and analysis of the registrant's financial condition and results of operations (''MD&A'').[520] Most recently, we amended Form 10–Q in 1997 to require registrants to disclose qualitative and quantitative information about market risks.[521]

Both the existing registration system and the proposed registration system rely on Exchange Act disclosure. The rationale behind the rules granting relief from Section 18 seems out of place more than 40 years later in a market which now routinely relies on such reasonable estimates and assumptions. Furthermore, registrants have had 28 years of experience preparing quarterly financial statements and 17 years of preparing MD&A disclosures.

Accordingly, we propose to revise rules to treat the financial statements and MD&A disclosure in Forms 10–Q and 10–QSB as filed.[522] We would not extend the same treatment to market risk disclosure. Given the recent adoption of the rules requiring that disclosure, as well as the complex nature of that disclosure, we believe it would be appropriate to continue to treat that part of Form 10–Q disclosure as not ''filed'' for purposes of Section 18.

We solicit comment on whether applying Section 18 remedies to financial statements and MD&A disclosure would cause registrants to alter disclosure in quarterly reports that they make today. If so, what kinds of disclosure would change and how? Is there any reason to treat MD&A disclosure as ''filed'' but not the financial statements, or vice versa? How does the treatment of these parts as not ''filed'' affect investors? Should we also apply Section 18 remedies to quarterly market risk disclosures?

4. Request for Comment on Management Report to Audit Committee

We solicit comment on the Advisory Committee's recommendation to require the filing of a management report to the audit committee of the board of directors.[523] The report would disclose the procedures, if any, established to assure the accuracy and adequacy of Exchange Act reports. As the Advisory Committee envisioned it, the report would not specify a particular set of procedures to follow, nor would it require an assessment of the adequacy of the procedures. The report would be filed as an exhibit to the Form 10–K and would be refiled only when there was a material change in procedures. Would such a report enhance the quality of disclosure provided in Exchange Act reports?

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[509] ''Foreign private issuer'' is defined in Exchange Act Rule 3b–4(c), 17 CFR 240.3b–4(c).

[510] See General Instruction A.(b) of Form 20–F.

[511] Using electronic search databases, we found that foreign private issuers use Business Wire and PR Newswire and other services to issue press releases about their annual results, including detailed financial information. For comparative purposes, these companies disclose information about their most recent year end along with the same information for the prior year. While it appears that a minority of foreign companies issue these press releases as soon as two months after their fiscal year ends, others issue them within three or four months after the fiscal year end.

[512] *See* proposed Exchange Act Rule 13a–10(g)(3), 17 CFR 240.13a–10(g)(3) and proposed Exchange Act Rule 15d–10(g)(3), 17 CFR 240.15d–19(g)(3).

[513] *See* Exchange Act Rule 13a–10(g)(4), 17 CFR 240.13a–10(g)(4) and Exchange Act Rule 15d–10(g)(4), 17 CFR 240.15d–10(g)(4).

[514] Exchange Act Rule 13a–13(d), 17 CFR 240.13a–13(d), and Exchange Act Rule 15d–13(d), 17 CFR 240.15d–13(d).

[515] Part I of Form 10–Q consists of: the financial statements; the Management's Discussion and Analysis of Financial Condition and Results of Operations; and the Quantitative and Qualitative Disclosures About Market Risk. Part I of Form 10–QSB contains only the first two of those three categories.

[516] Section 18 provides a remedy for those relying on false or misleading statements made in any application, report, document or registration statement filed with the Commission under the Exchange Act.

[517] Exchange Act Release No. 5129 (Jan. 27, 1955) [20 FR 771].

[518] *Id.* See also Exchange Act Release No. 5189 (June 23, 1955) [20 FR 4816] (adopting the semi-annual reports as proposed).

[519] Exchange Act Release No. 9004 (Oct. 28, 1970) [35 FR 17537].

[520] Exchange Act Release No. 17524 (Feb. 17, 1981) [46 FR 12480].

[521] *See* Exchange Act Release No. 38223 (Jan. 31, 1997) [46 FR 6044].

[522] *See* proposed revisions to Exchange Act Rules 13a–13d and 15d–13(d), 17 CFR 240.13a–13(d) and 240.15d–13(d). Along with these proposed revisions to Rule 15d–13, we are correcting that Rule by removing paragraph (e), which is duplicative and was intended to be removed in a prior amendment to the Rule. *See* Exchange Act Release No. 13477 (Apr. 28, 1977) [42 FR 24062] and Exchange Act Release No. 13156 (Jan. 13, 1977) [42 FR 4424].

[523] *See* Advisory Committee Report at Appendix B, pp. 52–54. *See also* Section IX.D. of this release regarding whether the report should be considered as a factor in evaluating an underwriter's due diligence obligation.

B. Interim Reports on Form 8–K

1. Timely Disclosure of Annual and Quarterly Results of Domestic Companies

a. Form 8–K Requirement for Item 301 Information

A domestic reporting company must file an annual report on Form 10–K or Form 10–KSB within 90 days after the end of its fiscal year.[524] A domestic reporting company must file a quarterly report on Form 10–Q or 10–QSB within 45 days of the end of its quarter.[525]

Hundreds of public companies issue press releases to announce annual and quarterly results well before they file their annual and quarterly reports with the Commission.[526] We are cognizant that significant technological developments over at least the last three decades have simplified the process of preparing financial data and periodic reports. It appears that companies and their auditors have developed efficiencies over the years that allow them to generate basic financial data quickly.

The timing and frequency with which companies issue press releases about their annual and quarterly results indicates that companies complete the preparation of at least their core financial data well before the due dates of their periodic reports. That practice also reflects the importance of that financial information and investors' demand for it at the earliest time it is available.

While we applaud companies' practice of issuing press releases to keep investors informed, there are disadvantages to dissemination of information in this way. Not all investors subscribe to the publications that carry press release information. Not all publications report on every company's release or include all the information in the release.[527] The unevenness of press release disclosure raises concerns that not all investors are informed of a company's financial results at the same time. Moreover, presentation of annual and quarterly information in press releases differs from company to company. Sometimes this variance appears to arise because a company wants to focus on the positive aspects of the financial information.[528]

To ensure uniform and even disclosure by public companies, we propose to require domestic reporting companies to report selected financial data on Form 8–K. That report would be due on the earlier of the date they issue a press release containing earnings information or either the date that is 30 days after the end of each of the first three quarters of their fiscal year or 60 days after the end of their fiscal year.

The Form 8–K would include the selected financial data required by Item 301 of Regulation S–K for both the most recently completed fiscal quarter and interim period or year. For comparative purposes, we also would require companies to disclose Item 301 financial data for the same periods of the prior year. For example, if a company issued an early press release announcing earnings results for its second quarter, its Form 8–K would include Item 301 information for the three months comprising the second quarter as well as for the six months ending the second quarter. The Form also would include Item 301 information for the corresponding periods of the prior year so investors could compare current results with last year's results.

We believe the press releases of most companies include at least this level of basic material information. Accordingly, we do not believe the requirement would impose a significant burden on domestic reporting companies, particularly those that consistently issue press releases. As for companies that do not follow the press release practice, we believe that they nevertheless would be able to prepare Item 301 information by the 30th day after the end of their quarters or the 60th day after the end of their fiscal years.

Regulation S–B does not contain a disclosure requirement comparable to Item 301 of Regulation S–K. Thus, small business issuers now are not required to provide Regulation S–K, Item 301 information in their disclosure documents. Also, transitional small business issuers are not required to provide this information. We propose to require all small business issuers, including transitional small business issuers, to provide Regulation S–K, Item 301 information in Form 8–K reports filed in advance of their quarterly or annual reports. We request your comments on whether small business issuers should be required to provide Regulation S–K, Item 301 information in these current reports. Should small business issuers providing disclosure based on Regulation S–B be subject to this requirement? Should transitional small business issuers be subject to this requirement? Would it be more difficult for small business issuers to comply with this requirement? Would the additional time and cost of this disclosure requirement outweigh the increase in investor protection?

We believe that all investors and the market would benefit from being able to review selected financial data earlier than they can today. Would these benefits justify the cost associated with an additional filing? Should we require more or less than Item 301 information? If more, what kinds of additional information should we require? Should we require companies to discuss factors that may affect the comparability of current results with last year's results? If less, what should we omit? Would current interim financial data be meaningful absent presentation of historical comparative information? Given the limited nature of the information required by Item 301, should we require companies to file the Form 8–K even earlier than proposed (*e.g.*, 20 or 25 days after the end of the quarter and 45 or 50 days after the end of the year)?

b. Solicitation of Comment on Whether to Accelerate Due Dates

Since 1970, annual reports have been due 90 days after a reporting company's fiscal year end.[529] Quarterly reports, since they were first required in 1946, have always been due within 45 days after the end of a quarter.[530] Many companies file, or ostensibly could file, their periodic reports before they are due.

In this age of computers, instantaneous communications and

[524] *See* General Instructions A of Forms 10–K and 10–KSB. Foreign companies that do not satisfy the foreign private issuer definition in Exchange Act Rule 3b–4(c), 17 CFR 240.3b–4(c), also must report on Forms 10–K or 10–KSB.

[525] *See* General Instruction A of Forms 10–Q and 10–QSB. Foreign private issuers, as defined in Exchange Act Rule 3b–4(c) have no quarterly reporting obligation. *See* Exchange Act Rule 13a–13(b)(2), 17 CFR 240.13a–13(b)(2). Other non-governmental foreign issuers must file quarterly reports.

[526] Companies frequently issue press releases through Business Wire, PR Newswire and other publications. Through narrow searches of electronic databases, it is possible to find the press releases of hundreds of companies that relate to early annual and quarterly results or earnings information. Most companies seem to have included in their press releases the basic information that would be prepared for inclusion in a periodic report. Some companies also use press releases to announce the early filing of periodic reports with the Commission and to publish the same financial information that they include in their filings with the Commission.

[527] Some services apparently publish verbatim almost any company press release (*e.g.*, Business Wire or PR Newswire). Not all investors have access or know about these services.

[528] *See, e.g.*, Antilla, *Quarterly Reports Often Mask Companies' Ugly Truths*, The Dallas Morning News, Apr. 12, 1998 at 13A.

[529] *See* Exchange Act Release Nos. 9000 (Oct. 21, 1970) [35 FR 16919] and 9004 (Oct. 28, 1970) [35 FR 17537]. Before 1970, the due date for filing annual reports was 120 days after a company's fiscal year end.

[530] *See* Exchange Act Release No. 3803 (Mar. 28, 1946) [11 FR 10988].

electronic filing, we believe it is possible for reporting companies to file their annual and quarterly Exchange Act reports sooner than they are currently due. Public companies, as a group, have had decades of experience in preparing Exchange Act periodic reports within 90 and 45 days.[531]

As the proposed registration system makes clear, the securities markets move faster than they did before. Commentators have long remarked that because the due dates for quarterly reports are so lengthy, the information required by Form 10–Q or 10–QSB is stale by the time the reports are available.[532] Annual information—when provided 90 days after a fiscal year end—is also viewed as stale. We believe investors and the market would realize immediate and ongoing benefits if domestic reporting companies filed their annual and quarterly reports earlier than currently due. We also believe earlier due dates would provide investors with more timely disclosure as well as shorten the period during which periodic results would be available to only certain investors.

For these reasons, as an alternative to the proposal to add a financial reporting requirement to Form 8–K discussed above, we request comment on whether we should accelerate the due dates for annual and quarterly reports. Should we require companies to file quarterly reports on Forms 10–Q or 10–QSB within 30 days after their first three fiscal quarters? Should we require them to file annual reports within 60 days after their fiscal year end? Would companies find it feasible to prepare their periodic reports within those periods? If we adopt this alternative, should the periods be lengthened (*e.g.*, to 35 or 40 days after the end of a quarter and 70 or 75 days after the end of a fiscal year)? Should small business issuers, because they may have fewer resources, be given more time to prepare periodic reports than larger issuers? Should larger issuers, because their accounting issues may be more complex, be given the same amount or more time than small business issuers to prepare their periodic reports? If we were to reduce the time period for filing annual and quarterly reports, should we also shorten the filing period for the transition report that must be filed after an issuer changes its fiscal year?

We solicit comment on whether accelerated periodic reporting requirements would exacerbate the problems of selective disclosure by issuers to certain analysts or shareholders. Are there steps other than, or in addition to, accelerating the due dates of periodic and current reports that the Commission should take to address selective disclosure to institutional investors through conference calls, advance press releases or other methods?

2. Other Reporting Events

We propose to expand the items of disclosure that reporting companies must report on Form 8–K to include: material modifications to the rights of security holders; departure of a CEO or CFO; material defaults on senior securities; certain auditor notifications; and company name changes. Some of the proposed items currently have to be disclosed only on a quarterly basis. Other proposed items may be reported if the company chooses to do so or feels compelled to do so because of concerns about antifraud provisions. We believe that prompt reporting by issuers of each of these events would enhance investor protection. We solicit comment on whether other disclosure should be required on Form 8–K. If so, what types of information? If companies disclose less information to the market when experiencing difficulties, is there a need for more frequent reports or updates when events such as those we propose to add take place?

We also propose to accelerate the due date of reports that must be filed on Form 8–K. The longer the period of time between the occurrence of a material event and the public reporting of the event, the greater the likelihood that over the course of that period security holders will be selectively informed of that material information. The unfair trading advantage that may result can be significantly lessened if information about material events is reported earlier on Form 8–K.

a. Material Modifications to the Rights of Security Holders

The Commission believes, as did the Advisory Committee, that reporting companies should promptly and publicly notify their security holders about material modifications in their rights.[533] The Commission proposes to add an item to Form 8–K that would accelerate the disclosure of developments that materially modify the rights of security holders, favorably or unfavorably, to within five calendar days of the development or event causing the modification.

Under current requirements, a reporting company must disclose the general effects of those modifications in the report on Form 10–Q or Form 10–QSB for the quarter in which the modifications occur.[534] That requirement allows reporting companies to delay filing this information for up to four and a half months after changes to security holder rights have occurred. That timing is unnecessarily long given the significance of these matters to security holders and the possibility that modifications to their rights could have a dramatic effect on the value of the securities they own.

Under our proposal, reporting companies would be required to promptly disclose on Form 8–K any modification of the instruments that define security holder rights, modifications to security holder rights resulting from the issuance of another class of securities, and modifications resulting because of restrictions on working capital or payment of dividends.

We solicit comment on this proposal. Should it encompass other specific events that could materially affect security holder rights, such as reincorporation from one state to another, elimination of preemptive rights, or adoption of an anti-takeover plan.

b. Departure of CEO, CFO, COO or President

The departure of a reporting company's chief executive officer, chief financial officer, chief operating officer, president, or any person serving equivalent functions, is a material event that often can cause changes in the

[531] Since 1970, we have expanded the information required by Form 10–Q only twice to any notable extent. In 1981, we added the requirement for MD&A information. Exchange Act Release No. 17524 (Feb. 17, 1981); *see* Item 2 of Part 2 of Form 10–Q. Last year we added a disclosure requirement relating to market risk. Exchange Act Release No. 38223 (Jan. 31, 1997); *see* Item 3 of Part 2 of Form 10–Q.

[532] ''In a slower, paper-based world, quarterly reporting frames were deemed adequate for purposes of the 1934 Act's continuous disclosure system * * * [b]ut in an era of electronic reporting, it is possible to advocate a much more rapid reporting obligation.'' Coffee, *Brave New World? The Impact(s) of the Internet on Modern Securities Regulation*, 52 Bus. Law 1195, 1199 (Aug. 1997). In 1969, former Commission Chairman Manuel Cohen said: ''because companies need not file the [quarterly] report until 45 days after the end of the quarter, the information is often stale.'' *See* Brown, *Corporate Communications and the Federal Securities Laws*, 53 Geo. Wash. L. Rev. 741, (1985).

[533] The Advisory Committee recommended that the Commission expand Form 8–K to require disclosure about developments that would result in material modifications to the rights of security holders. *See* Advisory Committee Report at p. 27 and Appendix B at p. 55.

[534] Item 2 of Part II of Form 10–Q and 10–QSB. Foreign private issuers are not required to file quarterly reports and therefore are not subject to this disclosure requirement.

market price of the company's securities as well as changes to the company's business or goals. Today, reporting companies are not required to disclose these events on either a quarterly or current basis, although many do report them on a timely basis because the departure of a CEO, CFO, COO or president is usually viewed as a material event.[535]

The Advisory Committee recognized that general principles of materiality often cause reporting companies to promptly disclose the termination of their CEOs, CFOs, COOs or president; nonetheless, it recommended that the Commission expand Form 8–K to accelerate and mandate disclosure of the resignation or removal of a public company's top five executive officers.[536]

We believe it is important to investors and the market that public companies promptly report news of the departure of a CEO, CFO, COO, president or any person serving in those capacities. Whether the departure is the result of resignation or termination or another reason also would be of interest to investors. Accordingly, the Commission proposes to add an item to Form 8–K to require disclosure of that departure information. Given the significance of this information, we solicit comment on whether it should be reported within one business day of the departure.

We also seek comment on whether the proposal should be extended to include more than just a company's CEO, CFO, COO and president. Should we require a company to disclose on Form 8–K the departure of any of its five most highly compensated executive officers? Are other positions, whether or not based on compensation, significant enough to justify mandating Form 8–K disclosure when they are vacated? For example, should Form 8–K require disclosure of the departure of key personnel who make significant contributions to the company, such as a chief technology officer or head of information systems, a scientist, researcher, or head of marketing or production?

c. Material Defaults on Senior Securities

Any material default by a reporting company on payments of principal or interest or any other scheduled payment on its securities could have severe consequences to the reporting company, its business and its security holders. The default is especially significant when senior securities are involved, because a default on those securities may signal that the company faces imminent, serious financial difficulty.

Under current reporting requirements, disclosure of material defaults on senior securities need be made only on a quarterly basis.[537] The Commission believes quarterly reporting of such events is insufficient, as did the Advisory Committee.[538] Reporting companies should be required to provide current public notice of all material defaults on senior securities so that investors have time to consider the possible effects of any default, including whether to sell or hold their securities. Further, the Commission and the Advisory Committee share concerns that, under current reporting standards, default information may become stale before it reaches all the security holders of a reporting company.

For these reasons, we propose to revise 8–K to require current disclosure of material defaults under a company's governing instruments and material delinquencies in a company's payments of interest or a dividend preference due on its senior securities. Also, given the potentially grave consequences of a material default on senior securities, the Commission does not believe it would be appropriate to allow reporting companies to wait as much as five days to report the event. Instead, we believe that reporting companies should disclose this information as soon as possible, but certainly no later than the day following the material default. Accordingly, we propose to set the due date at one business day after the day the default occurred. Where the default occurred on a Saturday, Sunday or a federal holiday, we propose that the disclosure be due within two business days after the day the default occurred.

As with other proposed changes to Form 8–K, we solicit your comment. Do reporting companies need as much as five days before they are prepared to file material default reports? Should we limit the due date to one business day, instead of two business days, for reporting of material defaults that occur on a Saturday, Sunday or federal holiday?

d. Reliance on Prior Audit

Form 8–K already requires a reporting company to disclose promptly when its independent accountant resigns, declines to stand for reelection or is dismissed, as well as when it engages a new auditor.[539] To supplement these items, the Commission is proposing that a reporting company promptly report when:

(i) its independent auditor notifies it that it may no longer rely on the audit report included; and

(ii) the independent auditor notifies it that the auditor will not consent to the use of its prior audit report or the company or one of its significant subsidiaries.

The Commission believes that such announcements would be of interest and importance to investors and the market because they could signal a discrepancy in the company's audited financial reports.[540] Further, announcements or dissemination of information about such auditor notices, as with announcements and information about the other events proposed to be added to Form 8–K, could have an immediate and significant impact on the market price of a company's securities. We are concerned about the potential for unfair trading on the basis of selective information. The Advisory Committee stated these same concerns, and also posited that timely disclosure about matters relating to certifying would reinforce the auditor's role as a gatekeeper.[541]

Accordingly, we propose to add these events to those that relate to a

[535] Item 6 of Form 8–K currently requires prompt disclosure of a director's resignation or declination to stand for re-election. The Item does not require similar disclosure with respect to CEOs, CFOs, COOs or president.

[536] *See* Advisory Committee Report at p. 27 and Appendix B at p. 55. The Committee did not limit its recommendation to disclosures regarding the CEO, CFO, COO and president. It extended its recommendation to the ''top five'' or ''five most senior'' executive officers.

[537] Item 3 of Part II of Form 10–Q and Item 3 of Part II of Form 10–QSB. Both Items require disclosure of defaults whether under the terms of a company's governing instruments or with respect to arrearages in the payment of a dividend or other delinquencies. Neither Item, however, requires disclosure of defaults or arrearages with respect to any class of securities held entirely by or for the account of the registrant or its wholly owned subsidiaries. *See* Instruction to Item 3 of Part II of Form 10–Q and Instruction to Item 3 of Part II of Form 10–QSB. Our proposal includes these same reporting exceptions.

[538] The Advisory Committee also recommended that the Commission accelerate disclosure of material defaults on senior securities. The Committee believed that prompt public disclosure would reduce the possibility of unfair trading based on selective disclosure and would improve market efficiency. *See* Advisory Committee Report at p. 27 and Appendix B at pp. 55–56.

[539] Item 4 of Form 8–K.

[540] The Advisory Committee suggested that this kind of disclosure should be required on Form 8–K. *See* Advisory Committee Report at p. 27 and Appendix B at pp. 55–56. As noted, the Commission's proposals do not precisely follow the Committee's suggestions. The Committee did not expressly suggest expanding Form 8–K to require disclosure of an accountant or auditor's refusal to consent to use of its prior audit report.

[541] *See* Advisory Committee Report, Appendix B at pp. 27–28 and 55–56. The Committee explained that an auditor could provide a gatekeeping function when asked to furnish or update a consent to the use of its report. If the auditor does not satisfy itself that the report does not require any adjustments, it may withhold or refuse to consent to use of the report. By requiring companies to report when its auditor refuses to consent to use of its report, we elicit disclosure that may signal problems with the company's financials.

company's accountants and auditors and that are already in Form 8–K.[542] We would require companies to report these events within one business day of their occurrence.

We solicit comment about whether other events concerning an auditor's report should be included in the Form 8–K. For example, should companies report when they seek to have another auditor reaudit a prior audited period? The Committee did suggest we require disclosure of engagement of a new auditor to reaudit a prior audited period. We seek comment on this subject.

With respect to the information about auditors already required by Item 4 of Form 8–K, we propose to accelerate the due date for reporting that information to one business day after the reporting event occurs. We believe the significance of that information warrants near immediate disclosure.

e. Name Changes

We propose to add to Form 8–K a requirement that a reporting company report any change in its name. This disclosure is not specifically required in current periodic reports, although companies may report name changes because general principles of materiality may call for it. Under our proposal, companies would report their former and current names within five calendar days after the change. Prompt reporting of a change in a reporting company's name is important to keep investors informed of the status of the company. Also, for investors that are not otherwise aware, a change in a company's name often signals the occurrence of some significant event concerning the company about which they should educate themselves. Timely public notice of a name change also would allow investors to continue to follow or research the reporting company and avoid concern about its fate when its familiar name is replaced by an unfamiliar one.

We solicit comment on this proposal. If the name change results from a business combination that was already publicly announced, should we nonetheless require name change reporting?

f. Due Dates for Reporting Events

Currently, most reports filed on Form 8–K are due within 15 calendar days after the occurrence of the event triggering the reporting requirement.[543] Some reports are due within 5 business days after the occurrence of the event.[544]

The Commission believes that, given the explosive growth of the secondary trading market and the importance of Exchange Act reporting to it, reporting companies should be required to disclose more information about material events and developments that concern them and their security holders sooner than they are required currently.

The Advisory Committee suggested that the due date for mandated reports on Form 8–K be accelerated from 15 calendar days to 5 business days.[545] The Commission believes it is appropriate to go further, however, and proposes to accelerate the general Form 8–K due date to 5 calendar days after occurrence of the events required to be reported on the Form.[546] For disclosures of material defaults and notices that a company's independent accountant has resigned, declined to stand for reelection or been replaced,[547] as discussed above, we generally would require companies to report within one business day after the date of the reportable event. We also propose to accelerate the reporting of resignations of any of the registrant's directors to within one business day of the reportable event.[548]

The Commission recognizes that acceleration of the due date may create some burdens for reporting companies; however, we believe that any burdens are outweighed by investors' and the market's need for current information. With respect to each proposed addition to or acceleration of reporting under Form 8–K, the Commission believes that security holders and the market have a need for prompt disclosure particularly because the events could impact the market price of the reporting company's securities. We also believe that the faster that material information is publicly disclosed, the less the potential for unfair trading on the basis of selective disclosure.

We ask for your comment on this proposal. Does the proposed 5-day reporting period provide reporting companies with enough time to file their reports? If not, should the due dates be extended, as the Committee suggested, to 5 business days? Should material defaults be reported faster than other events required to be reported on Form 8–K? Should the due date of other required reports similarly be set at one business day?

C. Signatures

1. Exchange Act Reports and Registration Statements

The Commission is proposing to revise the signatures section of all registration statements and periodic reports filed under the Exchange Act to mandate that the persons who are required to sign those reports must certify that they have read the registration statement or report and that they know of no untrue statement of a material fact or omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.[549] The proposal also would expand the number of persons required to sign Forms 8–A, 10, 10–SB, 20–F, 40–F, 10–Q and 10–QSB, to include the principal executive officers of the registrant and a majority of the board of directors of the registrant.[550] Although we are not proposing to require that a majority of board members sign current reports filed under cover of Form 8–K and 6–K, we would require the signatory for the registrant to certify that he or she provided a copy of those reports to the registrant's board of directors. That certification should encourage board participation in the disclosures required to be made on those Forms.[551]

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[542] *See* proposed revisions to Item 304 of Regulation S–B, 17 CFR 228.304, and proposed revisions to Item 304 of Regulation S–K, 17 CFR 229.304.

[543] Events concerning changes in control of a registrant, acquisition or disposition by a registrant of a significant amount of assets, and a registrant's bankruptcy or receivership, as well as other events, must be reported within 15 calendar days of the occurrence of the event. *See* General Instruction B. of Form 8–K.

[544] Registrants must file reports on Form 8–K within 5 business days of both changes in the registrant's certifying accountant and the resignation of any of the registrant's directors. *See* General Instruction B. of Form 8–K.

[545] Advisory Committee Report at p. 27.

[546] As discussed above, this due date would not apply to the reporting of annual and quarterly financial results on Form 8–K.

[547] This information is currently required to be disclosed under Item 4 of Form 8–K, within 5 business days of the event.

[548] This information is currently required under Item 6 of Form 8–K and is due today within 5 business days of the event.

[549] The proposal relates to Exchange Act Forms 8–A, 10, 10–SB, 20–-F, 40–F, 6–K, 8–K, 10–Q, 10–QSB, 10–K and 10–KSB. The Commission is not currently proposing to change the language in these Forms that direct the registrant to file a specified number of copies with the Commission. Of course, reporting entities that file the Forms electronically pursuant to Regulation S–T need not submit multiple copies electronically.

[550] Forms 10–K and 10–KSB already require those persons to sign those Forms. *See* Instruction D.(2)(a) of Form 10K and Instruction C.2. of Form 10–KSB. Forms 8–K and 6–K only require the signature of the officer signing on behalf of the registrant and in his or her capacity as an officer of the registrant. *See* Form 6–K and Form 8–K. We do not propose to revise either Form 6–K or 8–K to require more signatures.

[551] Although board members may not review the disclosures in those Forms before receiving them from the registrant, we believe that the delivery requirement would increase director awareness of

We believe that persons signing the report will be less likely to adopt the practice of simply signing blank signature pages without having even seen the report if they must affirmatively state that they have read the report and that they know of no untrue statement of a material fact or omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.[552] Requiring a signatory of current reports to provide a copy of those reports to the registrant's board of directors would, at a minimum, help ensure that the board is quickly informed about material current developments or events that concern the registrant.

This proposal is based in part on the Advisory Committee's finding that the disclosures made in Exchange Act reports tends to be of a lesser quality than the disclosures made in Securities Act filings. The Committee believed that, generally, one way to improve Exchange Act disclosures would be to require senior management to review the Exchange Act reports filed on behalf of the company they managed.[553]

The Commission concurs with the Committee's goal that management take a more active role in the disclosure the registrant makes in its Exchange Act reports as well as acknowledge more responsibility for the disclosure in their reports.[554] We also note, as the Committee did, that revisions to enhance the disclosures in Form 8–K may improve disclosure for Securities Act purposes, because almost all seasoned issuers incorporate their Exchange Act reports into their Securities Act registration statements.

We recognize that companies may find it inconvenient to obtain the additional signatures that would be necessary to file the report. However, we believe the instructions to the Forms, current or proposed, that provide for conformed signatures would significantly ease any logistical burdens associated with obtaining the signatures.

2. Securities Act Filings

We also propose to revise the signature sections of certain registration statements under the Securities Act to mandate that any person signing the registration statements certify that he or she has read the registration statement and, to his or her knowledge, it does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.[555] Unlike the Exchange Act proposals, we would not expand the number of persons required to sign the registration statements.[556]

We hope that the certification requirement would cause the signatories, who typically also manage and control the issuer, to read the disclosure and perhaps even participate more in the preparation of the filing. We seek your comment on this proposal. Would the proposed certification have any effect on the extent to which the signatories participate in overseeing the disclosure? Would it change the extent to which management of the companies are given draft disclosure or given time to read the disclosure before filing? Given that signatories are already responsible for the disclosure under the liability provisions of the Securities Act,[557] would certification have any effect?

D. Form 6–K Submissions

Form 6–K is a critical part of the Exchange Act disclosure system for foreign private issuers. Form 6–K requires a foreign private issuer to furnish the Commission with all the material information that the foreign issuer:

1. Discloses or is required to disclose under the laws of its domicile or place of incorporation;

2. Files or is required to file with stock exchanges that list its securities; and

3. Distributes or is required to distribute to its security holders.[558]

Unlike Form 8–K,[559] Form 6–K does not explicitly encourage current voluntary disclosure that is not dependent upon foreign requirements. The Commission believes foreign issuers should be encouraged to keep their security holders and the market up-to-date, particularly because they may report less frequently than domestic issuers do under the Exchange Act system. Accordingly, the Commission proposes to add an instruction to Form 6–K to encourage foreign issuers to submit voluntarily current information that the issuer deems of importance to its security holders. Because the submission would be voluntary, we are not proposing a filing deadline, but we would recommend that foreign issuers promptly submit the Form 6–K after becoming aware of the information. We would deem information submitted voluntarily not to be filed for purposes of Section 18, just as we do all information under cover of Form 6–K.[560]

We solicit comment on the proposed instruction. Rather than encourage more disclosure by foreign private issuers, should we mandate particular disclosures not required under applicable foreign requirements? If so, what disclosures should be mandatory? For example, should we require issuers to report risk factor information similar to what would be required in Form 10–Q? Should we encourage reporting of other information about the issuer by enumerating in the proposed instruction areas of possible interest to investors?

The Commission is also proposing to revise Form 6–K to include four new

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the disclosure in the reports, and therefore possibly increase their participation. Moreover, the Commission has noted that certain companies may have no internal system by which to provide directors with significant corporate information. The Commission has indicated before that directors must assume some responsibility with respect to disclosures made by the companies on whose boards they sit. *See, e.g.,* Exchange Act Release No. 17114 (Sept. 2, 1980) [45 FR 63630].

[552] The Advisory Committee noted in its Report that it was advised that senior management of reporting companies routinely execute the signature pages for Exchange Act reports without having or reviewing the report itself. *See* Advisory Committee Report, Appendix B at p. 50. The Advisory Committee learned in various meetings and through research that board members devote less attention to Exchange Act reports than they devote to reviewing Securities Act filings. *See* Advisory Committee Report, Appendix A at pp. 49–53.

[553] The Committee also suggested that, the Commission require senior management to address and submit a report to the audit committee of the board of directors describing the procedures employed to ensure compliance with disclosure and accounting standards and requirements. *See* Advisory Committee Report, Appendix B at pp. 50–54.

[554] In 1980, the Commission amended Form 10–K to require that the Form be signed on behalf of the registrant by the registrant's principal executive officer(s), its principal financial officer, its controller or principal accounting officer and by at least a majority of the board of directors. Exchange Act Release No. 17114 (Sept. 2, 1980). The Commission noted that, while commentators either did not address or object to the proposal to require executive officers to sign the Form 10–K, they did object to the proposal that board members be required to sign. The Commission adopted the proposal over the commentators' objections because it concluded that the requirement would help shift the focus to Exchange Act reporting. By shifting the focus, the Commission expected that officers and directors would pay more attention to the disclosures made in Forms 10–K and to participate more in their preparation. It believed then, as we do now, that the signature requirement would impose an added measure of discipline that would provide benefits that outweighed the potential impact, if any, of the signature on legal liability.

[555] We would revise existing Securities Act Forms SB–1 and SB–2. Proposed Securities Act Forms A, B, C and SB–3 would include the same certification.

[556] Forms S–1, S–2, F–1, F–2, S–3, F–3, S–4, F–4 and S–11 currently require the signatures of the same persons we would require to sign proposed Forms A, B and C.

[557] *See* Securities Act Section 11(a), 15 U.S.C. § 77(k)(a).

[558] *See* General Instruction B to Form 6–K.

[559] *See* Item 5 of Form 8–K.

[560] For internal tracking purposes, we propose to add a box to the cover of Form 6–K for issuers to check if they are voluntarily submitting the Form 6–K pursuant to the proposed instruction.

items in the list of examples of what issuers would disclose on Form 6–K if the information is disclosed under applicable foreign requirements. Those items are: (i) changes in the issuer's name; (ii) material modifications to the rights of security holders; (iii) any material defaults on indebtedness, material arrearages in dividends and other material delinquencies; and (iv) departure of the issuer's chief executive officer, chief financial officer, chief operating officer or president (or anyone serving those functions). The existing list on Form 6–K mirrors the events that domestic issuers must report on Form 8–K. Because we are proposing to include these items on Form 8–K, we are proposing corresponding changes to the Form 6–K list. Each of the four relates to material events that all reporting issuers, foreign or domestic, should disclose to their security holders and the market of on a timely basis.

We seek comment on this revision. Are there reasons to omit any of the four from the instruction? Should we consider adding other, more specific, informational items?

E. Solicitation of Comment Regarding Plain English in Exchange Act Reports

The Commission recently adopted the requirement that Securities Act prospectuses be drafted in plain English. In the Securities Act registration system we propose today, investors would look increasingly to Exchange Act reports for information regarding the registrant. These proposals also would expand the documents that would be used in connection with an offering. The concerns that led to the plain English revisions included the need to read and understand easily the information that is the basis for the investment decision. Given today's proposals, these concerns would also seem to apply to Exchange Act documents that are incorporated by reference into the Securities Act prospectus. One proposal to require risk factor disclosure in Exchange Act registration statements and periodic reports also requires that disclosure be written using plain English principles. We solicit comment on whether we should extend the plain English requirement to all materials that are a part of the prospectus, including other parts of Exchange Act reports that are incorporated by reference into that document. Would it be more appropriate to extend the plain English requirements to all Exchange Act periodic reports, regardless of whether they are incorporated by reference into a Securities Act registration statement? Should we extend the plain English requirements only to certain parts of Exchange Act periodic reports, such as the description of the company's business or the MD&A section?

XII. Staff Review Policy

The Commission staff would continue to review all IPO registration statements for sufficiency of disclosure. The staff would review Form A registration statements by certain repeat issuers and Form C registration statements if they are selected in accordance with its review criteria.

Form B registration statements would not be reviewed by the staff before effectiveness. Although the Commission will continue to review their periodic reports on a regular basis, we see less need for regulatory supervision at the time of their offerings. We solicit comment, however, on whether the staff review should apply to Form B offerings of novel securities. If so, how should ''novel'' be defined so as to provide certainty as to the possibility of review? If the Commission staff reviews ''novel'' securities offerings, would those offerings tend to gravitate to the unregistered market?

Form B registration statements would be screened by the staff promptly after being filed with the Commission. The staff will determine whether the offering was eligible to be registered on Form B[561] and whether the disclosure raises any ''red flags'' concerning compliance with the antifraud provisions of the federal securities laws. If the offering filed on Form B is not eligible for registration on Form B, the issuer would have violated Section 5 of the Act and would be referred to the Division of Enforcement for appropriate action. If the disclosure raises ''red flags,'' the staff will conduct an immediate review of the registration statement and take further action as appropriate.

Filings on Form A would be divided into two categories: those subject to review and those not subject to review. Filings by smaller and unseasoned issuers would be reviewed by the staff in the same way they are today. However, medium-sized seasoned issuers may designate the time and date that their registration statements on Form A would become effective; these filings obviously would not be subject to staff review prior to effectiveness. Some commenters on the Concept Release suggested that the Division disclose its review criteria to provide more predictability in the offering process.[562] They noted that, other than in the case of initial public offerings which are always reviewed by the staff, the Commission has not chosen to tell issuers planning an offering what criteria the staff will use to make its decision about reviewing their registration statements.

We intend to resolve this uncertainty in the case of Form B offerings by announcing that the staff will not review those offerings. These registration statements either would be effective upon filing or would become effective when the issuer chooses. The same would be true of Form A offerings either made by issuers with a public float greater than $75 million or made by seasoned issuers incorporating an annual report on Form 10–K or Form 20–F that has been reviewed previously by the Commission staff. In addition, we propose not to review certain offerings by large seasoned foreign government issuers registering on Schedule B. In all other repeat offerings, we believe that the positive effects on registration statement disclosure that result from the possibility of staff review outweigh the cost of uncertainty. As a result, the Division will not make its review criteria for other offerings public.

In order to increase efficiency and certainty for issuers, however, we propose several changes to the staff review process with respect to Exchange Act filings.

A. Notification of Selection for Review

If the proposals are adopted, the Division staff will begin to notify the issuer as soon as its Exchange Act reports are selected for review. This practice would eliminate the concerns expressed by issuers that they are taken by surprise when they receive a comment letter from the staff on their Exchange Act filings. The staff also will indicate in those notification telephone calls approximately when comments, if any, can be expected to be communicated to the issuer by the staff.

B. Voluntary Pre-Review of Filings

If the proposals are adopted, the Division staff will begin to consider requests by issuers for the staff to review their Exchange Act disclosure because the issuer is planning an offering in the near future. The Commission also reminds issuers that, as always, the Division is willing to discuss with issuers potential accounting problems that may arise either in due course or in connection with unusual transactions.

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[561] The issuer and the offering must meet the eligibility requirements set forth in General Instruction I. of Form B.

[562] *See, e.g.*, comment letters, in File No. S7–19–96, from PSA The Bond Market Trade Ass'n (Nov. 8, 1996); Cleary, Gottlieb, Steen & Hamilton (Dec. 27, 1996); and the N.Y. State Bar Ass'n (Oct. 25, 1996).

Resolution of those issues before filing benefits all interested parties. [563]

This voluntary review option would be available to reporting issuers that are concerned about receiving a staff comment letter requesting an amendment to an Exchange Act report that is being incorporated into a registration statement or that will serve as the basis for company disclosure in a registration statement. Subject to obvious limitations on staff resources, the staff will make every effort to accommodate an issuer's request when made a reasonable period before an offering. If the staff is unable to accommodate a request, the issuer will be so advised promptly after the request is made. If the staff informs the issuer that it is unable to review the issuer's Exchange Act reports at that time, the staff would not select those reports for a routine review during the 30 days thereafter. At any time more than 30 days thereafter, the staff could choose to perform a routine review of that issuer's reports. At all times, the Commission staff would reserve the right to review those reports for cause.

XIII. Request for Comments About Investment Company Issuers and Market Value Adjustment Contracts

A. Investment Company Issuers

Interested persons are asked to submit written comments on how any aspect of the proposals affects investment companies and on how the proposals should be modified to reflect the circumstances of investment companies. For example should the safe harbors for communications contained in proposed rules 167, 168 and 169 apply to investment companies or should investment companies be expressly excluded from these safe harbors? Do the proposals, which generally are tied to the form on which securities are registered, adequately address delivery obligations with respect to investment company securities, particularly the securities of closed-end investment companies?

B. Market Value Adjustment Contracts

Life insurance companies sometimes issue so-called ''market value adjustment'' contracts, either alone or in combination with a variable annuity contract. Under a market value adjustment contract, an insurer promises a contractowner a fixed interest rate, subject to an adjustment based on prevailing interest rates in the event of early surrender of the contract. Market value adjustment contracts have been registered on Form S–1, S–2 or S–3. Under today's proposals, they would be registered on Form A or B.

We solicit comment on how the proposals affect market value adjustment contracts and on how the proposals should be modified for these contracts. For example, what criteria should be used to determine whether a market value adjustment contract is registered on Form A or Form B? Is one of these forms more appropriate for all market value adjustment contracts? Should registration statements on Form B for market value adjustment contracts be subject to the same rules for time of filing and time of effectiveness as other Form B registration statements, or should they be treated similarly to investment company registration statements? Should the exemption permitting offers to be made in the pre-filing period apply to market value adjustment contracts registered on Form B? Should the same delivery requirements apply to market value adjustment contracts registered on Forms A and B as apply to other Form A and B offerings, or should market value adjustment contracts be treated similarly to investment company securities?

XIV. Cost-Benefit Analysis

The proposed new rules and amendments should modernize and improve the Commission's regulatory system for offerings under the Securities Act. We believe our proposals would enhance communications between public companies and investors, and promote investor protection. In this section we examine the benefits and costs of the proposed revisions of the Securities Act and Exchange Act, focusing on the groups that might be affected. We request that commentators provide views and supporting information as to the benefits and costs associated with the proposals.

A. Impact on Investors

We anticipate that the proposed rules and amendments would enhance investor protection by requiring issuers to deliver information to investors before they commit to purchasing securities.[564] Specifically, the proposed rules and amendments would require issuers registering securities on Form A to deliver preliminary prospectuses to potential buyers 7 days before pricing for initial public offerings and 3 days before pricing for repeat offerings. Issuers would have to notify offerees of material changes at least 24 hours before pricing. For Form B offerings, issuers would be required to deliver term sheets outlining the key features of the securities before accepting purchases from customers. In contrast to the proposed rules, the final prospectus currently is required to be sent to investors before, or at the same time as, the securities purchased.[565] Thus investors typically receive prospectuses after securities sales, rather than when they are considering the merits of investments. The proposed rules and amendments would accelerate the delivery of information to investors in some circumstances, thereby ensuring they receive written information before investing.

The proposed rules and amendments would also enhance the timeliness, uniformity, and quality of disclosure in Exchange Act reports by:

- Requiring registrants to file summary financial information on Form 8–K before they file Forms 10–K and 10–Q;
- Shortening the period during which foreign private registrants may file Form 20–F;
- Reducing the 15-day filing period for Form 8–K to 5 days, and reducing the 5-day filing period for disclosing independent accountant and director resignations, material defaults, dividend arrearages, and delinquencies filed on Form 8–K to 1 day;
- Requiring registrants to report additional events on Form 8–K, including:

—Material modifications to rights of security holders;
—Departures of CEO, CFO, COO or president (or persons in equivalent positions);
—Material defaults on senior securities (must be disclosed no later than one day following default);
—notices that reliance on prior audit is no longer permissible, or that auditor will not consent to use of its report in a Securities Act filing; [566] and
—change in company name.

- Altering Form 6–K to:

—Encourage registrants to voluntarily and promptly report current important information;
—Suggest that registrants report the same events that are reported pursuant to Form 8–K; and
—Include a signature requirement.

- Treating the information in Part I of Forms 10–Q and 10–QSB as ''filed'' for purposes of Section 18 under the Exchange Act; [567] and

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[563] We would exclude from this policy Exchange Act reports filed in accordance with requirements of foreign law, such as Forms 40–F and 6–K.

[564] *See* proposed Securities Act Rule 172, 17 CFR 230.172.

[565] In initial public offerings, issuers are required to deliver preliminary prospectuses to investors at least 48 hours before sending confirmations.

[566] *See* 17 CFR 228.304 and 17 CFR 229.304.

[567] *See* proposed revisions to Exchange Act Rules 13a–13(d) and 15d–13(d), 17 CFR 240.13a–13(d) and 17 CFR 240.15d–13(d).

- Requiring risk factors disclosure in Forms 10–K and 10–KSB with quarterly updating in Forms 10–Q and 10–QSB.[568]

Reducing filing periods and requiring firms to file summary financial information with the Commission before filing Forms 10–K and 10–Q would unify and in some instances accelerate the release of information to investors. The other requirements would enhance the uniformity and quality of information disseminated to the market and investors.

The Commission is proposing to require that all persons who sign a firm's registration statements filed under the Securities Act and reports filed under the Exchange Act certify they have read the filing and do not know of any material misstatement or omissions of information in the filing.[569] The proposals would expand the number of persons required to sign forms to include the registrant, the registrant's principal executive officer, principal financial officer, principal accounting officer, and at least a majority of the registrant's board.[570] These revisions would help ensure that information is adequately reviewed both internally by a registrant's senior management (and by its board), thereby enhancing investors' confidence in the quality of the information.

The proposed rules and amendments would also improve investors' access to information by allowing issuers to use ''free writing'' sales materials before the effectiveness of their registration statement.[571] Current limitations on communications originally were intended to focus investors' attention on prospectuses, whose contents were specified by the Commission. We believe that by allowing issuers the additional flexibility to communicate with investors before the effectiveness of a registration statement, investors may become better informed before making their investment decisions. These additional communications made during the offering period would be subject to the provisions of Section 12(a)(2) under the Securities Act and the antifraud provisions of the Securities and the Exchange Acts.[572] Additionally, investors would continue to have access to issuers' registration statements through the Commission's Internet web site and several non-governmental web sites. The Commission recognizes, however, that deregulating communications may impose an analytical burden on investors. For example, in some offerings, an investor may need to assemble and assimilate various free writing documents and Exchange Act materials in order to get the whole investment picture. We seek comment on whether investors would benefit overall from issuers communicating with investors during the waiting period.

The proposed rules and amendments would improve investors' access to information by allowing issuers that register offerings on Form B to communicate with investors before they file a registration statement. [573] The proposed rules and amendments would apply to:

- Large, seasoned companies;
- Offerings sold only to QIBs;
- Offerings to certain existing shareholders;
- Offerings of certain non-convertible investment securities; and
- Certain market making transactions by affiliated brokers/dealers.

In these instances, the Commission anticipates investors would benefit from receiving information from issuers during the pre-filing period, and believes that doing so would not create an investor protection concern, given the information is subject to the provisions of Section 12(a)(2) under the Securities Act and the antifraud provisions of the Securities and the Exchange Acts. [574] Moreover, given the abundance of readily accessible information about large, seasoned public companies, any communications made by them while in the process of registering an offering are less likely to have a significant impact by conditioning the market or stimulating interest in a proposed offering. The Commission, however, recognizes that deregulating communications may lead to issuers ''hyping'' securities more than today. We seek comment on whether such activities would interfere with investors' ability to evaluate offerings objectively.

Offerings to QIBs and existing shareholders also may be registered on Form B. We believe that these investors, due to their experience or nature, would be less susceptible than other investors to pre-filing hype about a new offering. For example, under the proposed rules, issuers may register on Form B an offering of securities to QIBs. Because of their sophistication, we believe QIBs are more likely than other investors to be in a position to insist that issuers explain any information disseminated before the filing of a registration statement. Similarly, we believe that certain existing shareholders would benefit from issuers communicating more freely. These investors are likely to be knowledgeable about the investments in which they would be eligible to receive additional issuer disclosures during the pre-offering period. And finally, we believe purchasers of non-convertible investment grade debt are unlikely to need the additional protections offered by Form A registration. We understand these securities' investors buy largely based on ratings and maturities. We request comment on the accuracy of these views.

The proposed new rules and amendments are designed to increase the amount of information provided to investors. For example, the proposals would allow analysts to distribute research reports around the time of offerings as long as they disclosed potential conflicts of interest.[575] Facilitating communication between analysts and investors would enhance investors' ability to evaluate offerings and should increase the speed at which the market discovers prices.

The proposed revisions also would reduce the effects of selected disclosure by requiring issuers to file all ''free writing'' materials with the Commission. These materials would then be available to all investors through our web site. In offerings today, many issuers and their representatives exclude some investors from roadshows and other issuer communications. The proposed rules and amendments should put investors with Internet access on a more equal footing with respect to receiving written information about the issuer, although issuers might continue or increase their selective disclosure of oral information. We request comment

[568] The proposed revisions would also require issuers to disclose risk factors in Forms 10, 10–SB, 18, 20–F, and 18–K.

[569] The proposed revisions would affect Forms A, B, C, SB–1, SB–2, and SB–3 under the Securities Act and Forms 10–K, 10–KSB, 10–Q, 10–QSB, 10, 8–A, 10–SB, 20–F, 40–F, 18, 8–K, and 6–K under the Exchange Act.

[570] Foreign private issuers also would need to have an authorized representative in the United States sign. The proposed revisions would affect Forms A, B, C, SB–1, SB–2, and SB–3 under the Securities Act and Forms 10–K, 10–KSB, 10–Q, 10–QSB, 10, 8–A, 10–SB, 20–F, 40–F, and 18 under the Exchange Act. For Forms 8–K and 6–K, we would require either the registrant's principal executive officer, principal financial officer, or principal accounting officer to sign a particular Exchange Act report and certify he or she provided a copy to board members.

[571] *See* proposed Securities Act Rule 165, 17 CFR 230.165, and Rule 166, 17 CFR 230.166.

[572] Under the proposals, Form B offering information would be subject to liability under Section 11 of the Securities Act.

[573] *See* proposed Securities Act Rule 166, 17 CFR 230.166.

[574] Under the proposals, Form B offering information would be subject to liability under Section 11 of the Securities Act.

[575] *See* proposed revisions to Securities Act Rules 137, 138, and 139, 17 CFR 230.137, 230.138, and 230.139.

on whether investors without access to the Internet may be disadvantaged.

The proposed new rules and amendments would likely expand the registered investment opportunities available to investors. The proposed revisions would lower the cost of registering public offerings which in turn may motivate issuers to shift at least some securities' sales from the private to the public market. Investors that are eligible to purchase securities in private placements today would be able to purchase securities that would be similar to those before, but would be freely resalable. The information would be subject to the higher liability standards of Section 11 under the Securities Act. Investors currently ineligible to purchase securities in private placements may have new investment opportunities. Shifting securities offerings from the private to the public market also would likely increase the liquidity of the public market.

Although it is difficult to estimate the number of offerings or aggregate amount of securities that might become available to the public market, we anticipate that larger seasoned issuers would register some offerings on Form B that otherwise would have been privately placed, resulting in more offerings becoming available to non-QIB investors. Smaller, less seasoned issuers would likely register at least some offerings on Form B that they offer exclusively to QIBs and to certain existing shareholders, or that are investment grade non-convertible securities, rather than privately place them, resulting in more offerings being traded in the public market.[576] The Commission recognizes that some smaller, less seasoned issuers, however, would choose today to register their securities on Form B as an offering exclusively to QIBs. In these instances, non-QIB investors under the proposals would not be able to participate in the initial distribution of securities. We request comment on the extent to which the proposed rules would integrate the private and public markets and bifurcate QIB versus non-QIB investment opportunities.

One cost to investors of the proposed revisions is that they might increase investors' analytical burden. The proposed new rules and amendments would allow Form A issuers with two years of reporting history to incorporate Exchange Act reports into prospectuses as long as they deliver the reports with prospectuses to investors. Investors in these offerings would have to physically compile the delivered integrated information. The Commission notes that investors have not complained they are unduly burdened when investing in offerings where company information is incorporated by reference from the issuer's Exchange Act reports. The Commission seeks comment from investors as to whether, as a practical matter, compiling delivered materials that are incorporated by reference into prospectuses is burdensome to investors. The Commission seeks comment from investors as to whether, in their experience, issuers or mutual fund companies have promptly delivered periodic reports incorporated by reference or, in the mutual fund context, the Statement of Additional Information, when such materials were requested. And we seek comment from companies on how often they receive requests from investors.

The proposed new rules and amendments could also increase investors' analytical burden if they receive transactional information in Form B registration statements that is not uniform. In addition, investors would have the burden of identifying omitted information that today may be mandated. In general, however, we expect few problems. We anticipate that issuers and underwriters would use the opportunity to craft disclosure based on investors' demand and the requirement to provide material information to investors. The proposed rules do not change issuers' or underwriters' liability, thus we expect they would have incentives to present complete and correct transactional information. The Commission also is proposing to continue mandating the same company information as today, as well as certain transactional disclosure items. We request your comments on the accuracy of this view.

The Commission recognizes that some fraction of the cost savings to issuers and underwriters reflects a shifting of costs from issuers to investors, including investment advisers, investment companies, and retail investors. These costs may include quantifiable costs (such as printing) and less quantifiable costs (such as time, effort, and inconvenience). Some portion of the printing costs that Form B companies would save by not printing and delivering final prospectuses might be shifted to investors. Under the proposals, prospectuses would be available to investors through the Commission's web site or issuers' toll-free telephone numbers. Investors could either rely on prospectuses' continued availability on the Internet (and not acquire hard copies), call issuers for free copies or download and print them.

The Commission seeks comment on the assumptions and quantitative data that should go into estimating the costs to investors of acquiring prospectuses in Form B offerings. For example, would investors be less likely to read and use prospectuses if prospectuses are not delivered and investors have to take extra steps to receive them? What percentage of investors would contact issuers for free copies of prospectuses? What percentage of investors would obtain prospectuses through the Internet? How much does it cost investors in terms of paper, Internet connection costs, and telephone connection time to download information and print prospectuses? How likely is it that investors would read prospectuses ''on-line,'' and if they did so, how much in additional connection charges would they pay? What are the costs to issuers and underwriters of printing and delivering prospectuses? What are the costs of bulk printing of prospectuses through commercial printers relative to the cost of ''retail printing'' of prospectuses by individual investors? We request comment on the number of prospectuses that issuers and underwriters would no longer need to print and deliver to investors and the size of the resulting cost savings.

The proposed new rules and amendments would allow companies that currently are ineligible to register offerings on Forms SB–1 and SB–2 to use these forms, and to register business combinations on new Form SB–3.[577] One issue that could arise is the quality of the newly eligible firms' disclosures might be lower than today, because the small issuer disclosure system, of which

[576] In a study of non-convertible debt, we found that at least 49% of the non-convertible debt issued in the 144A market in the first half of 1998 would have likely migrated to the public market under the proposed rules. The evidence indicates yields on privately placed investment grade securities and securities with registration rights are essentially the same as yields on registered securities with similar characteristics. The insignificant yield differential suggests that investors perceive few differences between these privately placed and publicly registered securities. Yet issuers pay as much as 100 basis points in extra issuance costs for privately placed investment grade securities and securities with registration rights. Presumably, issuers believe the additional expense is more than justified by the issuance and timing flexibility provided by the private market. Under the proposed rules, issuers would have much of the same flexibility when they register offerings on Form B that they currently have in the private market. We therefore anticipate that issuers would sell these securities in the public rather than private market. *See Effects of Streamlined Registration,* Memorandum by the Commission's Office of Economic Analysis (Sept. 18, 1998).

[577] *See* proposed revisions to Securities Act Rule 405, 17 CFR 230.405.

Forms SB–1 and SB–2 are part, allows companies to register offerings with less extensive disclosure requirements than those required by Forms S–1 and S–2. We do not anticipate, however, that classifying companies with revenues up to $50 million as small business issuers would harm investors. The information that we have suggests allowing more firms to file on Forms SB–1 and SB–2 would not cause or allow firms that otherwise would register on Forms A or B to misrepresent or omit material information to investors. We request your comments on the accuracy of this view.

A final concern is that eliminating staff review of offerings registered on Form B would diminish issuers' incentives to fully and accurately disclose information in prospectuses. Although the Commission's staff currently reviews relatively few offerings that would be registered on Form B under the proposals,[578] the possibility of review likely enhances the quality of disclosure. The Commission agrees that prospectus review is valuable, but believes the resources currently dedicated to prospectus review might better serve investors' interests if applied to reviews of Exchange Act reports. As discussed in the Advisory Committee report, the equity trading markets are approximately 35 times larger (approximately $5.5 trillion dollars in 1995) than the primary markets (approximately $155 billion dollars in 1995).[579] Given that larger seasoned issuers are followed by analysts and other providers of information, we believe that focusing on Exchange Act report reviews would benefit investors. We request your comments on the accuracy of this view.

B. Impact on Issuers

The proposed rules and amendments would change the registration forms on which issuers register offerings and business combinations. Issuers would use Forms A, B, and C rather than Forms S–1, F–1, S–2, F–2, S–3, F–3, S–4, and F–4. Form A would be available to all issuers: It would roughly parallel current Forms S–1, F–1, S–2, and F–2. Issuers that would have been reporting companies for at least two years and that used Form A would be able to incorporate Exchange Act reports by reference. Form B would be available to larger seasoned issuers; that is, issuers with either public floats of at least $75 million *and* ADTVs of $1 million *or* public floats of at least $250 million.[580] Alternatively, issuers could use Form B if they sell securities exclusively to QIBs and certain existing shareholders, or sell non-convertible investment grade securities. Issuers would use Form C to register business combinations. The Commission also is proposing to revise the definition of small business issuer to increase the revenue test from $25 to $50 million and remove the public float test.[581] Firms that meet this test would be eligible to register offerings on Forms SB–1 and SB–2, and business combinations on new Form SB–3.

In the table below, we estimate the impact of the proposed eligibility requirements on companies' form eligibility based on data from 1997. We apply the proposed Form A and Form B public float, ADTV, and reporting history form requirements to the companies that were publicly traded on the NYSE, AMEX, and NASDAQ market in 1997.[582] Of the 8,825 companies that were traded on these exchanges and market in 1997, 5,428 would have been required to register offerings on Form A under the proposals, unless they sold securities solely to QIBs and certain existing shareholders, or sold non-convertible investment grade securities.[583] Of those 5,428 companies, 1,075 of the companies would not have been allowed to incorporate Exchange Act reports by reference on Form A under the proposals, whereas 4,353 would have been permitted to incorporate Exchange Act reports by reference. Of the 4,353 companies that would have been permitted to incorporate Exchange Act reports by reference on Form A under the proposals, 2,526 were required to register offerings on Forms S–1 and F–1 in 1997, 400 were required to register offerings on Forms S–2 and F–2, and 1,427 were required to register offerings on Forms S–3 and F–3. Under the proposed rules and amendments, 3,397 registrants would have been eligible to register offering on Form B based on their public floats and ADTVs. Not shown in the table are the 4,087 companies, 1,050 more than today, that would have been eligible in 1997 to register offerings on Forms SB–1, SB–2, and SB–3 under the proposed rules.[584] The impact of these changes on issuers is discussed below.

TABLE: IMPACT OF PROPOSED FORM REQUIREMENTS ON REGISTRANTS

	Form A, no incorporation by reference	Form A, incorporation by reference	Form B	Total
Form S–1/F–1	1,075	2,526	0	3,601
Form S–2/F–2	0	400	0	400
Form S–3/F–3	0	1,427	3,397	4,824
Total	1,075	4,353	3,397	8,825

We anticipate that the proposed rules and amendments would lower the cost of raising capital in the public market for many issuers. For the purposes of the Paperwork Reduction Act, the table in Section XV summarizes our preliminary estimates of the internal burden hours that parties would spend to comply with the proposals. We base these estimates on current burden hour estimates and the staff's experience with these filings. The estimates in the table

[578] *See* Advisory Committee Report at Appendix A, p. 9, Table 2. The Commission reviewed approximately 15% of prospectuses of underwritten common equity registered in calendar years 1994 and 1995 on Form S–3, which roughly parallels Form B.

[579] *See* Advisory Committee Report at p. 2 and at Addendum to Appendix A, Fig. 2.

[580] Public float is the aggregate market value of the issuer's outstanding voting and non-voting common equity held by non-affiliates of the issuer. *See* 17 CFR 230.405.

[581] *See* proposed revisions to Securities Act Rule 405, 17 CFR 230.405.

[582] Market capitalization was used as a proxy for public float. We use data from the Center for Research in Security Prices. We also are proposing to change the requirements for Canadian foreign private issuers to be eligible for MJDS to roughly conform with the requirements for Form B. These changes affect Forms F–7, F–8, F–9, F–10, F–80 and 40–F. We request comment on the impact of the revisions on these issuers.

[583] The proposed rules would allow certain Form A issuers with at least $75 million in public float to go effective whenever they request. We estimate approximately 1,960 issuers would be eligible under the proposals.

[584] *See* 17 CFR 228.10.

indicate that public companies would expend approximately 9,106,343 internal burden hours/year complying with the proposals. If we assume 70% of these burden hours would be expended by persons that cost the affected parties $85/hour and 30% of these burden hours would be expended by persons that cost $10/hour, then the proposals would cost approximately $573,699,609/year in internal staff time.[585] For the purposes of the Paperwork Reduction Act, we also estimate that parties would spend approximately $4,754,863,050/year on outside professional help to comply with the proposals. Thus we estimate that affected parties would spend approximately $5,328,562,659/year to comply with the proposals. Applying the same cost estimates to the burden imposed by the current rules, we estimate that issuers would spend approximately $5,581,739,205/year.[586] Note that these estimates do not attempt to quantify the proposals' intangible benefits, such as the benefits to issuers and investors of enhanced communications and the greater likelihood that issuers would shift capital raising from the private to the public market, nor its intangible costs, such as the cost to security holders of identifying misleading or incomplete pre-filing information. We request comment on the reasonableness of our estimates.

The proposed rules would allow issuers that otherwise would not be eligible to register securities on Form B to use Form B if they sold securities exclusively to QIBs and certain existing shareholders, or sold non-convertible investment grade securities. Consequently, they would be able to incorporate Exchange Act reports by reference without delivering them to investors, and would be able to craft transactional disclosure, subject to Section 11 liability standards, with fewer constraints than under the current regime. These changes would lower issuers' expenses to publicly raise capital. Although we cannot estimate the number of offerings or aggregate amount of securities that these issuers might register on Form B rather than on Form A, we anticipate that they would register at least some offerings on Form B. If they used Form B, they would also be allowed to communicate with investors during the pre-offering period. We request your comments, including any supporting empirical information, on the benefits and costs to smaller, less seasoned issuers of registering securities on Form B under the proposed rules.

The proposed rules would simplify larger seasoned issuers' preparation of Form B by lifting restrictions on communications,[587] enhancing these issuers' control over the timing of public offerings,[588] and not requiring physical delivery of a prospectus.[589] Under the proposed rules, we would require issuers in Form B offerings to deliver only a term sheet of the securities' most important features, instead of a full prospectus. We request comment on the number of Form B offerings in which issuers would not have to deliver prospectuses, the number of offerees in these deals, and the percentage of investors that would not request prospectuses. To the extent investors do not request the prospectus or information incorporated by reference, or obtain such information on the Internet, issuers would save mailings costs. Specifically, how does the difference in costs between the bulk mailing of prospectuses, under current law, and the on-request mailing of prospectuses as proposed, affect the potential cost to Form B issuers? How much would it cost Form B issuers to establish toll-free telephone numbers? How much would it cost Form B issuers to deliver term sheets? In Form A offerings, issuers would no longer have to deliver final prospectuses, but would have to deliver preliminary prospectuses. How many prospectuses would Form A issuers have to send to offerees? How does this number compare to the number of investors in these offerings? Would it cost more or less to send preliminary prospectuses relative to sending final prospectuses today? We request comment on the benefits and costs of these revisions to issuers.

The proposed rules and amendments would increase all issuers' flexibility to raise capital in a number of ways. The proposals would allow issuers to ''test the waters'' to gauge investor interest in offerings, allowing them to withdraw unpopular offerings more quickly than under the current regime. Issuers would be able to convert more easily and with less regulatory uncertainty between public and private offerings,[590] and would no longer be required to announce public or private status in ''limited content notices.'' [591] The Commission would also credit issuers' registration fees if they withdraw registration statements, and would allow small business issuers to increase the amount of securities they register on a statement by 50%, up from 20% today. The Commission is proposing to permit issuers in the small business issuer system to delay paying registration statement filing fees until shortly before they sell securities.[592] This provision is designed to help ease these issuers' liquidity concerns. We anticipate these changes would benefit issuers. We request comment on the reasonableness of this view.

These proposed new rules and amendments could slow issuers' access to the public market in quick offerings because issuers would be required to deliver preliminary prospectuses in some offerings and term sheets in others. The proposed rules and amendments would require issuers registering securities on Form A to deliver preliminary prospectuses to buyers 7 days before pricing for initial public offerings and 3 days before pricing for repeat offerings. In addition, issuers would have to notify offerees of material changes at least 24 hours in advance of pricing. For Form B offerings, issuers would be required to deliver term sheets outlining the key features of securities being offered.[593]

To assess the burden of the proposed Form A delivery requirements on issuers whose public floats, ADTVs, and reporting histories would otherwise require them to register offerings on Form A, we examine whether these issuers' offerings in 1996 would have been slowed by the proposed restrictions. In the case of non-shelf offerings, very few deals would have been affected.[594] In the case of shelf

[585] These hourly rates translate to annual salaries of $170,000/year and $20,000/year.

[586] For the purposes of the Paperwork Reduction Act, we estimate in the table of Section XV the burden hours imposed on parties to comply with the current rules. Assuming (as we did for the proposed rules) that 25% of the hours required to comply with the rules are provided by corporate staff at a cost of $63/hour (70% of the expended corporate staff time cost $85/hour, whereas 30% of the expended corporate staff time cost $10/hour), and 75% of the hours required to comply with the rules are provided by external professional help at a cost of $175/hour, we estimate that affected parties spend approximately 37,971,015 burden hours/year * $147/hour = $5,581,739,205/year.

[587] *See* proposed Securities Act Rules 165 and 166, 17 CFR 230.165 and 230.166.

[588] Offering materials would not be subject to staff review, and issuers could designate offerings' effective dates. Certain Schedule B filers also could designate the timing of their offerings' effectiveness.

[589] *See* proposed Securities Act Rules 172 and 173, 17 CFR 230.172 and 230.173.

[590] *See* proposed revisions to Securities Act Rule 152, 17 CFR 230.152.

[591] *See* proposed revisions to Securities Act Rules 135c and 135, 17 CFR 230.135c and 230.135.

[592] *See* 17 CFR 228.512.

[593] *See* proposed Securities Act Rule 172, 17 CFR 230.172, and proposed revisions to Exchange Act Rule 15c2–8, 17 CFR 240.15c2–8.

[594] We found that 14 non-shelf offerings by 13 issuers would have been slowed by the proposed Form A delivery requirements. In all but one case, the requirement to deliver notice of material changes at least 24 hours in advance of pricing

Continued

offerings, more deals, especially medium-term-note offerings, would have been slowed by the Form A prospectus delivery requirements.[595] In general, however, these offerings are sold to institutional buyers, and issuers would be eligible to register offerings on Form B if securities were sold solely to QIBs and certain existing shareholders, or were non-convertible investment grade securities. Registration on Form B would eliminate regulatory uncertainty and Form B issuers would be required to deliver only a securities term sheet to investors.

Under the proposals, we would require issuers to file post-effective amendments for delayed shelf takedowns by the time of first sale. This requirement would accelerate issuers' filing obligation with respect to transactional disclosure in prospectus supplements relative to today. We do not, however, anticipate a substantial increase in burden on issuers. We ask comment on the reasonableness of this view.

C. Impact on Other Parties

We anticipate that the proposed rules and amendments would on balance benefit underwriters. The proposed changes would clarify and expand the current safe harbors for research reports. Analysts would be allowed to distribute research reports around the time of an offering as long as potential conflicts of interest were disclosed.[596] Thus analysts would be able to continue servicing their clients, even during offerings.

The proposed rules and amendments would also remove much of the burden on issuers and underwriters of delivering final prospectuses.[597] We anticipate these parties would experience tremendous cost savings from this change. The proposed rules would also facilitate the Commission moving towards quicker clearing and settling cycles in the future, reducing clearance and settlement risk to clearing corporations, their members, and public investors. The proposed rules and amendments would lift the obligation on dealers to deliver final prospectuses to investors in sales after initial distributions if final prospectuses are on file with the Commission and dealers notify investors where they may acquire them.[598]

The proposed rules, however, could increase the pressure on underwriters to rapidly review offerings because more offerings would be eligible to come to market quickly. Although underwriters' techniques to review offerings have improved since the introduction of shelf registration in 1982, several commentators on the Concept Release noted that further deregulation of the registration process could undermine their ability to influence the contents of issuer disclosure, leaving them liable for prospectus content. The Commission is proposing to revise Rule 176 to provide courts better guidance as to whether a due diligence investigation meets a ''reasonable investigation'' and ''reasonable ground for belief'' standard in a defense against liability under Sections 11 and 12(a)(2) in a quick offering.[599] We also are proposing to extend Rule 176 to cover liability under Section 12(a)(2) as well as Section 11. We believe the revisions would provide guidance to underwriters and the courts while preserving underwriters' as ''gatekeepers.''

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[600] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

Commenters should provide empirical data on (a) the annual effect on the economy; (b) any increase in costs or prices for consumers or individual industries; and (c) any effect on competition, investment or innovation. We note that for purposes of the Paperwork Reduction Act, we estimate the proposals would create an annual information collection paperwork preparation savings to issuers of more than $100 million. We request your comments on the reasonableness of this estimate.

In adopting rules under the Exchange Act, Section 23(a) requires the Commission to consider the impact that rules would have on competition and to not adopt any rule that would impose a burden on competition not necessary or appropriate in the public interest. Section 3(f) of the Exchange Act requires the Commission, when engaged in rulemaking and required to consider or determine whether the action is necessary or appropriate in the public interest, to also consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.[601]

We believe the proposals would lower companies' cost of capital raising relative to today which would enhance their efficiency and facilitate capital formation. We anticipate the proposals would promote investor protection and enhance communications between public companies and investors, thereby increasing investors' confidence in the integrity of the securities markets.

To the extent that the proposals would lower the cost of raising capital in the United States, they could enhance the competitiveness of issuers that raise capital in the U.S. public capital markets. We anticipate the proposals also could reduce some of the competitive disadvantage of small issuers that today register offerings on Forms S–1, SB–1, and SB–2 relative to larger firms. Given that the proposals would (1) allow small issuers to raise capital from QIBs and certain existing shareholders, or sell non-convertible investment grade securities using Form B; (2) allow small businesses to incorporate Exchange Act reports by reference into registration statements as long as they deliver the reports with prospectuses to investors; and (3) allow certain Form A issuers' registration statements to go effective immediately if they are reporting companies for at least two years and have public floats of at least $75 million, we believe small companies' competitiveness could be enhanced relative to today.

The proposals to revise Rule 176 to provide courts better guidance as to whether a due diligence investigation meets a ''reasonable investigation'' and ''reasonable ground for belief'' standard

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would have caused the delay. Of course, the current registration regime encourages issuers to delay filing registration statement amendments, thus it is unclear as to whether these issuers could have filed their amendments earlier without incurring additional cost.

[595] In some cases, as discussed above, firms that currently use Forms S–3 and F–3 to issue securities from shelves would not have sufficient public float and ADTV to qualify to use Form B. These firms would have to meet the preliminary prospectus delivery requirements for Form A. Here we examine these firms' use in 1996 of unallocated shelf to see if the proposed prospectus delivery requirements would have slowed their offerings. In 1996, 187 firms that were eligible to use Forms S–3 and F–3, but which would not have been eligible to use Form B took securities off unallocated shelves. Not all of these offerings, however, would have been slowed. In roughly ⅔ of equity deals and ⅓ of non medium-term-note (MTN) debt deals, firms file preliminary takedown prospectuses (red herrings) with the Commission because they market the deals. Marketing, not regulatory requirements slow these deals. Such marketing is rare, however, for takedowns in MTN programs.

[596] *See* proposed revisions to Securities Act Rules 137, 138, and 139, 17 CFR 230.137, 230.138, and 230.139.

[597] *See* proposed Securities Act Rule 173, 17 CFR 230.173.

[598] *See* proposed revisions to Securities Act Rule 174, 17 CFR 230.174.

[599] *See* proposed revisions to Securities Act Rule 176, 17 CFR 230.176.

[600] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[601] 15 U.S.C. § 78c(f).

in a defense against liability under Sections 11 and 12(a)(2) in a quick offering could, however, put underwriters that do not have in-house analysts at a competitive disadvantage relative to other underwriters. The revision would allow underwriters to cite the employment and consultation of research analysts that are actively involved in an issuer's industry as a positive factor for the courts to consider when deciding whether underwriters' investigations are reasonable. Underwriters that cannot rely on this factor may be somewhat at a competitive disadvantage in underwriting quick offerings. We request comment on the significance of this disadvantage.

As discussed above, the Commission anticipates that the proposed rules and amendments would reduce the cost of raising capital in the public market, promoting efficiency, competition, and capital formation. The Commission requests comment on these preliminary views and encourages commentators to provide empirical data and other facts to support their views. We request data and analysis on the effect of the proposed changes on efficiency and capital formation. The Commission also requests comments on the competitive effects that may impact market participants under the proposed amendments.

XV. Initial Regulatory Flexibility Analysis

We prepared this Initial Regulatory Flexibility Analysis under 5 U.S.C. § 603 concerning the new rules, forms, and amendments proposed today. We will consider your written comments in the preparation of the final analysis.

A. Reasons and Objectives for Proposed Action

The purpose of the proposed new rules, forms, and amendments is to modernize, rationalize, and clarify the Commission's regulatory system for offerings under the Securities Act of 1933, enhance communications between public companies and investors, and promote investor protection.

B. Objectives and Legal Basis

We propose the new rules, forms, and amendments to the Commission's existing rules and forms pursuant to Sections 2(b), 6, 7, 8, 10, 19(a), and 28 of the Securities Act, as amended and Sections 3, 4, 10, 12, 15, 23, and 36 of the Exchange Act.

C. Small Entities Subject to the Rules

The proposed rules and amendments would affect small entities that are required to file registration statements and reports under the Securities Act, Exchange Act, and the Investment Company Act. For the purposes of the Regulatory Flexibility Act, the Securities Act and Exchange Act define a ''small business'' issuer, other than an investment company, to be an issuer that, on the last day of its most recent fiscal year, had total assets of $5 million or less.[602] When used with respect to an issuer that is an investment company, the term is defined as an investment company and any related investment company with aggregate net assets of $50 million or less as of the end of its most recent fiscal year.[603]

We currently are aware of approximately 1,100 reporting companies that are not investment companies with assets of $5 million or less. There are approximately 400 investment companies that satisfy the ''small entity'' definition. All of these companies would be subject to the proposed rules, forms, and amended rules. We have no reliable way, however, to determine how many businesses may become subject to Commission reporting obligations in the future, or may otherwise be impacted by the changes.

D. Reporting, Recordkeeping, and Other Compliance Requirements

For the most part, the proposals are deregulatory in nature, modernizing, rationalizing, and clarifying the Commission's regulatory system for offerings under the Securities Act and enhancing communications between public companies and investors. Under the proposed rules, small businesses would report and file essentially the same information as today, although more small companies would be eligible for the small business disclosure system's streamlined reporting. The Commission also is proposing a new small business combination form, Form SB–3. One exception to this generalization is the Commission would require issuers, both large and small, to file written communication used during the waiting period in a securities offering. The proposed rules and amendments also could change small issuers' recordkeeping of prospectus delivery to investors. Our preliminary view is that any additional recordkeeping burden resulting from our proposals for prospectus delivery would be minimal. To the extent that underwriters and issuers collect information to contact potential investors and collect information to send prospectuses and confirmations under the existing rules, we do not anticipate the proposals would impose a significant additional burden on underwriters and issuers. We request comment, however, on the accuracy of this view.

E. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small issuers. In connection with the proposed rules forms, and amendments, we considered several alternatives, including:

- Establishing different compliance and reporting requirements or timetables that take into account the resources of small businesses;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rule for small businesses;
- Using performance rather than design standards; and
- Exempting small businesses from all or part of the requirements.

In a number of instances, the proposed rules, forms, and amendments would reduce the burden of complying with the Securities Act and Exchange Act to both large and small businesses. We propose to allow issuers to simultaneously register offerings under the Securities Act and classes of securities under the Exchange Act by checking a box on their Securities Act registration statements.[604] The revision would reduce the number of issuer filings. And the proposed rules and amendments would reduce uncertainty regarding staff review of Exchange Act reports through notification of review and pre-review. The proposed rules would allow issuers, both large and small, to raise capital from QIBs and certain existing shareholders, or sell non-convertible investment grade securities using Form B. These issuers would be able to incorporate Exchange Act reports by reference without necessarily delivering them to investors, and would be able to craft transactional disclosure, subject to Section 11 liability standards, with fewer constraints than under the current regime. These changes should lower issuers' expenses to publicly raise capital.

The proposed rules and amendments would increase all issuers' flexibility to raise capital in a number of ways. The

[602] *See* 17 CFR 230.157 and 17 CFR 240.0–10.

[603] *See* 17 CFR 240.0–10.

[604] *See* proposed Securities Act Rule 499, 17 CFR 230.499, for Schedule B filers and proposed revisions to Exchange Act Rule 12d1–2, 17 CFR 240.12d1–2.

proposals would allow issuers to ''test the waters'' to gauge investor interest in offerings, allowing them to withdraw unpopular offerings more quickly than under the current regime. Issuers would be able to convert more easily and with less regulatory uncertainty between public and private offerings,[605] and would no longer be required to announce public or private status in ''limited content notices.'' [606] The Commission would credit issuers' registration fees if they withdraw registration statements. We anticipate these changes would benefit small issuers.

The proposals would also relax many of the restrictions on communications between issuers and investors and clarify any remaining limitations. Issuers would be able to more freely promote and sell securities to investors, subject to the provisions of Section 12(a)(2) under the Securities Act and the antifraud provisions of Rule 10b-5 under the Exchange Act.[607] Specifically, the proposed rules and amendments would allow all issuers to communicate freely with investors after registration statements are filed.[608] During the pre-filing period, issuers of offerings registered on Forms A, SB–1, and SB–2 and unregistered offerings would be somewhat limited in their ability to communicate with investors, but the proposed rules would clearly define the length of the period and would delineate the types of communications permitted and prohibited.[609] These changes would enhance small businesses' communications with investors and reduce regulatory uncertainty.

The proposed rules and amendments explicitly would reduce the impact on small businesses complying with the provisions of the Securities Act by allowing seasoned small businesses to incorporate Exchange Act reports by reference into the small business registration forms as long as they deliver the reports with prospectuses to investors. This provision should save issuers time and money. For example, we estimate issuers would spend approximately 533, or 343 fewer, burden hours preparing Form SB–2 registration statements under the proposed rules than today.[610] The Commission is proposing to allow more issuers to qualify for the small business disclosure system and to allow small business issuers to register business combinations and exchange offers on a new form, Form SB–3. Form SB–3 is designed to simplify and streamline the information that small businesses must disclose when they combine with other firms. As discussed in detail in Section XV, we estimate small business issuers would expend approximately 1,095 burden hours to file business combinations on Form SB–3,[611] or $163,155/filing in labor costs. Relative to filing on Forms S–4 or F–4 today, we estimate these issuers would save approximately 149 burden hours/filing or $22,201/filing in labor costs. The Commission also is proposing to permit issuers in the small business issuer system to delay paying registration statement filing fees until shortly before they sell securities.[612] This provision is designed to help ease these issuers' liquidity concerns. Small business issuers also would gain approximately $166/filing in interest because they would be able to defer paying registration fees.[613] Finally, the Commission would allow small business issuers to increase the amount of securities they register on a statement by 50%, up from 20% today.

The proposed rules and amendments could impose additional analytical burdens on investors that qualify as small entities, such as some investment companies and investment advisors. As discussed in Section XV, the proposed rules and amendments would allow issuers to communicate, including using written sales materials, with investors, both large and small, after registering offerings with the Commission. We seek comment on whether small investors would benefit overall from issuers communicating with investors during the waiting period. The proposed new rules and amendments also would allow Form A issuers with two years of reporting history to incorporate Exchange Act reports into prospectuses as long as they deliver the reports with prospectuses to investors. Investors in these offerings would have to physically compile the delivered integrated information. The Commission seeks comment from investors as to whether, as a practical matter, compiling delivered materials that are incorporated by reference into prospectuses would be burdensome to small investors. Finally, the proposals could also increase small investors' analytical burden if they receive transactional information in Form B registration statements that is not uniform in presentation from offering to offering. We request your comments on whether some issuer flexibility in crafting Form B transactional disclosure would unduly burden small investors.

As discussed in Section XV, the Commission recognizes that some portion of the printing costs that Form B companies would save by not printing and delivering final prospectuses might be shifted to small investors. Under the proposals, prospectuses would be available to investors through the Commission's web site or through issuers' toll-free telephone numbers. Small investors could either rely on prospectuses' continued availability on the Internet (and not acquire hard copies), call issuers for free copies or download and print them. The Commission seeks comment on whether the proposed revisions would unduly burden small investors.

We did not propose all of the alternatives that we considered. In some instances, the alternatives we chose not to propose would be inconsistent with our statutory mandate to require prospectuses to disclose fully and fairly all material information to investors. In other instances, the alternatives would significantly reduce the quality and timeliness of Exchange Act report information, depriving shareholders of an important means to evaluate investments. We believe that except in the specific instances, such as in the case of the small business disclosure system and Form B disclosure requirements, the proposed rules, forms, and amendments should apply equally to all entities required to disclose information to enhance protection of all investors. For these reasons, we also believe there would be no benefit in providing separate requirements for small issuers based on the use of

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[605] *See* proposed revisions to Securities Act Rule 152, 17 CFR 230.152.

[606] *See* proposed revisions to Securities Act Rules 135c and 135, 17 CFR 230.135c and 230.135.

[607] Under the proposals, Form B offering information would be subject to liability under Section 11 of the Securities Act.

[608] *See* proposed Securities Act Rule 425, 17 CFR 230.425.

[609] *See* proposed Securities Act Rules 167, 168, and 169, 17 CFR 230.167, 230.168, and 230.169.

[610] *See* the detailed discussion in Section XV of this release.

[611] We base this estimate on the number of burden hours required to file Form SB–2 under the proposals relative to the number of burden hours required to file Form A. We then reduce the number of burden hours required today to file Form C by this ratio. Specifically, we estimate the number of hours required to file Form SB–3 under the proposed rules would be [(533 burden hours/SB–2 filing under the proposals / 606 burden hours/Form A filing under the proposals) * 1,244 burden hours/Form C filing under the proposals = 1,095 burden hours/SB–3 filing.

[612] *See* 17 CFR 228.512.

[613] In fiscal year 1998, small business issuers filed registration statements an average of 103 days before effectiveness. On average, these issuers raised $13,068,000/filing. At an interest rate of 15%/year, which the staff believes small firms could be required to pay, and Commission filing fees of 0.03% per dollar of capital raised, these issuers would have saved $166/filing on average in interest if they had been able to postpone paying their registration fee.

performance rather than design standards.

F. Overlapping or Conflicting Federal Rules

We do not believe any current federal rules duplicate, overlap or conflict with the rules, schedules, and amendments that we propose to amend.

We request your written comments on any aspect of this Initial Regulatory Flexibility Analysis. We particularly seek comment on:

- The number of small entities that would be affected by the proposed rules, forms, and amendments;
- The expected impact of the proposals as discussed above; and
- How to quantify the number of small entities that would be affected by, and how to quantify the impact of, the proposed rules, forms, and amendments.

We ask commentators to describe the nature of any impact and provide empirical data supporting the extent of the impact.

XVI. Paperwork Reduction Act

The proposed rules and amendments affect several regulations and forms that contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995.[614] The Commission has submitted proposed revisions to those rules and Forms to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. § 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The proposed new rules, forms, and amendments would modernize, rationalize, and clarify the Commission's regulatory system for offerings under the Securities Act of 1933, enhance communications between public companies and investors, and promote investor protection. The proposed forms and regulations set forth the disclosures that the Commission would require issuers to make about themselves and their securities offerings to the public. The requirements of the forms would largely be the same as today, except for a few changes that are discussed in detail below and in Section XIII. The information is needed so that prospective investors may make informed investment decisions both in registered offerings and in secondary transactions of registered securities. The information collection requirements imposed by the forms and regulations would be mandatory to the extent that companies are publicly owned and offer securities to the public. There would be no mandatory retention period for the information disclosed, and the information gathered would be made publicly available.

Form S–1 under the Securities Act (OMB Control Number 3235–0065) is used by issuers that are not eligible to use other forms to register offerings of securities.[615] The form sets forth the transactional and company information required by the Commission in securities offerings. Form S–2 under the Securities Act (OMB Control Number 3235–0072) is used by issuers that have reported under the Exchange Act for a minimum of three years and have timely filed all required reports during the 12 calendar months and any portion of the month immediately preceding the filing of the registration statement to register offerings of securities. The form sets forth the transactional and company information required by the Commission in securities offerings. It permits incorporation by reference of Exchange Act reports. Delivery of these incorporated documents as well as the prospectus to investors may be required. Form S–3 under the Securities Act (OMB Control Number 3235–0073) is used by issuers that have reported under the Exchange Act for a minimum of twelve months and have met the timely filing requirements set forth under Form S–3 (also, the offering and issuer must meet the eligibility tests prescribed by the form) to register offerings of securities. The form sets forth the transactional and company information required by the Commission in securities offerings. It permits incorporation by reference of Exchange Act reports. Form F–1 under the Securities Act (OMB Control Number 3235–0258) is used by foreign private issuers that are not eligible to use other forms to register offerings of securities. The form sets forth the transactional and company information required by the Commission in securities offerings. Form F–2 under the Securities Act (OMB Control Number 3235–0257) is used by foreign private issuers that have reported under the Exchange Act for a minimum of three years or have an equity float of at least $75 million worldwide or are registering non-convertible investment grade securities to register offerings of securities. The form is somewhat shorter than Form F–1 because it uses delivery of filings made by the issuer under the Exchange Act, particularly Form 20–F. Form F–3 under the Securities Act (OMB Control Number 3235–0256) is used by foreign private issuers that have reported under the Exchange Act for a minimum of twelve months and that have a worldwide public market float of more than $75 million (the form also may be used by eligible foreign private issuers to register offerings of non-convertible investment grade securities, securities to be sold by selling security holders, or securities to be issued to certain existing security holders) to register offerings of securities. The form allows issuers to incorporate Exchange Act reports by reference. Form SB–1 under the Securities Act (OMB Control Number 3235–0423) is used by small business issuers, as defined in Rule 405 of the Securities Act, to register offerings of up to $10 million of securities in a continuous 12-month period. The form sets forth the transactional and company information required by the Commission in securities offerings. It requires less detailed information about the issuer's business than Form S–1. Form SB–2 under the Securities Act (OMB Control Number 3235–0418) is used by small business issuers, as defined in Rule 405 of the Securities Act, to register securities offerings. The form sets forth the transactional and company information required by the Commission in securities offerings. It requires less detailed information about the issuer's business than Form S–1. Form S–4 under the Securities Act (OMB Control Number 3235–0324) is used by issuers to register securities offerings in connection with business combinations and exchange offers. The form sets forth the transactional and company information required by the Commission in securities offerings. Form F–4 under the Securities Act (OMB Control Number 3235–0325) is used by issuers to register securities offerings in connection with business combinations and exchange offers involving foreign private issuers. The form sets forth the transactional and company information required by the Commission in securities offerings. Form F–7 under the Securities Act (OMB Control Number 3235–0383) is used by publicly traded Canadian foreign private issuers to register rights offers extended to their U.S. holders. To be registered on Form F–7, the rights must be granted to U.S. shareholders on terms no less favorable than those extended to other shareholders. Form F–8 under the Securities Act (OMB

[614] 44 U.S.C. § 3501 *et seq.*

[615] Regulations S–K and S–B do not impose reporting burdens directly on public companies. For administrative convenience, each of these regulations is currently assigned one burden hour. The burden hours imposed by the disclosure regulations are currently included in the estimates for the forms that refer to the regulations.

Control Number 3235–0378) is used by large publicly traded Canadian foreign private issuers to register securities offerings in connection with business combinations and exchange offers. To be registered on Form F–8, the securities must be offered to U.S. shareholders on terms no less favorable than those extended to other holders. Form F–9 under the Securities Act (OMB Control Number 3235–0377) is used by large publicly traded Canadian foreign private issuers to register non-convertible investment grade securities. Form F–10 under the Securities Act (OMB Control Number 3235–0380) is used by large publicly traded Canadian foreign private issuers to register any securities offerings, except certain derivative securities. Unlike Forms F–7, F–8, F–9, and F–80, however, Form F–10 requires the Canadian issuer to reconcile its financial statements to U.S. GAAP. Form F–80 under the Securities Act (OMB Control Number 3235–0404) is used by large publicly traded Canadian foreign private issuers to register securities offerings in connection with business combinations and exchange offers. To be registered on Form F–80, the securities must be offered to U.S. holders on terms no less favorable than those extended to other holders. Schedule B under the Securities Act is used by Foreign governments or political subdivisions thereof to register securities offerings. Generally, it contains a description of the country and its government, the terms of the offering, and the uses of proceeds. Form S–8 under the Securities Act (OMB Control Number 3235–0066) is used by issuers to register securities for offer and sale to employees in a compensatory or incentive context. Form A under the Securities Act (OMB Control Number to be determined) would be used by issuers that are not eligible to use other forms to register offerings of securities. The form would set forth the transactional and company information required by the Commission in securities offerings. Form B under the Securities Act (OMB Control Number to be determined) would be used by issuers that have reported under the Exchange Act for a minimum of twelve months and that have public floats of at least $75 million and ADTVs of $1 million or public floats of at least $250 million (alternatively, issuers could use Form B if they sell securities exclusively to QIBs and certain existing shareholders or register non-convertible investment grade securities) to register offerings of securities. These issuers would be able to incorporate Exchange Act reports by reference without necessarily delivering them to investors, and would be able to craft transactional disclosure, subject to Section 11 liability standards and some itemized requirements, with fewer constraints than under the current Form S–3. Form C under the Securities Act (OMB Control Number to be determined) would be used by issuers to register securities offerings in connection with business combinations and exchange offers. The form would set forth the transactional and company information required by the Commission in securities offerings. Form SB–3 under the Securities Act (OMB Control Number to be determined) would be used by small business issuers, as defined in Rule 405 of the Securities Act, to register securities offerings in connection with business combinations and exchange offers. The form would set forth the transactional and company information required by the Commission in securities offerings. It would require less detailed information about the issuer's business than Form A.

Form 10 under the Exchange Act (OMB Control Number 3235–0064) is used by registrants to file classes of securities. It requires certain business and financial information about the issuer. Form 8–A under the Exchange Act (OMB Control Number 3235–0056) is an optional short form used by issuers to file classes of securities. Form 10–SB under the Exchange Act (OMB Control Number 3235–0419) is used by small business issuers, as defined in Rule 12b–2 of the Exchange Act, to file classes of securities. This form requires slightly less detailed information about the issuer's business than Form 10 requires. Form 20-F under the Exchange Act (OMB Control Number 3235–0288) is used by foreign private issuers to register securities or file annual reports. Form 40-F under the Exchange Act (OMB Control Number 3235–0381) is used by Canadian foreign private issuers to register securities or file annual reports. Form 18 under the Exchange Act (OMB Control Number 3235–0121) is used by foreign governments or political subdivisions thereof to register securities on a national securities exchange. Form 10–K under the Exchange Act (OMB Control Number 3235–0063) is used by registrants to file annual reports. It provides a comprehensive overview of the registrant's business. Form 10–KSB under the Exchange Act (OMB Control Number 3235–0420) is used by small business registrants, as defined in Rule 12b–2 of the Exchange Act, to file annual reports. It provides a comprehensive overview of the registrant's business, although its requirements call for slightly less detailed information than required by Form 10–K. Form 18–K under the Exchange Act (OMB Control Number 3235–0120) is used by foreign governments or political subdivisions thereof to file annual reports. Form 10–Q under the Exchange Act (OMB Control Number 3235–0070) is used by registrants to file quarterly reports. It includes unaudited financial statements and provides a continuing view of the registrant's financial position during the year. The report must be filed for each of the first three fiscal quarters of the registrant's fiscal year. Form 10–QSB under the Exchange Act (OMB Control Number 3235–0416) is used by small business registrants, as defined in Rule 12b–2 of the Exchange Act, to file quarterly reports. It includes unaudited financial statements and provides a continuing view of the registrant's financial position during the year. The report must be filed for each of the first three fiscal quarters of the registrant's fiscal year. Form 8–K under the Exchange Act (OMB Control Number 3235–0060) is used by registrants to report the occurrence of material events or corporate changes. Form 6–K under the Exchange Act (OMB Control Number 3235–0116) is used by foreign private issuers to report information: (i) Required to be made public in the country of its domicile; (ii) filed with and made public by a foreign stock exchange on which its securities are traded; or (iii) distributed to security holders. The report must be furnished promptly after such material is made public. Issuers would also file under Rule 425 of the Securities Act (OMB Control Number to be determined) written communications (other than required registration statements) about pending offerings.

In addition to affecting these collections of information, the proposed rules and amendments also could change issuers' recordkeeping of prospectus delivery to investors and impose a new burden of tracking their ''first offers'' in Form B offerings. Our preliminary view is that any additional recordkeeping burden resulting from our proposals for prospectus delivery would be minimal. To the extent that underwriters and issuers collect information to contact potential investors and collect information to send prospectuses and confirmations under the existing rules, we do not anticipate the proposals would impose a significant additional burden on underwriters and issuers. We request comment, however, on the accuracy of

this view. We also do not anticipate that requiring issuers to keep information provided to investors fifteen days before the first offer and any information used throughout the offering period would impose a significant burden on issuers. Issuers would only have to keep the information until they file it with us. Thus issuers might not have to keep it longer than the date of their first offer because they can file their registration statement with us at that time. The longest issuers would have to keep the information would be the length of the offering period, plus 15 days, since the latest they can file the registration statement is at first sale. We request comment and any supporting data on the burden that these requirements would impose on issuers and underwriters.

We anticipate that the proposed rules and amendments would lower the cost of raising capital in the public market for many issuers. For the purposes of the Paperwork Reduction Act, the table below summarizes our preliminary estimates of the burden hours that parties would spend to comply with the proposals. We base these estimates on current burden hour estimates and the staff's experience with these filings. The estimates in the table indicate that parties would expend approximately 9,106,343 burden hours/year to comply with the proposals. In addition, as discussed in more detail below, we estimate that parties would spend approximately $4,754,863,050/year on outside professional help to comply with the proposals. Note that these estimates do not attempt to quantify the proposals' intangible benefits, such as the benefits to issuers and investors of enhanced communications and the greater likelihood that issuers would shift capital raising from the private to the public market, nor its intangible costs, such as the cost to security holders of identifying misleading or incomplete pre-filing information. We request comment on the reasonableness of our estimates.

TABLE: BURDEN HOUR ESTIMATES

Form	Estimated burden hours/filing		Estimated filings/year		Estimated burden hours/year	
	Before revisions (A)	After revisions (B)	Before revisions (C)	After revisions (D)	Before revisions (E) = A*C	After revisions (F) = B*D
S–1	1,267	0	1,136	0	1,439,312	0
S–2	470	0	152	0	71,440	0
S–3	398	0	3,890	0	1,548,220	0
F–1	1,868	0	139	0	259,652	0
F–2	559	0	1	0	559	0
F–3	166	0	172	0	28,552	0
SB–1	710	178	8	8	5,680	1,424
SB–2	876	138	414	559	362,664	77,142
S–4	1,233	0	3,701	0	4,563,333	0
F–4	1,308	0	677	0	885,516	0
F–7	2	1	1	1	2	1
F–8	2	1	16	16	32	16
F–9	420	105	12	12	5,040	1,260
F–10	420	105	45	45	18,900	4,725
F–80	2	1	2	2	4	2
Schedule B	0	0	33	33	0	0
S–8	46	12	5,597	5,261	257,462	63,132
A	0	152	0	2,616	0	397,632
B	0	75	0	3,067	0	230,025
C	0	311	0	3,984	0	1,239,024
SB–3	0	280	0	394	0	110,320
10	95	24	124	124	11,780	2,976
8–A	7	7	2,293	0	15,363	0
10–SB	90	23	162	162	14,580	3,726
20–F	1,991	498	908	908	1,807,828	452,184
20–FR	95	24	99	99	9,405	2,376
40–F	1,991	498	121	121	240,911	60,258
40–FR	95	24	15	15	1,425	360
18	8	2	0	0	0	0
10–K	1,723	431	10,392	9,342	17,905,416	4,026,402
10–KSB	1,179	295	2,591	3,641	3,054,789	1,074,095
18–K	8	2	38	38	304	76
10–Q	144	36	29,551	26,401	4,255,344	950,436
10–QSB	131	33	7,521	10,671	985,251	352,143
8–K	5	5	27,519	69,087	137,595	345,435
6–K	8	8	10,582	11,000	84,656	88,000
Filings under Rule 425	0	0.25	0	10,628	0	2,657
Total					37,971,015	9,106,343

The Commission's experience indicates that allowing small companies to register offerings on Forms SB–1 and SB–2 reduces issuers' disclosure burden hours and cost. The proposed rules and amendments would therefore save time and money for 1,050 companies—companies that would become newly eligible to register offerings on Forms SB–1, SB–2, and SB–3 under the proposed rules and amendments.[616] Among those affected would be (1) non-

[616] *See* proposed revisions to Securities Act Rule 405.

reporting companies with revenues between $25 and $50 million that plan to register initial public offerings under the Securities Act or propose to register under the Exchange Act, (2) non-reporting companies with revenues under $25 million but public float over $25 million, because the public float test would be eliminated, and (3) reporting companies that would remain in the small business disclosure system longer than under the current system.

In fiscal year 1998, issuers registered eight offerings on Form SB–1. Given the limited use of this form, we do not expect any additional filings on this form under the proposed rules and amendments. Under the proposed rules, we estimate issuers would require 710 hours to file Form SB–1, the same as today.[617] Of the 710 hours, we estimate that 25% (178 internal burden hours) would be provided by corporate staff, and 75% (532 hours) by external professional help. In addition, we anticipate filers would spend, at an estimated $175/hour, approximately $93,100/filing in professional labor costs to file Form SB–1.[618] We request your comments and supporting empirical information on the reasonableness of these estimates.

In fiscal year 1998, issuers registered 414 offerings on Form SB–2. In addition to these filings, we expect an additional 143 filings/year, for a total of 559 filings/year, on Form SB–2 because more firms would be eligible to use Form SB–2 under the proposed rules and amendments.[619] Under the current rules, issuers expend approximately 876 hours to register securities on Form SB–2, which does not allow issuers to incorporate Exchange Act reports by reference. The proposed rules and amendments would allow seasoned issuers to incorporate Exchange Act reports by reference into Form SB–2 registration statements as long as they deliver the reports with prospectuses to investors. We anticipate this provision would save issuers time and money. We anticipate approximately 330 (59%) of the 559 filings/year would incorporate Exchange Act reports by reference under the proposed rules, whereas 229 (41%) would not.[620] Under the proposed rules, we estimate issuers would require 876 hours to file Form SB–2 if they cannot incorporate Exchange Act reports by reference under the proposals, and approximately 324 hours if they can.[621] On average, we estimate small business issuers would spend approximately 550 hours preparing Form SB–2 registration statements under the proposed rules than today. [622] Of the 550 hours, we estimate that 25% (138 internal burden hours) would be provided by corporate staff, and 75% (412 hours) by external professional help. We anticipate filers would spend, at an estimated $175/hour, approximately $72,100/filing in professional labor costs to file Form SB–2.[623] We request your comments and supporting empirical information on the reasonableness of these estimates.

The proposed rules would simplify larger seasoned issuers' preparation of Form B by allowing them greater flexibility to craft their transactional disclosure. In fiscal year 1998, approximately 4,824 issuers registered 4,062 offerings on Forms S–3 and F–3.[624] Based on the proposed rule's public float and ADTV tests, approximately 3,397 or 70% of these issuers would be eligible to register offerings on Form B under the proposed rules.[625] The remaining 1,427 or 30% of issuers would be required to register offerings on Form A. Based on relative representation, and the total offerings registered on Forms S–3 and F–3 in fiscal year 1998, we estimate issuers would register approximately 2,843 offerings on Form B and 1,219 offerings on Form A.[626] (We anticipate, however, that many Form A issuers would register at least some offerings on Form B by selling their securities exclusively to QIBs and certain existing shareholders, or selling non-convertible investment grade securities, and thus would achieve the savings associated with filing on Form B.) We estimate 224 additional secondary offerings would be filed on Form B under the proposals that currently are filed on Form S–8.[627] Thus, we anticipate 3,067 offerings would be filed on Form B under the proposals. We anticipate that these issuers would save burden hours and money from the simplification of Form B. We estimate that issuers would require 300 hours to register securities on Form B. Of the 300 hours, we estimate that 25% (75 internal burden

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[617] The numbers in Column B of the Table differ significantly from those in Column A of Table 2 because the estimated burden hours in Column A include the estimated corporate burden hours and outside labor hours that parties would require to file information statement. In Column B, we estimate only the corporate burden hours needed to file information statements (we estimate separately the expense, in dollar terms, of outside labor).

[618] We estimate filers would spend $93,100/filing in professional labor costs. We base this estimate on 532 hours of professional labor/Form SB–1 *$175/hour. In aggregate, we estimate that filers would spend $744,800/year to file 8 Form SB–1s/year.

[619] We base this estimate on the number of firms that would be eligible to register offerings on Form SB–2 under the proposals relative to the number of firms that are eligible to register offerings on Form SB–2 today, and on the number of SB–2 filings in fiscal year 1998. Specifically, we estimate the number of SB–2 filings under the proposals would be (4,087 firms eligible to register on Form SB–2 under the proposals/3,037 firms eligible to register on Form SB–2 today) *414 SB–2 filings/year today=559 SB–2 filings/year.

[620] We base this estimate on the number of repeat offerings registered on Form SB–2 today relative to the number of offerings registered on Form SB–2 today, and on the number of offerings we expect would be registered on Form SB–2 under the proposals. Specifically, we estimate the number of SB–2 filings/year that would incorporate Exchange Act reports by reference under the proposals would be (246 repeat offerings registered on Form SB–2 today/414 offerings registered on Form SB–2 today) *559 SB–2 filings/year under the proposals=330 SB–2 filings/year. We expect the remaining 229 offerings (559 SB–2 filings/year under the proposals −330 SB–2 filings/year that would incorporate Exchange Act reports by reference under the proposals) not to incorporate Exchange Act reports by reference.

[621] We base this estimate on the number of burden hours required today to file Form S–2 (which allows issuers to incorporate Exchange Act reports by reference, but requires them to deliver the reports to investors) relative to the number of burden hours required today to file Form S–1. We then reduce the number of burden hours we estimate issuers would require under the proposed rules to file Form SB–2 if they cannot incorporate Exchange Act information by reference by this ratio. Specifically, we estimate the number of hours required to file Form SB–2 under the proposed rules if an issuer cannot incorporate Exchange Act reports by reference would be (470 burden hours/S–2 filing today/1,267 burden hours/S–1 filing today) *876 burden hours/SB–2 filing under the proposals with no incorporation by reference=324 burden hours/SB–2 filing with incorporation by reference.

[622] We base this estimate on [(876 hours/SB–2 filing under the proposals with no incorporation by reference *229 SB–2 filings under the proposals with no incorporation by reference)+(324 hours/SB–2 filing under the proposals with incorporation by reference *330 SB–2 filings under the proposals with no incorporation by reference)]/559 SB–2 filings under the proposals=550 hours/SB–2 filing on average under the proposed rules. Today, SB–2 filings require 876 hours/filing or 326 more hours than under the proposed rules.

[623] We estimate filers would spend $72,100/filing in professional labor costs. We base this estimate on 412 hours of professional labor/Form SB–2 *$175/hour. In aggregate, we estimate that filers would spend $40,303,900/year to file 559 Form SB–2s/year.

[624] In fiscal year 1998, issuers registered 3,890 offerings on Form S–3 and 172 offerings on Form F–3.

[625] We estimate the percentage of firms that currently are eligible to use Forms S–3 and F–3 that would be eligible under the proposals to register offerings on Form B based on their public floats and ADTVs would be (3,397 firms that would be required to register offerings on Form B under the proposals/4,824 firms that would be eligible to register offerings on Forms S–3 and F–3 today)=70%.

[626] Specifically, 70% *4,062 offerings/year=2,843 offerings/year on Form B under the proposals and 30% *4,062 offerings/year=1,219 offerings/year on Form A.

[627] In a random sample of 50 offerings filed in 1996 and 1997 on Form S–8, we found 6% would no longer be eligible to file on Form S–8 under the proposals. Under the proposed rules and based on our sample, we would require 4% (224) of the 5,597 offerings filed on Form S–8 in fiscal year 1998 to file on Form B, 1% (56) to file on Form A with automatic effectiveness and incorporation by reference, and 1% (56) to file on Form A with no automatic effectiveness.

hours) would be provided by corporate staff, and 75% (225 hours) by external professional help. We anticipate filers would spend, at an estimated $175/hour, approximately $39,375/filing in professional labor costs to file Form B.cv[628] We request your comments and supporting empirical information on the reasonableness of these estimates.

The proposed rules and amendments also would simplify issuers' preparation of Form A prospectuses and reduce regulatory uncertainty. The proposals would allow certain Form A issuers' registration statements to go effective immediately if they are reporting companies for at least two years and have public floats of at least $75 million. We estimate approximately 1,960 Form A issuers would meet these criteria. The proposals would also allow Form A issuers to incorporate Exchange Act disclosure by reference in registration statements two years after becoming reporting issuers rather than after three years, as currently required. As discussed above, 2,526 companies that currently are required to register offerings on Forms S–1 and F–1 would become newly eligible to incorporate Exchange Act reports by reference. These firms would save burden hours and prospectus preparation costs when offering securities. Based on the number of offerings filed on Forms S–1, S–2, F–1, and F–2 in fiscal year 1998,[629] the proposed availability of Forms SB–1 and SB–2 to certain of these issuers,[630] the number of offerings by issuers that today would file on Forms S–3 and F–3 that would not be eligible for Form B, [631] and the number of offerings currently filed on Form S–8 that would be filed on Form A under the proposals,[632] we estimate issuers would file approximately 2,616 offerings/year on Form A.[633] We expect the 1,219 offerings/year that issuers registered in fiscal year 1998 on Forms S–3 and F–3 to incorporate Exchange Act reports by reference on Form A under the proposals. In addition, we expect approximately 978 of the 1,397 remaining filings on Form A to incorporate Exchange Act reports by reference each year.[634] Thus we expect issuers would incorporate Exchange Act reports by reference into 2,197 Form A offerings/year under the proposed rules. The remaining 419 offerings on Form A would not be eligible to incorporate Exchange Act reports by reference. We estimate issuers filing on Form A under the proposed rules and amendments would expend approximately 1,333 burden hours/filing if they cannot incorporate Exchange Act reports by reference,[635] and 471 burden hours if they can.[636] On average, we anticipate issuers would spend about 609 hours preparing Form A registration statements.[637] Of the 609 hours, we estimate that 25% (152 internal burden hours) would be provided by corporate staff, and 75% (457 hours) by external professional help. We anticipate filers would spend, at an estimated $175/hour, approximately $79,975/filing in professional labor costs to file Form B.[638] We request your comments and supporting empirical information on the reasonableness of these estimates.

The proposed rules and amendments would also create new Form C for business combinations and new Form SB–3 for small business issuer combinations. In fiscal year 1998, issuers registered 4,378 business combinations on Forms S–4 and F–4. Of these, we estimate issuers would register approximately 3,984 on Form C and 394 on Form SB–3 under the proposed rules.[639] We estimate issuers

[628] We estimate filers would spend $39,375/filing in professional labor costs. We base this estimate on 225 hours of professional labor/Form B* $175/hour. In aggregate, we estimate that filers would spend $120,763,125/year to file 3,067 Form Bs/year.

[629] Issuers registered 1,136 offerings on Form S–1, 152 offerings on Form S–2, 139 offerings on Form F–1, and one offering on Form F–2, for a total of 1,428 offerings in fiscal year 1998.

[630] Under the proposed rules, issuers would register these offerings on Form A, except for the 143 offerings we anticipate issuers would register on Form SB–2.

[631] We estimate 30% of the firms currently eligible to use Forms S–3 and F–3 would be required to register offerings on Form A based on their public floats and ADTVs. Specifically, the percentage would be (1,427 firms that would be required to register offerings on Form A under the proposals/4,824 firms that would be eligible to register offerings on Forms S–3 and F–3 today) = 30%. If we adjust the 4,062 offerings issuers registered on Forms S–3 and F–3 in fiscal year 1998 by this percentage, we estimate issuers would register approximately 1,219 of these offerings/year on Form A under the proposals.

[632] In a random sample of 50 offerings filed in 1996 and 1997 on Form S–8, we found 6% would no longer be eligible to file on Form S–8 under the proposals. Under the proposed rules and based on our sample, we would require 4% (224) of the 5,597 offerings filed on Form S–8 in fiscal year 1998 to file on Form B, 1% (56) to file on Form A with automatic effectiveness and incorporation by reference, and 1% (56) to file on Form A with no automatic effectiveness.

[633] Specifically, issuers would register on Form A under the proposed rules 1,428 offerings/year currently registered on Forms S–1, S–2, F–1, and F–2–143 offerings/year registered on Form SB–2 + 1,219 offerings/year currently registered on Form S–3 + 112 offerings/year currently registered on Form S–8 = 2,616 offerings/year.

[634] We base this conclusion on the number of firms that currently are required to register offerings on Forms S–1 and F–1 that would become newly eligible to incorporate Exchange Act reports by reference under the proposals relative to the number of firms that currently are required to register offerings on Forms S–1 and F–1. Specifically, the number of filings on Form A that would incorporate Exchange Act reports by reference each year would be (2,526 firms that would be eligible to incorporate Exchange Act reports by reference on Form A under the proposals/3,601 firms that currently are eligible to register offerings on Forms S–1 and F–1) *(2,616 offerings/year on Form A − 1,219 offerings/year on Form A that would incorporate Exchange Act reports by reference that are eligible to be registered on Form S–3 today) = 978 offerings/year (in addition to the 1,219 offerings/year on Form A that would incorporate Exchange Act reports by reference that are eligible to be registered on Form S–3 today).

[635] Both domestic and foreign issuers would be able to register offerings on Form A. Domestic issuers currently require 1,267 hours to complete Form S–1 (which does not allow issuers to incorporate Exchange Act reports by reference), whereas foreign issuers require 1,868 hours to complete Form F–1 (which also does not allow issuers to incorporate Exchange Act reports by reference). In fiscal year 1998, issuers registered 1,136 offerings on Form S–1 and 139 offerings on Form F–1. We estimate the number of hours that issuers would require to file Form A if they cannot incorporate Exchange Act reports by reference would be [(1,136 domestic Form A filings that previously would have been filed on Form S–1 *1,267 hours/domestic Form A filing that previously would have been filed on Form S–1) + (139 foreign Form A filings that previously would have been filed on Form F–1 *1,868 hours/foreign Form A filing that previously would have been filed on Form F–1)]/1,275 filings on Form A = 1,333 hours/filing.

[636] Both domestic and foreign issuers would be able to register offerings on Form A. Domestic issuers currently require 470 hours to complete Form S–2 (which allows issuers to incorporate Exchange Act reports by reference), whereas foreign issuers require 559 hours to complete Form F–2 (which allows issuers to incorporate Exchange Act reports by reference). In fiscal year 1998, issuers registered 152 offerings on Form S–2 and one offering on Form F–2. We therefore estimate the number of hours that issuers would require to file Form A if they can incorporate Exchange Act reports by reference would be 471 hours/filing.

[637] As discussed above, we anticipate issuers would register 419 offerings/year on Form A where Exchange Act reports would not be incorporated by reference and 2,197 offerings/year on Form A where Exchange Act reports would be incorporated by reference. The average hours to file Form A would be approximately 1,333 hours if they cannot incorporate Exchange Act reports by reference and 471 hours if they can incorporate Exchange Act reports by reference. On average we expect the number of hours issuers would expend to file Form A would be [(419 offerings/year on Form A where Exchange Act reports would not be incorporated by reference * 1,333 hours if they cannot incorporate Exchange Act reports by reference) + (2,197 offerings/year on Form A where Exchange Act reports would be incorporated by reference * 471 hours if they can incorporate Exchange Act reports by reference)]/2,616 offerings/year on Form A = 609 hours/filing.

[638] We estimate filers would spend $79,975/filing in professional labor costs. We base this estimate on 457 hours of professional labor/Form A * $175/hour. In aggregate, we estimate that filers would spend $209,214,600/year to file 2,616 Form As/year.

[639] Issuers registered 3,701 offerings on Form S–4 in fiscal year 1998 and 677 offerings on Form F–4, for a total of 4,378 business combinations. Based on the number of offerings we expect issuers would register on Forms SB–1 and SB–2 under the proposals relative to the number of offerings registered on Forms SB–1, SB–2, A, and B, and the number of business combinations in fiscal year 1998, we estimate the number of SB–3 filings

Continued

would expend approximately 1,245 hours to complete Form C under the proposed rules and amendments.[640] Of the 1,245 hours, we estimate that 25% (311 internal burden hours) would be provided by corporate staff, and 75% (934 hours) by external professional help. We anticipate filers would spend, at an estimated $175/hour, approximately $163,450/filing in professional labor costs to file Form C.[641] We estimate small business issuers would expend approximately 1,121 hours to file business combinations on Form SB–3.[642] Of the 1,121 hours, we estimate that 25% (280 internal burden hours) would be provided by corporate staff, and 75% (841 hours) by external professional help. We anticipate filers would spend, at an estimated $175/hour, approximately $147,175/filing in professional labor costs to file Form B.[643] We request your comments and supporting empirical information on the reasonableness of these estimates.

The proposals also would relax many of the restrictions on communications between issuers and investors and clarify any remaining limitations. Issuers would be able to more freely promote securities to investors, subject to the provisions of Section 12(a)(2) under the Securities Act and the antifraud provisions of the Securities and the Exchange Acts.[644] Specifically, the proposed rules and amendments would allow all issuers to communicate freely with investors after a registration statement was filed.[645] During the pre-filing period, issuers of offerings registered on Forms A, SB–1, and SB–2 and unregistered offerings would be somewhat limited in their ability to communicate with investors, but the proposed rules would clearly define the length of the period and would delineate the types of communications permitted and prohibited.[646] The Commission would permit larger seasoned issuers and other issuers making particular kinds of offerings on Form B to communicate with investors both before and after registration statements are filed.[647] Proposed Rule 425 would require issuers to file written communications (in addition to required registration statements) about pending offerings. The rule, which would have few specific information requirements, would require issuers to attach their written communications and include a prominent legend advising investors to read the registration statement. The Commission recognizes that companies would incur costs from filing sales literature used in public offerings. We estimate that a firm's corporate staff would expend approximately 15 burden minutes (0.25 internal burden hours) to file a written communication under the proposed rule.[648] Not all issuers would use sales literature in offerings, especially those that occur quickly. In other offerings, however, issuers might communicate with investors using sales literature. Preliminarily, we estimate issuers would file, on average, one written communication (besides the required registration) for each offering. Thus, we anticipate issuers would register approximately 10,628 offerings on Forms A, B, C, SB–1, SB–2, and SB–3 per year. We estimate issuers would expend approximately 2,657 burden hours to file written communications under Rule 425. We request your comments and supporting empirical information on the reasonableness of these estimates.

We anticipate that the proposed rules and amendments would streamline and simplify issuers' filing of Exchange Act reports in two ways. First, the Commission would allow issuers to simultaneously register an offering under the Securities Act and a class of securities under the Exchange Act by checking a box on their Securities Act registration statements.[649] This change would not result in any loss of information to investors because the Securities Act registration forms would include any Exchange Act registration information currently not required by the Securities Act registration requirements. The revision, however, would reduce the number of issuer filings. As indicated in the Table, we anticipate that issuers would no longer need to file approximately 2,293 Form 8–As/year, saving approximately 7 burden hours/filing. Second, the proposed rules and amendments would reduce uncertainty regarding staff review of Exchange Act reports through notification of review and pre-review.

These proposed new rules and amendments, however, would enhance and expedite some of the disclosure required in Exchange Act reports filed by reporting companies. These revisions could increase issuers' cost of disclosure. To help assess the costs, we asked representatives of the American Society of Corporate Secretaries (ASCS), two issuers, one accounting firm, and two law firms to assess the impact of the proposed rule changes. These parties did not anticipate substantial increases in registrant costs if the Commission required reporting companies to file summary financial information on Form 8–K within 30 days after quarter-end and 45 days after fiscal year-end.[650] They reported that most firms release earnings information before quarter end and hence the requirement would codify and unify financial reporting

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issuers would file under the proposals would be (567 offerings registered on Forms SB–1 and SB–2 under the proposals / 6,250 offerings registered in fiscal year 1998) * 4,378 filings/year under the proposals = 394 SB–3 filings/year. The remaining 3,984 business combinations (4,378 filings/year—394 SB–3 filings/year) would be filed on Form C.

[640] Both domestic and foreign issuers would be required to register business combinations on Form C. Domestic issuers currently require 1,233 hours to complete Form S–4, whereas foreign issuers require 1,308 hours to complete Form F–4. In fiscal year 1998, issuers registered 3,701 business combinations on Form S–4 and 677 business combinations on Form F–4. We estimate the number of burden hours that issuers would require to file Form C would be [(3,701 Form C filings that previously would have been filed on Form S–4 * 1,233 hours/Form C filing that previously would have been filed on Form S–4) + (677 Form C filings that previously would have been filed on Form F–4 * 1,308 hours/Form C filing that previously would have been filed on Form F–4)]/4,378 filings on Form C = 1,245 hours/filing on Form C.

[641] We estimate filers would spend $163,450/filing in professional labor costs. We base this estimate on 934 hours of professional labor/Form C * $175/hour. In aggregate, we estimate that filers would spend $651,184,800/year to file 3,984 Form Cs/year.

[642] We base this estimate on the number of hours required to file Form SB–2 under the proposals relative to the number of hours required to file Form A. We then reduce the number of hours required today to file Form C by this ratio. Specifically, we estimate the number of hours required to file Form SB–3 under the proposed rules would be [(550 hours/SB–2 filing under the proposals / 609 hours/Form A filing under the proposals) * 1,245 hours/Form C filing under the proposals = 1,121 hours/SB–3 filing.

[643] We estimate filers would spend $147,175/filing in professional labor costs. We base this estimate on 841 hours of professional labor/Form A* $175/hour. In aggregate, we estimate that filers would spend $57,986,950/year to file 394 Form As/year.

[644] Under the proposals, Form B offering information would be subject to liability under Section 11 of the Securities Act.

[645] *See* proposed Securities Act Rule 165, 17 CFR 230.165.

[646] *See* proposed Securities Act Rules 167, 168, and 169, 17 CFR 230.167, 230.168, and 230.169.

[647] *See* proposed Securities Act Rule 166, 17 CFR 230.166.

[648] We base this estimate on the burden imposed by a similar filing requirement under Item 901(c) of Regulation S–K for roll-up transactions.

[649] *See* proposed Securities Act Rule 499, 17 CFR 230.499, for Schedule B filers and proposed revisions to Exchange Act Rule 12d1–2, 17 CFR 240.12d1–2.

[650] In a 1998 survey of its members, the ASCS found that although only 10% of respondents file Form 8–K with quarterly financial information, over 99% issue quarterly press releases. Of those, approximately 90% issue a press release within 30 days after quarter-end. The results of the survey indicate that 38% of respondents issue a summary or complete balance sheet, 46% issue a summary or complete income statement, 24% issue a summary or complete cash flow statement, 69% issue information on revenues or sales (including those that issued an income statement), 80% issue earnings (including those that issued an income statement), and 12% issue segment financial information.

practice. We estimate registrants would file 4 additional Form 8–Ks/year. If each Form 8–K filing requires a registrant to expend 5 burden hours, companies would expend approximately 20 additional burden hours/year.[651] We request comment on the reasonableness of this estimate.

The proposed rules and amendments would also reduce the Form 8–K filing period from 15 to 5 days, affecting only announcements of:

- Changes in control;
- Acquisitions or dispositions of assets;
- Bankruptcies or receiverships; and
- Changes of fiscal year.

The parties we contacted did not anticipate reducing the Form 8–K filing period for these events would substantially increase registrants' costs. They indicated that registrants typically issue press releases when these events occur, and thus would be able to file announcements on Form 8–K within 5 days at little additional cost. We request comment on the feasibility and cost of accelerating the filing deadline of Form 8–K for these events.

The proposed rules and amendments would also reduce the Form 8–K filing period from 5 to 1 days for announcements of:

- Independent accountant resignations;
- Director resignations; and
- Material defaults, dividend arrearages, and delinquencies.

The Commission does not anticipate that reducing the Form 8–K filing period for these events would substantially increase registrants' costs, and believes the benefits to investors would outweigh the costs to registrants. We request comment, however, on the validity of this view.

The proposed rules and amendments would require additional events required to be reported on Form 8–K, including:

- Material modifications to rights of security holders;
- Departures of CEO, CFO, COO or president (or persons in equivalent positions);
- Material default on senior securities (must be disclosed no later than one day following default);
- Notice that reliance on prior audit is no longer permissible, or that auditor will not consent to use of its report in a Securities Act filing;[652] and
- Change in company name.

As with the reduction in the Form 8–K filing period, the Commission anticipates the cost of these revisions to be low. After (or, in some cases, before) these events occur, registrants are likely to issue press releases and file a Form 8–K based on their more general obligation to release information about material events.[653] And most of these events are likely to be expected and thus issuers should be able to anticipate the need to file. We request your comments, including any supporting empirical information, on the costs that would be incurred by companies under the proposed revisions. We also view the proposed changes to Form 6–K as imposing little additional burden on foreign private issuers. In many instances, the firms that the Commission would ask to file a Form 6–K already are required to file similar information in their home countries. The proposed filings would also be voluntary, rather than required. We request comment on the burden of these revisions, along with the signature requirement, on foreign private issuers.

We propose to treat the information in Part I of Forms 10–Q and 10–QSB as ''filed'' for purposes of Section 18 under the Exchange Act. Although the revision would increase the liability associated with the financial information in Forms 10–Q and 10–QSB, we do not believe it would significantly increase registrants' costs. The reporting systems that generate this financial information also generate the financial information contained in Forms 10–K and 10–KSB, which currently is subject to liability under Section 18. We therefore do not anticipate that registrants would need to undertake substantial investments to generate information in quarterly reports that can withstand the heightened standard of liability. We request comment on this view.

Another proposed rule would require registrants to disclose risk factors in Forms 10–K and 10–KSB and to update them quarterly in Forms 10–Q and 10–QSB.[654] Again the Commission does not anticipate that the rule would impose a substantial burden on reporting companies. The Commission already requires issuers to disclose risk factors in most Securities Act registration statements. Thus the proposed revisions would require firms that recently have raised capital just to update previously disclosed risk factors. In a 1998 ASCS survey of its members, only 20% of respondents indicated that the costs of disclosing risk factors would be significant, 54% estimated modest cost increases, and 26% estimated no cost increase. Of those respondents estimating costs to be significant, 19% believed the impact would be short term, rather than on-going. To reflect this cost, we added one hour to the estimates for Forms 10–K, 10–KSB, 10–Q, and 10–QSB.[655] On average, we anticipate issuers would spend about 1,724 hours preparing Form 10–K.[656] Of the 1,724 hours, we estimate that 25% (431 internal burden hours) would be provided by corporate staff, and 75% (1,293 hours) by external professional help. We anticipate filers would spend, at an estimated $175/hour, approximately $226,275/filing in professional labor costs to file Form 10–K.[657] We request your comments and supporting empirical information on the reasonableness of these estimates. Finally, the Commission is proposing to require that all persons who sign a firm's registration statements filed under the Securities Act and reports filed under the Exchange Act certify they have read the filing and do not know of any material misstatement or omissions of information in the filings.[658] The proposals would also

[651] The parties consulted generally indicated that Form 8–K filings are prepared by corporate counsel.

[652] *See* 17 CFR 228.304 and 17 CFR 229.304.

[653] *See, e.g.*, the comment letter on the Concept Release, File No. S7–19–96, submitted by the American Bar Ass'n. (Dec. 11, 1996).

[654] The proposed revisions would also require issuers to disclose risk factors in Forms 10, 10–SB, 18, 20–F, and 18–K.

[655] We also added a burden hour to our estimates for Forms 10, 10–SB, 18, 20–F, and 18–K.

[656] As discussed above, we anticipate issuers would register 419 offerings/year on Form A where Exchange Act reports would not be incorporated by reference and 2,197 offerings/year on Form A where Exchange Act reports would be incorporated by reference. The average hours to file Form A would be approximately 1,333 hours if they cannot incorporate Exchange Act reports by reference and 471 hours if they can incorporate Exchange Act reports by reference. On average we expect the number of hours issuers would expend to file Form A would be [(419 offerings/year on Form A where Exchange Act reports would not be incorporated by reference * 1,333 hours if they cannot incorporate Exchange Act reports by reference) + (2,197 offerings/year on Form A where Exchange Act reports would be incorporated by reference * 471 hours if they can incorporate Exchange Act reports by reference)]/2,616 offerings/year on Form A = 609 hours/filing.

[657] We estimate filers would spend $226,275/filing in professional labor costs. We base this estimate on 1,293 hours of professional labor/Form 10–K* $175/hour. In aggregate, we estimate that filers would spend $2,113,861,050/year to file 9,342 Form 10–Ks/year. In fiscal year 1998, registrants filed 10,392 Form 10–Ks and 2,591 Form 10–KSBs. Under the proposals 1,050 companies that currently file their annual report on Form 10–K would be eligible to file on Form 10–KSB. Thus we anticipate registrants would file 9,342 Form 10–Ks and 3,641 Form 10–KSBs. In fiscal year 1998, registrants filed 29,551 Form 10–Qs and 7,521 Form 10–QSBs. Under the proposals 1,050 companies that currently file their quarterly reports on Form 10–Q would be eligible to file on Form 10–QSB. Thus we anticipate registrants would file 26,401 Form 10–Qs [29,551 Form 10–Qs today—(3 quarterly reports on Form 10–QSB/year * 1,050 companies)], and 10,671 Form 10–QSBs [7,521 Form 10–QSBs today + (3 quarterly reports on Form 10–QSB/year * 1,050 companies)].

[658] The proposed revisions would affect Forms A, B, C, SB–1, SB–2, and SB–3 under the Securities

Continued

expand the number of persons required to sign forms to include the registrant, the registrant's principal executive officer, principal financial officer, principal accounting officer, and at least a majority of the registrant's board.[659] The cost to registrants of these proposals would be the cost associated with having managers and board members spend additional time reading documents so that they can affirm having read them. Given the involvement of most firms' senior managers in the reporting process, we do not anticipate significant additional cost to registrants from these proposals. We request comment, however, on this view.

In accordance with 44 U.S.C. § 3506c(2)(B), we solicit comment on the following:

- Whether the proposed changes in each collection of information are necessary for the proper performance of the function of the agency;
- The accuracy of our estimate of the burden of the proposed changes to each collection of information;
- The quality, utility, and clarity of the information to be collected; and
- Whether there are ways to minimize the burden of any of the collections of information on those who are required to respond, including through the use of automated collection techniques or other forms of information technology.

Anyone desiring to submit comments on any or all of the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, with reference to File No. S7–30–98. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

XVII. General Request for Comments

Given the scope and significance of this proposal, the Commission is particularly eager to receive your comments. We solicit comment, both specific and general, upon each component of the proposal. We believe your comments will be very important in determining the course these proposals will take. The Commission therefore intends to review with great care all comments received.

We also solicit comment on whether issuers would take advantage of some of the flexibility in registration or communication provided in the proposal to engage in fraudulent activities. If so, what elements of the proposal could be open to such abuse? How can we avoid abuse and continue to ensure investor protection, for example, in the proposals for automatic effectiveness and free communications, while at the same time provide issuers with timing certainty and allow market participants to take fuller advantage of today's technology?

We believe our proposals would provide additional benefits for smaller companies (*e.g.*, simpler and more flexible registration process, elimination of restrictions on post-filing communications and relaxed integration rules). We also believe that our proposals balance these benefits with enhanced protection for investors (*e.g.*, earlier prospectus delivery, filing of free writing prospectuses). We solicit comment on the impact that our proposals may have on microcap companies and microcap fraud. Should we exclude microcap companies from some of our proposals as a precautionary measure against microcap fraud? If so, which proposals? By excluding microcap companies from certain proposals would we be providing a competitive advantage to their non-microcap competitors? Rather than excluding microcap companies, should we provide for enhanced monitoring of microcap companies?

We encourage your comments on whether and how our proposal would affect the secondary trading markets for securities. How would our proposal affect public investors, broker-dealers and the companies whose securities are traded in the secondary markets? Our proposed changes to the Exchange Act disclosure system would enhance and speed corporate information to the marketplace, would add Commission resources to oversight of the secondary markets and should provide valuable benefits to investors. Besides the proposed Exchange Act reporting changes, our proposal relates primarily to the securities offering process, rather than secondary trading. Would these proposed changes adversely affect participants in secondary trading? Would investor protection in secondary market transactions be affected by our proposed changes? If so, how?

Any interested person wishing to submit written comments on any aspect of the proposals, as well as on other matters that might have an impact on the proposals, is requested to do so. In addition, the Commission requests comment on whether any further changes to the Commission's rules and forms are necessary or appropriate to implement the objectives of the proposals. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and should refer to file number S7–30–98.

XVIII. Statutory Bases

The proposed new rules, forms and amendments to the Commission existing rules and forms are being proposed pursuant to Sections 2(b), 6, 7, 8, 10, 19(a) and 28 of the Securities Act of 1933 as amended and Sections 3, 4, 10, 12, 15, 23 and 36 of the Securities Exchange Act of 1934.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegation (Government agencies).

17 CFR Part 202

Administrative practice and procedure, Securities.

17 CFR Part 210

Accountants, Accounting.

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small business.

17 CFR Parts 229, 239 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Advertising, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

Act and Forms 10–K, 10–KSB, 10–Q, 10–QSB, 10, 8–A, 10–SB, 20–F, 40–F, 18, 8–K, and 6–K under the Exchange Act. We also are proposing to require registrants to disclose their email address and web site on all registration statements and Exchange Act reports. We do not anticipate any additional burden from these requirements.

[659] Foreign private issuers also would need to have an authorized representative in the United States sign. The proposed revisions would affect Forms A, B, C, SB–1, SB–2, and SB–3 under the Securities Act and Forms 10–K, 10–KSB, 10–Q, 10–QSB, 10, 8–A, 10–SB, 20–F, 40–F, and 18 under the Exchange Act. For Forms 8–K and 6–K, we would require either the registrant's principal executive officer, principal financial officer or principal accounting officer to sign a particular Exchange Act report and certify he or she provided a copy to board members.

Text of Proposed Amendments

In accordance with the foregoing, the Securities and Exchange Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

The authority citation for part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

* * * * *

§ 200.30–1 [Amended]

2. By removing paragraph (a)(4) in § 200.30–1 and by redesignating paragraphs (a)(5), (a)(6), (a)(7) and (a)(8) as paragraphs (a)(4), (a)(5), (a)(6) and (a)(7).

PART 202—INFORMAL AND OTHER PROCEDURES

3. The authority citation for part 202 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78*ll*(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, and 80b–11, unless otherwise noted.

* * * * *

4. By revising the seventh sentence of the introductory text of § 202.3a to read as follows:

§ 202.3a Instructions for filing fees.

* * * Filing fees paid pursuant to Section 6(b) of the Securities Act of 1933 (15 U.S.C. 77a *et. seq*.) or pursuant to Section 307(b) of the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et. seq*.) should be designated as ''restricted,'' except that filing fees paid with respect to registration statements filed in accordance with Form SB–1, SB–2 and SB–3 (§§ 239.9, 239.10 and 239.11 of this chapter) or pursuant to §§ 230.462(b), 230.462(e) and 230.462(f) of this chapter should be designated as ''unrestricted.'' * * *

* * * * *

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

5. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77aa(25), 77aa(26), 78j–1, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), unless otherwise noted.

§ 210.3–14 [Amended]

6. By amending the Note following paragraph (a)(1) of § 210.3–14 by removing the words ''Item 15 of Form S–11'' and adding, in their place the words ''Item 1107(b) of Regulation S–K (§ 229.1107(b) of this chapter)''.

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

7. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

8. By amending § 228.10 by removing paragraph (b)(4); and revising paragraph (a) to read as follows:

§ 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 company that meets all of the following criteria:

(i) Has revenues (including revenues of any consolidated subsidiaries) of less than $50,000,000;

(ii) Is a U.S. or Canadian issuer;

(iii) Is not an investment company;

(iv) If a majority-owned subsidiary, the parent corporation is also a small business issuer; and

(v) Each majority-owned subsidiary of the company, if any, meets the criteria of paragraphs (a)(1)(ii) and (a)(1)(iii) of this section.

(2) *Entering and exiting the small business disclosure system.* (i) A company that meets the definition of small business issuer may use Form SB–1, SB–2 or SB–3 (§§ 239.9, 239.10 and 239.11 of this chapter), whichever is appropriate, for registration of its securities under the Securities Act; Form 10–SB (§ 249.210b of this chapter) for registration of its securities under the Exchange Act; and Forms 10–KSB and 10–QSB (§§ 249.310b and 249.308b of this chapter) 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 or a registration statement under the Exchange Act, the determination as to whether the company is a small business issuer is made with reference to its revenues during its last fiscal year.

(iii) Once a small business issuer becomes a reporting company, it will remain a small business issuer until it exceeds the revenue limit at the end of two consecutive years (or until it fails to meet one of the other criteria in the small business issuer definition).

(iv) A reporting company that is not a small business issuer 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.

(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 Exchange Act reports relating to the remainder of that fiscal year. The determination made for a reporting company at the end of its fiscal year governs all Exchange Act reports relating to the next fiscal year. An issuer may not change from one category to another with respect to reports under the Exchange Act for a single fiscal year. A small business issuer may, however, choose not to use Form SB–1 or SB–2 (§ 239.9 or § 239.10 of this chapter) for registration under the Securities Act.

(vi) Notwithstanding paragraph (a)(2)(v) of this section, a company that is a reporting company as of _____ [insert effective date of the final rule] may determine at any time between _____ [insert effective date of the final rule] and _____ [insert date one year after effective date of the final rule] to begin reporting under the Exchange Act on the forms available only to small business issuers if it satisfies the small business issuer definition through having revenues of less than $50 million in each of its last two fiscal years and satisfying the other criteria in paragraph (a)(1) of this section.

* * * * *

9. By amending § 228.304 by revising the introductory text of paragraph (a)(1), paragraphs (a)(1)(i), (a)(1)(iii), (a)(1)(iv)(A), (a)(1)(iv)(B) introductory text, (a)(1)(iv)(B)(*2*), (a)(1)(iv)(B)(*3*), (a)(1)(iv)(D) and (a)(1)(iv)(E); and by adding a sentence at the end of paragraph (a)(3) to read as follows:

§ 228.304 (Item 304) Changes in and disagreements with accountants on accounting and financial disclosure.

(a)(1) The disclosure described below is required if the small business issuer, during its two most recent fiscal years or any subsequent interim period, dismissed its principal independent accountant or a significant subsidiary dismissed its independent accountant on whom the small business issuer's principal accountant expressed reliance in its report. The disclosure also is required if, during that time, any of those accountants: resigned; declined to stand for re-election after the current audit; notified the registrant or a significant subsidiary that reliance on the accountant's prior audit report is no longer permissible; or notified the registrant or a significant subsidiary that it will not consent to the use of the accountant's prior audit report in a filing with the Commission. State:

(i) Which of the actions described in paragraph (a)(1) of this section occurred and when;

* * * * *

(iii) If a change in accountants resulted, whether the decision to change accountants was recommended or approved by the board of directors or a committee thereof; and

(iv)(A) Whether, during the small business issuer's two fiscal years and any subsequent interim period immediately preceding the date of the action described in paragraph (a)(1) of this section, there were disagreements with the accountant, whether or not resolved to the accountant's satisfaction, on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure;

(B) The following information, if applicable. Indicate whether the accountant advised the small business issuer that:

* * * * *

(*2*) Information has come to the attention of the accountant that 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 its audit should be expanded significantly, or that 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

* * * * *

(D) Whether the board of directors or any committee thereof discussed the subject matter of each such disagreement with the accountant;

(E) If a change in accountants resulted, 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 such disagreement. If not, describe the nature of any limitation on responses and the reason for that limitation.

* * * * *

(3) * * * If the former accountant declines to furnish the registrant with a letter addressed to the Commission stating whether the accountant agrees with the statements made by the registrant in response to this Item 304(a), so state.

* * * * *

10. By amending § 228.512 by removing the words ''Form S–3 or S–8 (§§ 239.13 or 239.16b of this chapter)'' from the Note to paragraph (a)(1) and adding in their place the words ''Form B or S–8 (§§ 239.5 or 239.16b of this chapter)''; and by adding paragraphs (g), (h) and (i) to read as follows:

§ 228.512 (Item 512) Undertakings.

* * * * *

(g) *Registration on Form SB–3 of securities offered for resale.* Include the following if the securities are being registered on Form SB–3 (§ 239.11 of this chapter) in connection with a transaction specified in paragraph (a) of § 230.145 of this chapter:

(1) Before a public reoffering of securities registered on this Form by any person who is considered an underwriter within the meaning of § 230.145(c) of this chapter through use of a prospectus that is a part of this registration statement, [Name of registrant] will ensure that the reoffering prospectus contains all the information called for by the Form concerning the reoffering by the underwriter(s) (in addition to the information required by other items of the Form).

(2) [Name of registrant] will file as part of an amendment to the registration statement any prospectus that is filed under paragraph (g)(1) of this Item or purports to meet the requirements of Section 10(a)(3) of the Securities Act (15 U.S.C. 77j(a)(3)) and is used in connection with an offering of securities subject to § 230.415 of this chapter. We will not use such prospectus until the amendment containing the prospectus is effective. For purposes of determining any liability under the Securities Act of 1933 (15 U.S.C. 77a *et. seq.*), we acknowledge that each amendment will be considered a new registration statement relating to the securities being offered, and the offering of those securities at that time will be considered the initial bona fide offering of those securities.

(h) *Delayed payment of registration fee.* A small business issuer relying on § 230.456 of this chapter to delay paying the registration fee, must include the following undertaking:

[Name of registrant] will pay the required registration fee no later than the earlier of:

(1) The date on which we request that the Commission grant effectiveness of this registration statement under Section 8(a) of the Act (15 U.S.C. 77h(a)); or

(2) The date on which we file an amendment to the registration statement that contains the statement set forth in § 230.473(b).

(i) *Registration on Form SB–1, SB–2 or SB–3.* If the securities are being registered on Form SB–1 (§ 239.9 of this chapter), Form SB–2 (§ 239.10 of this chapter) or on Form SB–3 (§ 239.11 of this chapter) include the following:

The registrant will file with the Commission, on or before the date of first use, all free writing materials used in connection with the securities registered on this registration statement after effectiveness and before the offering is completed.

11. By amending § 228.601 by removing from paragraph (b)(1) the words ''Form S–3 (§ 239.13)'' and adding, in their place, the words ''Form B (§ 239.5)''; by removing from paragraph (b)(10)(ii)(B)(*5*) the words '', or registering debt or non-voting preferred stock on Form S–2 (§ 239.12)''; by removing from Note 2 to paragraph (c)(1)(ii) the words ''Form S–3 (§ 239.13 of this chapter)'' and adding, in their place, the words ''Form B (§ 239.5 of this chapter)''; by removing from Note 1 to paragraph (c)(1) the words ''Form S–2 (§ 239.12 of this chapter), Form S–3 (§ 239.13 of this chapter)'' and adding, in their place, the words ''Items 11 and 12 of Form SB–2 (§ 239.10 of this chapter), Form B (§ 239.5 of this chapter)''; by removing from the introductory text of paragraph (c)(3) the words ''Form S–1 (§ 239.11 of this chapter)'' and adding, in their place, the words ''Form A (§ 239.4 of this chapter)''; and by revising the exhibit table to read as follows:

§ 228.601 (Item 601) Exhibits.

* * * * *

EXHIBIT TABLE

	Securities Act forms				Exchange Act forms			
	B	SB–2	SB–3	S–8	10–SB	8–K	10–QSB	10–KSB
(1) Underwriting agreement	X	X	X	.....	.....	X	.....	.....
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X	.....	X	X	X	X
(3) (i) Articles of Incorporation	.....	X	X	.....	X	.....	X	X
(ii) By-Laws	.....	X	X	.....	X	.....	X	X
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X	X	X	.....	.....	.....	.....
(6) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) [Removed and reserved]	.....	.....	.....	.....	.....	.....	.....	.....
(8) Opinion re tax matters	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
(12) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(13) Annual or quarterly reports, Form 10–Q [1]	.....	X	X	.....	.....	.....	.....	X
(14) [Removed and reserved]	.....	.....	.....	.....	.....	.....	.....	.....
(15) Letter re unaudited interim financial information	X	X	X	X	.....	.....	X	.....
(16) Letter re change in certifying accountant [3]	.....	X	X	.....	X	X	.....	X
(17) Letter re director resignation	.....	.....	.....	.....	.....	X	.....	.....
(18) Letter re change in accounting principles	.....	.....	.....	.....	.....	.....	X	X
(19) Report furnished to security holders	.....	.....	.....	.....	.....	.....	X	.....
(20) Other documents or statements to security holders	.....	.....	.....	.....	.....	X	.....	.....
(21) Subsidiaries of the registrant	.....	X	X	.....	X	.....	.....	X
(22) Published report regarding matters submitted to vote of security holders	.....	.....	.....	.....	.....	.....	X	X
(23) Consents of experts and counsel	X	X	X	X	.....	[2] X	[2] X	[2] X
(24) Power of attorney	X	X	X	X	X	X	X	X
(25) Statement of eligibility of trustee	X	X	X	.....	.....	.....	.....	.....
(26) Invitation for competitive bids	X	X	X	.....	.....	.....	.....	.....
(27) Financial Data Schedule [4]	X	X	X	.....	X	X	X	X
(28) [Removed and reserved]	.....	.....	.....	.....	.....	.....	.....	.....
(29) Underwriter Concurrence with Effective Date	X	.....	.....	.....	.....	.....	.....	.....
[Reserved (30) through (98)]	.....	.....	.....	.....	.....	.....	.....	.....
(99) Additional Exhibits	X	X	X	X	X	X	X	X

[1] 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.
[2] Where the opinion of the expert counsel has been incorporated by reference into a previously filed Securities Act registration statement.
[3] If required under Item 304 of Regulation S–K.
[4] Financial Data Schedules must be filed by electronic filers only. Such Schedule must be filed only when a filing includes annual and/or interim financial statement that have not been previously included in a filing with the Commission. See Item 601(c) of Regulation S–B.

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

12. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

§ 229.10 [Amended]

13. By amending § 229.10 by removing in paragraph (c)(1)(iii) the words ''Form S–3 (§ 239.13 of this chapter)'' and adding, in their place, the words ''Form B (§ 239.5 of this chapter)''.

§ 229.101 [Amended]

14. By amending § 229.101 by removing in paragraph (a)(2)(i) the words ''Form S–1 (§ 239.11 of this chapter)'' and adding, in their place, the words ''Form A (§ 239.4 of this chapter)'', and by removing in paragraph (a)(2)(iii)(B)(1) the words ''Form S–1'' and adding, in their place, the words ''Form A''.

§ 229.102 [Amended]

15. By amending § 229.102 by removing the words ''Office of Engineering'' in Instruction 4. to Instructions to Item 102 and adding, in their place, ''Office of Natural Resources''.

§ 229.201 [Amended]

16. By amending § 229.201 by removing in paragraph (a)(2) the words ''Form S–1 (§ 239.11 of this chapter)'' and adding, in their place, the words ''Form A (§ 239.4 of this chapter)''.

17. By amending § 229.304 by revising the introductory text of paragraph (a)(1), paragraph (a)(1)(i), the introductory text of paragraph (a)(1)(iii), paragraph (a)(1)(iv), the first sentence of the introductory text of paragraph (a)(1)(v), paragraph (a)(1)(v)(C)(*2*), paragraph (a)(1)(v)(D)(*2*); and by adding a sentence at the end of paragraph (a)(3) to read as follows:

§ 229.304 (Item 304) Changes in and disagreements with accountants on accounting and financial disclosure.

(a)(1) The disclosure described below is required if the registrant, during its two most recent fiscal years or any subsequent interim period, dismissed its

principal independent accountant or a significant subsidiary dismissed its independent accountant on whom the registrant's principal accountant expressed reliance in its report. The disclosure also is required if, during that time, any of those accountants: resigned; declined to stand for re-election after the current audit; notified the registrant or a significant subsidiary that reliance on the accountant's prior audit report is no longer permissible; or notified the registrant or a significant subsidiary that it will not consent to the use of the accountant's prior audit report in a filing with the Commission.

(i) State which of the actions described in paragraph (a)(1) of this section occurred and when;

* * * * *

(iii) If a change in accountants resulted, state whether the decision to change accountants was recommended or approved by:

* * * * *

(iv) State whether, during the registrant's two fiscal years and any subsequent interim period immediately preceding the date of the action described in paragraph (a)(1) of this section, there were disagreements with the accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure. In addition:

(A) Describe each such disagreement;

(B) State whether the board of directors or any committee thereof discussed the subject matter of each such disagreement with the accountant; and

(C) If a change in accountants resulted, state whether the registrant has authorized the former accountant to respond fully to the inquiries of the successor accountant concerning the subject matter of each such disagreement. If not, describe the nature of any limitation on responses and the reason for that limitation.

Instructions to Item 304(a)(1)(iv).

1. The registrant need only disclose information in response to this Item if the disagreement(s), if not resolved to the satisfaction of the accountant, would have caused it to make reference to the subject matter of the disagreement(s) in connection with its report.

2. The disagreements required to be reported in response to this Item include both those resolved to the accountant's satisfaction and those not resolved to the accountant's satisfaction.

3. Disagreements contemplated by this Item are those that occur at the decision-making level, *i.e.*, between personnel of the registrant responsible for the presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.

(v) If, during the registrant's two fiscal years and any subsequent interim period immediately preceding the date of the action described in paragraph (a)(1) of this Item, any of the events listed in paragraphs (a)(1)(v)(A) through (a)(1)(v)(D) of this Item occurred, provide the information required by paragraph (a)(1)(iv) of this Item for each event (even if the registrant and the accountant did not express a difference of opinion regarding the event). * * *

* * * * *

(C) * * *

(*2*) Due to the action described in paragraph (a)(1) of this Item, or for any other reason, the accountant did not so expand the scope of its audit or conduct such further investigation; or

(D) * * *

(*2*) Due to the action described in paragraph (a)(1) of this Item, or for any other reason, the issue has not been resolved to the accountant's satisfaction prior to such action.

* * * * *

(3) * * * If the former accountant declines to furnish the registrant with a letter addressed to the Commission stating whether the accountant agrees with the statements made by the registrant in response to this Item 304(a), so state.

* * * * *

18. By amending § 229.305 by revising Instruction 2.D. to General Instructions to Paragraphs 305(a), 305(b), 305(c), 305(d), and 305(e), to read as follows:

§ 229.305 (Item 305) Quantitative and qualitative disclosures about market risk.

* * * * *

General Instructions to Paragraphs 305(a), 305(b), 305(c), 305(d), and 305(e):

* * * * *

2. * * *

D. For purposes of Instruction 1. of the General Instructions to Paragraphs 305(a), 305(b), 305(c), 305(d), and 305(e), market capitalization is the aggregate market value of common equity. The term ''common equity'' is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding voting and non-voting common equity shall include the common equity held by affiliates and shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of January 28, 1997.

19. By amending § 229.404 by removing in the introductory text of paragraph (d) the words ''Form S–1 under the Securities Act (§ 239.11 of this chapter)'' and adding, in their place, the words ''Form A under the Securities Act (§ 239.4 of this chapter)''.

20. By amending § 229.501 by revising the section heading to read as follows:

§ 229.501 (Item 501) Front cover page of the registration statement and outside front cover page of the prospectus.

* * * * *

21. By amending § 229.512 by removing in paragraph (a)(1)(iii) the words ''on Form S–3 (§ 239.13 of this chapter)'' and adding in their place the words ''on Form B (§ 239.5 of this chapter)''; in paragraph (a)(4), by removing in the third sentence the words ''on Form F–3 (§ 239.33 of this chapter)'' and adding, in their place, the words ''on Form B (§ 239.5 of this chapter)'', and removing the words ''in the Form F–3.'' and adding in their place ''in the Form B.''; by revising paragraph (b) and the introductory text of paragraph (g); and by adding paragraph (k) to read as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(b) *Filings incorporating by reference subsequent Exchange Act documents.* Include the following if the registration statement incorporates by reference any Exchange Act document filed subsequent to the initial effective date of the registration statement:

The undersigned registrant hereby undertakes that, for determining liability under the Securities Act of 1933, each of the registrant's reports pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

* * * * *

(g) *Registration on Form C or Form SB–3 of securities offered for resale.* Include the following if the registrant is registering an offering on Form C or Form SB–3 (§§ 239.6 or 239.11 of this chapter) in connection with a transaction specified in paragraph (a) of Rule 145 (§ 230.145 of this chapter).

* * * * *

(k) *Registration on Form A, Form B or Form C.* If the securities are being registered on Form A (§ 239.4 of this chapter), Form B (§ 239.5 of this chapter) or on Form C (§ 239.6 of this chapter) include the following:

The registrant will file with the Commission, on or before the date of first use, all free writing materials used in connection with the securities registered on

this registration statement after effectiveness and before the offering is completed.

22. By amending § 229.601 by removing from paragraph (b)(10)(iii)(B)(*6*) the words ''or registering debt instruments or preferred stock which are not voting securities on Form S–2''; and by removing from Note 1 to Paragraph (c)(1) the words ''Form S–2 (§ 239.12 of this chapter), Form S–3 (239.13 of this chapter)'' and adding, in their place, the words ''Form B (239.13 of this chapter), General Instruction VIII of Form A (§ 239.4 of this chapter)''; by revising the Exhibit Table, paragraph (b)(4)(ii) and paragraph (b)(8); and by adding paragraph (b)(28) to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(4) *Instruments defining the rights of security holders, including indentures*

(i) * * *

(ii) Except as set forth in paragraph (b)(4)(iii) of this Item, for filings on Forms A and C under the Securities Act (§§ 239.4 and 239.6 of this chapter) and Forms 10 and 10–K (§§ 249.210 and 249.310 of this chapter) under the Exchange Act all instruments defining the rights of holders of long-term debt of the registrant and its consolidated subsidiaries and for any of its unconsolidated subsidiaries for which financial statements are required to be filed.

* * * * *

(8) *Opinion re tax matters.* (i) *Real estate entity registrants and roll-up transactions.* The registrant must file an opinion of counsel, an opinion of an independent public or certified public accountant or a revenue ruling from the Internal Revenue Service supporting the tax matters and consequences to the investors it describes in its filing in the following circumstances:

(A) The registrant is required to provide the information required by Item 1108 of Regulation S–K (Tax treatment) in its registration statement on Form A (§ 239.4 of this chapter);

(B) Securities Act Industry Guide 5 applies to the offering; or

(C) The transaction being registered is a roll-up as defined in Item 901 of Regulation S–K (§ 229.901).

(ii) *All other registrants.* All other registrants must include this exhibit only when the tax consequences are material to an investor and the registrant includes a discussion of tax consequences in the filing. If a tax opinion is set forth in full in the filing, the exhibit may so state instead of repeating the full opinion. Any conditions or qualifications on the opinion must be adequately described in the filing.

* * * * *

(28) *Underwriter concurrence with effective date.* A registrant filing a registration statement listed in § 230.462(f)(1) of this chapter must file the written concurrence with the effective date, signed and dated by the managing underwriter(s), or if there are no managing underwriter(s), of the principal underwriter(s) of its offering. If the filed concurrence is not manually signed, a registrant must retain the manually signed underwriters' concurrence for a period of five years. Upon request, the registrant must provide a copy of that concurrence to the Commission or its staff.

* * * * *

EXHIBIT TABLE

	Securities Act forms			
	A	*B*	*C*[3]	S–8
(1) Underwriting agreement	X	.....	X	.....
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	.....	X	.....
(3) Articles of Incorporation	X	.....	X	.....
(ii) By-Laws	X	.....	X	.....
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X
(5) Opinion re legality	X	X	X	X
(6) [Removed and reserved]	.....	.....	.....	.....
(7) [Removed and reserved]	.....	.....	.....	.....
(8) Opinion re tax matters	X	X	X	.....
(9) Voting trust agreement	X	.....	X	.....
(10) Materials contracts	X	.....	X	.....
(11) Statement re computation of per share earnings	X	.....	X	.....
(12) Statements re computation of ratios	X	.....	X	.....
(13) Annual report to security holders, Form 10–Q or quarterly report to security holders[1]	X	.....	X	.....
(14) [Removed and reserved]	.....	.....	.....	.....
(15) Letter re unaudited interim financial information	X	.....	X	X
(16) Letter re change in certifying accountant	X[4]	.....	X[4]	.....
(17) Letter re director resignation	.....	.....	.....	.....
(18) Letter re change in accounting principles	.....	.....	.....	.....
(19) Report furnished to security holders	.....	.....	.....	.....
(20) Other documents or statements to security holders	.....	.....	.....	.....
(21) Subsidiaries of the registrant	X	.....	X	.....
(22) Published matters regarding matters submitted to vote of security holders	.....	.....	.....	.....
(23) Consents of experts and counsel[2]	X	X	X	X
(24) Power of attorney	X	.....	X	X
925) Statement of eligibility of trustee	X	X	X	.....
(26) Invitation for competitive bids	X	.....	X	.....
(27) Financial Data Schedule[5]	X	.....	X	.....
(28) [Removed and Reserved]	.....	.....	.....	.....
(29) Underwriter Concurrence with Effective Date	X	X	.....	.....
[Reserved (30) through (98)]	.....	.....	.....	.....
(99) Additional Exhibits	.....	.....	X	X

[1] Where incorporated by reference into the text of the prospectus and delivered to security holders along with the prospectus as permitted by the registration statement; or, in the case of the Form 10–K, where the annual report to security holders is incorporated by reference into the text of the Form 10–K.

[2] Where the opinion of the expert or counsel has been incorporate by reference into a previously filed Securities Act registration statement
[3] An exhibit need not be provided about a company if
(a) the company meets the requirements of General Instruction I.A., I.B., I.C.1 of Form B; and
(b) The Exhibit would not have been required to be filed if the Company was registering a primary offering on Form B.
[4] If required pursuant to item 304 of Regulation S–K.
[5] Financial Data Schedules shall be filed by electronic filers only. Such schedule shall be filed only when a filing includes annual and/or interim financial statements that have not been previously included in a filing with the Commission. *See* Item 601 of Regulation S–K.

23. By amending Securities Act Industry Guide 5 (referenced in § 229.801(e)) by removing from paragraph 16 the words ''Form S–1 or S–11'' and adding, in their place, the words ''Form A (§ 239.4 of this chapter)'' and by revising paragraph 19.D. to read as follows:

Note: The text of Securities Act Industry Guide 5 does not and this amendment will not appear in the Code of Federal Regulations.

* * * * *

Guide 5

* * * * *

19. Summary of promotional and sales material

* * * * *

D.(1) The registrant or any offering participant must, before its use, provide the Commission staff supplementally any written sales material that it intends to furnish investors. This includes all materials described in paragraph B. The registrant or the offering participant need not, however, supplementally provide the staff with sales material if:

(i) the offering is registered on Form A and the registrant meets the requirements of General Instruction VIII. of that Form;

(ii) the offering is registered on Form B;

(iii) the staff has notified the registrant that its registration statement will not be reviewed; or

(iv) the sales material is used only internally.

(2) For purposes of this paragraph, sales material includes all marketing memoranda that are sent by the General Partner or its affiliates to broker/dealers or other sales personnel and may include material labeled ''for broker/dealers use only.'' Staff comments, if any, will be promptly communicated to the registrant. The registrant should contact the staff before using any sales material that has been submitted to the staff.

Note to paragraph 19.D.: You should read Securities Act Rule 425. Sales materials may be required to be filed under that Rule.

24. By amending part 229 to add subpart 229.1100 to read as follows:

Subpart 229.1100—Real Estate Interests

229.1101 (Item 1101) Definitions.
229.1101 (Item 1102) Limitations on transfer.
229.1103 (Item 1103) Summary risk factor information.
229.1104 (Item 1104) Organization.
229.1105 (Item 1105) Operating and financing activities.
229.1106 (Item 1106) Real estate and other investment activities.
229.1107 (Item 1107) Description of real estate and operating data.
229.1108 (Item 1108) Tax treatment of you and your investors.
229.1109 (Item 1109) Certain relationships and related transactions.
229.1110 (Item 1110) Selection, management and custody of investments.
229.1111 (Item 1111) Conflict of interest policies.
229.1112 (Item 1112) Limitations of liability.
229.1113 (Item 1113) Sales to special parties.

Subpart 229.1100—Real Estate Interests

§ 229.1101 (Item 1101) Definitions

For purposes of this subpart 229.1100 of Regulation S-K:

(a) You are a *real estate entity* if you:

(1) Are a real estate investment trust under Section 856 of the Internal Revenue Code (26 U.S.C. 856(a)); or (2) Invest in real estate, interests in real estate, or securities of other real estate investors as your primary business.

Instruction to Item 1101(a)

''Real estate entity'' does not include any issuer that is an investment company registered or required to register under the Investment Company Act of 1940.

(b) *Affiliated person* means:

(1) Your directors and officers;

(2) Any person directly or indirectly controlling or under direct or indirect common control with you;

(3) Any record owner who owns, or anyone you know who beneficially owns, 10 percent or more of any class of your equity securities;

(4) Any promoter directly or indirectly connected with you in any capacity;

(5) Principal underwriters of securities being registered;

(6) People performing management or advisory services; and (7) Any associate of any of these people.

§ 229.1102 (Item 1102) Limitations on transfer.

Disclose on the cover page of the prospectus any limitations on the transfer of the securities you are offering. If no market exists for the securities, so state on the cover page. If a market does exist, disclose in the prospectus the nature of the market and the market price as of the latest practicable date before the filing of the registration statement or an amendment to the registration statement.

§ 229.1103 (Item 1103) Summary risk factor information.

In a series of concise bullets or paragraphs, present a summary of the risk factors of the offering. Address the following, if appropriate:

(a) A comparison of the percentage of securities being offered to the public and those issued or to be issued to affiliated person;

(b) The extent to which security holders can be liable for your acts or obligations;

(c) The allocation of cash distributions between investors who are affiliated persons and those investors who are not affiliated persons; and

(d) The compensation and benefits affiliated persons will receive, directly or indirectly. With respect to underwriters, include a comparison of the aggregate compensation and benefits to be received by them with the aggregate net proceeds from the sale of the securities being registered.

§ 229.1104 (Item 1104) Organization.

(a) Provide the following information:

(1) Your name and form of organization;

(2) The State or other jurisdiction whose laws govern your organization;

(3) The date your governing instruments became operative; and

(4) The date on which your governing instruments will expire, if any and, if you may be finite life as defined in Item 901 of Regulation S–K, your planned time period for holding your assets.

(b) Outline any provisions of your governing instruments that provide that your duration or planned investment holding period may be shortened or extended.

(c) Summarize the provisions of your governing instruments, or any policy or proposed policy, relating to the holding of annual or other meetings of investors.

(d) If you were organized within the last five years, name all promoters. Indicate whether each promoter holds any position or intends to hold any position with you.

§ 229.1105 (Item 1105) Operating and financing activities.

For each of the following activities, describe your and your subsidiaries' policy or proposed policy, indicate if you may change each policy without a vote of investors, and indicate the extent to which you have engaged in each activity.

(a) Issue securities senior to the securities you are offering;

(b) Borrow money;

(c) Make loans. Purchasing a portion of publicly distributed bonds, debentures or other securities, in the original distribution, or otherwise, is not making a loan;

(d) Invest in another issuer's securities in order to exercise control;

(e) Underwrite other issuer's securities;

(f) Purchase, sell or trade investments;

(g) Offer securities in exchange for property;

(h) Repurchase or otherwise reacquire your securities; and

(i) Provide annual or other reports to investors. Indicate what the reports will cover and whether they will include audited financial statements.

Instruction to Item 1105.

Include a separate description of your policy for each activity. If you will not engage in a particular activity, specifically state that you will not.

§ 229.1106 (Item 1106) Real estate and other investment activities.

(a) Describe the types of real estate investments you intend to make and indicate whether you can change this plan without a vote of investors.

(b) Describe the principles and procedures you and your subsidiaries will use in investing in the assets.

(c) Disclose the percentage of your and your subsidiaries' assets you may invest in any one type of investment.

(d) You should include the information below if you or your subsidiaries might invest in the following types of assets:

(1) *Investments in real estate or real estate interests.* (i) Identify the geographic areas where you intend to invest;

(ii) Describe the types of real estate in which you may invest, such as office buildings, apartment buildings, shopping centers, industrial and commercial properties, special purpose buildings or undeveloped land;

(iii) Describe how you intend to operate and finance your real estate. Disclose any limit on the number or amount of mortgages you may place on any one piece of property;

(iv) Specifically state whether your policy is to acquire assets primarily for income or capital gain; and

(v) Disclose your policy as to the amount or percentages of your assets you may invest in any one property;

(2) *Investments in real estate mortgages and mortgage-backed securities.* (i) Describe the types of mortgages you may invest in, such as first or second mortgages. Disclose whether the mortgages are guaranteed, and if so, by whom;

(ii) Describe your policy as to the amount or percentage of assets you may invest in any single mortgage;

(iii) Describe each type of mortgage activity in which you intend to engage, such as originating or servicing mortgages;

(iv) Describe how long you anticipate holding these investments;

(v) Indicate the types of properties subject to mortgages in which you intend to invest, such as, single family homes, apartment buildings, office buildings, bowling alleys, commercial properties or undeveloped land; and

(vi) Identify the geographic areas where the property underlying the mortgages is located.

(3) *Securities of or interests in other real estate investors.* (i) Describe the types of securities or other interests in persons engaged in real estate activities in which you may invest, such as common stock, limited partnership interests, interests in real estate investment trusts, mortgage-backed securities and joint venture interests;

(ii) Disclose your policy as to the amount or percentage of your assets you may invest in each type of security or interest and the amount or percentage of your assets you may invest in any one issuer;

(iii) Describe the investment policies and primary activities of persons in which you will invest, such as mortgage sales, investment in office buildings or investment in undeveloped land; and

(iv) State your criteria for the purchase of these securities or interests, such as securities listed on a national securities exchange, minimum net income requirements, period of operation of issuer or rating of security.

(e) Indicate the type of other securities (*e.g.*, bonds, preferred stocks, common stocks) and the industry groups in which you may invest and the percentage of your assets which you may invest in each type or industry group. Describe how you will acquire these assets.

§ 229.1107 (Item 1107) Description of real estate and operating data.

Provide the following information separately for each material real estate interest. For all other real estate interests, provide the following information by classes or groups of properties that reasonably convey the required disclosure:

(a) For real estate interests in which you or your subsidiaries now invest or intend to invest:

(1) State the location and describe the general character;

(2) Identify the present and proposed use and discuss whether the real estate interests are suitable and adequate for the present or proposed use;

(3) Describe your title to or interest in the real estate;

(4) For each material mortgage, lien or other encumbrance:

(i) Disclose the principal amount;

(ii) Describe the interest and amortization provisions;

(iii) Describe the prepayment provisions;

(iv) Discuss any cross collateralization or cross default provisions;

(v) Identify the maturity date; and

(vi) Quantify the balance due at maturity assuming no prepayment of principal;

(5) Disclose principal lease terms;

(6) Outline the terms of any option or contract to purchase or sell the real estate interests;

(7) Briefly discuss proposed renovation, development or improvement programs. Quantify the cost of these programs. If you do not have any plans, state that you have no plan and indicate why you are investing or will invest in the real estate;

(8) Describe the general competitive conditions in the markets in which the real estate interests or the underlying properties are operated; and

(9) State whether management believes that the real estate interest or the underlying properties are adequately covered by insurance.

(b) For each improved material real estate interest in which you or your subsidiaries now invest or intend to invest:

(1) Occupancy rate, as a percentage of rentable square footage or units, for each of the past five years;

(2) Average annual effective rent paid per square foot or per unit for each of the past five years;

(3) The following schedule of lease expirations in each of the next ten years:

Year	(A) Total number of tenants with leases expiring	(B) Area covered by expiring leases (sq. feet)	(C) Annual rental of expiring leases ($)	(D) Percentage of gross annual rental for expiring leases
Year in which filing is made.				
Second Year.				
***.				
***.				
***.				
Tenth Year.				

(4) The number of tenants that occupy ten percent or more of the rentable square footage, the main business of those tenants and the principal provisions of their lease including, but not limited to, annual rent, the expiration date and any renewal option;

(5) The principal businesses, occupations or professions conducted at the property underlying the real estate interest;

(6) The Federal tax basis, rate, depreciation method and life claimed for each real estate interest or component for which you charge depreciation; and

(7) The realty tax rate, annual realty taxes and estimated taxes on any proposed improvement.

Instructions to Item 1107.

1. You need not provide detailed legal and physical descriptions of your real estate interest. Rather, you should disclose all information necessary for an investor to evaluate and understand your real estate interests. We encourage tabular presentation.

2. A material real estate interest is one that:

(a) Has a book value representing ten percent or more of your total assets, including assets of your consolidated subsidiaries; or

(b) Produced gross revenue in the last fiscal year that was ten percent or more of your total revenues for the last fiscal year, including revenues of your consolidated subsidiaries.

§ 229.1108 (Item 1108) Tax treatment of you and your investors.

Describe material Federal income tax consequences for you, your subsidiaries and your investors including a discussion of:

(a) Your and your subsidiaries' treatment under Federal income tax laws;

(b) The treatment of distributions to investors under Federal income tax laws, including gains from the sale of securities or real estate interests in excess of annual net income; and

(c) The tax treatment of any exchange of securities for real estate interests or other securities.

§ 229.1109 (Item 1109) Certain relationships and related transactions.

Disclose the aggregate depreciation claimed by the seller for Federal income tax purposes if:

(a) You provide any information required by Instruction 5 to Item 404(a) of Regulation S–K; and

(b) The assets had been acquired by the seller within five years prior to the Item 404 of Regulation S–K transaction.

§ 229.1110 (Item 1110) Selection, management and custody of investments.

(a) Describe any arrangements you or your subsidiaries have made or propose to make with respect to the following. If any of the persons performing these services is a corporation or other organization, include the name and principal occupations during the last five years of each principal executive officer of such corporation or other organization:

(1) Management of your real estate interests, including arranging for purchases, sales, leases, maintenance and insurance;

(2) The purchase, sale and servicing of your mortgages; and

(3) Investment advisory services.

(b) If any of these services in paragraph (a) of this Item will be performed by any affiliated person, other than an officer or director performing the services in that capacity with no additional compensation, furnish the following information about each person:

(1) Name and address;

(2) Nature of principal business;

(3) Principal occupations during the last five years;

(4) Nature of all existing direct or indirect material interests in or business connections with you or any of your affiliated person;

(5) Nature of all services rendered to you; and

(6) Compensation received from you and your subsidiaries, directly or indirectly, during your last fiscal year and the capacities in which this remuneration was received.

§ 229.1111 (Item 1111) Conflict of interest policies.

Outline your policies and provisions of your governing instruments which limit any person from any of the following:

(a) Having any financial interest in any investment you or any of your subsidiaries will acquire or dispose of or in any transaction to which you or any of your subsidiaries are a party or have an interest; and

(b) Engaging for their own account in business activities of the types you and your subsidiaries conduct or will conduct.

§ 229.1112 (Item 1112) Limitations of liability.

Outline the principal provisions of your governing instruments or of any contract or arrangement to which you or a subsidiary are a party that limit the liability of affiliated person or any of their directors, officers or employees. Indicate the effect of Section 14 of the Act (15 U.S.C. 77n) upon any provision broad enough to cover liability arising under the Act.

§ 229.1113 (Item 1113) Sales to special parties.

Name each person or specify each class of persons (other than underwriters or dealers, acting in that capacity) to whom you or your subsidiaries have sold securities within the past six months or are going to sell securities at a different price than you are offering the same class of securities pursuant to this registration statement. Also provide this information with respect to any selling security holder registering securities pursuant to this registration statement. State the consideration given or to be given by each of these persons or class.

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

By revising the general authority citation for part 230 to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d,

78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

26. By revising paragraph (d) of § 230.110 to read as follows:

§ 230.110 Business hours of the Commission.

* * * * *

(d) *Filings by facsimile.* Registration statements, post-effective amendments and prospectuses, filed pursuant to §§ 230.425(c), 230.462(a), (b), (e) or (f) may be filed by facsimile transmission with the Commission any day (except Saturdays, Sundays and federal holidays) from 5:30 p.m. to 10 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect.

By revising the introductory text of paragraph (b) of § 230.111 to read as follows:

§ 230.111 Payment of fees.

* * * * *

(b) Notwithstanding paragraph (a) of this section, payment of filing fees for registration statements filed pursuant to §§ 230.462(b), (e), or (f) between the hours of 5:30 p.m. and 10 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect may be made by:

* * * * *

By amending § 230.134 by revising the section heading and the introductory text, the introductory text of paragraph (a) and paragraphs (a)(3), (a)(13), (a)(14)(i), (b)(1), and (e) to read as follows:

§ 230.134 Registered investment company communications not deemed a prospectus.

The term prospectus as defined in Section 2(10) of the Act (15 U.S.C. 77b(10)) does not include a notice, circular, advertisement, letter, or other communication published or transmitted to any person after a registration statement has been filed by an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1—80(a)–64) (''fund'') if the communication contains only the statements required or permitted by this section.

(a) The communication may include any one or more of the following items of information, in any order:

* * * * *

(3)(i) The fund's classification and subclassification under the Investment Company Act of 1940, the type or category of fund and whether in the selection of investments emphasis is placed upon income or growth characteristics, and a general description of an investment company including its general attributes, methods of operation and services offered provided that such description is not inconsistent with the operation of the particular fund for which more specific information is being given, identification of the fund's investment adviser, any logo, corporate symbol or trademark of the fund or its investment adviser and any graphic design or device or an attention-getting headline, not involving performance figures, designed to direct the reader's attention to textual material included in the communication pursuant to other provisions of this section; and, with respect to a fund issuing redeemable securities:

(A) A description of the fund's investment objectives and policies, services, and method of operation;

(B) Identification of the fund's principal officers;

(C) The year of incorporation or organization or period of existence of the fund, its investment adviser, or both;

(D) The fund's aggregate net asset value as of the most recent practicable date;

(E) The aggregate net asset value as of the most recent practicable date of all funds under the management of the fund's investment adviser;

(F) Any pictorial illustration that is appropriate for inclusion in the fund's prospectus and not involving performance figures;

(G) Descriptive material relating to economic conditions, or to retirement plans or other goals to which an investment in the fund could be directed, but not directly or indirectly relating to past performance or implying achievement of investment objectives; and

(H) Written notice of the terms of an offer made solely to all registered holders of the securities, or of a particular class or series of securities, issued by the fund proportionate to their holdings, offering to sell additional shares to such holders of securities at prices reflecting a reduction in, or elimination of, the regular sales load charged: *Provided that,* if any printed material permitted by paragraphs (a)(3)(i) (A) through (H) of this section is included, or if any material permitted by paragraphs (a)(3)(i) (A) through (G) of this section is used in a radio or television advertisement, the communication shall also contain the following legend given emphasis no less than that used in the major portion of the advertisement:

For more complete information about [Name of Fund] including charges and expenses [get] [obtain] [send for] a prospectus [from (Name and Address)] [by sending this coupon]. Read it carefully before you invest or [pay] [forward funds] [send money].

(ii) For purposes of paragraph (a)(3)(i)(B) of this section, principal officers means the president, secretary, treasurer, any vice-president in charge of a principal business function and any other person who performs similar policy making functions for the fund on a regular basis.

(iii) In the case of two or more funds having the same investment adviser or principal underwriter, the same information described in paragraph (a)(3)(i) may be included as to each such fund in a joint communication on the same basis as it is permitted in communications dealing with individual funds under paragraph (a)(3)(i).

* * * * *

(13) Offers, descriptions and explanations of any products and services not constituting securities subject to registration under the Act, and descriptions of corporations. The offers, descriptions and explanations may not relate directly to the desirability of owning or purchasing a security issued by a fund and all direct references to a security issued by a fund may contain only the statements required or permitted to be included by the other provisions of this section and must be placed in a separate and enclosed area in the communication.

(14)(i) With respect to any class of debt securities, any class of convertible debt securities or any class of preferred stock, the security rating or ratings assigned to the class of securities by any nationally recognized statistical rating organization and the name or names of the nationally recognized statistical rating organization(s) that assigned such rating(s).

* * * * *

(b) * * *

(1) If the registration statement has not yet become effective, the following statement:

A registration statement relating to these securities has been filed with the Securities and Exchange Commission but has not yet become effective. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This [communication] shall not constitute an offer to sell or the solicitation of an offer to buy.

* * * * *

(e) In the case of a fund that holds itself out as a ''money market fund,'' a communication used under this section shall contain the disclosure required by § 230.482(a)(7).

By revising § 230.135 to read as follows:

§ 230.135 Notice of proposed offerings.

(a) *All Offerings.* For purposes of Section 5 of the Act (15 U.S.C. 77e) only, an issuer or a selling security holder (and any person acting on behalf of either of them) that publishes through any medium a notice of a proposed offering will not be deemed to offer its securities for sale through that notice if:

(1) *Legend.* The notice includes a statement to the effect that it does not constitute an offer of any securities for sale; and

(2) *Limited notice content.* The notice otherwise includes no more than the following information:

(i) The name of the issuer;

(ii) The title, amount and basic terms of the securities offered;

(iii) The amount of the offering, if any, to be made by selling security holders;

(iv) The anticipated timing of the offering;

(v) A brief statement of the manner and the purpose of the offering;

(vi) Whether the issuer is directing its offering to only a particular class of purchasers;

(vii) Any statements or legends required by the laws of any state or foreign country or administrative authority; and

(viii) In the following offerings, the notice may contain additional information, as follows:

(A) In a rights offering to existing security holders:

(*1*) The class of security holders eligible to subscribe;

(*2*) The subscription ratio and expected subscription price;

(*3*) The proposed record date;

(*4*) The anticipated issuance date of the rights; and

(*5*) The subscription period or expiration date of the rights offering.

(B) In an offering to employees of the issuer or an affiliated company:

(*1*) The name of the employer;

(*2*) The class of employees being offered the securities;

(*3*) The offering price; and

(*4*) The duration of the offering period.

(C) In an exchange offer:

(*1*) The basic terms of the exchange offer;

(*2*) The name of the subject company; and

(*3*) The subject class of securities.

(b) *Corrections of misstatements about the offering.* A person that publishes a notice in reliance on this section may issue a notice that contains no more information than is necessary to correct inaccuracies published about the proposed offering.

(c) *Rule 145(a) offerings.* For purposes of Section 5 of the Act (15 U.S.C. 77e) only, an issuer or a selling security holder (and any person acting on behalf of either of them) that publishes through any medium a notice of a transaction described in paragraph (a) of § 230.145 will not be deemed to offer its securities for sale through that notice if:

(1) *Legend.* The notice includes a statement to the effect that it does not constitute an offer of any securities for sale;

(2) *Limited notice content.* The notice otherwise includes no more than the following information:

(i) The name of the issuer;

(ii) The name of the person whose assets are to be sold in exchange for the securities to be offered;

(iii) The names of any other parties to the transaction;

(iv) A brief description of the business of the parties to the transaction;

(v) The date, time and place of the meeting of security holders to vote on or consent to the transaction;

(vi) A brief description of the transaction and the basis upon which the transaction will be made; and

(vii) Any statements or legends required by the laws of any state or foreign country or administrative authority.

§ 230.135c [Removed and Reserved]

30. By removing and reserving § 230.135c.

31. By amending § 230.135e by revising paragraph (b)(1) to read as follows:

§ 230.135e Offshore press conferences, meetings with issuer representatives conducted offshore, and press-related materials released offshore.

* * * * *

(b) * * *

(1) State that:

(i) The written press-related materials are not an offer of securities for sale in the United States;

(ii) The securities may not be offered or sold in the United States absent registration or an exemption from registration; and

(iii) Any registered public offering to be made in the United States will involve a registration statement that will contain information about the company and management, as well as financial statements.

* * * * *

32. By revising § 230.137 to read as follows:

§ 230.137 Publications by brokers or dealers that are not participating in a registrant's distribution of securities.

Under the following conditions, a broker or dealer shall not be considered an *underwriter* as defined in Section 2(a)(11) of the Act (15 U.S.C. 77b(a)(11)) solely because it publishes or distributes information, an opinion or a recommendation with respect to the securities of a registrant that proposes to file, has filed, or has an effective registration statement under the Act:

(a) The broker or dealer is not participating, and does not propose to participate, in the distribution of the registered securities;

(b) The issuer is not:

(1) 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 entity or entities;

(2) A shell entity having few or no assets, earnings or operations; or

(3) Registering an offering of penny stock as defined in § 240.3a51–1 of this chapter; and

(c) In connection with its publication or distribution, the broker or dealer is not receiving consideration directly or indirectly from, or acting under any direct or indirect arrangement or understanding with:

(1) The registrant;

(2) A selling security holder;

(3) Any participant in the distribution; or

(4) Any other person with an interest in the securities that are the subject of the registration statement.

Instruction to paragraph (c):

This provision does not preclude payment of the regular subscription or purchase price of the document or other communication in which the broker or dealer's information, opinion or recommendation appears.

33. By revising § 230.138 to read as follows:

§ 230.138 Publications by a broker or dealer about securities other than those it is distributing or selling.

(a) *Registered offerings.* Under the following conditions, a broker's or dealer's publication or distribution of information, an opinion or a recommendation shall be exempt from Section 5(b)(1) and Section 5(c) of the Act (15 U.S.C. 77e(b)(1) and (c)) even if the broker or dealer is participating or will participate in the distribution of the issuer's securities to which the registration statement relates:

(1) The issuer is:

(i) Subject to the requirements of Section 12 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l* or 78o(d)); or

(ii) A foreign private issuer that satisfies the public float threshold in General Instruction I.C.1. of Form B (§ 239.5 of this chapter) or the public

float/average daily trading volume threshold in General Instruction I.C.1. of Form B (except measured on world-wide markets rather than only U.S. markets), and has equity securities trading on a designated offshore securities market as defined in § 230.902(b);

(2) The issuer is not:

(i) 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 entity or entities;

(ii) A shell entity having few or no assets, earnings or operations; or

(iii) Registering an offering of penny stock as defined in § 240.3a51–1 of this chapter;

(3) The broker or dealer publishes or distributes the information, opinion or recommendation in the ordinary course of its business;

(4) The publication prominently describes the capacity in which the broker or dealer is participating in the distribution; and

(5) The information, opinion or recommendation relates to:

(i)(A) An issuer's common stock, or debt or preferred stock convertible into common stock; and

(B) The issuer proposes to file a registration statement, has filed a registration statement, or has an effective registration statement relating to non-convertible debt securities or non-convertible, nonparticipating preferred stock; or

(ii)(A) An issuer's non-convertible debt securities or non-convertible, nonparticipating preferred stock; and

(B) The issuer proposes to file a registration statement, has filed a registration statement, or has an effective registration statement relating solely to common stock or debt or preferred stock convertible into common stock.

(b) *Certain unregistered offerings.* (1) If the conditions set forth in paragraph (a)(1), (a)(2), (a)(3), (a)(4), (b)(2) and (b)(3) of this section are satisfied, a broker's or dealer's publication or distribution of information, an opinion or a recommendation:

(i) Shall not constitute directed selling efforts as defined in § 230.902(c);

(ii) Shall not be inconsistent with an offshore transaction as defined in § 230.902(h); and

(iii) Shall be an exception to the prohibition against offers to persons other than qualified institutional buyers in § 230.144A(d)(1)(i).

(2) The broker or dealer publishes or distributes the information, opinion or recommendation in a publication that is distributed with reasonable regularity in the ordinary course of business.

(3) The information, opinion or recommendation relates to:

(i)(A) An issuer's common stock, or debt or preferred stock convertible into common stock; and

(B) The issuer proposes to offer or is offering solely non-convertible debt securities or non-convertible, nonparticipating preferred stock; or

(ii)(A) An issuer's non-convertible debt securities or non-convertible, nonparticipating preferred stock; and

(B) The issuer proposes to offer or is offering solely common stock or debt or preferred stock convertible into common stock.

34. By revising § 230.139 to read as follows:

§ 230.139 Publications by brokers or dealers distributing securities.

(a) *Registered offerings.* Under the following conditions, a broker's or dealer's publication or distribution of information, an opinion or a recommendation shall be exempt from Section 5(b)(1) and Section 5(c) of the Act (15 U.S.C. 77e(b)(1) and (c)) even if the broker or dealer is participating or will participate in the distribution of the issuer's securities to which a registration statement relates:

(1) *Seasoned issuers; larger foreign issuers; foreign government issuers.* (i) The issuer:

(A) Has been subject to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l* or 78o(d)) for at least one year and has filed all reports it was required to file pursuant to Section 13, 14 or 15(d) of such Act (15 U.S.C. 78m, 78n or 78o(d)) during the last year;

(B) Is a foreign private issuer that:

(*1*) Is not subject to the requirements of Section 13 or 15(d) of the Exchange Act;

(*2*) Satisfies the public float threshold in General Instruction I.C.1. of Form B (§ 239.5 of this chapter) or the public float/average daily trading volume threshold in General Instruction I.C.1. of Form B (except measured on markets worldwide rather than only U.S. markets); and

(*3*) Has had equity securities trading on a designated offshore securities market (as defined in § 230.902(b)) for at least one year;

(C) Is a foreign government issuer eligible to register on Schedule B (15 U.S.C. 77aa), if the offering is a firm commitment underwritten offering in excess of $250 million in securities;

(ii) The issuer is not:

(A) 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 entity or entities;

(B) A shell entity having few or no assets, earnings or operations; or

(C) Registering an offering of ''penny stock'' as defined in § 240.3a51–1 of this chapter;

(iii) The publication prominently describes the capacity in which the broker or dealer is participating in the distribution; and

(iv) The information, opinion or recommendation is contained in a publication that is distributed in the ordinary course of business.

(2) *All other reporting and non-reporting issuers.* (i) The conditions set forth in paragraphs (a)(1)(ii), (a)(1)(iii) and (a)(1)(iv) of this section are satisfied;

(ii) The information, opinion or recommendation is contained in a publication that is distributed with reasonable regularity in the ordinary course of business;

(iii) The information, opinion or recommendation is contained in a publication that includes similar information, opinions or recommendations with respect to a substantial number of issuers in the issuer's industry or sub-industry, or contains a comprehensive list of securities currently recommended by such broker or dealer;

(iv) The information, opinion or recommendation is given no materially greater space or prominence in the publication than that given to other securities or registrants; and

(v) If the publication contains an opinion or recommendation more favorable as to the issuer or any class of its securities than that last published by the broker or dealer prior to the commencement of participation in the distribution, the publication sets forth the last two opinions or recommendations published by the broker or dealer with respect to the issuer or its securities while not participating in a distribution by the issuer.

(b) *Certain unregistered offerings.* If the conditions set forth in paragraph (a)(1) of this section are satisfied, a broker's or dealer's publication or distribution of information, an opinion or a recommendation, if contained in a publication that is distributed with reasonable regularity in the ordinary course of business:

(1) Shall not constitute directed selling efforts as defined in § 230.902(c);

(2) Shall not be inconsistent with an offshore transaction as defined in § 230.902(h); and

(3) Shall be an exception to the prohibition against offers to persons other than qualified institutional buyers in § 230.144A(d)(1)(i).

Instructions to § 230.139.

1. For purposes of paragraph (a)(2) of this section, a research report has not been distributed with ''reasonable regularity'' if it contains information, an opinion or a recommendation concerning a company with respect to which a broker or dealer currently is not publishing research.

2. Projections constitute opinions within the meaning of this section.

3. For purposes of paragraph (a)(2)(ii) of this section, where projections of an issuer's sales or earnings are included in a publication, the broker or dealer must have published the projections previously on a regular basis in order for the publication to have been distributed with reasonable regularity in the ordinary course of business.

4. For purposes of paragraph (a)(2)(iii), the broker or dealer must have included projections with respect to either a substantial number of companies in the issuer's industry or sub-industry, or all companies represented in the comprehensive list of securities contained in the publication. Also, those projections may not cover significantly different periods with respect to the issuer as compared to the other companies.

35. By amending § 230.144A by redesignating paragraphs (d)(1)(i), (d)(1)(ii), (d)(1)(iii) and (d)(1)(iv) as paragraphs (d)(1)(ii)(A), (d)(1)(ii)(B), (d)(1)(ii)(C) and (d)(1)(ii)(D); and by adding new paragraphs (d)(1)(i) and (d)(1)(ii) introductory text to read as follows:

§ 230.144A Private resales of securities to institutions.

* * * * *

(d) * * *

(1)(i) The securities are offered or sold only to a qualified institutional buyer or to an offeree or purchaser that the seller and any person acting on behalf of the seller reasonably believe is a qualified institutional buyer, except that if the seller is a broker or dealer, it may distribute information, an opinion or a recommendation in accordance with § 230.138(b) or § 230.139(b) while relying on this section.

(ii) In determining whether a prospective purchaser is a qualified institutional buyer, the seller and any person acting on its behalf shall be entitled to rely upon the following non-exclusive methods of establishing the prospective purchaser's ownership and discretionary investments of securities:

* * * * *

36. By amending § 230.145 by revising the last sentence of the first paragraph of the Preliminary Note and paragraph (b) to read as follows:

§ 230.145 Reclassification of securities, mergers, consolidations and acquisitions of assets.

Preliminary Note: * * * Issuers must register transactions described in paragraph (a) of Rule 145 on Form C (§ 239.6 of this chapter), Form SB–3 (§ 239.11 of this chapter) or Form N–14 (§ 239.23 of this chapter).

* * * * *

(b) *Communications.* Communications in connection with a registered transaction described in paragraph (a) of this section may be made in accordance with §§ 230.135, 230.165, 230.166, 230.167, 230.168 or 230.169.

* * * * *

37. By revising § 230.152 to read as follows:

§ 230.152 Integration of private and public offerings.

(a) *Completed private offerings; resales.* (1) A completed bona fide private offering will not be considered part of an offering registered under the Act as long as the registration statement is filed after the completion of the private offering. At any time following the completion of a bona fide private offering, a registrant may register the securities sold in the private offering for purpose of resale by persons other than an affiliate or a dealer who has purchased directly from the issuer or an affiliate of the issuer.

(2) For purposes of paragraph (a)(1) of this section, a private offering will be considered completed:

(i) As of the date all purchasers in the private offering have paid the purchase price; or

(ii) As of the date the following are true, provided that the transaction is not subsequently renegotiated:

(A) All purchasers are unconditionally obligated to pay the purchase price, except that the purchase obligation may be contingent on a condition that is not within the direct or indirect control of any purchaser; and

(B) The purchase price is fixed and is not contingent on the market price of the securities at or around the time of the registered offering.

(3) For purposes of paragraph (a)(1) of this section, an offering of securities underlying convertible securities or warrants will be considered completed if the offering of the convertible securities or warrants to which it relates is completed. This is true regardless of when the convertible securities or warrants become convertible or exercisable.

(4) For purposes of paragraph (a)(1) of this section, an offering of securities prior to the issuer's initial offering registered under Section 5 of the Act (15 U.S.C. 77e) will be considered completed if:

(i) It does not raise capital for the issuer;

(ii) It is undertaken for the sole purpose of modifying the capital structure of the issuer; and

(iii) It does not involve a roll-up transaction as defined in § 228.901(c) of this chapter.

(b) *Abandoned private offerings followed by offerings registered other than on Form B.* A bona fide private offering of securities will not be considered part of an offering subsequently registered under Section 5 of the Act on a form other than Form B (§ 239.5 of this chapter) if:

(1) The registrant notifies all offerees in the private offering of its abandonment of that offering;

(2) The registrant does not file the registration statement for the registered offering until at least 30 days after it notified the offerees of abandonment, where the registrant (or any person acting on its behalf) offered securities in the private offering to any person ineligible to purchase in an offering in accordance with Section 4(2) or 4(6) of the Act (15 U.S.C. 77d(2) or 77d(6)) or § 230.506;

(3) Neither the issuer nor any person acting on its behalf offered the securities in the private offering by any form of general solicitation or general advertising (as those terms are used in § 230.502(c));

(4) No securities were sold in the private offering; and

(5) One of the following conditions is met:

(i) The registrant files any selling materials used in the private offering as part of the effective registration statement; or

(ii) The registrant informs offerees in the private offering that:

(A) The prospectus delivered in the registered offering supersedes any selling materials used in the private offering; and

(B) Any indications of willingness to purchase offerees gave during the private offering are considered rescinded.

(c) *Abandoned public offerings followed by private offerings.* An offering of securities for which a registration statement under the Act was filed or that would have been eligible to be registered on Form B (collectively, a ''public offering'') will not be considered part of a subsequent bona fide private offering if:

(1) The issuer notifies all offerees in the public offering of its abandonment of that offering or, if the issuer filed a

registration statement for that offering, the issuer withdraws it under § 230.477;

(2) No securities were sold in the public offering; and

(3) One of the following conditions is satisfied:

(i) If the issuer (or any person acting on its behalf) first offers the securities in the private offering more than 30 days after notification of abandonment or withdrawal of the public offering, it notifies each purchaser in the private offering that:

(A) The offering is not registered under the Act;

(B) The securities are restricted and cannot be resold unless they are registered under the Securities Act or unless an exemption from registration is available; and

(C) Investors do not have the protection of Section 11 of the Act (15 U.S.C. 77k).

(ii) If the issuer (or any person acting on its behalf) first offers the securities in the private offering 30 or fewer days after notification of abandonment or withdrawal of the public offering, the issuer and any underwriter:

(A) Agree in writing, in a manner enforceable by each investor committing to purchase in the 30-day period following abandonment or withdrawal of the public offering, that they will be liable for any material misstatements or omissions in the offering documents used in the private offering under the standards set by Section 11 of the Act; and

(B) Agree in writing, in a manner enforceable by each investor committing to purchase after the 30-day period following abandonment or withdrawal of the public offering, that they will be liable for any material misstatements or omissions in the offering documents used in the private offering under the standards set by Section 12(a)(2) of the Act (15 U.S.C. 77*l*(a)(2)).

(d) *Definition of terms.* For the purposes of this section only, a *private offering* means an unregistered offering of securities that is exempt from registration pursuant to Section 4(2) or 4(6) of the Act or § 230.506 of Regulation D.

§ 230.153 [Removed and Reserved]

38. By removing and reserving § 230.153.

39. By adding § 230.159 to read as follows:

§ 230.159 Lock-up agreements.

All offers and sales in a negotiated transaction described in § 230.145(a) may be registered under Section 5 of the Act (15 U.S.C. 77e) notwithstanding the fact that certain shareholders of the company to be acquired sign agreements with the acquiror to vote in favor of the transaction prior to the filing or the effective date of the registration statement, if:

(a) The agreements are limited to executive officers, affiliates and directors of the company to be acquired, the founder(s) of that company and their family members, and holders of 5% or more of the voting equity securities of that company;

(b) The persons signing the agreements own less than 100% of the voting equity securities of the company being acquired; and

(c) Votes will be solicited from shareholders of the company to be acquired who:

(1) Have not signed the agreements; and

(2) Would be ineligible to purchase under an exemption from registration pursuant to Section 4(2) or 4(6) of the Act (15 U.S.C. 77d(2) or 77d(6)) or § 230.506 of Regulation D.

40. By adding § 230.165 to read as follows:

§ 230.165 Post-filing free writing.

Notwithstanding Section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)), any prospectus used in connection with an offering after the filing of a registration statement need not satisfy the requirements of Section 10 (15 U.S.C. 77j) of the Act if:

(a) Prospectus information is delivered in accordance with § 230.172, as applicable;

(b) The registrant files with the Commission any prospectus used in reliance on this section when so required by § 230.425; and

(c) The registrant files with the Commission the information necessary to satisfy the requirements of Section 10(a) of the Act prior to the first sale in the offering.

41. By adding § 230.166 to read as follows:

§ 230.166 Offers made before filing a registration statement.

(a) *Form B and seasoned Schedule B offerings.* Notwithstanding Section 5(c) of the Act (15 U.S.C. 77e(c)), an issuer, underwriter or participating dealer may make an offer to sell or solicit an offer to buy securities prior to the filing of a registration statement with respect to those securities if:

(1) At the time of the offer, the registrant and the offering satisfy the Eligibility Requirements of Schedule B or General Instruction I of Form B (§ 239.5 of this chapter);

(2) Either:

(i) The offering is later registered on Form B; or

(ii) The offering:

(A) Is later registered on Schedule B (15 U.S.C. 77aa);

(B) Is a firm commitment underwritten offering in excess of $250 million in securities; and

(C) Is registered 1 year or more after the effective date of the registrant's initial registered offering; and

(3) The registrant files any prospectus used in reliance on this section in the period beginning 15 days before the first offer and ending with the filing of the registration statement when so required by § 230.425.

(b) *Form C/SB–3 transactions.* Notwithstanding Section 5(c) of the Act, the offeror of securities in a transaction to be registered on Form C, SB–3, F–8, F–80 or F–10 (§§ 239.6, 239.11, 239.38, 239.41 or 239.40 of this chapter) (when that form is used in a business combination transaction) may make an offer to sell or solicit an offer to buy securities before the filing of a registration statement with respect to those securities if:

(1) Any prospectus relating to the transaction used in the period beginning with the first public announcement, and ending with the filing of the registration statement is filed in accordance with § 230.425; and

(2) In an exchange offer, the offers are made in accordance with the tender offer rules; and, in a transaction involving the vote of security holders, the offers are made in accordance with the proxy rules.

42. By adding § 230.167 to read as follows:

§ 230.167 Exemption from Section 5(c) for certain communications.

(a) In offerings registered on Form B (§ 239.5 of this chapter), any communication made before the offering period shall not constitute an offer to sell or an offer to buy the securities being offered under the registration statement for purposes of Section 5(c) of the Act (15 U.S.C. 77e(c)). ''Offering period'' is defined in Form B.

(b) In offerings registered on Forms C (§ 239.6 of this chapter), SB–3 (§ 239.11 of this chapter), F–8 (§ 239.38 of this chapter), F–80 (§ 239.41 of this chapter) or F–10 (§ 239.40 of this chapter) (when Form F–10 is used in connection with a business combination transaction), any communication before the first communication related to the offering (except for communications among the participants in the offering) shall not constitute an offer to sell or an offer to buy the securities being offered under the registration statement for purposes of Section 5(c) of the Act, provided that the parties to the transaction take all

reasonable steps within their control to prevent further distribution or publication of such communication during the period between that first communication and the date of filing the registration statement.

(c) In all offerings other than those described in paragraph (a) or (b) of this section or those registered on Form S–8 (§ 239.16b of this chapter), any communication made by an issuer, underwriter or participating dealer more than 30 days before the date of filing of the registration statement shall not constitute an offer to sell or offer to buy the securities being offered under the registration statement for purposes of Section 5(c) of the Act, provided that the issuer, underwriter(s) or participating dealer(s) take all reasonable steps within their control to prevent further distribution or publication of such communication during the 30 days immediately preceding the date of filing the registration statement.

43. By adding § 230.168 to read as follows:

§ 230.168 Regularly released forward-looking information.

(a) Except in connection with offerings registered on Form S–8, C, SB–3, F–8, F–80 or F–10 (when that form is used in a business combination transaction), (§ 239.16b, 239.6, 239.11, 239.38, 239.41 or 239.40 of this chapter) in a registered offering by an issuer that is subject to the requirements of Section 12 or 15(d) of the Exchange Act (15 U.S.C. 78l or 78o(d)), the dissemination of regularly released forward-looking information by an issuer, underwriter or participating dealer in the 30-day period immediately preceding the filing of a registration statement shall be exempt from the prohibitions on offers to sell or offers to buy set forth in Section 5(c) of the Act (15 U.S.C. 77e(c)), if the registrant files any prospectus used in reliance on this section when so required by § 230.425.

(b) In an offering registered on Form S–8, C, SB–3, F–8, F–80 or F–10 (when that form is used in a business combination transaction) by an issuer that is subject to the requirements of Section 12 or 15(d) of the Exchange Act, the dissemination of regularly released forward-looking information by an issuer, underwriter or participating dealer in the period after the public announcement of the offering and prior to the filing of the registration statement shall be exempt from the prohibitions on offers to sell or offers to buy in Section 5(c) of the Act, if the registrant files any prospectus used in reliance on this section when so required by § 230.425.

(c) For purposes of this section, ''regularly released forward-looking information'' includes the information listed in paragraphs (c)(1) through (c)(4) of this section, if the issuer customarily releases information of this type in the ordinary course of business on a regular basis, it has done so in the two fiscal years (and any portion of a fiscal year) immediately prior to the communication, and the time, manner and form in which it is released is consistent with past practice:

(1) Projections of the issuer's revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;

(2) Statements about the issuer management's plans and objectives for future operations, including plans or objectives relating to the products or services of the issuer;

(3) Statements about the issuer's future economic performance of the type contemplated by the management's discussion and analysis of financial condition and results of operation described in § 229.303 of this chapter or Item 9 of Form 20–F (§ 249.220f of this chapter); and

(4) Assumptions underlying or relating to any of the information described in paragraphs (c)(1), (c)(2) and (c)(3) of this section.

By adding § 230.169 to read as follows:

§ 230.169 Factual business communications.

(a) Except in connection with offerings registered on Form S–8, C, SB–3, F–8, F–80 or F–10 (when that form is used in a business combination transaction), (§§ 239.16b, 239.6, 239.11, 239.38, 239.41 or 239.40 of this chapter), factual business communications made by an issuer, underwriter or participating dealer in the 30-day period immediately preceding the filing of a registration statement with respect to a registered offering shall be exempt from the prohibitions on offers to sell and offers to buy in Section 5(c) of the Act (15 U.S.C. 77e(c)).

(b) In an offering registered on Form S–8, C, SB–3, F–8, F–80 or F–10 (when that form is used in a business combination transaction), factual business communications made by an issuer, underwriter or participating dealer after the public announcement of the offering and prior to the filing of the registration statement shall be exempt from the prohibition on offers to sell and offers to buy in Section 5(c) of the Act.

(c) For purposes of this section, *factual business communications* include:

(1) Factual information about the issuer or some aspect of its business;

(2) Advertisement of the issuer's products or services;

(3) Factual business or financial developments with respect to the issuer;

(4) Dividend notices;

(5) Factual information set forth in any Exchange Act report the issuer is required to file; and

(6) Factual information communicated in response to unsolicited inquiries by persons that are not affiliates of the issuer, underwriter or participating dealer.

(d) For purposes of this section, *factual business communications* do not include:

(1) Information about the registered offering; or

(2) Forward-looking information.

45. By adding § 230.172 to read as follows:

§ 230.172 Delivery of prospectus information.

The issuer, selling security holders, any underwriter, any participating broker or dealer, and any person acting on behalf of any of them, must deliver prospectus information to each person offered securities in connection with an offering registered under the Act as follows:

(a) *Form B and Schedule B seasoned registrants.* If the registrant is offering securities as described in paragraph (a)(1) of this section, then delivery under paragraph (a)(2) of this section must be made.

(1) Securities in an offering registered on:

(i) Form B (§ 239.5 of this chapter), other than pursuant to General Instruction I.C.6. of Form B; or

(ii) Schedule B (15 U.S.C. 77aa), where it is a firm commitment underwritten offering in excess of $250 million in securities that is registered more than one year after the effective date of the registrant's initial registered offering;

(2) A term sheet prospectus that contains the following information must be sent in a manner reasonably designed to arrive before the date an investor makes a binding investment decision:

(i) An itemization of the material terms of the securities in summary format;

(ii) The name of any person, other than the issuer, for whose account securities are offered and a brief identification of any material

relationship such person has (or had within the past three years) with the issuer or any affiliate of the issuer;

(iii) The identity and location of a contact person to whom questions may be directed; and

(iv) The identity and location of a person who, upon request, will send promptly the documents that define the terms of the securities.

(b) *Other registrants—firm commitment underwritten offerings.* If an offering is registered on Form A, Form SB–1, Form SB–2, Form F–7, Form F–9, Form F–10 (other than in a business combination transaction), (§§ 239.4, 239.9, 239.10, 239.37, 239.39, 230.40 of this chapter) or on Schedule B (other than as described in paragraph (a) of this section), is underwritten on a firm commitment basis and the offering:

(1) Is the registrant's initial offering registered in accordance with Section 5 of the Act (15 U.S.C. § 77e) or is an offering registered within one year of the effective date of the registrant's initial registered offering, then a prospectus satisfying Section 10 of the Act (15 U.S.C. § 77j) must be sent to each investor in a manner reasonably designed to arrive at least 7 calendar days before the pricing of the securities.

(2) Takes place more than one year after the effective date of the registrant's initial offering registered in accordance with Section 5 of the Act, then a prospectus satisfying Section 10 of the Act must be sent to each investor in a manner reasonably designed to arrive at least 3 calendar days before the pricing of the securities.

(c) *Other registrants—non-firm commitment underwritten offerings.* If an offering is registered on Form A, Form SB–1, Form SB–2, Form F–7, Form F–9, Form F–10 (other than in a business combination), or on Schedule B (other than as described in paragraph (a) of this section), is *not* underwritten on a firm commitment basis and the offering:

(1) Is the registrant's initial offering in accordance with Section 5 of the Act or is an offering taking place within one year of the effective date of the registrant's initial registered offering, then a prospectus satisfying Section 10 of the Act must be sent to each investor in a manner reasonably designed to arrive at least 7 calendar days before the investor signs a subscription agreement or otherwise commits to purchase securities.

(2) Takes place more than one year after the effective date of the registrant's initial registered offering in accordance with Section 5 of the Act, then a prospectus satisfying Section 10 of the Act must be sent to each investor in a manner reasonably designed to arrive at least 3 days before the investor signs a subscription agreement or otherwise commits to purchase the securities.

Note to paragraphs (b) and (c).

The issuer, underwriter or participating broker or dealer may choose to deliver a prospectus meeting the requirements of Section 10(a), instead of a prospectus meeting the requirements of Section 10, if it does so in accordance with the terms of paragraphs (b) and (c) of this section.

(d) *Roll-ups.* Notwithstanding paragraphs (a) through (c) of this section, if a registrant is registering a roll-up transaction as defined in § 229.901(c) of this chapter, a prospectus that satisfies the requirements of Section 10 of the Act must be sent to each investor no later than the earlier of:

(1) 60 calendar days before the meeting at which the roll-up transaction will be submitted to a vote or 60 calendar days before the earliest date on which partnership action could be taken by consent; and

(2) The date calculated by applying the maximum number of days permitted for giving notice under applicable state law.

(e) *Material changes.* If not previously disclosed by any other means to investors, material changes to the information reflected in the prospectus delivered must be set forth in a document sent to each investor in a manner reasonably designed to arrive at least 24 hours before:

(1) The securities are priced, if the offering is subject to paragraph (b) of this section;

(2) The investor signs a subscription agreement or otherwise commits to purchase securities, if the offering is subject to paragraph (c) of this section; or

(3) The date of the meeting at which the transaction will be submitted to a vote or on which partnership action could be taken by consent, if the offering is subject to paragraph (d) of this section.

(f) *Rule 462 registration statements.* Notwithstanding paragraphs (a) through (d) of this section, if an offering is registered in part through a registration statement filed under § 230.462(b) or § 230.462(e), a prospectus delivered with respect to the earlier registration statement to an investor in compliance with this § 230.172 will be deemed to satisfy the delivery requirements with respect to that investor under this § 230.172 with respect to the § 230.462(b) or § 230.462(e) registration statement for the offering, provided that the issuer, underwriter or participating dealer otherwise informs investors purchasing in the offering of the change in the size of the offering.

46. By adding § 230.173 to read as follows:

§ 230.173 Delivery of final prospectuses.

Notwithstanding Section 5(b)(2) of the Act (15 U.S.C. 77e(b)(2)), a prospectus that meets the requirements of Section 10(a) of the Act (15 U.S.C. 77j(a)) need not precede or accompany the carrying or delivery of any security by any person in an offering registered other than on Form S–8, Form C, Form SB–3, Form F–8, Form F–80 or F–10 (when that form is used in a business combination transaction) (§§ 239.16b, 239.6, 239.11, 239.38, 239.41 or 239.40 of this chapter) provided that:

(a) Prospectus information that satisfies the requirements of Section 10(a) of the Act other than the price-related information that may be omitted pursuant to § 230.430A is filed with the Commission prior to the transmission of any confirmation in connection with the offering;

(b) Delivery of prospectus information in accordance with § 230.172 or § 230.174, as applicable, has been made;

(c) At or before the time they receive any confirmation of sale, investors are informed where they can acquire promptly the prospectus information that meets the requirements of Section 10(a) of the Act, free of charge; and

(d) The security being carried or delivered is not issued by an investment company.

47. By revising § 230.174 to read as follows:

§ 230.174 Aftermarket delivery of prospectuses by dealers.

(a) For transactions that take place prior to the expiration of the 40-day or 90-day period specified in Section 4(3) of the Act (15 U.S.C. 77d(3)) in which a dealer is obliged to deliver a Section 10(a) (15 U.S.C. 77j(a)) prospectus, the dealer need only satisfy that obligation in transactions occurring during a period of twenty-five calendar days after the later of:

(1) The effective date of the registration statement; or

(2) The first date on which the security was bona fide offered to the public.

(b) For purposes of paragraph (a) of this section, the required prospectus is delivered if:

(1) A prospectus satisfying the requirements of Section 10(a) (other than omitting price-related information pursuant to § 230.430A) is on file with the Commission; and

(2) Prior to or at the same time each investor receives a confirmation the

dealer notifies it as to where it may obtain promptly that prospectus, free of charge.

(c) Paragraph (a) of this section shall not apply to any transaction relating to a *blank check company* (as defined in § 230.419). In such transactions, all dealers must deliver a prospectus satisfying the requirements of Section 10(a) for ninety calendar days after the date the funds and securities are released from the escrow or trust account under § 230.419.

(d) If a registration statement relates to offerings made on a continuous basis, a dealer's prospectus delivery obligation expires after the initial prospectus delivery period specified in this section.

(e) This section shall not apply to any transaction in which:

(1) The registration statement is the subject of a stop order issued under Section 8 of the Act (15 U.S.C. 77h); or

(2) The Commission provides, upon application or on its own motion, another aftermarket delivery obligation.

(f) Nothing in this section shall affect any obligation to deliver a prospectus pursuant to the provisions of Section 5 of the Act (15 U.S.C. 77e) by a dealer who:

(1) Is acting as an underwriter with respect to the securities involved; or

(2) Is engaged in a transaction as to securities constituting the whole or a part of an unsold allotment to, or subscription by, that dealer as a participant in the distribution of the securities by the issuer or by or through an underwriter.

(g) No prospectus need be delivered in the 40-day or 90-day period specified in Section 4(3) of the Act (15 U.S.C. 77d(3)) if the registration statement is on Form F–6 (§ 239.36 of this chapter).

48. By amending § 230.176 by revising the section heading and the introductory text; by removing the word ''and'' at the end of paragraph (g); revising ''incorporated.'' at the end of paragraph (h) to read ''incorporated; and''; and by adding paragraph (i) to read as follows:

§ 230.176 Reasonable investigation and reasonable grounds for belief under Section 11 of the Act and reasonable care under Section 12(a)(2) of the Act.

In determining whether or not the conduct of a person, other than the issuer, constitutes a reasonable investigation or a reasonable ground for belief meeting the standard set forth in Section 11(c) of the Act (15 U.S.C. 77k(c)) or the exercise of reasonable care meeting the standard set forth in Section 12(a)(2) of the Act (15 U.S.C. 77*l*(a)(2)), relevant circumstances to include:

* * * * *

(i)(1) The circumstances listed in paragraph (i)(3) of this section if:

(i) The person is an underwriter;

(ii) Investment grade debt securities are not being offered;

(iii) The offering is marketed and priced in fewer than five days;

(iv) The issuer meets the requirements of General Instruction I.B.2. of Form B (§ 239.5 of this chapter); and

(v) The offering is registered on Form B (§ 239.5 of this chapter) pursuant to either General Instruction I.C.1. or I.C.2.

(2) The absence of any one or more of the circumstances listed in paragraph (i)(3) of this section, except for paragraph (i)(3)(i) of this section, should not be considered definitive in reaching a conclusion regarding whether the conduct of the underwriter met the standards set forth in Section 11(c) or 12(a)(2) of the Act.

(3)(i) Whether the underwriter:

(A) Reviewed the registration statement (which, for purposes of this section, includes all amendments and supplements to it and all documents incorporated by reference into it); and

(B) Conducted a reasonable inquiry into any fact or circumstance that would have caused a reasonable person to question whether the registration statement contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading;

(ii) Whether the underwriter discussed the information contained in the registration statement with the relevant executive officer(s) of the issuer (including, at a minimum, its chief financial officer or chief accounting officer or that person's designee (or person performing those functions)) and the issuer's chief financial officer or chief accounting officer or that person's designee (or person performing those functions) certified to the underwriter that:

(A) He or she has read the registration statement; and

(B) To the best of his or her knowledge after reasonable investigation, the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading;

(iii) Whether the underwriter received from the independent accountants responsible for the audited financial statements included in the registration statement a letter contemplated by Statement on Auditing Standards No. 72 of the American Institute of Certified Public Accountants;

(iv) Whether the underwriter received an opinion from the issuer's legal counsel substantially to the effect that:

(A) Counsel is of the opinion that the registration statement and prospectus (except for financial statements, financial data and schedules included therein as to which counsel need not express any opinion) comply as to form in all material respects with the Act and the rules and regulations of the Commission thereunder; and

(B) Counsel has participated in the drafting and preparation of the registration statement and prospectus and nothing that has come to the attention of counsel that has caused it to believe that the registration statement (except for financial statements, financial data and schedules as to which counsel need not express any belief), contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading;

(v)(A) Whether the underwriter employed legal counsel that reviewed:

(*1*) The issuer's registration statement and all periodic reports filed by the issuer with the Commission for the last full fiscal year ended prior to the offering and any portion of a fiscal year thereafter; and

(*2*) The issuer's charter, by-laws, corporate minutes for the last full fiscal year ended prior to the offering and any portion of a fiscal year thereafter, and all material contracts entered into by the issuer in the last five years prior to effectiveness of the registration statement;

(B) Whether underwriter's counsel opined substantially to the effect that nothing has come to its attention that would lead it to believe that the registration statement contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading;

(vi) Whether the underwriter employs a research analyst that:

(A) For at least the 6 months immediately prior to the commencement of the offering, has followed the issuer or the issuer's industry on an ongoing basis;

(B) Has issued a report on the issuer or the issuer's industry within the 12 months immediately prior to the commencement of the offering; and

(C) Has been consulted by the underwriter in connection with the disclosure used in the offering.

49. By amending § 230.401 by revising paragraph (g) to read as follows:

§ 230.401 Requirements as to proper form.

* * * * *

(g) Except for registration statements and post-effective amendments that become effective automatically pursuant to § 230.462, § 230.464 and 230.485(b) (including registration statements that become effective automatically at the time designated by the issuer in accordance with § 230.462(f)(2)), a registration statement or any amendment thereto is deemed filed on the proper form unless the Commission objects to the form before the effective date.

50. By revising paragraph (d) of § 230.402 to read as follows:

§ 230.402 Number of copies; binding; signatures.

* * * * *

(d) Notwithstanding any other provision of this section, if a registrant files a registration statement pursuant to § 230.462(b), § 230.462(e) or § 230.462(f) by facsimile pursuant to § 230.110(d), the registrant need only file one complete copy of the registration statement with the Commission. That copy must include all exhibits and other documents that are a part of it. That copy need not be bound. It may include facsimile versions of signatures in accordance with paragraph (e) of this section.

* * * * *

51. By amending § 230.405 by revising the definition of ''small business issuer'' 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 (including revenues of any consolidated subsidiaries) of less than $50,000,000;

(2) Is a U.S. or Canadian issuer;

(3) Is not an investment company;

(4) If a majority-owned subsidiary, the parent corporation is also a small business issuer; and (5) Each majority owned subsidiary of the entity, if any, meets the criteria in paragraphs (2) and (3) of this definition.

* * * * *

§ 230.406 [Amended]

52. By amending § 230.406 by removing in paragraph (a) the words ''Form S–3, F–2, F–3 (§ 239.13, 239.32 or 239.33 of this chapter) relating to a dividend or interest reinvestment plan, or on Form S–4 (§ 239.25 of this chapter) complying with General Instruction G of that Form'' and adding, in their place, the words ''Form B (§ 239.5 of this chapter), or on Form A (§ 239.4 of this chapter) complying with General Instruction VIII. of that Form where the issuer plans to have the registration statement become effective upon filing or fewer than 20 days thereafter''.

§ 230.415 [Amended]

53. By amending paragraph (a)(1)(x) of § 230.415 by removing the words ''Form S–3 or Form F–3 (§ 239.13 or § 239.33 of this chapter)'' and adding, in their place, the words ''Form B (§ 239.5 of this chapter)''.

54. By amending § 230.418 by revising the first sentence of the introductory text of paragraph to read as follows:

§ 230.418 Supplemental information.

(a) The Commission or its staff may, where it deems appropriate, request supplemental information not otherwise filed with the Commission concerning the registrant, the registration statement, the distribution of the securities, market activities and underwriters' activities.

* * *

* * * * *

55. By removing in § 230.418(a)(3) the words ''eligible to use Form S–2 or Form S–3 (§§ 239.12 or 239.13 of this chapter)'' and adding, in their place, the words ''that meets the requirements of General Instructions II.A. and II.B of Form A (§ 239.4 of this chapter) or is eligible to use Form B (239.5 of this chapter)''.

56. By amending § 230.421 by adding paragraph (e) to read as follows:

§ 230.421 Presentation of Information in Prospectuses.

* * * * *

(e) If a prospectus is not subject to the informational requirements of Section 10 of the Act, it must contain a prominent legend that urges investors to read filed documents because they contain important information. The legend must identify the other types of filings available about the offering, for example: free writing, term sheet, Exchange Act reports, and prospectus (registration statement). The legend must also explain that investors can get the document(s) for free at the SEC's web site and explain which documents are free from the issuer. You may adapt the following legend or write your own in plain English:

Example: Before you invest, you should read the other document(s) that we have filed with the SEC. These documents [describe or name the documents] contain important information that you need to consider before making an investment decision. You may get these documents for free by visiting EDGAR on the SEC web site at www.sec.gov. We will send you [describe or name the documents] for free if you call us at 1 800 xxx–xxxx.

57. By amending § 230.424 by revising the section heading and paragraph (b)(2); revising Instruction 1 and redesignating it as ''Instruction to § 230.424''; and by removing paragraph (b)(7) and Instruction 2 to read as follows:

§ 230.424 Filing of Section 10 prospectuses; number of copies.

* * * * *

(b) * * *

(2) A prospectus used in connection with a primary offering of securities made on a delayed basis pursuant to §§ 230.415(a)(1)(vii) or 230.415(a)(1)(viii) that discloses the public offering price, description of securities, specific method of distribution or similar matters shall be filed with the Commission no later than the second business day following the earlier of:

(i) The date the offering price is determined; and

(ii) The date the prospectus is first used after effectiveness in connection with a public offering or sale.

* * * * *

Instruction to § 230.424. Notwithstanding §§ 230.424(b)(2) and 230.424(b)(5), a form of prospectus or prospectus supplement relating to an offering of mortgage-related securities on a delayed basis under § 230.415(a)(1)(vii) that is required to be filed pursuant to paragraph (b) of this section shall be filed with the Commission no later than the second business day it is first used after effectiveness in connection with a public offering or sale.

* * * * *

58. By adding § 230.425 to read as follows:

§ 230.425 Filing of ''free writing'' and other prospectuses.

(a) A registrant must file under this section the information described in paragraph (b) of this section except that it need not file:

(1) Any factual business communication, as defined in § 230.169, regardless of when it is made;

(2) Any research report used in reliance on § 230.137, § 230.138, § 230.139, § 230.165 or § 230.166;

(3) Any information used in connection with an offering under Form S–8 (§ 239.16b of this chapter);

(4) Any information used in connection with an offering on Form B (§ 239.5 of this chapter) under a dividend or interest reinvestment plan;

(5) Any information used in connection with a direct stock purchase plan;

(6) Any information filed or to be filed as part of an effective registration statement (except in a business combination transaction registered on

Form C, SB–3, F–8, F–10 or F–80 (§§ 239.6, 239.11, 239.38, 239.40 or 239.41)); or

(7) Any confirmation described in § 240.10b–10 of this chapter;

(b)(1) Five copies of any prospectus used in reliance on § 230.165 shall be filed with the Commission on or before the date of first use.

(2) Five copies of any prospectus used prior to the filing of a registration statement in reliance on § 230.166(*a*) shall be filed with the Commission at the time the related registration statement is filed.

(3) Five copies of any prospectus used before the filing of a registration statement in reliance on § 230.166(b) shall be filed with the Commission on or before the date of first use. Each copy of a prospectus filed under this section must identify the filer and the company that is the subject of the offering in the upper right corner of the cover page in addition to the information required by paragraph (c) of this section.

(4) Five copies of any prospectus used in reliance on § 230.168 shall be filed with the Commission at the time the related registration statement is filed.

(c) Each copy of a prospectus filed under this section shall contain, in the upper right corner of the cover page, the Commission file number for the related registration statement or, if that file number is unknown, a description sufficient to identify the related registration statement.

§ 230.428 [Amended]

59. By removing in § 230.428(b)(2)(iii) the words ''or F–1 (§ 239.31 of this chapter)'' and adding, in their place, the words ''or Form A (§ 239.4 of this chapter)''.

60. By revising § 230.429 to read as follows:

§ 230.429 Prospectus relating to several registration statements.

(a) Where a registrant has filed two or more registration statements, it may file a single prospectus in the latest one in order to satisfy the requirements of the Act and the rules and regulations thereunder for that offering and any other offering(s) registered on the earlier registration statement(s). The combined prospectus in the latest registration statement must include all of the information that would currently be required in a prospectus relating to all offering(s) it covers. The combined prospectus may be filed as part of the initial filing of the latest registration statement, in a pre-effective amendment to it or in a post-effective amendment to it.

(b) Where a registrant relies on paragraph (a) of this section, the registration statement containing the combined prospectus shall act, upon effectiveness, as a post-effective amendment to those registration statements whose offerings have been combined into the new or amended registration statement. The registrant must identify the earlier registration statement(s) to which the combined prospectus relates by setting forth the Commission file number(s) at the bottom of the facing page of the latest registration statement.

61. By amending § 230.430A by removing the word ''fifteen'' and adding, in each place it appears, the word ''five'' in paragraph (a)(3) and by revising the last sentence of Instruction to Paragraph (a) to read as follows:

§ 230.430A Prospectus in a registration statement at the time of effectiveness.

* * * * *

Instruction to Paragraph (a). * * * Notwithstanding the foregoing, any increase or decrease in volume (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the price range may be reflected in the form of prospectus filed with Commission pursuant to § 230.424(b)(1) or § 230.497(h) if, in the aggregate, the changes in volume and price result in no more than a 20% change in the amount of net proceeds disclosed in a prospectus that was delivered to investors in accordance with § 230.172(b) or, if no prospectus was required to be delivered, in the prospectus that was part of the effective registration statement.

* * * * *

§ 230.431 [Removed and Reserved]

62. By removing and reserving § 230.431.

63. By revising § 230.434 to read as follows:

§ 230.434 Prospectus delivery requirements in firm commitment underwritten offerings by registered investment companies.

(a) Where an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) registers an offering of securities on Form N–2 (§ 274.11a–1 of this chapter) or Form S–6 (§ 239.16 of this chapter) and the conditions described in paragraph (b) are satisfied, then:

(1) The prospectus subject to completion and the term sheet described in paragraph (b)(4), taken together, shall constitute a prospectus that meets the requirements of Section 10(a) of the Act (15 U.S.C. 77j(a)) for purposes of Section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)) and Section 5(b)(2) of the Act (15 U.S.C. 77e(b)(2)); and

(2) The Section 10(a) prospectus described in paragraph (a)(1) shall have:

(i) Been sent or given prior to or at the same time that a confirmation is sent or given for purposes of Section 2(a)(10) of the Act; and

(ii) Accompanied or preceded the transmission of the securities for purpose of sale or for delivery after sale for purposes of Section 5(b)(2) of the Act.

(b) Conditions:

(1) The securities are offered for cash in a firm commitment underwritten offering;

(2) A prospectus subject to completion and any term sheet described in paragraph (b)(iv), together or separately, are sent or given prior to or at the same time with the confirmation;

(3) The prospectus subject to completion and term sheet, together, are not materially different from the prospectus in the registration statement at the time of its effectiveness or an effective post-effective amendment thereto (including, in both instances, information deemed to be a part of the registration statement at the time of effectiveness pursuant to Rule 430A(b) (§ 230.430A(b)); and

(4) The term sheet under this paragraph (b) sets forth all information material to investors with respect to the offering that is not disclosed in the prospectus subject to completion or the confirmation.

(c) The information contained in any term sheet described in this section shall be deemed to be a part of the registration statement as of the time such registration statement was declared effective.

Instruction: Any form of prospectus or term sheet used in reliance on this section shall be filed in accordance with § 230.497(h).

(d) Any term sheet described under this section shall state, at the top center of its cover page, that the term sheet is a supplement to a prospectus and identify that prospectus by issuer name and date; clearly identify the document as a term sheet used in reliance on Rule 434; set forth the approximate date of the term sheet's first use; and clearly identify the documents that, when taken together, constitute the Section 10(a) prospectus.

(e) For purposes of this section, prospectus subject to completion shall mean any prospectus that is either a preliminary prospectus used in reliance on Rule 430 (§ 230.430) or a prospectus omitting information in reliance on Rule 430A (§ 230.430A).

64. By revising § 230.455 to read as follows:

§ 230.455 Place of filing.

All registration statements and other papers filed with the Commission under the Act in paper format shall be filed at its principal office, except for registration statements and post-effective amendments thereto filed via facsimile pursuant to § 230.110(d). Materials not filed electronically or via facsimile may be filed by delivery to the Commission through the mails or otherwise.

65. By amending § 230.456 by revising the section heading; designating the current text as paragraph (a); and adding paragraph (b) to read as follows:

§ 230.456 Date of filing, timing for fee payment by small business issuers.

* * * * *

(b)(1) Notwithstanding Section 6 of the Act (15 U.S.C. 77f) and paragraph (a) of this section, a small business issuer filing a registration statement on Form SB–1, SB–2 or SB–3 (§§ 239.9, 239.10 or 239.11 of this chapter) that contains the delaying amendment described in § 230.473(a) may defer payment of the registration fee required by Section 6, provided that it pays the fee no later than the first date to occur of the following:

(i) The date on which the small business issuer requests that the Commission grant effectiveness of the registration statement under Section 8(a) of the Act (15 U.S.C. 77h(a)); or

(ii) The date on which the small business issuer files an amendment to the registration statement that states that the registration statement shall thereafter become effective in accordance with the provisions of Section 8(a) of the Act, as described in § 230.473(b).

(2) Notwithstanding Section 6(c) of the Act, where the small business issuer defers payment of the registration fee in accordance with paragraph (b)(1) of this section, the registration statement (and any amendment thereto) will be considered filed when it is received by the Commission (assuming all requirements of the Act and the rules that apply to such filing have been complied with, other than payment of the registration fee).

66. By amending § 230.457 by adding paragraphs (f)(5), (p) and (q) and revising the first sentence of paragraph (o) to read as follows:

§ 230.457 Computation of Fee.

* * * * *

(f) * * *

(5) If a filing fee is paid pursuant to this paragraph for the registration of an offering and the registration statement also covers the resale of such securities, no additional filing fee is required to be paid with respect to the resale.

* * * * *

(o) Where an issuer is registering an offering of securities, the registration fee may be calculated on the basis of the maximum aggregate offering price of all the securities listed in the ''Calculation of Registration Fee'' table. * * *

(p) Where all or a portion of the securities offered under a registration statement remain unsold after the offering's completion or termination, the dollar amount of the filing fee paid that is associated with the unsold securities may be used as an offset against the total filing fee due to be paid for a subsequent registration statement or registration statements. The subsequent registration statement(s) must be filed by the same registrant or a wholly-owned subsidiary of that registrant within five years of the completion or termination of the initial registration statement.

(q) Notwithstanding any other provisions of this section, no filing fee is required for the registration of an indeterminate amount of securities to be offered solely for market making purposes by an affiliate of the issuer.

67. By revising paragraph (b)(2) of § 230.461 to read as follows:

§ 230.461 Acceleration of effective date.

* * * * *

(b) * * *

(2)(i) Where delivery of prospectus information to investors required by § 230.172 is not accomplished, until the registrant, any underwriter and any participating dealer give the Commission adequate assurance that they have complied with § 230.172; and

(ii) Where the prospectus information delivered to investors is found to be inaccurate or inadequate in any material respect, until the registrant, any underwriter and any participating dealer give the Commission adequate assurance that they have informed investors that will purchase in the offering of the appropriate correcting information.

* * * * *

68. By amending § 230.462 by revising the section heading, paragraphs (a), (b)(2) and (c); and by adding paragraphs (e), (f) and (g) to read as follows:

§ 230.462 Effectiveness of certain registration statements and post-effective amendments.

(a) A registration statement filed in accordance with Form S–8 (§ 239.16b of this chapter) shall become effective upon filing with the Commission.

(b) * * *

(2) The registration statement is filed before the date confirmations are sent or given or, in an offering described in § 230.145(a), before the meeting date at which security holders approved the transaction or, if no meeting was held, the date the transaction was approved by security holders' authorization or consent; and

* * * * *

(c) A post-effective amendment shall become effective upon filing with the Commission if:

(1) Other than price-related information previously omitted in reliance upon § 230.430A, it contains no substantive changes from or additions to the prospectus previously filed:

(i) As part of the effective registration statement; or

(ii) As part of a post-effective amendment to that registration statement; and

(2) The post-effective amendment is filed:

(i) Prior to the time confirmations are sent or given; and

(ii) No more than 30 days after the effectiveness of the registration statement or another post-effective amendment thereto that contains a prospectus.

* * * * *

(e) A registration statement and any post-effective amendment thereto shall become effective upon filing with the Commission if:

(1) The registration statement is filed on Form SB–1 (§ 239.9 of this chapter), Form SB–2 (§ 239.10 of this chapter) or Form SB–3 (§ 239.11 of this chapter) and is registering additional securities of the same class(es) as were included in an earlier effective registration statement filed on Form SB–1, Form SB–2 or Form SB–3 for the same offering;

(2) The registration statement is filed before the date confirmations are sent or given or, in an offering described in § 230.145(a), before the meeting date at which security holders approved the transaction or, if no meeting was held, the date the transaction was approved by security holders' authorization or consent; and

(3) The new registration statement registers additional securities in an amount and at a price that together represent no more than 50% of the maximum aggregate offering price set forth for each class of securities in the ''Calculation of Registration Fee'' table contained in the earlier registration statement.

(f)(1) The following registration statements shall become effective in accordance with paragraph (e)(2) of this section:

(i) A registration statement filed in accordance with Form B (§ 239.5 of this chapter);

(ii) A registration statement filed in accordance with Schedule B (15 U.S.C. 77aa) by a foreign government issuer that:

(A) Registered an offering under the Act within the 3 years before the filing date of the current offering; and

(B) Is registering an offering of at least $250 million in securities that is underwritten on a firm commitment basis; and

(iii) A registration statement filed in accordance with Form A (§ 239.4 of this chapter) by an issuer that:

(A) Satisfies the requirements of General Instruction II.A. or II.C. of Form A and is not disqualified as specified in General Instruction II.B. of Form A.; and

(B) Has a public float of $75 million or more as of the filing date; or

(C) Incorporates into the Form A its annual report filed under Section 13(a) or 15(d) of the Securities Exchange Act (15 U.S.C. 78m or 78o(d)) for the end of its most recently completed fiscal year and that annual report was reviewed fully by the staff of the Commission and was amended in accordance with the staff's comments (if so requested).

(2) The registrant shall designate the effective date of the registration statement listed in paragraph (f)(1) of this section. It must indicate on the front page of the Form or Schedule that the registration statement will become effective either:

(i) Upon filing with the Commission;

(ii) At the date and time set forth on the front page of the Form or Schedule; or

(iii) As specified in a later amendment to the Form or Schedule.

(g) An issuer may file only one registration statement pursuant to either paragraph (b) or (e) of this section for any offering.

69. By revising § 230.464 to read as follows:

§ 230.464 Effective date of a post-effective amendment filed on Form A, Form B or Form S–8.

(a) If at the time a registrant files a post-effective amendment on Form A, it meets the requirements set forth in General Instruction VIII. to Form A (§ 239.4 of this chapter):

(1) Its post-effective amendment filed on Form A shall become effective in accordance with the registrant's designation on the front page of Form A either:

(i) Upon filing with the Commission;

(ii) On the date set forth on the front page of Form A; or

(iii) As specified in a later post-effective amendment to the Form; and

(2) The effective date of the registration statement shall be deemed to be the effective date of the post-effective amendment.

(b) If at the time a registrant files a post-effective amendment on Form B (§ 239.5 of this chapter), it meets the eligibility requirements to file that post-effective amendment on Form B:

(1) Its post-effective amendment filed on Form B shall become effective in accordance with the registrant's designation on the front page of Form B either:

(i) Upon filing with the Commission;

(ii) On the date set forth on the front page of Form B; or

(iii) As specified in a later post-effective amendment to the Form; and

(2) The effective date of the registration statement shall be deemed to be the effective date of the post-effective amendment.

(c) If a registrant meets the eligibility requirement of Form S–8 (§ 239.16b of this chapter), its post-effective amendment filed on Form S–8:

(1) Shall become effective upon filing with the Commission; and

(2) The effective date of the registration statement shall be deemed to be the filing date of the post-effective amendment.

70. By revising the first sentence of paragraph (a) of § 230.471 and adding paragraph (c) to read as follows:

§ 230.471 Signatures to amendments.

(a) Except as provided in paragraph (c) of this section or § 230.478, every amendment to a registration statement shall be signed by the persons specified in Section 6(a) of the Act (15 U.S.C. 77f(a)). * * *

* * * * *

(c)(1) All persons who sign a registration statement on Form B (§ 239.5 of this chapter) will be deemed to have signed a post-effective amendment to that registration statement where an authorized representative of the registrant signs that amendment if all the following are true:

(i) The registration statement relates to an offering under § 230.415(a)(1)(x);

(ii) The person did not grant a power of attorney for another person to sign a post-effective amendment; and

(iii) The post-effective amendment does not expressly state to the contrary.

(2) Despite paragraph (c)(2) of this section, if any person who signed the registration statement no longer acts in the capacity in which such person signed the registration statement, the registrant must provide the signature of the person who currently acts in that capacity in the post-effective amendment.

71. By revising paragraph (e) of § 230.472 to read as follows:

§ 230.472 Filing of amendments; number of copies.

* * * * *

(e) Notwithstanding any other provision of this section, if a registrant files a post-effective amendment pursuant to § 230.462(b), § 230.462(e) or § 230.462(f) by facsimile pursuant to § 230.110(d), the registrant need file only one complete copy of the registration statement with the Commission. That copy must include all exhibits and other documents that are a part of it. That copy need not be bound. It may include facsimile versions of signatures in accordance with § 230.402(e).

§ 230.473 [Amended]

72. By amending § 230.473 by removing in paragraph (d) the words ''Form S–3, F–2 or F–3 (§ 239.13, § 239.32 or § 239.33 of this chapter) relating to a dividend or interest reinvestment plan; or on Form S–4 (§ 239.25 of this chapter) complying with General Instruction G of that Form'' and adding, in their place, the words ''Form B (§ 239.5 of this chapter) or on Form A (§ 239.4 of this chapter) complying with General Instruction VIII. of that Form''.

§ 230.475a [Removed]

73. By removing § 230.475a.

74. By amending § 230.477 by revising paragraphs (b) and (c); and by adding paragraph (d) to read as follows:

§ 230.477 Withdrawal of registration statement or amendment.

* * * * *

(b) Any application for withdrawal of an entire registration statement will be deemed granted upon filing of the application with the Commission if made prior to the effective date.

(c) The registrant must sign any application for withdrawal and must state fully in it the grounds on which it is making the application. If the application for withdrawal is being made in anticipation of reliance on § 230.152(c), the registrant must state in the application that no securities were sold in connection with the offering and that it may undertake a subsequent private offering in reliance on § 230.152.

(d) Any withdrawn document will remain in the Commission's files, but an indication of the date of withdrawal will be included in the file for the withdrawn document along with a notation that it was withdrawn upon the request of the registrant with the consent of the Commission.

75. To add § 230.493A to read as follows:

§ 230.493A Filing of securities term sheet in certain offerings registered on Schedule B.

Foreign government issuers must file with the Commission any securities term sheet they deliver pursuant to § 230.172(a) as part of the prospectus in the related effective registration statement on Schedule B (15 U.S.C. 77aa). They must file the securities term sheet no later than the date of the first sale in the offering.

76. By adding § 230.499 to read as follows:

§ 230.499 Concurrent registration under the Exchange Act on Schedule B.

(a) Any issuer filing a registration statement pursuant to Schedule B (15 U.S.C. 77aa) also may use that Schedule to register concurrently under Section 12(b) or 12(g) of the Exchange Act (15 U.S.C. 78l(b) or (g)). The issuer may register any class of securities that is the subject of the offering it is registering under the Securities Act. To register, the issuer must check the appropriate box(es) and identify the class(es) of securities it is registering under Section 12(b) or 12(g) and the exchange or market for those securities. The issuer also must include the following paragraph and table on the facing page of the Schedule B registration statement:

The issuer is using Schedule B to register concurrently under Section 12(b) or 12(g) of the Exchange Act one or more classes of securities that are the subject of the offering being registered under the Securities Act. The issuer has checked the appropriate box(es) and identified the class(es) of securities it is registering under Section 12(b) or 12(g) on the table below:

☐Securities being registered pursuant to Exchange Act Section 12(b):

Title of each class:

_____

_____

Name of exchange on which listed:

_____

_____

☐Securities being registered pursuant to Exchange Act Section 12(g):

Title of each class:

_____

_____

Name of market on which quoted:

_____

_____

(b) Registration on Schedule B of a class of securities under Exchange Act Section 12(b) shall become effective upon the later of:

(1) Receipt by the Commission of certification from the national securities exchange listed on the cover of the Schedule B that the securities have been approved for listing; or (2) Effectiveness of the Schedule B under the Securities Act.

(c) Registration on this Schedule B of a class of securities under Exchange Act Section 12(g) shall become effective automatically upon the earlier of:

(1) 60 days after the initial filing of this Schedule B; or

(2) The effectiveness of this Schedule B.

(d) The issuer must file at least one complete, signed copy of the registration statement on Schedule B with each exchange or market identified on the cover of the Schedule B.

77. By amending § 230.502 by removing in paragraph (b)(2)(ii)(B) the words ''Form S–1 (§ 239.11 of this chapter)'' and adding, in their place, the words ''Form A (§ 239.4 of this chapter)'', by removing ''SB–2 (§ 239.10 of this chapter) or S–11 (§ 239.18 of this chapter)'' and adding, in their place, the words ''or SB–2 (§ 239.10 of this chapter)'', by removing in paragraph (b)(2)(ii)(D) the words ''Form F–1 (§ 239.31 of this chapter)'' and adding, in their place, the words ''Form A (§ 239.4 of this chapter)'' by removing in paragraph (c)(2) the words ''with § 230.135c'' and adding, in their place, the words ''with § 230.135''; revising the Note heading following paragraph (a) and adding a sentence at the end of that Note to read as follows:

§ 230.502 General conditions to be met.

* * * * *

(a) *Integration.* * * *

Note to Paragraph (a). * * * *See also* § 230.152 which provides safe harbors from integration of public offerings and private offerings made around the same time, including offerings under § 230.506.

* * * * *

78. By revising paragraph (a) of § 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 section shall be exempt from the provisions of Section 5 of the Act (15 U.S.C. 77e) under Section 3(b) of the Act (15 U.S.C. 77c(b)) if the issuer is not:

(1) An investment company;

(2) A development stage company that either:

(i) Has no specific business plan or purpose; or

(ii) Has indicated that its business plan is to engage in a merger or acquisition with an unidentified entity or entities; or

(3) Subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)), except that an issuer may be subject to those requirements in connection with the offer and sale of securities underlying convertible securities or warrants if:

(i) The issuer offered and sold the convertible securities or warrants in compliance with this section while it was not subject to those requirements; and

(ii) The issuer offered the securities underlying the convertible securities or warrants in compliance with this section prior to becoming subject to those requirements.

* * * * *

79. By amending § 230.902 by removing the word ''and'' at the end of paragraph (c)(3)(v)(B); by revising paragraph (c)(3)(vi); by removing the period at the end of paragraph (c)(3)(vii) and adding in its place ''; and''; and by adding paragraphs (c)(3)(viii) and (h)(4) to read as follows:

§ 230.902 Definitions.

* * * * *

(c) *Directed selling efforts.* * * *

(3) * * *

(vi) Publication by an issuer of a notice in accordance with § 230.135;

* * * * *

(viii) Publication or distribution of information, an opinion or a recommendation by a broker or dealer in accordance with § 230.138 or § 230.139.

* * * * *

(h) *Offshore transaction.* * * *

(4) Notwithstanding paragraph (h)(1) of this section, publication or distribution of information, an opinion or a recommendation in accordance with § 230.138 or § 230.139 by a broker or dealer at or around the time of an offering in reliance on Regulation S (§§ 230.901 through 230.904) will not cause the transaction to fail to be an offshore transaction as defined in this section.

* * * * *

PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILERS

80. By revising the authority citation for part 232 to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 77z-3, 78c(b), 78d, 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 78mm, 79t(a), 80a-8, 80a-29, 80a-30 and 80a-37.

81. By amending § 232.13 by revising paragraphs (a)(1)(ii), (a)(1)(iii) and (a)(3) before the Note; and by adding paragraph (a)(1)(iv) to read as follows:

§ 232.13 Date of filing; adjustment of filing date.

(a) * * *

(1) * * *

(ii) The filing conforms to the applicable technical standards regarding electronic format in the EDGAR Filer Manual;

(iii) With respect to Securities Act filings, including filings under Section 24(f) of the Investment Company Act (15 U.S.C. 80a-24(f)), the required fee payment:

(A) For registration statements filed in accordance with Forms SB–1, SB–2 or SB–3 (§§ 239.9, 239.10 or 239.11 of this chapter) is made no later than the earlier of:

(*1*) The date on which the small business issuer requests, under § 230.461 of this chapter, that the Commission accelerate the effective date of its registration statement; or

(*2*) The date on which the small business issuer files an amendment to the registration statement that contains the statement set forth in § 230.473(b) of this chapter.

(B) For registration statements other than those filed in accordance with Forms SB–1, SB–2 or SB–3 is confirmed upon filing; and

(iv) Notwithstanding paragraph (a)(1)(iii) of this section, the failure to pay an insignificant amount of the fee at the required time, as a result of a bona fide error, shall not affect the filing.

(2) * * *

(3) Notwithstanding paragraph (a)(2) of this section, any registration statement or any post-effective amendment thereto filed pursuant to §§ 230.462(b), 230.462(e) or 230.462(f) of this chapter by direct transmission commencing on or before 10:00 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect, shall be deemed filed on the same business day.

* * * * *

82. By amending § 232.101 by revising the Note following paragraph (a)(3); by removing paragraph (c)(7); and by redesignating paragraphs (c)(8), (c)(9), (c)(10), (c)(11), (c)(12), (c)(13), (c)(14), (c)(15), (c)(16) and (c)(17) as paragraphs (c)(7), (c)(8), (c)(9), (c)(10), (c)(11), (c)(12), (c)(13), (c)(14), (c)(15) and (c)(16) to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(3) * * *

Note to Paragraph (a): Failure to submit a required electronic filing pursuant to paragraph (a) of this section, as well as any required confirming electronic copy of a paper filing made in reliance on a hardship exemption as provided in §§ 232.201 and 232.202, will result in the ineligibility to use Form B and S–8 (§§ 239.5 and 239.16b of this chapter), restrict incorporation by reference of the document submitted in paper (*see* § 232.303), and toll certain time periods associated with tender offers (*see* §§ 240.13e-4(f)(12) and 240.14e-1(e) of this chapter).

* * * * *

83. By amending § 232.201 revising Note 1 following paragraph (b) to read as follows:

§ 232.201 Temporary hardship exemption.

* * * * *

(b) * * *

Note 1 to Paragraph (b): Failure to submit the confirming electronic copy of a paper filing made in reliance on a temporary hardship exemption, as required in paragraph (b) of this section, will result in the ineligibility to use Form B and S–8 (§§ 239.5 and 239.16b of this chapter), restrict incorporation by reference of the document submitted in paper (*see* § 232.303), and toll certain time periods associated with tender offers (*see* §§ 240.13e-4(f)(12) and 240.14e-1(e) of this chapter).

* * * * *

84. By amending § 232.202 by revising Note 3 following paragraph (d) to read as follows:

§ 232.202 Continuing hardship exemption.

* * * * *

(d) * * *

Note: 3 Failure to submit the confirming electronic copy of a paper filing made in reliance on a continuing hardship exemption granted pursuant to paragraph (d) of this section will result in the ineligibility to use Forms B and S–8 (§§ 239.5 and 239.16b of this chapter), restrict incorporation by reference of the document submitted in paper (*see* § 232.303), and toll certain time periods associated with tender offers (*see* §§ 240.13e-4(f)(12) and 240.14e-1(e) of this chapter).

85. By adding a sentence at the end of paragraph (a) of § 232.304 to read as follows:

§ 232.304 Graphic and image material.

(a) * * * Additionally, five copies of any prospectus filed in accordance with § 230.425 that contains graphic, imagine or audio material that cannot be reproduced in the electronic filing must be filed with the Commission in its original form.

* * * * *

§ 232.311 [Amended]

86. By amending § 232.311 by removing paragraph (i).

87. By amending § 232.401 by revising the last sentence of the Note to read as follows:

§ 232.401 Financial Data Schedule.

* * * * *

Note: * * * Further, electronic filers that have not filed a required Financial Data Schedule will be ineligible to use Form B and Form S–8 (§§ 239.5 and 239.16b of this chapter).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

88. By revising the general authority citation for part 239 to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 78mm, 78u-5, 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a-8, 80a-24, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

* * * * *

§§ 239.11, 239.12, 239.13, 239.18, 239.25, 239.31, 239.32, 239.33, 239.34 and Forms S–1, S–2, S–3, S–4, S–11, F–1, F–2, F–3, and F–4 [Removed and Reserved]

89. By removing and reserving § 239.11, § 239.12, § 239.13, § 239.25, § 239.18, § 239.31, § 239.32, § 239.33, § 239.34, and by removing Forms S–1, S–2, S–3, S–4, S–11, F–1, F–2, F–3, and F–4.

90. By adding § 239.4 and Form A to read as follows:

§ 239.4 Form A, for registration under the Securities Act of 1933 and optional concurrent registration under the Securities Exchange Act of 1934.

(a) This form shall be used for registration under the Securities Act of 1933 (15 U.S.C. 77a *et. seq.*) (''Securities Act'') of any offering for which no other form is authorized or prescribed. Therefore, for example, this form shall not be used for:

(1) Any offering for which Form C or Form SB–3 (§ 239.6 or 239.11) is authorized; or

(2) Any offering by a foreign government or a political subdivision thereof for which Schedule B (15 U.S.C. 77aa) is authorized.

(b) A registrant also may use this form to register concurrently under Section 12(b) or 12(g) of the Securities Exchange Act of 1934 (''Exchange Act''). It may register under the Exchange Act any class of securities that are the subject of the offering it is registering under the Securities Act. To register, the registrant must check the appropriate box(es) on the cover page of this form and identify which class(es) of securities it is registering under Section 12(b) or 12(g) of the Exchange Act.

Note: The text of Form A will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form A—Registration Statement Under The Securities Act of 1933 [and Optional Registration Pursuant to Section 12(b) or 12(g) of The Securities Exchange Act of 1934]

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English, if applicable)

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification Number)

(Address and telephone number of Registrant's principal executive offices)

(Name, address and telephone number of Registrant's agent for service)

(Web Site Address, if any)

(E-mail Address, if any)

* * * * *

Approximate date of commencement of sales

If you are a foreign private issuer as defined in Securities Act Rule 405, check the following box. [ ]

If you are not a foreign private issuer as defined in Securities Act Rule 405, check the following box. [ ]

If any of the securities being registered on this Form are to be offered pursuant to Securities Act Rule 415, check the following box. [ ] _____

If you are filing this Form to register additional securities for an offering in accordance with Securities Act Rule 462(b), check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] _____

If this Form is a post-effective amendment filed in accordance with Securities Act Rule 462(c) to re-start the 15-business-day period during which pricing must occur under Securities Act Rule 430A(a)(3) or to reflect a non-substantive change from, or addition to, the prospectus, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] _____

If this Form is a post-effective amendment filed in accordance with Rule 462(d) under the Securities Act solely to add exhibits, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] _____

If you are using this Form to register concurrently under Section 12(b) or 12(g) of the Exchange Act any class of securities that are the subject of the offering you are registering under the Securities Act, check the appropriate box and provide the information indicated below:

[ ] Securities being registered pursuant to Exchange Act Section 12(b):

Title of each class:

Name of exchange on which listed:

This Section 12(b) registration will become effective upon the later of (1) effectiveness of this Form A; or (2) receipt by the Commission of certification from the national securities exchange listed above.

[ ] Securities being registered pursuant to Exchange Act Section 12(g):

Title of each class:

Name of market on which quoted:

Section 12(g) registration statements become effective automatically 60 days after filing. You may check box 1 or 2, below, to shorten this time period. Also, you may check box 3, below, to preserve your option to shorten this time period. If you check box 3 and do not file a later amendment, the registration of the class of securities listed above will become effective 60 days after filing of this Form A.

We propose that this filing become effective (check appropriate box):

1. [ ] upon filing with the Commission. By checking this box, the undersigned are certifying compliance with the delivery requirements of Securities Act Rule 172(b) in connection with the offering. In addition, in checking this box, any underwriter in connection with the offering also is requesting that the registration statement become effective upon filing.

2. [ ] on _____ at _____. By checking this box, the undersigned are certifying compliance with the delivery requirements of Securities Act Rule 172(b) in connection with the offering. In addition, in checking this box, any underwriter in connection with the offering also is requesting that the registration statement become effective upon the date and time designated.

3. [ ] as specified in a later amendment to this Form.

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Notes to the Fee Table:

1. Set forth any explanatory details relating to the fee table in footnotes to the table.
2. If the basis for calculating the fee is not evident from the information presented in this table, refer to the applicable provisions of Securities Act Rule 457 in a footnote.
3. If the fee is calculated under Rule 457(o), the ''Amount to be registered'' and the ''Proposed maximum offering price per unit'' need not appear in this table.
4. If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. *See* Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

General Instructions

I. Rules as to Use of Form A

A. This Form shall be used for registration under the Securities Act of 1933 (''Securities Act'') of any offering for which no other form is authorized or prescribed. Therefore, for example, this Form shall not be used for:

1. any offering for which Form C or Form SB–3 is authorized; or

2. any offering by a foreign government or a political subdivision thereof for which Schedule B is authorized.

B. A registrant also may use this Form to register concurrently under Section 12(b) or 12(g) of the Securities Exchange Act of 1934 (''Exchange Act''). It may register under the Exchange Act any class of securities that are the subject of the offering it is registering under the Securities Act. To register, the

registrant must check the appropriate box(es) on the cover page of this Form and identify which class(es) of securities it is registering under Section 12(b) or 12(g).

II. Registrant Information—Incorporation by Reference

A. *Registrants Eligible to Incorporate by Reference.* Unless otherwise provided in General Instruction II.B., a registrant may comply with Items 12 and 13, instead of Item 14, if it meets the following requirements:

1. the registrant:

(a) has a class of securities registered pursuant to Section 12(b) or 12(g) of the Exchange Act; or

(b) is required to file reports pursuant to Section 15(d) of the Exchange Act;

2. for a period of at least twenty-four full calendar months and any portion of a month immediately preceding the date of filing this Form, the registrant:

(a) has been subject to the requirements of Section 12 or Section 15(d) of the Exchange Act;

(b) has filed all material it was required to file pursuant to Sections 13, 14 and 15(d) of the Exchange Act; and

(c) has filed two annual reports if its public float is less than $75 million.

(3) for a period of at least twelve full calendar months and any portion of a month immediately preceding the date of filing this Form, the registrant has filed in a timely manner all materials it was required to file pursuant to Sections 13, 14 and 15(d) of the Exchange Act.

Note to General Instruction II.A.2.(c):

If a registrant filed a Form 12b–25 to delay filing any report (or portion of a report) during that time period, it must have filed the related report (or portion) within the time prescribed by Rule 12b–25.

B. *Registrants Ineligible to Incorporate by Reference and Rely on Automatic Effectiveness.* A registrant must comply with Item 14 and is ineligible to rely on Securities Act Rule 462(f)(1)(iv) if it fails to meet any of the conditions of General Instruction II.A. or any of the following is true:

1. within 2 years before the date of filing this Form, the registrant was a development stage company that either:

(a) had no specific business plan or purpose; or

(b) indicated that its business plan was to engage in a merger or acquisition with an unidentified entity or entities;

2. within two years before the date of filing this Form, the registrant was a shell entity having few or no assets, earnings or operations;

3. the registrant is registering an offering of ''penny stock'' as defined in Exchange Act Rule 3a51–1 or has issued it in the two years prior to the date of filing this Form;

4. the registrant or any of its subsidiaries has, since the end of the last fiscal year for which the registrant included certified financial statements in an Exchange Act report:

(a) failed to pay any dividend or sinking fund installment on preferred stock;

(b) caused any material delinquency with respect to preferred stock that was not cured within 30 days; or

(c) defaulted on any payment of principal, interest, a sinking fund installment, a purchase fund installment or any other installment on indebtedness, or defaulted on any rental on a long-term lease, if such debt and lease defaults in the aggregate are material;

5. the independent accountant that examined the registrant's financial statements for the most recent fiscal year expressed in its report substantial doubt about the registrant's ability to continue as a going concern;

6. within three years before the date of filing, a petition under the federal bankruptcy laws or any state insolvency law was filed by or against the registrant, or a court appointed a receiver, fiscal agent or similar officer with respect to the business or property of the registrant. If true, however, this would not disqualify the registrant if it has filed an annual report with audited financial statements subsequent to its emergence from that bankruptcy, insolvency or receivership process;

7. within five years before the date of filing, the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or underwriter was convicted of any felony or misdemeanor described in clauses (i) through (iv) of Section 15(b)(4)(B) of the Exchange Act;

8. within five years before the date of filing, the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or underwriter was made the subject of a judicial or administrative decree or order arising out of a governmental action that:

(a) prohibits future violations of any antifraud provision of the securities laws or Section 5 of the Securities Act;

(b) requires that the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or underwriter cease and desist from violating any antifraud provision of the securities laws or from violating Section 5 of the Securities Act; or

(c) determines that the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or underwriter violated any antifraud provision of the securities laws or Section 5 of the Securities Act;

9. the registrant is a ''small business issuer,'' as defined in Securities Act Rule 405, that provided the ''Information Required in Annual Report of Transitional Small Business Issuers'' in its most recent annual report on Form 10–KSB; and

10. the registrant would incorporate by reference into its Form A registration statement a report under the Exchange Act that:

(a) the Commission, after review, requested that the registrant amend in accordance with its comments; and

(b) either the registrant did not amend the report or, in the Commission's judgment, did not amend the report in accordance with the Commission's comments.

C. *Successor Registrants.* We will deem a successor registrant to have satisfied the eligibility requirements of General Instruction II.A. of this Form if it satisfies either of the following requirements:

1.(a) taken together, the registrant and its predecessor(s) meet the eligibility requirements in General Instruction II.A. of this Form;

(b) the primary purpose of the succession was to change the state or other jurisdiction of incorporation of the predecessor(s) or to form a holding company for the predecessor(s); and

(c) the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or

2. the predecessor(s) met the eligibility requirements of General Instruction II.A. of this Form at the time of succession and the registrant has continued to meet them since the succession.

III. Domestic and Foreign Registrants

A. *Definitions.*

1. As used in this Form, ''U.S. registrant'' includes all registrants other than foreign governments and foreign private issuers.

2. As used in this Form, ''foreign registrant'' includes only registrants that are foreign private issuers.

3. ''Foreign government'' and ''foreign private issuer'' are defined in Rule 405 of Regulation C.

B. *Information Required.*

1. U.S. registrants must provide all information required by the Items of this Form except where the Item expressly identifies the requirement as applying only to foreign registrants.

2. Foreign registrants must provide all information required by the Items of this Form except where the Item expressly identifies the requirement as applying only to U.S. registrants.

IV. Free Writing Prospectus Information

You should read Securities Act Rule 165. That rule permits a Form A registrant and those acting on its behalf to use ''free writing'' offering materials that do not meet the requirements of Section 10 of the Act. Those offering materials may be used after the registrant has filed with the Commission a registration statement containing the Section 10 prospectus. If you use a prospectus in reliance on that Rule, you must file it when required to do so by Securities Act Rule 425.

V. Securities Act Rules and Regulations

A. *Prospectus delivery.* You should read Securities Act Rule 172. That rule describes prospectus delivery obligations applicable to offerings registered on this Form.

B. *Preparation and filing of Form.* You should read the other rules and regulations under the Securities Act (Part 230 of Title 17 of the Code of Federal Regulations), particularly Regulation C, Regulation S–K and Form 20–F. Regulation C contains general requirements regarding the preparation and filing of registration statements. Regulation S–K contains non-financial statement disclosure requirements applicable to registration statements. Form 20–F also contains non-financial statement disclosure requirements, but they apply only to foreign private issuers.

C. *Blank check companies.* If the offering registered on this Form relates to a blank check company, you should read Securities Act Rule 419. Among other things, that Rule contains additional disclosure requirements.

VI. Foreign Registrant Financial Statements

A. A foreign registrant must reconcile its financial statements included in or incorporated into this registration statement. It must reconcile them to Item 18 of Form 20–F, except as otherwise permitted in paragraph B of this General Instruction.

B. A foreign registrant need only reconcile its financial statements to Item 17 of Form 20–F if:

1. it is registering an offering of its non-convertible investment grade securities. A security is ''investment grade'' if, at the time of sale:

(a) it is rated by at least one nationally recognized statistical rating organization (''NRSRO'') (as that term is used in Exchange Act Rule 15c3–1(c)(2)(vi)(F)) in one of the generic rating categories that signify investment grade; and

(b) no other NRSRO rating the security has placed it in a category that does not signify investment grade;

2. it is registering an offering of its securities to be issued upon the exercise of outstanding rights granted pro rata to all existing security holders of the class of securities to which the rights attach;

3. it is registering an offering of its securities pursuant to a dividend or interest reinvestment plan;

4. it is registering an offering of its securities upon the conversion of outstanding convertible securities that it (or its affiliate) issued; or

5. it is registering an offering of its securities upon the exercise of outstanding transferrable warrants that it (or its affiliate) issued.

C. Notwithstanding paragraphs B.2., B.3., B.4. and B.5. of this General Instruction, if securities are to be offered or sold in a standby underwriting in the United States or by similar arrangement, the registrant must reconcile its financial statements to Item 18 of Form 20–F.

VII. Roll-Up Transactions

A. The registrant must comply with the disclosure provisions of Subpart 900 of Regulation S–K if it registers a roll-up transaction (as defined in Item 901(c) of Regulation S-K) on this Form, even if the registrant is a ''small business issuer'' as defined in Securities Act Rule 405. To the extent that the disclosure requirements of Subpart 900 are inconsistent with the disclosure requirements of this Form, the requirements of Subpart 900 control.

B. If the registrant registers a roll-up transaction on this Form, special prospectus delivery requirements apply. *See* Securities Act Rule 172(e).

C. You should read the proxy rules and Rule 14e–7 of the tender offer rules. They contain provisions specifically applicable to roll-up transactions. Those provisions apply whether or not the entities involved have registered securities under Section 12 of the Exchange Act.

VIII. Effectiveness of Registration Statement and Post-Effective Amendments

A.1. Registration statements on this Form will become effective automatically pursuant to Securities Act Rule 462(f)(1)(iv) on the date designated by the registrant on the front page of the Form if:

(i) the registrant meets the requirements of General Instruction II.A. or II.C. and is not disqualified as specified in General Instruction II.B.; and

(A) the registrant has a public float of $75 million or more; or

(B) the annual report filed by the registrant for its most recently completed fiscal year end was reviewed by the staff of the Commission, was amended in accordance with the staff's comments (if so requested) and is incorporated by reference into the Form A.

2. ''Public float'' means the aggregate market value of the registrant's outstanding voting and non-voting common equity securities held by persons other than affiliates of the registrant, as of the end of the registrant's last fiscal quarter.

3. Under Rule 462(f)(1)(iv), registrants may designate that the Form will become effective either:

(i) upon filing with the Commission;

(ii) at the date and time as set forth on the front page of the Form;

(iii) as specified in a later amendment to the Form.

4. Before filing this Form in reliance on Rule 462(f)(1)(iv), registrants must obtain the concurrence of the underwriter with the designated effective date.

5. Registration statements on this Form filed in reliance on Securities Act Rule 462(f)(1)(iv) become public upon filing and are not reviewed by the Commission staff prior to the effective date designated by the issuer. Confidential treatment requests with respect to information that the registrant is required to file in this Form may, however, be reviewed by the staff. As a result, when the issuer plans to have the Form become effective upon filing or fewer than 20 days thereafter, it must furnish to the staff in advance of filing, any request it wishes to make for confidential treatment of information relating to the Form. *See* Securities Act Rule 406. The Commission must act on the confidential treatment request before this Form becomes effective.

B. Any post-effective amendment filed on this Form by a registrant eligible to designate its effective date as described in General Instruction VIII.A. also shall become effective as designated by the registrant. *See* General Instruction VIII.A.2. and Securities Act Rule 464.

IX. Registration of Additional Securities.

A. Under certain circumstances, the registrant may increase the size of an offering after the effective date through filing a short-form registration statement under Securities Act Rule 462(b). A Rule 462(b) registration statement may include only the following:

1. the facing page;

2. a statement that the earlier registration statement, identified by file number, is incorporated by reference;

3. any required opinions and consents;

4. the signature page; and

5. any price-related information omitted from the earlier registration statement in reliance on Securities Act Rule 430A, if the registrant so chooses.

B. The information contained in a Rule 462(b) registration statement is deemed to be a part of the earlier effective registration statement as of the date of effectiveness of the Rule 462(b) registration statement.

C. The registrant may incorporate by reference from the earlier registration statement any opinion or consent required in the Rule 462(b) registration statement if:

1. the opinion or consent expressly allows that incorporation; and

2. the opinion or consent also relates to the Rule 462(b) registration statement.

Note to General Instruction IX.C.

You should read Securities Act Rule 411(c) regarding incorporation by reference of exhibits and Securities Act Rule 439(b) regarding incorporation by reference of consents.

X. Concurrent Registration of Securities under the Exchange Act.

A. Registration on this Form of a class of securities under Exchange Act Section 12(b) shall become effective upon the later of:

1. receipt by the Commission of certification from the national securities exchange listed on the cover of this Form that the securities have been approved for listing; or

2. effectiveness of this registration statement.

B. Registration on this Form of a class of securities under Exchange Act Section 12(g) shall become effective upon the effectiveness of this registration statement.

C. If the registrant is required to file an annual report under Exchange Act Section 15(d) for its last fiscal year, it must file that annual report within the time period specified in the appropriate annual report form even if the Exchange Act registration becomes effective before the annual report is due.

D. The registrant must file at least one complete, signed copy of the registration statement with each exchange or market identified on the cover of this Form.

Part I—Information Required in the Prospectus

Item 1. Front Cover Page of the Registration Statement and Outside Front Cover Page of the Prospectus

(a) Provide the information required by Item 501 of Regulation S–K.

(b) If the registrant is a real estate entity as defined in Item 1101 of Regulation S–K, provide the information required by Item 1102 of Regulation S–K.

Item 2. Inside Front and Outside Back Cover Pages of Prospectus

Provide the information required by Item 502 of Regulation S–K.

Item 3. Prospectus Summary, Risk Factors, and Ratio of Earnings to Fixed Charges

(a) Provide the information required by Item 503 of Regulation S–K.

(b) If the registrant is a real estate entity as defined by Item 1101 of Regulation S–K,

provide the information required by Item 1103 of Regulation S–K.

Note to Item 3.

Information is required by this Item only to the extent that it is not already incorporated by reference from an Exchange Act report.

Item 4. Use of Proceeds

Provide the information required by Item 504 of Regulation S–K.

Item 5. Determination of Offering Price

Provide the information required by Item 505 of Regulation S–K.

Item 6. Dilution

Provide the information required by Item 506 of Regulation S–K.

Item 7. Selling Security Holders

Provide the information required by Item 507 of Regulation S–K.

Item 8. Plan of Distribution

Provide the information required by Item 508 of Regulation S–K.

Item 9. Description of Securities

Provide the information required by Item 202 of Regulation S–K.

Item 10. Interests of Named Experts and Counsel

Provide the information required by Item 509 of Regulation S–K.

Item 11. Real Estate Entities

If the registrant is a real estate entity as defined in Item 1101 of Regulation S–K, provide the information required by Item 1104 and Items 1108 through Item 1112 of Regulation S–K.

Item 12. Information Required for Seasoned Form A Companies

If the registrant meets the requirements of General Instruction II. of this Form and elects to comply with this Item and Item 13 (instead of Item 14), it must do the following:

(a) *Annual report.* Deliver together with the prospectus a copy of its latest annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act.

(b) *Quarterly information.* U.S. registrants: Provide the information required by Part I of Form 10–Q (or Form 10–QSB, if applicable) for the most recent fiscal quarter following the fiscal year covered by the annual report delivered pursuant to this Item. The registrant must:

(1) include that information in the prospectus; or (2) deliver together with the prospectus a copy of its latest Form 10–Q (or 10–QSB);

Notes to Items 12(a) and 12(b).

1. Indicate in the prospectus that it is accompanied by the reports that the registrant sends pursuant to paragraphs (a) and (b) of this Item.

2. If the registrant incorporates by reference portions of any other document into a report it delivers under this Item, it also must deliver the incorporated portions with it.

3. If the registrant's Form 10–Q (or 10–QSB) for the most recent quarter is not due to be filed prior to the effective date of the registration statement, it may provide the information for the previous fiscal quarter to satisfy Item 12(b). For this purpose, the due date is calculated without the extension provided by Exchange Act Rule 12b–25.

(c) *Current financial statements.* Foreign registrants: If the financial statements you incorporate by reference in accordance with Item 13 of this Form are not sufficiently current to comply with Rule 3–19 of Regulation S–X, you must provide financial statements necessary to comply with that Rule. You must do so through one of the following means:

(1) include that information in the prospectus; or

(2) include that information in an amended or a newly filed Exchange Act report, disclose in the prospectus that you have done so, incorporate that report by reference into the effective registration statement, and deliver it together with the prospectus.

(d) *Other financial information.* If not reflected in the registrant's annual report delivered to investors in accordance with paragraph (a) of this Item, provide:

(1) financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than the one being registered;

(2) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X where:

(i) after the end of its most recent fiscal year, the registrant consummated one or more business combinations accounted for by the pooling of interest method of accounting; and

(ii) the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) or Regulation S–X;

(3) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X, if a change in accounting principles or correction of an error required a material retroactive restatement of financial statements; or

(4) any financial information required because of a material disposition of assets outside the normal course of business. *See* Item 2 of Form 8–K and Instruction 3 to Rule 11–02(b) of Regulation S–X.

Instructions to Item 12(d).

1. You may incorporate by reference into the effective registration statement the information required by paragraph (d) of Item 12. If you incorporate it, you must deliver it together with the prospectus.

2. Foreign registrants: You should read Rules 4–01(a)(2) and 10–01 of Regulation S–X.

(e) *Material changes.* Describe any material change in the registrant's affairs that:

(1) has occurred since the end of the fiscal year covered by the annual report delivered pursuant to this Item; and

(2) the registrant has not described in an Exchange Act report delivered together with the prospectus in accordance with this Item.

Instructions to Item 12.

1. The registrant must deliver information required by this Item with the first prospectus it delivers. It need not deliver that information with any subsequent prospectus sent to the same person.

2. Any reports the registrant delivers together with the prospectus pursuant to this Item must be delivered without charge to the investor.

3. *Small business issuers.* Small business issuers may provide the information required by Item 11 of Form SB–2, instead of the information required by this Item.

Item 13. Incorporation of Certain Information by Reference for Seasoned Form A Companies

If the registrant provides information in accordance with Item 12 of this Form:

(a) it must incorporate by reference into the prospectus that is part of the effective registration statement:

(1) its latest annual report filed in accordance with Section 13(a) or 15(d) of the Exchange Act that contains audited financial statements;

(2) any reports it filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of that fiscal year covered by its annual report incorporated in this Form.

Instructions to Item 13(a).

1. List in the prospectus that is part of the effective registration statement all documents filed prior to effectiveness that are incorporated by reference.

2. You should read Rule 439 regarding consent to the use of material incorporated by reference.

(b) You must set forth the following undertakings in the prospectus:

(1) that you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(2) that you will provide this information upon written or oral request;

(3) that you will provide this information at no cost to the requester;

(4) that you will send a copy of that information within one business day of any request for that information;

(5) that you will send those incorporated documents in a manner that should result in delivery within three business days; and

(6) that the name, address and telephone number to which the request for this information must be made is: [*fill in information*].

Instructions to Item 13(b).

1. The undertakings cover all documents incorporated by reference through the date of responding to the request.

2. If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(c) In the prospectus, you must:

(1) identify the reports and other information that you file with the Commission;

(2) state that the public:

(i) may read and copy materials you file with the Commission at the Commission's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549; and

(ii) may obtain information on the operation of the Public Reference Room by calling the Commission at 1–800-SEC–0330; and

(3) if you are an electronic filer, state that the Commission maintains an Internet web site that contains reports, proxy and

information statements, and other information regarding issuers that file electronically with the Commission and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet web site address, if available.

Item 14. Information Required for All Other Companies

Any registrant that does not provide information in accordance with Items 12 and 13 must provide the following information:

(a) *Description of Business.*

(1) U.S. registrants: Item 101 of Regulation S-K.

(2) Foreign registrants: Item 1 of Form 20-F.

(b) *Description of Property.*

(1) U.S. registrants: Item 102 of Regulation S-K.

(2) Foreign registrants: Item 2 of Form 20-F.

(3) If the registrant is a real estate entity as defined in Item 1101 of Regulation S-K, provide the information required by Items 1105, 1106 and 1107 of Regulation S-K in lieu of the information required by paragraph (b)(i) or (b)(ii) of this Item.

(c) *Legal Proceedings.*

(1) U.S. registrants: Item 103 of Regulation S-K.

(2) Foreign registrants: Item 3 of Form 20-F.

(d) *Market Information.*

(1) U.S. registrants: If the registrant is offering common equity securities, Item 201 of Regulation S-K.

(2) Foreign registrants: Item 5 of Form 20-F.

(e) *Financial Statements.*

(1) U.S. registrants:

(i) financial statements meeting the requirements of Regulation S-X and any information required by Rule 3–05 and Article 11 of Regulation S-X;

(ii) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S-X where:

(A) after the end of its most recent fiscal year, the registrant consummated one or more business combinations accounted for by the pooling of interest method of accounting; and

(B) the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) or Regulation S-X;

(iii) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S-X, if a change in accounting principles or correction of an error required a material retroactive restatement of financial statements; and

(iv) any financial information required because of a material disposition of assets outside the normal course of business. *See* Item 2 of Form 8-K and Instruction 3 to Rule 11–02(b) of Regulation S-X.

(2) Foreign registrants: Item 18 of Form 20-F except if you may comply with Item 17 of Form 20-F pursuant to General Instruction VI.

Instructions to Item 14(e).

1. File schedules required by Regulation S-X as ''Financial Statement Schedules'' pursuant to Item 20 of this Form.

2. Foreign registrants: Your financial statements must comply with Rule 3–19 of Regulation S-X. See also Rules 4–01(a)(2) and 10–01 of Regulation S-X.

(f) *Exchange Controls.*

(i) U.S. registrants: Not applicable.

(ii) Foreign registrants: Item 6 of Form 20-F.

(g) *Taxation.*

(i) U.S. registrants: Not applicable.

(ii) Foreign registrants: Item 7 of Form 20-F.

(h) *Selected Financial Data.*

(i) U.S. registrants: Item 301 of Regulation S-K.

(ii) Foreign registrants: Item 8 of Form 20-F.

(i) *Supplementary Financial Information.*

(i) U.S. registrants: Item 302 of Regulation S-K.

(ii) Foreign registrants: Not applicable.

(j) *Management's Discussion and Analysis.*

(i) U.S. registrants: Item 303 of Regulation S-K.

(ii) Foreign registrants: Item 9 of Form 20-F.

(k) *Changes In and Disagreements With Accountants.*

(i) U.S. registrants: Item 304 of Regulation S-K.

(ii) Foreign registrants: Not applicable.

(l) *Quantitative and Qualitative Disclosures of Market Risk.*

(i) U.S. registrants: Item 305 of Regulation S-K.

(ii) Foreign registrants: Item 9A of Form 20-F.

(m) *Directors and Executive Officers.*

(i) U.S. registrants: Item 401 of Regulation S-K.

(ii) Foreign registrants: Item 10 of Form 20-F.

(n) *Executive and Officer Compensation.*

(i) U.S. registrants: Item 402 of Regulation S–K.

(ii) Foreign registrants: Item 11 of Form 20–F.

(o) *Control of Registrant.*

(i) U.S. registrant: Item 403 of Regulation S–K.

(ii) Foreign registrant: Item 4 of Form 20–F.

(p) *Options Issued by Registrant.*

(i) U.S. registrants: Not applicable.

(ii) Foreign registrants: Item 12 of Form 20–F.

(q) *Interest of Management in Certain Transactions.*

(i) U.S. registrant: Item 404 of Regulation S–K.

(ii) Foreign registrant: Item 13 of Form 20–F.

Item 15. Disclosure of Commission Position on Indemnification for Securities Act Liabilities

Provide the information required by Item 510 of Regulation S–K.

Part II—Information Not Required in the Prospectus

Item 16. Other Expenses of Issuance and Distribution

Provide the information required by Item 511 of Regulation S–K.

Item 17. Indemnification of Directors and Officers

Provide the information required by Item 702 of Regulation S–K.

Item 18. Recent Sales of Unregistered Securities

Provide the information required by Item 701 of Regulation S–K, unless incorporated by reference.

Item 19. Sales to Special Parties

If the registrant is a real estate entity as defined in Item 1101 of Regulation S–K, provide the information required by Item 1113 of Regulation S–K.

Item 20. Exhibits

(a) Provide the information required by Item 601 of Regulation S–K.

(b) Provide the financial statement schedules required by Regulation S–X and Items 11 or 13 of this Form. List each schedule according to the number assigned to it in Regulation S–X.

Item 21. Undertakings

Provide the information required by Item 512 of Regulation S–K.

Signatures

The registrant certifies that it has duly caused and authorized the undersigned to sign this registration statement on its behalf. The undersigned certifies that he/she has read this registration statement and to his/her knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(Registrant) _____

By (Signature and Title) _____

Date _____

The following persons certify that they have read this registration statement and to their knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) _____

Date _____

By (Signature and Title) _____

Date _____

Signature Instructions.

1. The following persons, or persons performing similar functions, must sign the registration statement:

(a) the registrant;

(b) its principal executive officer or officers;

(c) its principal financial officer;

(d) its controller or principal accounting officer; and

(e) at least the majority of its board of directors.

2. Where the registrant is a foreign issuer, its authorized representative in the United States also must sign the registration statement.

3. Where the registrant is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement.

4. Type or print the name and title of each person who signs the registration statement beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs the registration statement. *See* Securities Act Rule 402 concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

91. By adding § 239.5 and Form B to read as follows:

§ 239.5 Form B, for registration under the Securities Act of 1933 of certain offerings, and optional concurrent registration under the Securities Exchange Act of 1934.

(a) A registrant may use this Form for registration of securities offerings under the Securities Act of 1933 (15 U.S.C. 77a et seq.) (''Securities Act'') if:

(1) It is not a foreign government as defined in § 230.405 of this chapter;

(2) It meets all of the requirements of General Instruction I.B. of this Form, unless otherwise specified in General Instruction I.C.;

(3) The offering is one of those described in General Instruction I.C. of this Form and is not a roll-up transaction as defined in Item 901(c) of Regulation S-K (§ 229.901(c) of this chapter); and

(4) Form C (§ 230.6 of this chapter) is not authorized for registration of the offering.

(b) A registrant also may use this Form to register concurrently under Section 12(b) or 12(g) of the Securities Exchange Act of 1934 (''Exchange Act''). It may register under the Exchange Act any class of securities that are the subject of the offering it is registering under the Securities Act. To register, the registrant must check the appropriate box(es) on the cover page of this Form and identify which class(es) of securities it is registering under Section 12(b) or 12(g) of the Exchange Act.

Note: The text of Form B will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

FORM B—Registration Statement Under The Act of 1933 [And Optional Registration Pursuant to Section 12(b) or 12(g) of the Securities Exchange Act of 1934]

_____

(Exact name of Registrant as specified in its charter)

_____

(Translation of Registrant's name into English, if applicable)

_____

(State or other jurisdiction of incorporation or organization)

_____

(I.R.S. Employer Identification Number)

_____

(Address and telephone number of Registrant's principal executive offices)

_____

(Name, address and telephone number of Registrant's agent for service)

_____

(Web Site Address, if any)

_____

(E-mail Address, if any)

* * * * *

Approximate date of commencement of sales

_____

If you are a foreign private issuer as defined in Securities Act Rule 405, check the following box. [ ]

If you are not a foreign private issuer as defined in Securities Act Rule 405, check the following box. [ ]

If any of the securities being registered on this Form are to be offered pursuant to Securities Act Rule 415, check the following box. [ ] _____

If you are using this Form to register concurrently under Section 12(b) or 12(g) Exchange Act any class of securities that are the subject of the offering you are registering under the Securities Act, check the appropriate box and provide the information indicated below:

[ ] Securities being registered pursuant to Exchange Act Section 12(b):

Title of each class:

_____

_____

Name of exchange on which listed:

_____

_____

This Section 12(b) registration will become effective upon the later of (1) effectiveness of this Form B; or (2) receipt by the Commission of certification from the national securities exchange listed above.

[ ] Securities being registered pursuant to Exchange Act Section 12(g):

Title of each class:

_____

_____

Name of market on which quoted:

_____

_____

Section 12(g) registration statements become effective automatically 60 days after filing. You may check box 1 or 2, below, to shorten this time period. Also, you may check box 3, below, to preserve your option to shorten this time period. If you check box 3 and do not file a later amendment, the registration of the class of securities listed above will become effective 60 days after filing of this Form B.

We propose that this filing become effective (check appropriate box):

1. [ ] upon filing with the Commission. By checking this box, the undersigned are certifying compliance with the delivery requirements of Securities Act Rule 172(a) in connection with the offering. In addition, in checking this box, any underwriter in connection with the offering also is requesting that the registration statement become effective upon filing.

2. [ ] on (date) at (time) . By checking this box, the undersigned are certifying compliance with the delivery requirements of Securities Act Rule 172(a) in connection with the offering. In addition, in checking this box, any underwriter in connection with the offering also is requesting that the registration statement become effective upon the date and time designated.

3. [ ] as specified in a later amendment to this Form.

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

A**Notes to the Fee Table:**

A1. Set forth any explanatory details relating to the fee table in footnotes to the table.

A2. If the basis for calculating the fee is not evident from the information presented in this table, refer to the applicable provisions of Securities Act Rule 457 in a footnote.

A3. If the fee is calculated under Rule 457(o), the ''Amount to be registered'' and the ''Proposed maximum offering price per unit'' need not appear in this table.

A4. If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. *See* Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

A5. Where two or more classes of securities are being registered pursuant to General Instruction I.C.1., I.C.2. or I.C.4. on a delayed or continuous basis pursuant to Securities Act Rule 415(a)(1)(x) and Rule 457(o), the registrant need only specify the ''Proposed maximum aggregate offering price'' and the ''Amount of registration fee'' for all classes listed in the fee table as a group, not for each individual class. The registrant must, however, list each of the classes of securities under the ''Title of each class of securities to be registered'' section of the fee table.

General Instructions

I. Eligibility Requirements for Form B

A. *General Requirement.*

1. A registrant may use this Form for registration of securities offerings under the Securities Act of 1933 if:

(a) it is not a foreign government as defined in Securities Act Rule 405;

(b) it meets all of the requirements of General Instruction I.B., unless otherwise specified in General Instruction I.C.;

(c) the offering is one of those described in General Instruction I.C. and is not a roll-up transaction as defined in Item 901(c) of Regulation S–K; and

(d) Form C is not authorized for registration of the offering.

2. A registrant also may use this Form to register concurrently under Section 12(b) or 12(g) of the Exchange Act. It may register under the Exchange Act any class of securities that are the subject of the offering it is registering under the Securities Act. To register, the registrant must check the appropriate box(es) on the cover page of this Form and identify which class(es) of securities it is registering under Section 12(b) or 12(g).

B. *Eligible Registrants.*

1. The registrant:

(a) has a class of securities registered pursuant to Section 12(b) or 12(g) of the Exchange Act; or

(b) is required to file reports pursuant to Section 15(d) of the Exchange Act.

2. For a period of at least 12 full calendar months and any portion of a month immediately preceding the date of filing this Form, the registrant:

(a) has been subject to the requirements of Section 12 or 15(d) of the Exchange Act;

(b) has filed all the material it was required to file pursuant to Sections 13, 14 and 15(d) of the Exchange Act;

(c) has filed in a timely manner all materials it was required to file pursuant to Sections 13, 14 and 15(d) of the Exchange Act.

Note to General Instruction I.B.2.(c): If a registrant filed a Form 12b–25 to delay filing any report (or a portion of a report) during that time period, it must have filed the related report (or portion) within the time prescribed by Exchange Act Rule 12b–25;

3. The registrant filed at least one annual report on Form 10–K or Form 20–F prior to the date of filing this Form;

4. Prior to the date of filing this Form, the registrant registered an offering of securities under the Securities Act other than on a Form B, Form F–7, Form F–8, Form F–9, Form F–10, Form F–80 or on any form that became effective upon filing. A registrant need not satisfy this requirement, however, if it became a publicly held entity through an unregistered spin-off transaction whereby its parent company distributed equity shares of the registrant on a pro rata basis to the parent's shareholders;

5. *Successor Registrants.* We will deem a successor registrant to have satisfied the eligibility requirements of General Instruction I.B.2, I.B.3. and I.B.4. of this Form if it satisfies either of the following requirements:

(a)(1) taken together, the registrant and its predecessor(s) meet the eligibility requirements in General Instructions I.B.2, I.B.3. and I.B.4.;

(2) the primary purpose of the succession was to change the state or other jurisdiction of incorporation of the predecessor(s) or to form a holding company for the predecessor(s); and

(3) the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor(s); or

(b) the predecessor met the eligibility requirements of General Instructions I.B.2, I.B.3. and I.B.4. at the time of succession and the registrant has continued to meet them since the succession.

6. *Disqualifications.* None of the following is true:

(a) within two years before the date of filing this Form, the registrant was a development stage company that either:

(1) had no specific business plan or purpose; or

(2) indicated that its business plan was to engage in a merger or acquisition with an unidentified entity or entities;

(b) within two years before the date of filing this Form, the registrant was a shell entity having few or no assets, earnings or operations;

(c) the registrant is registering an offering of ''penny stock'' as defined in Exchange Act Rule 3a51–1 or has issued penny stock in the two years prior to the date of filing this Form;

(d) the registrant or any of its subsidiaries has, since the end of the last fiscal year for which the registrant included certified financial statements in an Exchange Act report:

(1) failed to pay any dividend or sinking fund installment on preferred stock;

(2) caused any material delinquency with respect to preferred stock that was not cured within 30 days; or

(3) defaulted on any payment of principal, interest, a sinking fund installment, a purchase fund installment or any other installment on indebtedness, or defaulted on any rental on a long-term lease, if such debt and lease defaults in the aggregate are material;

(e) the independent accountant that examined the registrant's financial statements for the most recent fiscal year expressed in its report substantial doubt about the registrant's ability to continue as a going concern;

(f) within three years before the date of filing, a petition under the federal bankruptcy laws or any state insolvency law was filed by or against the registrant, or a court appointed a receiver, fiscal agent or similar officer with respect to the business or property of the registrant. If true, however, this would not disqualify the registrant if it has filed an annual report with audited financial statements subsequent to its emergence from that bankruptcy, insolvency or receivership process;

(g) within five years before the date of filing, the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or underwriter was convicted of any felony or misdemeanor described in clauses (i) through (iv) of Section 15(b)(4)(B) of the Exchange Act;

(h) within five years before the date of filing, the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or underwriter was made the subject of a judicial or administrative decree or order arising out of a governmental action that:

(1) prohibits future violations of any antifraud provision of the securities laws or Section 5 of the Securities Act;

(2) requires that the registrant, any executive officer, director or general partner of the registrant or person nominated any of those positions, or underwriter cease and desist from violating any antifraud provision of the securities laws or from violating Section 5 of the Securities Act; or

(3) determines that the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or underwriter violated any antifraud provision of the securities laws or Section 5 of the Securities Act; and

(i) the registrant would incorporate by reference into its Form B registration statement a report under the Exchange Act that:

(*1*) the Commission, after review, requested that the registrant amend in accordance with its comments; and

(*2*) either the registrant did not amend the report or, in the Commission's judgment, did not amend the report in accordance with the Commission's comments; and

(j) the registrant is a ''small business issuer,'' as defined in § 230.405, that

provided the ''Information Required in Annual Report of Transitional Small Business Issuers'' in its most recent annual report on Form 10–KSB.

7. *MJDS Filers.* A registrant shall be ineligible to use Form B if the most recent annual report it filed pursuant to Section 13 or 15(d) of the Exchange Act was on Form 40–F.

C. *Eligible Offerings.*

1. *Offerings by Well-Followed Issuers.*

An offering of securities of a registrant that satisfies all of the registrant requirements in General Instruction I.B. is eligible where either the registrant's public float is $75 million or more and the average daily trading volume value of its equity securities is $1 million or more, or the registrant's public float is $250 million or more.

For purposes of this Instruction:

(a) ''affiliate'' has the meaning set forth in Securities Act Rule 144(a)(1);

(b) ''average daily trading volume'' means the average daily trading volume on U.S. markets during the three full calendar months, or any 90 consecutive calendar days ending within 10 calendar days, immediately preceding the filing of the registration statement;

(c) ''common equity'' has the meaning set forth in Securities Act Rule 405; and

(d) ''public float'' means the aggregate market value of the registrant's outstanding voting and non-voting common equity securities held by persons other than affiliates of the registrant, as of the end of the registrant's last fiscal quarter. The aggregate market value of the registrant's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold before the end of the last fiscal quarter, or the average of the bid and asked prices in the principal market for such common equity, as of the last reported date before the end of the last fiscal quarter.

2. *Offerings Made Solely to QIBs.*

An offering of securities of a registrant that satisfies the registrant requirements in General Instruction I.B. is eligible where the securities are offered and sold only to persons that the seller, and any person acting on behalf of the seller, reasonably believe are qualified institutional buyers.

Note to General Instruction I.C.2.: For purposes of this Instruction, ''qualified institutional buyer'' shall have the meaning set forth in Securities Act Rule 144A(a)(1) except that it shall not include dealers as defined in Section 2(a)(12) of the Act or investment advisers as defined in Section 202(a)(11) of the Investment Advisers Act of 1940. Rules 144A(a)(2)—(a)(5) shall apply to this Instruction. In determining whether an investor is a qualified institutional buyer, the registrant and any person acting on behalf of the registrant may rely on the non-exclusive methods set forth in Rule 144A(d)(1)(i)—(iv).

3. *Offerings to Certain Existing Shareholders.*

An offering by a registrant that satisfies all of the registrant requirements in General Instruction I.B. is eligible where the securities are offered and sold solely to existing security holders as follows:

(a) *Rights Offerings.* Securities of the registrant to be offered upon the exercise of outstanding rights granted by the registrant pro rata to all its existing security holders of the class to which the rights attach;

(b) *DRIPS.* Securities offered pursuant to a dividend or interest reinvestment plan, as defined in Securities Act Rule 405, provided that:

(1) with respect to a dividend reinvestment plan, securities will be offered only while the registrant has not discontinued dividend payments on the securities held, and with respect to an interest reinvestment plan, securities will be offered only while the registrant has not discontinued payment of interest on the securities held;

(2) the plan offering being registered on this Form represents no more than 15% of its public float (as defined in General Instruction I.C.1.(d)) when aggregated with the dollar amount of securities registered on this Form B by the registrant for offerings to its existing shareholders within the 12 months before the start of and during the offering on this Form. For purposes of determining the amount of 15% of the registrant's public float, the registrant should use the amount of public float reported on its most recently filed Form 10–K;

(3) the plan offering being registered on this Form is extended only to existing shareholders of the registrant that have held securities of the registrant continuously for at least a two-month period prior to becoming a participant; and

(4) the proposed aggregate purchase of securities by an existing shareholder and its affiliates in the offering registered on this Form and any other Form B offerings to existing shareholders made by the issuer during the preceding 12-month period, does not exceed the greater of:

(i) $10,000; or

(ii) whichever of the following amounts is smaller:

(A) 100% of the aggregate value of the same class(es) of the issuer's securities owned by the existing shareholder and its affiliates at the start of the 12-month period; or

(B) 5% of the total dollar amount of securities in the offering.

(c) *Common Stock Holders.* Offerings of the registrant's common stock solely to the registrant's existing common stock holders, without regard to whether pursuant to an ongoing plan, provided that:

(1) the offering being registered on this Form represents no more than 15% of the registrant's public float (as defined in General Instruction I.C.1.(d)) when aggregated with the dollar amount of securities registered by the registrant on Form B for offerings to its existing shareholders within the last 12 months before the start of and during the offering on this Form. For purposes of determining the amount of 15% of the registrant's public float, the registrant should use the amount of public float reported on its most recently filed Form 10–K;

(2) the offering is extended only to existing shareholders of the registrant that have held its common stock continuously for at least a two-month period prior to being offered the securities; and

(3) the proposed aggregate purchase of securities by an existing shareholder and its affiliates in the offering registered on this Form and any other Form B offerings to existing shareholders made by the issuer during the preceding 12-month period, does not exceed the greater of:

(i) $10,000; or

(ii) whichever of the following amounts is smaller:

(A) 100% of the aggregate value of the same class(es) of the issuer's securities owned by the existing shareholder and its affiliates at the start of the 12-month period; or

(B) 5% of the total dollar amount of securities in the offering.

(d) *Options Holders.* Securities of the registrant issued upon the exercise of its outstanding transferable options;

(e) *Holders of Convertible Securities.* Securities of the registrant issued upon conversion of its outstanding convertible securities; and (f)

(f) *Warrants Holders.* Securities of the registrant issued upon the exercise of its outstanding transferable warrants.

(g) *Standby Underwriting Agreements.* No portion of any offering registered pursuant to this paragraph 3. may be offered pursuant to a standby underwriting agreement, or similar arrangement, in the United States.

4. *Offerings of Non-Convertible Investment Grade Securities.*

(a) An offering of non-convertible investment grade securities of a registrant that satisfies the registrant requirements in General Instruction I.B. is eligible where the securities offered are, at the time of sale, investment grade securities.

(b) For purposes of this Form, a security is ''investment grade'' if, at the time of sale:

(1) it is rated by at least one nationally recognized statistical rating organization (''NRSRO'') (as that term is used in Exchange Act Rule 15c3–1(c)(2)(vi)(F)) in one of the generic rating categories that signify investment grade; and

(2) no other NRSRO rating the security has placed it in a category that does not signify investment grade.

5. *Offerings by Majority-Owned Subsidiaries.*

If a registrant is a majority-owned subsidiary, it may register offerings of its non-convertible securities on this Form notwithstanding the fact that it does not satisfy a registrant eligibility requirement in General Instruction I.B.1., I.B.2., I.B.3. or I.B.4., or the public float/ADTV test in General Instruction I.C.1. if:

(a) its parent satisfies all registrant eligibility requirements in General Instruction I.B. and the public float/ADTV test in General Instruction I.C.1.;

(b) the offering satisfies the applicable transaction requirement; and

(c) its parent fully and unconditionally guarantees the payment obligations on the securities being offered in the registered transaction.

Note to General Instruction I.C.5.

The parent must concurrently register its offering of the guarantee and may register that on the same registration statement used for the offering of the guaranteed securities. Rule 3–10 of Regulation S–X specifies the financial statements of the guarantor and its affiliates that are required.

6. *Market-Making Transactions.*

An offering by a registrant that satisfies the registrant requirements in General Instruction I.B.1. and I.B.6. is eligible if:

(a) it registers transactions of a broker-dealer that is an affiliate of the issuer;

(b) the broker-dealer engages in the transactions solely in its ordinary capacity as a market maker as defined in Exchange Act Section 3a–38; and

(c) the transactions involve outstanding securities of the issuer that the broker-dealer has not acquired directly from the issuer or an affiliate of the issuer or indirectly by arrangement with the issuer or an affiliate of the issuer.

II. Securities Act Rules and Regulations

A. You should read Securities Act Rule 172. That rule describes prospectus delivery obligations that may be applicable to offerings registered on this Form.

B. You should read the other rules and regulations under the Securities Act (Part 230 of Title 17 of the Code of Federal Regulations), particularly Regulation C. That Regulation contains general requirements regarding the preparation and filing of registration statements.

C. You should read Rules 101, 201 and 202 of Regulation S–T. Those rules require registrants subject to the electronic filing requirements to make all applicable filings through the Commission's EDGAR system. Those rules also provide that failure to submit a required electronic filing will result in ineligibility to use this Form and restrictions on use of incorporation by reference until the required electronic filing has been made.

III. Offering Materials

A. You should read Securities Act Rule 166. That rule permits an eligible registrant to make offers prior to filing a Form B registration statement. If you use a prospectus to make offers in reliance on that rule in the offering period, you must file that prospectus when required to do so by Securities Act Rule 425.

B. You should read Securities Act Rule 165. That rule permits a Form B registrant and those acting on its behalf to use ''free writing'' offering materials that do not meet the requirements of Section 10 of the Securities Act. If you use a prospectus in reliance on that Rule, you must file it when required to do so by Securities Act Rule 425.

IV. Foreign Issuer Financial Statements

A. A foreign issuer must reconcile its financial statements included in or incorporated into this registration statement. It must reconcile them to Item 18 of Form 20–F, except as otherwise permitted in paragraph B of this General Instruction.

B. A foreign issuer need only reconcile its financial statements to Item 17 of Form 20–F if:

1. an offering of the registrant's non-convertible investment grade securities is being registered. *See* General Instruction I.C.4. for the definition of ''investment grade'' securities; '

2. an offering of the registrant's securities upon the exercise of outstanding rights that it granted pro rata to all existing security holders of the class of securities to which the rights attach is being registered;

3. an offering of the registrant's securities pursuant to a dividend or interest reinvestment plan is being registered;

4. an offering of the registrant's securities upon the conversion of outstanding convertible securities that it (or its affiliate) issued is being registered; or

5. an offering of the registrant's securities upon the exercise of outstanding transferrable warrants that it (or its affiliate) issued is being registered.

C. Notwithstanding paragraphs B.2., B.3., B.4. and B.5. of this General Instruction, if securities are to be offered or sold in a standby underwriting in the United States or by similar arrangement, the registrant must reconcile to Item 18 of Form 20-F.

V. Requests for Confidential Treatment

All registration statements on this Form become public upon filing. Registration statements filed on this Form are not reviewed by the Commission staff prior to the effective date. Confidential treatment requests with respect to information that the registrant is required to file in this Form may, however, be reviewed by the staff. As a result, when the issuer plans to have the Form become effective upon filing or fewer than 20 days thereafter, it must furnish to the staff in advance of filing, any request it wishes to make for confidential treatment of information relating to the Form. *See* Securities Act Rule 406. The Commission must act on that request before this Form becomes effective.

VI. Concurrent Registration of Securities Under the Exchange Act

A. Registration on this Form of a class of securities under Exchange Act Section 12(b) shall become effective upon the later of:

1. receipt by the Commission of certification from the national securities exchange listed on the cover of this Form that the securities have been approved for listing; or

2. effectiveness of this registration statement.

B. Registration on this Form of a class of securities under Exchange Act Section 12(g) shall become effective automatically upon the earlier of (1) 60 days after the initial filing of this registration statement; or (2) the effectiveness of this registration statement.

C. If the registrant is required to file an annual report under Exchange Act Section 15(d) for its last fiscal year, it must file that annual report within the time period specified in the appropriate annual report form even if the Exchange Act registration becomes effective before the annual report is due.

D. The registrant must file at least one complete, signed copy of the registration statement with each exchange or market identified on the cover of this Form.

Information Required in the Prospectus That Is Part of the Effective Registration Statement

1. *Offering Information.*

(a) Disclose the following information, all of which constitutes the ''offering information'' for purposes of this Form:

(1) the amount of securities being offered;

(2) material changes in the issuer's affairs since the end of the latest fiscal year that are not reflected in incorporated Exchange Act reports;

(3) the information required by Item 504 of Regulation S–K regarding use of proceeds;

(4) the information required by Item 507 of Regulation S–K regarding who is selling the securities;

(5) material information about the terms of the securities offered as required by Item 202 of Regulation S–K, unless capital stock is to be registered and securities of the same class are registered pursuant to Section 12 of the Exchange Act;

(6) information about the risks of the offering of the type described in Item 503 of Regulation S–K;

(7) information about the underwriter's discounts and commissions required by Item 501(b)(3) of Regulation S–K; and

(8) all information regarding the transaction that is material, which may include where applicable, but is not limited to:

(i) information about dilution of the type described in Item 506 of Regulation S–K;

(ii) information about the determination of the offering price of the type described in Item 505 of Regulation S–K;

(iii) information about the plan of distribution of the type described in Item 508 of Regulation S–K;

(iv) ratio of earnings to fixed charges as described in Item 503 of Regulation S–K.

(b) You must include any offering information disclosed by or on behalf of the issuer during the offering period, other than information communicated orally.

(c) You may include offering information communicated orally. You may not include offering information that has not been disclosed by or on behalf of the issuer during the offering period.

(d) For purposes of this Form, ''offering period'' means the period beginning 15 days in advance of the first offer made in connection with the offering and ending when the offering is completed.

2. *Incorporation of Previously Filed Information.*

State that you are incorporating by reference into the prospectus that is part of the effective registration statement the following documents, and list them:

(a) your latest annual report filed in accordance with Section 13(a) or 15(d) of the Exchange Act that contains audited financial statements; and

(b) any reports you filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report you incorporate in this Form;

3. *Incorporation of Subsequently Filed Information.*

(a) Subject to paragraph (b) of this instruction, state that all documents you subsequently file pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act during the offering period are deemed to be incorporated by reference into the prospectus that is part of the effective registration statement as of the date you file those documents.

(b) You may incorporate Exchange Act documents filed after the time of delivery in

accordance with Securities Act Rule 172 only if you otherwise disclosed to investors the information contained in those documents prior to or at the same time as you delivered.

(c) You may not incorporate Exchange Act documents filed after the end of the offering period. For offerings done as part of a delayed shelf under Securities Act Rule 415(a)(1)(x), each takedown will be treated as having its own offering period. In each takedown post-effective amendment on this Form you must state that you are incorporating the documents required by paragraph 2.(a) of this instruction and list them.

(d) Securities Act Rule 424 is not available in connection with offerings registered on this Form. Material changes in disclosure must be reflected in pre-effective amendments, in post-effective amendments that the registrant may choose to designate as effective upon filing, or in Exchange Act documents where permitted to be incorporated by reference.

4. *Financial statements*.

(a) *Foreign registrants*: If the financial statements you incorporate by reference in accordance with paragraph 2 of this instruction of the Form are not sufficiently current to comply with Rule 3–19 of Regulation S–X, you must provide financial statements necessary to comply with that Rule. You must through one of the following means:

(1) include that information in the prospectus; or

(2) include that information in an amended or a new Exchange Act report, disclose in the prospectus that you have done so, incorporate that report by reference into the effective registration statement, and deliver it together with the prospectus.

(b) *Other financial information*. Include the following information in the prospectus unless incorporated by reference:

(1) financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than the one being registered;

(2) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X where:

(i) after the end of its most recent fiscal year, the registrant consummated one or more business combinations accounted for by the pooling of interest method of accounting; and

(ii) the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X;

(3) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X, if a change in accounting principles or correction of an error required a material retroactive restatement of financial statements; or

(4) any financial information required because of a material disposition of assets outside the normal course of business.

Instruction to paragraph 4.

1. Foreign registrants: You should read Rules 4–01(a)(2) and 10–01 of Regulation S–X.

2. Small business issuers: You must provide the financial information specified in paragraph 4(b) if required by Item 310 of Regulation S-B.

5. *Securities Term Sheet*. File as part of the prospectus in the effective registration statement the term sheet prospectus that must be delivered to investors under Securities Act Rule 172(a)(2). That term sheet need contain only:

(a) an itemization of the material terms of the securities in summary format;

(b) the name of any person, other than the issuer, for whose account securities are offered and a brief identification of any material relationship such person has (or had within the past three years) with the issuer or any affiliate of the issuer;

(c) the identity and location of a contact person to whom questions may be directed; and

(d) the identity and location of a person to whom requests for documents defining the terms of the securities, which shall be sent promptly upon request, may be made.

6. *Material Changes Term Sheet*. File as part of the prospectus in the effective registration statement any document describing material changes that must be delivered to investors under Securities Act Rule 172(e).

7. *Undertakings*. Set forth the following undertakings in the prospectus:

(a) that you will provide to each investor, including any beneficial owner, a copy of any information that has been incorporated by reference in the prospectus but not delivered, as follows:

(i) upon written or oral request;

(ii) at no cost to the requester;

(b) that you will send that incorporated information within one business day of any request for it;

(c) that you will send that incorporated information in a manner that should result in delivery within three business days; and

(d) that the name, address, and telephone number to which the request for that information must be made is: [*fill in information*].

Notes to Paragraph 7.

(1) This undertaking covers all documents incorporated by reference through the date of responding to the request.

(2) If you send any of the information that is incorporated by reference in the prospectus to investors, you must also send any exhibits that are specifically incorporated by reference in that information.

8. *Aftermarket Delivery*. Include the legend required by Item 502(b) of Regulation S–K.

Information not Required in the Prospectus That Is Part of the Effective Registration Statement

1. *Exhibits*. Provide the exhibits required by Item 601 of Regulation S–K.

2. *Undertakings*.

(a) Include the undertakings required by Item 512 of Regulation S–K.

(b) *Aftermarket delivery period*. If not contained in the prospectus that is part of the effective registration statement, undertake that you will file a post-effective amendment to insert the date the aftermarket delivery period ends in the legend required by Item 502(b) of Regulation S–K.

Other Offering Materials

In addition to the offering information filed in the prospectus that is part of the effective registration statement, the registrant, any underwriter, any participating dealer or anyone acting on behalf of any of them may use free writing materials. ''Free writing'' materials for purposes of this Form consist of all information disclosed by or on behalf of the issuer during the offering period, other than offering information, factual business communications as defined in Securities Act Rule 169 or information disclosed orally. You must file free writing materials by the time of first sale. Securities Act Rule 425 describes the procedures for filing those offering materials with the Commission.

Signatures

The registrant hereby certifies that it meets all of the requirements for filing on Form B. The registrant also certifies that it has duly caused and authorized the undersigned to sign this registration statement on its behalf. The undersigned certifies that he/she has read this registration statement and to his/her knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(Registrant) _____

By (Signature and Title) _____

Date _____

The following persons certify that they have read this registration statement and to their knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) _____

Date _____

By (Signature and Title) _____

Date _____

Signature Instructions

1. The following persons, or persons performing similar functions, must sign the registration statement:

(a) the registrant;

(b) its principal executive officer or officers;

(c) its principal financial officer;

(d) its controller or principal accounting officer; and

(e) at least the majority of its board of directors.

2. Where the registrant is a foreign issuer, its authorized representative in the United States also must sign the registration statement.

3. Where the registrant is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement.

4. Type or print the name and title of each person who signs the registration statement beneath the person's signature. Any person

who occupies more than one of the specified positions must indicate each capacity in which that person signs the registration statement. *See* Securities Act Rule 402 concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

5. Where eligibility for use of the Form is based on the assignment of a security rating, the registrant may sign the registration statement notwithstanding the fact that the security rating has not been assigned by the filing date, provided that the registrant reasonably believes, and so states in the registration statement, that the security rating requirement will be met by the time of sale.

6. *Rule 415(a)(1)(x) offerings.*

(a) All persons who sign this registration statement will be deemed by doing so to grant an authorized representative of the registrant the power to sign any post-effective amendment to the registration statement on their behalf if:

(i) the registration statement relates to an offering pursuant to Rule 415(a)(1)(x);

(ii) a power of attorney has not been granted by the person in connection with signatures of post-effective amendments; and

(iii) the post-effective amendment does not provide otherwise.

(b) If, at the time of filing a post-effective amendment, any person who signed the effective registration statement no longer acts in the capacity in which he or she signed it, the person who currently acts in that capacity must sign the post-effective amendment.

92. By adding § 239.6 and Form C to read as follows:

§ 239.6 Form C, for registration under the Securities Act of 1933 of securities issued in business combination transactions, and for optional concurrent registration under the Securities Exchange Act of 1934.

(a) A registrant other than a small business issuer must use this Form to register an offering under the Securities Act of 1933 (''Securities Act'') that is:

(1) A transaction of the type specified in paragraph (a) of § 230.145 of this chapter;

(2) A merger in which the applicable law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired;

(3) An exchange offer for securities of the issuer or another entity;

(4) A public reoffering or resale of any such securities acquired pursuant to this registration statement; or

(5) More than one of the kinds of transactions listed in paragraphs (a)(1) through (a)(4) of this section registered on one registration statement.

(b) A registrant also may use this Form to register concurrently under Section 12(b) or 12(g) of the Securities Exchange Act of 1934 (''Exchange Act''). It may register under the Exchange Act any class of securities that are the subject of the offering it is registering under the Securities Act. To register, the registrant must check the appropriate box(es) on the cover page of this Form and identify which class(es) of securities it is registering under Section 12(b) or 12(g) of the Exchange Act.

Note: The text of Form C will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form C—Registration Statement Under the Securities Act of 1933 [And Optional Registration Pursuant to Section 12(b) or 12(g) of the Securities Exchange Act of 1934]

_____

(Exact name of Registrant as specified in its charter)

_____

(Translation of Registrant's name into English, if applicable)

_____

(State or other jurisdiction of incorporation or organization)

_____

(I.R.S. Employer Identification Number)

_____

(Address and telephone number of Registrant's principal executive offices)

_____

(Name, address and telephone number of Registrant's agent for service)

_____

(Web Site Address, if any)

_____

(E-mail Address, if any)

* * * * *

Approximate date of commencement of sales _____

If you are a foreign private issuer as defined in Securities Act Rule 405, check the following box. [ ]

If you are not a foreign private issuer as defined in Securities Act Rule 405, check the following box. [ ]

If you are filing this Form to register additional securities for an offering in accordance with Securities Act Rule 462(b), check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] _____

If this Form is a post-effective amendment filed in accordance with Securities Act Rule 462(c) to re-start the 15-business-day period during which pricing must occur under Securities Act Rule 430A(a)(3) or to reflect a non-substantive change from, or addition to, the prospectus, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] _____

If this Form is a post-effective amendment filed in accordance with Securities Act Rule 462(d) solely to add exhibits, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] _____

If you are using this Form to register concurrently under Section 12(b) or 12(g) of the Exchange Act any class of securities that are the subject of the offering you are registering under the Securities Act, check the appropriate box and provide the information indicated below:

[ ] Securities being registered pursuant to Exchange Act Section 12(b):

Title of each class:

_____

_____

Name of exchange on which listed:

_____

_____

[ ] Securities being registered pursuant to Exchange Act Section 12(g):

Title of each class:

_____

_____

Name of market on which quoted:

_____

_____

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Notes to the Fee Table:

1. Set forth any explanatory details relating to the fee table in footnotes to the table.

2. If the basis for calculating the fee is not evident from the information presented in this table, refer to the applicable provisions of Securities Act Rule 457 in a footnote.

3. If the fee is calculated under Rule 457(o), the ''Amount to be registered'' and the ''Proposed maximum offering price per unit'' need not appear in this table.

4. If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. See Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

General Instructions

I. Rules as to Use of Form C

A. A registrant other than a small business issuer must use this Form to register an offering under the Securities Act that is:

1. a transaction of the type specified in Securities Act Rule 145(a);

2. a merger in which the applicable law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired;

3. an exchange offer for securities of the issuer or another entity;

4. a public reoffering or resale of any securities acquired pursuant to this registration statement; or 5. more than one of the kinds of transactions listed in paragraphs A.1. through A.4. of this instruction registered on one registration statement.

B. A registrant also may use this Form to register concurrently under Section 12(b) or 12(g) of the Exchange Act. It may register any class of securities that are the subject of the offering it is registering under the Securities Act. To register, the registrant must check the appropriate box(es) on the cover page of this Form and identify which class(es) of securities it is registering under Section 12(b) or 12(g).

C. You may not use this Form if you are a registered investment company or a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940.

D. You may not use this Form if you are a ''small business issuer'' as defined in Securities Act Rule 405 (§ 230.405). Small business issuers use Form SB–3 to register the transactions listed in General Instruction I.A.

II. Registrant Information

Provide information about the registrant as follows:

A. *Form B Registrants.* If the registrant meets the requirements of General Instructions I.B. and I.C.1. of Form B, it must comply with:

1. Items 11 and 12 of this Form;

2. Items 13 and 14 of this Form; or

3. Item 15 of this Form.

B. *Seasoned Form A Registrants.* If the registrant meets the requirements of General Instruction II. of Form A for incorporation by reference, it must comply with:

1. Items 13 and 14 of this Form; or

2. Item 15 of this Form.

C. *All Other Registrants.* All other registrants must comply with Item 15 of this Form.

III. Information With Respect to the Company Being Acquired

Provide information about the company being acquired (which includes any entity whose securities are to be exchanged for securities of the registrant) as follows:

A. *Form B Companies.* If the company being acquired meets the requirements of General Instructions I.B. and I.C.1. of Form B, provide information in accordance with:

1. Item 16 of this Form;

2. Item 17 of this Form; or

3. Item 18 of this Form.

B. *Seasoned Form A Companies.* If the company being acquired meets the requirements of General Instruction II. of Form A for incorporation by reference, provide information in accordance with:

1. Item 17 of this Form; or

2. Item 18 of this Form.

C. *All Other (Non-Small Business) Companies.* For all other companies being acquired, provide information in accordance with Item 18 of this Form.

D. *Transitional Small Business Issuer Companies.* If the company being acquired is a transitional small business issuer that meets the requirements of II.A.1. of Form SB–3, provide information in accordance with Item 19 of this Form.

E. *Seasoned Form SB–2 Companies.* If the company being acquired meets the requirements of General Instruction E.1. of Form SB–2, provide information in accordance with:

1. Item 20 of this Form; or

2. Item 21 of this Form.

F. *All Other Small Business Issuers.* All other companies being acquired that are small business issuers, including transitional small business issuers that choose to comply with this requirement, provide information in accordance with Item 21 of this Form.

IV. Securities Act Rules and Regulations

You should read the rules and regulations under the Securities Act (Part 230 of Title 17 of the Code of Federal Regulations), particularly Regulation C. That Regulation contains general requirements regarding the preparation and filing of registration statements.

V. Free Writing Prospectus Information

A. You should read Securities Act Rule 166. That Rule permits a registrant to make offers prior to filing a Form C registration statement. If you use a prospectus in reliance on that Rule, you must file that prospectus when required to do so by Securities Act Rule 425.

B. You should read Securities Act Rule 165. That Rule permits a Form C registrant and those acting on its behalf to use ''free writing'' offering materials that do not meet the requirements of Section 10 of the Securities Act. If you use a prospectus in reliance on Rule 165, you must file it when required to do so by Securities Act Rule 425.

VI. U.S. and Foreign Registrants.

A. *Definitions.*

1. As used in this Form, ''U.S. registrant'' includes all registrants other than foreign governments and foreign private issuers. ''U.S. company being acquired'' includes all entities being acquired other than foreign governments and foreign private issuers.

2. As used in this Form, ''foreign registrant'' includes only registrants that are foreign private issuers. ''Foreign company being acquired'' includes only entities being acquired that are foreign private issuers.

3. ''Foreign private issuer'' is defined in Rule 405 of Regulation C.

B. *Information Required.*

1. U.S. registrants must provide all information required by the Items of this Form except where the Item expressly identifies the requirement as applying only to foreign registrants or foreign companies being acquired.

2. Foreign registrants must provide all information required by the Items of this Form except where the Item expressly identifies the requirement as applying only to U.S. registrants or U.S. companies being acquired.

VII. Interaction With the Exchange Act

A. If Regulation 14A or 14C under the Exchange Act applies to the transaction registered on this Form:

1. the prospectus may be in the form of a proxy statement or information statement;

2. the prospectus must contain the information required by this Form in lieu of that required by Schedule 14A or 14C; and

3. material filed as a part of the registration statement shall be deemed filed also for purposes of Regulation 14A or 14C, as applicable.

B. If neither Regulation 14A nor 14C applies to the transaction registered on this Form, any proxy or information statement material sent to security holders must be filed prior to use as a part of the effective registration statement.

C. If you are registering an offering that is subject to Section 13(e), 14(d) or 14(e) of the Exchange Act, the provisions of those Sections and the rules and regulations thereunder shall apply to the transaction in addition to the provisions of this Form.

VIII. Business Combinations Effected on a Delayed Basis

A. A registrant may use this Form to register a transaction that will be effected on a delayed basis under Securities Act Rule 415(a)(1)(viii). In that event, it need only furnish information about the contemplated transaction and the company being acquired to the extent practicable as of the effective date of the registration statement. It must file

a post-effective amendment to include the remaining required information about the transaction and the company being acquired in the registration statement.

B. A registrant may use this Form to register a transaction that would qualify for an exemption from Section 5 of the Securities Act but for the proximity in time of other similar transactions. In that event, the registrant need only file a prospectus supplement to provide the required information about the transaction and the company being acquired.

C. *Unallocated Shelf.* The registrant may register two or more classes of securities on this Form that it will offer on a delayed or continuous basis pursuant to Rule 415(a)(1)(viii). If the registrant meets the requirements of General Instruction I.B. of Form B and General Instruction I.C.1., I.C.2. or I.C.4. of Form B, it need only identify on an aggregate basis (and not by class) in the ''Calculation of Registration Fee'' table:

1. the amount to be registered;
2. the proposed maximum offering price per unit; and
3. the proposed maximum aggregate offering price.

IX. Roll-Up Transactions

A. Roll-up transactions (as defined in Item 901(c) of Regulation S-K) may be registered on this Form. In that event, the registrant must comply with the disclosure requirements of Subpart 900 of Regulation S-K. To the extent that the disclosure requirements of Subpart 900 are inconsistent with those in this Form, the requirements of Subpart 900 control.

B. If the registrant registers a roll-up transaction on this Form, special prospectus delivery requirements apply. See Securities Act Rule 172(e).

C. The proxy rules and Exchange Act Rule 14e–7 of the tender offer rules contain provisions specifically applicable to roll-up transactions. Those provisions apply whether or not the entities involved have registered securities pursuant to Section 12 of the Exchange Act.

X. Registration of Additional Securities

A. Under certain circumstances, the registrant may increase the size of an offering after the effective date through filing a short-form registration statement under Securities Act Rule 462(b). A Rule 462(b) registration statement may include only the following:

1. the facing page;
2. a statement that the earlier registration statement, identified by file number, is incorporated by reference;
3. any required opinions and consents;
4. the signature page; and
5. any price-related information omitted from the earlier registration statement in reliance on Securities Act Rule 430A, if the registrant so chooses.

B. The information contained in a Rule 462(b) registration statement is deemed to be a part of the earlier effective registration statement as of the date of effectiveness of the Rule 462(b) registration statement.

C. The registrant may incorporate by reference from the earlier registration statement any opinion or consent required in the Rule 462(b) registration statement if:

1. the opinion or consent expressly allows that incorporation; and
2. the opinion or consent also relates to the Rule 462(b) registration statement.

Note to General Instruction X.

You should read Securities Act Rule 411(c) regarding incorporation by reference of exhibits and Securities Act Rule 439(b) regarding incorporation by reference of consents.

XI. Concurrent Registration of Securities Under the Exchange Act

A. Registration on this Form of a class of securities under Exchange Act Section 12(b) shall become effective upon the later of:

1. receipt by the Commission of certification from the national securities exchange listed on the cover of this Form that the securities have been approved for listing; or
2. effectiveness of this registration statement.

B. Registration on this Form of a class of securities under Exchange Act Section 12(g) shall become effective upon the effectiveness of this registration statement.

C. If the registrant is required to file an annual report under Exchange Act Section 15(d) for its last fiscal year, it must file that annual report within the time period specified in the appropriate annual report form even if the Exchange Act registration becomes effective before the annual report is due.

D. The registrant must file at least one complete, signed copy of the registration statement with each exchange or market identified on the cover to this Form.

Part I—Information Required in the Prospectus

A. Information About the Transaction

Item 1. Front Cover Page of the Registration Statement and Outside Front Cover Page of the Prospectus

Provide the information required by Item 501 of Regulation S–K.

Item 2. Inside Front and Outside Back Cover Pages of Prospectus

(a) Provide the information required by Item 502 of Regulation S–K.

(b) If you incorporate information by reference into the prospectus, state on the inside front cover page:

(1) that the prospectus incorporates by reference important business and financial information about the company that is not delivered with it;

(2) that this information is available without charge to any person, including any beneficial owner, upon written or oral request;

(3) that you will send those incorporated documents in a manner that should result in delivery within three business days of the request;

(4) the name, address and telephone number to which persons must make this request; and

(5) that to obtain timely delivery, persons must request this information no later than _____ [specify date five business days before the date on which the final investment decision must be made]. You must highlight this statement by print type or otherwise.

Instruction to Item 2.

1. The undertaking covers all documents incorporated by reference through the date of responding to the request.

2. If you send any of the information that is incorporated by reference in the prospectus, you also must send any exhibits that are specifically incorporated by reference in that information.

3. If information is incorporated by reference in any document you are sending upon request, you also must send the information incorporated by reference.

Item 3. Prospectus Summary and Other Information

In the forepart of the prospectus, provide a summary of the information contained in the prospectus as described in Item 503(a) of Regulation S–K and the following information:

(a) *Contact information.* The name, complete mailing address and telephone number of the principal executive offices of the registrant and the company being acquired;

(b) *Risk factors.*

(1) The information required by Item 503(c) of Regulation S–K;

(2) If the registrant or the company to be acquired is a real estate entity as defined in Item 1101 of Regulation S–K, provide the information required by Item 1103 of Regulation S–K in addition to the information required by paragraph (b)(1) of this Item.

(c) *Ratio of earnings to fixed charges.* The information required by Item 503(d) of Regulation S–K;

(d) *Business conducted.* A brief description of the general nature of the business conducted by the registrant and by the company being acquired;

(e) *Transaction being registered.* A brief description of the transaction in which the securities being registered will be offered;

(f) *Selected financial data.* The selected financial data required by Item 301 of Regulation S–K for U.S. registrants and U.S. companies being acquired and Item 8 of Form 20–F for foreign registrants and foreign companies being acquired. To the extent this information is required to be presented in the prospectus pursuant to other Items of this Form, it need not be presented pursuant to this Item;

(g) *Pro forma selected financial data.* If material, the information required by Item 301 of Regulation S–K for U.S. registrants and Item 8 of Form 20–F for foreign registrants, showing the pro forma effect of the transaction. To the extent the information is required to be presented in the prospectus pursuant to other Items of this Form, it need not be presented pursuant to this Item;

(h) *Pro forma information.* In a table designed to facilitate comparison, historical and pro forma per share data of the registrant and historical and equivalent pro forma per share data of the company being acquired for the following items:

(1) book value per share as of the date financial data is presented pursuant to Item 301 of Regulation S–K for U.S. registrants and U.S. companies being acquired and Item

8 of Form 20–F for foreign registrants and foreign companies being acquired;

(2) cash dividends declared per share for the periods for which financial data is presented pursuant to Item 301 of Regulation S–K for U.S. registrants and U.S. companies being acquired and Item 8 of Form 20–F for foreign registrants and foreign companies being acquired; and

1(3) income (loss) per share from continuing operations for the periods for which financial data is presented pursuant to Item 301 of Regulation S–K for U.S. registrants and U.S. companies being acquired and Item 8 of Form 20–F for foreign registrants and foreign companies being acquired;

Instructions to Item 3(g) and 3(h).

1. For a business combination accounted for as a purchase, present the financial information required by paragraphs (g) and (h) only for the most recent fiscal year and interim period. For a business combination accounted for as a pooling, present the financial information required by paragraphs (g) and (h) (except for information with regard to book value) for the most recent three fiscal years and interim period. For a business combination accounted for as a pooling, present the book value information as of the end of the most recent fiscal year and interim period.

2. Calculate the equivalent pro forma per share amounts for one share of the company being acquired by multiplying the exchange ratio times each of:

(a) the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction;

(b) the pro forma book value per share; and (c) the pro forma dividends per share of the registrant.

3. Foreign Private Issuers: Instruction 7 to Item 8 of Form 20–F is applicable to the financial information presented hereunder to the extent that this Form requires reconciliation of financial statements of foreign private issuers to U.S. GAAP and Regulation S–X.

(i) *Market value of securities.* In a table designed to facilitate comparison, the market value of securities of the company being acquired (on a historical and equivalent per share basis) and the market value of the securities of the registrant (on a historical basis) as of the day before the date the public announcement of the proposed transaction. If no such public announcement was made, as of the day before the date the agreement with respect to the transaction was entered into;

(j) *Affiliates' voting shares.* With respect to the registrant and the company being acquired, a brief statement comparing the percentage of outstanding shares entitled to vote held by directors, executive officers and their affiliates. State the vote required for approval of the proposed transaction;

(k) *Regulatory approval.* A statement as to whether any regulatory requirements must be complied with or approval must be obtained in connection with the transaction, and if so, the status of such compliance or approval;

(l) *Dissenters' rights.* A statement about whether or not dissenters' rights of appraisal exist, including a cross-reference to the information provided pursuant to Item 21 or 22 of this Form; and

(m) *Tax consequences.* A brief statement about the tax consequences of the transaction or, if appropriate, a cross-reference to the information provided pursuant to Item 4 of this Form.

Item 4. Terms of the Transaction

(a) Provide a summary of the material features of the proposed transaction. The summary shall include, where applicable:

(1) 3 the information required by Item 1004(a) of Regulation M–A (§ 229.1004(a) of this chapter); and

(2) where not organized in the same country, a discussion of any material differences in the corporate laws applicable to the company being acquired and to the surviving entity. The discussion should include, but not necessarily be limited to: corporate governance, board structure, quorums, class action suits, shareholder derivative suits, rights to inspect corporate books and records, rights to inspect the shareholder list and rights of directors and officers to obtain indemnification from the company.

(b) If a report, opinion or appraisal materially relating to the transaction has been received from an outside party and such report, opinion or appraisal is referred to in the prospectus, provide the information called for by Item 1015(b) of Regulation S–K (§ 229.1015(b) of this chapter).

(c) Incorporate the acquisition agreement by reference into the prospectus.

Item 5. Pro Forma Financial Information

Provide the financial information required by Article 11 of Regulation S–X with respect to this transaction.

Instructions.

1. Present any Article 11 information required by the other Items of this Form (where not incorporated by reference) together with the information provided under this Item. In presenting this information, you must clearly distinguish between this transaction and any other one.

2. You need only show the pro forma effect that the registered transaction has on any pro forma financial information that:

(i) is incorporated by reference; and

(ii) reflects all prior transactions.

Item 6. Material Contacts With the Company Being Acquired

Provide the information required by Items 1005(b) and 1011(a) of Regulation M–A for the registrant or its affiliates and the company being acquired or its affiliates. The information provided only need cover the periods for which financial statements are presented or incorporated by reference into this Form.

Item 7. Real Estate Entities

If the registrant or the company to be acquired is a real estate entity as defined in Item 1101 of Regulation S–K, provide the information required by Item 1104 and Items 1108 through 1112 of Regulation S–K.

Item 8. Additional Information Required for Reoffering by Persons Deemed To Be Underwriters

If any person who is deemed to be an underwriter of the securities is reoffering any of the securities to the public, provide the following information in the prospectus prior to its use for the reoffer:

(a) The information required by Item 507 of Regulation S–K;

(b) Information with respect to the consummation of the transaction in which the securities were acquired; and

(c) A description of any material change in the registrant's affairs that occurred after the transaction in which the securities were acquired.

Note to Item 8.

You should read Item 512(g) of Regulation S–K regarding undertakings required in reoffering registration statements.

Item 9. Interests of Named Experts and Counsel

Provide the information required by Item 509 of Regulation S–K.

Item 10. Disclosure of Commission Position on Indemnification for Securities Act Liabilities

Provide the information required by Item 510 of Regulation S–K.

B. Information About the Registrant

Item 11. Information Required for Form B Companies

If the registrant meets the requirements of General Instructions I.B. and I.C.1. of Form B and elects to comply with this Item and Item 12 (instead of Items 13 and 14 or Item 15), it must provide the following information:

(a) *Material changes.* Describe any material change in the registrant's affairs that:

(1) has occurred since the end of the latest fiscal year for which it incorporates by reference audited financial statements in accordance with Item 12 of this Form; and

(2) the registrant has not described in an Exchange Act report.

(b) *Current financial statements.* Foreign registrants: If the financial statements you incorporate by reference in accordance with Item 12 of this Form are not sufficiently current to comply with Rule 3–19 of Regulation S–X, you must provide financial statements necessary to comply with that Rule. You must through one of the following means:

(1) include that information in the prospectus; or

(2) include that information in an amended or a newly filed Exchange Act report, disclose in the prospectus that you have done so, incorporate that report by reference into the effective registration statement, and deliver it together with the prospectus.

(c) *Other financial information.* Include the following information in the prospectus unless incorporated by reference:

(1) financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than the one being registered;

(2) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X where:

(i) after the end of its most recent fiscal year, the registrant consummated one or more business combinations accounted for by the pooling of interests method of accounting; and

(ii) the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X;

(3) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X, if a change in accounting principles or correction of an error requires a material retroactive restatement of financial statements; or

(4) any financial information required because of a material disposition of assets outside the normal course of business.

Instruction.

Foreign registrants: You should read Rules 4–01(a)(2) and 10–01 of Regulation S–X.

Item 12. Incorporation of Certain Information by Reference for Form B Companies

If the registrant provides information in accordance with Item 11 of this Form:

(a) It must incorporate by reference into the prospectus that is part of the effective registration statement the documents listed below:

(1) its latest annual report filed in accordance with Section 13(a) or 15(d) of the Exchange Act that contains audited financial statements;

(2) any reports it filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by its annual report incorporated in this Form; and

(3) the description of capital stock contained in an Exchange Act registration statement, including any amendments or reports updating such description, if:

(i) capital stock is being registered and securities of the same class are registered under Section 12 of the Exchange Act; and

(ii) such stock is listed for trading or admitted to unlisted trading privileges on a national securities exchange; or

(iii) bid and offer quotations for such stock are reported in an automated quotations system operated by a national securities association.

Instructions to Item 12(a).

1. List in the prospectus that is part of the effective registration statement all documents that are filed prior to effectiveness and incorporated by reference.

2. Notwithstanding Instruction 2 to Item 404 of Regulation S–K, you need only provide Item 404 information covering one year if you incorporate that information by reference pursuant to this Item.

3. Foreign registrants: All annual reports or registration statements you incorporate by reference pursuant to this Item must contain financial statements that comply with Item 18 of Form 20–F except that your financial statements may comply with Item 17 of Form 20–F if the only securities you are registering are investment grade securities.

A security is ''investment grade'' if, at the time of sale:

(a) it is rated by at least one nationally recognized statistical rating organization (''NRSRO'') (as that term is used in Exchange Act Rule 15c3–1(c)(2)(vi)(F)) in one of the generic rating categories that signify investment grade; and

(b) no other NRSRO rating the security has placed it in a category that does not signify investment grade.

4. Foreign registrants: You may incorporate by reference any Form 6–K satisfying the requirements of Form C. *See* Rules 4–01(a)(2) and 10–01 of Regulation S–X and Item 18 of Form 20–F.

(b) It must state in the prospectus that all documents it files pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act are deemed to be incorporated by reference into the prospectus that is part of the effective registration statement if filed after effectiveness and before the latest of the following that is applicable:

(1) the date of any meeting of security holders of either the registrant or the company being acquired relating to the transaction described in the prospectus;

(2) the date on which the transaction described in the prospectus is consummated, if no meeting of security holders of either the registrant or the company being acquired is held;

(3) the date of the termination of any exchange offer registered on this registration statement; or

(4) the date of termination of any reoffering or resale of securities registered on this registration statement.

Note to Item 12(b).

You should read Securities Act Rule 439 regarding consent to the use of material incorporated by reference.

(c) In the prospectus, you must:

(1) identify the reports and other information that you file with the Commission;

(2) state that the public:

(i) may read and copy any materials you file with the Commission at the Commission's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549; and

(ii) may obtain information on the operation of the Public Reference Room by calling the Commission at 1–800–SEC–0330; and

(3) if you are an electronic filer, state that the Commission maintains an Internet web site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the Commission and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet web site address, if available.

Item 13. Information Required for Seasoned Form A Companies

If the registrant meets the requirements of General Instruction II. of Form A and elects to comply with this Item and Item 14 (instead of Item 15), it must do the following:

(a) *Annual report.* Deliver together with the prospectus a copy of its latest annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act;

(b) *Quarterly information.* U.S. registrants: provide the information required by Part I of Form 10–Q or Form 10–QSB for the most recent fiscal quarter following the fiscal year covered by the annual report delivered pursuant to this Item. The registrant must either:

(1) include that information in the prospectus; or

(2) deliver together with the prospectus a copy of its latest Form 10–Q or Form 10–QSB;

Notes to Item 13(a) and 13(b).

1. Indicate in the prospectus that it is accompanied by the reports that the registrant sends pursuant to paragraphs (a) or (b) of this Item.

2. If the registrant incorporates by reference portions of any document into a report it delivers under this Item, it also must deliver the incorporated portions with it.

3. If the registrant's Form 10–Q or Form 10–QSB for the most recent quarter is not due to be filed prior to the effective date of the registration statement, it may provide the information for the previous fiscal quarter to satisfy Item 13(b). For this purpose, the due date is calculated without the extension provided by Exchange Act Rule 12b–25.

(c) *Current financial statements.* Foreign registrants: If the financial statements you incorporate by reference in accordance with Item 14 are not sufficiently current to comply with Rule 3–19 of Regulation S–X, provide financial statements necessary to comply with that Rule. You must do so by one of the following means:

(1) include that information in the prospectus; or

(2) inclose that information in an amended or newly filed Exchange Act report, disclose in the prospectus that you have done so, incorporate that report by reference into the effective registration statement, and deliver it together with the prospectus.

(d) *Other financial information.* If not reflected in the registrant's annual report delivered to investors in accordance with paragraph (a) of this Item, provide:

(1) financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than the one being registered;

(2) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X where:

(i) after the end of its most recent fiscal year, the registrant consummated one or more business combinations accounted for by the pooling of interests method of accounting; and

(ii) the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X;

(3) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X, if a change in accounting principles or correction of an error requires a material retroactive restatement of financial statements; and

(4) any financial information required because of a material disposition of assets outside the normal course of business.

Instructions to Item 13(d).

1. You may incorporate by reference into the effective registration statement the information required by paragraph (d) of Item 13. If you incorporate it, you must deliver it together with the prospectus.

2. Foreign registrants: You should read Rules 4–01(a)(2) and 10–01 of Regulation S–X.

(e) *Material changes.* Describe any material change in the registrant's affairs that:

(1) has occurred since the end of the latest fiscal year for which it incorporates by reference audited financial statements in accordance with Item 14; and

(2) the registrant has not described in an Exchange Act report delivered with the prospectus in accordance with this Item;

Instructions to Item 13.

1. The registrant must deliver information required by this Item with the first prospectus it delivers. It need not deliver that information with any subsequent prospectus sent to the same person.

2. Any reports the registrant delivers together with the prospectus pursuant to this Item must be delivered without charge to the investor.

Item 14. Incorporation by Reference by Seasoned Form A Companies

If the registrant provides information in accordance with Item 13 of this Form:

(a) It must incorporate by reference into the prospectus that is part of the effective registration statement:

(1) its latest annual report filed in accordance with Section 13(a) or 15(d) of the Exchange Act that contains audited financial statements;

Note to Item 14(a)(1).

The registrant may satisfy this obligation to incorporate its annual report by incorporating a Form 40–F if it meets the requirements of General Instruction A.(2) of Form 40–F.

(2) any reports it filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by its annual report incorporated in this Form.

Instructions to Item 14(a).

1. List in the prospectus that is part of the effective registration statement all documents that are filed prior to effectiveness and incorporated by reference.

2. Notwithstanding Instruction 2 to Item 404 of Regulation S–K, you need only provide Item 404 information covering one year if you incorporate that information by reference pursuant to this Item.

3. Foreign registrants: All annual reports you incorporate by reference pursuant to this Item must contain financial statements that comply with Item 18 of Form 20–F, except that your financial statements may comply with Item 17 of Form 20–F if the only securities you are registering are investment grade securities as defined in Instruction 3 of Instructions to Item 12(a).

4. Foreign registrants may incorporate by reference and deliver with the prospectus any Exchange Act report containing information meeting the requirements of Form A. *See* Rules 4–01(a)(2) and 10–01 of Regulation S–X and Item 18 of Form 20–F.

5. You should read Rule 439 regarding consent to the use of material incorporated by reference.

(b) In the prospectus, you must:

(1) identify the reports and other information that you file with the Commission;

(2) state that the public;

(i) may read and copy any materials you file with the Commission at the Commission's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549; and

(ii) may obtain information on the operation of the Public Reference Room by calling the Commission at 1–800–SEC–0330; and

(3) if you are an electronic filer, state that the Commission maintains an Internet web site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the Commission and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet web site address, if available.

Item 15. Information Required for All Other Companies

Any registrant that does not provide information in accordance with Items 11 and 12 or Items 13 and 14 must provide the following information:

(a) *Description of Business.*

(i) U.S. registrants: Item 101 of Regulation S–K.

(ii) Foreign registrants: Item 1 of Form 20–F.

(b) *Description of Property.*

(i) U.S. registrants: Item 102 of Regulation S–K.

(ii) Foreign registrants: Item 2 of Form 20–F.

(iii) If the registrant is a real estate entity as defined in Item 1101 of Regulation S–K, provide the information required by Items 1105, 1106 and 1107 of Regulation S–K in lieu of the information required by paragraph (b)(i) or (b)(ii) of this Item.

(c) *Legal Proceedings.*

(i) U.S. registrants: Item 103 of Regulation S–K.

(ii) Foreign registrants: Item 3 of Form 20–F.

(d) *Common Equity Securities.* If the registrant is issuing common equity securities:

(i) U.S. registrants: Item 201 of Regulation S–K.

(ii) Foreign registrants: Item 5 of Form 20–F. You must update such information to cover any subsequent interim periods for which financial statements are required pursuant to Rule 3–19 of Regulation S–X.

(e) *Financial Statements.*

(i) U.S. registrants: Regulation S–X.

(ii) Foreign registrants: Item 18 of Form 20–F except if you are registering only investment grade securities as defined in the second instruction of Instructions to Item 11(a) of this Form. In that event, you may comply with Item 17 of Form 20–F instead of Item 18.

Instructions to Item 15(e).

1. File schedules required by Regulation S–X as ''Financial Statement Schedules,'' as authorized by Item 25 of this Form.

2. Provide any financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than the one being registered.

3. Foreign registrants: Your financial statements must comply with Rule 3–19 of Regulation S–X. *See also* Rules 4–01(a)(2) and 10–01 of Regulation S–X.

(f) *Exchange Controls.*

(i) U.S. registrants: not applicable.

(ii) Foreign registrants: Item 6 of Form 20–F.

(g) *Taxation.*

(i) U.S. registrants: not applicable.

(ii) Foreign registrants: Item 7 of Form 20–F.

(h) *Selected Financial Data.*

(i) U.S. registrants: Item 301 of Regulation S–K.

(ii) Foreign registrants: Item 8 of Form 20–F.

(i) *Supplementary Financial Information.*

(i) U.S. registrants: Item 302 of Regulation S–K.

(ii) Foreign registrants: not applicable.

(j) *Management's Discussion and Analysis.*

(i) U.S. registrants: Item 303 of Regulation S–K.

(ii) Foreign registrants: Item 9 of Form 20–F.

(k) *Changes in and Disagreements with Accountants.*

(i) U.S. registrants: Item 304 of Regulation S–K.

(ii) Foreign registrants: not applicable.

(l) *Quantitative and Qualitative Disclosures of Market Risk.*

(i) U.S. registrants: Item 305 of Regulation S–K.

(ii) Foreign registrants: Item 9A of Form 20–F.

C. Information About the Company Being Acquired

Item 16. Information Required for Form B Companies

If the company being acquired meets the requirements of General Instructions I.B. and I.C.1. of Form B and compliance with this Item is elected, provide the information required by Items 11 and 12 of this Form as if the company being acquired were the registrant.

Instruction.

Foreign companies being acquired: Notwithstanding the requirements of Items 11 and 12, the financial statements of the company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F.

Item 17. Information Required for Seasoned Form A Companies

If the company being acquired meets the requirements of General Instruction II. of Form A and compliance with this Item is elected, provide the information required by Items 13 and 14 of this Form as if the company being acquired were the registrant.

Instruction.

Foreign companies being acquired: Notwithstanding the requirements of Items 13 and 14, the financial statements of the company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F.

Item 18. Information Required for All Other (Non-Small Business) Companies

If the company being acquired does not meet the requirements of General Instructions I.B. and I.C.1. of Form B or General Instruction II. of Form A, or compliance with this Item is elected, provide the information that would be required by Item 15 of this Form as if the company being acquired were the registrant, subject to the following:

(a) Only those schedules required by Rules 12–15, 28 and 29 of Regulation S–X need be provided with respect to the company being acquired;

(b) Notwithstanding the requirements of Item 14, the financial statements of any

foreign company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F;

(c) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), or has not furnished an annual report to its security holders under Rule 14a-3 or Rule 14c-3 for the latest fiscal year because of Exchange Act Section 12(i), furnish the financial statements that would be required in an annual report sent to security holders under Rules 14a-3(b)(1) and (b)(2) if one was required.

Instructions to paragraph (c).

1. If the registrant's security holders will not be voting on the transaction, financial statements for the two fiscal years before the latest fiscal year need be provided only to the extent that security holders of the company being acquired were previously furnished with financial statements (prepared in conformity with GAAP) for those periods.

2. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.

3. If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

(d) Notwithstanding paragraph (c) of this Item, the financial statements of the company being acquired must be audited for the fiscal years required by paragraph (b)(2) of Rule 3–05 of Regulation S–X if this registration statement is used for resales by any person deemed to be an underwriter within the meaning of Securities Act Rule 145(c).

(e) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), provide the information required by Part I of Form 10–Q or Form 10–QSB for the most recent quarter for which a quarterly report would be due if the company being acquired were subject to those reporting requirements.

Item 19. Information Required for Companies That Are Transitional Small Business Issuers

If the company being acquired meets the requirements of General Instruction II.A.1. of Form SB–3, provide information in accordance with either Item 14 or 16 of Form SB–3.

Item 20. Information Required for Companies That Are Seasoned SB–2 Issuers

If the company being acquired meets the requirements of General Instruction E.1. of Form SB–2 and compliance with this Item is elected, provide the information required by Items 11 and 12 of Form SB–3 as if the company being acquired were the registrant on Form SB–3.

Instruction to Item 20.

Canadian small business issuers being acquired: Notwithstanding the requirements of Items 11 and 12 of Form SB–3, the financial statements of the company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F.

Item 21. Information Required for All Other Small Business Issuers

If the company being acquired does not meet the requirements of General Instruction E.1. of Form SB–2, or compliance with this Item is elected, provide the information required by Item 13 of Form SB–3 as if the company being acquired were the registrant on Form SB–3, subject to the following:

(a) Canadian small business issuers being acquired: Notwithstanding the requirements of Item 13 of Form SB–3, the financial statements of the company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F.

(b) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), or has not furnished an annual report to its security holders under Rule 14a-3 or Rule 14c-3 for the latest fiscal year because of Exchange Act Section 12(i), furnish the financial statements that would be required in an annual report sent to security holders under Rules 14a-3(b)(1) and (b)(2) if one was required.

Instructions to paragraph (b).

1. If the registrant's security holders will not be voting on the transaction, financial statements for the two fiscal years before the latest fiscal year need be provided only to the extent that security holders of the company being acquired were previously furnished with financial statements (prepared in conformity with GAAP) for those periods.

2. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.

3. If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

(c) Notwithstanding paragraph (b) of this Item, the financial statements of the company being acquired must be audited for the fiscal years required by Item 310 of Regulation S–B if this registration statement is used for resales by any person deemed to be an underwriter within the meaning of Securities Act Rule 145(c).

(d) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), provide the information required by Part I of Form 10–QSB for the most recent quarter for which a quarterly report would be due if the company being acquired were subject to those reporting requirements.

D. Voting and Management Information

Item 22. Information if Proxies, Consents or Authorizations Will Be Solicited

(a) If either the registrant or the company being acquired is soliciting proxies, consents or authorizations, provide the following information:

(1) *Date, Time and Place Information.* Item 1 of Schedule 14A;

(2) *Revocability of Proxy.* Item 2 of Schedule 14A;

(3) *Dissenters' Rights of Appraisal.* Item 3 of Schedule 14A;

(4) *Persons Making the Solicitation.* Item 4 of Schedule 14A;

(5) *Persons with a Substantial Interest in the Matter.* Item 5 of Schedule 14A, with respect to both the registrant and the company being acquired;

(6) *Voting Securities and Principal Holders.* Item 6 of Schedule 14A, with respect to both the registrant and the company being acquired;

Instructions to Item 22(a)(6).

1. Foreign registrants and foreign companies being acquired: You may provide the information specified in Item 4 of Form 20–F in lieu of the information specified in Item 6(d) of Schedule 14A.

2. Small business issuers being acquired: You may provide the information specified in the Instruction to Item 20(a)(6) of Form SB–3 instead of the information specified in Item 6(d) of Schedule 14A.

(7) *Vote Required for Approval.* Item 21 of Schedule 14A; and

(8) *Directors and Executive Officers.* With respect to each person who will serve as a director or an executive officer of the surviving or acquiring company, the information required by:

(i) U.S. registrants: Items 401, 402 and 404 of Regulation S–K; and

(ii) Foreign registrants: Items 10, 11, 12 and 13 of Form 20–F.

Instruction to Item 21(a)(8).

Small business issuers being acquired: You may provide the information specified in Item 20(a)(8)(i) or (ii) of Form SB–3 instead of the information specified in Item 21(a)(8) of this Form.

(b) If the registrant or the company being acquired meets the requirements of General Instructions I.B. and I.C.1. of Form B, General Instruction II. of Form A or General Instruction E.1. of Form SB–2, any information required by paragraphs (a)(6) or (a)(8) of this Item with respect to it may be incorporated by reference from its latest annual report.

Item 23. Information if Proxies, Consents or Authorizations Will Not Be Solicited or in an Exchange Offer

(a) If proxies, consents or authorizations will not be solicited in connection with the transaction or in an exchange offer, provide the following information:

(1) *Statement that Proxies are not to be Solicited.* Item 2 of Schedule 14C;

(2) *Date, Time and Place Information.* The date, time and place of the meeting of

security holders, unless such information is otherwise disclosed in material furnished to security holders with or preceding the prospectus;

(3) *Dissenters' Rights of Appraisal.* Item 3 of Schedule 14A;

(4) *Affiliates' Interests in the Transaction.* A brief description of any direct or indirect material interest of affiliates of the registrant and of the company being acquired in the proposed transaction;

Instruction to Item 23(a)(4).

You need not describe any interest arising from the ownership of securities where the affiliate receives no benefit not shared on a pro rata basis by all other holders of the same class.

(5) *Voting Securities and Principal Holders.* Item 6 of Schedule 14A, with respect to both the registrant and the company being acquired;

Instructions to Item 23(a)(5).

1. Foreign registrants and foreign companies being acquired: You may provide the information specified in Item 4 of Form 20–F in lieu of the information specified in Item 6(d) of Schedule 14A.

2. Small business issuers being acquired: You may provide the information specified in the Instruction to Item 21(a)(5) of Form SB–3 instead of the information specified in Item 6(d) of Schedule 14A.

(6) *Vote Required for Approval.* Item 21 of Schedule 14A; and

(7) *Directors and Executive Officers.* With respect to each person who will serve as a director or an executive officer of the surviving or acquiring company, the information required by:

(i) U.S. registrants: Items 401, 402 and 404 of Regulation S–K; and

(ii) Foreign registrants: Items 10, 11, 12 and 13 of Form 20–F.

Instruction to Item 23(a)(7).

Small business issuers being acquired: You may provide the information specified in Item 21(a)(7)(i) or (ii) of Form SB–3 instead of the information specified in Item 22(a)(7) of this Form.

Instruction to Item 23(a).

If proxies, consents or authorizations will not be solicited in connection with the transaction because the transaction is an exchange offer, you need not provide the information required by paragraphs (a)(1), (a)(2) and (a)(3).

(b) If the registrant or the company being acquired meets the requirements of General Instruction I.B. and I.C.1. of Form B or General Instruction II. of Form A, any information required by paragraphs (a)(5) and (a)(7) of this Item with respect to it may be incorporated by reference from its latest annual report.

Part II—Information Not Required in the Prospectus

Item 24. Indemnification of Directors and Officers

Provide the information required by Item 702 of Regulation S–K.

Item 25. Exhibits and Financial Statement Schedules

(a) Provide the exhibits required by Item 601 of Regulation S–K.

Instruction to Item 25(a).

Provide exhibits required by Item 601(b)(10) with respect to both the registrant and the company being acquired.

(b) Provide the financial statement schedules required by Regulation S–X and Item 14(e) or Item 17(a) of this Form. List each schedule according to the number assigned to it in Regulation S–X.

(c) If information is provided pursuant to Item 4(b) of this Form, provide the report, opinion or appraisal as an exhibit to this Form, unless it is included in the prospectus.

Item 26. Undertakings

(a) Set forth in the effective registration statement the undertakings required by Item 512 of Regulation S–K.

(b) Set forth the following undertaking if the registrant is using this Form for a transaction to be effected on a delayed basis:

[Name of registrant] will file a post-effective amendment containing all required information concerning a transaction and the company being acquired that was not included in the registration statement when it became effective because it was not practicable to do so.

Signatures

The registrant hereby certifies that it meets all of the requirements for filing on Form C. The registrant also certifies that it has duly caused and authorized the undersigned to sign this registration statement on its behalf. The undersigned certifies that he/she has read this registration statement and to his/her knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(Registrant) _____

By (Signature and Title) _____

Date _____

The following persons certify that they have read this registration statement and to their knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) _____

Date _____

By (Signature and Title) _____

Date _____

Signature Instructions.

1. The following persons, or persons performing similar functions, must sign the registration statement:

(a) the registrant;

(b) its principal executive officer or officers;

(c) its principal financial officer;

(d) its controller or principal accounting officer; and

(e) at least the majority of its board of directors.

2. Where the registrant is a foreign issuer, its authorized representative in the United States also must sign the registration statement.

3. Where the registrant is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement.

4. Type or print the name and title of each person who signs the registration statement beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs the registration statement. *See* Securities Act Rule 402 concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

5. If the securities to be offered are those of an entity that is not yet in existence at the time the registration statement is filed, but which will be a party to a consolidation involving two or more existing entities, then each existing entity will be deemed a registrant and must be so designated on the cover page of the Form. In that case, each existing entity (and the applicable persons noted in Signature Instructions 1.—3.) must sign the registration statement as if it were the registrant.

93. By revising § 239.9 and amending Form SB–1 (referenced in § 239.9) by revising the title of the Form and the facing page, General Instruction A.3., General Instruction B.3., General Instruction H. and the Signatures section; by removing in General Instruction A.1.(b) the words ''S–4'' and adding, in their place, the words ''SB–3'' and by removing the words ''S–3 (if the issuer incorporates by reference transitional Exchange Act reports),''; and by adding General Instruction I. and General Instruction J. to read as follows:

§ 239.9 Form SB–1, optional Form for the registration under the Securities Act of 1933 of securities to be sold to the public by certain small business issuers, and for optional concurrent registration under the Securities Exchange Act of 1934.

(a) A ''small business issuer,'' as defined in Rule 405 of the Securities Act of 1933 (the ''Securities Act''), may use this Form to register an offering of securities under the Securities Act. It may register up to $10,000,000 of securities to be sold for cash, if it has not registered more than $10,000,000 in securities offerings in any continuous 12-month period, including the transaction being registered. In calculating the $10,000,000 ceiling, the issuer must include all offerings that were registered under the Securities Act, other than any amounts registered on Form S–8 (§ 239.16b).

(b) A small business issuer also may use this Form to register concurrently under Section 12(b) or 12(g) of the Securities Exchange Act of 1934 (''Exchange Act''). It may register under the Exchange Act any class of securities that are the subject of the offering it is

registering under the Securities Act. To register, the small business issuer must check the appropriate box(es) on the cover page of this Form and identify which class(es) of securities it is registering under Section 12(b) or 12(g) of the Exchange Act.

Note: The text of Form SB–1 does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

FORM SB–1—Registration Statement Under the Securities Act of 1933 [and Optional Registration Pursuant to Section 12(b) or 12(g) of the Securities Exchange Act of 1934]

(Amendment No. ____)

_____
(Name of Small Business Issuer in its charter)

_____
(Translation of Small Business Issuer's name into English, if applicable)

_____
(State or other jurisdiction of incorporation or organization)

_____
(Primary Standard Industrial Classification Code Number)

_____
(I.R.S. Employer Identification Number)

_____
(Address and telephone number of Registrant's principal executive offices)

_____
(Address of principal place of business or intended principal place of business)

_____
(Name, address and telephone number of agent for service)

_____
(Web Site Address, if any)

_____
(E-mail Address, if any)

* * * * *

Approximate date of commencement of sales _____

If you include the Securities Act Rule 473(a) delaying legend on this registration statement when you first file it, and you are relying on Securities Act Rule 456(b) to delay payment of the registration fee, check the following box. [ ]

If you do not include the Securities Act Rule 473(a) delaying legend on this registration statement when you first file it, or if you specifically state in a pre-effective amendment that this registration statement shall hereafter become effective in accordance with Section 8(a) of the Securities Act, check the following box. [ ]

Note: If you check this box, you must pay the registration fee required by Section 6 of the Securities Act (unless previously paid) before the registration statement or pre-effective amendment will be considered filed.

If you are filing this Form to register additional securities for an offering in accordance with Securities Act Rule 462(e), check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] _____

If this Form is a post-effective amendment filed in accordance with Securities Act Rule 462(c) to re-start the 15-business-day period during which pricing must occur under Securities Act Rule 430A(a)(3) or to reflect a non-substantive change from, or addition to, the prospectus, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] _____

If this Form is a post-effective amendment filed in accordance with Securities Act Rule 462(d) solely to add exhibits, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] _____

If you are using this Form to register concurrently under Section 12(b) or 12(g) of the Exchange Act any class of securities that are the subject of the offering you are registering under the Securities Act, check the appropriate box and provide the information indicated below:

[ ] Securities being registered pursuant to Exchange Act Section 12(b):
Title of each class:
_____
_____
Name of exchange on which listed:
_____
_____

[ ] Securities being registered pursuant to Exchange Act Section 12(g):
Title of each class:
Name of market on which quoted:
_____
_____
Name of market on which quoted:
_____
_____

Calculation of Registration Fee

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Notes to the Fee Table:

1. Set forth any explanatory details relating to the fee table in footnotes to the table.
2. If the basis for calculating the fee is not evident from the information presented in this table, refer to the applicable provisions of Securities Act Rule 457 in a footnote.
3. If the fee is calculated under Rule 457(o), the ''Amount to be registered'' and the ''Proposed maximum offering price per unit'' need not appear in this table.
4. If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. See Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

The following delaying amendment is optional, but see Securities Act 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 _____

General Instructions

A. Use of Form and Place of Filing

* * * * *

3. A small business issuer also may use this Form to register concurrently under Section 12(b) or 12(g) of the Exchange Act. It may register under the Exchange Act any class of securities that are the subject of the offering it is registering under the Securities Act. To register, the small business issuer must check the appropriate box(es) on the cover page of this Form and identify which class(es) of securities it is registering under Section 12(b) or 12(g).

B. General Requirements

* * * * *

3. If you are engaged in real estate, oil and gas, or mining activities, you should read the Industry Guides in Item 801 or Regulation S-K. Real estate entities should also read Items 1105 (Real Estate and Other Investment Activities) and 1106 (Description of Real Estate and Operating Data) of Regulation S-K.

* * * * *

H. Registration of Additional Securities

1. Under certain circumstances, a small business issuer may increase the size of an offering after the effective date through filing a short-form registration statement under Securities Act Rule 462(b) or 462(e). That type of registration statement may include only the following:

(a) the facing page;

(b) a statement that the earlier registration statement, identified by file number, is incorporated by reference;

(c) any required opinions and consents;

(d) the signature page; and

(e) any price-related information omitted from the earlier registration statement in reliance on Securities Act Rule 430A, if the registrant so chooses.

2. The information contained in a Rule 462(b) or Rule 462(e) registration statement is deemed to be a part of the earlier effective registration statement as of the date of effectiveness of the Rule 462(b) or Rule 462(e) registration statement.

3. The small business issuer may incorporate by reference from the earlier registration statement any opinion or consent required in the Rule 462(b) or Rule 462(e) registration statement if:

(a) the opinion or consent expressly allows that incorporation; and

(b) the opinion or consent also relates to the Rule 462(b) or Rule 462(e) registration statement.

Note to General Instruction H.

You should read Securities Act Rule 411(c) regarding incorporation by reference of exhibits and Securities Act Rule 439(b) regarding incorporation by reference of consents.

I. Free Writing Prospectus Information

You should read Securities Act Rule 165. That rule permits the small business issuer and those acting on its behalf to use ''free writing'' offering materials that do not meet the requirements of Section 10 of the Securities Act. Those offering materials may be used after the small business issuer has filed that Section 10 prospectus with the Commission in the registration statement. If you use a prospectus in reliance on that Rule, you must file it when required to do so by Securities Act Rule 425.

J. Concurrent Registration of Securities Under Exchange Act

1. Registration on this Form of a class of securities under Exchange Act Section 12(b) shall become effective upon the later of:

(a) receipt by the Commission of certification from the national securities exchange listed on the cover of this Form that the securities have been approved for listing; or

(b) effectiveness of this registration statement.

2. Registration on this Form of a class of securities under Exchange Act Section 12(g) shall become effective automatically upon the earlier of (1) 60 days after the initial filing of this registration statement; or (2) the effectiveness of this registration statement.

3. If the registrant is required to file an annual report under Exchange Act Section 15(d) for its last fiscal year, it must file that annual report within the time period specified in the appropriate annual report form even if the Exchange Act registration becomes effective before the annual report is due.

4. The registrant must file at least one complete, signed copy of the registration statement with each exchange or market identified on the cover of this Form.

* * * * *

Signatures

The registrant hereby certifies that it meets all of the requirements for filing on Form SB–1. The registrant also certifies that it has duly caused and authorized the undersigned to sign this registration statement on its behalf. The undersigned certifies that he/she has read this registration statement and to his/her knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(Registrant) _____

By (Signature and Title) _____

Date _____

The following persons certify that they have read this registration statement and to their knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) _____

Date _____

By (Signature and Title) _____

Date _____

Signature Instructions.

1. The following persons, or persons performing similar functions, must sign the registration statement:

(a) the small business issuer;

(b) its principal executive officer or officers;

(c) its principal financial officer;

(d) its controller or principal accounting officer; and

(e) at least the majority of its board of directors.

2. Where the small business issuer is a foreign issuer, its authorized representative in the United States also must sign the registration statement.

3. Where the small business issuer is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement.

4. Type or print the name and title of each person who signs the registration statement beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs the registration statement. *See* Securities Act Rule 402 concerning manual signatures and Item 601 of Regulation S–B concerning signatures pursuant to powers of attorney.

94. By revising § 239.10 and amending Form SB–2 by revising the title of the Form and the facing page, General Instruction A., General Instruction B.1. and B.2., and General Instruction C; by adding General Instructions B.4. and B.5., General Instruction D., General Instruction E., and General Instruction F.; by removing Items 9–11 and 15–23; by redesignating Items 12 and 13 as Items 9 and 10; by adding Items 11, 12 and 13; by redesignating Items 24–28 as Items 14–18; and by revising the Signatures section to read as follows:

§ 239.10 Form SB–2, optional Form for the registration under the Securities Act of 1933 of securities to be sold to the public by small business issuers, and for optional concurrent registration under the Securities Exchange Act of 1934.

(a) A ''small business issuer,'' as defined in § 230.405 of this chapter, may use this Form to register under the Securities Act of 1933 (15 U.S.C. 77a *et. seq.*) (''Securities Act'') an offering of securities for cash. *See also* Item 10(a) of Regulation S–B (§ 228.10(a) of this chapter).

(b) A small business issuer must file this registration statement in the Commission's Washington, D.C. office.

(c) A small business issuer also may use this Form to register concurrently under Section 12(b) or 12(g) of the Securities Exchange Act of 1934 (''Exchange Act''). It may register under the Exchange Act any class of securities that are the subject of the offering it is registering under the Securities Act. To register, the small business issuer must check the appropriate box(es) on the cover page of this Form and identify which class(es) of securities it is registering under Section 12(b) or 12(g) of the Exchange Act.

Note: The text of Form SB–2 does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form SB–2—Registration Statement Under the Securities Act of 1933 [and Optional Registration Pursuant to Section 12(b) or 12(g) of the Securities Exchange Act of 1934] (Amendment No. ____)

_____
(Name of Small Business Issuer in its charter)

_____
(Translation of Small Business Issuer's name into English, if applicable)

_____
(State or other jurisdiction of incorporation or organization)

_____
(Primary Standard Industrial Classification Code Number)

_____
(I.R.S. Employer Identification Number)

_____
(Address and telephone number of Registrant's principal executive offices)

_____
(Address of principal place of business or intended principal place of business)

_____
(Name, address and telephone number of agent for service)

_____
(Web Site Address, if any)

_____
(E-mail Address, if any)

* * * * *

Approximate date of commencement of sales _____

If you include the Securities Act Rule 473(a) delaying legend on this registration statement when you first file it, and you are relying on Securities Act Rule 456(b) to delay payment of the registration fee, check the following box. [ ]

If you do not include the Rule 473(a) delaying legend on this registration statement when you first file it, or if you specifically state in a pre-effective amendment that this registration statement shall hereafter become effective in accordance with Section 8(a) of the Securities Act, check the following box. [ ]

Note: If you check this box, you must pay the registration fee required by Section 6 of the Securities Act (unless previously paid) before the registration statement or pre-effective amendment will be considered filed.

If you are filing this Form to register additional securities for an offering in accordance with Securities Act Rule 462(e), check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] _____

If this Form is a post-effective amendment filed in accordance with Securities Act Rule 462(c) to re-start the 15-business-day period during which pricing must occur under Securities Act Rule 430A(a)(3) or to reflect a non-substantive change from, or addition to, the prospectus, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] _____

If this Form is a post-effective amendment filed in accordance with Securities Act Rule 462(d) solely to add exhibits, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] _____

If you are using this Form to register concurrently under Section 12(b) or 12(g) of the Exchange Act any class of securities that are the subject of the offering you are registering under the Securities Act, check the appropriate box and provide the information indicated below:

[ ] Securities being registered pursuant to Exchange Act Section 12(b):

Title of each class:

_____

_____

Name of exchange on which listed:

_____

_____

[ ] Securities being registered pursuant to Exchange Act Section 12(g):

Title of each class:

_____

_____

Name of market on which quoted:

_____

_____

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Notes to the Fee Table:

1. Set forth any explanatory details relating to the fee table in footnotes to the table.
2. If the basis for calculating the fee is not evident from the information presented in this table, refer to the applicable provisions of Securities Act Rule 457 in a footnote.
3. If the fee is calculated under Rule 457(o), the ''Amount to be registered'' and the ''Proposed maximum offering price per unit'' need not appear in this table.
4. If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. *See* Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

The following delaying amendment is optional, but see Securities Act 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.

General Instructions

A. Use of Form and Place of Filing

1. A ''small business issuer,'' as defined in § 230.405 of this chapter, may use this Form to register under the Securities Act of 1933 (''Securities Act'') an offering of securities for cash. See also Item 10(a) of Regulation S–B.

2. A small business issuer must file this registration statement in the Commission's Washington, D.C. office.

3. A small business issuer also may use this Form to register concurrently under Section 12(b) or 12(g) of the Exchange Act. It may register under the Exchange Act any class of securities that are the subject of the offering it is registering under the Securities Act. To register, the small business issuer must check the appropriate box(es) on the cover page of this Form and identify which

class(es) of securities it is registering under Section 12(b) or 12(g).

B. General Requirements

1. If you are registering securities for the first time, you should be aware of Rule 463 under the Securities Act concerning sales of registered securities and the use of proceeds.

2. If you are engaged in real estate, oil and gas, or mining activities, you should read the Industry Guides in Item 801 of Regulation S–K.

* * * * *

4. You should read Securities Act Rule 172. That Rule describes prospectus delivery obligations applicable to offerings registered on this Form.

5. If the offering registered on this Form relates to a blank check company, you should read Securities Act Rule 419. Among other things, that Rule contains additional disclosure requirements.

C. Registration of Additional Securities

1. Under certain circumstances, a small business issuer may increase the size of an offering after the effective date through filing a short-form registration statement under Rule 462(b) or Rule 462(e). That type of registration statement may include only the following:

(a) the facing page;

(b) a statement that the earlier registration statement, identified by file number, is incorporated by reference;

(c) any required opinions and consents;

(d) the signature page; and

(e) any price-related information omitted from the earlier registration statement in reliance on Rule 430A, if the registrant so chooses.

2. The information contained in a Rule 462(b) or Rule 462(e) registration statement is deemed to be a part of the earlier effective registration statement as of the date of effectiveness of the Rule 462(b) or Rule 462(e) registration statement.

3. The registrant may incorporate by reference from the earlier registration statement any opinion or consent required in the Rule 462(b) or Rule 462(e) registration statement if:

(a) the opinion or consent expressly allows that incorporation; and

(b) the opinion or consent also relates to the Rule 462(b) or Rule 462(e) registration statement.

Note to General Instruction C.

You should read Securities Act Rule 411(c) regarding incorporation by reference of exhibits and Securities Act Rule 439(b) regarding incorporation by reference of consents.

D. Free Writing Prospectus Information

You should read Securities Act Rule 165. That Rule permits the small business issuer and those acting on its behalf to use ''free writing'' offering materials that do not meet the requirements of Section 10 of the Act. Those offering materials may be used after the small business issuer has filed that Section 10 prospectus with the Commission in the registration statement. If you use a prospectus in reliance on that Rule, you must file it when required to do so by Securities Act Rule 425.

E. Registrant Information—Incorporation by Reference

1. *Registrants Eligible to Incorporate by Reference.* Unless otherwise provided in General Instruction E.2., a registrant will be eligible to use Items 11 and 12, instead of Item 13, of this Form if it meets the following requirements:

(a) the registrant has a class of securities registered under Section 12(b) or 12(g) of the Exchange Act, or the registrant is required to file reports under Section 15(d) of the Exchange Act;

(b) the registrant has been subject to the requirements of Section 12 or 15(d) of the Exchange Act for at least 24 full calendar months and any portion of a month immediately preceding the date of filing this Form;

(c) the registrant has filed at least two annual reports under Section 13(a) or 15(d) of the Exchange Act; and

(d) the registrant has filed in a timely manner all reports and materials required by Section 13(a), 14 or 15(d) of the Exchange Act for at least 12 full calendar months and any portion of a month immediately before the date of filing this Form.

Note to General Instruction E.1.(d).

If the registrant filed an Exchange Act Rule 12b–25 notice to delay filing any report (or portion of a report) during that time period, it must have filed the related report (or portion) within the time prescribed by Rule 12b–25.

2. *Registrants Ineligible to Incorporate by Reference.* A registrant must comply with Item 13 if it fails to meet any of the conditions of General Instruction E.1. or any of the following is true:

(a) the registrant is a small business issuer that provided the ''Information Required in Annual Report of Transitional Small Business Issuers'' in its latest Form 10–KSB;

(b) within 2 years before the date of filing this Form, the registrant was a development stage company that either:

(1) had no specific business plan or purpose; or

(2) indicated that its business plan was to engage in a merger or acquisition with an unidentified entity or entities;

(c) within two years before the date of filing this Form, the registrant was a shell entity having few or no assets, earnings or operations;

(d) the registrant is registering an offering of ''penny stock'' as defined in Exchange Act Rule 3a51–1 or has issued it in the two years prior to the date of filing this Form;

(e) the registrant or any of its subsidiaries has, since the end of the last fiscal year for which the registrant included certified financial statements in an Exchange Act report:

(1) failed to pay any dividend or sinking fund installment on preferred stock;

(2) caused any other material delinquency with respect to preferred stock that was not cured within 30 days; or

(3) defaulted on any payment of principal, interest, a sinking fund installment, a purchase fund installment or any other installment on indebtedness, or defaulted on any rental on a long-term lease, if such debt and lease defaults in the aggregate are material;

(f) the independent accountant that examined the registrant's financial statements for the most recent fiscal year expressed in its report substantial doubt about the registrant's ability to continue as a going concern;

(g) within three years before the date of filing, a petition under the federal bankruptcy laws or any state insolvency law was filed by or against the registrant, or a court appointed a receiver, fiscal agent or similar officer with respect to the business or property of the registrant. If true, however, this would not disqualify the registrant if it has filed an annual report with audited financial statements subsequent to its emergence from that bankruptcy, insolvency or receivership process;

(h) within five years before the date of filing, the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or its underwriter was convicted of any felony or misdemeanor described in clauses (i) through (iv) of Section 15(b)(4)(B) of the Exchange Act;

(i) within five years before the date of filing, the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or its underwriter was made the subject of a judicial or administrative decree or order arising out of a governmental action that:

(1) prohibits future violations of any antifraud provision of the securities laws or Section 5 of the Securities Act;

(2) requires that the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or its underwriter cease and desist from violating any antifraud provision of the securities laws or from violating Section 5 of the Securities Act; or

(3) determines that the registrant, any executive officer, director or general partner of the registrant or person nominated to any of those positions, or underwriter violated any antifraud provision of the securities laws or Section 5 of the Securities Act; and

(j) the registrant would incorporate by reference into its Form SB–2 registration statement a report under the Exchange Act that:

(1) the Commission, after review, requested that the registrant amend in accordance with its comments; and

(2) either the registrant did not amend the report or, in the Commission's judgment, did not amend the report in accordance with the Commission's comments.

3. *Successor Registrants.* We will deem a successor registrant to have satisfied the eligibility requirements of General Instruction E.1. of this Item if it satisfies either of the following requirements:

(a)(1) taken together, the registrant and its predecessor meet the eligibility requirements in General Instruction B.1. of this Item;

(2) the primary purpose of the succession was to change the state of incorporation of the predecessor or to form a holding company for the predecessor; and

(3) the assets and liabilities of the successor at the time of succession are

substantially similar to those of the predecessor; or

(b) the predecessor met the eligibility requirements of General Instruction E.1. at the time of succession and the registrant continues to meet those requirements since the succession.

4. *Reporting Companies Recently Entering the Small Business Disclosure System.*

(a) If the small business issuer meets the requirements of General Instruction E.1. and its latest annual report was filed on Form 10–K or Form 20–F (rather than Form 10–KSB), it may use Items 11 and 12 and incorporate that annual report. The annual report on Form 10–K or 20–F must be updated by the Form 10–QSB for its most recent quarter. *See* Item 10(a)(2) of Regulation S–B which explains when and how a reporting company may enter the small business disclosure system.

(b) If a Canadian small business issuer incorporates an annual report on Form 20–F that includes financial statements prepared and presented under Item 17 of Form 20–F, it must include in the prospectus financial statements prepared and presented under Item 18 of Form 20–F unless otherwise permitted under Note 2 of Item 310 of Regulation S–B.

(c) If the small business issuer chooses not to incorporate information from its latest annual report on Form 10–K or 20–F, it must provide the information required by Item 13. Item 13 requires disclosure based upon Regulation S–B, including Item 310 financial statements.

F. Concurrent Registration of Securities Under the Exchange Act

1. Registration on this Form of a class of securities under Exchange Act Section 12(b) shall become effective upon the later of:

(a) receipt by the Commission of certification from the national securities exchange listed on the cover of this Form that the securities have been approved for listing; or

(b) effectiveness of this registration statement.

2. Registration on this Form of a class of securities under Exchange Act Section 12(g) shall become effective automatically upon the earlier of (1) 60 days after the initial filing of this registration statement; or (2) the effectiveness of this registration statement.

3. If the registrant is required to file an annual report under Exchange Act Section 15(d) for its last fiscal year, it must file that annual report within the time period specified in the appropriate annual report form even if the Exchange Act registration becomes effective before the annual report is due.

4. The registrant must file at least one complete, signed copy of the registration statement with each exchange or market identified on the cover of this Form.

* * * * *

Item 11. Information Required for Seasoned Form SB–2 Companies

If you meet the requirements of General Instruction E.1. of this Form and elect to comply with this Item and Item 12 (instead of Item 13), you must:

(a) *Annual Report.* Deliver together with the prospectus a copy of your latest annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act.

(b) *Canadian Annual Report.* If you are a Canadian small business issuer and you incorporate an annual report on Form 20–F that includes financial statements prepared and presented pursuant to Item 17 of Form 20–F, include in the prospectus financial statements prepared and presented pursuant to Item 18 of Form 20–F.

Notes to Item 11(b).

1. You must state in the prospectus that it is accompanied by that annual report.

2. Canadian small business issuers: You may not satisfy this obligation by delivering an annual report on Form 40–F.

3. Canadian small business issuers: You do not need to include financial statements that comply with Item 18 of Form 20–F if the only securities offered are those listed in paragraphs (a) through (c) of Note 2 of Item 310 of Regulation S–B.

(c) *Quarterly Information.* Provide the information required by Part I of Form 10–QSB for the most recent fiscal quarter following the fiscal year covered by the annual report delivered pursuant to this Item. You must either:

(1) include that information in the prospectus; or

(2) deliver together with the prospectus a copy of your latest Form 10–QSB.

Notes to Item 11(c).

1. If your Form 10–QSB for the most recent quarter is not due to be filed before effectiveness of the registration statement, it may provide the information for the previous fiscal quarter to satisfy Item 11(c). For this purpose, the due date is calculated without reference to the extension provided by Exchange Act Rule 12b–25.

2. If you deliver your latest Form 10–QSB, you must state in the prospectus that it is accompanied by that report.

(d) *Financial statements and information.* If not included in your latest annual report delivered to investors pursuant to this Item, provide:

(1) financial statements and information required by Items 310 (c)–(e) of Regulation S–B;

(2) restated financial statements prepared in accordance with or reconciled to U.S. GAAP where:

(i) after the end of its most recent fiscal year, the registrant consummated one or more business combinations accounted for by the pooling of interests method of accounting; and

(ii) the acquired businesses, considered in the aggregate, are significant pursuant to Item 310(c) of Regulation S–B;

(3) restated financial statements prepared in accordance with or reconciled to U.S. GAAP, if a change in accounting principles or correction of an error required a material retroactive restatement of financial statements;

(4) disclosure required by Item 310(b)(2)(v) of Regulation S–B regarding any material accounting change; or

(5) financial information required by Item 310(b)(2)(iv) of Regulation S–B regarding a significant disposition or purchase business combination;

Instruction to Item 11(d).

You may incorporate by reference into the effective registration statement the information required by paragraph (d) of Item 11. If you incorporate it, you must deliver it together with the prospectus.

(e) *Material changes.* Describe any material changes in your affairs which occurred since the end of the latest fiscal year covered by the annual report and which were not described in an Exchange Act Report that was delivered with the prospectus.

Instructions to Item 11.

1. You must deliver the information required by this Item with the first preliminary prospectus you deliver. You do not need to redeliver those documents with any later prospectus sent to the same person.

2. Any reports the registrant delivers together with the prospectus pursuant to this Item must be delivered without charge to the investor.

Item 12. Incorporation of Certain Information by Reference for Seasoned Form SB–2 Companies

If you provide information pursuant to Item 11 of this Form:

(a) You must incorporate by reference into the prospectus that is part of the effective registration statement:

(1) Your latest annual report filed in accordance with Section 13(a) or 15(d) of the Exchange Act that contains audited financial statements; and

Note to Item 12(a)(1).

Canadian small business issuers: You may not satisfy this obligation by incorporating an annual report on Form 40–F.

(2) All other reports you filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report incorporated in this Form;

Instructions to Item 12(a).

1. List in the prospectus that is part of the effective registration statement all documents filed prior to effectiveness that are incorporated by reference.

2. You should read Rule 439 regarding consent to the use of material incorporated by reference.

(b) You must provide the following undertakings in the prospectus:

(1) that you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(2) that you will provide this information upon written or oral request;

(3) that you will provide this information at no cost to the requester;

(4) that you will send a copy of information incorporated by reference into the prospectus but not delivered with it within one business day of any request for that information;

(5) that you will send these incorporated documents in a manner that should result in delivery within three business days; and

(6) the name, address and telephone number to which the request for this information must be made is: [*fill in information*].

Notes to Item 12(b).

1. The undertaking covers all documents incorporated by reference through the date of responding to the request.

2. If you send any of the information that is incorporated by reference in the prospectus to security holders, you must also send any exhibits that are specifically incorporated by reference in that information.

(c) In the prospectus you must:

(1) identify the reports and other information that you file with the Commission;

(2) state that the public:

(i) may read and copy materials you file with the Commission at the Commission's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549; and

(ii) may obtain information on the operation of the Public Reference Room by calling the Commission at 1–800–SEC–0330; and

(3) if you are an electronic filer, state that the Commission maintains an Internet web site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the Commission and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet web site address, if available.

Item 13. Information Required for all Other Small Business Issuer Registrants

If you do not provide information in accordance with Item 10 or Items 11 and 12, you must provide the following information:

(a) *Description of Business.* Item 101 of Regulation S–B;

(b) *Description of Property*. Item 102 of Regulation S–B;

(c) *Legal Proceedings.* Item 103 of Regulation S–B;

(d) *Market for Common Stock and Related Stockholder Matters.* Item 201 of Regulation S–B;

(e) *Financial Statements.* Item 310 of Regulation S–B;

(f) *Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.* Item 304 of Regulation S–B;

(g) *Management's Discussion and Analysis or Plan of Operation*. Item 303 of Regulation S–B;

(h) *Directors, Executive Officers, Promoters and Control Persons.* Item 401 of Regulation S–B;

(i) *Executive Compensation*. Item 402 of Regulation S–B;

(j) *Security Ownership of Certain Beneficial Owners and Management.* Item 403 of Regulation S–B; and

(k) *Certain Relationships and Related Transactions.* Item 404 of Regulation S–B.

* * * * *

Signatures

The registrant hereby certifies that it meets all of the requirements for filing on Form SB–2. The registrant also certifies that it has duly caused and authorized the undersigned to sign this registration statement on its behalf. The undersigned certifies that he/she has read this registration statement and to his/her knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(Registrant) _____

By (Signature and Title) _____

Date _____

The following persons certify that they have read this registration statement and to their knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) _____

Date _____

By (Signature and Title) _____

Date _____

Signature Instructions.

1. The following persons, or persons performing similar functions, must sign the registration statement:

(a) the small business issuer;

(b) its principal executive officer or officers;

(c) its principal financial officer;

(d) its controller or principal accounting officer; and

(e) at least the majority of its board of directors.

2. Where the small business issuer is a foreign issuer, its authorized representative in the United States also must sign the registration statement.

3. Where the small business issuer is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement.

4. Type or print the name and title of each person who signs the registration statement beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs the registration statement. *See* Securities Act Rule 402 concerning manual signatures and Item 601 of Regulation S–B concerning signatures pursuant to powers of attorney.

95. By revising § 239.11 and adding Form SB–3 to read as follows:

§ 239.11 Form SB–3, for registration under the Securities Act of 1933 of securities issued by small business issuers in business combination transactions.

Small business issuers must use this Form for registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) of offerings of securities:

(a) In a transaction of the type specified in paragraph (a) § 230.145 of this chapter;

(b) In a merger in which the applicable law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired;

(c) In an exchange offer for securities of the issuer or another entity;

(d) In a public reoffering or resale of any securities acquired pursuant to this registration statement; or

(e) In more than one of the kinds of transactions listed in paragraphs (a) through (d) of this section registered on one registration statement.

Note: The text of Form SB–3 will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form SB–3—Registration Statement Under the Securities Act of 1933

_____

(Exact name of Registrant as specified in its charter)

_____

(Translation of Registrant's name into English, if applicable)

_____

(State or other jurisdiction of incorporation or organization)

_____

(I.R.S. Employer Identification Number)

_____

(Address and telephone number of Registrant's principal executive offices)

_____

(Name, address and telephone number of Registrant's agent for service)

_____

(Web Site Address, if any)

_____

(E-mail Address, if any)

If you include the Securities Act Rule 473(a) delaying legend on this registration statement when you first file it, and you are relying on Securities Act Rule 456(b) to delay payment of the registration fee, check the following box. [ ]

If you do not include the Rule 473(a) delaying legend on this registration statement when you first file it, or if you specifically state in a pre-effective amendment that this registration statement shall hereafter become effective in accordance with Section 8(a) of the Securities Act, check the following box. [ ]

Note: If you check this box, you must pay the registration fee required by Section 6 of the Securities Act (unless previously paid) before the registration statement or pre-effective amendment will be considered filed.

If you are filing this Form to register additional securities for an offering in accordance with Rule 462(e) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] _____

If you are using this Form to register concurrently under Section 12(b) or 12(g) of the Exchange Act any class of securities that are the subject of the offering you are registering under the Securities Act, check the appropriate box and provide the information indicated below:

[ ] Securities being registered pursuant to Exchange Act Section 12(b):

Title of each class:

Name of exchange on which listed:

[ ] Securities being registered pursuant to Exchange Act Section 12(g):
Title of each class:

Name of market on which quoted:

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Notes to the Fee Table:

1. Set forth any explanatory details relating to the fee table in footnotes to the table.
2. If the basis for calculating the fee is not evident from the information presented in this table, refer to the applicable provisions of Securities Act Rule 457 in a footnote.
3. If the fee is calculated under Rule 457(o), the ''Amount to be registered'' and the ''Proposed maximum offering price per unit'' need not appear in this table.
4. If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. *See* Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

General Instructions

I. Rules as to Use of Form SB–3

A. A ''small business issuer'' as defined in Securities Act Rule 405 may use this Form to register an offering under the Securities Act of 1933 (''Securities Act'') that is:

1. a transaction of the type specified in Securities Act Rule 145(a);
2. a merger in which the applicable law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired;
3. an exchange offer for securities of the issuer or another entity;
4. a public reoffering or resale of any securities acquired pursuant to this registration statement; or
5. more than one of the kinds of transactions listed in paragraphs 1. through 4. registered on one registration statement.

B. You also may use this Form to register concurrently under Section 12(b) or 12(g) of the Securities Exchange Act of 1934 (''Exchange Act''). You may register any class of securities that are the subject of the offering you are registering under the Securities Act. To register, you must check the appropriate box(es) on the cover page of this Form and identify which class(es) of securities it is registering under Section 12(b) or 12(g) of the Exchange Act.

C. You may not use this Form if you are a registered investment company or a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940.

II. Registrant Information

Provide information about the registrant as follows:

A. *Transitional Small Business Issuer Registrants.* A registrant may comply with either Item 10(b) or (c) of this Form, as applicable, if it meets the following requirements:

1. it is a reporting company under the Exchange Act;
2. it provided the disclosure required by Alternative 1 or 2 of ''Information Required in Annual Report of Transitional Small Business Issuers'' in its most recent Form 10–KSB; and
3. it is eligible to use Form SB–1.

B. *Seasoned Form SB–2 Registrants.* If the registrant meets the requirements of General Instruction E.1. of Form SB–2, it must comply with:

1. Items 11 and 12 of this Form; or
2. Item 13 of this Form.

C. *All Other Small Business Issuer Registrants.* All other small business issuer registrants, including transitional small business issuers that choose not to rely on Item 10, must comply with Item 13 of this Form.

III. Information With Respect to the Company Being Acquired

Provide information about the company being acquired (which includes any entity whose securities are to be exchanged for securities of the registrant) as follows:

A. *Transitional Small Business Issuers.* If the company being acquired is a transitional small business issuer that meets the requirements of General Instruction II.A.1., it may provide the information required by either Item 14 or 16 of this Form.

B. *Seasoned Form SB–2 Companies.* If the company being acquired meets the requirements of General Instruction E.1. of Form SB–2, provide the information required by:

1. Item 15 of this Form; or
2. Item 16 of this Form.

C. *All Other Small Business Issuers.* For all other small business issuers being acquired, provide the information required by Item 16 of this Form.

D. *Form B Companies.* If the company being acquired meets the requirements of General Instructions I.B. and I.C.1. of Form B, provide information in accordance with:

1. Item 17 of this Form;
2. Item 18 of this Form; or
3. Item 19 of this Form.

E. *Seasoned Form A Companies.* If the company being acquired meets the requirements of General Instruction II. of Form A, provide information in accordance with:

1. Item 18 of this Form; or
2. Item 19 of this Form.

F. *All Other Companies.* For all other companies being acquired, provide information in accordance with Item 19 of this Form.

IV. Securities Act Rules and Regulations

You should read the rules and regulations under the Securities Act (Part 230 of Title 17 of the Code of Federal Regulations), particularly Regulation C. That Regulation contains general requirements regarding the preparation and filing of registration statements.

V. Free Writing Prospectus Information

A. You should read Securities Act Rule 166. That Rule permits a registrant to make offers prior to filing a Form SB–3 registration statement. If you use a prospectus in reliance on that Rule, you must file that prospectus when required to do so by Securities Act Rule 425.

B. You should read Securities Act Rule 165. That Rule permits the use of ''free writing'' offering materials that do not meet the requirements of Section 10 of the Act. If you use a prospectus in reliance on Rule 165,

you must file it when required to do so by Securities Act Rule 425.

VI. U.S. and Foreign Companies Being Acquired

A. As used in this Form, ''larger U.S. company being acquired'' includes all entities being acquired other than U.S. small business issuers, foreign governments and foreign private issuers.

B. As used in this Form, ''larger foreign company being acquired'' includes only entities being acquired that are foreign private issuers. It does not include Canadian small business issuers.

C. ''Foreign private issuer'' is defined in Rule 405 of Regulation C.

D. ''Small business issuer being acquired'' includes only those entities being acquired that are small business issuers, as defined in Rule 405.

VII. Interaction With the Exchange Act

A. If Regulation 14A or 14C under the Exchange Act applies to the transaction registered on this Form:

1. the prospectus may be in the form of a proxy statement or information statement;

2. the prospectus must contain the information required by this Form in lieu of that required by Schedule 14A or 14C; and

3. material filed as a part of the registration statement shall be deemed filed also for purposes of Regulation 14A or 14C, as applicable.

B. If neither Regulation 14A nor 14C applies to the transaction registered on this Form, any proxy or information statement material sent to security holders must be filed prior to use as a part of the effective registration statement.

C. If you are registering an offering that is subject to Section 13(e), 14(d) or 14(e) of the Exchange Act, the provisions of those sections and the rules and regulations thereunder shall apply to the transaction in addition to the provisions of this Form.

VIII. Business Combinations Effected on a Delayed Basis

A. A registrant may use this Form to register a transaction that will be effected on a delayed basis under Securities Act Rule 415(a)(1)(viii). In that event, it need only furnish information about the contemplated transaction and the company being acquired to the extent practicable as of the effective date of the registration statement. It must file a post-effective amendment to include the remaining required information about the transaction and the company being acquired in the registration statement.

B. A registrant may use this Form to register a transaction that would qualify for an exemption from Section 5 of the Securities Act but for the proximity in time of other similar transactions. In that event, the registrant need only file a prospectus supplement to provide the required information about the transaction and the company being acquired.

C. A registrant may register two or more classes of securities on this Form that it will offer on a delayed or continuous basis pursuant to Rule 415(a)(1)(viii).

IX. Roll-Up Transactions

A. Roll-up transactions (as defined in Item 901(c) of Regulation S–K) may be registered on this Form. In that event, the small business issuer registrant must comply with the disclosure requirements of Subpart 900 of Regulation S–K. To the extent that the disclosure requirements of Subpart 900 are inconsistent with those in this Form, the requirements of Subpart 900 control.

B. If the registrant registers a roll-up transaction on this Form, special prospectus delivery requirements apply. *See* Securities Act Rule 172(e).

C. The proxy rules and Exchange Act Rule 14e–7 of the tender offer rules contain provisions specifically applicable to roll-up transactions. Those provisions apply whether or not the entities involved have registered securities pursuant to Section 12 of the Exchange Act.

X. Registration of Additional Securities

A. Under certain circumstances, a small business issuer may increase the size of an offering after the effective date through filing a short-form registration statement under Securities Act Rule 462(b) or Rule 462(e). That type of registration statement may include only the following:

1. the facing page;

2. a statement that the earlier registration statement, identified by file number, is incorporated by reference;

3. any required opinions and consents;

4. the signature page; and

5. any price-related information omitted from the earlier registration statement in reliance on Securities Act Rule 430A, if the registrant so chooses.

B. The information contained in a Rule 462(b) or Rule 462(e) registration statement is deemed to be a part of the earlier effective registration statement as of the date of effectiveness of the Rule 462(b) or Rule 462(e) registration statement.

C. The registrant may incorporate by reference from the earlier registration statement any opinion or consent required in the Rule 462(b) or Rule 462(e) registration statement if:

1. the opinion or consent expressly allows that incorporation; and

2. the opinion or consent also relates to the Rule 462(b) or Rule 462(e) registration statement.

Note to General Instruction X.

You should read Securities Act Rule 411(c) regarding incorporation by reference of exhibits and Securities Act Rule 439(b) regarding incorporation by reference of consents.

XI. Concurrent Registration of Securities Under the Exchange Act

A. Registration on this Form of a class of securities under Exchange Act Section 12(b) shall become effective upon the later of:

1. receipt by the Commission of certification from the national securities exchange listed on the cover of this Form that the securities have been approved for listing; or

2. effectiveness of this registration statement.

B. Registration on this Form of a class of securities under Exchange Act Section 12(g) shall become effective automatically upon the earlier of (1) 60 days after the initial filing of this registration statement; or (2) the effectiveness of this registration statement.

C. If the registrant is required to file an annual report under Exchange Act Section 15(d) for its last fiscal year, it must file that annual report within the time period specified in the appropriate annual report form even if the Exchange Act registration becomes effective before the annual report is due.

D. The registrant must file at least one complete, signed copy of the registration statement with each exchange or market identified on the cover to this Form.

Part I—Information Required in the Prospectus

A. Information About the Transaction

Item 1. Front of Registration Statement and Front Cover of Prospectus

Provide the information required by Item 501 of Regulation S–B.

Item 2. Inside Front and Outside Back Cover Pages of Prospectus

(a) Provide the information required by Item 502 of Regulation S–B.

(b) If you incorporate information by reference into the prospectus, state on the inside front cover page:

(1) that the prospectus incorporates by reference important business and financial information about the company that is not delivered with it;

(2) that this information is available without charge to any person, including any beneficial owner, upon written or oral request;

(3) that you will send those incorporated documents in a manner that should result in delivery within three business days of the request;

(4) the name, address and telephone number to which persons must make this request; and

(5) that to obtain timely delivery, persons must request this information no later than ____ [specify date five business days before the date on which the final investment decision must be made. You must highlight this statement by print type or otherwise.

Instruction to Item 2.

1. The undertaking covers all documents incorporated by reference through the date of responding to the request.

2. If you send any of the information that is incorporated by reference in the prospectus, you also must send any exhibits that are specifically incorporated by reference in that information.

3. If information is incorporated by reference in any document you are sending to a security holder upon request, you also must send the information incorporated by reference.

Item 3. Prospectus Summary and Other Information

In the forepart of the prospectus, provide a summary of the information contained in the prospectus as described in Item 503(a) of Regulation S–B and the following information:

(a) *Contact information.* The name, complete mailing address and telephone

number of the principal executive offices of the registrant and the company being acquired;

(b) *Risk factors.* The information required by Item 503(c) of Regulation S–B;

(c) *Ratio of earnings to fix charges.* The information required by Item 503(d) of Regulation S–K;

(d) *Business conducted.* A brief description of the general nature of the business conducted by the registrant and by the company being acquired;

(e) *Transaction being registered.* A brief description of the transaction in which the securities being registered will be offered;

(f) *Selected financial data.* The selected financial data required by Item 301 of Regulation S–K for larger U.S. companies being acquired and Item 8 of Form 20–F for larger foreign companies being acquired. To the extent this information is required to be presented in the prospectus pursuant to other Items of this Form, it need not be presented pursuant to this Item;

(g) *Pro forma selected financial data.* If material, the information required by Item 310 of Regulation S–B for the registrant showing the pro forma effect of the transaction. To the extent the information is required to be presented in the prospectus pursuant to other Items of this Form, it need not be presented pursuant to this Item;

(h) *Pro forma information.* In a table designed to facilitate comparison, historical and pro forma per share data of the registrant and historical and equivalent pro forma per share data of the company being acquired for the following items:

(1) book value per share as of the dates financial data is presented;

(2) cash dividends declared per share for the periods for which financial data is presented; and

(3) income (loss) per share from continuing operations for the periods for which financial data is presented.

Instructions to Item 3(g) and 3(h).

1. For a business combination accounted for as a purchase, present the financial information required by paragraphs (g) and (h) only for the most recent fiscal year and interim period. For a business combination accounted for as a pooling, present the financial information required by paragraphs (g) and (h) (except for information with regard to book value) for the most recent two fiscal years and interim period. For purposes of these paragraphs, book value information need only be provided for the most recent balance sheet date.

2. Provide the per share data of the registrant and the company being acquired as of the dates that, or for the periods for which, financial data is presented pursuant to the applicable requirements of:

(a) Item 310 of Regulation S–B for small business issuer registrants and companies being acquired that are small business issuers;

(b) Item 301 of Regulation S–K for larger U.S. companies being acquired; and

(c) Item 8 of Form 20–F for larger foreign companies being acquired;

3. Calculate the equivalent pro forma per share amounts for one share of the company being acquired by multiplying the exchange ratio times each of:

(a) the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction;

(b) the pro forma book value per share; and

(c) the pro forma dividends per share of the registrant.

4. Larger foreign companies: Instruction 7 to Item 8 of Form 20–F is applicable to the financial information presented hereunder to the extent that this Form requires reconciliation of financial statements of foreign private issuers to U.S. GAAP and Regulation S–X.

(i) *Market value of securities.* In a table designed to facilitate comparison, the market value of securities of the company being acquired (on a historical and equivalent per share basis) and the market value of the securities of the registrant (on an historical basis) as of the day before the date the public announcement of the proposed transaction. If no such public announcement was made, as of the day before the date the agreement with respect to the transaction was entered into;

(j) *Affiliates' voting shares.* With respect to the registrant and the company being acquired, a brief statement comparing the percentage of outstanding shares entitled to vote held by directors, executive officers and their affiliates. State the vote required for approval of the proposed transaction;

(k) *Regulatory approval.* A statement as to whether any regulatory requirements must be complied with or approval must be obtained in connection with the transaction, and if so, the status of such compliance or approval;

(l) *Dissenters' rights.* A statement about whether or not dissenters' rights of appraisal exist, including a cross-reference to the information provided pursuant to Item 20 or 21 of this Form; and

(m) *Tax consequences.* A brief statement about the tax consequences of the transaction or, if appropriate, a cross-reference to the information provided pursuant to Item 4 of this Form.

Item 4. Terms of the Transaction

(a) Provide a summary of the material features of the proposed transaction. The summary shall include, where applicable:

(1) the information required by paragraphs (a)(1) and (a)(2) of Regulation M–A (§ 229.1004(a)(1) and (a)(2) of this chapter) and

(2) where not organized in the same country, a discussion of any material differences in the corporate laws applicable to the company being acquired and to the surviving entity. The discussion should include, but not necessarily be limited to: corporate governance, board structure, quorums, class action suits, shareholder derivative suits, rights to inspect corporate books and records, rights to inspect the shareholder list and rights of directors and officers to obtain indemnification from the company.

(b) If a report, opinion or appraisal materially relating to the transaction has been received from an outside party and such report, opinion or appraisal is referred to in the prospectus, provide the information called for by Item 1015(b) of Regulation M–A (§ 229.1015(b) of this chapter).

(c) Incorporate the acquisition agreement by reference into the prospectus.

Item 5. Pro Forma Financial Information

Provide the financial information required by Item 310(d) of Regulation S–B with respect to this transaction.

Instructions.

1. Present any Item 310(d) information required by the other Items of this Form (where not incorporated by reference) together with the information provided under this Item. In presenting this information, you must clearly distinguish between this transaction and any other one.

2. You need only show the pro forma effect that the registered transaction has on any pro forma financial information that:

(i) is incorporated by reference; and

(ii) reflects all prior transactions.

Item 6. Material Contacts With the Company Being Acquired

Provide the information required by Items 1005(b) and 1011(a) of Regulation M–A (§ 229.1005(b) and § 229.1011(a) of this chapter) for the registrant or its affiliates and the company being acquired or its affiliates. The information provided only need cover the periods for which financial statements are presented or incorporated by reference into this Form.

Item 7. Additional Information Required for Reoffering by Persons Deemed To Be Underwriters

If any person who is deemed to be an underwriter of the securities is reoffering any of the securities to the public, provide the following information in the prospectus prior to its use for the reoffer:

(a) The information required by Item 507 of Regulation S–B;

(b) Information with respect to the consummation of the transaction in which the securities were acquired; and

(c) A description of any material change in the registrant's affairs that occurred after the transaction in which the securities were acquired.

Note to Item 7.

You should read Item 512(g) of Regulation S–K regarding undertakings required in reoffering registration statements.

Item 8. Interests of Named Experts and Counsel

Provide the information required by Item 509 of Regulation S–B.

Item 9. Disclosure of Commission Position on Indemnification for Securities Act Liabilities

Provide the information required by Item 510 of Regulation S–B.

B. Information About the Registrant

Item 10. Information Required for Transitional Small Business Issuers

(a) The registrant may rely upon either paragraph (b) or (c), as applicable, of this Item (instead of Item 13), if it meets all of the following requirements:

(1) it is a reporting company under the Exchange Act;

(2) it relied upon Alternative 1 or 2 of ''Information Required in Annual Report of Transitional Small Business Issuers'' in its most recent Form 10–KSB; and

(3) it is eligible to use Form SB–1.

(b) A registrant that meets the requirements of paragraph (a) of this Item and relied upon

Alternative 1 in its most recent Form 10–KSB may provide the information required by:

(1) *Offering Circular Model A of Form 1–A*. Questions 3, 4, 11, 43 and 47–50;

(2) *Market for Common Equity and Related Stockholder Matters*. If common equity securities are being issued, Item 201 of Regulation S–B;

(3) *Changes in and Disagreements with Accountants on Accounting and Financial Disclosure*. Item 304 of Regulation S–B; and

(4) *Financial Statements*. Item 310 of Regulation S–B.

(c) A registrant that meets the requirements of paragraph (a) of this Item and relied upon Alternative 2 in its most recent Form 10–KSB may provide the information required by:

(1) *Offering Circular Model B of Form 1–A*. Items 6 and 7;

(2) *Legal Proceedings*. Item 103 of Regulation S–B;

(3) *Market for Common Equity and Related Stockholder Matters*. If the registrant is issuing common equity securities, Item 201 of Regulation S–B;

(4) *Changes in and Disagreements with Accountants on Accounting and Financial Disclosure*. Item 304 of Regulation S–B; and

(5) *Financial Statements*. Item 310 of Regulation S–B.

Item 11. Information Required for Seasoned Form SB–2 Companies

If you meet the requirements of General Instruction E.1. of Form SB–2 and elect to comply with this Item and Item 12 (instead of Item 13), you must:

(a) *Annual Report*. Deliver together with the prospectus a copy of your latest annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act;

(b) *Canadian Annual Report*. If you are a Canadian small business issuer and you incorporate an annual report on Form 20–F that includes financial statements prepared and presented pursuant to Item 17 of Form 20–F, include in the prospectus financial statements prepared and presented pursuant to Item 18 of Form 20–F.

Notes to Item 11(a) and (b).

1. You must state in the prospectus that it is accompanied by that annual report.

2. Canadian small business issuers: You may not satisfy the requirement to deliver an annual report with an annual report on Form 40–F.

3. Canadian small business issuers: You do not need to include financial statements that comply with Item 18 of Form 20–F if the only securities offered are those listed in paragraphs (a) through (c) of Note 2 of Item 310 of Regulation S–B.

(c) *Quarterly Information*. Provide the information required by Part I of Form 10–QSB for the most recent fiscal quarter following the fiscal year covered by the annual report delivered pursuant to this Item. You must either:

(1) include that information in the prospectus; or

(2) deliver together with the prospectus a copy of your latest Form 10–QSB;

Notes to Item 11(c):

1. If your Form 10–QSB for the most recent quarter is not due to be filed before effectiveness of the registration statement, you may provide the information for the previous fiscal quarter to satisfy Item 11(c). For this purpose, the due date is calculated without reference to the extension provided by Exchange Act Rule 12b–25.

2. If you deliver your latest Form 10–QSB, you must state in the prospectus that it is accompanied by that report.

(d) *Financial statements and information*. If not included in your latest annual report delivered to investors pursuant to this Item, provide:

(1) financial statements and information required by Items 310(c)–(e) of Regulation S–B;

(2) restated financial statements prepared in accordance with or reconciled to U.S. GAAP where:

(i) after the end of its most recent fiscal year, the registrant consummated one or more business combinations accounted for by the pooling of interests method of accounting; and

(ii) the acquired businesses, considered in the aggregate, are significant pursuant to Item 310(c) of Regulation S–B;

(3) restated financial statements prepared in accordance with or reconciled to U.S. GAAP, if a change in accounting principles or correction of an error required a material retroactive restatement of financial statements;

(4) disclosure required by Item 310(b)(2)(v) of Regulation S–B regarding any material accounting change; or

(5) financial information required by Item 310(b)(2)(iv) of Regulation S–B regarding a significant disposition or purchase business combination.

Instruction to Item 11(d).

You may incorporate by reference into the effective registration statement the information required by paragraph (d) of Item 11. If you incorporate it, you must deliver it together with the prospectus.

(e) *Material Changes*. Describe any material changes in your affairs that occurred since the end of the latest fiscal year covered by the annual report and were not described in an Exchange Act report that was delivered with the prospectus.

Instructions to Item 11:

1. You must deliver the information required by this Item with the first preliminary prospectus you deliver. You do not need to redeliver those documents with any later prospectus sent to the same person.

2. Any reports the registrant delivers together with the prospectus pursuant to this Item must be delivered without charge to the investor.

Item 12. Incorporation of Certain Information by Reference for Seasoned Form SB–2 Companies

If you provide information pursuant to Item 11 of this Form:

(a) You must incorporate by reference into the prospectus that is part of the effective registration statement:

(1) Your latest annual report filed in accordance with Section 13(a) or 15(d) of the Exchange Act that contains audited financial statements; and

Note to Item 12(a)(1).

Canadian small business issuers: you may not satisfy this obligation by incorporating an annual report on Form 40–F.

(2) All other reports you filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report incorporated in this Form.

Instructions to Item 12(a).

1. List in the prospectus that is part of the effective registration statement all documents filed prior to effectiveness that are incorporated by reference.

2. You should read Securities Act Rule 439 regarding consent to the use of material incorporated by reference.

(b) In the prospectus you must:

(1) identify the reports and other information that you file with the Commission;

(2) state that the public:

(i) may read and copy materials you file with the Commission at the Commission's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549; and

(ii) may obtain information on the operation of the Public Reference Room by calling the Commission at 1–800–SEC–0330; and

(3) if you are an electronic filer, state that the Commission maintains an Internet web site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the Commission and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet web site address, if available.

Item 13. Information Required for all Other Small Business Issuer Registrants

If you do not provide information in accordance with Item 10 or Items 11 and 12, you must provide the following information:

(a) *Description of Business*. Item 101 of Regulation S–B;

(b) *Description of Property*. Item 102 of Regulation S–B;

(c) *Legal Proceedings*. Item 103 of Regulation S–B;

(d) *Market for Common Stock and Related Stockholder Matters*. Item 201 of Regulation S–B;

(e) *Financial Statements*. Item 310 of Regulation S–B;

(f) *Changes In and Disagreements With Accountants on Accounting and Financial Disclosure*. Item 304 of Regulation S–B;

(g) *Management's Discussion and Analysis or Plan of Operations*. Item 303 of Regulation S–B;

(h) *Directors, Executive Officers, Promoters and Control Persons*. Item 401 of Regulation S–B;

(i) *Executive Compensation*. Item 402 of Regulation S–B;

(j) *Security Ownership of Certain Beneficial Owners and Management*. Item 403 of Regulation S–B; and

(k) *Certain Relationships and Related Transactions*. Item 404 of Regulation S–B.

C. Information About the Company Being Acquried

Item 14. Information Required for Companies That Are Transitional Small Business Issuers

(a) If the company being acquired meets the requirements to use Item 10(b) of this Form and compliance with this Item is elected, provide the information required by

Item 10(b) as if the company being acquired were the registrant.

(b) If the company being acquired meets the requirements to use Item 10(c) of this Form and compliance with this Item is elected, provide the information required by Item 10(c) as if the company being acquired were the registrant.

Item 15. Information Required for Seasoned SB–2 Issuers

If the company being acquired meets the requirements of General Instruction E.1. of Form SB–2 and compliance with this Item is elected, provide the information required by Items 11 and 12 of this Form as if the company being acquired were the registrant.

Instruction.

Canadian small business issuers being acquired: Notwithstanding the requirements of Items 11 and 12, the financial statements of the company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F.

Item 16. Information Required for all Other Small Business Issuers

If the company being acquired does not meet the requirements of General Instruction E.1. of Form SB–2, or compliance with this Item is elected, provide the information required by Item 13 of this Form as if the company being acquired were the registrant, subject to the following:

(a) Canadian small business issuers being acquired: Notwithstanding the requirements of Item 13 of this Form, the financial statements of the company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F.

(b) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), or has not furnished an annual report to its security holders under Rule 14a–3 or Rule 14c–3 for the latest fiscal year because of Exchange Act Section 12(i), furnish the financial statements that would be required in an annual report sent to security holders under Rules 14a–3(b)(1) and (b)(2) if one was required.

Instructions to paragraph (b).

1. If the registrant's security holders will not be voting on the transaction, financial statements for the two fiscal years before the latest fiscal year need be provided only to the extent that security holders of the company being acquired were previously furnished with financial statements (prepared in conformity with GAAP) for those periods.

2. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.

3. If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

(c) Notwithstanding paragraph (b) of this Item, the financial statements of the company being acquired must be audited for the fiscal years required by Item 310 of Regulation S–B if this registration statement is used for resales by any person deemed to be an underwriter within the meaning of Rule 145(c).

(d) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), provide the information required by Part I of Form 10–QSB for the most recent quarter for which a quarterly report would be due as if the company being acquired were subject to those reporting requirements.

Item 17. Information Required for Form B Companies

If the company being acquired meets the requirements of General Instructions I.B. and I.C.1. of Form B and compliance with this Item is elected, provide the information required by Items 10 and 11 of Form C as if the company being acquired were the registrant on Form C.

Instruction.

Larger foreign companies being acquired: Notwithstanding the requirements of Items 10 and 11 of Form C, the financial statements of the company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F.

Item 18. Information Required for Seasoned Form A Companies

If the company being acquired meets the requirements of General Instruction II. of Form A and compliance with this Item is elected, provide the information required by Items 12 and 13 of Form C as if the company being acquired were the registrant on Form C.

Instruction.

Foreign companies being acquired: Notwithstanding the requirements of Items 12 and 13 of Form C, the financial statements of the company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F.

Item 19. Information Required for All Other Companies

If the company being acquired does not meet the requirements of General Instructions I.B. and I.C.1. of Form B or General Instruction II. of Form A, or compliance with this Item is elected, provide the information required by Item 14 of Form C as if the company being acquired were the registrant on Form C, subject to the following:

(a) Only those schedules required by Rules 12–15, 28 and 29 of Regulation S–X need be provided with respect to the company being acquired.

(b) Notwithstanding the requirements of Item 14 of Form C, the financial statements of any foreign company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F.

(c) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), or has not furnished an annual report to its security holders under Rule 14a–3 or Rule 14c–3 for the latest fiscal year because of Exchange Act Section 12(i), furnish the financial statements that would be required in an annual report sent to security holders under Rules 14a–3(b)(1) and (b)(2) if one was required.

Instructions to paragraph (c).

1. If the registrant's security holders will not be voting on the transaction, financial statements for the two fiscal years before the latest fiscal year need be provided only to the extent that security holders of the company being acquired were previously furnished with financial statements (prepared in conformity with GAAP) for those periods.

2. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.

3. If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

(d) Notwithstanding paragraph (c) of this Item, the financial statements of the company being acquired must be audited for the fiscal years required by paragraph (b)(2) of Rule 3–05 of Regulation S–X if this registration statement is used for resales by any person deemed to be an underwriter within the meaning of Rule 145(c).

(e) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), provide the information required by Part I of Form 10–Q or 10–QSB for the most recent quarter for which a quarterly report would be due as if the company being acquired were subject to those reporting requirements.

D. Voting and Management Information

Item 20. Information if Proxies, Consents or Authorizations Will Be Solicited

(a) If either the registrant or the company being acquired is soliciting proxies, consents or authorizations, provide the following information:

(1) *Date, Time and Place Information*. Item 1 of Schedule 14A;

(2) *Revocability of Proxy*. Item 2 of Schedule 14A;

(3) *Dissenters' Rights of Appraisal*. Item 3 of Schedule 14A;

(4) *Persons Making the Solicitation*. Item 4 of Schedule 14A;

(5) *Persons with a Substantial Interest in the Matter*. Item 5 of Schedule 14A, with respect to both the registrant and the company being acquired;

(6) *Voting Securities and Principal Holders*. Item 6 of Schedule 14A, with

respect to both the registrant and the company being acquired;

Instruction to Item 20(a)(6).

The following registrants and companies being acquired may provide the information required below instead of the information required by Item 6(d) of Schedule 14A:

1. Transitional small business issuers that rely upon Item 10(b) (if a registrant) or 14(a) (if an acquiree) of this Form: the information required by Questions 37 and 38 of Offering Circular Model A of Form 1–A;

2. Transitional small business issuers that rely upon Item 10(c) (if a registrant) or 14(b) (if an acquiree) of this Form: the information required by Item 10 of Offering Circular Model B of Form 1–A;

3. All other small business issuers, whether registrants or acquirees: the information required by Item 403 of Regulation S–B; and

4. Larger foreign companies being acquired: the information specified in Item 4 of Form 20–F.

(7) *Vote Required for Approval.* Item 21 of Schedule 14A; and

(8) *Directors and Executive Officers.* For the following companies, with respect to each person who will serve as a director or an executive officer of the registrant:

(i) Transitional Small Business Issuers:

(A) Questions 29–36 and 39–42 of Offering Circular Model A of Form 1–A, if the registrant or acquiree relied upon Item 10(b) or 14(a), respectively; or

(B) Items 8, 9 and 11 of Offering Circular Model B of Form 1–A, if the registrant or acquiree relied upon Item 10(c) or 14(b), respectively;

(ii) All other Small Business Issuers: Items 401, 402 and 404 of Regulation S–B;

(iii) Larger U.S. companies being acquired: Items 401, 402 and 404 of Regulation S–K; and

(iv) Larger foreign companies being acquired: Items 10, 11, 12 and 13 of Form 20–F.

(b) If the registrant or the company being acquired meets the requirements of General Instruction E.1. of Form SB–2, General Instructions I.B. and I.C.1. of Form B or General Instruction II. of Form A, any information required by paragraphs (a)(6) or (a)(8) of this Item with respect to it may be incorporated by reference from its latest annual report.

Item 21. Information if Proxies, Consents or Authorizations Will Not Be Solicited or in an Exchange Offer

(a) If proxies, consents or authorizations will not be solicited in connection with the transaction or in an exchange offer, provide the following information:

(1) *Statement that Proxies Are Not To Be Solicited.* Item 2 of Schedule 14C;

(2) *Date, Time and Place Information.* The date, time and place of the meeting of security holders, unless such information is otherwise disclosed in material furnished to security holders with or preceding the prospectus;

(3) *Dissenters' Rights of Appraisal.* Item 3 of Schedule 14A;

(4) *Affiliates' Interests in the Transaction.* A brief description of any direct or indirect material interest of affiliates of the registrant and of the company being acquired in the proposed transaction;

Instruction to Item 21(a)(4).

You need not describe any interest arising from the ownership of securities where the affiliate receives no benefit not shared on a pro rata basis by all other holders of the same class.

(5) *Voting Securities and Principal Holders.* Item 6 of Schedule 14A, with respect to both the registrant and the company being acquired;

Instruction to Item 21(a)(5).

The following registrants and companies being acquired may provide the information required below instead of the information required by Item 6(d) of Schedule 14A:

1. Transitional small business issuers that rely upon Item 10(b) (if a registrant) or 14(a) (if an acquiree) of this Form: the information required by Questions 37 and 38 of Offering Circular Model A of Form 1–A;

2. Transitional small business issuers that rely upon Item 10(c) (if a registrant) or 14(b) (if an acquiree) of this Form: the information required by Item 10 of Offering Circular Model B of Form 1–A;

3. All other small business issuers, whether registrants or acquirees: the information required by Item 403 of Regulation S–B; and

4. Larger foreign companies being acquired: the information specified in Item 4 of Form 20–F.

(6) *Vote Required for Approval.* Item 21 of Schedule 14A; and

(7) *Directors and Executive Officers.* With respect to each person who will serve as a director or an executive officer of the registrant, the information required by:

(i) Transitional Small Business Issuers:

(A) Questions 29–36 and 39–42 of Offering Circular Model A of Form 1–A, if the registrant or acquiree relied upon Item 10(b) or 14(a) of this Form, respectively; or

(B) Items 8, 9 and 11 of Offering Circular Model B of Form 1–A, if the registrant or acquiree relied upon Item 10(c) or 14(b) of this Form, respectively;

(ii) All other Small Business Issuers: Items 401, 402 and 404 of Regulation S–B;

(iii) Larger U.S. companies being acquired: Items 401, 402 and 404 of Regulation S–K; and

(iv) Larger foreign companies being acquired: Items 10, 11, 12 and 13 of Form 20–F.

Instruction to Item 21(a).

If proxies, consents or authorizations will not be solicited in connection with the transaction because the transaction is an exchange offer, you need not provide the information required by paragraphs (a)(1), (a)(2) and (a)(3).

(b) If the registrant or the company being acquired meets the requirements of General Instruction E.1. of Form SB–2, General Instruction I.B. and I.C.1. of Form B or General Instruction II. of Form A, any information required by paragraphs (a)(5) and (a)(7) of this Item with respect to it may be incorporated by reference from its latest annual report.

Part II—Information Not Required in the Prospectus

Item 22. Indemnification of Directors and Officers

Provide the information required by Item 702 of Regulation S–B.

Item 23. Exhibits and Financial Statement Schedules .

(a) Transitional small business issuer registrants must provide the exhibits required by Part II of Form SB–1. All other small business issuer registrants must provide the exhibits required by Item 601 of Regulation S–B.

Instruction to Item 23(a).

For the following companies being acquired, provide the exhibits required below:

(1) Transitional small business issuer being acquired: Item 2(6) of Part III—Exhibits of Form 1–A;

(2) Any other small business issuer being acquired: Item 601(b)(10) of Regulation S–B;

(3) Larger U.S. company being acquired: Item 601(b)(10) of Regulation S–K; or (4) Larger foreign company being acquired: Item 601(b)(10) of Regulation S–K.

(b) Provide the financial statement schedules required by Regulation S–X and Item 19 of this Form. List each schedule according to the number assigned to it in Regulation S–X.

(c) If information is provided pursuant to Item 4(b) of this Form, provide the report, opinion or appraisal as an exhibit to this Form, unless it is included in the prospectus.

Item 24. Undertakings

(a) Set forth in the effective registration statement the undertakings required by Item 512 of Regulation S–B.

(b) Set forth the following undertaking if the registrant is using this Form for a transaction to be effected on a delayed basis:

[Name of registrant] will file a post-effective amendment containing all required information concerning a transaction and the company being acquired that was not included in the registration statement when it became effective because it was not practicable to do so.

Signatures

The registrant hereby certifies that it meets all of the requirements for filing on Form SB–3. The registrant also certifies that it has duly caused and authorized the undersigned to sign this registration statement on its behalf. The undersigned certifies that he/she has read this registration statement and to his/her knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(Registrant) _____

By (Signature and Title) _____

Date _____

The following persons certify that they have read this registration statement and to their knowledge the registration statement does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to

make the statements therein not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) _____

Date _____

By (Signature and Title) _____

Date _____

Signature Instructions.

1. The following persons, or persons performing similar functions, must sign the registration statement:

(a) the registrant;

(b) its principal executive officer or officers;

(c) its principal financial officer;

(d) its controller or principal accounting officer; and

(e) at least the majority of its board of directors.

2. Where the registrant is a foreign issuer, its authorized representative in the United States also must sign the registration statement.

3. Where the registrant is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement.

4. Type or print the name and title of each person who signs the registration statement beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs the registration statement. *See* Securities Act Rule 402 concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

5. If the securities to be offered are those of an entity that is not yet in existence at the time the registration statement is filed, but which will be a party to a consolidation involving two or more existing entities, then each existing entity will be deemed a registrant and must be so designated on the cover page of the Form. In that case, each existing entity (and the applicable persons noted in Signature Instructions 1.–3.) must sign the registration statement as if it were the registrant.

96. By amending Form S–8 (referenced in § 239.16b) by adding four lines immediately preceding the heading ''Calculation of Registration Fee''; Note 3 immediately preceding the General Instructions; by removing General Instruction C.; by redesignating General Instructions D. through G. as General Instructions C. through F.; and by revising newly designated General Instruction D. to read as follows:

Note: The text of Form S–8 does not and this amendment will not appear in the Code of Federal Regulations.

Form S–8—Registration Statement Under the Securities Act of 1933

* * * * *

Telephone number, including area code, of agent for service _____

_____

(Web Site Address, if any)

_____

(E-mail Address, if any)

Calculation of Registration Fee

* * * * *

Note 3: If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. *See* Securities Act Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

General Instructions

* * * * *

D. Registration of Additional Securities

An issuer may register additional securities of the same class of securities that have been previously registered on this form. The registration statement for the additional securities shall consist only of the following:

(1) a facing page;

(2) a statement that the contents of the earlier registration statement, identified by its file number, is incorporated by reference;

(3) all required opinions;

(4) all required consents;

(5) any information required in the new registration statement that is not in the earlier registration statement; and

(6) a signature page; A filing fee required by the Act and Rule 457 of this chapter shall be paid with respect to the additional securities only.

* * * * *

97. By amending Form F–7 (referenced in § 239.37) to add four lines to the cover page of the registration statement, to add one check box to the cover page of the registration statement immediately before the Calculation of Registration Fee table, a paragraph to appear as the last paragraph on the cover page of the registration statement, paragraph K to General Instruction II, and General Instruction IV. and in Part II following the center heading to add the heading ''Exhibits;'' to designate the introductory text as paragraph (a); to add a heading ''Undertakings;'' and to add paragraph (b) to read as follows:

Note: The text of Form F–7 does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form F–7—Registration Statement Under the Securities Act of 1933

* * * * *

_____

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States

_____

(Web Site Address, if any)

_____

(E-mail Address, if any)

* * * * *

If you are filing this Form to register additional securities for an offering in accordance with Securities Act Rule 462(b), check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] _____

Calculation of Registration Fee*

* * * * *

If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. *See* Securities Act Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

K. You should read Securities Act Rule 172. That rule describes prospectus delivery obligations applicable to offerings registered on this Form.

* * * * *

IV. Registration of Additional Securities

A. Under certain circumstances, the registrant may increase the size of an offering after the effective date through filing a short-form registration statement under Securities Act Rule 462(b). A Rule 462(b) registration statement may include only the following:

1. the facing page;

2. a statement that the earlier registration statement, identified by file number, is incorporated by reference;

3. any required opinions and consents;

4. the signature page; and

5. any price-related information omitted from the earlier registration statement in reliance on Securities Act Rule 430A, if the registrant so chooses.

B. The information contained in a Rule 462(b) registration statement is deemed to be a part of the earlier effective registration statement as of the date of effectiveness of the Rule 462(b) registration statement.

C. The registrant may incorporate by reference from the earlier registration statement any opinion or consent required in the Rule 462(b) registration statement if:

1. the opinion or consent expressly allows that incorporation; and

2. the opinion or consent also relates to the Rule 462(b) registration statement.

Note to General Instruction IV.

You should read Securities Act Rule 411(c) regarding incorporation by reference of exhibits and Securities Act Rule 439(b) regarding incorporation by reference of consents.

Part II—Information Not Required to be Sent to Shareholders

Exhibits

(a) * * *

* * * * *

Undertakings

(b) Include the following undertaking.

The registrant will file with the Commission, on or before the date of first use, all free writing materials used in connection with the securities registered on this registration statement after effectiveness and before the offering is completed.

* * * * *

98. By amending § 239.38 to revise paragraph (d)(4) and the heading ''Instructions''; to add Instruction 5 to the Instructions to paragraph (d); and to revise paragraph (h)(3) to read as follows:

§ 239.38 Form F–8, for registration under the Securities Act of 1933 of securities of certain Canadian issuers to be issued in exchange offers or a business combination.

* * * * *

(d) * * *

(4) *Public Float/ADTV.*

(i) Satisfies either of the following thresholds:

(A) The market value of the public float of the registrant's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the registrant's outstanding equity shares is $250 million or more; and

(ii) A registrant conducting its own exchange offer need not meet either of the thresholds in paragraph (d)(4)(i) of this section.

Instructions to Paragraph (d).

* * * * *

5. For the purposes of this Form, ''average daily trading volume'' shall mean the average daily trading volume the registrant's equity securities on Canadian markets during the three full calendar months or any 90 consecutive calendar days ending within 10 calendar days immediately preceding the filing of the registration statement.

* * * * *

(h) * * *

(3) *Public Float/ADTV.*

(i) Except for the successor registrant, each company participating in the business combination satisfies either of the following thresholds:

(A) The market value of the public float of the company's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the company's outstanding equity shares is $250 million or more; and

(ii) Any company participating in the business combination need not meet either of the thresholds in paragraph (h)(3)(i) of this section if the assets and gross revenues from continuing operations of the other companies participating in the business combination comprise at least 80 percent of successor registrant's total assets and gross revenues from continuing operations, and each of the other participating companies meets either of the thresholds in paragraph (h)(3)(i) of this section. Measurement of the successor registrant's total assets and gross revenues from continuing operations must be based on the pro forma combined financial statements of all the participating companies' most recently completed fiscal years.

(iii) Any company participating in a business combination will be deemed to have met either of the thresholds in paragraph (h)(3)(i) of this section if, within the last twelve months:

(A) In connection with an exchange offer, the company's equity securities either were registered or could have been registered on Form F–8, F–9, F–10 or F–80 (§ 239.28, 239.39, 239.40 or 239.41) or, in connection with a terminated tender offer, the company filed or could have filed Schedule 13E–4F (§ 240.13e–102 of this chapter) or Schedule 14D–1F (§ 240.14d–102 of this chapter); and

(B) The company would have satisfied either of the thresholds in paragraph (h)(3)(i) of this section immediately before commencing the exchange offer or tender offer.

* * * * *

99. By amending Form F–8 (referenced in § 239.38) by adding four lines to the cover page of the registration statement, by adding one check box to the cover page of the registration statement immediately before the Calculation of Registration Fee table, by adding a paragraph to appear as the last paragraph on the cover page of the registration statement, by revising paragraph (4) of General Instruction II.A., by adding Instruction 5 to the Instructions to General Instruction II.A., by revising paragraph (3) of General Instruction III.A, by adding General Instruction VI., by adding paragraph (c) to Part III. Item 1., to read as follows:

Note: The text of Form F–8 does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form F–8—Registration Statement Under the Securities Act of 1933

* * * * *

_____

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States

_____

(Web Site Address, if any)

_____

(E-mail Address, if any)

* * * * *

If you are filing this Form to register additional securities for an offering in accordance with Securities Act Rule 462(b), check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] _____

Calculation of Registration Fee *

* * * * *

If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. *See* Securities Act Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

General Instructions

* * * * *

II. Eligibility Requirements for Exchange Offers

A. * * *

(4) *Public Float/ADTV.*

(i) Satisfies either of these thresholds:

(A) The market value of the public float of the registrant's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the registrant's outstanding equity shares is $250 million or more.

(ii) A registrant conducting its own exchange offer need not meet either of the thresholds in paragraph A.(4)(i).

Instructions

* * * * *

5. For the purposes of this Form, ''average daily trading volume'' shall mean the average daily trading volume of the registrant's equity securities on Canadian markets during the three full calendar months or any 90 consecutive calendar days ending within 10

calendar days immediately preceding the filing of the registration statement.

* * * * *

III. Eligibility Requirements for Business Combinations

A. * * *

(3) *Public Float/ADTV.*

(i) Except for the successor registrant, each company participating in the business combination satisfies either of the following thresholds:

(A) The market value of the public float of the company's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the company's outstanding equity shares is $250 million or more.

(ii) Any company participating in the business combination need not meet either of the thresholds in paragraph A.(3)(i) of this instruction if the assets and gross revenues from continuing operations of the other companies participating in the business combination comprise at least 80 percent of successor registrant's total assets and gross revenues from continuing operations, and each of the other participating companies meets either of the thresholds in paragraph (A)(3)(i) of this section. Measurement of the successor registrant's total assets and gross revenues from continuing operations must be based on the pro forma combined financial statements of all the participating companies' most recently completed fiscal years.

(iii) Any company participating in a business combination will be deemed to have met either of the thresholds in paragraph A.(3)(i) of this Instruction if, within the last twelve months:

(A) In connection with an exchange offer, the company's equity securities either were registered or could have been registered on Form F–8, F–9, F–10 or F–80 or, in connection with a terminated tender offer, the company filed or could have filed Schedule 13E–4F or 14D–1F; and

(B) The company would have satisfied either of the thresholds in paragraph A.(3)(i) immediately before commencing the exchange offer or tender offer.

* * * * *

VI. Registration of Additional Securities

A. Under certain circumstances, the registrant may increase the size of an offering after the effective date through filing a short-form registration statement under Securities Act Rule 462(b). A Rule 462(b) registration statement may include only the following:

1. the facing page;

2. a statement that the earlier registration statement, identified by file number, is incorporated by reference;

3. any required opinions and consents;

4. the signature page; and

5. any price-related information omitted from the earlier registration statement in reliance on Rule 430A, if the registrant so chooses.

B. The information contained in a Rule 462(b) registration statement is deemed to be a part of the earlier effective registration statement as of the date of effectiveness of the Rule 462(b) registration statement.

C. The registrant may incorporate by reference from the earlier registration statement any opinion or consent required in the Rule 462(b) registration statement if:

1. the opinion or consent expressly allows that incorporation; and

2. the opinion or consent also relates to the Rule 462(b) registration statement.

Note to General Instruction VI.

You should read Securities Act Rule 411(c) regarding incorporation by reference of exhibits and Securities Act Rule 439(b) regarding incorporation by reference of consents.

* * * * *

Part III—Undertakings and Consent to Service of Process

Item 1. Undertakings

(a) * * *

(b) * * *

(c) The registrant will file with the Commission, on or before the date of first use, all free writing materials used in connection with the securities registered on this registration statement after effectiveness and before the offering is completed.

* * * * *

100. By amending § 239.39 to revise paragraph (b)(4); and to add Instruction 7 to the Instructions to paragraph (b) to read as follows:

§ 239.39 Form F–9, for registration under the Securities Act of 1933 of certain investment grade debt or investment grade preferred securities of certain Canadian issuers.

* * * * *

(b) * * *

(4) *Public Float/ADTV.*

(i) Satisfies either of the following thresholds:

(A) The market value of the public float of the registrant's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the registrant's outstanding equity shares is $250 million or more.

(ii) A registrant need not meet either of the thresholds in paragraph (b)(4)(i) of this section if it is using this Form to register securities that are not convertible into another security.

Instructions

* * * * *

7. For the purposes of this Form, ''average daily trading volume'' shall mean the average daily trading volume of the registrant's equity securities on Canadian markets during the three full calendar months or any 90 consecutive calendar days ending within 10 calendar days immediately preceding the filing of the registration statement.

* * * * *

101. By amending Form F–9 (referenced in § 239.39) to add four lines to the cover page of the registration statement, to add a check box to the cover page of the registration statement immediately before the ''Calculation of Registration Fee'' table, and one paragraph to appear as the last paragraph on the cover page of the registration statement; to revise paragraph (4) of General Instruction I.B.; to add Instruction 7 to the Instructions to General Instruction I.B., paragraph M. to General Instruction II., General Instruction IV.; and in Part III Item 1., to designate the existing text as paragraph (a) and to add paragraph (b) to read as follows:

Note: The text of Form F–9 will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington D.C., 20549 Form F–9— Registration Statement Under the Securities Act of 1933

* * * * *

_____

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States

_____

(Web Site Address, if any)

_____

(E-mail Address, if any)

* * * * *

If you are filing this Form to register additional securities for an offering in accordance with Securities Act Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ]

_____

Calculation of Registration Fee *

* * * * *

If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. *See* Securities Act Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

General Instructions

I. Eligibility Requirements for Use of Form F–9

* * * * *

B. * * *

(4) *Public Float/ADTV.*

(i) Satisfies either of the following thresholds:

(A) The market value of the public float of the registrant's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the registrant's outstanding equity shares is $250 million or more.

(ii) A registrant need not meet either of the thresholds in paragraph B.(4)(i) of this Instruction if it is using this Form to register securities that are not convertible into another security.

Instructions

* * * * *

7. For the purposes of this Form, ''average daily trading volume'' shall mean the average daily trading volume on Canadian markets during the three full calendar months or any 90 consecutive calendar days ending within 10 calendar days immediately preceding the filing of the registration statement.

* * * * *

II. Application of General Rules and Regulations

* * * * *

M. You should read Securities Act Rule 172. That rule describes prospectus delivery obligations applicable to offerings registered on this Form.

* * * * *

IV. Registration of Additional Securities

A. Under certain circumstances, the registrant may increase the size of an offering after the effective date through filing a short-form registration statement under Securities Act Rule 462(b). A Rule 462(b) registration statement may include only the following:

1. the facing page;

2. a statement that the earlier registration statement, identified by file number, is incorporated by reference;

3. any required opinions and consents;

4. the signature page; and

5. any price-related information omitted from the earlier registration statement in reliance on Rule 430A, if the registrant so chooses.

B. The information contained in a Rule 462(b) registration statement is deemed to be a part of the earlier effective registration statement as of the date of effectiveness of the Rule 462(b) registration statement.

C. The registrant may incorporate by reference from the earlier registration statement any opinion or consent required in the Rule 462(b) registration statement if:

1. the opinion or consent expressly allows that incorporation; and

2. the opinion or consent also relates to the Rule 462(b) registration statement.

Note to General Instruction IV.

You should read Securities Act Rule 411(c) regarding incorporation by reference of exhibits and Securities Act Rule 439(b) regarding incorporation by reference of consents.

* * * * *

Part III—Undertakings and Consents to Service of Process

Item 1. Undertakings

Include the following undertakings:

(a) * * *

(b) The registrant will file with the Commission, on or before the date of first use, all free writing materials used in connection with the securities registered on this registration statement after effectiveness and before the offering is completed.

* * * * *

102. By amending § 239.40 to revise paragraph (c)(4); and to add Instruction 5 to the Instructions to paragraph (c) to read as follows:

§ 239.40 Form F–10, for registration under the Securities Act of 1933 of securities of certain Canadian issuers.

* * * * *

(c) * * *

(4) *Public Float/ADTV.*

(i) Satisfies either of the following thresholds:

(A) The market value of the public float of the registrant's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the registrant's outstanding equity shares is $250 million or more.

(ii) Except for the successor issuer, any company participating in the business combination need not meet either of the thresholds in paragraph (c)(4)(i) of this section if the assets and gross revenues from continuing operations of the other companies participating in the business combination comprise at least 80 percent of successor registrant's total assets and gross revenues from continuing operations, and each of the other participating companies meets either of the thresholds in paragraph (c)(4)(i) of this section. Measurement of the successor registrant's total assets and gross revenues from continuing operations must be based on the pro forma combined financial statements of all the participating companies' most recently completed fiscal years.

(iii) Any company participating in a business combination will be deemed to have satisfied either of the thresholds in paragraph (c)(4)(i) of this section if, within the last twelve months:

(A) In connection with an exchange offer, the company's equity securities either were registered or could have been registered on Form F–8, F–9, F–10 or F–80 (§ 239.38, 239.39, 239.40 or 239.41) or, in connection with a terminated tender offer, the company filed or could have filed Schedule 13E–4F (§ 240.13e–102 of this chapter) or Schedule 14D–1F (§ 240.14d–102 of this chapter); and

(B) The company would have satisfied either threshold in paragraph (c)(4)(i) of this section immediately before commencing the exchange offer or tender offer.

Instructions

* * * * *

5. For the purposes of this Form, ''average daily trading volume'' shall mean the average daily trading volume of the registrant's equity securities on Canadian markets during the three full calendar months or any 90 consecutive calendar days ending within 10 calendar days immediately preceding the filing of the registration statement.

* * * * *

103. By revising Form F–10 (referenced in § 239.40) to add four lines to the cover page of the registration statement, to add one check box to the cover page of the registration statement immediately before the ''Calculation of Registration Fee'' table, one paragraph to appear as the last paragraph on the cover page of the registration statement; to revise paragraph (4) of General Instruction I.C.; to add Instruction 5 to the Instructions to General Instruction I.C. and paragraph N. to General Instruction II, General Instruction IV.; and in Part III Item 1., to designate the second paragraph as paragraph (a) and to add paragraph (b) to read as follows:

* * * * *

Note: The text of Form F–10 does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form F–10—Registration Statement Under the Securities Act of 1933

* * * * *

_____

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

_____

(Web Site Address, if any)

_____

(E-mail Address, if any)

* * * * *

If you are filing this Form to register additional securities for an offering in accordance with Securities Act Rule 462(b), check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] _____

Calculation of Registration Fee *

* * * * *

If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. *See* Securities Act Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

General Instructions

I. General Eligibility Requirements for Use of Form F–10

* * * * *

C. * * *

(4) *Public Float/ADTV.*

(i) Satisfies either of the following thresholds:

(A) The market value of the public float of the registrant's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the registrant's outstanding equity shares is $250 million or more.

(ii) Any individual company participating in the business combination need not meet either of the thresholds in paragraph C.(4)(i) of this Instruction if the assets and gross revenues from continuing operations of the other companies participating in the business combination comprise at least 80 percent of successor registrant's total assets and gross revenues from continuing operations, and each of the other participating companies meets either of the thresholds in paragraph C.(4)(i). Measurement of the successor registrant's total assets and gross revenues from continuing operations must be based on the pro forma combined financial statements of all the participating companies' most recently completed fiscal years.

(iii) Any company participating in a business combination will be deemed to have satisfied either of the thresholds in paragraph C.(4)(i) of this Instruction if, within the last twelve months:

(A) In connection with an exchange offer, the company's equity securities either were registered or could have been registered on Form F–8, F–9, F–10 or F–80 or, in connection with a terminated tender offer, the company filed or could have filed Schedule 13E–4F or 14D–1F; and

(B) The company would have satisfied either threshold in paragraph C.(4)(i) of this Instruction immediately before commencing the exchange offer or tender offer.

Instructions

* * * * *

5. For the purposes of this Form, ''average daily trading volume'' shall mean the average daily trading volume of the registrant's equity securities on Canadian markets during the three full calendar months or any 90 consecutive calendar days ending within 10 calendar days immediately preceding the filing of the registration statement.

* * * * *

II. Application of General Rules and Regulations

* * * * *

N. You should read Securities Act Rule 172. That rule describes prospectus delivery obligations applicable to offerings registered on this Form.

* * * * *

IV. Registration of Additional Securities

A. Under certain circumstances, the registrant may increase the size of an offering after the effective date through filing a short-form registration statement under Securities Act Rule 462(b). A Rule 462(b) registration statement may include only the following:

1. the facing page;

2. a statement that the earlier registration statement, identified by file number, is incorporated by reference;

3. any required opinions and consents;

4. the signature page; and

5. any price-related information omitted from the earlier registration statement in reliance on Securities Act Rule 430A, if the registrant so chooses.

B. The information contained in a Rule 462(b) registration statement is deemed to be a part of the earlier effective registration statement as of the date of effectiveness of the Rule 462(b) registration statement.

C. The registrant may incorporate by reference from the earlier registration statement any opinion or consent required in the Rule 462(b) registration statement if:

1. the opinion or consent expressly allows that incorporation; and

2. the opinion or consent also relates to the Rule 462(b) registration statement.

Note to General Instruction IV.

You should read Securities Act Rule 411(c) regarding incorporation by reference of exhibits and Securities Act Rule 439(b) regarding incorporation by reference of consents.

* * * * *

Part III—Undertakings and Consent to Service of Process

Item 1. Undertakings

Include the following undertakings:

(a) * * *

(b) The registrant will file with the Commission, on or before the date of first use, all free writing materials used in connection with the securities registered on this registration statement after effectiveness and before the offering is completed.

* * * * *

104. By amending § 239.41 to revise paragraph (d)(4); to add Instruction 5 to the Instructions to paragraph (d); and to revise paragraph (h)(3) to read as follows:

§ 239.41 Form F–80, for registration under the Securities Act of 1933 of securities of certain Canadian issuers to be issued in exchange offers or a business combination.

* * * * *

(d) * * *

(4) *Public Float/ADTV.*

(i) Satisfies either of the following thresholds:

(A) The market value of the public float of the registrant's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the registrant's outstanding equity shares is $250 million or more.

(ii) A registrant conducting its own exchange offer need not meet either of the thresholds in paragraph (d)(4)(i) of this section.

Instructions

* * * * *

5. For the purposes of this Form, ''average daily trading volume'' shall mean the average daily trading volume of the registrant's equity securities on Canadian markets during the three full calendar months or any 90 consecutive calendar days ending within 10 calendar days immediately preceding the filing of the registration statement.

* * * * *

(h) * * *

(3) *Public Float/ADTV.*

(i) Except for the successor registrant, each company participating in the business combination satisfies either of the following thresholds:

(A) The market value of the public float of the company's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the company's outstanding equity shares is $250 million or more.

(ii) Any company participating in the business combination need not meet either of the thresholds in paragraph (h)(3)(i) of this section if the assets and gross revenues from continuing operations of the other companies participating in the business combination comprise at least 80 percent of successor registrant's total assets and gross revenues from continuing operations, and each of the other participating companies meets either of the thresholds in paragraph (h)(3)(i) of this section. Measurement of the successor registrant's total assets and gross revenues from continuing operations must be based on the pro forma combined financial statements of all the participating companies' most recently completed fiscal years.

(iii) Any company participating in a business combination will be deemed to have met either of the thresholds in paragraph (h)(3)(i) of this section if, within the last twelve months:

(A) In connection with an exchange offer, the company's equity securities either were registered or could have been registered on Form F–8, F–9, F–10 or F–80 (§ 239.38, 239.39, 239.40 or 239.41) or, in connection with a terminated tender offer, the company filed or could have filed Schedule 13E–4F (§ 240.13e–102 of this chapter) or 14D–1F (§ 240.14d–102 of this chapter); and

(B) The company would have satisfied either threshold in paragraph (h)(3)(i) of this section immediately before commencing the exchange offer or tender offer.

105. By amending Form F–80 (referenced in § 239.41) to add four lines to the cover page of the registration

statement, to add one check box to the cover page of the registration statement immediately before the ''Calculation of Registration Fee'' table, one paragraph to appear as the last paragraph on the cover page of the registration statement; to revise paragraph (4) of General Instruction II.A.; to add Instruction 5 to the Instructions to General Instruction II.A.; to revise paragraph (3) of General Instruction III.A.; to add General Instruction VI.; and in Part III Item 1. to add paragraph (c) to read as follows:

* * * * *

Note: The text of Form F–80 does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form F–80—Registration Statement Under the Securities Act of 1933

* * * * *

_____

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

_____

(Web Site Address, if any)

_____

(E-mail Address, if any)

* * * * *

If you are filing this Form to register additional securities for an offering in accordance with Securities Act Rule 462(b), check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. [ ] _____

Calculation of Registration Fee*

If any of the securities registered are not sold in connection with this offering, the registrant (or a qualifying wholly-owned subsidiary) may use the dollar amount of the fee paid with respect to the unsold securities to offset the total fee due on its subsequent registration statement. *See* Securities Act Rule 457(p). When offsetting any part of the fee under Rule 457(p), the registrant must state the dollar amount being offset in a footnote to the fee table and must identify the file number of the registration statement and the amount and class of securities in connection with which the offsetting fee was previously paid. Use of Rule 457(p) to offset any fee automatically deregisters the securities in connection with which the fee was previously paid.

General Instructions

* * * * *

II. Eligibility Requirements for Exchange Offers

A. * * *

(4) *Public Float/ADTV.*

(i) Satisfies either of these thresholds:

(A) The market value of the public float of the registrant's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the registrant's outstanding equity shares is $250 million or more.

(ii) A registrant conducting its own exchange offer need not meet either of the thresholds in paragraph A.(4)(i) of this Instruction.

Instructions

* * * * *

5. For the purposes of this Form, ''average daily trading volume'' shall mean the average daily trading volume of the registrant's equity securities on Canadian markets during the three full calendar months or any 90 consecutive calendar days ending within 10 calendar days immediately preceding the filing of the registration statement.

* * * * *

III. Eligibility Requirements for Business Combinations

A. * * *

(3) *Public Float/ADTV.*

(i) Except for the successor registrant, each company participating in the business combination satisfies either of the following thresholds:

(A) The market value of the public float of the company's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more; or

(B) The market value of the public float of the company's outstanding equity shares is $250 million or more.

(ii) Any company participating in the business combination need not meet either of the thresholds in paragraph A.(3)(i) of this Instruction if the assets and gross revenues from continuing operations of the other companies participating in the business combination comprise at least 80 percent of successor registrant's total assets and gross revenues from continuing operations, and each of the other participating companies meets either of the thresholds in paragraph A.(3)(i) of this Instruction. Measurement of the successor registrant's total assets and gross revenues from continuing operations must be based on the pro forma combined financial statements of all the participating companies' most recently completed fiscal years.

(iii) Any company participating in a business combination will be deemed to have met either of the thresholds in paragraph A.(3)(i) of this Instruction if, within the last twelve months:

(A) In connection with an exchange offer, the company's equity securities either were registered or could have been registered on Form F–8, F–9, F–10 or F–80 or, in connection with a terminated tender offer, the company filed or could have filed Schedule 13E–4F or 14D–1F; and

(B) The company would have satisfied either threshold in paragraph A.(3)(i) of this Instruction immediately before commencing the exchange offer or tender offer.

* * * * *

VI. Registration of Additional Securities

A. Under certain circumstances, the registrant may increase the size of an offering after the effective date through filing a short-form registration statement under Securities Act Rule 462(b). A Rule 462(b) registration statement may include only the following:

1. the facing page;

2. a statement that the earlier registration statement, identified by file number, is incorporated by reference;

3. any required opinions and consents;

4. the signature page; and

5. any price-related information omitted from the earlier registration statement in reliance on Securities Act Rule 430A, if the registrant so chooses.

B. The information contained in a Rule 462(b) registration statement is deemed to be a part of the earlier effective registration statement as of the date of effectiveness of the Rule 462(b) registration statement.

C. The registrant may incorporate by reference from the earlier registration statement any opinion or consent required in the Rule 462(b) registration statement if:

1. the opinion or consent expressly allows that incorporation; and

2. the opinion or consent also relates to the Rule 462(b) registration statement.

Note to General Instruction VI.

You should read Securities Act Rule 411(c) regarding incorporation by reference of exhibits and Securities Act Rule 439(b) regarding incorporation by reference of consents.

* * * * *

Part III—Undertakings and Consent to Service of Process

Item 1. Undertakings

(a) * * *

(b) * * *

(c) The registrant will file with the Commission, on or before the date of first use, all free writing materials used in connection with the securities registered on this registration statement after effectiveness and before the offering is completed.

* * * * *

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

106. By revising the general authority citation for part 240 to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

107. By amending § 240.12b–2 by revising the definition of ''small business issuer'' 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 (including revenues of any consolidated subsidiaries) of less than $50,000,000;

(2) Is a U.S. or Canadian issuer;

(3) Is not an investment company;

(4) If a majority-owned subsidiary, the parent corporation is also a small business issuer; and

(5) Each majority-owned subsidiary of the entity, if any, meets the criteria of paragraphs (2) and (3) of this definition.

* * * * *

108. By adding § 240.12b–24 to read as follows:

§ 240.12b–24 Plain English risk factor disclosure.

(a) To enhance the readability of risk factor disclosure, you must use plain English principles in the organization, language and design of the risk factor section of any Exchange Act registration statement or report.

(b) Any disclosure you provide in those registration statements or reports that relates to risk factors must, at a minimum, substantially comply with each of the following plain English writing principles:

(1) Short sentences;

(2) Definite, concrete, everyday words;

(3) Active voice;

(4) Tabular presentation or bullet lists for complex material, whenever possible;

(5) No legal jargon or highly technical business terms; and

(6) No multiple negatives.

Note to this section.

You should read Securities Act Release No. 7497 (January 28, 1998) for more information on plain English principles.

109. By adding two notes at the end of § 240.12d1–2 to read as follows:

§ 240.12d1–2 Effectiveness of registration.

* * * * *

Notes to Rule 12d1–2

(1) As established by Section 12(g) of the Exchange Act (15 U.S.C. 78l(g)), a Form 8–A (§ 249.208a of this chapter) filed under paragraph (c) of this section becomes effective no more than 60 days after the date that registration statement is filed with the Commission. The automatic effectiveness described in paragraph (c) permits earlier effectiveness of the Form 8–A only.

(2) Registrants may use Forms A, B, C, SB–1, SB–2, or SB–3 or Schedule B (§ 239.4, 239.5, 239.6, 239.9, 239.10, or 239.11 or 15 U.S.C. 77aa) to register a class of securities under Section 12 of the Exchange Act concurrently with the registration of a public offering of securities of that class under the Securities Act. The Exchange Act registration on Forms A, B, C, SB–1, SB–2 or SB–3 will become effective as described in those forms. The Exchange Act registration on Schedule B will become effective as described in Securities Act Rule 499. Securities Act Rule 499 also sets forth disclosure and procedural requirements for registrants using Schedule B for concurrent registration under the Exchange Act and the Securities Act.

§ 240.13a–10 [Amended]

110. By amending § 240.13a–10 by removing the word ''six'' and adding, in its place, the word ''five'' in paragraph (g)(3).

* * * * *

111. By amending § 240.13a–13 by revising paragraph (d) to read as follows:

§ 240.13a–13 Quarterly reports on Form 10–Q and Form 10–QSB (§ 249.308a and § 249.308b of this chapter).

* * * * *

(d) Notwithstanding the foregoing provisions of this section, market risk disclosure required by Item 3 of Part I of Form 10–Q shall not be deemed to be ''filed'' for the purpose of Section 18 of the Act (15 U.S.C. 78r). That disclosure, therefore, shall not be subject to the liabilities of that Section. That disclosure shall, however, be subject to all other provisions of the Act.

112. By amending § 240.14a–2 by removing at the end of paragraph (a)(5) the words ''Act of 1935; and'' and adding, in their place, the words ''Act of 1935;'', at the end of paragraph (a)(6)(iii) the words ''by security holders.'' and adding, in their place, the words ''by security holders; and''; and by adding paragraph (a)(7) to read as follows.

§ 240.14a–2 Solicitations to which § 240.14a–3 to § 240.14a–15 apply.

* * * * *

(a) * * *

(7) Any solicitation by a broker or dealer made in accordance with § 230.138 or § 230.139 of this chapter in connection with an offering registered under the Securities Act of 1933.

113. By amending § 240.14a–101 by revising Note E., by revising paragraph (b)(1), and by revising the heading to paragraph (b)(2) of Item 13 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

E. In Item 13 of this Schedule, the reference to ''meets the requirements of Form B'' shall mean a registrant who meets:

(1) the requirements of General Instruction I.B. of Form B; and

(2) one of the following:

(a) General Instruction I.C.1. of Form B;

(b) General Instruction I.C.4. of Form B, if action is to be taken as described in Item 11, 12 and 14 of this schedule that concerns non-convertible debt or preferred securities which are ''investment grade securities.'' The time by which the rating must be assigned shall be the date on which definitive copies of the proxy statement are first sent or given to security holders; or

(c) General Instruction I.C.5. of Form B.

* * * * *

Item 13. Financial and Other Information

(See Notes D and E at the Beginning of this Schedule.)

* * * * *

(b) * * *

(1) *Form B registrants.* If the registrant meets the requirements of Form B (as defined in Note E), it may incorporate by reference to previously filed documents any of the information required by paragraph (a) of this Item, provided that the requirements of paragraph (c) are met. Where the registrant meets these requirements of Form B and has elected to furnish the required information by incorporation by reference, the registrant may elect to update the information incorporated by reference to information in subsequently filed documents.

(2) *All other registrants.*

* * * * *

114. By revising the section heading and paragraph (b) and by removing the words ''of paragraphs (b) and (d)'' in the last sentence of paragraph (d) of § 240.15c2–8 to read as follows:

§ 240.15c2–8 Delivery of prospectus information.

* * * * *

(b) A broker or dealer, and any person acting on behalf of them, must deliver prospectus information to each person offered securities in connection with an offering registered under the Securities Act as follows:

(1) *Form B and Schedule B Seasoned Issuers.* If the issuer is offering securities as described in paragraph (b)(1)(i), then delivery under paragraph (b)(1)(ii) must be made.

(i) Securities in an offering registered on:

(A) Form B (§ 239.5 of this chapter), other than pursuant to General Instruction I.C.6. of that Form; or

(B) Schedule B (15 U.S.C. 77aa) where a firm commitment underwritten offering in excess of $250 million in securities takes place more than one year after the effective date of the issuer's initial registered offering;

(ii) A term sheet prospectus that contains the following information must be sent in a manner reasonably designed to arrive before the date an investor makes a binding investment decision:

(A) An itemization of the material terms of the securities in summary format;

(B) The name of any person, other than the issuer, for whose account securities are offered and a brief identification of any material relationship such person has (or had within the past three years) with the issuer or any affiliate of the issuer;

(C) The identity and location of a contact person to whom questions may be directed; and

(D) The identity and location of a person who, upon request, will send

promptly the documents that define the terms of the securities.

(2) *Other issuers—firm commitment underwritten offerings.* If an offering is registered on Form A, Form SB–1, Form SB–2, Form F–7, Form F–9, Form F–10 (other than in a business combination), (§ 239.4, 239.9, 239.10, 239.37, 239.39 or 239.40 of this chapter) or on Schedule B (other than as described in paragraph (b)(1) of this section), is underwritten on a firm commitment basis and the offering:

(i) Is the issuer's initial offering registered in accordance with Section 5 of the Securities Act (15 U.S.C. 77e) or is an offering taking place within one year of the effective date of the issuer's initial registered offering, then a prospectus satisfying Section 10 (15 U.S.C. 77j) of the Securities Act must be sent to each investor in a manner reasonably designed to arrive at least 7 calendar days before the pricing of the securities.

(ii) Takes place more than one year after the effective date of the issuer's initial offering registered in accordance with Section 5 of the Securities Act, then a prospectus satisfying Section 10 of the Securities Act must be sent to each investor in a manner reasonably designed to arrive at least 3 calendar days before the pricing of the securities.

(3) *Other issuers—non-firm commitment underwritten offerings.* If an offering is registered on Form A, Form SB–1, Form SB–2, Form F–7, Form F–9, Form F–10 (other than in a business combination), or on Schedule B (other than as described in paragraph (b)(1) of this section), is *not* underwritten on a firm commitment basis and the offering:

(i) Is the issuer's initial offering in accordance with Section 5 of the Securities Act or is an offering taking place within one year of the effective date of the issuer's initial registered offering, then a prospectus satisfying Section 10 of the Securities Act must be sent to each investor in a manner reasonably designed to arrive at least 7 calendar days before the investor signs a subscription agreement or otherwise commits to purchase securities.

(ii) Takes place more than one year after the effective date of the issuer's initial registered offering in accordance with Section 5 of the Securities Act, then a prospectus satisfying Section 10 of the Securities Act must be sent to each investor in a manner reasonably designed to arrive at least 3 calendar days before the investor signs a subscription agreement or otherwise commits to purchase securities.

Note to paragraphs (b)(2) and (b)(3). A broker or dealer may choose to deliver a prospectus meeting the requirements of Section 10(a) of the Securities Act, instead of a prospectus meeting the requirements of Section 10 of the Securities Act, if it does so in accordance with the terms of paragraphs (b)(2) and (b)(3).

(4) *Roll-ups.* Notwithstanding paragraphs (b)(1) through (b)(3) of this section, if an issuer is registering a roll-up transaction as defined in § 229.901(c) of this chapter, a prospectus that satisfies the requirements of Section 10 of the Securities Act must be sent to each investor no later than the earlier of:

(i) 60 calendar days before the meeting at which the roll-up transaction will be submitted to a vote or 60 calendar days before the earliest date on which partnership action could be taken by consent; and

(ii) The date calculated by applying the maximum number of days permitted for giving notice under applicable state law.

(5) *Material changes.* If not previously disclosed by any other means to investors, a broker or dealer must send to each investor a document setting forth material changes to the information in the prospectus delivered in a manner reasonably designed to arrive at least 24 hours before:

(i) The securities are priced, if the offering is subject to paragraph (b)(2) of this section;

(ii) The investor signs a subscription agreement or otherwise commits to purchase securities, if the offering is subject to paragraph (b)(3) of this section; or

(iii) The date of the meeting at which the transaction will be submitted to a vote or on which partnership action could be taken by consent, if the offering is subject to paragraph (b)(4) of this section.

(6) *Rule 462 registration statements.* Notwithstanding paragraphs (b)(1) through (b)(4) of this section, if an offering is registered in part through a registration statement filed under § 230.462(b) or § 230.462(e), a prospectus delivered with respect to the earlier registration statement to an investor in compliance with this § 240.15c2–8 will be deemed to satisfy the delivery requirements with respect to that investor under this § 240.15c2–8 with respect to the § 230.462(b) or § 230.462(e) registration statement for the offering, provided that the broker or dealer otherwise informs investors purchasing in the offering of the change in the size of the offering.

* * * * *

115. By amending § 240.15d–10 by removing the word ''six'' and adding, in its place, the word ''five'' in paragraph (g)(3).

116. By amending § 240.15d–13 by revising paragraph (d) and removing paragraph (e) to read as follows:

§ 240.15d–13 Quarterly reports on Form 10–Q and Form 10–QSB (§ 249.308a and § 249.308b of this chapter).

* * * * *

(d) Notwithstanding the foregoing provisions of this section, market risk disclosure required by of Item 3 of Part I of Form 10–Q shall not be deemed to be ''filed'' for the purpose of Section 18 of the Act (15 U.S.C. 78r). That disclosure, therefore, shall not be subject to the liabilities of that Section. That disclosure shall, however, be subject to all other provisions of the Act.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

117. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

§ 249.210 Authority Citation [Removed]

118. The authority citations following § 249.210 are removed.

119. By amending Form 8–A (referenced in § 249.208a) by revising the title of General Instruction A. and paragraph (a) of General Instruction A.; by designating Instruction D. of General Instructions as paragraph (a) of Instruction D. of General Instructions; by adding a sentence at the end of paragraph (a) of Instruction D. of General Instructions, paragraphs (b), (c), (d) and (e) to Instruction D. of General Instructions; and by revising the Signatures section to read as follows:

Note: The text of Form 8–A does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form 8–A

* * * * *

General Instructions

* * * * *

A. Use of Form 8–A

(a) Subject to paragraph (b), you may use this Form for registration pursuant to Section 12(b) or 12(g) of the Securities Exchange Act of 1934 of any class of securities of any issuer that:

(1) Is required to file reports pursuant to Section 13(a) or 15(d) of the Act, and has filed all material required to be filed under Section 13, 14 or 15(d) for a period of at least 12 full calendar months and any portion of

a month immediately preceding the date of filing this Form (or such shorter period that the issuer was subject to those requirements); or

(2) Has securities listed on an exchange that is not registered as a national securities exchange, pursuant to an order exempting that exchange from such registration.

* * * * *

D. Signature and Filing of Registration Statement

(a) * * * *See* Exchange Act Rule 12b–11(d) concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

(b) The following persons, or persons performing similar functions, must sign the registration statement:

(1) The registrant;

(2) Its principal executive officer or officers;

(3) Its principal financial officer;

(4) Its controller or principal accounting officer; and

(5) At least the majority of its board of directors.

(c) Where the registrant is a foreign issuer, its authorized representative in the United States also must sign the registration statement.

(d) Where the registrant is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement.

(e) Type or print the name and title of each person who signs the registration statement beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs the registration statement.

* * * * *

Signatures*

The registrant hereby certifies that it meets all of the requirements for filing on Form 8–A. The registrant also certifies that it has duly caused and authorized the undersigned to sign this registration statement on its behalf. The undersigned certifies that he/she has read this registration statement and to his/her knowledge the registration statement does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(Registrant) _____

By (Signature and Title) _____

Date _____

The following persons certify that they have read this registration statement and to their knowledge the registration statement does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The following persons also certify that they are signing on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) _____

Date _____

By (Signature and Title) _____

Date _____

*See General Instruction D.

* * * * *

120. By amending Form 10 (referenced in § 249.210) by designating Instruction D. of General Instructions as paragraph (a) of Instruction D. of General Instructions; by adding a sentence at the end of paragraph (a) of Instruction D. of General Instructions, paragraphs (b), (c), (d) and (e) to Instruction D. of General Instructions, by adding four lines to the cover page of the registration statement, Item 1A. to the ''Information Required in the Registration Statement'' section; and by revising the Signatures section to read as follows:

Note: The text of Form 10 does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form 10

* * * * *

General Instructions

* * * * *

D. Signature and Filing of Registration Statement

(a) * * * *See* Exchange Act Rule 12b–11(d) concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

(b) The following persons, or persons performing similar functions, must sign the registration statement:

(1) the registrant;

(2) its principal executive officer or officers;

(3) its principal financial officer;

(4) its controller or principal accounting officer; and

(5) at least the majority of its board of directors.

(c) Where the registrant is a foreign issuer, its authorized representative in the United States also must sign the registration statement.

(d) Where the registrant is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement.

(e) Type or print the name and title of each person who signs the registration statement beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs the registration statement.

* * * * *

Form 10—General Form for Registration of Securities Pursuant to Section 12 (b) or (g) of the Securities Exchange Act of 1934

* * * * *

_____

(Exact name of registrant as specified in its charter)

Registrant's telephone number, including area code _____

* * * * *

Information Required in Registration Statement

* * * * *

Item 1A. Company Risk Factors

If the registrant is not required, as of the date of filing, to file reports pursuant to Section 13(a), set forth, under the caption ''Company Risk Factors,'' the most significant factors with respect to the registrant's business, operations, industry, or financial position that may have a negative impact on the registrant's future financial performance. Explain briefly how the risk affects the registrant. Do not present risk factors that could apply to any registrant. Set forth each risk factor under a caption that adequately describes the risk. Provide the discussion of risk factors in plain English in accordance with Exchange Act Rule 12b–24.

* * * * *

Signatures*

The registrant certifies that it has duly caused and authorized the undersigned to sign this registration statement on its behalf. The undersigned certifies that he/she has read this registration statement and to his/her knowledge the registration statement does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(Registrant) _____

By (Signature and Title) _____

Date _____

The following persons certify that they have read this registration statement and to their knowledge the registration statement does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The following persons also certify that they are signing on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) _____

Date _____

By (Signature and Title) _____

Date _____

*See General Instruction D.

121. By amending Form 10–SB (referenced in § 249.210b) by adding four lines to the cover page of the registration statement, by adding a sentence at the end of General Instruction B.2., General Instruction B.3., B.4., B.5. and B.6., and Item 1A. to Part II; and by revising the Signatures section to read as follows:

Note: The text of Form 10–SB does not and these amendments will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form 10–SB

* * * * *

General Instructions

* * * * *

Issuer's telephone number _____

_____

(Web Site Address, if any)

_____

(E-mail Address, if any)

* * * * *

B. Signature and Filing of Registration Statement

* * * * *

2. * * * *See* Exchange Act Rule 12b–11(d) concerning manual signatures and Item 601 of Regulation S–B concerning signatures pursuant to powers of attorney.

3. The following persons, or persons performing similar functions, must sign the registration statement:

(a) The small business issuer;

(b) Its principal executive officer or officers;

(c) Its principal financial officer;

(d) Its controller or principal accounting officer; and

(e) At least the majority of its board of directors.

4. Where the small business issuer is a foreign issuer, its authorized representative in the United States also must sign the registration statement.

5. Where the small business issuer is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement.

6. Type or print the name and title of each person who signs the registration statement beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs the registration statement.

* * * * *

Part II

* * * * *

Item 1A. Company Risk Factors

If the registrant is not required, as of the date of filing, to file reports pursuant to Section 13(a), set forth, under the caption ''Company Risk Factors,'' the most significant factors with respect to the registrant's business, operations, industry, or financial position that may have a negative impact on the registrant's future financial performance. Explain briefly how the risk affects the registrant. Do not present risk factors that could apply to any registrant. Set forth each risk factor under a caption that adequately describes the risk. Provide the discussion of risk factors in plain English in accordance with Exchange Act Rule 12b–24.

* * * * *

Signatures*

The registrant hereby certifies that it meets all of the requirements for filing on Form 10–SB. The registrant also certifies that it has duly caused and authorized the undersigned to sign this registration statement on its behalf. The undersigned certifies that he/she has read this registration statement and to his/her knowledge the registration statement does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(Registrant) _____

By (Signature and Title) _____

Date _____

The following persons certify that they have read this registration statement and to their knowledge the registration statement does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The following persons also certify that they are signing on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) _____

Date _____

By (Signature and Title) _____

Date _____

*See General Instruction B.

122. By amending Form 18 (referenced in § 249.218) by revising the title of the Form, by adding four lines to the cover page of the registration statement, by revising the ''Rule as to the Use of Form 18'' section and by adding paragraph 3A. after paragraph 3.(g) to the ''Definitions'' section to read as follows:

Note: The text of Form 18 does not and this amendment will not appear in the Code of Federal Regulations.

Form 18

* * * * *

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

_____

(Web Site Address, if any)

_____

(E-mail Address, if any)

* * * * *

Application for Registration Pursuant to Section 12(b) of the Securities Exchange Act of 1934

* * * * *

Rule as to the Use of Form 18

Foreign governments and political subdivisions shall use Form 18 for registration pursuant to Section 12(b) of the Securities Exchange Act of 1934.

* * * * *

Definitions

* * * * *

3A. If the registrant is not required, as of the date of filing, to file reports pursuant to Section 13, set forth, under the caption ''Risk Factors'': (i) the most significant factors with respect to the registrant's financial position; and (ii) country risks that are unlikely to be known or anticipated by investors. Explain briefly how the risk affects the registrant. Do not present risk factors that could apply to any registrant. Set forth each risk factor under a caption that adequately describes the risk. Provide the discussion of risk factors in plain English in accordance with Exchange Act Rule 12b–24.

* * * * *

123. By amending Form 20–F (referenced in § 249.220f) by adding four lines to the cover page of registration statement, by removing in General Instruction G.(c) the words ''Forms F–3 (§ 239.33 of this chapter) or F–2 (§ 239.32 of this chapter)'' and adding, in their place, the words ''Form B (§ 239.5 of this chapter) or Form A (§ 239.4 of this chapter)'', in Item 1(a)(2)(i) the words ''Form F–1 (§ 239.31 of this chapter)'' and adding, in their place, the words ''Form A (§ 239.4 of this chapter)'', in Item 1(a)(2)(iii)(B)(*1*) the words ''Form F–1'' and adding, in their place, the words ''Form A''; by revising paragraph (b) of General Instruction A. and General Instruction C.(a); by designating Instruction D. of General Instructions as paragraph (a) of Instruction D. of General Instructions; by adding a sentence at the end of paragraph (a) of Instruction D. of General Instructions, paragraphs (b), (c) and (d) to Instruction D. of General Instructions, by revising Item 1.(b); by redesignating the Instruction following Item 1.(b) as Instruction number 1; by adding Instruction number 2; by revising paragraph D. to General Instructions to Items 9A(a), 9A(b), 9A(c), 9A(d) and 9A(e); and by revising the Signatures section to read as follows:

Note: The text of Form 20–F does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form 20–F

* * * * *

_____

(Address of principal executive offices)

_____

(Web Site Address, if any)

_____

(E-mail Address, if any)

* * * * *

General Instructions

A. Rule as to Use of Form 20–F

* * * * *

(b) A foreign private issuer must file its annual report on this Form within five months after the end of the fiscal year covered by the report.

* * * * *

C. Preparation of Registration Statements and Reports

(a) Do not use this Form as a blank form to be filled in; use it only as a guide in the preparation of the registration statement or annual report. See General Instruction G. as to the items to be responded to in the registration statement or annual report. Where any item requires information in tabular form, provide the information in substantially the tabular form specified in the item. The registration statement or report must contain the numbers and captions of all items. The text following each caption in this Form, which describes what must be disclosed under each item, may be omitted if the disclosure provided in response to each item indicates the coverage of the item without the necessity of referring to the text. Omit the text of all instructions in this Form. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, make an appropriate statement to that effect.

* * * * *

D. Signature and Filing of Registration Statements and Reports

(a) * * * *See* Exchange Act Rule 12b–11(d) concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

(b) The following persons, or persons performing similar functions, must sign the registration statement or report:

(1) the registrant;

(2) its principal executive officer or officers;

(3) its principal financial officer;

(4) its controller or principal accounting officer;

(5) at least the majority of its board of directors; and

(6) its authorized representative in the United States.

(c) Where the registrant is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement or report.

(d) Type or print the name and title of each person who signs the registration statement or report beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs it.

* * * * *

Part I

Item 1. Description of Business

* * * * *

(b) Set forth, under the caption ''Company and Country Risk Factors'': (i) the most significant factors with respect to the registrant's business, operations, industry, or financial position that may have a negative impact on the registrant's future financial performance; and (ii) any material country risks that are unlikely to be known or anticipated by investors and could materially affect the registrant's operations. Explain briefly how the risk affects the registrant. Do not present risk factors that could apply to any registrant. Set forth each risk factor under a caption that adequately describes the risk. Provide the discussion of risk factors in plain English in accordance with Exchange Act Rule 12b–24.

Instructions

1. * * *

2. If this Form is being used to register securities, registrants that are required, as of the date of filing, to file reports pursuant to Section 13(a) need not comply with the requirements of paragraph (b) of this Item.

* * * * *

Item 9A. Quantitative and Qualitative Disclosures About Market Risk

* * * * *

General Instructions to Items 9A(a), 9A(b), 9A(c), 9A(d), and 9A(e).

* * * * *

2. * * *

D. For purposes of paragraph 1. of this Instruction, market capitalization is the aggregate market value of common equity as set forth in General Instruction I.C.1. of Form B; provided, however that common equity held by affiliates is included in the calculation of market capitalization; and provided further that the market capitalization measurement date is January 28, 1997.

* * * * *

Signatures*

The registrant hereby certifies that it meets all of the requirements for filing on Form 20–F. The registrant also certifies that it has duly caused and authorized the undersigned to sign this registration statement [report] on its behalf. The undersigned certifies that he/she has read this registration statement [report] and to his/her knowledge the registration statement [report] does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(Registrant) _____

By (Signature and Title) _____

Date _____

The following persons certify that they have read this registration statement [report] and to their knowledge the registration statement [report] does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) _____

Date _____

By (Signature and Title) _____

Date _____

*See General Instruction D.

* * * * *

By amending § 249.240f by revising paragraph (b)(4); and adding Instruction 7 to the Instructions following paragraph (b)(4) to read as follows:

§ 249.240f Form 40–F, for registration of securities of certain Canadian issuers pursuant to Section 12(b) or (g) and for reports pursuant to Section 15(d) and Rule 15d–4 (§ 240.15d–4 of this chapter).

* * * * *

(b) * * *

(4) *Public Float/ADTV.*

(i) The registrant meets either of the following thresholds:

(A) The market value of the public float of the registrant's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more, or

(B) The market value of the public float of the registrant's outstanding equity shares is $250 million or more.

(ii) A registrant need not meet either of the thresholds in paragraph (b)(4)(i) of this section if it registered or is eligible to register non-convertible securities on Form F–9 (§ 239.39 of this chapter).

Instructions

* * * * *

7. For the purposes of this Form, ''average daily trading volume'' shall mean the average daily trading volume of the registrant's equity securities on Canadian markets during the three full calendar months or any 90 consecutive calendar days ending within 10 calendar days immediately preceding the filing of the registration statement.

* * * * *

125. By amending Form 40–F (referenced in § 249.240f) by adding four lines to the cover page of the registration statement, by revising paragraph (2)(iv) of General Instruction A.; adding Instruction 7 to the Instructions following paragraph (2)(iv) of General Instruction A.; revising paragraph (8) and adding paragraph (10) (before the Notes) to General Instruction D.; by revising the Signatures section; by redesignating Instructions A and B following the Signatures section as Instructions D and E; and by adding Instructions A, B and C following the Signatures section to read as follows:

Note: The text of Form 40–F does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

FORM 40–F—[ ] Registration Statement Pursuant to Seciton 12 of the Securities Exchange Act of 1934 or [ ] Annual Report Pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934

* * * * *

_____

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

(Web Site Address, if any) _____

(E-mail Address, if any) _____

* * * * *

General Instructions

* * * * *

A. Rules as to Use of Form 40–F

(2) * * *

(iv) *Public Float/ADTV.*

(A) The registrant meets either of the following thresholds:

(*1*) The market value of the public float of the registrant's outstanding equity shares is $75 million or more and the average trading volume value is $1 million or more, or

(*2*) The market value of the public float of the registrant's outstanding equity shares is $250 million or more.

(B) A registrant need not meet either of the thresholds in paragraph A.(2)(iv) of this Instruction if it registered or is eligible to register non-convertible securities on Form F–9 (§ 239.39 of this chapter).

Instructions

* * * * *

7. For the purposes of this Form, ''average daily trading volume'' shall mean the average daily trading volume of the registrant's equity securities on Canadian markets during the three full calendar months or any 90 consecutive calendar days ending within 10 calendar days immediately preceding the filing of the registration statement.

* * * * *

D. Application of General Rules and Regulations

* * * * *

(8) At least one copy of every registration statement or report filed on this Form shall be signed manually. Unsigned copies shall be conformed.

* * * * *

(10) Where this Form requires a manual signature on a document, the document may be manually signed, signed using typed signatures, or signed using duplicated or facsimile versions of manual signatures. Where typed, duplicated or facsimile signatures are used, each signatory must manually sign, no later than the time of filing, a signature page or other document authenticating, acknowledging or otherwise adopting the signature that appears in the filing. That manually signed page or document must be retained for five years by the registrant and must be furnished to the Commission or its staff upon request.

* * * * *

Signatures

The registrant hereby certifies that it meets all of the requirements for filing on Form 40–F. The registrant also certifies that it has duly caused and authorized the undersigned to sign this registration statement [report] on its behalf. The undersigned certifies that he/she has read this registration statement [report] and to his/her knowledge the registration statement [report] does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(Registrant) _____

By (Signature and Title) _____

Date _____

The following persons certify that they have read this registration statement [report] and to their knowledge the registration statement [report] does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) _____

Date _____

By (Signature and Title) _____

Date _____

Instructions

A. The following persons, or persons performing similar functions, must sign the registration statement or report:

(1) the registrant;

(2) its principal executive officer or officers;

(3) its principal financial officer;

(4) its controller or principal accounting officer;

(5) at least the majority of its board of directors; and

(6) its authorized representative in the United States.

B. Where the registrant is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the registration statement or report.

C. Type or print the name and title of each person who signs the registration statement or report beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs it. *See* Exchange Act Rule 12b–11(d) concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

* * * * *

126. By amending Form 6–K (referenced in § 249.306) by revising the second paragraph of General Instruction B., by revising General Instruction C., by adding General Instruction E., by adding four lines to the cover page, a sentence and a check box to the cover page immediately before ''Signatures''; and by revising the Signatures section to read as follows:

Note: The text of Form 6–K does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form 6–K

* * * * *

General Instructions

* * * * *

B. Information and Document Required To Be Furnished

* * * * *

The information required to be furnished pursuant to (i), (ii) or (iii) above is that which is material with respect to the issuer and its subsidiaries. The information may concern, for example:

1. Changes in business;
2. Changes in the issuer's name;
3. Changes in control;
4. Acquisitions or dispositions of assets;
5. Bankruptcy or receivership;
6. Changes in the issuer's certifying accountants;
7. The financial condition and results of operations;
8. Material legal proceedings;
9. Changes in securities or in the security for registered securities;
10. Material modifications to the rights of security holders;
11. Material increases or decreases in the amount outstanding of securities or indebtedness;
12. Material defaults on indebtedness, material arrearages in dividends and other material delinquencies;
13. The results of the submission of matters to a vote of security holders;
14. Transactions with directors, officers, or principal security holders;
15. Departure of the issuer's chief executive officer, chief financial officer, chief operating officer or president (or anyone serving those functions);
16. The granting of options or payment of other compensation to directors or officers; and
17. Any other information that the issuer deems of importance to security holders.

* * * * *

C. Preparation and Filing of Report

1. This report shall consist of: a cover page, the document or report furnished by the issuer and a signature page. Furnish to the Commission eight complete copies of each report on this Form. File with any national securities exchange or the Nasdaq stock market on which any class of the registrant's securities is listed at least one complete copy of the report.

2. The following persons, or persons performing similar functions, must sign the report:

(a) the principal executive officer or officers;

(b) the principal financial officer;

(c) the controller or principal accounting officer.

3. Type or print the name and title of each person who signs the report beneath the person's signature. Any person who occupies more than one position must indicate each capacity in which that person signs it. *See* Exchange Act Rule 12b–11(d) concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

* * * * *

E. Voluntary Reporting of Other Events of Information

A foreign private issuer also may use this Form to disclose voluntarily events and

information that it believes may be of interest or importance to its security holders. We encourage foreign private issuers to submit voluntary reports on this Form promptly after they learn about the information they are disclosing.

* * * * *

Form 6–K

_____

(Address of principal executive offices)

_____

(Web Site Address, if any)

_____

(E-mail Address, if any)

* * * * *

If you are submitting information voluntarily pursuant to General Instruction E., check the following box. [ ]

Signatures *

The registrant hereby certifies that it meets all of the requirements for filing on Form 6–K. The registrant also certifies that it has duly caused and authorized the undersigned to sign this report on its behalf. The undersigned certifies that he/she has read this report and to his/her knowledge the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The undersigned also certifies that he/she has provided a copy of this report to each member of the registrant's board of directors.

(Registrant) _____

By (Signature and Title) _____

Date _____

* See General Instruction C.

By amending Form 8–K (referenced in § 249.308) by adding four lines to the cover page, by revising General Instruction B.1.; by redesignating General Instructions B.3. and B.4. as General Instructions B.2. and B.3.; by revising General Instruction E., paragraph (a) and the Instruction following paragraph (b) of Item 4; by adding Items 10, 11, 12, 13 and 14; and by revising the Signatures section to read as follows:

Note: The text of Form 8–K does not and these amendments will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form 8–K—Current Report

* * * * *

Registrant's telephone number, including area code

_____

(Web Site Address, if any)

_____

(E-mail Address, if any)

* * * * *

General Instructions

* * * * *

B. Events To Be Reported and Time for Filing of Reports

1. The date on which a report required by this Form is due is as follows:

(a) With respect to Items 1–3, 6, 9, 10, and 13 of this Form, within 5 calendar days after the occurrence of the event;

(b) With respect to Item 7 of this Form, in accordance with paragraph (a)(4) of that Instruction;

(c) With respect to Item 8 of this Form, within 5 calendar days after the date on which the registrant makes the determination to use a fiscal year end different than that used in its most recent filing with the Commission; and

(d) With respect to Items 4, 11 and 12 of this Form, within one business day after the reportable event occurred. In the case of Item 11, if the default occurred on a Saturday, Sunday or federal holiday, the due date would be within two business days after the day the default occurred.

(e) With respect to Item 14 of this Form:

(1) The date on which financial information for the registrant's most recent fiscal year is publicly released, but no later than 60 calendar days after the end of that fiscal year; and

(2) The date on which financial information for the registrant's most recent quarter (except for the last quarter of any fiscal year) is publicly released, but no later than 30 calendar days after the end of that quarter.

Instruction to General Instruction B.1.(e):

No report under Item 14 is due, however, if the registrant has filed its Form 10–Q (or Form 10–QSB) or Form 10–K (or Form 10–KSB) for the period that is required to be presented in the Item 14 report.

* * * * *

E. Signature and Filing of Report

1. File with the Commission three complete copies of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, and five additional copies which need not include exhibits. File with any national securities exchange or the Nasdaq stock market on which any class of the registrant's securities is listed at least one complete copy of the report, including any financial statements, exhibits or other documents filed as a part of it.

2. The following persons, or persons performing similar functions, must sign the report:

(a) The principal executive officer or officers;

(b) The principal financial officer; and

(c) The controller or principal financial officer.

3. Type or print the name and title of each person who signs the report beneath the person's signature. Any person who occupies more than one position must indicate each capacity in which that person signs it. *See* Exchange Act Rule 12b–11(d) concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

* * * * *

Item 4. Changes in Registrant's Certifying Accountant

(a) Provide the information required by Item 304(a)(1) of Regulation S–K, including compliance with the related instructions to Item 304 and with Item 304(a)(3), if the registrant's principal independent accountant or a significant subsidiary's independent accountant upon whom the registrant's principal accountant expressed reliance in its report:

(1) resigns;

(2) declines to stand for re-election after the current audit;

(3) is dismissed;

(4) notifies the registrant that reliance on its prior audit report with respect to the registrant or a significant subsidiary is no longer permissible; or

(5) notifies the registrant that it will not consent to the use of its prior audit report with respect to the registrant or a significant subsidiary in a filing with the Commission.

(b) * * *

Instruction. The events described in paragraphs (a)(1)—(a)(5) are reportable events separate from the engagement of a new independent accountant. On some occasions involving a change in accountants, two reports on Form 8–K will be required. (For example, the registrant may file the first Form 8–K upon the accountant's resignation and the second Form 8–K upon the later engagement of a new accountant.) Under such circumstances, the registrant need not disclose information ordinarily required in the second Form 8–K if it was previously disclosed in the first Form 8–K.

* * * * *

Item 10. Material Modifications to the Rights of Security Holders

(a) If the instruments defining the rights of holders of any class of registered securities have been materially modified, identify the class of securities involved and state briefly the general effect of the modification upon those holders' rights.

(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 upon the rights of holders of the registered securities.

Instruction. Working capital restrictions and other limitations upon the payment of dividends are to be reported pursuant to Item 9.

Item 11. Defaults, Dividend Arrearages and Delinquencies

(a) Disclose the information required by paragraph (b) of this Item if, with respect to indebtedness of the registrant or any of its significant subsidiaries exceeding 5% of the total assets of the registrant and its consolidated subsidiaries, there has been:

(1) any material default in the payment of principal, interest, a sinking or purchase fund installment; or

(2) any other material default.

(b) Identify the indebtedness and state the nature of the default. In the case of such a default under paragraph (a)(1), state the amount of the default and the total arrearage on the date of filing this report.

Instruction. Paragraph (a) refers only to events that have become defaults under the governing instruments, *i.e.*, after the expiration of any grace period and compliance with any notice requirements.

(c) Disclose the information required by paragraph (d) of this Item if there is any material arrearage in the payment of dividends or any other material delinquency with respect to:

(1) Any class of the registrant's preferred stock that is registered;

(2) Any class of the registrant's preferred stock that ranks prior to any class of the registrant's securities that is registered; or

(3) Any class of preferred stock of any significant subsidiary of the registrant.

(d) State the title of the class and state the nature of the arrearage or delinquency. In the case of an arrearage in the payment of dividends, state the amount and the total arrearage as of the date of filing this report.

Instruction to Item 11. You need not report under this Item defaults or dividend arrearages relating to any class of securities all of which is owned by, or for the account of, the registrant or its wholly-owned subsidiaries.

Item 12. Departure of Registrant's Key Officers

If the registrant's chief executive officer, chief financial officer, chief operating officer, president or any person serving an equivalent function, has ceased serving the registrant in that capacity:

(a) State the date when that occurred;

(b) Indicate the reason for his or her departure; and

(c) State the name of any person chosen, to date, as a replacement.

Item 13. Name Change

If the registrant has changed its name, state both the former name and the current name of the registrant.

Item 14. Annual and Quarterly Financial Information

(a) Provide the financial information required by Item 301 of Regulation S–K, in a table designed to facilitate comparison, for the following periods:

(1) If the most recently completed fiscal period was the registrant's fiscal year:

(i) The most recently fiscal year ended; and

(ii) The preceding fiscal year (or for the life of the registrant and its predecessor, if less).

(2) If the most recently completed fiscal period was one of the first three quarters of the registrant's fiscal year:

(i) The most recent fiscal quarter ended;

(ii) The quarterly periods between the end of the last fiscal year and the end of the most recent fiscal quarter; and

(iii) The periods of the preceding fiscal year corresponding to the periods referred to in paragraphs (a)(2)(i) and (a)(2)(ii).

Instructions to Item 14.

The financial information required by this Item means the financial information for the registrant and its subsidiaries on a consolidated basis. The financial information may be unaudited.

Signatures*

The registrant certifies that it has duly caused and authorized the undersigned to sign this report on its behalf. The undersigned certifies that he/she has read this report and to his/her knowledge the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The undersigned also certifies that he/she has provided a copy of this report to each member of the registrant's board of directors.

(Registrant) _____

By (Signature and Title) _____

Date _____

* See General Instruction E.

128. By amending Form 10–Q (referenced in § 249.308a) by revising General Instructions A., F., G., and H.2.b.; by adding four lines to the cover page, by adding Item 1A. to Part II; and in Part II, Item 2 by revising the heading, by removing paragraphs (a) and (b) and the Instruction following paragraph (d), and by redesignating paragraphs (c) and (d) as paragraphs (a) and (b); by removing Item 3 of Part II; by redesignating Items 4, 5 and 6 of Part II as Items 3, 4 and 5 of Part II; and by revising the Signatures section to read as follows:

Note: The text of Form 10–Q does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form 10–Q

* * * * *

General Instructions

A. Rule as to Use of Form 10–Q

1. Unless eligible to use Form 10–QSB, a registrant must use Form 10–Q for quarterly reports under Section 13 or 15(d) of the Securities Exchange Act of 1934 as required by Exchange Act Rule 13a–13 or Rule 15d–13. A registrant must file a quarterly report on this Form within 45 days after the end of each of the first three fiscal quarters of each fiscal year. It need not file a quarterly report for the fourth quarter of any fiscal year.

2. Unless eligible to use Form 10–QSB, a registrant also must use Form 10–Q for transition and quarterly reports under Exchange Act Rule 13a–10 or Rule 15d–10. It must file those reports in accordance with the requirements set forth in those Rules which are applicable when a registrant changes its fiscal year end.

* * * * *

F. Filed Status of Market Risk Disclosure in the Form 10–Q

Pursuant to Exchange Act Rule 13a–13(d) and Rule 15d–13(d), market risk disclosures required by Item 3 of Part I of this Form are not deemed to be ''filed'' for purposes of Section 18 of the Act. That disclosure is therefore not subject to the liabilities of Section 18. Disclosure required by other Items of the Form is ''filed'' for purposes of Section 18, however, even if it is also required by Item 3 of Part I of the Form. Market risk disclosure required by Item 3 of Part I of this Form is subject to all other provisions of the Act.

G. Signature and Filing of Report

1. File with the Commission three complete copies of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, and five additional copies which need not include exhibits. File with each exchange or the Nasdaq stock market on which any class of securities of the registrant is registered at least one complete copy of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof. Manually sign at least one complete copy of the report filed with the Commission and with each exchange or market. Type or print signatures on copies not manually signed. See Exchange Act Rule 12b–11(d) concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

2. The following persons, or persons performing similar functions, must sign the report:

a. The registrant;

b. Its principal executive officer or officers;

c. Its principal financial officer;

d. Its controller or principal accounting officer; and

e. At least the majority of its board of directors.

3. Where the registrant is a foreign issuer, its authorized representative in the United States also must sign the report.

4. Where the registrant is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the report.

5. Type or print the name and title of each person who signs the report beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs it.

H. Omission of Information by Certain Wholly-Owned Subsidiaries

* * * * *

2. * * *

b. Such registrants may omit the information called for by Item 2 of Part II, Sales of Securities and Use of Proceeds, and Item 3. of Part II, Submission of Matters to a Vote of Security Holders.

* * * * *

Form 10–Q

* * * * *

_____

(Registrant's telephone number, including area code)

_____

(Web Site Address, if any)

_____

(E-mail Address, if any)

* * * * *

Part II—Other Information:

* * * * *

Item 1A. Updated Company Risk Factors

Set forth any material disclosure regarding company risk factors (as described in Item 1A. of Part I of Form 10–K) that either was not included in the later of the registrant's most recent Securities Act registration statement or Exchange Act annual report, or has changed since the date of that registration statement or annual report. Set forth each risk factor under a caption that adequately describes the risk. Provide the discussion of risk factors in plain English in accordance with Exchange Act Rule 12b–24.

Item 2. Sales of Securities and Use of Proceeds

* * * * *

Signatures *

The registrant certifies that it has duly caused and authorized the undersigned to sign this report on its behalf. The undersigned certifies that he/she has read this report and to his/her knowledge the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(Registrant) _____

By (Signature and Title) _____

Date _____

The following persons certify that they have read this report and to their knowledge the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) _____

Date _____

By (Signature and Title) _____

Date _____

* See General Instruction G.

129. By amending Form 10–QSB (referenced in § 249.308b) by adding four lines to the cover page; by removing General Instruction E.; by redesignating General Instructions F., G. and H. as General Instructions E., F. and G.; in newly designated General Instructions E, F and G, by revising the first sentence of E.1. and E.2.; by adding E.3., E.4., E.5. and E.6.; by revising General Instruction F.2.(b); by adding a title and removing the words ''Item 6(a)'' and adding, in their place, the words ''Item 5(a)'' in General Instruction G.; in Part II, by adding Item 1A; by revising the title in Item 2; by removing paragraphs (a) and (b) and the Instruction to Item 2 following paragraph (d) and redesignating paragraphs (c) and (d) as paragraphs (a) and (b); by removing Item 3; and redesignating Items 4, 5 and 6 as Items 3, 4 and 5; and by revising the Signatures section to read as follows:

Note: The text of Form 10–QSB does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form 10–QSB

* * * * *

_____

(Registrant's telephone number, including area code)

_____

(Web Site Address, if any)

_____

(E-mail Address, if any)

* * * * *

General Instructions

* * * * *

E. Signature and Filing of Report

1. File three ''complete'' copies and five ''additional'' copies of the report with the Commission and file at least one complete copy with each exchange or the Nasdaq stock market on which any class of securities of the registrant is registered. * * *

2. Manually sign at least one complete copy of the report filed with the Commission and with each exchange or market. Type or print signatures on copies not manually signed. *See* Exchange Act Rule 12b–11 concerning manual signatures and Item 601 of Regulation S–B concerning signatures pursuant to powers of attorney.

3. The following persons, or persons performing similar functions, must sign the report:

(a) The small business issuer;

(b) Its principal executive officer or officers;

(c) Its principal financial officer;

(d) Its controller or principal accounting officer; and

(e) At least the majority of its board of directors.

4. Where the small business issuer is a foreign issuer, its authorized representative in the United States also must sign the report.

5. Where the small business issuer is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the report.

6. Type or print the name and title of each person who signs the report beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs.

F. Omission of Information by Certain Wholly-Owned Subsidiaries

* * * * *

2. * * *

b. Such registrants may omit the information called for by Items 2 and 3 of Part II.

G. Exhibits

* * * * *

Part II—Other Information:

* * * * *

Item 1A. Updated Company Risk Factors

Set forth any material disclosure regarding company risk factors (as described in Item 1A. of Form 10–KSB) that either was not included in the later of the registrant's most recent Securities Act registration statement or Exchange Act annual report, or has changed since the date of that registration statement or annual report. Set forth each risk factor under a caption that adequately describes the risk. Provide the discussion of risk factors in plain English in accordance with Exchange Act Rule 12b–24.

Item 2. Sales of Securities and Use of Proceeds

* * * * *

Signatures*

The registrant hereby certifies that it meets all of the requirements for filing on Form 10–QSB. The registrant also certifies that it has duly caused and authorized the undersigned to sign this report on its behalf. The undersigned certifies that he/she has read this report and to his/her knowledge the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(Registrant) _____

By (Signature and Title) _____

Date _____

The following persons certify that they have read this report and to their knowledge the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) _____

Date _____

By (Signature and Title) _____

Date _____

*See General Instruction F.

130. By amending Form 10–K (referenced in § 249.310) by revising General Instruction D.(1) and D.(2); by redesignating General Instruction D.(3) as General Instruction D.(7); by adding General Instructions D.(3), D.(4), D.(5) and D.(6); by revising the first two sentences of General Instruction G.(4); by adding four lines to the cover page; in Part I, by adding Item 1A. and by revising Item 2 and the Signatures section to read as follows:

Note: The text of Form 10–K does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form 10–K

* * * * *

General Instructions

* * * * *

D. Signature and Filing of Report

(1) File with the Commission three complete copies of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, and five additional copies which need not include exhibits. File with each exchange or the Nasdaq stock market on which any class of securities of the registrant is registered at least one complete copy of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof.

(2) Manually sign at least one complete copy of the report filed with the Commission and with each exchange or market. Type or print signatures on copies not manually signed. *See* Exchange Act Rule 12b–11(d) concerning manual signatures and Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

(3) The following persons, or persons performing similar functions, must sign the report:

(a) The registrant;

(b) Its principal executive officer or officers;

(c) Its principal financial officer;

(d) Its controller or principal accounting officer; and

(e) At least the majority of its board of directors.

(4) Where the registrant is a foreign issuer, its authorized representative in the United States also must sign the report.

(5) Where the registrant is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the report.

(6) Type or print the name and title of each person who signs the report beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs it.

* * * * *

G. Information To Be Incorporated by Reference

* * * * *

(4) Although Exchange Act Rule 12b–13 requires that this report contain the numbers and captions of all items, the material incorporated by reference into the report generally need not contain the numbers and captions. You must, however, caption the information provided in response to Item 1A. as ''Company Risk Factors'' even when incorporated by reference.

* * *

* * * * *

Form 10–K

* * * * *

_____

(Issuer's telephone number, including area code)

_____

(Web Site Address, if any)

_____

(E-mail Address, if any)

* * * * *

Part I

* * * * *

Item 1A. Company Risk Factors

Set forth, under the caption ''Company Risk Factors,'' the most significant factors with respect to the registrant's business, operations, industry, or financial position that may have a negative impact on the registrant's future financial performance. Explain briefly how the risk affects the registrant. Do not present risk factors that could apply to any registrant. Set forth each risk factor under a caption that adequately describes the risk. Provide the discussion of risk factors in plain English in accordance with Exchange Act Rule 12b–24.

Item 2. Properties

(a) Furnish the information required by Item 102 of Regulation S–K; and

(b) If the registrant is a real estate entity as defined in Item 1101 of Regulation S–K, furnish the information required by Items 1105, 1106 and 1107 of Regulation S–K in lieu of the information required by paragraph (a) of this Item.

* * * * *

Signatures*

The registrant certifies that it has duly caused and authorized the undersigned to sign this report on its behalf. The undersigned certifies that he/she has read this report and to his/her knowledge the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(Registrant) _____

By (Signature and Title) _____

Date _____

The following persons certify that they have read this report and to their knowledge the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The following persons also certify that they are signing below on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) _____

Date _____

By (Signature and Title) _____

Date _____

*See General Instruction D.

* * * * *

131. By amending Form 10–KSB (referenced in § 249.310b) by adding four lines to the cover page; in General Instruction C, by revising the first sentence and removing the last sentence of C.1.; by revising C.2.; by redesignating C.3. as C.7.; by adding General Instructions C.3., C.4., C.5. and C.6.; by revising the first two sentences of General Instruction E.4.; by removing the words ''S–4'' and adding, in their place, the words ''SB–3''; by removing the words ''S–3 (if the issuer incorporates by reference transitional Exchange Act reports)'' in General Instruction H.(b); by adding Item 1A. to Part I, by adding Item 1A. to Part II of the ''Information Required in Annual Report of Transitional Small Business Issuers'' section; and by revising the Signatures section to read as follows:

Note: The text of Form 10–KSB does not and this amendment will not appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Form 10–KSB

* * * * *

_____

(Registrant's telephone number, including area code)

_____

(Web Site Address, if any)

_____

(E-mail Address, if any)

* * * * *

General Instructions

* * * * *

C. Signature and Filing of Report

* * * * *

1. File three ''complete'' copies and five ''additional'' copies of the report with the Commission and file at least one complete copy with each exchange or the Nasdaq stock market on which any class of securities of the registrant is registered. * * *

2. Manually sign at least one complete copy of the report filed with the Commission and with each exchange or market. Type or print signatures on copies not manually signed. *See* Exchange Act Rule 12b–11 concerning manual signatures and Item 601 of Regulation S–B concerning signatures pursuant to powers of attorney.

3. The following persons, or persons performing similar functions, must sign the report:

(a) The small business issuer;

(b) Its principal executive officer or officers;

(c) Its principal financial officer;

(d) Its controller or principal accounting officer; and

(e) At least the majority of its board of directors.

4. Where the small business issuer is a foreign issuer, its authorized representative in the United States also must sign the report.

5. Where the small business issuer is a limited partnership, its general partner must sign. Where the general partner is a corporation, the majority of the board of directors of the corporate general partner must sign the report.

6. Type or print the name and title of each person who signs the report beneath the person's signature. Any person who occupies more than one of the specified positions must indicate each capacity in which that person signs.

* * * * *

E. Information To Be Incorporated by Reference

* * * * *

4. Although Exchange Rule 12b-13 requires that this report contain the numbers and captions of all items, the material incorporated by reference into the report generally need not contain the numbers and captions. You must, however, caption the information provided in response to Item 1A. as ''Company Risk Factors'' even when incorporated by reference.

* * * * *

Part I

* * * * *

Item 1A. Company Risk Factors

Set forth, under the caption ''Company Risk Factors,'' the most significant factors with respect to the registrant's business, operations, industry, or financial position that may have a negative impact on the registrant's future financial performance. Explain briefly how the risk affects the registrant. Do not present risk factors that could apply to any registrant. Set forth each risk factor under a caption that adequately describes the risk. Provide the discussion of risk factors in plain English in accordance with Exchange Act Rule 12b-24.

* * * * *

Information Required in Annual Report of Transitional Small Business Issues

* * * * *

Part II

* * * * *

Item 1A. Company Risk Factors

Set forth, under the caption ''Company Risk Factors,'' the most significant factors with respect to the registrant's business, operations, industry, or financial position that may have a negative impact on the registrant's future financial performance. Explain briefly how the risk affects the registrant. Do not present risk factors that could apply to any registrant. Set forth each risk factor under a caption that adequately describes the risk. Provide the discussion of risk factors in plain English in accordance with Exchange Act Rule 12b–24.

* * * * *

Signatures *

The registrant hereby certifies that it meets all of the requirements for filing on Form 10–KSB. The registrant also certifies that it has duly caused and authorized the undersigned to sign this report on its behalf. The undersigned certifies that he/she has read this report and to his/her knowledge the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(Registrant) _____

By (Signature and Title) _____

Date _____

The following persons certify that they have read this report and to their knowledge the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The following persons also certify that they are signing on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title) _____

Date _____

By (Signature and Title) _____

Date _____

* See General Instruction C.

* * * * *

132. By amending Form 18-K (referenced in § 249.318) by adding paragraph 1A., by revising the ''Rule as to Use of Form 18-K'' section of the Instruction Book for Form 18-K, and by revising Instructions 1. and 3.(a) of the ''Instructions as to the Preparation and Filing of the Report'' section to read as follows:

Note: The text of Form 18-K does not and this amendment will not appear in the Code of Federal Regulations.

Form 18-K

* * * * *

1A. Set forth, under the caption ''Risk Factors'': (i) the most significant factors with respect to the registrant's financial position; and (ii) country risks that are unlikely to be known or anticipated by investors. Explain briefly how the risk affects the registrant. Do not present risk factors that could apply to any registrant. Set forth each risk factor under a caption that adequately describes the risk. Provide the discussion of risk factors in plain English in accordance with Exchange Act Rule 12b-24.

* * * * *

Instruction Book for Form 18-K

* * * * *

Rule as to Use of Form 18-K

This Form is to be used for the annual reports of foreign governments and political subdivisions thereof.

Instructions as to the Preparation and Filing of the Report

1. Registrants shall file annual reports on this Form within nine months of the close of each fiscal year of the registrant.

2. * * *

3.(a) The registrant shall file the report on good quality, unglazed, white paper no larger than 8½ × 11 inches in size. If reduction of larger documents would render them illegible, the registrant may file such documents on paper larger than 8½ × 11 inches in size. The registrant may bind the report on the left.

* * * * *

By the Commission.

Dated: November 13, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31045 Filed 12–3–98; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 229, 230, 232, 239, and 240

[Release No. 33–7607; 34–40633; IC–23520; File No. S7–28–98]

RIN 3235–AG84

Regulation of Takeovers and Security Holder Communications

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission proposes to update and simplify the rules and regulations applicable to takeover transactions (including tender offers, mergers, acquisitions and similar extraordinary transactions). We propose to permit significantly more communications with security holders and the markets before the filing of a registration statement involving a takeover transaction, a proxy statement or tender offer statement. We also propose to put cash and stock tender offers on a more equal regulatory footing; integrate the forms and disclosure requirements in issuer tender offers, third-party tender offers and going private transactions and consolidate the disclosure requirements in one location; permit security holders to tender their securities during a limited period after the successful completion of a tender offer; more closely align merger and tender offer requirements; and update the tender offer rules to clarify certain requirements and reduce compliance burdens where consistent with investor protection. The proposals presented in this release should be considered together with the companion release issued today, the Securities Act Reform Release.

DATES: Comments should be submitted on or before April 5, 1999.

ADDRESSES: Comments concerning the proposed amendments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, N.W., Washington, D.C. 20549–6009. Comments also may be submitted electronically to the following e-mail address: rule-comments@sec.gov. All comment letters

should refer to File Number S7–28–98. This file number should be included on the subject line if e-mail is used to submit comments. Comment letters will be available for inspection and copying in the public reference room at the same address. Electronically submitted comment letters will be posted on our Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: James J. Moloney, in the Office of Mergers and Acquisitions, or P.J. Himelfarb, in the Office of Chief Counsel, Division of Corporation Finance, at (202) 942–2920. For questions regarding proposed Rule 14e–5, please contact Irene A. Halpin or Michael R. Trocchio, in the Office of Risk Management and Control, Division of Market Regulation, at (202) 942–0772.

SUPPLEMENTARY INFORMATION: We propose amendments to Rules 13e–1, 13e–3, 13e–4, 14a–4, 14a–6, 14a–11, 14a–12, 14c–2, 14c–5, 14d–1, 14d–2, 14d–3, 14d–4, 14d–5, 14d–6, 14d–7, 14d–9, 14e–1 [1] and Schedules 14A, 14C, 13E–3, and 14D–9 [2] under the Securities Exchange Act of 1934 (''Exchange Act'').[3] We also propose an amendment to Item 10 of Regulation S–K [4] and a new subpart of Regulation S–K, the 1000 series (''Regulation M–A''); a new tender offer schedule, Schedule TO, that would replace Schedules 13E–4 and 14D–1; [5] a new tender offer Rule 14e–5 that would replace Rule 10b–13; [6] and new tender offer Rules 14d–11 and 14e–8. Further, we propose to amend Rule 13(d) of Regulation S–T and Rules of Practice 30–1 and 30–3.[7] We also propose amendments to Rules 145 and 432, and new Rule 162, under the Securities Act of 1933 (''Securities Act'').[8] In addition, in the Securities Act Reform Release,[9] we propose new rules, forms and amendments under the Securities Act affecting the regulatory scheme for takeovers. Some of these proposals are republished in this release for the convenience of readers, as follows: portions of proposed new Forms C and SB–3 and proposed new Rules 166, 167 and 425.

[1] 17 CFR 240.13e–1; 17 CFR 240.13e–3; 17 CFR 240.13e–4; 17 CFR 240.14a–4; 17 CFR 240.14a–6; 17 CFR 240.14a–11; 17 CFR 240.14a–12; 17 CFR 240.14c–2; 17 CFR 240.14c–5; 17 CFR 240.14d–1; 17 CFR 240.14d–2; 17 CFR 240.14d–3; 17 CFR 240.14d–4; 17 CFR 240.14d–5; 17 CFR 240.14d–6; 17 CFR 240.14d–7; 17 CFR 240.14d–9; and 17 CFR 240.14e–1.

[2] 17 CFR 240.14a–101; 17 CFR 240.14c–101; 17 CFR 240.13e–100; and 17 CFR 240.14d–101.

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 229.10.

[5] 17 CFR 240.13e–101; 17 CFR 240.14d–100.

[6] 17 CFR 240.10b–13.

[7] 17 CFR 232.13(d); 17 CFR 200.30–1; 17 CFR 200.30–3.

[8] 17 CFR 230.145; 17 CFR 230.432; 15 U.S.C. 77a *et seq.*

[9] *See* Release No. 33–7606A (November 13, 1998).

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I. Executive Summary and Background

Over the last several years, takeover activity has surpassed the extraordinary levels seen during the 1980s.[10] In 1996, there were over 7,000 merger and acquisition transactions completed in the U.S. valued at more than $650 billion. In 1997, U.S. merger and acquisition activity increased to approximately 7,800 transactions valued at over $790 billion.[11] Global merger and acquisition activity totaled approximately (U.S.) $900 billion in 1996.[12] In 1997, global merger and acquisition activity increased to (U.S.) $1.6 trillion.[13] This wave of takeovers has continued into 1998 with approximately $626 billion in domestic mergers and acquisitions announced as of June, 1998.[14]

Three characteristics are common to many of today's takeover transactions. First, many acquirors are offering securities or a combination of securities

[10] In 1988, approximately 3,000 domestic merger and acquisition transactions were completed with a total value of over $300 billion. In 1989, there were slightly more than 3,800 transactions valued at approximately $330 billion. *See* Mergers & Acquisitions, The Dealmaker's Journal, 1998 Almanac (March/April 1998), at 42.

[11] *Id.*

[12] *See* 1996 Mergers and Acquisitions, Corporate Financing Week (February 10, 1997).

[13] *See* Steven Lipin, *Murphy's Law Doesn't Apply: The Conditions Are Perfect For Continued Growth In Mergers,* Wall St. J., Jan. 2, 1998, at R6.

[14] *See* John R. Wilke & Bryan Gruley, *In Merger Blitz, Regulators Vie to Bust Biggest Prizes,* Wall St. J., June 11, 1998, at B1, *citing* Securities Data Corp. Although the boom in U.S. merger and acquisition activity has tempered slightly in recent months, it is expected to remain strong. *See Third Q M&A Soars, but the Bear Lurks,* Mergers & Acquisitions Report, October 5, 1998.

and cash to the security holders of subject companies (''targets''). In 1996, almost half of the completed takeover transactions involved some form of stock as consideration, as opposed to cash only.[15] In 1997, the number of stock-based takeovers remained relatively constant at approximately half of all completed transactions.[16] During the first half of 1998, approximately 43% of the completed transactions involved securities as consideration.[17]

Second, there has been an increase in the number of hostile transactions involving proxy or consent solicitations. This trend appears to be the result of the adoption of anti-takeover devices by many public companies and the development of more stringent state anti-takeover laws in reaction to the wave of takeovers in the 1980s. Today's proxy and consent solicitations are primarily aimed at unseating incumbent directors, dismantling anti-takeover devices, and generally facilitating transactions opposed by management.

Third, significant technological advances in communications permit more frequent, timely and direct communications with security holders. These developments in technology affect how acquirors, targets, and other market participants communicate with security holders and the securities markets regarding proposed mergers and other extraordinary corporate transactions. For example, many companies post detailed information regarding corporate developments on their Internet web sites. In addition, companies use the Internet as a means of communicating with security holders during proxy contests and in connection with tender offers and mergers.[18] These changes in how companies, security holders, and market participants communicate with one another prompted the Commission to issue several releases addressing the use of the Internet and other electronic media under the federal securities laws.[19]

While the takeover market has evolved dramatically over the past 20 years, the applicable regulatory framework has remained substantially the same.[20] As a result, the application of our existing rules to today's extraordinary transactions can often raise complex regulatory issues. These issues may, in some instances, cause unnecessary burdens for companies without corresponding benefits to security holders. Today's proposals are intended to reduce these costs while maintaining the same high level of investor protection.

In formulating the proposals, we have drawn on the staff's experience in reviewing takeover disclosure, the suggestions of practitioners, and the recommendations of the Task Force on Disclosure Simplification.[21] We have examined all of the regulations relating to tender offers as well as other forms of takeovers with a view toward improving the regulatory scheme.

We encourage readers to keep in mind that these proposals were drafted, and should be considered, with the proposals presented in the Securities Act Reform Release also issued today. The goal underlying the proposals described below is the same as that underpinning the Securities Act Reform Release—making the regulatory scheme more workable for issuers and more effective for investors in today's capital markets. While we intend that both sets of proposals move towards adoption on the same track, we may adopt the proposals in either release without adopting those in the companion release.

The proposals vary in some respects from those in the Securities Act Reform Release because it is necessary to recognize the special nature of business combination transactions in contrast to capital-raising transactions. Specifically, we have considered that a security holder's decision regarding a proposed business combination is not always volitional, and that a change in security ownership can arise as a result of the security holder's inaction.[22] In addition, where the acquiror offers securities, the investment decision can be complex, requiring security holders to assess both the security of another company offered in exchange and the security they are asked to give up. They also must consider how the acquiror may change as a result of the acquisition, because they will receive securities in the combined entity. Therefore, it may be important for the companies involved to have the flexibility to announce and discuss the proposed acquisition, regardless of the size and seasoned status of the acquiror.[23] In addition, it is necessary for information about the transaction to be delivered timely to security holders who must evaluate the deal in order to protect their existing investment.[24]

In some cases, we have proposed significant modifications to the entire regulatory approach to takeovers. In doing so, we have attempted to treat different acquisition methods in a similar manner to the extent the different methods merit similar treatment. In other cases, we have focused on areas where current practice could be improved. Our goals are to update the regulations in order to reduce unnecessary regulatory burdens on participants, while maintaining investor protection and improving the quality of information that investors receive about business combination transactions.[25] We describe below three areas where the costs of compliance with the current rules applicable to takeovers may outweigh the benefits conferred upon security holders, and summarize the proposals in this release.

Restrictions on Communications to Security Holders and the Marketplace

A company's ability to communicate in a timely and effective manner with its security holders about a proposed

[15] Stock or a combination of stock and cash was offered to security holders in approximately 1,395 out of the 2,892 transactions announced in 1996. *See* Mergers & Acquisitions, The Dealmaker's Journal, 1998 Almanac (March/April 1998), at 47. The information reported in Mergers & Acquisitions 1998 Almanac was based on all completed mergers, acquisitions, and divestitures priced at $5 million and over, including purchases of partial interests of at least a 40% stake in the target company or an investment of a least $100 million. *Id.* at 42.

[16] Stock or a combination of stock and cash was offered to security holders in approximately 1,703 out of the 3,449 transactions announced in 1997. *Id.* at 47.

[17] *See* Mergers & Acquisitions, The Dealmaker's Journal, (September/October 1998) at p. 50.

[18] Companies also have broadcast annual security holder meetings over the Internet, and are increasingly soliciting proxies via the Internet.

[19] *See* Release Nos. 33–7233 (October 6, 1995) [60 FR 53458] and 33–7288 (May 9, 1996) [61 FR 24644], expressing the Commission's views on the use of electronic media to satisfy information delivery requirements under the federal securities laws. *See also* Release No. 33–7516 (March 27, 1998) [63 FR 14806] interpreting jurisdictional issues involving the use of the Internet by issuers, investment companies, broker-dalers, exchanges and investment advisers to solicit offshore securities transactions.

[20] One exception is the Commission's revisions to the proxy rules in 1992. The Commission eliminated the regulation of certain communications with or among security holders relating to corporate performance and other matters of interest to all security holders when made in the context of an actual or potential proxy solicitation. *See* Release No. 34–31326 (October 16, 1992) [57 FR 48276].

[21] The Commission staff's Report of the Task Force on Disclosure Simplification (March, 1996) recommended several of the proposals in this release. *See* ''Significant Corporate Transactions'' at pp. 51–57.

[22] *See* Form S–4 adopting release No. 33–6578 (April 23, 1995) [50 FR 18990, at 18991].

[23] By contrast, the Securities Act Reform Release conditions the extent to which communications will be liberalized on the size and seasoned status of the issuer.

[24] The Securities Act Reform Release proposes to reduce the prospectus delivery requirements under certain circumstances with respect to offerings by large, seasoned issuers.

[25] *See* Part II.A for a description of the basic methods of business combination and how they are treated under the current regulatory scheme.

takeover is limited by the Securities Act if the transaction involves an offering of securities. Although the impact of the Securities Act on capital formation has been the subject of great debate,[26] commentators have given somewhat less attention to the permissibility of communications relating to business combinations involving the issuance of securities. Offerors often have a compelling reason, and may under certain circumstances have an obligation under Rule 10b–5,[27] to disseminate promptly full, fair and accurate information regarding a planned extraordinary transaction to existing security holders as well as the securities markets. As a part of this release, we propose to increase significantly the ability of companies to communicate with security holders with respect to business combinations involving the registered offering of securities. In addition, many takeovers trigger the need for compliance with the tender offer and proxy rules, which also contain restrictions on the timing and content of communications. We propose to permit freer communications under the tender offer rules in connection with public announcements of tender offers. Similarly, we propose to permit freer communications under the proxy rules, whether or not the matter being voted on relates to a takeover.

Regulatory Disadvantage of Exchange Offers

Tender offers where the bidder is offering securities generally cannot commence until the Securities Act registration statement for the securities being offered becomes effective. In some cases, where the staff undertakes to review and comment during the waiting period,[28] the delay of effectiveness can be quite lengthy. This delay is particularly troublesome for bidders [29] in exchange offers.[30] In contrast, cash offers, which may compete with exchange offers, can commence as soon as the required information is filed with the Commission and disseminated to security holders. The delay in commencing an exchange offer can place the bidder at risk that a competing all-cash bid will commence and close before the exchange offer can even commence. As a result, bidders that offer securities in takeover transactions may not be as successful in acquiring targets as cash bidders, even when the value of the stock offered is equal to or greater than the value of the cash offered in a competing offer. In response to the disparities in regulatory treatment, we propose to permit exchange offers to commence on a similar time frame to cash tender offers.

Costs of Compliance WIth Multiple Regulatory Schemes

Many of today's takeover transactions involve a combination of tender offer, proxy solicitation and Securities Act registration issues. As a result, participants in a merger or acquisition may be required to comply with several distinct regulatory schemes. Companies can incur additional costs analyzing and complying with the multiple filing and disclosure regimes that may apply to a transaction. For example, when a company conducts an exchange offer for all outstanding securities of an affiliated company, three regulatory schemes may be involved, including the tender offer rules, the ''going-private'' rule, and the provisions of the Securities Act relating to the registration of securities. The proxy rules also can apply if the transaction involves a solicitation of votes or consents. We recognize that the application of multiple regulatory regimes to a single transaction can significantly increase the burdens and costs of compliance without necessarily benefiting investors. We propose to simplify the regulatory structure for takeovers by using combined forms and a uniform disclosure regulation.

In summary, we propose numerous revisions to the regulations to conform them to the realities of today's environment surrounding takeover transactions, while maintaining high quality investor protection and enhancing the timing and quality of information available to investors. The proposed revisions address changes in deal structure and advances in technology. Our principal proposals are to:

- Relax the current restrictions on communications with security holders to provide the market with more information on a timely basis; in particular,
- Permit free communications before the filing of a registration statement in connection with either a stock tender offer or a stock merger transaction;
- Permit free communications before the filing of a proxy statement (whether or not a takeover transaction is involved);
- Permit free communications about a planned tender offer without triggering the ''commencement'' of the offer, requiring the filing and dissemination of information;
- Harmonize the various communications principles applicable to business combinations under the Securities Act, tender offer rules and proxy rules;
- Eliminate the confidential treatment now available for merger proxy statements;
- Reduce the disparate treatment of stock and cash tender offers by permitting stock tender offers to commence upon the filing of a Securities Act registration statement;
- Simplify the regulatory scheme by integrating the disclosure requirements for tender offers, going-private transactions, and other extraordinary transactions into a new 1000 series of Regulation S–K, referred to as ''Regulation M–A'';
- Combine the current schedules for issuer and third-party tender offers into a single schedule available for all tender offers, entitled ''Schedule TO'';
- Require a ''plain English'' summary term sheet in all cash tender offer, cash merger and going-private transactions;
- Update the financial statement requirements for takeover transactions; in particular,
- Eliminate the need to file financial statements for target companies in most cash mergers, to harmonize with the treatment of cash tender offers;
- Clarify when financial statements of the acquiring company are not required in cash mergers, and when financial statements are required, reduce the financial statements required for the acquiror from three years to two;
- Clarify when the bidder's financial statements are not required in cash tender offers, and when financial statements are required in third-party offers, reduce the requirement from three years to two;
- Require pro forma and related financial information in cash tender offers where the bidder intends to engage in a back-end stock merger;
- Reduce the financial statements required for non-reporting target companies in stock mergers;
- Permit a subsequent offering period, similar to that available in many United Kingdom tender offers, during which security holders can tender their shares for a limited period after completion of a tender offer;

[26] *See* the Securities Act Reform Release.

[27] 17 CFR 240.10–5. Rule 10b–5 prohibits misleading statements or omissions and other fraudulent or deceptive practices in connection with the purchase or sale of a security.

[28] The ''waiting period'' is the period of time between when a registration statement is first filed and when it becomes effective.

[29] The term ''bidder'' is used throughout this release to refer to the offeror or purchaser in a tender offer.

[30] Exchange offers, sometimes called stock tender offers, are tender offers where the consideration offered to security holders includes securities; these transactions generally are registered under the Securities Act.

• Clarify the rule that requires issuers to report any intended repurchases of their securities after a third-party tender offer has commenced (Rule 13e-1), and require information to be disseminated on a timely basis; and

• Clarify the rule that prohibits purchases outside a tender offer (Rule 10b-13), codify prior interpretations of and exemptions from the rule, and redesignate it as Rule 14e-5.

At this time we are not proposing, but are considering, whether we should:

• Impose a federally mandated proxy solicitation period in merger transactions comparable to the current minimum tender offer period, to allow security holders at least a minimum time to consider the proxy statement disclosure;

• Modify the proxy rules to permit direct delivery of proxy materials to non-objecting beneficial owners;

• Create a broad safe harbor under the proxy rules that would permit ''test the waters'' communications with security holders without requiring the filing or delivery of a proxy statement, so long as no proxy card is delivered to security holders;

• Require delivery of a disclosure document to security holders in cash tender offers, instead of permitting dissemination by summary advertisement alone, to conform the dissemination required in tender offers with that in proxy solicitations and securities offerings;

• Permit proxy cards to be sent to security holders before a registration statement for a stock merger is effective; and

• Expand by rule the coverage of the Private Securities Litigation Reform Act safe harbor from liability to include forward-looking statements made in connection with tender offers.

II. Discussion of Proposals

A. Overview of the Regulatory Schemes

It may be useful to discuss the regulatory schemes for different methods of business combination before addressing how our proposals would affect the current procedures. This release discusses two primary business combination methods: tender offers and mergers.[31] Tender offers may be made either by the issuer of the securities sought or by a third party.[32] The essence of a tender offer is that the offeror, or bidder, can go directly to security holders of the target company with an offer to buy their shares. Each security holder makes an individual decision whether or not to tender. A tender offer may or may not have the cooperation of the target company's board of directors. Even if the tender offer is successful, the bidder is unlikely to receive 100% of the shares. In contrast, a merger is a collective, voting decision.[33] The acquiror acquires the entire company if security holders of the target company approve the merger.[34] The acquiror generally needs the approval of the target's board of directors in order to present the transaction for a security holder vote.

In either a tender offer or a merger, the offeror may offer cash, securities, or a combination. If the consideration consists all or partly of securities, the offeror generally will have to register them under the Securities Act.[35] The offeror will have to give more information to security holders of the target company than if it were offering cash, since the investment decision is more complex. Security holders of the target need information about the issuer whose securities they will receive if the transaction is consummated, which really means information about the surviving, combined entity (the issuer plus the acquired company).

The following summarizes the regulatory process for the four basic business combination methods. These examples assume that the tender offers and proxy solicitations discussed are subject to our filing and dissemination requirements:

1. Cash tender offer—either issuer or third party. The bidder commences the offer by disseminating tender offer material to security holders, including a request that they tender their shares. On the same day, the bidder files this material publicly with the Commission, along with a tender offer schedule that contains additional information.[36] Unlike the other three transactions discussed below, the Commission staff does not have the opportunity to review the tender offer material until after the tender offer has begun. If the staff decides to review the filed material, and has comments, the staff gives comments to the bidder during the tender offer and the bidder addresses the comments appropriately. (For example, the bidder may need to send additional information to the security holders of the target and the offer may have to be extended.) The offer must remain open for at least 20 business days, and then the bidder can purchase the shares if all conditions to the offer have been satisfied or waived.[37]

2. Exchange offer (stock tender offer)—either issuer or third party.[38] The bidder files a Securities Act registration statement containing a preliminary prospectus covering the securities it is offering to security holders of the target in exchange for their shares. The prospectus also contains the information about the exchange offer required by the tender offer rules. This is a public document. The bidder may disseminate the preliminary prospectus to security holders of the target company, but it usually does not do so because it cannot request tenders or buy any shares until the registration statement is declared effective. If the staff decides to review the registration statement, it may give comments to the bidder. After these comments are resolved, the bidder requests that the staff declare the registration statement effective. Once the registration statement is effective, the tender offer may ''commence''—the bidder disseminates the combined final prospectus/tender offer document to security holders, and requests that they tender their shares. On the same day, the bidder files with the Commission the

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[31] The discussion of ''business combinations'' in this release includes all mergers and tender offers addressed by our rules, including those that do not necessarily result in a ''combination,'' such as issuer tender offers and tender offers where the bidder is not seeking control of the target.

[32] An offer by the company to purchase its own outstanding securities is an ''issuer tender offer,'' while an offer by someone other than the issuer is a ''third party tender offer.'' Third-party tender offers for a class of equity securities registered under Section 12 of the Exchange Act [15 U.S.C. 78*l*] must comply with the requirements of Regulation 14D. In addition, whether or not an offer is subject to Regulation 14D [17 CFR 240.14d-1 through 240.14d-101], the offer must comply with Regulation 14E [17 CFR 240.14e-1 through 240.14e7] and the antifraud requirements of Section 14(e) of the Exchange Act [15 U.S.C. 78n(e)]. Issuer tender offers for the equity securities of a public reporting must comply with Rule 13e-4. Whether or not the issuer is a public reporting company, the issuer tender offer must comply with Regulation 14E and Section 14(e).

[33] Throughout the release, where we discuss mergers we also include reclassifications, consolidations and transfers of assets where security holders are asked to vote or consent. *See* Rule 145(a) [17 CFR 230.145(a)].

[34] The security holders of the target company almost always must vote on the merger; sometimes the acquiring company's security holders also must vote. This is determined by state law, the company's governing instruments, and requirements of all applicable self-regulatory organizations. If either voting party's securities are equity registered under Section 12 of the Exchange Act, the voting party must comply with the proxy or information statement rules (Regulation 14A or 14C) [17 CFR 240.14a-1 through 240.14a-104 and 17 CFR 240.14c-1 through 240.14c-101].

[35] The offeror also must comply with the tender offer and proxy rules, if applicable. All business combination methods described in this release also are subject to the antifraud provisions of the federal securities laws. *See* Securities Act Section 17 [15 U.S.C. 77q]; Exchange Act Section 10(b) [15 U.S.C. 77j(b)]; Rule 10b-5, Rule 14a-9 [17 CFR 240.14a-9], and Exchange Act Section 14(e) and the rules under that section.

[36] Third-party tender offer statements are filed with the Commission on Schedule 14D–1, while issuer tender offers are filed on Schedule 13E–4.

[37] In a third-party tender offer, the target company must respond to the offer with a recommendation to its security holders. This recommendation is disseminated to the security holders and filed with the Commission along with a Schedule 14D–9 containing additional information. The staff may review the material and comment on it after it is filed, the same as with the bidders material.

[38] In this release we sometimes refer to ''stock tender offers'' and ''stock mergers,'' but in both cases it is possible for the consideration offered to be either equity or debt.

same tender offer schedule as for a cash tender offer.[39] The offer must remain open for at least 20 business days from this point before the bidder can purchase any shares.

3. Cash merger. The offeror files a preliminary proxy statement with the Commission that describes the transaction. This is usually a public document, but the offeror can request that the preliminary merger proxy statement be treated confidentially, with some exceptions. The offeror may mail the preliminary proxy statement to security holders, but often waits until the proxy statement is final, or ''definitive.'' This is because the offeror can send the proxy card only with the definitive proxy statement. The offeror may mail the definitive proxy statement ten days after the preliminary proxy statement is filed. However, if the staff decides to review the proxy material, in most cases offerors wait to receive staff comments before mailing. Once all comments have been resolved, the offeror mails the definitive proxy statement along with a proxy card for security holders to mark and return. There is no federally mandated time period between the date the offeror mails the proxy material and the date of the security holder meeting,[40] but state law generally requires security holder notice of the meeting a specified time before the meeting. If the vote at the meeting is to approve the merger and all conditions have been met, the merger can close.

4. Stock merger. The offeror files a Securities Act registration statement with the Commission that contains a preliminary prospectus as well as the information required in a proxy statement. Registration statements are filed publicly, but the material may be filed as a confidential proxy statement if the offeror so chooses. The registration statement is then filed as a ''wrap around'' the proxy statement when the offeror is ready to make the information public. The offeror may disseminate the preliminary prospectus/proxy statement, but ordinarily will not do so because the offeror may not include the proxy card. If the staff decides to review the filing, it gives comments to the offeror. After comments are resolved, the offeror requests that the staff declare the registration statement effective. Once the registration statement is effective, the offeror can mail the combined final prospectus/definitive proxy statement along with a proxy card. The process then continues as it would for a cash merger.

Any of the above transactions also could be a ''going-private'' transaction if it meets the criteria set forth in the ''going-private'' rule.[41] In this case, the offeror and any other party engaging in the transaction must file another schedule and provide additional information to the Commission and security holders, in addition to complying with the other regulatory requirements discussed. Usually this information is combined into a single disclosure document with the proxy statement, tender offer material or prospectus.

B. Expand Communications Permitted in Tender Offers and Mergers

1. Overview and General Considerations

As discussed above, the fast pace of today's securities markets and the ready accessibility of information through electronic media have caused changes in the mergers and acquisitions environment. We understand that participants in many merger and acquisition transactions are providing extensive, deal-related information to the marketplace immediately following the execution of a definitive merger or purchase agreement.

Frequently, parties to a merger or other similar transaction release information to the press containing pro firma financial information on the combined entity, as well as estimated cost savings or ''synergies.'' The parties generally issue this type of information through press releases, analyst conferences, and meetings with institutional investors and the press.[42] The information provided to analysts often goes beyond the information disseminated to all security holders through press releases.

Parties to merger agreements have asserted several reasons for the need to disclose deal-related information at an early stage, including the duty to make ''full disclosure'' of material information under Rule 10b–5.[43] Under Rule 10b–5, it is unlawful to make any misstatement or omission of material fact in connection with the purchase or sale of a security. The rule applies to mergers, exchange offers and other extraordinary transactions. The duty to disclose can be triggered by, among other things: (1) line-item disclosure requirements in filings with the Commission; (2) the issuer or insider's duty to ''disclose or abstain'' from trading while in possession of material, non-public information; [44] (3) the duty to provide full and complete information when disclosing information to the markets; [45] and (4) the duty to correct false or misleading statements made by the company.[46] Companies also may be required by the particular rules of the stock exchange or inter-dealer quotation system upon which their securities trade to inform the marketplace in a timely manner of material corporate developments, including proposed mergers.[47]

We understand that parties involved in extraordinary transactions may have certain economic reasons as well for disclosing more information to the markets before a registration, proxy or tender offer statement is filed with the Commission. These reasons include: the need to maintain an orderly market for the securities to be offered as

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[39] The target company has the same obligations as in a cash tender offer.

[40] *But see* note 94.

[41] *See* Rule 13e–3 and Schedule 13E–3. This rule covers specified transactions where a company may cease to be a public reporting company or a class of equity securities may cease to be registered or publicly traded.

[42] ''The boundaries of the 'gun jumping' prohibition are being pushed in the current environment. A careful balance must be made between deal announcement activities and broader disclosures, which may serve legitimate disclosure issues, covering expected timetables managements financing plans, integration [of] operations and synergy expectations. Deal participants frequently are pressured for such information by analysts, reporters and institutional investors, and it is not uncommon for corporations to have full analyst presentations that announce, among other things, aggregate synergies/cost savings and CEO succession plans at the time of the announcement of an exchange offer, merger or spin-off transaction.'' *See* Brownstein & Cohen, ''Navigating the M&A Waters: Greater Options, Greater Challenges,'' N.Y.L.J. (February 18, 1997), at p. 6 (''Brownstein & Cohen'').

[43] The Commission has long recognized the need for issuers to communicate with their security holders with respect to important business and finance developments. *See* Releases No. 33–4697 (May 28, 1964) [29 FR 7317] and 33–5180 (August 16, 1971) [36 FR 16506]. *See also* Release No. 33–5927 (April 24, 1978) [42 FR 18163], in which the Division of Corporation Finance noted that compelling policy reasons exist, as reflected in the Williams Act disclosure requirements, to permit disclosure of information regarding contemplated ''back-end'' mergers in order to aid investors confronted with a tender offer investment decision that would otherwise ''jump the gun'' on a merger.

[44] *See SEC v. Texas Gulf Sulphur Co.*, 401 F.2d 833,848 (2d Cir. 1968).

[45] *Id.* at 862; *Basic* v. *Livinson*, 485 U.S.C. 224 (1988).

[46] *See Ross* v. *A.H. Robins Co., Inc.*, 465 F. Supp. 904 (S.D.N.Y.), *rev'd in part and remanded on other grounds*, 607 F. 2nd 545 (2d Cir. 1979), *cert. denied*, 446 U.S. 946 (1980); *Naye* v. *Boyd*, CCH ¶92,980 (W.D. Wash. Oct. 20, 1986); Sharp v. *Coopers & Lybrand*, CCH ¶96,952 (E.D. Pa. 1979); SEC v. *Shattuck Denn Minning Corp.* 297 F. Supp. 470 (S.D.N.Y. 1968); *Fischer* v. *Kletz*, 266 F. Supp. 180 (S.D.N.Y. 1967). Generally, however, there is no duty to correct statements issued by a third party unless the statements are attributable to the company. *See Electronic Specialty Co.* v. *Int'l Controls Corp.*, 409 F.2d 937 (2d Cir. 1969); *Zucker* v. *Sable*, 426 F. Supp. 658 (S.D.N.Y. 1976). Under certain circumstances courts have found a duty to update information previously disclosed when it is rendered misleading by subsequent developments. *See In re Time Warner, Inc.*, 9 F.3d 259 (2d Cir. 1993).

[47] *See* NYSE Listed Company Manual § 202.05 stating that ''[a] listed company is expected to release quickly to the public any news or information that might reasonably be expected to materially affect the market for its securities''; and American Stock Exchange, Listing Standards, Policies and Requirements § 402 requiring disclosure of material information ''likely to have a significant effect on the price of any of the company's securities or * * * likely to be considered important by a reasonable investor in determining a choice of action,'' providing as an example information regarding mergers and acquisitions. *See also* the National Association of Securities Dealers, Inc. (''NASD'') Manual, Rules 4310(c)(16) and 4320(e)(14).

consideration;[48] the need to satisfy the market's increased demand for information regarding a proposed transaction;[49] and the need to inform customers, employees or other constituencies.

While there may be certain regulatory and economic reasons for early disclosure of deal-related information, provisions of the Securities Act and Exchange Act, including the Williams Act,[50] restrict the type of information that may be disseminated before the filing of a registration, proxy or tender offer statement. The flow of information to investors is constrained primarily by the concepts of ''offer''[51] and ''prospectus''[52] under the Securities Act, ''solicitation'' under the Exchange Act, and ''commencement'' under the Williams Act.[53] Each of these concepts reflect a judgment that the information needed to make an informed voting or investment decision should be provided within the four corners of a prescribed disclosure document.

We believe that alleviation of these regulatory constraints may be appropriate in today's marketplace, particularly given technological advances in communications. Information regarding a planned extraordinary transaction can be provided to all security holders on a more equal and timely basis. Restricting communications to one document may in fact serve to impede, rather than promote, informed investing and voting decisions. Of course, any proposed safe harbors permitting increased communications must be balanced to assure investor protection. Modifications to the existing regulatory scheme include conditions designed to provide full and fair disclosure to all investors and the broader marketplace and not simply to a limited audience of analysts and financially sophisticated market participants. Today's proposals are designed to reduce selective disclosure by permitting the widespread dissemination of information through a variety of media calculated to inform all security holders about the terms, benefits and risks of a proposed extraordinary transaction.

It is important to note that the proposals do not change the current requirement that before security holders are asked to vote or tender their shares, they must receive a mandated disclosure document—a prospectus, proxy statement, or tender offer statement—that sets forth complete and balanced information.[54] Our long-standing concern about communications conditioning the market before the dissemination of mandated disclosure documents (*i.e.*, ''gun-jumping'') is alleviated by continuing to require this disclosure document before the investment decision, as well as by the liability that could attach to knowingly false offering materials.

2. Eliminate Restrictions on Pre-filing Communications

We propose to eliminate the current restrictions on communications about an upcoming merger, tender offer, or other business combination. Each of the regulatory schemes would provide for a safe harbor, as described below, for oral and written communications about the transaction before the registration, proxy or tender offer statement is filed. Recognizing that deal-related disclosure, including forward-looking information, is important to a complete understanding of a transaction, we do not propose any content limitation on the communications. However, we request comment on whether any content restrictions should be included in the proposed safe harbors. Of course, even without content restrictions, the antifraud rules will continue to apply.

We do not propose to limit eligibility for the proposed safe harbors to transactions involving large or seasoned issuers. We considered making distinctions by size and seasoned status along the same lines as in the Securities Act Reform Release (*i.e.*, Form A and Form B), but believe that those distinctions are not as important as other considerations in the case of business combination transactions. In these transactions, the market does not need information about the offeror alone, but rather the combined entity, with which the market is unfamiliar in any case. Thus, the need for freer disclosure stems in large part from the fact that the offeror is, in essence, becoming a new company. Therefore, the market-driven disclosure is not company information but ''synergies'' and similar information about the combined entity. Further, we believe that regardless of seasoned status, the reasons for full and timely disclosure in a business combination still exist.

Nevertheless, we request comment as to whether the size and seasoned status of the parties to the transaction should determine the availability of the free communication safe harbors. Should the safe harbor be limited to Form B companies?[55] If the safe harbor were based upon the size and seasoned status of the parties, should it be the status of the acquiror or the target that would govern, or both? If the status of the acquiror controlled, different acquirors for the same target could be subject to different rules. Would the lack of a level playing field for competing acquirors have adverse effects on competition or the target's security holders?

While we believe that the parties involved in a business combination transaction should be permitted to rely on the free communications safe harbors regardless of size, certain safeguards to protect investors are necessary. All written communications by those parties from the date of the first announcement of the transaction would be required to be filed with the

[48] In the takeover heyday of the 1980s, the price of participants' stock frequently dropped following the announcement of the transaction. This also can happen today, but market reaction can be positive when a deal appears to make business sense. Steven Lipin, ''Corporations' Dreams Converge in One Idea: It's Time to Do a Deal,'' Wall St. J. (February 26, 1997).

[49] Wall Street may require education due to the complexity of the transaction, the non-apparent nature of its value or the obscure nature of the business. In any case, assuring that the value created by a transaction is properly appreciated by Wall Street, and relected in stock price, may be both a matter of responsibility to shareholders as well as protecting the deal itself.'' Brownstein & Cohen at p. 6. Indeed, commentators have argued that ''winning the immediate favor of the market through disclosure of projections and other forward-looking information can be an essential element in ensuring the transaction's success.'' *See, e.g.*, Victor I. Lewkow and Paul J. Shim, *Law Puts Parties in a Bind When Ammouncing Merger,* Nat'l L. J. (Feb. 10, 1997), at p. B9.

[50] The Williams Act was enacted in 1968 as an amendment to the Exchange Act (Sections 13(d)–(e) and 14(d)–(f). The Williams Act regulates tender offers and imposes beneficial ownership reporting requirements. 15 U.S.C. 78m(d)-(e) and 15 U.S.C. 78n(d)–(f).

[51] Section 2(a)(3) of the Securities Act broadly defines ''offer'' as including every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. 15 U.S.C. 77b. Offers are prohibited during the pre-filing period and restricted during the waiting period.

[52] The term ''prospectus'' is defined in Section 2(a)(10) to include any prospectus, notice, circular, advertisement, letter of communication, written or by radio or television, that offers any security for sale or confirms the sale of the security, except for communications that are preceded or accompanied by a statutory prospectus. 15 U.S.C. 77b.

[53] ''Solicitation'' is broadly defined by the Commission to include ''the furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.'' *See Rule 14a–1(l)* [17 CFR 240.14a–1(*l*)]. The Williams Act provides that only limited information can be announced without either commencing a crash tender offer or requiring the filing of a registration statement in a stock offer.

[54] *See* the discussion of proposed Form C in Part II.D.2.d below.

[55] If the proposals in the Securities Act Reform Release are not adopted, then the proposals presented in this release could be limited to companies that are Form S–3 eligible, including the requirement that the aggregate market value of voting and non-voting common equity held by non-affiliates equal or exceed $75 million.

Commission upon first use.[56] Although there would be no requirement to deliver this information to security holders, written communications would have to be filed upon first use in order to assure that the information is available to *all* security holders—not just analysts and institutional investors—at the same time. Furthermore, written information about a proposed combined entity or the ''synergies'' that are expected to result from a proposed transaction could be verified or confirmed, and corrective disclosure could be required if needed.

Each communication would be required to include a prominent legend advising investors to read the registration, proxy or tender offer statement.[57] We solicit comment on whether certain basic information, including the name and description of the acquiror, also should be required in each communication.[58]

We believe that bidders would welcome the opportunity to disclose deal information earlier in the process and that the filing on first use requirement would not ''chill'' disclosure of forward-looking information because of continuing market demands. We request comment, however, as to whether parties involved in tender offers would be reluctant, in light of the filing requirement, to disclose forward-looking information absent a safe harbor from liability for that information. The safe harbor established by the Private Securities Litigation Reform Act currently applies to merger transactions but does not apply to tender offers. We discuss below the possibility of expanding by rule the scope of that safe harbor to tender offers.[59]

Would parties to a transaction communicate more freely if the written communications could be filed at a later date, whether along with the mandated disclosure document[60] or some other date, instead of filing upon first use? If so, should the communications required to be filed be limited to those made during a specified period of time, such as 30 calendar days or 30 business days before the disclosure document is filed? In addition to the filing requirement for written communications, would any market conditioning effect of the pre-filing communications be cured by the built-in time period between delivery of the disclosure document and the final voting or tendering decision? Would offerors tend to shorten this time period, to the extent permitted by law, if they could engage in more extensive communications at an earlier point? We also ask whether security holders would tend to sell into the market on the basis of pre-filing communications, rather than waiting for the disclosure document.

As noted, the proposed free communications safe harbors would apply to oral as well as written communications. We do not propose to require that oral communications be reduced to writing and filed. As one objective of the proposal is to reduce selective disclosure, we solicit comment on whether liberalizing oral communications would remove incentives for offerors to file information and disseminate it in a widespread manner.[61]Should the safe harbors be available to oral communications?[62] If so, would the need to provide information to the markets generally provide a sufficient incentive for offerors to disseminate full, fair and balanced information in a widespread manner? Should a ''notice'' filing be required when oral communications are made?

As proposed in the Securities Act Reform Release, business information that is factual in nature and relates solely to ordinary business matters, not to the pending transaction, would be exempt from the prohibition on offers and would not be required to be filed. This type of information generally does not have the potential for conditioning the market before an extraordinary transaction and, as the dissemination of such information is usually routine, we do not view it as specifically related to the transaction.[63] The proxy and tender offer rules would provide the same exclusion.[64]

3. Waiting Period and Post-Effective Period Communications

In the Securities Act Reform Release, we propose to permit free oral and written communications during the period between filing and effectiveness of the registration statement, in order to provide an opportunity for open dialogue between the company and its potential investors.[65] This Securities Act safe harbor also would apply to the period after effectiveness of the registration statement.[66] The rule would be available for business combinations as well as for capital-raising transactions. We also would extend this safe harbor to the proxy and tender offer rules.[67] Like pre-filing communications, written communications during these periods would be required to be filed upon first use. Free communications during the waiting period would be particularly important if our proposal to permit exchange offers to commence before effectiveness is adopted.[68]

4. Alternative Communications Proposals

We are considering alternatives to the free communications safe harbors that would provide more limited flexibility for pre-filing communications. In particular, we are considering whether to allow the companies conducting the transaction to make deal-related disclosure only during a 48-hour period following the public announcement of a definitive merger agreement or takeover plan. Similar to the ''free communications'' proposal, there would be no content restrictions on the companies' communications during the proposed 48-hour period, other than the antifraud provisions. After the 48-hour period, the companies would be required to remain quiet regarding the transaction until a registration, proxy or

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[56] *See* Part II.B.5 below. Written communications include communications that are published in electronic media, such as videos and CD–ROMs.

[57] The legend also would advise investors that they can obtain copies of the filed documents for free at the Commission's web site and explain which documents are available for free from the issuer. *See* proposed Securities Act Rule 421(e) in the Securities Act Reform Release, as well as proposed Rules 14a–12(a)(2), 13e–4(c) and 14d–2(b)(2) in this release.

[58] As discussed below, free pre-filing communications are permitted under the current scheme only in contested proxy solicitations under Rules 14s–11 and 14a–12. Those rules require that certain basic information (the identity of the participants in the solicitation and description of their interest in the transaction) be disclosed in each communication, whether written or oral.

[59] *See* Part II.E.6 below.

[60] This is the way Form B issuers would be treated in capital-raising transactions, as proposed in the Securities Act Reform Release.

[61] Of course, nothing in the proposal would affect a person's liability for trading on inside information. *See* Rules 10b–5 and 14e–3 [17 CFR 240.14e–3].

[62] The current safe harbor in Securities Act Rule 145(b)(2), discussed below, is limited to written communications.

[63] Proposed Rule 169. Also as proposed in the Securities Act Reform Release, there would be a safe harbor for regularly released forward-looking information (which would be filed under Rule 425), and the safe harbors for the publication of research reports by broker-dealers would be revised. All of these would apply to business combinations as well as to capital-raising transactions. *See* proposed Rule 168(b) and proposed revisions to Rules 137, 138, and 139 [17 CFR 230.137; 17 CFR 230.138 and 17 CFR 230.139].

[64] Proposed Rules 13e–4(c), 14a–12 and 14d–2.

[65] Proposed Rule 165.

[66] Currently, ''free writing'' is permitted after a registration statement becomes effective, but the ''free writing'' material, such as sales literature, must be accompanied or preceded by a final prospectus.

[67] Proposed Rules 14a–12 and 14d–2.

[68] *See* Part II.C.1 below.

tender offer statement is filed. If this alternative proposal is adopted, should the 48-hour time period be shorter or longer (*e.g.*, 24 or 72 hours), or should it be based on a number of business days, such as one, three or five business days?

Under this alternative proposal, the safe harbor would not be available to a company if it disclosed deal-related information after the 48-hour period without the relevant disclosure document on file. The company, however, could take steps to regain protection under the safe harbor by discontinuing communications related to the transaction for at least 30 calendar days (the ''30-day quiet period'') before a registration statement is filed. The 30-day quiet period would serve to cure any conditioning effect that the communications may have had on the market for the companies' securities.

As a third alternative to the free communications proposal and the 48-hour model, we also solicit comment on whether to permit free communications for an unlimited period of time after the deal is announced, so long as the parties observe a 30-day quiet period before filing the registration statement, proxy statement or tender offer material. This would be similar to the treatment of Form A companies in capital-raising transactions, as proposed in the Securities Act Reform Release. We ask commenters whether it would be practicable in the business combination context to require a minimum of 30 days between announcing the deal and filing the registration statement, proxy statement or tender offer material.

We request comment on whether, under the alternative proposals, the 30-day quiet period would be sufficient to cure any conditioning effect that earlier communications may have on the market. Is a longer quiet period necessary (e.g., 45 days), or would a shorter period suffice (e.g., 15 or 20 days)? We also solicit comment on whether the time period for staff review should be included in the 30-day quiet period. Should companies be permitted to file the relevant disclosure document as soon as it is prepared despite disclosure of deal-related information outside the 48-hour period? How should the announcement of a hostile transaction affect the type of communications permitted during the 30-day quiet period? Should the type of communications permitted outside the 48-hour period be different for friendly and hostile transactions? Should the communications be filed on first use, or not filed until the mandated disclosure document is filed?

Finally, we request comment as to whether either of the alternative proposals is preferable to the free communications safe harbors.[69] Commenters should keep in mind that we would conform the proxy rules and tender offer rules to whatever scheme we adopt under the Securities Act for business combinations.

5. Free Communications Under the Securities Act

To implement the overall scheme discussed above, we propose new Securities Act Rule 166(b) to permit free communications in connection with any registration statement for a business combination. As discussed above, this rule would not contain any content restrictions so that deal-related information could be disclosed to analysts and security holders alike. Given the potential breadth of the communications, these communications still would be considered offers under the Securities Act.

As discussed above, Section 5(c) of the Securities Act prohibits offers unless a registration statement is on file. In 1996, the Commission was granted exemptive authority under Section 28 of the Securities Act.[70] For the reasons stated above—including the need to reduce selective disclosure and provide deal-related information to all security holders on an equal basis—we believe that an exemption from Section 5(c) of the Securities Act for persons making offers in business combination transactions is in the public interest and is consistent with the protection of investors.

The proposed safe harbor under this exemption would be available to the acquiring company—the offeror of the securities. The company to be acquired would not ordinarily be subject to restrictions on communications under the Securities Act, but under some circumstances it could be viewed as joining the acquiring company in making the offer. In this event, it also could avail itself of the safe harbor. In addition, we request comment as to whether any other parties should be exempted from Section 5(c) and eligible to rely on the proposed safe harbor for pre-filing communications. For example, should the parties' affiliates, dealer-managers and others acting on behalf of the parties to the transaction be permitted to take advantage of the safe harbor?[71]

In cases where deal-related information is disclosed before filing a registration statement, the current practice has been to file the communications on Form 8–K[72] and then incorporate these filings by reference into the registration statement. As a result, these communications are subject to Section 11 liability.[73] As a condition to the proposed free communications safe harbor, written communications relating to the transaction would be filed upon first use as pre-filing prospectus supplements[74] that are subject to Section 12(a)(2) liability.[75] This is because we believe Section 12(a)(2) liability would adequately protect investors while not chilling parties' willingness to make these communications. However, we request comment on whether all written communications related to the transaction should be incorporated into the registration statement and subject to Section 11 liability under the Securities Act.[76] Would this encourage offerors to rely more on oral communications? We also ask whether it is necessary to condition the availability of the safe harbor on the timely filing of these communications, as proposed.

We note that relatively free written and oral pre-filing communications already are permitted under the current scheme for contested proxy solicitations. Such solicitations, if

[69] Like the free communications proposal, the alternative safe harbors would not restrict factual business communications at any time. These communications could occur throughout the pre-filing and waiting period without precluding reliance on the safe harbor or triggering a 30-day quiet period.

[70] The Commission, by rule or regulation, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision of this title or any rule or regulation issued under this title to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with protection of investors. 15 U.S.C. 77bb.

[71] See the discussion of research reports in the Securities Act Reform Release.

[72] 17 CFR 249.308.

[73] 15 U.S.C. 77k.

[74] Written communications would be filed as offering material under proposed Rule 425(b)(3). Like Rule 424 [17 CFR 230.424], proposed Rule 425 would provide the procedural requirements for filing the written communications as pre-filing prospectus supplements. Comparable filing requirements are proposed under the proxy and tender offer rules (proposed Rules 13e–4(c), 14a–12 and 14d–2). These communications would be filed on EDGAR to the same extent that the related prospectus, tender offer or proxy statement would be required to be filed electronically. For a discussion of materials in various electronic media and how they would be filed, see Part VII.B of the Securities Act Reform Release. If a Rule 425 filing was required, filers would not also have to file the same document under the proxy and tender offer rules.

[75] 15 U.S.C. 77l(a)(2). Oral communications also would be offers subject to Section 12(a)(2) liability.

[76] In any event, if a pre-filing communication contains material information that is required to be in the registration statement, the filer will put the information in the registration statement, so Section 11 will apply.

written, currently are not deemed offers under the Securities Act.[77] Written communications must be filed in accordance with proxy Rule 14a-12(b), as discussed below.

To harmonize treatment of all merger transactions, whether contested or friendly, we propose to eliminate the provision that such communications are not offers under the Securities Act.[78] Thus, pre-filing communications in contested transactions also would be considered offers and pre-filing supplements to the prospectus subject to liability under Section 12(a)(2) of the Securities Act. We do not believe that communications would be chilled by this modification because of the heightened need for communications in hostile or competing transactions. In addition, we note that such communications already are subject to antifraud liability. We request comment, however, as to whether treating this information as offers—imposing Section 12(a)(2) liability under the Securities Act—would chill communications in hostile transactions.

Rule 135 notices are not currently, and are not proposed to be, filed with the Commission. We solicit comment, however, on whether Rule 135 notices involving prospective business combinations should be filed, since they could contain the initial public announcement of the transaction. The filing would be made under Rule 425, but since these notices are not considered ''offers'' they would not have liability as such; Rule 425 would be modified to make this clear.[79]

In the Securities Act Reform Release, the proposed scheme for capital-raising transactions for Form A issuers contemplates that communications more than 30 days before the filing of a registration statement do not constitute offers.[80] In contrast, the proposed scheme for business combinations treats all communications related to the transaction as offers, starting with the first communication relating to the transaction (except for communications among the participants in the transaction).[81] Thus, these communications would be subject to Section 12(a)(2) liability even if made more than 30 days before filing the registration statement. Should we treat business combinations the same as capital-raising transactions and apply the 30-day rule to both?[82] If we did this, we could still require communications before the 30-day window to be filed, but they would not have Securities Act liability as offers. We ask commenters to address whether the status of deal-related communications as offers should depend on how soon they are followed by the filing of a registration statement.

We also solicit comment on whether, if we do retain the first public announcement standard, we need to define ''public announcement.'' We could define this as the first public communication about the transaction that gives more information than permitted by Rule 135. Alternatively, we could have a broader definition that includes any public communication identifying the offeror, the target company or class of securities, the number or percentage of securities sought, and the price or range of prices. Should the definition clarify what is meant by ''public'' (*i.e.*, communications that go beyond the participants to the transaction)?

6. Free Communications Under the Proxy Rules

a. Expand Rule 14a–12 Safe Harbor

In 1992, we significantly enhanced security holders' ability to communicate with one another regarding corporate matters without furnishing a proxy statement, so long as no proxy card or other authorization is furnished to or requested from security holders.[83] The enhancements have worked well to improve the quality and amount of information flowing to and among security holders. Under the current regulatory scheme, however, there are still some restrictions on communications. For instance, management or security holders seeking proxy authority may not communicate without first furnishing a proxy statement, unless the solicitation is either in connection with an election contest under Rule 14a–11[84] or in opposition to an earlier solicitation, invitation for tenders, or certain other publicized activity under Rule 14a–12.[85] Both rules permit solicitations before furnishing security holders with a written proxy statement, so long as: (i) no form of proxy (*i.e.*, proxy card) is furnished until a written proxy statement is furnished; (ii) the identity of the participants in the solicitation and a description of their interests are included in any communication published, sent, or given to security holders; and (iii) a written proxy statement is provided to security holders at the earliest practicable date. The rules apply to both oral and written solicitations.[86] Written soliciting material must be filed with, or mailed for filing to, the Commission no later than the date the material is first published, sent, or given to security holders.[87]

Despite the 1992 amendments, some have contended that the current rules may continue to unnecessarily restrict communications among security holders and/or between a company and its own security holders. Recent developments in information technology have enabled companies to engage in more frequent, direct and timely communications with their security holders about matters of particular interest. As the pace of the securities markets increases, there appears to be a greater need for some flexibility in the proxy rules to permit communications before filing and delivery of a written proxy statement. Accordingly, we propose to broaden the safe harbor in Rule 14a–12 to apply to all solicitations, not just to those involving opposed matters.

The other provisions in Rule 14a–12, including the condition that no form of proxy is furnished, the obligation to disclose participant information, and the delivery of a written proxy statement to all solicited security holders as soon as practicable, would be retained. We also would continue to require that written solicitations be filed upon first use. In addition, consistent with proposed changes to the Securities Act and tender offer rules, each communication would be required to prominently advise security holders to

[77] See Rule 145(b)(2) [17 CFR 230.145(b)(2)]. Rule 145 is the rule that applies the registration requirements to business combinations involving security holder voting decisions.

[78] Rule 145(b)(2) would be rescinded. Rule 145(b)(1), which provides that certain written communications containing only specified information about mergers and similar transactions are not deemed offers, would be moved from Rule 145 to Rule 135 [17 CFR 230.135]. Rule 135 already contains similar provisions for communications about exchange offers. See the Securities Act Reform Release for the text of proposed Rule 135 revisions.

[79] In any event, under the proposed scheme these communications would need to be filed under the proxy or tender offer rules.

[80] See proposed Rule 167(c).

[81] See proposed Rule 167(b).

[82] In that case, we also would apply the 30-day rule to proxy and tender offer solicitations.

[83] *See* Rule 14a–2(b)(1). [17 CFR 240.14a–2(b)(1)]. The rule may not be used by the company itself. Also, there are various exceptions for persons with specified interests in the solicitation. For example, the rule may not be used by any person soliciting in opposition to a merger or other extraordinary transaction, when the soliciting person is a party to an alternative transaction.

[84] 17 CFR 240.14a–11.

[85] 17 CFR 240.14a–12. In addition, parties other than the company's management may solicit proxies from up to ten persons without being required to file a proxy statement. *See* Rule 14a–2(b)(2) [17 CFR 240.14a–2(b)(2)].

[86] The proxy antifraud rule, Rule 14a–9, applies to these communications.

[87] *See* Rules 14a–11(c) and 14a–12(b) [17 CFR 240.14a–11(c) and 240.14a–12(b)].

read the proxy statement.[88] These requirements, together with the antifraud provisions in Rule 14a–9, appear sufficient to assure the integrity and adequacy of the information and protect against misleading solicitations.[89]

Filing of written communications upon first use also would assure consistency with the requirements we propose for extraordinary transactions under the Securities Act. We request comment, however, on whether the filing upon first use requirement should be modified if under the Securities Act we permit filing later than upon first use (*i.e.*, when the disclosure document is filed). We also request comment on whether to retain the requirement to disclose the identity of participants and their interests if we do not adopt a corresponding requirement under the tender offer rules and the Securities Act requirements for tender offers. If we change either the filing requirement or the participant information requirement, should the change apply only to proxy statements relating to business combinations?

We proposed expanding Rule 14a–12 in 1992 to permit solicitations before filing and delivering a written proxy statement regardless of the existence of an opposing solicitation.[90] We ultimately determined not to adopt the proposal because ''the broad scope of current Rules 14a–11(d) (now Rule 14a–11) and 14a–12 reach virtually all contested and responsive solicitations.'' [91] We further noted that the need to extend Rule 14a–12 to all solicitations was mitigated by the proposal to allow registrants and other persons planning a solicitation to begin their solicitation on the basis of a publicly filed preliminary proxy statement.[92] However, given the pressures—both regulatory and market-induced—to disclose deal-related information immediately upon announcement, we now believe that the current rules may overly restrict communications among security holders and/or between a company and its own security holders. Based upon our experience with the 1992 liberalization of communications, we do not believe that further easing of restrictions would lead to abuse.

Under the proposed expansion of Rule 14a–12, management could engage more freely in communications regarding a prospective or pending acquisition. However, this proposal is not limited to takeover-related matters. For example, management could rely on the proposed safe harbor to obtain security holders' views in connection with certain corporate governance items that may require a security holder vote, such as the adoption or amendment of executive and director compensation plans, an increase in the number of authorized shares that may be issued, and the adoption or redemption of a security holder rights plan. We believe that management's ability to disseminate information on a more timely basis may result in more informed voting decisions by security holders and may increase the amount and quality of information generally available to all security holders.

We request comment as to whether there are certain instances when the requirement to deliver a proxy statement as soon as practicable would be too burdensome. In addition, are there any circumstances under which management or other parties may want to communicate that should not trigger the obligation to deliver a proxy statement at the earliest practicable date? For example, if a merger transaction was only under consideration by management, and no formal agreements were entered into, should it be necessary to send a proxy statement to security holders if the transaction does not materialize? As another example, management might find the proposed safe harbor useful to ''road-test'' an executive compensation proposal with large security holders, but not present the matter for a security holder vote if the reaction was negative. What impact would this have on smaller security holders?

We invite comments on whether the expansion of Rule 14a–12 to non-contested situations would have the intended effect of permitting management to communicate more freely with security holders and whether this would enhance the timing or quality of information given to security holders. One effect of the proposed expansion of Rule 14a–12 may be to eliminate any need for Rule 14a–11.[93] Would it be appropriate to eliminate Rule 14a–11 if we expanded Rule 14a–12 to cover all matters, whether or not they are contested?

As discussed above, one ''check'' on any conditioning effect that free communications might have on security holders is the fact that security holders will receive a mandated disclosure document in extraordinary transactions before making their tender or voting decision. In a tender offer, there is a mandated minimum 20-business day period between the time the disclosure document is disseminated and the expiration of the offer. As a general rule, however, there is no federally mandated time period for disseminating a proxy statement.[94] Many state laws, however, dictate that there be at least 10 and no more than 60 days between notice of the meeting and the meeting date. Generally, the state law notice and the federally mandated proxy statement are mailed together to security holders. During this period, security holders are able to assess the relevance and credibility of all written communications in light of the mandated disclosure. In some cases, state law permits a period so short that security holders may not have enough time to consider the information.

We request comment as to whether there should be a federally mandated solicitation period for mergers and similar transactions, given the free communications proposals and the need to digest the mandated disclosure in light of earlier communications. This period also would assure that record holders and beneficial owners alike would have enough time to consider the proxy materials. If a federally mandated

[88] Proposed Rule 14a–12(a)(2).

[89] The proposed expansion of communications would not expand a company's ability to secure promises to vote a certain way before a proxy statement is provided. *See* the Securities Act Reform Release, however, for proposed Rule 159, which would provide exemptions from the proxy rules for certain ''lock-up'' arrangements.

[90] Release No. 34–30849 (June 24, 1992) [57 FR 29564].

[91] Release No. 34–31326 (October 16, 1992) [57 FR 48276]. Comments on the proposal were mixed. Those who objected ''questioned whether there was a demonstrated need for the revisions and raised concern with the potential abuse that could arise.'' *Id*.

[92] *Id*. When a soliciting party uses a preliminary proxy statement to begin a solicitation, the form of proxy may not be included with the material distributed.

[93] Currently, Rule 14a–12 excludes matters covered by Rule 14a–11.

[94] Note, however, that there is a mandated 60-day solicitation period if the transaction is a roll-up. *See* Section 14(h)(1)(J) of the Exchange Act [15 U.S.C. 78n(h)(1)(J)]; Rule 14a–6(*l*) [17 CFR 240.14a–6(*l*); General Instruction I.2 to Form S–4 [17 CFR 239.25] and General Instruction G.2 to Form F–4 [17 CFR 239.34]. Also note that there is a requirement to send or give security holders a written information statement on Schedule 14C at least 20 calendar days before the meeting date or the earliest date on which corporate action may be taken if no meeting will be held. *See* Rule 14c–2(b) [17 CFR 240.14c–2(b)]. *See also* Release No. 34–33768 (March 16, 1994) [59 FR 13517]. ''Although the rules do not specify the number of days before the meeting by which registrants must make their proxy materials available for distribution to their beneficial owners, in order to comply with the timeliness requirement, the materials must be mailed sufficiently in advance of the meeting to allow five business days for processing by the banks and brokers and an additional period to provide ample time for delivery of the material, consideration of the material by beneficial owners, return of their voting instructions, and transmittal of the vote from the bank or broker to the tabulator.'' *Id*. (footnotes omitted).

solicitation period is adopted, how long should it be? Would 20 business days make sense so that it is harmonized with the mandated tender offer time period? Should it be 20 calendar days to conform with the information statement requirement, or should the information statement requirement be changed to 20 business days? Should the solicitation period be required only as a condition of the free communications safe harbor? Should it apply only to votes on business combinations?

We are particularly concerned about giving security holders time to consider proxy material in the case of street name holders—beneficial owners of securities who obtain their proxy material through banks, broker-dealers, or other nominees holding record title to the securities. Do street name holders receive correcting or updating material in a timely fashion? Would modifying the security holder communications provisions of the proxy rules to permit direct delivery of proxy statements and other soliciting materials to non-objecting beneficial owners facilitate more timely and fully informed voting decisions?[95]

b. ''Test the Waters'' Proxy Solicitations

We also are considering a broader exemption from the proxy rules that would not require delivery of a proxy statement after communicating with security holders. The only condition would be that no proxy card or other authorization be requested or sent. In effect, such a rule would permit both written and oral ''test the waters'' proxy solicitations.[96] Such an exemption would be crafted as part of Rule 14a–2,[97] which sets forth a number of solicitations that are exempt from the proxy statement disclosure and dissemination requirements. Would a broad exemption remove the need for any of the current exemptions in Rule 14a–2?[98] Would it remove the need for Rules 14a–11 and 14a–12? Would the same purpose be accomplished by amending Rule 14a–2(b)(1) to eliminate the exceptions, so the rule could be used by the company itself and interested parties?[99] Should the ''test the waters'' communication be required to include any minimal information?

Unlike Rule 14a–12, the ''test the waters'' proxy rule would not require that written communications be filed with the Commission.[100] However, we are considering requiring communications to be filed in order to harmonize with the treatment of written communications under the Securities Act and the Williams Act. Commenters should address whether the need to file material would reduce the usefulness of the ''test the waters'' proxy exemption. Would a filing requirement provide benefits to security holders by assuring that information is available on a widespread basis? If we do require filing of material under this exemption, should it be a ''notice'' filing only as opposed to requiring the communication itself to be filed? Should the filing requirement be limited to the business combination context? Or should the ''test the waters'' proxy solicitation be unavailable for business combination communications, leaving Rule 14a–12 as the sole safe harbor for these communications?

We request comment on whether a ''test the waters'' proxy rule would benefit security holders. This change would be consistent with the general theme of easing restrictions on communications under the Securities Act as expressed in this release and the Securities Act Reform Release. On the other hand, does the current requirement to follow up communications with delivery of a proxy statement impose a beneficial discipline on the solicitation process by discouraging premature insupportable communications? Should we require a ''cooling-off period'' (*e.g.*, 20 or 30 days) between the ''test the waters'' solicitation and a request for a proxy card? Commenters should advise whether they think the ''test the waters'' rule would work, not just in the context of takeover-related matters, but also in the context of any corporate governance matters or other topics that are likely to be the subject of a proxy solicitation.

c. Eliminate Confidential Treatment of Merger Proxies

Currently, preliminary proxy material relating to certain reclassifications and business combinations, other than going-private or roll-up transactions,[101] may be filed confidentially with the Commission.[102] In that case the proxy material is not filed on EDGAR and is not available for public inspection.[103] Due to the changing realities of today's markets, and the expressed need by many companies for an expanded safe harbor permitting early disclosure of information before a registration statement is on file, we propose to eliminate confidential treatment for merger proxy statements.[104] Often companies that invoke confidential treatment for their merger proxy statements already have made extensive pre-filing disclosure of information beyond what is permitted by current Securities Act Rule 145(b) and the proxy rules. It is unclear to us why a company that broadcasts extensive deal-related information to the securities markets soon after a definitive merger agreement is executed needs confidential treatment for the same information contained in its proxy materials. In some instances, the information disclosed to the market is more extensive than the information disclosed in the preliminary proxy statement filed confidentially.

We previously proposed to eliminate confidential treatment for all preliminary proxy statements, including those relating to mergers, in 1992.[105] The Commission ultimately decided to preserve confidential treatment for merger transactions in light of commenters' concerns that the inability to file documents relating to business combinations or acquisitions on a non-public basis would cause premature disclosure of information. The concern articulated was that merger negotiations might not be ripe at the time of filing and public disclosure ''would adversely affect the timing of such transactions and thereby their costs, since they could not obtain Commission review of the offering documents while the

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[95] *See* Rules 14a–13 [17 CFR 240.14a–13], 14b–1 [17 CFR 240.14b–1], 14b–2 [17 CFR 240.14b–2] and 14c–7 [17 CFR 240.14c–7].

[96] Rule 14a–9 would, of course, impose antifraud liability on these communications.

[97] 17 CFR 240.14a–2.

[98] In particular, the exemption for solicitations that do not seek the power to act as a proxy for another security holder and do not furnish or otherwise request a form of revocation, abstention, consent or authorization in Rule 14a–2(b)(1) and the ''ten person'' exemption in Rule 14a–2(b)(2). [17 CFR 240.14a–2(b)].

[99] A person relying on Rule 14a–2(b)(1) currently is not permitted to change the exempt proxy solicitation to a non-exempt one and send a proxy card to security holders. This position would have to be modified to accomplish the objectives of the ''test the waters'' proxy solicitation proposal.

[100] Currently, communications exempt under Rule 14a–2 need not be filed, except that notice filings are required for certain communications under Rule 14a–2(b)(1) and the roll-up solicitation rule, Rule 14a–2(b)(4).

[101] A roll-up transaction is any transaction or series of transactions that directly or indirectly, through acquisition or otherwise, involves the combination or reorganization of one or more ''finite-life'' entities (usually limited partnerships) where the securities to be issued are publicly registered. *See* Release No. 33–6900 (June 17, 1991) [56 FR 28979]; Release No. 33–6922 (October 30, 1991) [56 FR 57237]; Release No. 33–7113 (December 1, 1994 [59 FR 63676]; and the 900 series of Regulation S–K.

[102] Rule 14a–6(e)(2) [17 CFR 240.14a–6(e)(2)].

[103] The proxy material is filed publicly in definitive or final form when the staff has no further comments or when a related registration statement is filed that wraps-around (or incorporates) the information contained in the proxy statement.

[104] When the transaction is a stock merger, this would eliminate the need for the current practice of filing a (confidential) proxy statement before filing the related (public) registration statement.

[105] *See* Release No. 34–30849 (June 24, 1992) [57 FR 29564].

participants were preparing for the public announcement of the transaction.'' [106] In light of the current practice of disclosing extensive deal-related information before the filing of a proxy statement, we do not believe that preliminary merger proxy materials continue to merit confidential treatment.

The elimination of confidential treatment of merger proxy statements would harmonize the treatment of preliminary proxy statements with preliminary prospectuses and tender offer materials, which are publicly available when filed. In addition, security holders would obtain faster access to information concerning extraordinary transactions. Without confidential treatment, security holders also would have more time to consider and respond to proposed mergers and acquisitions.

We request comment on whether confidential treatment should be retained under any limited circumstances. Should confidential treatment be available if the parties to the merger transaction do not rely on the new safe harbors permitting increased communications?

Some have expressed the view that confidential treatment makes registrants more comfortable with amending their materials to comply with staff comments, as the marketplace is not aware of the nature of the changes. If a proxy statement is filed publicly, the trading markets may act on the information disclosed and there may be liability concerns if the information disclosed is revised. Do commenters believe that these concerns outweigh the benefits of public filing? If so, how are merger proxies different from exchange offers and other types of filings that are not accorded confidential treatment?

We note that when the wrap-around procedure is used, registration statement exhibits are filed on a delayed basis. Would registrants be put at a significant disadvantage if they were required to file all exhibits when they filed their registration statements publicly, or would they continue the practice of filing exhibits when available? Should we continue to permit the filing of a proxy statement before the wrap-around registration statement, even though the proxy statement would be public?

d. Timing of Filings

In addition to the substantive changes to the proxy rules proposed above, we propose procedural amendments to the proxy filing requirements. Rule 14a-6(b) requires definitive material to be ''filed with, or mailed for filing to, the Commission not later than the date such material is first sent or given to any security holders.'' Several other proxy and information statement filing rules contain similar language.[107] The option to mail proxy materials to the Commission is no longer relevant because companies that are subject to the proxy rules are now required to file electronically.[108] We propose to update these filing rules to eliminate the ''mailed for filing'' language in the rules. Filers would be required to file definitive material with the Commission no later than the date they send or give proxy materials to security holders.

We believe that making definitive material available to security holders, the market and the staff as promptly as possible is important. EDGAR, and other sources of electronic filings, including the Internet, have become essential in supplying the investment community with public information. Any discrepancy between the time information is first disseminated and the time it is filed with the Commission could place those who rely on our filings for public information at a disadvantage.

Filers (particularly those in time zones later than the Commission's) have argued that filing proxy materials on the same day is a hardship. It is not clear why this is the case, in view of the treatment of tender offer materials. Such materials must be filed ''as soon as practicable'' on the date the tender offer commences, and filers comply with that requirement without any apparent difficulty.[109] While the proposed electronic filing rule acknowledges that some information may be released when it is not possible to file it with the Commission, we believe that material distributed during Commission business hours should be available at that time to the public through our filing system.[110]

In connection with this change to the proxy filing rules, we propose to update our electronic filing rules to provide guidance to filers as to when to file material that is disseminated outside normal Commission business hours. The issue of when to file this type of material arises most often in the context of proxy soliciting material, although it may, on occasion, arise for tender offer filings. Our electronic filing rule already requires material that may be ''mailed for filing'' to be filed on or before publication or distribution; in the event of publication or distribution on a non-business day, the rule permits filing ''as soon as practicable on the next business day.'' [111] We propose to modify this rule to eliminate ''mailed for filing'' and refer to material that is required to be filed on the same day it is disseminated. The revised rule would continue to permit filing as soon as practicable on the next business day if the material was disseminated on a non-business day, but would make it clear that dissemination after the Commission's business hours is treated the same as dissemination on a non-business day. The revised rule would apply to tender offer filings as well as proxy filings.

We solicit comment on the nature and extent of problems encountered with the timing requirement for filing proxy and tender offer material. Commenters should consider whether the proposed rule provides adequate guidance to filers disseminating materials outside of our business hours. Alternatively, the rule could be amended to require filing within one business day of dissemination instead of ''as soon as practicable on the next business day,'' or by a certain time on the next business day (*e.g.*, 9:00 a.m. or 12:00 noon). We believe security holders and the public in general should be able to access public filings at the earliest possible time. Currently, filings are accepted on EDGAR as late as 10:00 p.m., although filings submitted after 5:30 p.m. receive a filing date of the next business day and are not available to the public until the next business day. We could amend Rule 13(d) of Regulation S–T to require submission of proxy material by 10:00 p.m. on the same day it is disseminated to security holders, unless dissemination occurs on a day that the Commission is not open.

7. Free Communications Under the Tender Offer Rules

A bidder's ability to communicate with security holders and the markets in

[106] *Id.*

[107] *See* Rules 14a–4(f) [17 CFR 240.14a–4(f)], 14a–6(c) [17 CFR 240.14a–6(c)], 14a–11(c) [17 CFR 240.14a–11(c)], 14a–12(b) [17 CFR 240.14a–12(b)] and 14c–5(b) [17 CFR 240.14c–5(b)].

[108] *See* Rule 101(a)(iii) of Regulation S–T [17 CFR 232.101(a)(iii)]. Registrants may use paper only if a hardship exemption is available. Foreign private issuers that are not required to file electronically are exempt from the proxy and information statement requirements. 17 CFR 240.3a–12–3.

[109] *See* Rule 14d–3(a) [17 CFR 240.4d–3(a)]. *See also* Rule 14d–3(b) [17 CFR 240.14d–3(b)] (filing of additional tender offer material).

[110] In an interpretive letter, the Division of Corporation Finance stated that, where it is impracticable to file proxy materials on the same business day, it is consistent with the intent of Rule 13(d) to allow issuers and others to file electronically ''promptly on the next business day following distribution to security holders.'' *See Henry Lesser, Esq.* (November 28, 1995). This proposal would supersede that interpretation. material disseminated during the Commission's business hours would be required to be filed on that day.

[111] *See* Rule 13(d) of Regulation S–T.

general regarding a proposed offer is limited by the concept of ''commencement'' in the tender offer rules. A bidder is required to file and disseminate information regarding its offer upon ''commencement.'' Commencement is the date an offer starts for purposes of the tender offer rules. A bidder's public announcement of certain minimal information about an offer may trigger commencement and can result in certain filing and disclosure obligations for the bidder, depending upon whether cash or stock is offered.[112] Similarly, the target cannot make a recommendation regarding the offer without triggering filing and disclosure obligations.

a. Disclosure Triggering Commencement

Currently, a third-party cash tender offer is deemed to commence on the date the bidder discloses certain information (''announcement''),[113] *unless* the bidder does one of two things within five business days of the announcement date. If the bidder files a tender offer statement with the Commission, and disseminates specified information to security holders, the offer is deemed to commence on the date of filing and dissemination, not on the date of announcement.[114] If the bidder makes a subsequent public announcement that it has determined not to proceed with the offer, the initial announcement will not be deemed to commence an offer.[115] If the bidder neither complies with the tender offer rules nor withdraws the offer, the offer is deemed to commence upon public announcement, resulting in filing and disclosure violations. We refer to this requirement as the ''five business day rule.''

Stock tender offers are not subject to the same five business day rule. Instead, stock offers are deemed to commence when a final prospectus is first disseminated to security holders.[116] A bidder can publicly announce its intention to make a stock offer, so long as the announcement contains only the limited information permitted by the Securities Act.[117] This announcement will *not* stitute commencement of the offer if the bidder promptly files a registration statement relating to the securities offered.[118]

In 1979, we recognized the ''unsettling and disruptive effects'' that cash tender offers can have on the trading markets when we proposed the five business day rule.[119] In adopting the rule, we noted it was common practice for bidders to publicly announce the material terms of their cash offers in advance of formal commencement.[120] We observed that pre-commencement public announcements regarding cash tender offers can trigger market mechanisms, such as arbitrageur activity, and cause security holders to make investment decisions with respect to a tender offer on the basis of incomplete information. The five business day rule was designed to prevent bidders from publicly announcing the material terms of an offer before formally commencing the offer.

Based on our experience with tender offers and the factors influencing the treatment of communications discussed earlier, we now believe that the communications restrictions imposed on bidders in both cash and stock tender offers may unnecessarily restrict communications with security holders. We believe that the reasoning behind easing restrictions on communications for other types of business combinations applies equally to tender offers. Unrestricted communications should result in the availability of more information to security holders on a timely basis. As a result, security holders should have a greater opportunity to inform themselves and assess the specific terms of a proposed offer. In light of the fact that tender offers generally remain open for a short period of time, usually 20 business days, advance notice of an offer should benefit security holders.

In an effort to increase bidders' ability to communicate with security holders, we propose to amend the provisions relating to commencement. Specifically, we propose to eliminate the obligation to commence or withdraw a cash offer within five business days of making a public announcement. We also propose to eliminate the requirement to promptly file a registration statement after public announcement of a stock offer. The revised rule would permit bidders to engage in free communications before commencement.[121] The communications permitted under the safe harbor, however, would not include a transmittal form or instructions on how to tender into the offer.

In place of the five business day rule and the requirement to promptly file a registration statement, we propose to require bidders to file and disseminate the required information when tenders are first requested. The Williams Act and the tender offer rules were designed to assure that there is adequate information available to security holders so that they can make an informed investment decision before tendering into an offer. The public announcement of an offer should not trigger the need to file or disseminate information. Instead, the focus should be on when security holders are provided the means to tender their shares into the offer. That is the time when information required by the tender offer rules must be available to security holders.[122]

Under the proposal, we would require bidders in both stock and cash tender offers to satisfy the filing and dissemination requirements upon first disseminating transmittal forms (the tender offer equivalent of a proxy card) or disclosing to security holders instructions on how to tender into an offer. For example, if a bidder published an advertisement that instructed security holders how to contact the bidder and receive information on tendering securities in the offer (*e.g.*, by publishing a telephone number for security holders to call to receive more information on how to tender), then the bidder would be required to comply with the filing and dissemination

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[112] Issuer tender offers are not subject to pre-filing communication restrictions; thus no substantive change to the issuer tender offer rule is necessary, although we do propose some conforming changes.

[113] If solely cash and/or securities exempt from registration under Section 3 of the Securities Act are offered, then a public announcement of: the identity of the bidder, the identity of the subject company, the amount and class of securities sought and the price or range of prices offered will commence the tender offer. *See* Rule 14d–2 (b) and (c). [17 CFR 240.14d–2 (b) and (c)].

[114] *See* Rule 14d–2(b)(2). [17 CFR 240.14d–2(b)(2)].

[115] *See* Rule 14d–2(b)(1). [17 CFR 240.14d–2(b)(1)].

[116] *See* Rule 14d–2(a)(4) [17 CFR 240.14d–2(a)(4)].

[117] *See* Rule 135–2(a)(4) [17 CFR 230.135(a)(4)].

[118] *See* Rule 14d–2(e) [17 CFR 240.14d–2(e)].

[119] *See* Release No. 34–15548 (February 5, 1979) [44 FR 9956].

[120] *See* Release No. 34–16384 (November 29, 1979) [44 FR 70326].

[121] Proposed revision to Rule 14d–2. Shortly after adopting the five business day rule, the Commission authorized the issuance of an interpretive release discussing the staff's views with respect to when certain tender offers commence under Regulation 14D and 14E. *See* Release No. 16623 (March 5, 1980) [45 FR 15521]. If we rescind the five business day rule as proposed, many of the interpretations in the release regarding commencement would no longer be applicable.

[122] Although we propose to change the manner in which commencement of an offer is triggered, we are not defining the term ''tender offer'' or changing our position on what activities may be deemed to constitute a tender offer. Nothing in these proposals affects the fact that the tender offer rules may be triggered by activities that function as unconventional tender offers. We reiterate our position that the term ''tender offer'' should be interpreted flexibly in accordance with the intended purposes of Sections 14(d) and 14(e). A determination of whether a particular transaction or series of transactions constitutes a tender offer will, of course, depend on the particular facts and circumstances and is not limited to ''conventional'' tender offers. *See* Release No. 34–15548 (Feb. 5, 1979) [44 FR 9956].

requirements at that time. The 20 business day period would begin to run at this time.

The five business day rule and the requirement to file a registration statement promptly may serve as a protection against bidders making tender offer announcements without the intent or ability to follow through. In order to prevent the development of such practices if these requirements are eliminated, we propose a new rule to make it clear that such conduct would be prohibited as fraudulent under the tender offer rules.[123] The rule would prohibit a person from announcing a tender offer: without the intent to commence and complete the offer; with the intent to manipulate the price of either the bidder's or the target's securities; or without a reasonable belief that the person will have the means to purchase the securities sought. Are there other provisions that should be included to prevent inappropriate use of the free communications safe harbor, while not deterring legitimate communications?

We solicit comment on whether the five business day rule or the requirement to file a registration statement promptly provide investors, bidders, targets or security holders with any benefits that the proposed rule would not provide. Do these requirements cause bidders to provide security holders with needed information sooner?

We also ask whether the proposed rules increase the risk that investors will make investment decisions based solely on a bidder's pre-commencement communications without adequate information. Security holders might sell into the market based on a bidder's pre-filing communications. This risk, however, exists today under the current rules, although for a more limited time. Should the tender offer rules focus on this risk? Is the risk of market activity, based on incomplete information, greater for cash offers than it is for stock offers? If so, is it more important to maintain the five business day rule than to harmonize cash tender offers with other types of business combinations? Would the proposed obligation to file and disseminate information when security holders are first solicited to tender using a transmittal form adequately protect security holders? Is there less of a need to permit bidders to provide information to the marketplace before filing than there is for other types of business communications because cash tender offer material may be prepared and disseminated so quickly?

[123] Proposed Rule 14e–8.

Currently, bidders are required to hand deliver a copy of the tender offer statement and additional tender offer materials to the target company and any other bidder for the same class of securities.[124] In addition, we propose to require delivery to the same parties of the first written communication a bidder makes that sets forth its identity, that of the target company, the amount and class of securities sought, and the price or range of prices offered.[125] Is this needed, or would the fact that the communication must be filed with the Commission provide adequate notice to the target company and any other bidders?

Each communication made in reliance on the safe harbor would be required to prominently advise security holders to read the complete tender offer material, consistent with the Securities Act and proxy rule proposals.[126] Should we require any additional information in these communications? For example, should a bidder be required to disclose information such as its identity, the target's identity, the form and amount of consideration offered, any conditions to the offer, and the bidder's interest(s) in the target, including security ownership? This would be similar to the current requirement in Rule 14a-12 that specified information be contained in any communications made before the filing of a proxy statement.

Currently, the tender offer rules require specified information to be included in any communications made *after* the bidder has commenced the offer and disseminated the complete tender offer disclosure document. These ''additional tender offer materials'' must include basic information about the identity of the bidder and subject company, the terms and the expiration date. [127] We propose to retain this requirement. Does the requirement serve a useful purpose in preventing confusion, particularly where there are competing offers? Would it be more important to require specific information in pre-commencement communications than in post-commencement additional material?

We also propose to revise the rules to permit targets the same freedom to make pre-commencement communications as bidders. A target (or other person who makes any solicitation or recommendation to security holders regarding the offer) must provide specified information to security holders and file a Schedule 14D–9 with the Commission on the same date that it makes a recommendation regarding the offer.[128] This obligation is triggered by the target's communications even if the bidder has not yet commenced the tender offer. We propose to amend the rule so this obligation is not triggered by communications made by the target before the bidder has filed its tender offer statement and commenced the offer. Targets would be required to file pre-commencement communications on first use. This would put the bidder and target in an equal position to engage in free pre-commencement communications. We solicit comment on whether there is any reason to treat bidders and targets differently. We also ask whether the target's communications should be required to contain a statement advising security holders to read the complete recommendation when it is available.

b. Methods to Disseminate an Offer

The tender offer rules currently provide for several non-exclusive methods to ''commence'' an offer. If one or more of the specified methods are followed,[129] the tender offer will be deemed ''published, sent or given to security holders''' for purposes of Section 14(d)(1) of the Exchange Act. The methods of disseminating information that will commence an offer include: (i) long form publication; [130] (ii) summary advertisement; [131] (iii) summary advertisement or long form publication using stockholder lists and security position listings; [132] and (iv) if securities are to be offered as consideration, publishing, sending, or giving copies of a final prospectus to security holders.[133] While a tender offer can be commenced in other ways,[134] the

[124] *See* Rule 14d–3(a)(2).

[125] The current rule also requires telephonic notice and mailing of tender offer material to any securities exchange or the NASD on which the securities are listed or traded. We do not propose to extend this to cover pre-commencement communications, as the exchanges and the NASD are moving away from relying on paper filings and increasingly using electronic databases to obtain EDGAR filings.

[126] *See* proposed Rules 13e–4(c) and 14d–2(b)(2).

[127] *See* Rule 14d–6(c), proposed to be redesignated Rule 14d–6(b).

[128] *See* Rule 14d–9. A target must respond to a tender offer by communicating a position on the offer no later than ten business days from the date the offer is disseminated. *See* Rule 14e–2.

[129] A bidder can use more than one method provided it complies fully with each method used.

[130] *See* Rule 14d–2(a)(1) [17 CFR 240.14d–2(a)(1)]. *See also* Rule 14d–4 for these methods of dissemination, which also are means of publicizing changes to the initial tender offer information.

[131] *See* Rule 14d–2(a)(2) [17 CFR 240.14d–2(a)(2)].

[132] *See* Rule 14d–2(a)(3) [17 CFR 240.14d–2(a)(3)].

[133] *See* Rule 14d–2(a)(4) [17 CFR 240.14d–2(a)(4)].

[134] *See* Rule 14d–2(a)(5) [17 CFR 240.14d–2(a)(5)] providing that an offer may commence when ''the tender offer is first published, sent or given to security holders by the bidder by any means not

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methods listed above are generally regarded as safe harbors and will give the bidder comfort that the offer has commenced under the tender offer rules. Commencement is important because if an offer is not deemed to commence, the required 20 business day period will not begin to run.[135]

Long form publication requires the bidder to publish extensive information regarding the tender offer in a newspaper.[136] Before we adopted the summary advertisement method in 1979,[137] long form publication was the accepted means of dissemination. Due to escalating costs and scheduling problems associated with long form publication, summary publication has replaced long form publication as the common means of disseminating a tender offer. Given that long form publication is not viewed as cost-effective and is rarely used by bidders, we propose to eliminate it as a means of disseminating information about a tender offer.[138] We solicit comment, however, on whether the method should be retained, perhaps in connection with publication on the Internet in combination with other methods of dissemination.

Under the summary publication method, a bidder must publish an advertisement in a newspaper and furnish its tender offer materials with reasonable promptness to any security holder who requests a copy. The advertisement must contain, and is limited to, certain specified information.[139] Bidders are not permitted to include a transmittal form with the summary advertisement.[140]

otherwise referred to in paragraphs (a)(1) through (4) of this section.''

[135] *See* Rule 14e–1(a) [17 CFR 240.14e–1(a)].

[136] A bidder must publish the information specified in Rule 14d–6(e)(1) [17 CFR 240.14d–6(e)(1)].

[137] *See* Release No. 34–16384 (November 29, 1979) [44 FR 70326].

[138] We propose this change both for issuer and third-party tender offers. *See* Rule 13e–4(e)(i) (issuer) and 14d–4(a)(1) (third party).

[139] *See* Rule 14d–6(a)(2) [17 CFR 240.14d–6(a)(2)]. Bidders, however, generally disclose more information in their summary advertisements than is currently permitted under the rules. There is some judicial support for the disclosure of additional information. *See Crouse-Hinds Co.* v. *Internorth, Inc.*, 518 F. Supp. 416 (N.D.N.Y. 1980) (permitting disclosure of conditions to an offer in a summary advertisement). Based on our proposals to permit free communications, we would amend Rule 14d–6(a)(2) to delete the language limiting the information that can appear in a summary advertisement. We would retain the prohibition against including a transmittal form with the summary advertisement. However, the summary advertisement could (and should, if it is designed to commence the offer) include the means to tender, *e.g.*, a telephone number to call to obtain the complete tender offer materials, including the transmittal form.

[140] *See* Rule 14d–6(e)(3) [17 CFR 240.13d–6(e)(3)].

Security holders therefore must request and receive complete information from the bidder before they can tender into the offer.

Summary advertisements alone usually are not sufficient to prompt a large number of security holders to request a copy of the tender offer materials. Therefore, bidders generally will supplement their solicitation of tenders with a request for a stockholder list under Rule 14d–5, in addition to publishing a summary advertisement. Under this rule bidders can request a stockholder list from the target. The target has the option of either mailing the offering materials to security holders at the bidder's expense, or providing the bidder with a stockholder list of record holders prepared as of the most recent practicable date.[141]

We solicit comment on whether we should eliminate dissemination by summary advertisement alone (without the use of stockholder lists) to make the cash tender offer regulations more comparable to other business combination methods. Should the stockholder list requirement apply to amendments disclosing material changes as well as to initial tender offer material? We note that delivery is required if registered securities are offered, given that prospectuses must be delivered as required by the Securities Act. Similarly, delivery of a disclosure document would be necessary if security holder approval was solicited under the proxy rules.[142] While we note that bidders typically use stockholder lists, we solicit comment on whether there are circumstances when the use of stockholder lists is impracticable.

In addition, we solicit comment on whether to retain the current requirement that bidders using stockholder lists also publish summary advertisements. The summary advertisement serves as an additional means of publicizing tender offer information while it is in the process of being mailed to security holders. This may be particularly useful in the short time frame of a cash tender offer.

Finally, we request commenters' views on whether we should permit means of disseminating tender offer material other than those described. The increasing use of electronic media, particularly the Internet, provides an avenue for widespread access to information. On the other hand, many security holders rely on more traditional sources of information, such as newspapers and the mail. We do not want to put these security holders at a disadvantage in obtaining tender offer information. Therefore, we are not proposing that electronic media be permitted as a sole means of dissemination. We are, however, interested in comment as to how electronic media are currently used in the tender offer area and whether there are electronic sources of information that are as commonly available and widely followed as the newspapers of general circulation used for summary advertisements.[143]

C. Permit Exchange Offers To Commence on Filing

1. Early Commencement

The Commission first adopted the requirement for an effective registration statement before commencing an exchange offer in 1979.[144] In proposing the requirement, we noted that we intended to codify ''the current practice of commencing the bidder's offer when its registration statement under the Securities Act becomes effective.'' [145] In 1983, a Commission Advisory Committee [146] noted the regulatory disincentives to offering securities as consideration [147] in a tender offer and recommended that exchange offers be permitted to commence as soon as the registration statement is filed.[148]

[141] In Part II.E.4 below, we propose to expand the stockholder list rule to make it more useful by including beneficial owner information.

[142] When delivery is required by the rules, this can be accomplished by using electronic media, provided the bidder satisfies the guidelines set forth in Release No. 33–7233 (October 6, 1995) [60 FR 53458], regarding electronic delivery. For example, a summary advertisement for a tender offer could contain a consent form for a security holder to indicate his or her willingness to receive the complete tender offer materials by means of a specified electronic medium.

[143] Rule 14d–4(b) [17 CFR 240.14d–4(b)] provides that publication in all editions of a daily newspaper with a national circulation is deemed to constitute adequate publication.

[144] Release No. 34–16384 (November 29, 1979) [44 FR 70326, 70338].

[145] Release No. 34–15548 (February 5, 1979) [44 FR 9956].

[146] *See Advisory Committee on Tender Offer Report on Recommendations* (July 8, 1983). We established the Committee to examine the tender offer process and other techniques of acquiring control of public issuers and to recommend legislative and/or regulatory changes deemed appropriate or necessary. Release No. 34–19528 (February 24, 1983) [48 FR 9111].

[147] The Committee stated that ''there are significant regulatory impediments to undertaking an exchange offer rather than a cash tender offer, which impediments are not necessary for the protection of shareholders'' and that ''regulation should not be a principal factor in determining the method of acquisition.'' Advisory Committee Report at 16. On that basis, the Committee issued Recommendation 5: Cash and securities tender offers should be placed on an equal regulatory footing so that bidder, the market and shareholders, and not regulation, decide between the two.

[148] Recommendation 12 of the Committee's Report stated:

In order to put cash and stock tender offers on a more level playing field, we propose to permit ''early commencement'' of third-party exchange offers. Currently, stock tender offers commence on the date the related registration statement becomes effective. Under today's proposal, exchange offers could commence upon the filing of a registration statement, or on a later date selected by the bidder.[149] As a result, the regulatory bias against stock offers would be reduced. We request comment as to whether the current regulatory scheme is a significant factor in deciding how offers are structured. Is it important to harmonize the regulatory treatment of cash and stock offers? If so, does the proposal accomplish this goal while continuing to protect investors?

Under the proposal, a bidder that wished to ''commence'' an exchange offer by requesting tenders would have to satisfy several requirements. First, the bidder would have to file a registration statement relating to the securities offered. The preliminary prospectus would need to include all information, including pricing information, necessary to allow security holders to make an informed investment decision. Information could not be omitted under Rule 430 or Rule 430A of the Securities Act.[150] Second, the prospectus would have to be disseminated to all security holders. Third, a tender offer statement would have to be filed with the Commission. The filing of a registration statement alone would not suffice. The bidder would have to file both a registration statement and a tender offer statement [151] and furnish a preliminary or final prospectus to security holders.[152] Security holders would have the right to withdraw shares tendered at any time until they were purchased, and bidders could not purchase shares until after the registration statement was effective.[153]

The ''early commencement'' proposal is limited to third-party exchange offers because the need to put cash and stock offers on a more level playing field appears to arise most often in that context. We ask for comment, however, on whether issuer exchange offers present the same timing and competitive concerns. Should the proposal be expanded to issuer exchange offers?

Going-private and roll-up transactions involving exchange offers would not be permitted to commence before the effectiveness of a related registration statement. These types of transactions often involve material disclosure issues. We continue to believe that the staff should have a full opportunity to review and comment upon the documents filed in connection with these transactions before commencement of an exchange offer in order to ensure that the rules are complied with and the appropriate level of disclosure is made to security holders.

Under the proposal, early commencement would be at the option of the bidder. The filing of a tender offer statement would serve as notice to the Commission and the public that the offer commenced and a prospectus was disseminated to security holders. A bidder could commence upon filing the registration statement, or wait for staff comments or effectiveness before actually commencing its offer.

We request comment on whether a bidder should be required to commence its offer as soon as it files a registration statement.

Alternatively, should bidders be free, as the rule proposes, to determine when a stock offer commences? If we do not require bidders to commence on filing the registration statement, should there be an outside date on which the exchange offer must commence (*e.g.*, no later than effectiveness of the related registration statement or no later than five or ten business days after effectiveness)?

The early commencement proposal is intended, in part, to provide bidders with an incentive to disseminate their offering materials broadly to all security holders at the earliest practicable date. The proposal would not prohibit bidders from making selective communications in addition to or instead of using the early commencement procedure to disseminate material to all security holders. When combined with the proposals above regarding communications, however, the availability of early commencement should encourage full and fair disclosure to all security holders. We request comment as to whether bidders would continue to communicate with large institutional investors to the exclusion of small retail investors. Is it necessary to require bidders to disseminate a prospectus to all security holders as soon as it is filed with the Commission? If we require delivery, however, the preliminary prospectus might include certain information that is not complete or accurate. In light of the inherent limitations on the information available to bidders that could be included in a preliminary prospectus, would mandatory dissemination to all security holders benefit or harm small retail investors?

The ability to commence upon filing may not be sufficient to level the playing field if bidders are not assured of having an effective registration statement within a reasonable period of time. While cash offers can expire after a minimum of 20 business days, stock offers could not expire under the proposal until the related registration statement became effective. Therefore, we solicit comment on whether expedited staff review is necessary to effectively harmonize the regulatory treatment of cash and stock tender offers. If so, how short would the Commission staff's review and comment period need to be in order to assure timely completion of a stock tender offer? Would it be helpful if the staff committed to an expedited review of stock tender offers whenever a competing cash tender offer emerges? Would it be necessary to provide for some form of accelerated effectiveness for stock offers to fully balance the treatment of cash and stock offers?

One way to achieve this balance would be to allow or require some or all exchange offers registered on Form C and Form SB–3 [154] to become effective

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Bidders should be permitted to commence their bids upon filing of a registration statement and receive tenders prior to the effective date of the registration statement. Prior to effectiveness, all tendered shares would be withdrawable. Effectiveness of the registration statement would be a condition to the exchange offer. If the final prospectus were materially different from the preliminary prospectus, the bidder would be required to maintain, by extension, a 10-day period between mailing of the amended prospectus and expiration, withdrawal and proration dates.

[149] Proposed Rule 14d–4(b).

[150] Generally, a prospectus that is used before effectiveness may omit certain pricing information including the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices or other matters dependent upon the offering price. *See* Rule 430 [17 CFR 230.430]. A prospectus in a registration statement that is declared effective may also omit certain syndicate, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices and other information that is dependent upon the offering price, delivery dates, and terms of the securities dependent upon the offering date. *See* Rule 430A. [17 CFR 230.430A].

[151] Generally, tender offer statements in exchange offers incorporate by reference substantial portions of the information contained in the prospectus in response to the various disclosure requirements. Incorporation by reference would continue to be available under the proposal.

[152] Under the proposal, a bidder could disseminate a preliminary prospectus without requesting tenders, as permitted under the current rules, and not trigger commencement.

[153] Proposed Securities Act Rule 162.

[154] As noted in the Securities Act Reform Release, Form C (and Form SB–3 for small business issuers) would be the successor to Forms S–4 and F–4. If

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on filing,[155] or allow the bidder to specify the date after filing on which the registration statement would become effective.[156] This approach would provide bidders with greater certainty as to when their offer could close and shares could be accepted in the offer. ''Early commencement'' would then be unnecessary. This approach would allow bidders to freely decide between offering cash or stock without concern for regulatory delay. Of course, the staff would not have an opportunity to review the information before it is disseminated to security holders, but could review it after effectiveness just as it now reviews cash tender offer materials after they are mailed to security holders. We would not extend this approach to going-private or roll-up transactions. If this approach were permitted, should it be limited to third-party tender offers or also extend to issuer tender offers? Do the same timing concerns apply to mergers? If so, and this approach is adopted, should it apply to mergers as well? Should automatic effectiveness be limited to bidders entitled to use Form B?

We also are considering whether to harmonize the proxy rules with the tender offer rules by providing a proxy analogue to the ''early commencement'' proposal. If we did this, we would permit proxy cards in connection with mergers and similar business combinations to be sent with a preliminary proxy statement/prospectus, rather than requiring that they accompany only a definitive proxy statement/final prospectus. Proxies may be revoked at any time before the vote, just as tenders may be withdrawn before the offer expires. The vote could not take place until after the proxy statement was definitive or the registration statement was effective, and security holders would have to be given information about material changes in sufficient time to act on it, as discussed below in connection with exchange offers. Would this procedure be useful in mergers? Is the merger situation different from the tender offer situation; would there be greater risk that security holders would vote on the basis of premature or incomplete information and not receive updating or corrective information in a timely fashion? In particular, would street name holders receive this information in sufficient time to make an informed voting decision?

We have considered how the ''early commencement'' proposal interacts with our rules regarding stock purchases outside a tender offer. Regulation M[157] prohibits purchases of the bidder's securities during an exchange offer's restricted period, while Rule 10b–13[158] prohibits purchases of the target's securities once the offer is publicly announced. The Regulation M restricted period begins as of the date that the exchange offer is commenced, *i.e.*, when the bidder has first published, sent or given security holders the means to tender. In contrast, the restrictions of Rule 10b–13 start as of the time the offer is first publicly announced to security holders, which can be before the offer commences. We believe these rules would operate appropriately in the ''early commencement'' context, but solicit commenters'' views.

2. Dissemination of a Supplement and Extension of the Offer

The Division of Corporation Finance staff decides whether to review a registration statement after it is filed, along with a related tender offer statement, based upon its selective review criteria. Under the ''early commencement'' proposal, the bidder already may have disseminated the combined prospectus/tender offer before staff comments are received. If the staff had material comments, the bidder would be required to file and disseminate a prospectus supplement, or possibly a post-effective amendment to the registration statement.

We propose to require bidders using ''early commencement'' to disseminate supplements to disclose any material changes, whether as a result of staff review, or due to any other material changes in the information previously disclosed. If a supplement contained material information, the exchange offer would need to remain open for a minimum period of time after a supplement was sent, as discussed below. The proposed rule would require a bidder to provide sufficient time for security holders to reconsider their investment decision (*i.e.*, by withdrawing previously tendered shares or tendering shares not yet tendered) based upon the additional information.

The tender offer rules do not currently establish a specific minimum time period with respect to the disclosure and dissemination of material changes, except for those relating to price or the amount of securities sought.[159] In an interpretive release relating to the tender offer rules, however, the Commission provided the following guidelines:

> As a general rule, the Commission is of the view that to allow dissemination to shareholders in a manner reasonably designed to inform (them) of such change (17 CFR 240.14d–4(c)), the offer should remain open for a minimum of five business days from the date that the material change is first published, sent or given to security holders. If material changes are made with respect to information that approaches the significance of price and share levels, a minimum period of ten business days may be required to allow for adequate dissemination and investor response. Moreover, the five business day period may not be sufficient where revised or additional materials are required because disclosure disseminated to security holders is found to be materially deficient. Similarly, a particular form of dissemination may be required. For example, amended disclosure material designed to correct materially deficient material previously delivered to security holders would have to be delivered rather than disseminated by publication.[160]

Under the ''early commencement'' proposal, if the bidder had to send a supplement containing material changes either before or after effectiveness of the registration statement, the offer would need to remain open for at least a specified minimum period.[161] The original expiration date would have to be extended if necessary. The offer would need to remain open at least:

- Five business days for a supplement containing a material change other than price or share levels;
- Ten business days for a supplement containing a change in price, the number of shares sought, the dealer's soliciting fee, or other similarly significant change;
- Ten business days for a supplement included as part of a post-effective amendment; and

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Forms C and SB–3 are not adopted, then the proposals in this release would apply to exchange offers registered on Form S–1, S–4, F–4 and S–11.

[155] The Task Force Disclosure Simplification recommended that registration statements on Forms S–4/F–4 relating to exchange offers by S–3/F–3 eligible companies become effective automatically upon filing, so long as the securities offered are common stock traded on a national securities exchange or quoted in the Nasdaq NMS, or are investment grade debt or preferred stock. *See* Report of the Task Force on Disclosure Simplification (March 1996) at p. 56. If the Securities Act Reform Release proposals are adopted, we could provide automatic effectiveness on filing for Form B issuers, or we could provide it for all registration statements on Form C only and not Form SB–3.

[156] This is how Form B would be treated in the Securities Act Reform Release.

[157] 17 CFR 242.100 through 242.105.

[158] 17 CFR 240.10b–13. Rule 10b–13 is proposed to be revised and redesignated as Rule 14e–5. *See* Part II.E.5 below.

[159] *See* Rule 14e–1(b) [17 CFR 240.14e–1(b)]. A tender offer must remain open for ten business days after a notice of an increase or decrease in the percentage of the class of securities being sought, the consideration offered, or the dealer's soliciting fee.

[160] Release No. 34–24296 (April 3, 1987) [52 FR 11458].

[161] Proposed Rule 14d–4(d)(2).

• 20 business days for a revised prospectus when the initial prospectus was materially deficient; for example, failing to comply with the going-private rules or filing a ''shell'' document solely to trigger commencement and staff review.[162]

We invite comment on whether these time periods are appropriate, and if not, what periods should be substituted. Would the ready availability of this information in electronic format (*e.g.*, on the Commission's or the bidder's Internet web site) mean that these time periods could be shorter? On the other hand, would shortening these periods deprive security holders of essential information if they are not willing or able to take advantage of electronic media? As proposed, this rule would apply only to exchange offers where ''early commencement'' is used. Should it instead replace Rule 14e–1(b) and thus apply to all tender offers?

We also solicit comment on whether bidders would be likely to take advantage of ''early commencement'' before receiving staff comments or a notification that the filing would not be reviewed. Would the risk of having to disseminate additional information and possibly extend the offer deter bidders from using this procedure? Or would they take those uncertainties into account as they now do for cash tender offers?

The Securities Act Reform Release proposes to eliminate the requirement that a final prospectus be delivered to investors who have received a preliminary prospectus.[163] This exemption would not apply to business combinations, which have a distinct scheme for delivery of information. However, we solicit comment on whether bidders who use the ''early commencement'' rule should be required to deliver a final prospectus after effectiveness. The informational purpose of the prospectus may be best served by requiring security holders to be given supplements setting forth significant changes, rather than by requiring the prospectus to be re-delivered.

3. Tenders into an Offer Exempt from Sale Requirements of the Securities Act

Under the ''early commencement'' proposal, once a bidder commenced an offer, security holders could tender into the offer before the related registration statement became effective, but the bidder could not purchase securities tendered until the offer expired. Security holders would have the right to withdraw tenders until the offer expired, as they do now. As discussed above, expiration always would be after effectiveness of the related registration statement. In order to prevent the tendering of securities into an offer from being viewed as a ''sale'' without an effective registration statement, we propose a new rule to address this issue.[164] We would use our new exemptive authority [165] to provide that transactions involving tenders during the ''waiting period'' when the early commencement rule is complied with would be exempt from the Securities Act requirements for sales.

The purpose of this rule is to place cash and exchange offers on a more equal footing by allowing them to operate on a more comparable time schedule and minimizing any regulatory factors that may influence a bidder's decision to offer cash instead of securities in a tender offer. The proposed exemption is necessary to assure bidders that they would not be viewed as violating Section 5 of the Securities Act [166] when security holders tender into an exchange offer during the waiting period. Investors would continue to receive disclosure before making an investment decision. We believe that it is consistent with the public interest and the protection of investors to reduce the regulatory bias towards cash so that the bidder's choice of consideration is not unduly affected by concerns about timing. However, we solicit comment on whether this is an appropriate use of the Commission's exemptive authority.

D. Integrate and Streamline the Disclosure Requirements for Tender Offers and Mergers

1. Subpart 1000 of Regulation S–K (''Regulation M–A'') and Combination of Schedules

Currently, there is a different disclosure schedule for issuer tender offers, third-party tender offers and going-private transactions. Compliance with the line-item requirements in each of these schedules results in certain differences in the information disclosed to security holders.[167] These differences in the disclosure requirements can be particularly troublesome to companies that are seeking to comply with the disclosure requirements in today's fast-paced takeover environment. We believe that the cost of compliance could be reduced, and the quality of disclosure improved, if the disclosure requirements were integrated into one set of uniform regulations and unnecessary differences were harmonized.[168]

Accordingly, we propose to integrate the disclosure items contained in the schedules relating to issuer and third-party tender offers, tender offer recommendations, and going-private transactions. The disclosure items applicable to these transactions would be relocated into a new subpart of Regulation S–K called ''Regulation M–A.'' The new series of items would contain the current disclosure requirements applicable to tender offers and going-private transactions, with minor modifications to harmonize and clarify the items as well as more substantive changes discussed below.[169] The new regulation includes some disclosure items for cash merger proxy statements and business combination registration statements as well. We have made an effort to use clear language and reduce legalese. We anticipate expanding the new regulation in the future to cover additional disclosure items.

We also propose to combine current Schedules 13E–4 and 14D–1 (the schedules now used for issuer and third-party tender offers, respectively), into a new schedule called ''Schedule

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[162] This would, in effect, re-start the 20 business day period required by the tender offer rules. If the initial prospectus did not comply with the roll-up rules and was revised during the offering period, the minimum solicitation period under the roll-up rules would be tolled until a revised prospectus satisfying the roll-up rules was disseminated.

[163] Proposed Rule 173.

[164] Proposed Securities Act Rule 162.

[165] Section 28 of the Securities act [15 U.S.C. 77z–3].

[166] 15 U.S.C. 77e.

[167] For example, while Schedules 14D–1, 13E–4 and 13E–3 all require disclosure of high and low bid quotations of the subject security for each quarterly period during the preceding two years, only Schedules 13E–4 and 13E–3 require disclosure of the source of such quotations. *See* Item 1(c) of Schedule 13E–4 and Schedule 13E–3. As another example, Schedules 14D–1 and 13E–3 both require disclosure of past contacts, negotiations or transactions between the parties subject to a proposed tender offer or going-private transaction. Schedule 13E–3 (which generally requires more disclosure because of the affiliated nature of the transaction) requires disclosure for only the two preceding years, while Schedule 14D–1 requires disclosure for the preceding *three* years. *See* Item 3 of Schedule 13E–3 and Item 3 of Schedule 14D–1.

[168] Integration has worked well in the past. In 1985, the Commission integrated the disclosure requirements of the registration statement most commonly used in stock-based extraordinary transactions, Form S–4, with the disclosure requirements for proxy statements on Schedule 14A. *See* Release No. 33–6578 (April 23, 1985) [50 FR 18990].

[169] In some cases, disclosure requirements appear in the rules rather than the schedules. These requirements also would be moved to Regulation M–A. For instance, schedule 14D–1 does not specifically require disclosure of the expiration date of the tender offer; that requirement appears in Rule 14d–6(e).

TO.'' [170] The information required in Schedule 13E–4 is substantially similar to that required in Schedule 14D–1. Combining the schedules would harmonize the disclosure requirements applicable to issuer and third-party tender offers. Any differences in the information required due to the nature of the bidder (either issuer or third-party) would be addressed in items of the schedule and the applicable disclosure items in Regulation M–A.

In addition, we propose to permit a single filing to satisfy both the tender offer and going-private disclosure requirements. The disclosure items required by Schedules 14D–1, 13E–4 and 13E–3 could all be satisfied in one combined filing. For example, an affiliate engaging in a tender offer having a going-private effect could file a combined Schedule TO and Schedule 13E–3. Of course, all filing person(s) and applicable schedules would have to be identified on the cover page, but separate cover pages would not be required. Schedule 13E–3 would be filed separately when the underlying transaction was not a tender offer.

In permitting a combined tender offer and going-private filing, we would reduce the redundancy of having to file two schedules for what is essentially the same transaction. The disclosure requirements are generally satisfied in the same document—the offer to purchase. This will continue to be the case.

Schedule TO would contain an instruction specifying the items that need to be complied with for particular types of transactions.[171] In addition, we would revise the current instruction requiring information that is incorporated by reference to be filed as an exhibit to the Schedule. The revised instruction would permit document(s) previously filed electronically with the Commission to be incorporated by reference without filing the information as an exhibit. Documents filed electronically on EDGAR are readily available to security holders and the public (*e.g.*, through the Internet, our public reference room, brokers and investment advisors). This change also would apply to going-private statements.

We request comment on whether the ability to combine the disclosure currently required by Schedules 14D–1, 13E–4 and 13E–3 into one filing would be useful to filing persons. Would it be easier for the marketplace to follow this information if the filings were kept separate?[172]

Alternatively, should the Schedule 13E–3 be eliminated entirely for most transactions? Instead, the tender offer schedule, registration statement and proxy statement cover page would have a check box indicating a going-private transaction is involved. The document would be required to contain all of the disclosure and signatures currently called for by Schedule 13E–3.[173] If we took this approach, the Schedule 13E–3 would not be available as a place to provide negative answers to items. Currently, negative answers may be provided in the schedule rather than in the disclosure document disseminated to security holders.[174] Accordingly, if we eliminated Schedule 13E–3 we would either eliminate the requirement for negative answers or require negative answers to be provided in the disclosure document.

We also request comment on whether the concept of one filing satisfying all disclosure requirements should be applied to the Securities Act and proxy rules as well as the tender offer and going-private rules. Should one filing be permitted to satisfy all of these transactions? Currently, different signature pages may be required depending upon the schedules or forms combined.[175] If registration statements and proxy statements were permitted to be combined with tender offer and going-private schedules, then a uniform signature requirement would be necessary, or we could require that the more extensive signature requirements control.

Currently, security holders do not receive all of the information filed with the Commission in a tender offer or going-private schedule. Instead, the rules permit filers to send security holders a disclosure document that summarizes most of the information in the schedule. The schedule, as filed, consists of a cover page, list of items with their responses, exhibits and signatures. The disclosure document is filed as one of the exhibits. Many of the responses to the items in the schedule are incorporated by reference from the disclosure document. While we are not changing this basic approach, we propose two changes to streamline the requirements:

- Instead of specifying the items of each schedule required to be summarized, the rules would simply require that the document given to security holders summarize the entire schedule (except for exhibits). This is not intended to increase the information given to security holders, but rather to permit filers to exercise their judgment in determining what constitutes a fair and adequate summary. As discussed below, each disclosure document would include a Summary Term Sheet highlighting the basic information. Certain information required by the going-private rule would still be required to be set forth in full in the disclosure document.[176]
- Filers would no longer have to answer each item of the schedule with a statement that the information is incorporated by reference from specified pages or sections of the disclosure document.[177] It would be sufficient to have a general statement incorporating the required information from the disclosure document into the schedule. The schedule, as filed, would consist primarily of a cover page, exhibits and

[170] Schedules 13E–3 and 14D–9 would be revised so that the format and instructions harmonize with schedule TO. These schedules would use clearer language and would refer to Regulation M–A for the substantive disclosure requirements. We do not propose to revise the schedules used in connection with the multijurisdictional disclosure system with Canada (*i.e.*, Schedules 14D–1F, 14D–9F and 13E–4F).

[171] An instruction will specify that certain items may be omitted when Schedule TO is combined with a Schedule 13E–3, to avoid redundant requirements. *See* General Instruction J to proposed Schedule TO.

[172] There would be check boxes on the cover page to indicate whether the filing was an issuer tender offer, third-party tender offer, and/or going-private transaction. EDGAR tags also would indicate this information. If this proposal is adopted, EDGAR would be programmed so that public users of information could quickly determine the nature of each filing.

[173] When a going-private transaction did not involve another Commission filing, the Schedule 13E–3 would be required as a stand-alone filing.

[174] *See* General Instruction A to Schedules 14D–9 and 13E–4; General Instruction B to Schedule 13E–3. As proposed, Schedule TO would include an instruction permitting filers to provide negative and ''not applicable'' answers in the schedule but not the disclosure document disseminated to security holders. A similar instruction is proposed for Schedules 13E–3 and 14D–9. *See* General Instruction E to proposed Schedules TO and 13E–3 and General Instruction C to proposed Schedule 14D–9. The ability to omit negative answers already exists to some extent for going-private and tender offer statements. *See* Instruction 1 to Rule 13e–3(e)(3); Instruction A to Rule 13e–4(d); and Rule 14d–6(e)(1)(vii). Negative answers are common in responding to items that call for information about civil and/or criminal proceedings involving the filing person and certain control persons for the five-year period before the filing. *See* Item 2 (e) and (f) to Schedules 13E–3 and 14D–1.

[175] For example, no signature is currently required for Schedule 14A proxy statements while Securities Act registration statements require signatures by the registrant, the principal executive officer, the principal financial officer, the controller or principal accounting officer, and at least a majority of the board of directors of persons performing similar functions. The current signature requirements in Schedules 14D–1, 13E–4 and 13E–3 are substantially the same; the schedule must be signed by each person on whose behalf the statement is filed.

[176] *See* Rules 14d–6(d), 14d–9(d), 13e–3(e) and 13e–4(d), as proposed to be revised.

[177] As an example of the current requirement, *see* General Instruction B to Schedule 14D–1.

signatures. The item numbers from the schedule would be included only to provide information not required to be in the disclosure document, such as negative or ''not applicable'' responses or information that goes beyond what is summarized in the disclosure document. This change is designed to make the schedules easier to prepare. It would still be necessary, of course, for filers to provide all the required information.[178]

The rest of this release discusses the most significant changes to the rules and schedules, many of which are incorporated into proposed Regulation M–A. In addition, we propose a number of less substantive changes to harmonize and update the requirements. For the complete text of all the technical, clarifying and conforming changes, including amendments to the tender offer and going-private rules, please see the text of the proposed rules at Part VII below. We request comment on these proposals as well.

2. Streamline Disclosure Requirements and Improve Disclosure

We believe that, in many cases, the current disclosure requirements can be simplified and clarified for filing persons. We also believe that disclosure to security holders can be improved. We discuss below several proposed amendments to the current rules and regulations that should help filing persons comply with their disclosure obligations and enhance security holders' understanding of tender offers and mergers.

a. ''Plain English'' Summary Term Sheet

The disclosure in tender offer and merger proxy statements often is lengthy, difficult to understand and uninviting to the reader. In many instances important information is buried in boilerplate. Security holders often must make a voting or investment decision within a relatively short period of time. With the increasing complexity of the transactions, filing persons should provide security holders with clear, concise and understandable disclosure as required by the Commission's rules.[179] Disclosure is not effective from an investor's perspective unless it is understandable, complete and timely.[180]

We propose to require that issuer and third-party cash tender offer statements, cash merger proxy statements, and going-private disclosure documents begin with a short ''plain English'' summary term sheet highlighting the most important features of the transaction.[181] The summary term sheet would be required to begin on the first or second page of the disclosure document. Each item covered in the summary term sheet would be presented in bullet point format with a cross-reference to a more detailed discussion found elsewhere in the tender offer, going-private or proxy materials.

In preparing a summary term sheet, filing persons would need to determine how best to highlight the most significant aspects of the transaction in a clear, concise and understandable manner. As noted by the Task Force, the summary term sheet should be used to answer the most common or frequently asked questions. In a tender offer, for example, the bidder should answer questions such as the following:

- Who is offering to buy my securities?
- What are the classes and amounts of securities sought in the offer?
- How much is the bidder offering to pay and what is the form of payment?
- Does the bidder have the financial resources to make payment?
- Is the bidder's financial condition relevant to my decision on whether to tender in the offer?
- How long do I have to decide whether to tender in the offer?
- Can the offer be extended, and under what circumstances?
- How will I be notified if the offer is extended?
- What are the most significant conditions to the offer?
- How do I tender my shares?
- Until what time can I withdraw previously tendered shares?
- How do I withdraw previously tendered shares?
- If the transaction is consensual, what does my board of directors think of the offer?
- Is this the first step in a going-private transaction?
- Will the tender offer be followed by a merger if all the company's shares are not tendered in the offer?
- If I decide not to tender, how will the offer affect my shares?
- What is the market value (if traded) or the net asset or liquidation value (if not traded) of my shares as of a recent date?
- Who can I talk to if I have questions about the tender offer?

In the case of a merger proxy statement, the summary term sheet should contain, among other things, a brief outline of the matters proposed, the material terms of the proposals including the parties to the proposed transaction, the consideration to be received by security holders, the board's recommendation on how to vote (if any), the effect of a vote for and against each proposal including the effects of not voting, the procedures for voting and changing or revoking a vote, and the existence of appraisal rights.

In going-private transactions, the summary term sheet would require a brief summary of the most material terms and consequences of the transaction. The summary term sheet should address, among other things, conflicts of interest, whether a fairness opinion was received, the identity, role and relationship of any affiliates involved in the transaction, the filing person's belief as to the fairness of the transaction to security holders, and any recommendations made to security holders regarding the transaction.

The proposed summary term sheet requirement would not specify the items to be addressed. Instead, the filing person would determine the most significant facts to highlight. We solicit comment, however, on whether the item should specify information that must be addressed in most situations. The information required could be specified in a manner similar to current Instruction 1 to Item 8 of Schedule 13E–3, which specifies factors that must normally be considered in determining the fairness of a going-private transaction to unaffiliated security holders. Other than the matters set forth above, what other information would rise to the level of requiring prominent disclosure in a summary term sheet?

Mergers or tender offers that involve the registration of securities are subject to the recently adopted ''plain English'' disclosure rules requiring issuers to write the cover page, summary, and risk factors section of their prospectuses in plain English.[182] In addition, Forms S–4 and F–4 currently require specified

[178] *See* General Instructions E and F to Schedules TO and 13E–3 and General Instructions C and D to Schedule 14D–9. Similarly, we propose to eliminate the requirement in General Instruction F of current Schedule 13E–3 to provide a cross reference sheet showing where the responses are located.

[179] *See* Rule 421 of Regulation C [17 CFR 230.421]. Bidders in exchange tender offers also are reminded that effectiveness of a registration statement may be denied or a stop order issued when there has not been a bona fide effort to present information in a reasonably clear, concise and readable manner. *See* Rule 461(b)(1) of Regulation C [17 CFR 230.461(b)(1)]; *see also, In the Matter of Franchard Corporation,* 42 S.E.C. 163 (1964).

[180] Report of the Task Force on Disclosure Simplification, ''Presentation of Information'' at p. 17.

[181] Proposed Item 1001 of Regulation M–A. ''Plain English'' would have the same meaning as in Rule 421, as amended, effective October 1, 1998.

[182] *See* Release No. 33–7497 (January 28, 1998) [63 FR 6370].

information about the transaction to appear in the front of the prospectus. This would be continued in proposed Forms C and SB–3. Therefore, we do not propose to require a summary term sheet for such transactions. Would a summary term sheet specifically adapted to these forms be useful?

b. Revise Item 14 of Schedule 14A to Clarify Requirements and Harmonize Cash Merger With Cash Tender Offer Disclosure

To help issuers prepare disclosure documents, we propose to clarify the disclosure required in proxy statements. Item 14 of Schedule 14A is triggered when a vote or consent is solicited on any of the following matters: (i) a merger; (ii) a consolidation; (iii) the acquisition of assets, a business or securities; (v) the sale or transfer of all or substantially all the assets of the registrant; (vi) a liquidation; or (vii) a dissolution. The Item calls for information about the transaction, as well as business and financial information about the companies involved. Item 14 information is similar to the information that would be required in a Form S–4 registration statement if registered securities were being offered.

We propose to revise this Item to make it easier to understand and to adapt the disclosure scheme to Form A and B companies instead of Forms S–1, S–2 and S–3 companies. Instead of setting forth the detailed requirements for information about the acquired and acquiring companies, Item 14 would simply refer to the applicable requirements in Forms C and SB–3.[183]

The revised Item would modify financial statement requirements in three principal respects. First, we propose to clarify that financial statements and other information about the acquiror in a cash merger are necessary only if material to the voting security holders' evaluation of the transaction.[184] Just as for financial statements of the bidder in a cash tender offer, discussed below, information about the acquiror in a merger generally is not needed if the target security holders are receiving cash and the acquiror has demonstrated the financial ability to satisfy the terms of the offer.[185]

Second, we propose to reduce the financial statements required for the acquiror under Item 14 from three years to two,[186] consistent with the proposed treatment of cash tender offers, as discussed below.[187]

Third, we propose to revise Item 14 with respect to when financial statements and other information about the *target* are required. Specifically, we propose to eliminate the requirement to provide information about the target in a cash merger when the acquiror's security holders are not voting on the transaction.[188] Security holders would receive a shorter document focusing on the terms and effect of the transaction. This revision would harmonize the disclosure required in cash merger transactions with that required in all-cash, all-share tender offers. Security holders are required to make substantially the same investment decision in both transactions.

Generally, financial statements of the target and other company information are not required in all-cash, all-share tender offers, although bidders sometimes provide this information in their tender offer materials on a voluntary basis. We do not believe the proxy rules should require disclosure of target information when the same transaction, structured as a cash tender offer, would not require disclosure of this information. In both types of transaction, security holders are asked to accept cash for their entire investment in the target, and most likely have received financial information previously with respect to the company whose security they already hold.

As proposed, we also would eliminate the requirement to provide information about the target when target security holders are voting on whether to approve a merger with the consideration consisting of acquiror securities exempt from Securities Act registration. This would be consistent with the requirements of the tender offer rules when exempt securities are being offered. Of course, information about the acquiring company would be material under these circumstances.

We do not propose to eliminate the requirement to provide financial statements of the target and other company information where the acquiror's security holders are voting on the transaction, since those security holders may not know anything about the target. In addition, we would continue to require target information in cash merger proxies that are going-private or roll-up transactions. We believe that target security holders have a need for current financial statements of their company if it is subject to one of these transactions.

We request comment on whether target security holders in mergers need financial statements and other information about their own company to determine whether or not to exercise their dissenters' or appraisal rights under state law. Are there circumstances under which the target security holders may have difficulty obtaining financial statements of the company whose securities they hold? Of course, if the proxy rules apply to the target, the target would be a reporting company. Does the liability imposed on financial statements filed under the proxy rules provide an added degree of protection to investors? If so, should the financial statements be incorporated by reference into the proxy material? Should we require the proxy statement to contain either summary financial statements,[189] or an undertaking to provide financial statements to any requesting security holder?

c. Reduce Financial Statements Required for Non-Reporting Target Companies

If our proposal to eliminate financial statements of the target in a cash merger when the acquiror's security holders are *not* voting is adopted, there still will be circumstances under which target financial statements are required. In particular, financial statements are required when the transaction is a stock merger or stock tender offer.

The rules currently provide special treatment when the target is not subject to the Commission's reporting requirements. We believe the existing requirements can be further relaxed under certain circumstances. In many transactions involving the acquisition of a non-reporting company, the target's financial statements are not readily available or can be obtained only at great expense. In some cases, companies have chosen to structure acquisitions so

[183] As revised, Item 14 eliminates the ability to incorporate specified information by reference to the ''glossy'' annual report to security holders. This is consistent with proposed Form C, as discussed in the Security Act Reform Release.

[184] *See* Instruction 2 to Item 14 of Schedule 14A currently and as proposed to be revised. Pro forma information about the transaction also generally would not be required in a cash merger where only the target's security holders are voting on the transaction.

[185] Even if the acquiror's security holders are voting, we propose to permit the omission of acquiror information, as those security holders presumably have access to information about their own company.

[186] *See* proposed Item 14(c)(1) to Schedule 14A.

[187] *See* Part II.E.2.b below. Financial statements of the target, when required, generally would continue to be required for three years in order to be consistent with other requirements for financial statements of acquired companies.

[188] *See* Instruction 2 to Item 14 of Schedule 14A, as proposed to be revised.

[189] For example, we could require summary financial statements as specified in Rule 1–02(bb) of Regulation S–X [17 CFR 210.1–02(bb)] for the latest fiscal year and interim period.

an exception from registration was available rather than obtain the financial statements needed to register the transaction. We propose to reduce the costs of preparing proxy statements and registration statements for business combinations by reducing the financial statement requirements when the target is a non-reporting company and the acquiror's security holders are not voting on the transaction.

Currently, the rules require the filing person (the acquiror) to provide financial statements ''that would have been required to be included in an annual report to security holders'' had the non-reporting company been required to furnish an annual report that complies with Rule 14a–3(b).[190] Rule 14a–3(b) requires audited balance sheets for each of the two most recent fiscal years and audited statements of income and cash flows for each of the three most recent fiscal years prepared in accordance with Regulation S–X.[191] We no longer believe non-reporting target companies (or their acquirors) should have to generate financial statements for three years when security holders of the non-reporting target most likely made their initial investment decision based on less extensive or different financial statements. The requirement to provide financial statements prepared in accordance with Regulation S–X going back three years can be costly and burdensome.

Under the proposal, when the acquiror's security holders are *not* voting on the acquisition, we would require financial statements of the target prepared in conformity with Generally Accepted Accounting Principles (''GAAP'') for the latest fiscal year.[192] If the non-reporting target company previously provided its security holders with GAAP financial statements for either of the two fiscal years before the latest fiscal year (or both), GAAP financial statements also would be required for those years.

As is currently the case, the item would not require audited financial statements for years before the most recent fiscal year if the non-reporting target's financial statements were not audited previously. In addition, the financial statements for the latest fiscal year would have to be audited only to the extent practicable.

We would not change the existing requirement to provide pro forma financial information required by Article 11 of Regulation S–X. In addition, we are not changing the requirement to provide audited financial statements in accordance with Rule 3–05 of Regulation S–X if a registration statement is used for registering resales to the public by any person who, with regard to the securities being re-offered, is deemed an underwriter within the meaning of Rule 145(c). Further, the proposal would not change the financial statements currently required if the acquiror's security holders are voting on the transaction.[193] It should be noted that the Securities Act Reform Release includes a proposal to require certain additional non-financial information regarding non-reporting target companies.

If the non-reporting target is a foreign company, the proposed reduction in the required financial statements would operate in the same manner as for domestic companies. If the acquiror's security holders are not voting on the transaction, and the target's financial statements are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP (''foreign GAAP''), a reconciliation to U.S. GAAP would be required unless a reconciliation is unavailable or not otherwise obtainable without unreasonable cost or expense.[194]

The proposed change would not affect financial statements for a non-reporting target in roll-up transactions.[195] We believe that the acquiror's security holders have an independent need for financial statements of any non-reporting company that would be rolled-up into their company. We request comment on whether there are any other circumstances when this reduction in the target financial statements required should not apply. For example, should this reduction apply when the acquiror is a public shell company seeking to merge with or be acquired by a private company with substantial assets?

We invite comment on whether this proposal would provide sufficient regulatory relief to filers and still assure that target security holders have sufficient information. We also solicit comment on whether, if the acquiror's security holders are voting on the transaction and it is significant to the acquiror at the 50% level, audited financial statements of the target should be required.[196] Currently, if the target is a non-reporting company the rules provide for special treatment by permitting Rule 14a–3(b) financial statements, as described above.[197] We invite comment on whether this special treatment provides any benefit to acquirors who eventually will have to provide audited financial statements of the target in a Form 8–K or in connection with other securities offerings.

d. Registration Statement Form for Business Combinations

In the Securities Act Reform Release, we propose to replace Forms S–4 and F–4 with Form C (and Form SB–3 for small business issuers). These forms would be the only ones available for registered exchange offers, mergers and other business combinations.[198] Currently, Form S–1 is available for exchange offers and Form S–2 is available for issuer exchange offers. If these forms are rescinded, issuer exchange offers would be limited to Forms C and SB–3.

As discussed in more detail in the Securities Act Reform Release, Forms C and SB–3 would require basically the same information as the current forms about the transaction, the acquiror, the company to be acquired and the

[190] *See* Item 17(b)(7) of Form S–4, Item 17(b)(5) of Form F–4 and Item 14(b)(3)(ii)(A) of Schedule 14A. The item states that the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited. The item further states that financial statements need be audited only to the extent practicable.

[191] 17 CFR 240.14a–3(b).

[192] We proposed to implement this change in proposal forms C and SB–3. *See* Items 18(c) and 21(b) in Form C and Items 16(b) and 19(c) in Form SB–3. If these forms are not adopted, we would implement this amendment in Forms S–4 and F–4.

[193] The proposal also would not affect the current requirement that the acquiror ultimately provide audited financial statements under Item 7 of Form 8–K when the transaction is significant to the acquiror.

[194] At a minimum, however, filers should provide a narrative description of the material variations in accounting principles, practices and methods used in preparing the foreign GAAP financial statements from those accepted in the U.S.

[195] An exception from the going-private rules would not be necessary because the proposal is limited to the financial statement requirements of non-reporting companies, which are not subject to Rule 13e–3.

[196] *See* Rule 3–05(b)(4)(i) of Regulation S–X [17 CFR 210.3–05(b)(4)(i)]. Audited financial statements of the target are currently required in Form S–4 if the target is a reporting company, whether or not the acquiror's security holders are voting on the transaction. In addition, audited financial statements are required for other probable acquisitions (*i.e.*, acquisitions other than the one being voted on by security holders) at the 50% significance level.

[197] *See* note 190 above.

[198] These forms would be available for all transactions that can be registered on Forms S–4 and F–4 today. Forms S–4 and F–4 permit incorporation by reference of information about the acquiring and acquired companies to the extent those companies are eligible to use Forms S–2 and S–3 instead of S–1 (Forms F–1; F–2; and F–3 for foreign private issuers). Forms C and SB–3 would adapt the incorporation by reference provisions to the proposed new regulatory scheme, permitting incorporation by reference for Form B, seasoned Form A, and seasoned Form SB–2 companies.

combined entity.[199] In that release, we propose to treat Form B issuers differently from other issuers in a number of respects. No information would be required to be delivered to investors until shortly before the investment decision; no final prospectus would be required to be delivered; and the registration statement would become effective upon filing, or upon a date designated by the filer. For the reasons discussed in Part II.B and C of this release, we do not propose the same scheme for Form C registration statements, even when the issuer and/or the target would be eligible to use Form B. Instead, our proposed approach for business combinations permits free communications, so long as security holders ultimately receive a mandated disclosure document with specified information before they make their tender or voting decision. We do, however, solicit comment on the extent to which aspects of the Form B scheme could be adopted for business combinations.

Forms S–4 and F–4 currently require that the prospectus be delivered at least 20 business days before the date of the vote or the expiration of the exchange offer when incorporation by reference is used. The purpose is to assure that security holders have time to obtain the documents incorporated by reference and review their contents. The proxy rules impose a comparable provision for cash mergers.[200] We propose to eliminate these requirements because Commission filings incorporated by reference are now readily available from many sources, including our Internet web site, our public reference room, and presumably from brokers and investment advisers. We ask for comment as to whether security holders would still benefit from a mandated solicitation period when incorporation by reference is used.

E. Update the Tender Offer Rules

The tender offer rules have not been revised since 1986.[201] We are attempting to update them to correspond to the need of today's markets. We have already discussed several proposals affecting tender offers. These proposals involve expanding permissible communications, changing the timing and methods of commencement, combining tender offer schedules, integrating disclosure requirements and including a summary term sheet. In addition, as discussed below, we have several proposals to provide new tender offer procedures, revise and clarify the financial statements requirements and clarify the rules. We also solicit comment on whether the tender offer rules should include a safe harbor from liability for forward-looking information.

1. PERMIT SECURITIES TO BE TENDERED DURING A ''SUBSEQUENT OFFERING PERIOD'' WITHOUT WITHDRAWAL RIGHTS

We believe that there may be times when bidders should be able to accept shares in a tender offer after the tender offer is completed.[202] We propose to permit security holders to tender securities during a limited time after the initial offer, including all extensions, is completed, referred to as the ''subsequent offering period.'' [203] The proposed subsequent offering period would be similar to the extended offering period that sometimes applies to tender offers made in the United Kingdom subject to the City Code on Take-overs and Mergers.[204] No withdrawal rights would be available during this period.[205] Security holders would be able to tender securities in the subsequent offering period only after all conditions to the offer were satisfied or waived and the shares tendered to that point were accepted for purchase and promptly paid for.[206] The subsequent offering period would be optional at the bidder's election.

We propose limiting the use of the subsequent offering period to third-party tender offers for all outstanding shares of the target. In addition, the bidder must intend to engage in a back-end merger with the target after the tender offer, either offering cash or securities. The bidder's intent to merge with the target would have to be publicly disclosed in its offering materials.

Under our proposal, a bidder would have to disclose its intention to provide a subsequent offering period in the initial tender offer materials filed and disseminated to security holders. The tender offer materials would have to adequately disclose the use of a subsequent offering period and explain how it would operate. If the ''plain English'' summary term sheet proposal is adopted, the subsequent offering period would be disclosed in the summary term sheet. If a bidder decided to include a subsequent offering period after the initial offering materials were filed and disseminated, that would be treated as a material change in information, requiring dissemination of a supplement and possibly an extension of the offer by up to five business days.[207]

The subsequent offering period would be strictly limited to offers for all outstanding shares.[208] The subsequent offering period would be a fixed ten business day period that would follow the date a bidder satisfied or waived all conditions to its offer and accepted for purchase any shares tendered to that point in time. The bidder's prompt payment obligation would apply to all shares accepted in the initial offering period before the subsequent offering period began. During the subsequent offering period, the bidder could solicit remaining security holders to tender. The bidder would be obligated to ''promptly'' pay for the shares tendered, with prompt payment running from the date of each separate tender.[209]

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[199] If the transaction is an exchange offer, the prospectus also must include certain information specified by the tender offer rules. *See* Rule 432. We propose a technical change to Rule 432.

[200] General Instruction A.2 to Form S–4; General Instruction A.2 to Form F–4; Note D.3 to Schedule 14A.

[201] In 1986, the Commission adopted amendments to the tender offer rules to provide that a third-party or issuer tender offer must be open to all holders of the class of securities subject to the tender offer (both record and beneficial owners) and that any security holder must be paid the highest consideration paid to any other security holder during the tender offer. *See* Release No. 34–23421 (July 11, 1986) [51 FR 25373] and Rule 14d–10 [17 CFR 240.14d–10]. More comprehensive revision of the tender offer rules has not been undertaken since 1979.

[202] For example, when a bidder is successful in acquiring a sufficient number of target shares to approve a back-end merger (typically a majority or two-thirds is required), most remaining security holders want to get cashed out, knowing that a back-end merger to acquire the remaining shares is a relative certainty. Under most state laws, the bidder must own at least 85 or 90% of the target to merge without security holder approval in a short-form merger.

[203] Proposed Rule 14d–11.

[204] The City Code on Takeovers and Mergers and the Rules Governing Substantial Acquisition of Shares (the ''City Code'') Rule 31.4. *See also* Part IV.A of Release No. 34–29275 (June 5, 1991) [56 FR 27582].

[205] Rule 14d–7 would be amended. The withdrawal rights that exist after 60 days following the start of the tender offer, pursuant to Section 14(d)(5) of the Exchange Act [15 U.S.C. 78n(d)(5)], similarly would not be available.

[206] The proposed subsequent offering period could not be used where payment would be delayed. We have stated that payment may be delayed for certain governmental regulatory approvals. *See* Release No. 34–16623 (March 5, 1980) [45 FR 15521]. However, the proposed subsequent offering period could not be used unless *all* conditions to payment have been satisfied or waived.

[207] Similarly, if the bidder stated that a subsequent offering period would be provided and then decided not to make one available, this would be a material change requiring dissemination and adequate time for security holders to receive and act on the information.

[208] Application of the subsequent offering period in a partial offer could raise complex proration issues if the offer is oversubscribed.

[209] Proposed revision to Rule 14e–1(c).

The subsequent offering period could not start until the offer was open at least 20 business days with withdrawal rights available to all tendering security holders. This would prevent bidders from offering withdrawal rights during the first ten business days of an offer but not the last ten business days.

The final amendment to reflect the results of the tender offer [210] would not be required until the end of the subsequent offering period. We solicit comment, however, on whether bidders should be required to issue a public announcement at the beginning of the subsequent offering period setting forth the number of shares tendered and accepted in the initial offering period.

The subsequent offering period would help security holders who do not tender into an offer, but then wish to participate in the offer after the bidder accepts shares and discloses the results. There may not be a very liquid trading market in the securities after the tender offer. As a result, security holders often are forced to either hold onto their shares until a back-end merger is completed or sell into the market below the offer price. Bidders may need to prepare and furnish a proxy statement or other disclosure documents before remaining security holders can obtain their final payment. We believe the subsequent offering period would minimize the delay in liquidating the investment of the relatively small number of security holders that do not tender in an offer, but later decide they want to tender and receive the offer price.

Comment is solicited on whether this procedure would be useful to bidders and security holders. Would there be any disadvantages for security holders? Should the subsequent offering period be mandatory? Should the subsequent offering period be longer or shorter (*e.g.*, five, seven, 15 or 20 business days)? Should the bidder be allowed to extend the subsequent offering period for either a limited number of days (*e.g.*, five or ten business days) or for whatever time period the bidder specifies? Would the subsequent offering period encourage security holders to delay tendering until the completion of the offer, and if so, how much of a disadvantage would this be to the bidder? Should the availability of the subsequent offering period be limited to circumstances where a substantial percentage of shares (such as 50%) has already been tendered? As proposed, the subsequent offering period would be available for both cash and stock tender offers, and the consideration offered in the back-end merger could be either cash or securities. Is there any reason to limit the proposal to cash tender offers or to situations where only cash is offered in the back-end merger? Should the subsequent offering period be limited to third-party offers, as proposed, or would it also be useful for issuer tender offers?

2. Clarify the Financial Information Required for Bidders in Cash Tender Offers

a. When the Bidder's Financial Statements Are Required in Cash Tender Offers

Under the current rules, the financial statements of a bidder in a cash tender offer must be disclosed if the information is ''material.'' [211] There are several instructions in Schedule 14D–1 that help bidders determine the need for, and adequacy of financial statements. The first instruction states that materiality will depend on the facts and circumstances of the tender offer.

Once a bidder determines that financial statements are material, there is a provision in the instruction that details the type of financial statements deemed adequate for disclosure purposes. If a bidder provides financial statements that are prepared in compliance with Form 10, the financial statements requirement is deemed satisfied.[212] A second instruction permits incorporation by reference if the bidder is subject to the Exchange Act reporting requirements. A third instruction provides that non-reporting companies need not include audited financial statements if they are not available or obtainable without unreasonable cost or expense. Both third-party bidders and issuer offerors are required only to disseminate a fair and adequate summary of the financial information to security holders.[213]

In adopting the third-party tender offer rules, we identified four factors that should be considered when determining whether financial statements of the bidder are material in a cash tender offer:

- The terms of the tender offer, particularly those terms concerning the amount of securities sought, such as any-or-all, a fixed minimum with the right to accept additional shares tendered, all-or-none, and a fixed percentage of the outstanding;
- Whether the purpose of the tender offer is for control of the subject company;
- The plans or proposals of the bidder; and
- The ability of the bidder to pay for the securities sought in the tender offer and/or to repay any loans made by the bidder or its affiliates in connection with the tender offer or otherwise.[214]

Under the staff's current interpretation, the above factors are not exclusive, and it is not necessary that all factors be present to meet the materiality test. Based on our experience with tender offers since 1977, we believe it would be more helpful to provide specific guidance to bidders as to when financial statements are *not* required. We propose to include an instruction in Schedule TO [215] stating that a bidder's financial statements are not material when:

- Only cash is offered;
- There is no financing condition; and *either:*
- The bidder is a public reporting company under the Exchange Act; *or*
- The offer is for all outstanding securities of the target.

Under the above circumstances, we believe that the burden of providing the bidder's financial statements may outweigh the usefulness of the information to security holders.[216] Based on the information currently available on EDGAR (via the Internet and other sources), we believe there is less need to require financial statements for bidders that are public reporting companies than for non-reporting entities.[217]

When the bidder is not a public reporting company, we believe financial statements should be provided when the offer is not for all outstanding shares of the target. Financial statements can be material in a partial tender offer because security holders may need to evaluate the bidder's financial condition in determining whether to tender into the offer or remain a security holder in a

[210] *See* current General Instruction D to Schedule 14D–1; proposed to be moved to Rule 14d–3(b)(2).

[211] *See* Item 9 of Schedule 14D–1 and Item 7 of Schedule 13E–4.

[212] [17 CFR 249.210]. Financial statements prepared in accordance with Item 17 of Form 20–F will be deemed adequate for foreign bidders. [17 CFR 249.220f].

[213] *See* Rules 14d–6(e) [17 CFR 240.14d–6] and 13e–4(d) [17 CFR 240.13e–4(d)].

[214] *See* Release No. 34–13787 (July 21, 1977) [42 FR 38341].

[215] The proposed instruction would appear in both Schedules 14D–1 and 13E–4 if our proposal to combine the schedules is not adopted. *See* proposed Instruction 2 to Item 10 of Schedule TO. *See also* Part II.D.2. above. Thus, we propose to clarify the financial statements required in both issuer and third-party tendor offers.

[216] If the bidder is a reporting company, the financial statements could be incorporated by reference, as currently permitted.

[217] If the bidder is offering securities, as well as cash, then financial statements are material. The registration statement form for the securities offered will specify the financial statements required. If the bidder offers securities that are exempt from registration, the financial statements specified in Schedule TO would be filed.

company in which the bidder will hold a substantial equity interest.[218]

We request comment on whether there are any other circumstances under which financial statements may not be material. Conversely, are there any circumstances under which we propose to exclude financial statements that the information would be material? For example, should we require financial statements of any non-reporting bidder unless the offer is for all shares and conditioned on acquiring a controlling interest in the target and the bidder intends a back-end merger? If an offer is not subject to a financing condition, could the bidder's financial statements be material even under our proposed instruction? Should the proposed instruction hinge upon whether financing for the offer is in place, as opposed to whether the offer is subject to a financing condition? If the offer is self-financed, are the bidder's financial statements needed even if there is no financing condition?

Should the criteria for determining when financial statements are required be applied differently when the bidder is a foreign company whose financial information may not be readily available? [219] To the extent that the financial statements of a foreign bidder are required and are prepared under foreign GAAP, a reconciliation to U.S. GAAP would be required unless a reconciliation is unavailable or not otherwise obtainable without unreasonable cost or expense.[220] Finally, we note that, although Item 9 does not require financial statements of bidders who are natural persons, financial information concerning such bidders may be material under the circumstances of the offer.[221] The practice has developed of including disclosure regarding the net worth of a bidder who is a natural person. We think such information is useful and therefore propose to codify this practice with an instruction to Schedule TO.

b. Content of Bidder's Financial Statements in Cash Tender Offers; Financial Statements in Going-Private Transactions

When financial statements of the bidder are material, the rules currently require three years of historical financial statements for a third-party tender offer. In contrast, only two years of financial statements of the issuer are required in an issuer tender offer or going-private transaction. We propose to harmonize these requirements by reducing the financial statements requirement for third-party tender offers to two years.[222] Currently, Instruction 1 to Item 9 of Schedule 14D–1 provides that financial statements prepared in compliance with Form 10 for a domestic bidder or Item 17 of Form 20–F for a foreign bidder will be deemed adequate for purposes of the disclosure requirement. We would eliminate this instruction and require the financial information specified in proposed Item 1010(a) and (b) of Regulation M–A, if material.

We solicit comment, however, on whether two years of financial statements are necessary to informed investor decisions. Should it matter if the bidder is offering securities that are exempt from registration rather than cash? Would one year of financial statements be adequate for third-party and issuer tender offers? Would one year of financial statements be adequate for a going-private transaction that is not subject to the more stringent registration or proxy statement requirements?

The current financial disclosure requirements in issuer tender offers and going-private transactions call for information regarding book value per share, as well as the pro forma effect of the transaction on the company's balance sheet and book value per share, as of the most recent fiscal year end and the latest interim balance sheet date.[223] In reviewing the disclosure items, we believe that it may be unnecessary to provide this data for both the latest fiscal year end and latest interim period, and propose to reduce the requirement to only the most recent balance sheet date.[224] This proposed change also would apply to third-party tender offers.

The current rules require that full financial statements of the bidder in a third-party tender offer and of the issuer in an issuer tender offer or going-private transaction be included in Schedule 14D–1, 13E–4 and 13E–3, respectively. Filers are permitted, however, to provide summary financial information instead of the full financial statements in the disclosure document sent to security holders. We believe the current requirements regarding summary financial information [225] are outdated and potentially confusing.[226] Therefore, we propose to revise the rules regarding summary information in all of these schedules to specifically require the information set forth in Rule 1–02(bb) of Regulation S–X.[227] The summary information would continue to be required for the same periods as the full financial statements. Rule 1–02(bb), however, calls for some information that is not currently required, specifically redeemable preferred stock, minority interests, and summarized financial information for unconsolidated subsidiaries and 50 percent or less owned persons. We solicit comment on whether this information is useful to investors.

The rules regarding summary financial information in issuer tender offers and going-private transactions currently require ratio of earnings to fixed charges, book value per share and, if material, pro forma data. These items are not specifically covered by Rule 1–02(bb). As proposed, Schedules TO and 13E–3 would call for these additional items as well as the information specified in Rule 1–02(bb). The current rule regarding summary financial information in third-party tender offers does not require book value per share information. As proposed, Schedule TO would call for this information, if material.

We also propose to clarify the reconciliation required for a foreign bidder's summary financial information

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[218] At least one court has observed that the bidder's financial condition can be material in an offer for all outstanding securities. In *Prudent Real Estate* v. *Johncamp Realty*, 599 F. 2d 1140 (2d Cir. 1979), Judge Friendly commented that: ''If the bidder is in a flourishing financial condition, the stockholder might decide to hold his shares in hope that, if the offer was only partially successful, the bidder might raise its bide after termination of the offer or infuse new capital into the enterprise.'' An offer, however, by a company in poor financial condition ''might cause the shareholder to accept for fear that control of the company would pass into irresponsible hands.'' *Id.* at 1147.

[219] Foreign private issuers are not required to file their Form 20–F electronically.

[220] As noted above in Part II.D.2.c, at a minimum, bidders should provide a narrative description of the material variations in accounting principles, practices and methods used in preparing the foreign GAAP financial statements from those accepted in the U.S.

[221] *See* Release No. 34–13787 (July 21, 1977) [42 FR 38348], at n. 22.

[222] *See* proposed Item 1010 of Regulation M–A. Of course, if the bidder is offering registered securities, the registration statement requirements will control. As noted in Part II.D.2.b above, we also propose to reduce the financial statements of acquiring companies in merger proxy statements from three to two years.

[223] *See* Item 14 to Schedule 13E–3 and Item 7 to Schedule 13E 4.

[224] *See* Item 1010 (a)(4), (b) (1) and (3) of proposed Regulation M–A. The book value per share change also would apply to merger proxy statements.

[225] *See* Rule 14d-6(e)(1)(viii) [17 CFR 240.14d-6(e)(1)(viii)]; Instruction B to Rule 13e-4(d)(1)(iv) [17 CFR 240.13e-4(d)(1)(iv)]; and Instruction 2 to Rule 13e-3(e)(3) [17 CFR 240.13e-3(e)(3)].

[226] At least one line item currently specified in the rules, ''total assets less deferred research and developemnt charges and excess cost of assets acquired over book value'' is not an appropriate measure under GAAP because it is inconsistent with FASB Statement 2, which prohibits capitalization of research and development costs.

[227] *See* proposed Item 10 to Schedule TO; proposed Item 13 to Schedule 13E–3; and proposed Item 1010 of Regulation M–A.

if the financial statements are prepared on the basis of foreign GAAP.[228] A reconciliation to U.S. GAAP would be required to the same extent that a reconciliation or narrative is required for the full financial statements, as discussed above.

Finally, we are considering whether, in light of the proposals to reduce the number of years for which financial statements are required, security holders should receive the full financial statements whenever they are required, rather than summary financial information. Should we eliminate the provisions in Rules 13e-3, 13e-4 and 14d-1 that permit the substitution of summary financial information for the full financial statements in the disclosure document sent to security holders?

c. Bidder's Source of Funds

Regardless of the level of financial information security holders receive, we believe that a bidder's ability to pay for securities in an offer is a material disclosure item. The disclosure appearing in many tender offers relating to a bidder's ability to finance the offer has been meager at best, even when financial statements are provided. Therefore, we intend to clarify the information that is required in order to fully inform security holders of the bidder's ability to finance the offer. We propose to expand the ''Source of Funds'' item requirement in the tender offer and going-private rules [229] to require the specific source(s) of financing, any condition(s) to the financing, and the bidder's ability to finance the offer if the primary source of financing falls through.[230]

d. Pro Forma Financial Information in Two-Tier Transactions

A ''two-tier'' transaction is one in which the bidder first offers to acquire shares of the target in a cash tender offer with any securities remaining outstanding acquired in a back-end merger where securities are offered as consideration. In two-tier transactions, security holders are essentially asked to make an investment decision of whether to tender for cash in the front-end tender offer (to the extent pro ration allows their shares to be accepted), or hold on to their securities to receive securities of the bidder in the back-end. We believe security holders need pro forma financial information regarding the combined entity at the first tier so they can evaluate the second tier of the transaction when deciding whether to tender.[231]

In addition to the general need for the information, disclosure of pro forma financial information would be in keeping with the general theme of free communications expressed in this release and the Securities Act Reform Release. Also, as discussed in Part II.B.1 above, many bidders currently disclose pro forma information in order to satisfy the market's demand for information on a proposed transaction and to effectively sell the transaction to the market. Thus, we propose to require pro forma and related financial information in the first tier when a second tier is contemplated.

The requirement to provide financial information would be based on the bidder's intent to engage in a back-end merger with target security holders receiving securities of the bidder. Under the proposal, bidders would be required to provide the financial information specified by Item 3(f), (g) and (h) and Item 5 of proposed Forms C or SB–3,[232] as appropriate. This information would be required to be included in the tender offer materials for the cash tender offer.[233] We believe that this information, which would be required in any Form C or Form SB–3 filed when the securities are offered to security holders in the back-end, is necessary for security holders to make an informed investment decision. Consistent with the summary information provisions discussed above,[234] the proposed instruction for two-tier transactions would permit third-party bidders to provide only the financial information specified in Item 3(f), (g) and (h) of proposed Forms C or SB–3 in the disclosure document sent to security holders so long as the Schedule TO filed with the Commission included the information specified by Item 5.

The proposal is consistent with an interpretive position published in 1978 that the inclusion of certain information would not be considered an ''offer to sell'' under the Securities Act. In the interpretive release, the Division of Corporation Finance stated that the ''gun jumping'' doctrine, which is designed to prevent an issuer from conditioning the market by arousing investor interest before a registration statement has been filed, does not prevent bidders from providing material information regarding a planned back-end merger. The Division explained:

> The bidder's concern is purchasing the subject company's securities for cash, not priming the market for a subsequent registered offering of securities. Regardless of the bidder's intent, Schedule 14D–1 for compelling policy reasons reflected by the Williams Act requires (information regarding any negotiations, agreement in principle, or definitive merger agreement with the subject company) in order to provide full disclosure to investors confronted with an investment decision in the context of a tender offer.[235]

Of course, under the proposals to permit free communications in this release and the Securities Act Reform Release, disclosure of pro forma financial information at any stage would not result in ''gun jumping'' under the Securities Act.

We request comment on whether this could create practical difficulties for bidders by causing delays in disseminating the cash tender offer material, and if so, whether this would be offset by benefits to security holders receiving the information. Also, if commenters believe the proposed requirement is too extensive, should we require some other level of information? For example, would the pro forma information specified in proposed Item 1010(b) of Regulation M–A be adequate? [236] Alternatively, would the pro forma information required by Article 11 of Regulation S–X be a sufficient basis for an investment decision regarding the cash tender offer?

We also request comment on whether, even if a transaction is intended, there could be reasons why the disclosure of pro forma information could be premature or unwarranted. Conversely, are there circumstances where pro forma financial information should be permitted or required if a back-end merger is not ''intended''? In addition, we invite comment on whether the requirement to provide pro forma financial information needs to be modified to minimize difficulties for bidders in hostile transactions.

3. Clarify the Requirement That a Target Report Purchases of its Own Securities After a Third-Party Tender Offer Is Commenced

Rule 13e-1 prohibits an issuer whose securities are the subject of a third-party tender offer from repurchasing any of its equity securities until information about

[228] *See* Rule 14d-6(e)(ix) [17 CFR 240.14d-6(e)(ix)].

[229] *See* Item 4 to Schedule 14D–1; Item 6 to Schedule 13E–3; and Item 2 to Schedule 13E–4.

[230] *See* proposed Item 1007 of Regulation M–A.

[231] *See* Rule 11–01(a) of Regulation S–X.

[232] Specifically, these items call for disclosure of: selected financial data; pro forma selected financial data; pro forma information; and pro forma information required by Article 11 of Regulation S–X (§§ 210.11–01 through 210.11–03).

[233] *See* Instruction 5 to proposed Item 10 of Schedule TO.

[234] *See* Part II.E.2.b above.

[235] *See* Release No. 33–5927, also discussed in note 43 above. Teh position expressed in the release was limited, in the tender offer context, to disclosure required by Schedule 14D–1.

[236] *See* Part II.E.2.b above and Item 1010(b) of proposed Regulation M–A.

the issuer's acquisition is filed with the Commission and is sent or given to security holders. We propose to update the rule, which was adopted in 1968,[237] and clarify its operation.

Once the required information is filed and sent to security holders, the issuer is free to repurchase its securities.[238] Under the current rule, an issuer can disseminate the required information to its security holders as early as six months before making any repurchases. As a result, issuers can send information regarding repurchases to security holders long before they become the target of a tender offer, diminishing the usefulness of this rule. We propose to revise the rule so that its purpose is to notify security holders that the issuer is purchasing its securities during a third-party tender offer for the securities. Therefore, the issuer's disclosure should be made only after a tender offer is made.

We also propose to rewrite the rule in plain English so that the rule is more understandable. It would call for the same information as the current rule, including the amount of securities to be purchased, identification of the sellers or market, purpose of the purchases, how the securities will be used, and the source of funds for the purchases. The revised rule would clarify that disclosure is required only when an issuer wants to repurchase its securities after a tender offer is made. The restriction on repurchases only applies during the term of the tender offer.

We invite comment on the timeliness of the information currently received under Rule 13e-1. Do security holders receive information either too early or too late to be of any use? We also solicit comment on whether the requirement to file and disseminate information during the limited time after a tender offer is made and before purchasing securities would impose an unreasonable burden on companies. How would this change affect companies with periodic stock repurchase plans? Should the rule not apply to routine purchases for employee benefit plans as to which the issuer has little or no discretion? If the issuer commences an issuer tender offer in response to the third-party tender offer, should the filing of the issuer's tender offer schedule satisfy the requirements of Rule 13e-1? Further, we request comment on the specific information that is required under the rule. Is there any information that either should or should not be required disclosure? Generally, the statement required by the rule consists of one or two pages of information.

We note that a limited number of statements are filed under the rule.[239] Given the relatively low number of filings, we question whether the rule provides any benefits to security holders and the market. Issuers may not be disclosing the required information, or they may not be triggering the reporting obligation. We invite comment on the usefulness of and the need for the information disclosed under the rule. Should we eliminate the rule entirely? If the information is beneficial, should issuers be required merely to make the filing with the Commission, and not disseminate the information to security holders?

4. Harmonize the Tender Offer and Proxy Rules Relating to the Delivery of a Stockholder List and Security Position Listing

We propose to revise Rule 14d-5, the rule relating to dissemination of certain tender offers by use of stockholder lists and security position listings, to more closely align it with the 1992 amendments to Rule 14a-7 (the parallel rule relating to proxy materials).[240]

Both Rule 14d-5 and Rule 14a-7 currently allow the ''requesting party'' (the bidder under Rule 14d-5 and the security holder soliciting in opposition under Rule 14a-7), to ask the company either to provide a stockholder list or to mail the requesting party's materials. Until 1992, both rules required that the list provided by the company identify no more than record holders. In 1992, the Commission amended Rule 14a-7 to require a stockholder list that includes a reasonably current list of non-objecting beneficial owners, as well as record holders, if the company has obtained or obtains a list of beneficial owners for its own use before the meeting or security holder action.[241] In contested situations, both the company and parties soliciting in opposition could use the list to engage in personal solicitation of non-objecting beneficial owners.

If the free communications proposals in this release are adopted, security holders may ultimately receive final disclosure documents closer to the time they are asked to make an investment decision. As a result, it may become more important for bidders to have access to stockholder lists that include non-objecting beneficial owners as well as record holders, particularly because of the time it takes for disclosure documents to be forwarded through street name holders to beneficial owners.

We propose to revise Rule 14d-5 to incorporate a stockholder list requirement in tender offers similar to that provided by Rule 14a-7 in proxy solicitations. Under the revised rule, a company that elects to provide a bidder with a stockholder list instead of mailing the bidder's materials would need to disclose the most recent list of names, addresses and security positions of non-objecting beneficial owners (as well as record holders) it has in its possession, or subsequently obtains. The list must be in the format requested by the bidder if this can be provided without undue burden or expense. The proposed amendment would give bidders the same ability as target companies to communicate directly with the non-objecting beneficial owners of securities.

This proposal would conform the stockholder list requirements so that the list required is the same whether security holders are solicited for proxies or for tenders. This should enhance a bidder's ability to timely communicate with non-objecting security holders of the target regarding the terms of its tender offer. Bidders would continue to be required to disseminate tender offer material to record holders (providing sufficient copies for the record holders to send to beneficial owners), but they would have the option also to send the material to non-objecting beneficial owners on the list. Would bidders find this useful? Should the rule permit bidders to send tender offer material to non-objecting beneficial owners instead of to record holders of those securities, and if so, should the issuer tender offer rule be revised the same way?[242] Would sending material, including transmittal forms, to beneficial owners unduly complicate the ability to keep track of tenders and count them accurately? Would beneficial owners receive tender offer material in a more timely manner than under the current system of dissemination through record holders?

5. Revise and Redesignate the Rule Prohibiting Purchases Outside an Offer

We propose to amend Exchange Act Rule 10b-13 and redesignate it as Rule 14e-5. The proposals would clarify the

[237] *See* Release No. 34–8370 (july 30, 1968 [33 FR 11015].

[238] There is no schedule or form accompanying the rule. The required information is disclosed in a ''Rule 13e-1 Transaction Statement'' filed electrically on EDGAR under the submission-type SC 13E1.

[239] Approximately six statements were filed under Rule 13e-1 during the past five years.

[240] 17 CFR 240.14a-7.

[241] *See* Release No. 34–31326 (October 16, 1992) [57 FR 48276]. The list of beneficial owners includes only those who have not objected to the bank or broker nominee disclosing their identity to the issuer.

[242] *See* Rule 13e-4(e)(1)(ii).

rule's text and codify several interpretations and exemptions.

Rule 10b-13 prohibits a person who is making a cash tender offer or exchange offer from purchasing or arranging to purchase, directly or indirectly, the security that is the subject of the offer (or any security that is immediately convertible into or exchangeable for the subject security) otherwise than as part of the offer.[243] The rule's prohibitions apply from the time the offer is publicly announced or otherwise made known to security holders until the time the bidder is required, by the offer's terms, either to accept or reject the tendered securities. Rule 10b-13 protects investors by preventing a bidder from extending greater or different consideration to some security holders by offering to purchase their securities outside the offer, while other security holders are limited to the offer's terms.[244] The rule applies to the bidder, whether the issuer or a third party, the bidder's affiliates, and the offer's dealer-manager.[245]

a. Proposed Amendments Redesignating and Clarifying the Rule

The Commission originally promulgated Rule 10b-13 under the provisions of Sections 10, 13 and 14 of the Exchange Act[246] to safeguard the interests of persons who sell their securities in response to a tender offer.[247] The dangers posed by a bidder's purchases outside an offer may involve fraud, deception and manipulation. Because the rule addresses conduct during tender offers, we believe it belongs with the other rules under Regulation 14E under the Exchange Act that directly address improper activities in the context of tender offers.[248]

The proposed amendments do not alter the rule's basic terms. Instead, they modify the rule's text to more clearly set forth the covered activities. New Rule 14e-5 would prohibit, in connection with a tender offer for equity securities, a covered person from purchasing or arranging to purchase any subject securities or any related securities otherwise than as part of the offer. As used in Regulation 14E, the term ''tender offer'' includes offers to exchange securities for cash and/or securities.[249]

We also propose to simplify the language describing the period during which the prohibition on purchases applies. Under proposed Rule 14e-5, this prohibition still would commence at the time the offer is first publicly announced or otherwise made known[250] to holders of subject securities and end with the offer's expiration. Under proposed Rule 14d-11, a tender offer could be extended under specific circumstances without offering withdrawal rights.[251] This gives security holders an additional opportunity to tender into the offer. We believe bidder purchases outside the offer during this subsequent offering period present the same concerns as during the initial offering period. Therefore, the proposed Rule 14e-5 restrictions would cover any subsequent offering period provided under proposed Rule 14d-11.

The rule applies from the time the offer is first publicly announced or otherwise made known to holders of subject securities. Should the rule apply if the bidder advises some but not all security holders that it intends to conduct a tender offer for the subject securities?

b. Persons and Securities Subject to the Rule

Scope of Persons Subject to the Rule. Rule 10b-13 applies to the person who makes the offer, which has been interpreted to cover the bidder, the bidder's affiliates, and the offer's dealer-manager.[252] Under proposed Rule 14e-5, the term ''person'' is replaced by ''covered person'' to codify this interpretation. Covered person is defined as: the offeror and its affiliates; the offeror's dealer-manager(s) and other advisors; and any person acting, directly or indirectly, in concert with them. The term ''affiliate'' is defined in proposed Rule 14e-5 as any person that ''directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the offeror.''[253]

Scope of Securities Subject to the Rule. Proposed Rule 14e-5 would apply only to offers for equity securities, just as Rule 10b-13 currently does. Moreover, Rule 10b-13 and proposed Rule 14e-5 prohibit purchases outside the offer of not only the target security, but also related securities. We propose several changes from Rule 10b-13 regarding the scope and treatment of related securities.

Proposed Rule 14e-5 would define ''related securities'' as ''securities that are immediately convertible into, exchangeable for, or exercisable for subject securities.'' By covering securities that are immediately ''exercisable for'' subject securities, we are clarifying that securities, such as options, that can be exercised to receive target securities are included in the class of securities that a covered person cannot purchase outside the offer.

c. Excepted Transactions

Exercise of Related Securities. Rule 10b-13 specifies that if the person making the offer ''is the owner of another security which is immediately convertible into or exchangeable for the security which is the subject of the offer, his subsequent exercise of his right of conversion or exchange with respect to such other security shall not be prohibited by this rule.'' We are amending this provision and relocating it in the part of proposed Rule 14e-5 covering excepted activities. When Rule 10b-13 was adopted, options were not nearly as common as they are today, and the text of this exception did not explicitly include the exercise of options. We believe the exercise of stock options is no more likely to lead to undesirable effects than the exchange or conversion of other related securities, so we want to make it clear that the exercise of options is included in this exception. Thus, we propose to permit a covered person to convert, exchange, or exercise related securities, as long as the covered person owned the related securities before the offer was publicly

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[243] 17 CFR 240.10b-13.

[244] Release No. 34–8712 (October 8, 1969) (''Rule 10b-13 Adopting Release'').

[245] *See e.g., Letter regarding Offers for Smith New Court PLC (*July 26, 1995) (''Smith New Court Letter'').

[246] 15 U.S.C. 78j; 15 U.S.C. 78m; 15 U.S.C. 78n.

[247] Rule 10b-13 Adopting Release.

[248] Section 14(e) of the Exchange Act confers on the Commission the authority to define and prescribe means to prevent fraudulent, deceptive, or manipulative acts or practices in connection with any tender offer. *See United States v. O'Hagan,* 117 S. Ct. 2199, 2217 (1997) (holding that ''under § 14(e), the Commission may prohibit acts, not themselves fraudulent under the common law or § 10(b), if the prohibition is 'reasonably designed to prevent * * * acts and practices [that] are fraudulent' '' (*citing* 15 U.S.C. 78n(e)).

We prepose to amend the rule delegating exemptive authority to the Director of the Division of Market Regulation, Rule 30–3, and to replace references to Rule 10b-13 with Rule 14e-5. We also propose to add a parallel provision to Rule 30–1 to delegate exemptive authority to the Director of the Division of Corporation Finance.

[249] Thus, it is unnecessary to include paragraph (b) of Rule 10b-13 defining the term ''exchange offer'' in new Rule 14e-5.

[250] The phrase ''otherwise made known'' means any form of communication, other than public announcement, that notifies holders of subject securities of an offer.

[251] *See* Part II.E.1 above.

[252] *See, e.g.,* Smith New Court Letter. *See also In the Matter of Trinity Acquisition's Offer to Purchase the Ordinary Shares and American Depositary Shares of Willis Corroon Group plc,* Release No. 34–40246 (July 22, 1998) (67 S.E.C. Docket 1320).

[253] This definition is taken substantially from Rule 12b-2 under the Exchange Act [17 CFR 240.12b-2].

announced or otherwise made known to security holders.[254]

Purchases by or for Plans. Since the adoption of Rule 10b-13, there has been an exception for purchases of the target security (or a related security) by the issuer, by participating employees of the issuer or the employees of its subsidiaries, or by the trustee or other person acquiring the security for the account of the employees, under certain types of plans.[255] For example, issuers conducting tender offers for their equity securities may purchase subject securities on behalf of an employee plan. Rule 10b-13 partly incorporates outdated Internal Revenue Code provisions to define these excepted plans.

We propose to eliminate references to Internal Revenue Code provisions to define permissible plan purchases and rely instead on the more expansive plan provisions contained in the Commission's Regulation M. The exception would permit purchases of subject securities or related securities for any ''plan'' if the purchases are made by an ''agent independent of the issuer'' as these terms are defined in Regulation M.[256] This exception would recognize the phenomenal growth in variety of employee, security holder, and affinity group plans in recent years. Moreover, requiring that these purchases be made by an ''agent independent of the issuer'' should help assure that such purchases do not lead to the abuses that proposed Rule 14e-5 is designed to prevent.

Does the proposal regarding plans adequately address circumstances when a bidder may need to purchase shares during an offer on behalf of a plan? Are there situations when it would be appropriate for the bidder to buy shares directly on behalf of the plan? Should the rule expressly prevent a bidder from establishing a plan around the time of an offer and then purchasing shares on behalf of that plan through an independent agent or otherwise?

Purchases during Odd-Lot Offers. We propose to add a new exception that permits purchases during an issuer odd-lot tender offer conducted in compliance with the provisions of Rule 13e-4(h)(5) under the Exchange Act.[257] Under Rule 13e-4(h)(5), an issuer tender offer is excepted from application of Rule 13e-4 if the offer is directed solely to odd-lot security holders and provides ''all holders'' and ''best price'' protections to tendering security holders. This proposal codifies a class exemption from Rule 10b-13 issued by the Commission in connection with a recent revision to Rule 13e-4(h)(5).[258]

Unsolicited Purchases by a Dealer-Manager. We propose to except unsolicited purchases by a dealer-manager that are made on an agency basis. This exception, which codifies a prior exemption, [259] would allow a dealer-manager to continue to conduct its customary brokerage activities during a tender offer. Those activities generally do not raise the concerns that proposed Rule 14e-5 is intended to address. Of course, the unsolicited orders must be from a person other than a covered person and must be made in the ordinary course of business.

Should the exception permit riskless principal transactions by dealer-managers as well? Is it necessary to define the term ''dealer-manager?''

d. Solicitation of Comments on Proposed Rule 14e-5

We solicit comment on all aspects of proposed Rule 14e-5. Are the current exceptions appropriate? Aside from plan transactions and purchases during an odd-lot offer, are there other circumstances when it would be appropriate to permit the bidder to purchase subject or related securities outside the offer? For example, should the bidder be permitted to purchase shares outside the offer if a purchase contract was entered into before public announcement of the offer and the per share purchase price is no higher than the offer consideration? Should any such exception be limited to cash tender offers for all outstanding shares?

In addition, we invite commenters to address whether a rule prohibiting purchases outside of a tender offer continues to be appropriate. Should we consider implementing a rule like that in the City Code, which permits purchases outside the offer if, among other things, the bidder increases the tender offer consideration to the highest price paid for any shares so acquired? [260]

Under what circumstances would it be appropriate not to apply Rule 14e-5 to the offer's dealer-managers and advisors? Should we consider provisions like those contained in the City Code that permit market makers affiliated with the offeror's advisors to continue their market making functions when the market maker is sufficiently independent from the advisor and other protections are present? [261]

6. Safe Harbor for Forward-Looking Statements

In permitting substantially greater communications before the filing of a tender offer statement and the commencement of an offer, we recognize that bidders may be unwilling to communicate freely about an offer absent a safe harbor from liability for forward-looking communications. Currently, the safe harbor provisions in the Private Securities Litigation Reform Act of 1995 (''PSLRA'') for forward-looking statements do not apply to statements made in connection with a tender offer,[262] although they do apply to statements made in connection with mergers.[263] We solicit comment on whether we should extend the provisions of the PSLRA to forward-looking statements issued in connection with a tender offer. Just as with mergers, there are other policing mechanisms to protect against false and misleading forward-looking statements in the tender offer context.

Of course, under any extension of the PSLRA safe harbor, bidders would have to identify their forward-looking statements as ''forward-looking'' and the statements would need to be accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ significantly from those disclosed. In addition, bidders still may be subject to liability in any proceeding brought by the Commission. In order to promote balanced disclosure, we also would extend the safe harbor to statements made by targets as well as bidders.

We invite comment on whether the statutory safe harbor for forward-looking statements is necessary or appropriate to encourage bidders and targets to communicate fully and freely with security holders regarding proposed tender offers. What types of forward-looking information do bidders typically provide, or need to provide, before

[254] As discussed above, proposed Rule 14e–5 would prohibit a covered persons from purchasing related securities from the time that the offer is publicly announced or otherwise made known to security holders.

[255] 17 CFR 240.10b–13(c).

[256] 17 CFR 242.100.

[257] 17 CFR 240.13e–4(h)(5).

[258] Release No. 34–38068 (December 20, 1996) [61 FR 68587].

[259] *Letter regarding Reuters Holdings PLC* (August 17, 1993).

[260] City Code, Rule 6.2.

[261] City Code, Rule 38; Statement 11.

[262] *See* Section 27A(b)(2)(C) of the Securities Act and Section 21E(b)(2)(C) of the Exchange Act. The safe harbor in the PSLRA also is unavailable to penny-stock companies, companies involved in ''blank check'' offerings, roll-up transactions or going-private transactions. *See* Section 27A(b)(1)(B)–(E) of the Securities Act and Section 21E(b)(1)(B)–(E) of the Exchange Act.

[263] The Commission's safe harbor rules, Securities Act Rule 175 [17 CFR 230.175] and Exchange Act Rule 3b–6 [17 CFR 240.3b–6], are available for certain forward-looking statements made in Commission filings, including those made in tender offers.

commencing a tender offer that merit safe harbor protection from private litigation? Could a safe harbor be abused in the fast-moving tender offer context? Are there any circumstances when a forward-looking information safe harbor should not be available? For example, should we limit our extension of the PSLRA safe harbor to only those communications made in reliance on the proposed free communications safe harbor?

III. General Request for Comments

If you would like to submit written comments on the proposals, to suggest additional changes, or to submit comments on other matters that might have an impact on the proposals, we encourage you to do so. Besides the specific questions we asked in this release, we also solicit comment on the usefulness of the proposals to security holders, issuers, and the marketplace at large. We would like comments from the point of view of both bidders and targets, as well as security holders and market professionals involved in the mergers and acquisitions area. We also encourage the submission of written comments on any aspect of the initial regulatory flexibility analysis. We will consider any written comments we receive in preparing the final regulatory flexibility analysis if the proposed rules are adopted.

We believe that the proposals, if adopted, would promote efficiency, competition, and capital formation. However, we solicit comment on whether the proposals would promote efficiency, competition, and capital formation. We also request comment on whether the proposals, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Securities Act and the Exchange Act. We will consider these comments in complying with our responsibilities under Section 23(a)(2) of the Exchange Act.[264]

Please send three copies of your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. You may also submit your comments electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–28–98; this file number should be included in the subject line if E-mail is used. Comment letters can be inspected and copied in the public reference room at 450 Fifth Street, N.W., Washington, D.C. We will post electronically submitted comments on our Internet Web site (http://www.sec.gov).

IV. Cost-Benefit Analysis

The proposed new rules, schedules, and amendments would update and simplify the rules and regulations that apply to takeover transactions, including tender offers, mergers, and similar extraordinary transactions. We propose to enhance communications between public companies and investors before companies file registration statements involving takeover transactions, proxy statements or tender offer statements. We also propose to put cash and stock tender offers on a more equal regulatory footing; integrate the forms and disclosure requirements applicable to issuer tender offers, third-party tender offers and going private transactions; and consolidate the disclosure requirements in one location. We propose to allow security holders to tender their shares during a limited period after the successful completion of a tender offer; more closely align the merger and tender offer requirements; and update the tender offer rules to clarify certain requirements and reduce compliance burdens where consistent with investor protection. In this section, we examine the benefits and costs associated with the proposed revisions, focusing on the groups that might be affected. We request that commenters provide their views and supporting data as to the benefits and costs of the proposals.

A. Communications

We anticipate the proposals would enhance price discovery and market efficiency by permitting companies to communicate more freely with investors in business combination transactions. Today, the provisions of the Securities Act and Exchange Act, including the Williams Act, restrict the type of information that can be disseminated before a bidder files a registration, proxy or tender offer statement. The proposals would allow companies to communicate with security holders both before and after they file their registration, proxy, and tender offer statements.[265] The proposed rules also would allow companies that are the target of a tender offer to communicate more freely with security holders.

We believe this increased flow of information would help security holders make more informed tender or voting decisions, despite the possibility that some deal participants might attempt to ''condition the market'' with false, misleading or confusing information. We believe security holders would benefit overall because they would receive issuers' registration, tender offer or proxy statements before having to tender or vote their shares. Therefore, security holders would have the opportunity to consider the statements in the disclosure document together with any other information disseminated by parties to business combination transactions. In addition, such information would be subject to high liability standards. Issuer communications made before filing with the Commission and during the waiting period would be subject to the anti-fraud provisions of Rule 10b–5 under the Exchange Act, as well as to the anti-fraud provisions of Rule 14a–9 and Section 14(e) if a transaction involves the proxy or tender offer rules, respectively. If the Securities Act is applicable, these communications also would be subject to the provisions of Section 12(a)(2) under the Securities Act. We have requested comment on whether these communications also should be deemed part of the registration statement and therefore subject to Section 11 of the Securities Act. We believe these standards of liability are sufficiently high to encourage parties to provide investors with fair and accurate information about transactions.

Does the benefit of greater freedom in communications outweigh the cost to security holders of obtaining and analyzing the additional information to determine its currency and accuracy and the cost to companies of filing such information? We do not believe that permitting offerors to communicate with security holders before filing their registration statements and during the waiting period would present a significant burden to investors or offerors. We request comment on the type and magnitude of burden this filing requirement would represent to deal participants.

In addition, we believe the proposed communication rules would reduce the current regulatory uncertainty for companies. As discussed above, the provisions of the Securities Act and Exchange Act, including the Williams Act, restrict communications before companies file their registration, proxy or tender offer statements. Companies have told us that they are uncertain whether and in what circumstances these restrictions conflict with their duties to make full and fair disclosure under Rule 10b–5 of the Exchange Act. Consequently, many companies are

[264] 15 U.S.C. 78w(a)(2).

[265] *See* proposed Rules 166(b), 14d–2, and 14a–12.

unsure how to balance their duty to disclose with their duty to be silent before the filing of a disclosure document. By relaxing restrictions on communications, the proposed revisions would minimize this regulatory tension. This clarification would benefit offerors and security holders alike.

One potential cost of the proposals is that some security holders may make investment decisions based on information received before the filing of a disclosure statement.[266] To the extent that such activity could occur under the proposals, it also could occur today. The current rules limit companies from communicating with investors before they file their statements. By allowing companies to publicly announce transactions before the filing of a mandated disclosure document and requiring companies to file their written communications on first use, we believe investors would be more likely to make informed investment decisions than under the current rules. We request comment on the accuracy of this view.

To further protect investors, we propose new Rule 14e–8 that would make it clear that it is unlawful to announce a tender offer without the intention of beginning and completing it with the intention of manipulating the market price of the bidder or target. It also would clarify that it is unlawful to announce a tender offer without the reasonable belief that the bidder has the means to purchase the securities in the offer. We believe such actions should be unlawful because it could cause investors to base their investment decisions on false or misleading information. We believe the proposed rule would help stem these activities, but request your comments on this viewpoint.

In addition to permitting increased communications between companies and investors, the proposed revisions would reduce the differential in information available to investors by requiring companies to file their written communications upon first use. This proposal would help assure that communications are immediately available to many more investors than currently is the case. The proposals also would increase the uniformity and timeliness of information received by investors.

We also propose to permit bidders to begin their exchange offers as soon as they file their registration statements; that is, they would no longer have to wait for the registration statements' effectiveness. We believe the ability to begin an exchange offer on filing would encourage issuers to file quickly with the Commission, thereby creating incentives for companies to publicly disseminate information rather than selectively communicate with only a few security holders.

We recognize that our proposals to liberalize oral communications, which would not need to be filed, may encourage companies to use oral communications rather than written communications, which would have to be filed. On balance, however, we believe the proposals will reduce the selective disclosure of information to the market. We request comment on whether the benefits to security holders of greater access to written information would outweigh any potential costs from deregulating oral communications.

In proxy solicitations, whether or not they involve a business combination, we propose to permit companies to more freely communicate with security holders. Under the proposed rules, companies would be able to communicate freely with security holders without first furnishing a written proxy statement.[267] The proposal would allow security holders to receive more information on upcoming votes than they do today.

We also propose to require companies to provide a short ''plain English'' summary term sheet in all cash mergers, cash tender offers, and going-private transactions.[268] We believe that this would facilitate investors' understanding of the basic terms of transactions, and thus allow them to make better-informed choices. We do not anticipate that companies would incur significant costs in writing plain English term sheets because they need to generate the same information to comply with other disclosure requirements and many should have experience writing plain English disclosures in connection with the Securities Act requirements. We request comment on the accuracy of this view.

B. Filings

We anticipate that the proposals would lower the costs of complying with the business combination disclosure and other regulatory requirements for many offerors. The proposals would integrate and streamline the disclosure requirements for business combinations, thereby reducing compliance costs. Specifically, the proposals would harmonize and integrate the disclosure requirements for tender offer, merger proxy, and going-private transaction statements. The proposals would allow issuers to file one schedule, rather than two, to satisfy the tender offer and going-private disclosure requirements when both apply to the transaction.

The proposals would reduce the burden of complying with the merger proxy requirements by,[269] among other things:

- Clarifying the disclosure requirements;
- Clarifying that financial statements are required for an acquiror in a cash transaction only if an acquiror has not demonstrated the financial ability to satisfy the terms of the offer or the information is otherwise material;
- Eliminating the requirement for financial statements of the target in a cash merger when the acquiror's security holders are not voting on the transaction;
- Reducing the financial statement requirements for non-reporting target companies (when security holders of the acquiring company are not voting on the transaction) to be only those financial statements the target previously furnished to its security holders (with a minimum of U.S. GAAP financial statements provided for the latest fiscal year) instead of financial statements for three years; [270] and
- Reducing the financial statements needed for acquiring companies in cash mergers and third-party cash tender offers from three years to two years.

In addition, we propose one offsetting cost. We would require that a bidder in a two-tier transaction, where security holders are offered cash in a tender offer and securities in a back-end merger, provide security holders with pro forma financial statements and other related information for the combined entity at the time of the cash tender offer. Rather than being an additional requirement, this proposal would accelerate the time at which bidders are required to disclose the information.

For the purposes of the Paperwork Reduction Act, Table 2 in Section VI summarizes our preliminary estimates of the internal burden hours that parties would spend to comply with the proposals. These estimates include the

[266] The above proposals could cause some security holders to make premature investment decisions based on incomplete information if they buy or sell securities after an issuer announces a transaction, but before the issuer files its registration, proxy or tender offer statement.

[267] A company would, however, have to provide a proxy statement before or concurrently with soliciting a proxy card.

[268] Forms C and SB–3 would be subject to the current Form S–4 summary and plain English requirements; thus we would not need to require a term sheet for securities offerings, although we are soliciting comment on whether it would be useful.

[269] *See* Item 14 of Schedule 14A.

[270] This revision would apply to Form C and SB–3 transactions.

burden hours incurred by companies from filing pre-filing communications. We base these estimates on current burden hour estimates and the staff's experience with these filings. The estimates in the table indicate that parties would expend approximately 234,759 internal burden hours/year complying with the proposals. If we assume that 70% of these burden hours would be expended by persons that cost the affected parties $85/hour and 30% of these burden hours would be expended by persons that cost $10/hour, then the proposals would cost approximately $14,691,250/year in internal staff time. For the purposes of the Paperwork Reduction Act, we also estimate that parties would spend approximately $122,929,990/year on outside professional help to comply with the proposals. Thus we estimate that affected parties would spend approximately $137,621,240/year to comply with the proposals. Applying the same cost estimates to the burden imposed by the current rules, we estimate that companies and affected parties spend approximately $163,268,490/year.[271] Note that these estimates do not attempt to quantify the proposals' intangible benefits, such as the benefits to issuers and investors of enhanced communications and possible improvements in price discovery, nor its intangible costs, such as the cost to security holders of identifying misleading or incomplete pre-filing information. We request comment on the reasonableness of our estimates and our analysis of other costs and benefits.

We propose to eliminate confidential treatment of merger proxy statements. Today, many of the filings we accord confidential treatment are preceded by public announcements of the transactions. Consequently, we question whether eliminating confidential treatment of merger proxy statements would impose a burden or cost on companies. We solicit comment on the possible impact on companies of this proposal.

C. Tender Offers

We propose to reduce a regulatory bias against using securities as consideration in tender offers by allowing third-party bidders to begin an exchange offer upon filing and dissemination of their Form C or SB–3 registration statement (like bidders offering cash). This proposal would give bidders more flexibility in determining whether to offer cash or securities as consideration in transactions. Under the proposals, a bidder could not purchase tendered securities until its registration statement was declared effective and the mandatory 20-business day tender offer period had elapsed. Security holders could withdraw their securities at any time until purchased by the bidder. This proposal would likely shorten the period of time to complete stock tender offers relative to today, putting them on a more equal footing with cash tender offers. Of course, it may also increase the risk that bidders offering securities would have to disseminate supplements to the tender offer materials after their offers begin due to changes in material information. If so, they would have to provide sufficient time for security holders to receive the supplements and reconsider their investment decisions. This risk, however, would not be unique to exchange offers; issuers run the same risk today with cash offers. We solicit comment on this analysis and on any other costs and benefits that may arise from bidders commencing their exchange offers earlier than today.

We also propose to permit bidders to purchase (at the stated offer price) securities from holders who did not tender their shares during the offer in a ''subsequent offering period.'' We believe the proposal would minimize the delay that security holders encounter in liquidating their investments in a target's securities when a bidder is successful in purchasing a significant or controlling interest in the target. Under the proposal, however, security holders might wait to tender their shares in the subsequent offering period. We solicit comment on whether this would be likely to occur and whether it would outweigh the benefits of the proposal. We note that bidders would not be under any obligation to offer to purchase securities in a subsequent offering period.

We propose to eliminate the requirement for financial statements of the target in cash mergers when acquirors' security holders are not voting on the transaction, and require two, rather than three years of financial statements when they are material in third-party cash tender offers. If the security holders of the acquiror are not making a voting decision on the transaction, they do not need three years of historical financial statements. The reduction from three to two years of historical financial statements would thus lower acquirors' costs of complying with our rules, while continuing to protect security holders.

Finally, we propose to allow bidders greater access to security holders in tender offers by enabling them to contact non-objecting beneficial owners if the target company maintains a list of these persons. The proposed amendment would give bidders the same ability as target companies to communicate directly with the beneficial owners of securities similar to that provided under the proxy rules. We believe this proposal would benefit bidders and security holders because communications would be more efficient than today. We request your comments on the benefits and costs of this proposal.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[272] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request information on the potential impact of the proposed rules, schedules, and amendments on the economy on an annual basis. Commenters should provide empirical data on: (i) the annual effect on the economy; (ii) any increase in costs or prices for consumers or individual industries; and (iii) any effect on competition, investment or innovation. We note that U.S. merger and acquisition activity in 1997 was valued at over $790 billion.[273]

In adopting rules under the Exchange Act, Section 23(a) requires the Commission to consider the impact that rules would have on competition and to not adopt any rule that would impose a burden on competition not necessary or appropriate in the public interest. Section 3(f) of the Exchange Act requires the Commission, when engaged in rulemaking, to consider or determine whether the action is necessary or appropriate in the public interest, and also to consider in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.[274]

[271] For the purposes of the Paperwork Reduction act, we estimate in Table 2 of Section VI the burden hours imposed on parties to comply with the current rules. Assuming (as we did for the proposed rules) that 25% of the hours required to comply with the rules are provided by corporate staff at a cost of $63/hour (70% of the expended corporate staff time cost $85/hour, whereas 30% of the expended corporate staff time cost $10/hour), and 75% of the hours required to comply with the rules are provided by external professional help at a cost of $175/hour, we estimate that affected parties spend approximately 1,110,670 burden hours/year * $147/hour-$163,268,490/year.

[272] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[273] *See* Mergers & Acquisitions, The Dealmaker's Journal, 1998 Almanac (March/April), at 42.

[274] 15 U.S.C. § 78c(f).

V. Initial Regulatory Flexibility Analysis

A. Reasons for Proposed Action

We prepared this Initial Regulatory Flexibility Analysis under 5 U.S.C. § 603 concerning the new rules, schedules, and amendments proposed today. We will consider your written comments in the preparation of the final analysis. The primary purposes of the proposed new rules, schedules, and amendments are to enhance communications with security holders; harmonize the regulations affecting cash and stock tender offers; facilitate compliance with the rules and regulations associated with takeover and similar extraordinary transactions; and promote investor protection.

B. Objectives and Legal Basis

The resulting reduction in compliance costs for all persons subject to our rules and regulations would benefit small and large business entities alike. The proposals should result in security holders receiving more information on a timely basis. In addition, the proposals would give persons subject to our rules greater flexibility in structuring and completing tender offers, mergers, and other extraordinary transactions. We propose the new rules, schedules, and amendments under Sections 2(3), 5, 7, 8, 10, 12, 19, and 28 of the Securities Act, as amended, and Sections 3(b), 4(e), 10(b), 13, 14, 18, 23(a), 24, and 36 of the Exchange Act, as amended.

C. Small Entities Subject to the Rules

The proposals would affect small entities that are required to file registration statements, proxy statements, tender offer statements and other reports under the Securities Act, Exchange Act, and the Investment Company Act. For the purposes of the Regulatory Flexibility Act, the Securities Act and Exchange Act define a ''small business'' issuer, other than an investment company, to be an issuer that, on the last day of its most recent fiscal year, had total assets of $5 million or less.[275] When used with respect to an issuer that is an investment company, the term is defined as an investment company and any related investment company with aggregate net assets of $50 million or less as of the end of its most recent fiscal year.[276]

We currently are aware of approximately 1,100 reporting companies that are not investment companies with assets of $5 million or less. There are approximately 400 investment companies that satisfy the ''small entity'' definition. All of these companies would be subject to at least some of the proposed rules, schedules, and amendments and could be affected either as acquiring or as acquired companies. We have no reliable way, however, to determine how many reporting or non-reporting small businesses may actually rely on the proposed rules, or may otherwise be affected by the rule proposals. Nevertheless, we believe that the proposals would substantially benefit both small and large entities to the extent the proposals substantially reduce current restrictions on communications and facilitate compliance with existing rules and regulations.

D. Reporting, Recordkeeping, and Other Compliance Requirements

For the most part, the proposals are deregulatory in nature, significantly expanding the ability of businesses to structure and time their business combination transactions and communicate with security holders. Under the proposed rules, small businesses would report and file essentially the same information as today. One exception to this generalization is that offerors, both large and small, would be required to file pre-filing communications in business combination transactions with the Commission. This requirement arises, however, from the proposed deregulation of voluntary pre-filing communications. The proposed rules, schedules, and amendments in this release would treat all persons and entities alike, and would not distinguish among them based on size.

E. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small issuers. In connection with the proposed rules, schedules, and amendments, we considered several alternatives, including:

- Establishing different compliance and reporting requirements or timetables that take into account the resources of small businesses;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rule for small businesses;
- Using performance rather than design standards; and
- Exempting small businesses from all or part of the requirements.

For the most part, the proposals are deregulatory in nature. They significantly expand the ability of businesses to structure and time their business combination transactions and communicate with security holders, while maintaining investor protections. Although we considered whether it would be appropriate to exclude smaller entities, we determined that the proposals should apply to all businesses regardless of their size; that is, we should not limit the rules and the corresponding benefits to large, seasoned issuers.

As a preliminary matter, we believe that there are no less restrictive alternatives to the proposed rules, schedules, and amendments that would serve the purposes of the proxy, tender offer, going-private, and registration requirements of the federal securities laws. We were unable to identify less burdensome alternatives to our proposals that would be consistent with our statutory mandate to require issuers to disclose material information fully and fairly to investors. We believe the proposed rules, schedules, and amendments should apply equally to all entities required to disclose information to enhance the protection of all investors. For these reasons, we also believe there would be no benefit in providing separate requirements for small issuers based on the use of performance rather than design standards.

F. Overlapping or Conflicting Federal Rules

We do not believe any current federal rules duplicate, overlap or conflict with the rules, schedules, and amendments that we propose to amend.

We request your written comments on any aspect of this Initial Regulatory Flexibility Analysis. We particularly seek comment on:

- The number of small entities that would be affected by the proposed rules, schedules, and amendments;
- The expected impact of the proposals as discussed above; and
- How to quantify the number of small entities that would be affected by, and how to quantify the impact of, the proposed rules, schedules, and amendments.

We ask commenters to describe the nature of any impact and provide empirical data supporting the extent of the impact.

VI. Paperwork Reduction Act

The proposed rules, schedules, and amendments affect several regulations and forms that contain ''collection of information requirements'' within the

[275] *See* 17 CFR 230.157 and 17 CFR 240.0–10.

[276] *See* 17 CFR 240.0–10

meaning of the Paperwork Reduction Act of 1995.[277] We have submitted proposed revisions to those rules, schedules, and amendments to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. § 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Table 1 below includes the titles for the affected collections of information under the Exchange Act, current OMB control numbers, if applicable, a summary of the collection of information, and a description of the likely respondents to each collection of information.[278]

TABLE 1: COLLECTIONS OF INFORMATION UNDER THE SECURITIES ACT AND EXCHANGE ACT

Title	OMB control No.	Summary of the collection of information and description of likely respondents
Schedule 14A	3235–0059	When a shareholder vote is required, persons soliciting proxies with respect to securities registered under Section 12 of the Exchange Act must furnish a proxy statement containing the information specified by Schedule 14A. The proxy statement is intended to provide security holders with the information necessary to enable them to vote in an informed manner on matters intended to be acted upon at security holders' meetings, whether the traditional annual meeting or a special meeting.
Schedule 14C	3235–0057	Companies with securities registered under Section 12 of the Exchange Act must send an information statement to every holder of the registered security that is entitled to vote on any matter for which a security holder vote is held, but proxies are not solicited. Schedule 14C sets forth the disclosure requirements for these information statements.
Schedule 13E–3	3235–0007	Companies or their affiliates that engage in specified transactions that cause a class of the company's equity securities registered under the Exchange Act to be: 1) held by fewer than 300 record holders, or 2) de-listed from a securities exchange or inter-dealer quotation system must file a Schedule 13E–3. Filers must disclose detailed information about transactions, including whether they believe the transactions are fair.
Schedule 14D–9	3235–0102	Interested parties (including issuers and beneficial owners of securities) that make a solicitation or recommendation to security holders regarding a tender offer subject to Regulation 14D must file a Schedule 14D–9.
Schedule 13E–4	3235–0203	Reporting companies that make tender offers for their own securities must file a Schedule 13E–4.
Schedule 14D–1	3235–0102	Any person, other than the issuer, making a tender offer for equity securities registered under Section 12 of the Exchange Act, which offer, if consummated, would cause that person to own over 5 percent of that class of the securities, must at the time of the offer file a Schedule 14D–1 and send it to certain other parties, such as the issuer and any competing bidders.
Schedule TO	t.b.d.	Any party that the SEC would require today to file a Schedule 13E–4 or Schedule 14D–1.

The proposed new rules, schedules, and amendments would update and simplify the rules and regulations for business combinations. The information is needed so that security holders may make informed tender and voting decisions in tender offers, mergers, acquisitions, and other extraordinary transactions. We propose to enhance communications between public companies and investors before companies file registration statements involving takeover transactions, proxy statements, and tender offer statements. We also propose to put cash and stock tender offers on a more equal regulatory footing; integrate the forms and disclosure requirements in issuer tender offers, third-party tender offers and going-private transactions; and consolidate the disclosure requirements in one location. We propose to allow security holders to tender their shares during a limited period after the completion of a tender offer; more closely align merger and tender offer requirements; and update the tender offer rules to clarify certain requirements and reduce compliance burdens where consistent with investor protection.

The affected schedules and regulations set forth the disclosures that the Commission would require offerors to make about business combination transactions and about themselves to the public. The requirements of the above schedules would largely be the same as today, except for a few changes. Specifically, under the proposals, Schedules 14A, 14C, 13E–3, 14D–9, and TO would require a short ''plain English'' summary term sheet, not currently required, in all cash mergers, cash tender offers, and going-private transactions.[279] The proposed rules would reduce the number of years of financial statements required by Schedules 14A and 14C for acquiring companies in cash mergers and cash tender offers from three years to two years. Under the proposals, Schedules 14A and 14C would no longer require the financial statements of the target in a cash merger when the acquiror's security holders are not voting on the transaction.[280] Proposed Schedule TO would replace current Schedules 13E–4 and 14D–1, harmonizing and clarifying their requirements. Under the proposals, Schedule TO would require a bidder in a two-tier transaction, where security holders are offered cash in a tender offer and securities in a back-end merger, provide security holders with pro forma financial statements and other related information for the combined entity at the time of the cash tender offer. The proposals would allow issuers to file

[277] 44 U.S.C. § 3501 *et seq.*

[278] Regulations S–K and S–B do not impose reporting burdens directly on public companies. For administrative convenience, each of these regulations is currently assigned one burden hour. The burden hours imposed by the disclosure regulations are currently included in the estimates for the forms that refer to the regulations.

[279] Forms C and SB–3 would be subject to the current Form S–4 summary and plain English requirements; thus we would not need to require a term sheet for securities offerings, although we are soliciting comment on whether it would be useful.

[280] For transactions offering stock as consideration (*i.e.*, Form C and SB–3 transactions), the proposals would reduce the financial statement requirements for non-reporting target companies (when security holders of the acquiring company are not voting on the transaction) to be only those financial statements the target previously furnished to its security holders (with a minimum of U.S. GAAP financial statements provided for the latest fiscal year) instead of financial statements for three years.

one schedule, rather than two, to satisfy the tender offer and going-private disclosure requirements when both apply to the transaction.

The information collection requirements imposed by the schedules and regulations are mandatory to the extent that companies are publicly owned and undertake business combination transactions. There are no mandatory retention periods for the information disclosed. The information gathered is made publicly available,[281] unless granted confidential treatment. However, the release proposes to eliminate the confidential treatment of preliminary proxy statements.

As discussed in detail in Section IV, the proposals, if adopted, would reduce the burden of complying with the business combination disclosure and transaction requirements for many issuers. Public companies would expend approximately 988,986 burden hours/year to comply with the proposed rules, schedules, and amendments, cumulatively saving at least 191,592 burden hours/year. Table 1 of Section IV shows the estimated burden hours for the proposed forms and the approximate number of filings of each schedule under the proposed rules, schedules, and amendments.

The proposals would integrate and streamline the disclosure requirements for business combinations, thereby reducing issuers' compliance costs. For the purposes of the Paperwork Reduction Act, Table 2 below summarizes our preliminary estimates of the burden hours that parties would spend to comply with the proposals. These estimates include the burden hours incurred by companies from filing pre-filing communications. We base these estimates on current burden hour estimates and the staff's experience with these filings. The estimates in the table indicate that parties would expend approximately 234,759 burden hours/year to comply with the proposals. In addition, as discussed in more detail below, we estimate that parties would spend approximately $122,929,990/year on outside professional help to comply with the proposals. Note that these estimates do not attempt to quantify the proposals' intangible benefits, such as the benefits to issuers and investors of enhanced communications and possible improvements in price discovery. We discuss our preliminary estimates in greater detail below. We request comment on the reasonableness of our estimates.

TABLE 2: BURDEN HOUR ESTIMATES

Schedule	Estimated burden hours/filing		Estimated filings/year[282]		Estimated burden hours	
	Before Revisions (A)	After Revisions (B)	Before Revisions (C)	After Revisions (D)	Before Revisions (E) = A*C	After Revisions (F) = B*D
14A	87.00	13.12	9,892	13,255	860,604	173,906
14C	87.00	13.12	253	339	22,011	4,448
13E–3	139.25	34.31	96	96	13,368	3,294
14D–9	354.25	64.43	258	353	91,397	22,744
13E–4	232.00	0.00	139	0	32,248	0
14D–1	354.25	0.00	257	0	91,042	0
TO	0.00	43.50	0	705	0	30,668
Total					1,110,670	235,060

[282] The estimated filings/year are based on the number of filings in fiscal year 1998.

We anticipate the proposals would reduce the number of hours required to file a full Schedule 14A from 87 hours today to 70 hours under the proposals.[283] Of the 70 hours, we estimate that 25% (17.5 internal burden hours) would be provided by corporate staff, and 75% (52.5 hours) by external professional help. Based on filings in fiscal year 1998, we anticipate that companies and other parties would file approximately 9,892 full Schedule 14As/year. Under the proposed rules, companies and other parties also would be required to file under cover of Schedule 14A any pre-filing written communications (in addition to the required proxy statement) concerning business combinations for cash.[284] The rule would require filers to attach their written communications and would have few specific information requirements. For fiscal year 1998, we estimate 34% of the 9,892 full Schedule 14As filed involved cash rather than securities.[285] We estimate that parties, on average, would file one written communication (in addition to the required proxy statement) for each cash transaction. We estimate that a firm's corporate staff would expend approximately 15 burden minutes (0.25 internal burden hours) to file a written communication under the proposed rules.[286] Thus, we estimate parties would file 9,892 full Schedule 14As/year (expending 17.5 internal burden hours/filing) and 3,363 written communications/year (expending 0.25 internal burden hours/filing). On average, filers would require approximately 13.12 internal burden hours to file 13,255 full Schedule 14As and written communications. In addition, we anticipate filers would spend, at an estimated $175/hour, approximately $9,188/filing in professional labor costs to file a full Schedule 14A.[287] We request your

[281] If, however, a bank finances all or part of a tender offer, we permit the offeror to conceal the bank's name if the offeror files a request and the bank's name with the Secretary of the Commission. *See* Item 4 of Schedule 14D–1.

[283] The numbers in Column B of Table 2 differ significantly from those in Column A of Table 2 for two reasons. First, the estimated burden hours in Column A include the estimated corporate burden hours and outside labor hours that parties would require to file each disclosure document. In Column B, we estimate only the corporate burden hours needed to file each disclosure document (we estimate separately the expense, in dollar terms, of outside labor). Second, the estimates in Column B include the estimated burden hours that bidders would require to file pre-filing communications. Because parties would require less time to file communications than full Schedule 14As, the average estimated burden hours in Column B are lower than in Column A.

[284] Under the proposed rules, bidders would file under Rule 425 any pre-filing communications in transactions where securities are offered as consideration. Because we are proposing Rule 425 in the Securities Act Reform Release, we estimate the burden hours for filings of pre-filing communications for those transactions in that release.

[285] According to Securities Data Corporation, in 1996 security holders received only cash in 34% of merger transactions.

[286] We base this estimate on the burden imposed by a similar filing requirement under Item 901(c) of Regulation S–K for roll-up transactions.

[287] We estimate filers would spend $9,188/filing in professional labor costs. We base this estimate on

comments and supporting empirical information on the reasonableness of these estimates.

We anticipate the proposals would reduce the number of hours required to file a full Schedule 14C from 87 hours today to 70 hours under the proposals. Of the 70 hours, we estimate that 25% (17.5 internal burden hours) would be provided by corporate staff, and 75% (52.5 hours) by external professional help. Based on filings in fiscal year 1998, we anticipate that companies and other parties would file approximately 253 full Schedule 14Cs/year. Under the proposed rules, companies and other parties also would be required to file under cover of Schedule 14C any pre-filing written communications (in addition to the required proxy statement) concerning business combinations for cash.[288] The rule would require filers to attach their written communications and would have few specific information requirements. For fiscal year 1998, we estimate 34% of the 253 full Schedule 14Cs filed involved cash rather than securities.[289] We estimate that parties, on average, would file one written communication (in addition to the required information statement) for each cash transaction. We estimate that a firm's corporate staff would expend approximately 15 burden minutes (0.25 internal burden hours) to file a written communication under the proposed rules. Thus, we estimate parties would file 253 full Schedule 14Cs/year (expending 52.50 burden hours/filing) and 86 written communications/year (expending 0.25 internal burden hours/filing). On average, filers would require approximately 13.12 internal burden hours to file 339 full Schedule 14Cs and written communications. In addition, we anticipate filers would spend, at an estimated $175/hour, approximately $9,188/filing in professional labor costs to file a full Schedule 14C.[290] We request your comments and supporting empirical information on the reasonableness of these estimates.

The proposals would clarify and make several technical changes to Schedule 13E–3. We anticipate a savings of two hours, from 139.25 hours/filing to 137.25 hours/filing, to file Schedule 13E–3 under the proposals. Of the 137.25 hours, we estimate that 25% (34.31 internal burden hours) would be provided by corporate staff, and 75% (102.94 hours) by external professional help. Based on filings in fiscal year 1998, we estimate parties would file 96 Schedule 13E–3s/year. In addition, we anticipate filers would spend, at an estimated $175/hour, approximately $18,015/filing in professional labor costs to file a full Schedule 13E–3.[291] We request your comments and supporting empirical information on the reasonableness of these estimates.

The proposals would clarify and make several technical changes to Schedule 14D–9. We anticipate a savings of two hours, from 354.25 hours/filing to 352.25 hours/filing, to file a full Schedule 14D–9 under the proposals. Of the 352.25 hours, we estimate that 25% (88.06 internal burden hours) would be provided by corporate staff, and 75% (264.19 hours) by external professional help. Based on filings in fiscal year 1998, we anticipate that companies and other parties would file approximately 258 full Schedule 14D–9s/year. Under the proposed rules, companies and other parties also would be required to file under cover of Schedule 14D–9 any pre-filing written communications (in addition to the required proxy statement) concerning business combinations for cash.[292] The rule would require filers to attach their written communications and would have few specific information requirements. For fiscal year 1998, we estimate 37% of the 258 full Schedule 14D–9s filed involved cash rather than securities.[293] We estimate that parties, on average, would file one written communication (in addition to the required information statement) for each cash transaction. We estimate that a firm's corporate staff would expend approximately 15 burden minutes (0.25 internal burden hours) to file a written communication under the proposed rules. Thus, we estimate parties would file 258 full Schedule 14D-9s/year (expending 88.06 internal burden hours/filing) and 95 written communications/year (expending 0.25 internal burden hours/filing). On average, filers would require approximately 64.43 internal burden hours to file 353 full Schedule 14D–9s and written communications. In addition, we anticipate filers would spend, at an estimated $175/hour, approximately $46,233/filing in professional labor costs to file a full Schedule 14D–9.[294] We request your comments and supporting empirical information on the reasonableness of these estimates.

The proposals also would replace Schedules 13E–4 and 14D–1 with a new tender offer schedule, Schedule TO. Schedule TO would harmonize and clarify the requirements in current Schedules 13E–4 and 14D–1. Based on the number of Schedule 13E–4 and Schedule 14D–1s filed in fiscal year 1998, and the number of hours required to complete them, we estimate that bidders would require approximately 309 hours to file a full Schedule TO under the proposed rules.[295] Of the 309 hours, we estimate that 25% (77.25 internal burden hours) would be provided by corporate staff, and 75% (231.75 hours) by external professional help. Based on filings in fiscal year 1998, we anticipate that companies and other parties would file approximately 396 full Schedule TOs/year. Under the proposed rules, companies and other parties also would be required to file under Schedule TO written communications (in addition to the required tender offer statement) concerning business combinations for

52.50 hours of professional labor/full Schedule 14A filing * $175/hour. In aggregate, we estimate that filers would spend $90,887,696/year to file 9,892 full Schedule 14As/year.

[288] Under the proposed rules, bidders would file under Rule 425 any pre-filing communications in transactions where securities are offered as consideration. Because we are proposing Rule 425 in the Securities Act Reform Release, we estimate the burden hours of filings of pre-filing communications for those transactions in that release.

[289] According to Securities Data corporation, in 1996 security holders received only cashe in 34% of merger transactions.

[290] We estimate filers would spend $9,188/filing in professional labor costs. We base this estimate on 52.50 hours of professional labor/full Schedule 14C filing * $175/hour. In aggregate, we estimate that filers would spend $2,324,564/year to file 253 full Schedule 14Cs/year.

[291] We estimate filers would spend $18,015/filing in professional labor costs. We base this esimate on 102.94 hours of professional labor/full Schedule 13e–3 filing * $175/hour. In aggregate, we estimate that filers would spend $1,729,440/year to file 96 full Schedule 13E–3s/year.

[292] Under the proposed rules, bidders would file under Rule 425 any pre-filing communications in transactions where securities are offered as consideration. Because we are proposing Rule 425 in the Securities Act Reform Release, we estimate the burden hours of filings of pre-filing communications for those transactions in that release.

[293] According to Securities Data corporation and *Mergerstat*, in 1996 security holders received only cash in 37% of merger and tender offer transactions.

[294] We estimate filers would spend $46,233/filing in professional labor costs. We base this esimate on 264.19 hours of professional labor/full Schedule 14D–9 filing * $175/hour. In aggregate, we estimate that filers would spend $11,928,114/year to file 258 full Schjedule 14D–9s/year.

[295] Offerors currently require 232 hours to complete Schedule 13E–4, and 354.25 hours to complete Schedule 14D–1. In fiscal year 1998, offerors registered 139 business combinations on Schedule 13E–4 and 257 business combinations on Schedule 14D–1. We estimate the number of burden hours that offerors would require to file a full Schedule TO would be [(139 Schedule TO filings that previously would have been filed on Schedule 13E–4 * 232 hours/Schedule TO filing that previously would have been filed on Schedule 13E–4) + (257 Schedule TO filings that previously would have been filed on Schedule 14D–1 * 354.25 hours/Scheduel TO filing that previously would have been filed on Schedule 14D–1)—2 burden hours from simplification]/396 filings on Schedule TO=309 hours/filing on Schedule TO.

cash.[296] The rule would require filers to attach their written communications and would have few specific information requirements. We estimate that parties, on average, would file one written communication (in addition to the required information statement) for each cash transaction. We estimate that a firm's corporate staff would expend approximately 15 burden minutes (0.25 internal burden hours) to file a written communication under the proposed rules. Based on data from fiscal year 1998, we estimate parties would file 396 full Schedule TOs/year (expending 77.25 internal burden hours/filing) and 309 written communications/year (expending 0.25 internal burden hours/filing).[297] On average, filers would require approximately 43.50 internal burden hours to file 705 full Schedule TOs and written communications. In addition, we anticipate filers would spend, at an estimated $175/hour, approximately $40,556/filing in professional labor costs to file a full Schedule TO.[298] We request your comments and supporting empirical information on the reasonableness of these estimates.

In accordance with 44 U.S.C. § 3506c(2)(B), we solicit comment on the following:

- Whether the proposed changes in each collection of information are necessary for the proper performance of the function of the agency;
- The accuracy of our estimate of the burden of the proposed changes to each collection of information;
- The quality, utility, and clarity of the information to be collected; and
- Whether there are ways to minimize the burden of any of the collections of information on those who are required to respond, including through the use of automated collection techniques or other forms of information technology.

Anyone desiring to submit comments on any or all of the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, with reference to File No. S7–28–98. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VII. Statutory Basis and Text of Proposed Amendments

The proposed rules, rule amendments, schedules, and schedule amendments in this release are being proposed under Sections 2(3), 5, 7, 8, 10, 12, 19 and 28, of the Securities Act of 1933, as amended, and Sections 3(b), 4(e), 10(b), 13, 14, 18, 23(a), 24 and 36 of the Securities Act of 1934, as amended.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegation.

17 CFR Parts 229, 230, 232, 239 and 240

Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

For the reasons set out in the preamble, we propose to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. By adding paragraph (e)(16) to § 200.30–1, to read as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(e) * * *

(16) Pursuant to Rule 14e–5(d) (§ 240.14e–5(d) of this chapter), to grant requests for exemptions from Rule 14e–5 (§ 240.14e-5 of this chapter).

* * * * *

§ 200.30–3 [Amended]

3. By amending paragraph (a)(6) of § 200.30–3 to remove the phrase ''Rules 10b–13(d), 14e–4(c), and 15c2–11(h) (§ § 240.10b–13(d), 240.14e–4(c), and 240.15c2–11(h) of this chapter)'' and in its place add ''Rules 14e–4(c), 14e–5(d), and 15c2–11(h) (§ § 240.14e–4(c), 240.14e–5(d), and 240.15c2–11(h) of this chapter)'', and to remove the phrase ''to grant requests for exemptions from Rules 10b–13, 14e–4, and 15c2–11) (§ § 240.10b–13, 240.14e–4, and 240.15c2–11 of this chapter)'' and in its place add ''to grant requests for exemptions from Rules 14e–4, 14e–5, and 15c2–11 (§ § 240.14e–4, 240.14e–5, and 240.15c2–11 of this chapter)''.

* * * * *

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

4. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77(e), 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

5. By revising paragraph (a)(2) of § 229.10 to read as follows:

§ 229.10 General.

(a) *Application of Regulation S–K.*

* * *

(2) Registration statements under section 12 (subpart C of part 249 of this chapter), annual or other reports under sections 13 and 15(d) (subparts D and E of part 249 of this chapter), going-private transactions under section 13 (part 240 of this chapter), tender offer statements under sections 13 and 14 (part 240 of this chapter), annual reports to security holders and proxy and information statements under section 14 (part 240 of this chapter), and any other documents required to be filed under the Exchange Act, to the extent provided in the forms and rules under that Act.

* * * * *

6. By adding an undesignated center heading and §§ 229.1000 through 229.1016 to read as follows:

Mergers and Acquisitions (M–A)

Sec.

229.1000 (Item 1000) Definitions.
229.1001 (Item 1001) Summary term sheet.
229.1002 (Item 1002) Subject company information.
229.1003 (Item 1003) Identity and background of filing person.

[296] Under the proposed rules, bidders would file under Rule 425 any pre-filing communications in transactions where securities are offered as consideration. Because we are proposing Rule 425 in the Securities Act Reform Release, we estimate the burden hours of filings of pre-filing communications for those transactions in that release.

[297] According to *Mergerstat*, in 1996 security holders received only cash in 78% of tender offer transactions.

[298] We estimate filers would spend $40,556/filing in professional labor costs. We base this estimate on 231.75 hours of professional labor/full Schedule TO filing * $175/hour. In aggregate, we estimate that filers would spend $16,060,176/year to file 396 full Schedule TOs/year.

229.1004 (Item 1004) Terms of the transaction.
229.1005 (Item 1005) Past contacts, transactions, negotiations and agreements.
229.1006 (Item 1006) Purpose of the transaction and plans or proposals.
229.1007 (Item 1007) Source and amount of funds or other consideration.
229.1008 (Item 1008) Interest in securities of the subject company.
229.1009 (Item 1009) Persons/assets, retained, employed, compensated or used.
229.1010 (Item 1010) Financial statements.
229.1011 (Item 1011) Additional information.
229.1012 (Item 1012) The solicitation or recommendation.
229.1013 (Item 1013) Purposes, alternatives, reasons and effects in a going-private transaction.
229.1014 (Item 1014) Fairness of the going-private transaction.
229.1015 (Item 1015) Reports, opinions, appraisals and negotiations.
229.1016 (Item 1016) Exhibits.

Mergers and Acquisitions (M–A)

§ 229.1000 (Item 1000) Definitions.

The following definitions apply to the terms used in Regulation M–A (§§ 229.1000–229.1016), unless specified otherwise:

(a) *Associate* has the same meaning as in § 240.12b–2 of this chapter;

(b) *Instruction C* means General Instruction C to Schedule 13E–3 (§ 240.13e–100 of this chapter) and General Instruction C to Schedule TO (§ 240.14d–100 of this chapter);

(c) *Issuer tender offer* has the same meaning as in § 240.13e–4(a)(2) of this chapter;

(d) *Offeror* means any person on whose behalf a tender offer is made;

(e) *Rule 13e–3 transaction* has the same meaning as in § 240.13e–3(a)(3) of this chapter;

(f) *Subject company* means the company or entity whose securities are sought to be acquired in the transaction (*e.g.*, the target), or that is otherwise the subject of the transaction;

(g) *Subject securities* means the securities or class of securities that are sought to be acquired in the transaction or that are otherwise the subject of the transaction; and

(h) *Third-party tender offer* means a tender offer that is not an issuer tender offer.

§ 229.1001 (Item 1001) Summary term sheet.

Summary term sheet. Provide security holders with a summary term sheet that is written in plain English. The summary term sheet must briefly describe in bullet point format the most material terms of the proposed transaction. The summary term sheet must provide security holders with sufficient information to understand the essential features and significance of the proposed transaction. The bullet points must cross-reference a more detailed discussion contained in the disclosure document that is disseminated to security holders.

Instructions to Item 1001

1. The summary term sheet must not recite all information contained in the disclosure document that will be provided to security holders. The summary term sheet is intended to serve as an overview of all material matters that are presented in the accompanying documents provided to security holders.

2. The summary term sheet must begin on the first or second page of the disclosure document provided to security holders.

3. Refer to Rule 421(d) of Regulation C of the Securities Act (§ 230.421 of this chapter) for a description of plain English disclosure.

§ 229.1002 (Item 1002) Subject company information.

(a) *Name and address.* State the name of the subject company (or the issuer in the case of an issuer tender offer), and the address and telephone number of its principal executive offices.

(b) *Securities.* State the exact title and number of shares outstanding of the subject class of equity securities as of the most recent practicable date (which may be based upon information in the most recently available filing with the Commission by the subject company unless the filing person has more current information).

(c) *Trading market and price.* Identify the principal market in which the subject securities are traded and state the high and low sales prices for the subject securities in the principal market (or, if there is no principal market, the range of high and low bid quotations and the source of the quotations) for each quarter during the past two years. If there is no established trading market for the securities (except for limited or sporadic quotations), so state.

(d) *Dividends.* State the frequency and amount of any dividends paid during the past two years with respect to the subject securities and briefly describe any restriction on the issuer's current or future ability to pay dividends. If the filing person is an affiliate of the subject company, furnish this information to the extent known after making reasonable inquiry.

(e) *Prior public offerings.* If the filing person has made an underwritten public offering of the subject securities for cash during the past three years that was registered under the Securities Act of 1933 or exempt from registration under Regulation A (§ 230.251 through § 230.263 of this chapter), state the date of the offering, the amount of securities offered, the offering price per share (adjusted for stock splits, stock dividends, etc. as appropriate) and the aggregate proceeds received by the filing person.

(f) *Prior stock purchases.* If the filing person purchased any subject securities during the past two years, state the amount of the securities purchased, the range of prices paid and the average purchase price for each quarter during that period. Affiliates need not give information for purchases made before becoming an affiliate.

§ 229.1003 (Item 1003) Identity and background of filing person.

(a) *Name and address.* State the name, business address and business telephone number of each filing person. Also state the name and address of each person specified in Instruction C to the schedule (except for Schedule 14D–9 (§ 240.14d–101 of this chapter)). If the filing person is an affiliate of the subject company, state the nature of the affiliation. If the filing person is the subject company, so state.

(b) *Business and background of entities.* If any filing person (other than the subject company) or any person specified in Instruction C to the applicable schedule is not a natural person, state the person's principal business, state or other place of organization, and the information required by paragraphs (c)(3) and (c)(4) of this section for each person.

(c) *Business and background of natural persons.* If any filing person or any person specified in Instruction C to the schedule is a natural person, provide the following information for each person:

(1) Current principal occupation or employment and the name, principal business and address of any corporation or other organization in which the employment or occupation is conducted;

(2) Material occupations, positions, offices or employment during the past five years, giving the starting and ending dates of each and the name, principal business and address of any corporation or other organization in which the occupation, position, office or employment was carried on;

(3) A statement whether or not the person was convicted in a criminal proceeding during the past five years (excluding traffic violations or similar misdemeanors). If the person was convicted, describe the criminal proceeding, including the dates, nature of conviction, name and location of

court, and penalty imposed or other disposition of the case;

(4) A statement whether or not the person was a party to any judicial or administrative proceeding during the past five years (except for matters that were dismissed without sanction or settlement) that resulted in a judgment, decree or final order enjoining the person from future violations of, or prohibiting activities subject to, federal or state securities laws, or a finding of any violation of federal or state securities laws. Describe the proceeding, including a summary of the terms of the judgment, decree or final order; and

(5) Country of citizenship.

(d) *Tender offer.* Identify the tender offer and the class of securities to which the offer relates, the name of the offeror and its address (which may be based on the offeror's Schedule TO (§ 240.14d-100 of this chapter) filed with the Commission).

Instruction to Item 1003

If the filing person is making information relating to the transaction available on the Internet, state the address where the information can be found.

§ 229.1004 (Item 1004) Terms of the transaction.

(a) *Material terms.* State the material terms of the transaction.

(1) *Tender offers.* In the case of a tender offer, the information must include:

(i) The total number and class of securities sought in the offer;

(ii) The type and amount of consideration offered to security holders;

(iii) The scheduled expiration date;

(iv) Whether a subsequent offering period will be available, if the transaction is a third-party tender offer;

(v) Whether the offer may be extended, and if so, how it could be extended;

(vi) The dates before and after which security holders may withdraw securities tendered in the offer;

(vii) The procedures for tendering and withdrawing securities;

(viii) The manner in which securities will be accepted for payment; and

(ix) The periods for accepting securities on a pro rata basis and the offeror's present intentions in the event that the offer is oversubscribed (if the offer is for less than all securities of a class).

(2) *Mergers or Similar Transactions.* In the case of a merger or similar transaction, the information must include:

(i) A brief description of the transaction;

(ii) The consideration offered to security holders;

(iii) The reasons for engaging in the transaction;

(iv) An explanation of any material differences in the rights of security holders as a result of the transaction;

(v) The vote required for approval of the transaction;

(vi) A brief statement as to the accounting treatment of the transaction; and

(vii) The federal income tax consequences of the transaction.

Instruction to Item 1004(a)

If the consideration offered consists solely of stock exempt from registration under the Securities Act of 1933, provide a description of the securities that complies with Item 202 of Regulation S–K (§ 229.202). This description is not required if the issuer of the securities meets the requirements of General Instructions I.B. and I.C.1. of Form B (§ 239.5 of this chapter) and elects to furnish information pursuant to Item 10; only capital stock is to be issued; and securities of the same class are registered under section 12 of the Exchange Act and either are listed for trading or admitted to unlisted trading privileges on a national securities exchange; or are securities for which bid and offer quotations are reported in an automated quotations system operated by a national securities association.

(b) *Purchases.* State whether any securities are to be purchased from any officer, director or affiliate of the subject company and provide the details of each transaction.

(c) *Different terms.* Describe any term or arrangement in the Rule 13e-3 transaction that treats any subject security holders differently from other subject security holders.

(d) *Appraisal rights.* State whether or not dissenting security holders are entitled to any appraisal rights. If so, summarize the appraisal rights. If there are no appraisal rights available under state law for security holders who object to the transaction, briefly outline any other rights that may be available to security holders under the law.

(e) *Provisions for unaffiliated security holders.* Describe any provision made by the filing person in connection with the transaction to grant unaffiliated security holders access to the corporate files of the filing person or to obtain counsel or appraisal services at the expense of the filing person. If none, so state.

(f) *Eligibility for listing or trading.* If the transaction involves the offer of securities of the filing person in exchange for equity securities held by non-affiliated security holders of the subject company, describe whether or not the filing person will take steps to assure that the securities offered are or will be eligible for trading on any national securities exchange or an automated inter-dealer quotation system.

§ 229.1005 (Item 1005) Past contacts, transactions, negotiations and agreements.

(a) *Transactions.* Briefly state the nature and approximate dollar amount of any transaction, other than those described in paragraphs (b) or (c) of this section, that occurred during the past two years, between the filing person (including any person specified in Instruction C of the schedule) and;

(1) The subject company or any of its affiliates that are not natural persons if the aggregate value of the transactions is more than one percent of the subject company's consolidated revenues for:

(i) The fiscal year when the transaction occurred; or

(ii) The past portion of the current fiscal year, if the transaction occurred in the current year; and

Instruction to Item 1005(a)(1)

The information required by this Item may be based on information in the subject company's most recent filing with the Commission, unless the filing person has reason to believe the information is not accurate.

(2) Any executive officer, director or affiliate of the subject company that is a natural person if the aggregate value of a transaction or series of similar transactions with that person exceeds $60,000.

(b) *Significant corporate events.* Describe any negotiations, transactions or material contacts during the past two years between the filing person (including subsidiaries of the filing person and any person specified in Instruction C of the schedule) and the subject company or its affiliates concerning any:

(1) Merger;

(2) Consolidation;

(3) Acquisition;

(4) Tender offer for or other acquisition of any class of the subject company's securities;

(5) Election of the subject company's directors; or

(6) Sale or other transfer of a material amount of assets of the subject company.

(c) *Negotiations or contacts.* Describe any negotiations or material contacts concerning the matters referred to in paragraph (b) of this section during the past two years between:

(1) Any affiliates of the subject company; or

(2) The subject company or any of its affiliates and any person not affiliated with the subject company who would have a direct interest in such matters.

Instruction to Item 1005(c)

Identify the person who initiated the contacts or negotiations.

(d) *Conflicts of interest.* If material, describe any agreement, arrangement or understanding and any actual or potential conflict of interest between the filing person or its affiliates and:

(1) The subject company, its executive officers, directors or affiliates; or

(2) The offeror, its executive officers, directors or affiliates.

Instruction to Item 1005(d)

If the filing person is the subject company, no disclosure called for by this paragraph is required in the document disseminated to security holders, so long as substantially the same information was filed with the Commission previously and disclosed in a proxy statement, report or other communication sent to security holders by the subject company in the past year. The document disseminated to security holders, however, must refer specifically to the discussion in the proxy statement, report or other communication that was sent to security holders previously. The information also must be filed as an exhibit to the schedule.

(e) *Agreements involving the subject company's securities.* Describe any agreement, arrangement, or understanding between the filing person (including any person specified in Instruction C of the schedule) and any other person with respect to any securities of the subject company. Name all persons that are a party to the agreements, arrangements, or understandings and describe all material provisions.

Instructions to Item 1005(e)

1. The information required by this Item includes: the transfer or voting of securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, or the giving or withholding of proxies, consents or authorizations.

2. Include information for any securities that are pledged or otherwise subject to a contingency, the occurrence of which would give another person the power to direct the voting or disposition of the subject securities. No disclosure, however, is required about standard default and similar provisions contained in loan agreements.

§ 229.1006 (Item 1006) Purpose of the transaction and plans or proposals.

(a) *Purposes.* State the purposes of the transaction.

(b) *Use of securities acquired.* Indicate whether the securities acquired in the transaction will be retained, retired, held in treasury, or otherwise disposed of.

(c) *Plans.* Describe any plans, proposals or negotiations that relate to or would result in:

(1) Any extraordinary transaction, such as a merger, reorganization or liquidation, involving the subject company or any of its subsidiaries;

(2) Any purchase, sale or transfer of a material amount of assets of the subject company or any of its subsidiaries;

(3) Any material change in the present dividend rate or policy, or indebtedness or capitalization of the subject company;

(4) Any change in the present board of directors or management of the subject company, including, but not limited to, any plans or proposals to change the number or the term of directors or to fill any existing vacancies on the board or to change any material term of the employment contract of any executive officer;

(5) Any other material change in the subject company's corporate structure or business, including, if the subject company is a registered closed-end investment company, any plans or proposals to make any changes in its investment policy for which a vote would be required by Section 13 of the Investment Company Act of 1940 (15 U.S.C. 80a–13);

(6) Any class of equity securities of the subject company to be delisted from a national securities exchange or cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association;

(7) Any class of equity securities of the subject company becoming eligible for termination of registration under Section 12(g)(4) of the Act (15 U.S.C. 78*l*);

(8) The suspension of the subject company's obligation to file reports under Section 15(d) of the Act (15 U.S.C. 78o);

(9) The acquisition by any person of additional securities of the subject company, or the disposition of securities of the subject company; or

(10) Any changes in the subject company's charter, bylaws or other governing instruments or other actions that could impede the acquisition of control of the subject company.

(d) *Subject company negotiations.* If the filing person is the subject company:

(1) State whether or not that person is engaged in any negotiations in response to the tender offer that relate to:

(i) A tender offer or other acquisition of the subject company's securities by the filing person or any of its subsidiaries; or

(ii) Any of the matters referred to in paragraphs (c)(1) through (c)(3) of this section; and

(2) Describe any transaction, board resolution, or signed contract that is entered into in response to the tender offer that relates to one or more of the matters referred to in paragraph (d)(1) of this section.

Instruction to Item 1006(d)(1)

If an agreement in principle has not been reached at the time of filing, no disclosure under paragraph (d)(1) of this section is required of the possible terms of or the parties to the transaction if in the opinion of the board of directors of the subject company disclosure would jeopardize continuation of the negotiations. In that case, disclosure indicating that negotiations are being undertaken or are underway and are in the preliminary stages is sufficient.

§ 229.1007 (Item 1007) Source and amount of funds or other consideration.

(a) *Source of funds.* State the specific sources and total amount of funds or other consideration to be used in the transaction. If the transaction involves a tender offer, disclose the amount of funds or other consideration required to purchase the maximum amount of securities sought in the offer.

(b) *Conditions.* State any material conditions to the financing discussed in response to paragraph (a) of this section. Disclose any alternative financing arrangements or alternative financing plans in the event the primary financing plans fall through. If none, so state.

(c) *Expenses.* Furnish a reasonably itemized statement of all expenses incurred or estimated to be incurred in connection with the transaction including, but not limited to, filing, legal, accounting and appraisal fees, solicitation expenses and printing costs and state whether or not the subject company has paid or will be responsible for paying any or all expenses.

(d) *Borrowed funds.* If all or any part of the funds or other consideration required is, or is expected to be borrowed, directly or indirectly, for the purpose of the transaction:

(1) Provide a summary of each loan agreement or arrangement containing the identity of the parties, the term, the collateral, the stated and effective interest rates, and any other material terms or conditions of the loan; and

(2) Briefly describe any plans or arrangements to finance or repay the loan, or, if no plans or arrangements have been made, so state.

Instruction to Item 1007(d)

If the transaction is a third-party tender offer and the source of all or any part of the funds used in the transaction is to come from a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act (15 U.S.C. § 78c), the name of the bank will not be made available to the

public if the filing person so requests in writing and files the request, naming the bank, with the Secretary of the Commission.

§ 229.1008 (Item 1008) Interest in securities of the subject company.

(a) *Securities ownership.* State the aggregate number and percentage of subject securities that are beneficially owned by each person named in response to Item 1003 of Regulation M–A (§ 229.1003) and by each associate and majority-owned subsidiary of those persons. Give the name and address of any associate or subsidiary.

Instructions to Item 1008(a)

1. For purposes of this section, beneficial ownership is determined in accordance with Rule 13d–3 (§ 240.13d–3 of this chapter) under the Exchange Act. Identify the shares that there is a right to acquire.

2. The information required by this section may be based on the number of outstanding securities disclosed in the subject company's most recently available filing with the Commission, unless the filing person has more current information.

3. The information required by this section with respect to officers, directors and associates of the subject company must be given to the extent known after making reasonable inquiry.

(b) *Securities transactions.* Describe any transaction in the subject securities during the past 60 days. The description of transactions required must include, but not necessarily be limited to:

(1) The identity of the persons specified in the Instruction to this section who effected the transaction;

(2) The date of the transaction;

(3) The amount of securities involved;

(4) The price per share; and

(5) Where and how the transaction was effected.

Instructions to Item 1008(b)

1. Provide the required transaction information for the following persons:

(a) The filing person (for all schedules);

(b) Any person named in Instruction C of the schedule and any associate or majority-owned subsidiary of the issuer or affiliate filing the schedule (for all schedules except Schedule 14D–9 (§ 240.14d–101 of this chapter));

(c) Any executive officer, director, affiliate or subsidiary of the filing person (for Schedule 14D–9 (§ 240.14d–101 of this chapter);

(d) The issuer and any executive officer or director of any subsidiary of the issuer or filing person (for an issuer tender offer on Schedule TO (§ 240.14d–100 of this chapter)); and

(e) The issuer and any pension, profit-sharing or similar plan of the issuer or affiliate filing the schedule (for a going-private transaction on Schedule 13E–3 (§ 240.13e–100 of this chapter)).

2. Provide the information required by this Item if it is available to the filing person at the time the statement is initially filed with the Commission. If the information is not initially available, it must be obtained and filed with the Commission promptly, but in no event later than three business days after the date of the filing, and if material, disclosed in a manner reasonably designed to inform security holders.

§ 229.1009 (Item 1009) Persons/assets, retained, employed, compensated or used.

(a) *Solicitations or recommendations.* Identify all persons and classes of persons that are directly or indirectly employed, retained, or to be compensated to make solicitations or recommendations in connection with the transaction. Provide a summary of all material terms of employment, retainer or other arrangement for compensation.

(b) *Employees and corporate assets.* Identify any officer, class of employees or corporate assets of the subject company that has been or will be employed or used by the filing person in connection with the transaction. Describe the purpose for their employment or use.

Instruction to Item 1009(b)

Provide all information required by this Item except for the information required by paragraph (a) of this section and Item 1007 of Regulation M–A (§ 229.1007).

§ 229.1010 (Item 1010) Financial statements.

(a) *Financial information.* Furnish the following financial information:

(1) Audited financial statements for the two fiscal years required to be filed with the company's most recent annual report under Sections 13 and 15(d) of the Exchange Act (15 U.S.C. 78m; 15 U.S.C. 78o);

(2) Unaudited balance sheets, comparative year-to-date income statements and related earnings per share data, statements of cash flows, and comprehensive income required to be included in the company's most recent quarterly report filed under the Exchange Act;

(3) Ratio of earnings to fixed charges, computed in a manner consistent with § 229.503(d), for the two most recent fiscal years and the interim periods provided under paragraph (a)(2) of this section; and

(4) Book value per share as of the date of the most recent balance sheet presented.

(b) *Pro forma information.* If material, furnish pro forma information disclosing the effect of the transaction on:

(1) The company's balance sheet as of the date of the most recent balance sheet presented under paragraph (a) of this section;

(2) The company's statement of income, earnings per share, and ratio of earnings to fixed charges for the most recent fiscal year and the latest interim period provided under paragraph (a)(2) of this section; and

(3) The company's book value per share as of the date of the most recent balance sheet presented under paragraph (a) of this section.

(c) *Summary information.* Furnish a fair and adequate summary of the information specified in paragraphs (a) and (b) of this section for the same periods specified. A fair and adequate summary includes:

(1) The summarized financial information specified in § 210.1–02(bb) of this chapter;

(2) Income per common share from continuing operations (basic and diluted, if applicable);

(3) Net income per common share (basic and diluted, if applicable);

(4) Ratio of earnings to fixed charges, computed in a manner consistent with § 229.503(d);

(5) Book value per share as of the date of the most recent balance sheet; and

(6) If material, pro forma data for the summarized financial information specified in paragraph (c)(1) through (c)(6) of this section disclosing the effect of the transaction.

§ 229.1011 (Item 1011) Additional information.

(a) *Agreements, regulatory requirements and legal proceedings.* If material to a security holder's decision whether to sell, tender or hold the securities sought in the tender offer, furnish the following information:

(1) Any present or proposed material agreement, arrangement, understanding or relationship between the offeror or any of its executive officers, directors, controlling persons or subsidiaries and the subject company or any of its executive officers, directors, controlling persons or subsidiaries (other than any agreement, arrangement or understanding disclosed under any other sections of Regulation M–A (§§ 229.1000–229.1016));

Instruction to Paragraph (a)(1)

In an issuer tender offer disclose any material agreement, arrangement, understanding or relationship between the offeror and any of its executive officers, directors, controlling persons or subsidiaries.

(2) To the extent known by the offeror after reasonable investigation, the applicable regulatory requirements which must be complied with or approvals which must be obtained in connection with the tender offer;

(3) The applicability of any anti-trust laws;

(4) The applicability of margin requirements under Section 7 of the Act (15 U.S.C. 78g) and the applicable regulations; and

(5) Any material pending legal proceedings relating to the tender offer, including the name and location of the court or agency in which the proceedings are pending, the date instituted, the principal parties, and a brief summary of the proceedings and the relief sought.

Instruction to Item 1011(a)(5)

A copy of any document relating to a major development (such as pleadings, an answer, complaint, temporary restraining order, injunction, opinion, judgment or order) in a material pending legal proceeding must be furnished promptly to the Commission staff on a supplemental basis.

(b) *Other material information.* Furnish such additional material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

§ 229.1012 (Item 1012) The solicitation or recommendation.

(a) *Solicitation or recommendation.* State the nature of the solicitation or the recommendation. If this statement relates to a recommendation, state whether the filing person is advising holders of the subject securities to accept or reject the tender offer or to take other action with respect to the tender offer and, if so, describe the other action recommended. If the filing person is the subject company and is not making a recommendation, state whether the subject company is expressing no opinion and is remaining neutral toward the tender offer or is unable to take a position with respect to the tender offer.

(b) *Reasons.* State the reasons for the position (including the inability to take a position) stated in paragraph (a) of this section. Conclusory statements such as ''The tender offer is in the best interests of shareholders'' are not considered sufficient disclosure.

(c) *Intent to tender.* To the extent known by the filing person after making reasonable inquiry, state whether the filing person or any executive officer, director, affiliate or subsidiary of the filing person currently intends to tender, sell or hold the subject securities that are held of record or beneficially owned by that person.

(d) *Intent to tender or vote in a going-private transaction.* To the extent known by the filing person after making reasonable inquiry, state whether or not any executive officer, director or affiliate of the issuer (or any person specified in Instruction C to the schedule) currently intends to tender or sell subject securities owned or held by that person and/or how each person currently intends to vote subject securities, including any securities the person has proxy authority for. State the reasons for the intended action.

Instruction to Item 1012(d)

Provide the information required by this section if it is available to the filing person at the time the statement is initially filed with the Commission. If the information is not available, it must be filed with the Commission promptly, but in no event later than three business days after the date of the filing, and if material, disclosed in a manner reasonably designed to inform security holders.

(e) *Recommendations of others.* To the extent known by the filing person after making reasonable inquiry, state whether or not any person specified in paragraph (d) of this section has made a recommendation either in support of or opposed to the transaction and the reasons for the recommendation.

§ 229.1013 (Item 1013) Purposes, alternatives, reasons and effects in a going-private transaction.

(a) *Purposes.* State the purposes for the Rule 13e–3 transaction.

(b) *Alternatives.* If the subject company or affiliate considered alternative means to accomplish the stated purposes, briefly describe the alternatives and state the reasons for their rejection.

(c) *Reasons.* State the reasons for the structure of the Rule 13e–3 transaction and for undertaking the transaction at this time.

(d) *Effects.* Describe the effects of the Rule 13e–3 transaction on the subject company, its affiliates and unaffiliated security holders, including the federal tax consequences of the transaction.

Instructions to Item 1013

1. Conclusory statements will not be considered sufficient disclosure in response to this section.

2. The description required by paragraph (d) of this section must include a reasonably detailed discussion of both the benefits and detriments of the Rule 13e–3 transaction to the subject company, its affiliates and unaffiliated security holders. The benefits and detriments of the Rule 13e–3 transaction must be quantified to the extent practicable.

3. If this statement is filed by an affiliate of the subject company, the description required by paragraph (d) of this section must include, but not be limited to, the effect of the Rule 13e–3 transaction on the affiliate's interest in the net book value and net earnings of the subject company in terms of both dollar amounts and percentages.

§ 229.1014 (Item 1014) Fairness of the going-private transaction.

(a) *Fairness.* State whether the subject company or affiliate filing the statement reasonably believes that the Rule 13e–3 transaction is fair or unfair to unaffiliated security holders. If any director dissented to or abstained from voting on the Rule 13e–3 transaction, identify the director, and indicate, if known, after making reasonable inquiry, the reasons for the dissent or abstention.

(b) *Factors considered in determining fairness.* Discuss in reasonable detail the material factors upon which the belief stated in paragraph (a) of this section is based and, to the extent practicable, the weight assigned to each factor. The discussion must include an analysis of the extent, if any, to which the filing person's beliefs are based on the factors described in Instruction 2 of this section, paragraphs (c), (d) and (e) of this section and § 229.1015.

(c) *Approval of security holders.* State whether or not the transaction is structured so that approval of at least a majority of unaffiliated security holders is required.

(d) *Unaffiliated representative.* State whether or not a majority of directors who are not employees of the subject company has retained an unaffiliated representative to act solely on behalf of unaffiliated security holders for purposes of negotiating the terms of the Rule 13e–3 transaction and/or preparing a report concerning the fairness of the transaction.

(e) *Approval of directors.* State whether or not the Rule 13e–3 transaction was approved by a majority of the directors of the subject company who are not employees of the subject company.

(f) *Other offers.* If any offer of the type described in paragraph (viii) of Instruction 2 to this section has been received, describe the offer and state the reasons for its rejection.

Instructions to Item 1014

1. A statement that the issuer or affiliate has no reasonable belief as to the fairness of the Rule 13e–3 transaction to unaffiliated security holders will not be considered sufficient disclosure in response to paragraph (a) of this section.

2. The factors that are important in determining the fairness of a transaction to unaffiliated security holders and the weight, if any, that should be given to them in a particular context will vary. Normally such factors will include, among others, those referred to in paragraphs (c), (d) and (e) of this section and whether the consideration offered to unaffiliated security holders constitutes fair value in relation to:

(i) Current market prices;

(ii) Historical market prices;

(iii) Net book value;

(iv) Going concern value;
(v) Liquidation value;
(vi) Purchase prices paid in previous purchases disclosed in response to § 229.1002(f);
(vii) Any report, opinion, or appraisal described in § 229.1015; and
(viii) Firm offers of which the subject company or affiliate is aware made by any unaffiliated person, other than the filing persons, during the past two years for:
(A) The merger or consolidation of the subject company with or into another company, or *vice versa;*
(B) The sale or other transfer of all or any substantial part of the assets of the subject company; or
(C) A purchase of the subject company's securities that would enable the holder to exercise control of the subject company.
3. Conclusory statements, such as ''The Rule 13e–3 transaction is fair to unaffiliated security holders in relation to net book value, going concern value and future prospects of the issuer'' will not be considered sufficient disclosure in response to paragraph (b) of this section.

§ 229.1015 (Item 1015) Reports, opinions, appraisals and negotiations.

(a) *Report, opinion or appraisal.* State whether or not the subject company or affiliate has received any report, opinion (other than an opinion of counsel) or appraisal from an outside party that is materially related to the Rule 13e–3 transaction, including, but not limited to: any report, opinion or appraisal relating to the consideration or the fairness of the consideration to be offered to security holders or the fairness of the transaction to the issuer or affiliate or to security holders who are not affiliates.

(b) *Preparer and summary of the report, opinion or appraisal.* For each report, opinion or appraisal described in response to paragraph (a) of this section or any negotiation or report described in response to Item 1014(d) of Regulation M–A (§ 229.1014) or Item 14(b)(6) of Schedule 14A (§ 240.14a–101 of this chapter) concerning the terms of the transaction:

(1) Identify the outside party and/or unaffiliated representative;

(2) Briefly describe the qualifications of the outside party and/or unaffiliated representative;

(3) Describe the method of selection of the outside party and/or unaffiliated representative;

(4) Describe any material relationship that existed during the past two years or is mutually understood to be contemplated and any compensation received or to be received as a result of the relationship between:

(i) The outside party, its affiliates, and/or unaffiliated representative; and

(ii) The subject company or its affiliates;

(5) If the report, opinion or appraisal relates to the fairness of the consideration, state whether the subject company or affiliate determined the amount of consideration to be paid or whether the outside party recommended the amount of consideration to be paid; and

(6) Furnish a summary concerning the negotiation, report, opinion or appraisal. The summary must include, but need not be limited to, the procedures followed; the findings and recommendations; the bases for and methods of arriving at such findings and recommendations; instructions received from the subject company or affiliate; and any limitation imposed by the subject company or affiliate on the scope of the investigation.

Instruction to Item 1015(b)

The information called for by paragraphs (b)(1), (2) and (3) of this section must be given with respect to the firm that provides the report, opinion or appraisal rather than the employees of the firm that prepared the report.

(c) *Availability of documents.* Furnish a statement to the effect that the report, opinion or appraisal will be made available for inspection and copying at the principal executive offices of the subject company or affiliate during its regular business hours by any interested equity security holder of the subject company or representative who has been so designated in writing. This statement also may provide that a copy of the report, opinion or appraisal will be transmitted by the subject company or affiliate to any interested equity security holder of the subject company or representative who has been so designated in writing upon written request and at the expense of the requesting security holder.

§ 229.1016 (Item 1016) Exhibits.

File as an exhibit to the schedule:

(a) Any disclosure materials furnished to security holders by or on behalf of the filing person, including:

(1) Tender offer materials (including transmittal letter);

(2) Solicitation or recommendation (including those referred to in § 229.1012;

(3) Going-private disclosure document;

(4) Prospectus used in connection with an exchange offer where securities are registered under the Securities Act of 1933; and

(5) Any other disclosure materials;

(b) Any loan agreement referred to in response to § 229.1007;

Instruction to Item 1016(b)

If the filing relates to a third-party tender offer and a request is made under § 229.1007(d), the identity of the bank providing financing may be omitted from the loan agreement filed as an exhibit.

(c) Any report, opinion or appraisal referred to in response to § 229.1014(d) or § 229.1015;

(d) Any document setting forth the terms of any agreement, arrangement, understanding or relationship referred to in response to § 229.1005(e) or § 229.1011(a)(1);

(e) Any agreement, arrangement or understanding referred to in response to § 229.1005(d), or the pertinent portions of any proxy statement, report or other communication containing the disclosure required by § 229.1005(d);

(f) A detailed statement describing security holders' appraisal rights and the procedures for exercising those appraisal rights referred to in response to § 229.1004(d);

(g) Any written instruction, form or other material that is furnished to persons making an oral solicitation or recommendation by or on behalf of the filing person directly or indirectly in connection with the transaction; and

(h) Any written opinion prepared by legal counsel at the filing person's request and communicated to the filing person pertaining to the tax consequences of the transaction.

EXHIBIT TABLE TO ITEM 1016 OF REGULATION M–A

	13E–3	TO	14D–9
Disclosure Material	X	X	X
Loan Agreement	X	X	
Report, Opinion or Appraisal	X		
Contracts, Arrangements or Understandings	X	X	X
Statement re: Appraisal Rights	X		
Oral Solicitation Materials	X	X	X

EXHIBIT TABLE TO ITEM 1016 OF REGULATION M–A—Continued

	13E–3	TO	14D–9
Tax Opinion		X	

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

7. The authority citation for part 230 is revised to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

8. In § 230.145 as proposed to be amended in a document published elsewhere in this **Federal Register**, republish the last sentence of the first paragraph of Preliminary Note and paragraph (b) to read as follows:

§ 230.145 Reclassifications of securities, mergers, consolidations and acquisitions of assets.

Preliminary Note: * * * Issuers must register transactions described in paragraph (a) of this section on Form C (§ 239.6 of this chapter), Form SB–3 (§ 239.11 of this chapter) or Form N–14 (§ 239.23 of this chapter).

* * * * *

(b) *Communications.* Communications in connection with a registered transaction described in paragraph (a) of this section may be made in accordance with § 230.135, § 230.165, § 230.166, § 230.167, § 230.168 or § 230.169.

* * * * *

9. By adding § 230.162 to read as follows:

§ 230.162 Submission of tenders in registered exchange offers.

Notwithstanding Section 5(a) of the Act (15 U.S.C. 77e), security holders may tender their securities in an exchange offer subject to Regulation 14D (§ § 240.14d–1 through 240.14d–101) before a registration statement is effective as to the security offered, so long as no securities are purchased until the registration statement is effective and the tender offer has expired in accordance with the tender offer rules.

10. In § 230.166 as proposed to be added in a document published elsewhere in this issue of the **Federal Register**, republish paragraph (b) to read as follows:

§ 230.166 Offers made before filing a registration statement.

* * * * *

(b) *Form C/SB–3 transactions.* Notwithstanding Section 5(c) of the Act (15 U.S.C. 77e), the offeror of securities in a transaction to be registered on Form C (§ 239.6 of this chapter), SB–3 (§ 239.11 of this chapter), F–8 (§ 239.38 of this chapter), F–80 (§ 239.41 of this chapter) or F–10 (§ 239.40 of this chapter) (when that form is used in a business combination) may make an offer to sell or solicit an offer to buy securities before the filing of a registration statement with respect to those securities if:

(1) Any prospectus relating to the transaction used in the period beginning with the first public announcement and ending with the filing of the registration statement is filed in accordance with § 230.425; and

(2) In an exchange offer, the offers are made in accordance with the tender offer rules; and, in a transaction involving the vote of security holders, the offers are made in accordance with the proxy rules.

11. In § 230.167 as proposed to be added in a document published elsewhere in this issue of the **Federal Register**, republish paragraph (b) to read as follows:

§ 230.167 Exemption from Section 5(c) for certain communications.

* * * * *

(b) In offerings registered on Form C (§ 239.6 of this chapter), SB–3 (§ 239.11 of this chapter), F–8 (§ 239.38 of this chapter), F–80 (§ 239.41 of this chapter) or F–10 (§ 239.40 of this chapter) (when Form F–10 is used in connection with a business combination transaction), any communication before the first communication related to the offering (except for communications among the participants in the offering) shall not constitute an offer to sell or an offer to buy the securities being offered under the registration statement for purposes of Section 5(c) of the Act, provided that the parties to the transaction take all reasonable steps within their control to prevent further distribution or publication of such communication during the period between that first communication and the date of filing the registration statement.

* * * * *

12. In § 230.425 as proposed to be added in a document published elsewhere in this issue of the **Federal Register**, republish paragraph (b)(3) to read as follows:

§ 230.425 Filing of ''free writing'' and other non-section 10 prospectuses.

* * * * *

(b) * * *

(3) Five copies of any prospectus used before the filing of a registration statement in reliance on § 230.166(b) must be filed with the Commission on or before the date of first use. Each copy of a prospectus filed under this section must identify the filer and the company that is the subject of the offering in the upper right hand corner of the cover page, in addition to the information required by paragraph (c) of this section.

* * * * *

13. By revising § 230.432 to read as follows:

§ 230.432 Additional information required to be included in prospectuses relating to tender offers.

Notwithstanding the provisions of any form for the registration of securities under the Act, any prospectus relating to securities to be offered in connection with a tender offer for, or a request or invitation for tenders of, securities that is subject to section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n) must include all of the information required by § 240.14d–6(d)(1) of this chapter to be included in all such tender offers, requests or invitations, published or sent or given to the holders of such securities.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

14. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

§ 232.13 [Amended]

15. By amending § 232.13 in the first sentence of paragraph (d) by removing the phrase ''may be 'mailed for filing with the Commission' at the same time'' and adding in its place ''must be filed on the same day'' and by removing the phrase ''on a business day'' and adding in its place ''during the official business hours''.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

16. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

17. In Form C (referenced in § 239.6) as proposed to be added in a document published elsewhere in this issue of the **Federal Register**, republish paragraph (c) of Item 18 and paragraph (b) of Item 21 to read as follows:

Note: Form C does not and this amendment will not appear in the Code of Federal Regulations.

Form C

* * * * *

Item 18. Information Required for All Other (Non-Small Business) Companies

* * * * *

(c) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), or has not furnished an annual report to its security holders under Rule 14a–3 or Rule 14c–3 for the latest fiscal year because of Exchange Act Section 12(i), furnish the financial statements that would be required in an annual report sent to security holders under Rules 14a–3 (b)(1) and (b)(2) if one was required.

Instructions to paragraph (c):

1. If the registrant's security holders will not be voting on the transaction, financial statements for the two fiscal years before the latest fiscal year need be provided only to the extent that security holders of the company being acquired were previously furnished with financial statements (prepared in conformity with GAAP) for those periods.

2. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.

3. If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

* * * * *

Item 21. Information Required for All Other Small Business Issuers

* * * * *

(b) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), or has not furnished an annual report to its security holders under Rule 14a–3 or Rule 14c–3 for the latest fiscal year because of Exchange Act Section 12(i), furnish the financial statements that would be required in an annual report sent to security holders under Rules 14a–3 (b)(1) and (b)(2) if one was required.

Instructions to paragraph (b):

1. If the registrant's security holders will not be voting on the transaction, financial statements for the two fiscal years before the latest fiscal year need be provided only to the extent that security holders of the company being acquired were previously furnished with financial statements (prepared in conformity with GAAP) for those periods.

2. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.

3. If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

* * * * *

18. In Form SB–3 (referenced in § 239.11) as proposed to be added in a document published elsewhere in this issue of the **Federal Register**, republish paragraph (b) of Item 16 and paragraph (c) of Item 19 to read as follows:

Note: Form SB–3 does not and this amendment will not appear in the Code of Federal Regulations.

Form SB–3

* * * * *

Item 16. Information Required for All Other Small Business Issuers

* * * * *

(b) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), or has not furnished an annual report to its security holders under Rule 14a–3 or Rule 14c–3 for the latest fiscal year because of Exchange Act Section 12(i), furnish the financial statements that would be required in an annual report sent to security holders under Rules 14a–3 (b)(1) and (b)(2) if one was required.

Instructions to paragraph (b):

1. If the registrant's security holders will not be voting on the transaction, financial statements for the two fiscal years before the latest fiscal year need be provided only to the extent that security holders of the company being acquired were previously furnished with financial statements (prepared in conformity with GAAP) for those periods.

2. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.

3. If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

* * * * *

Item 19. Information Required for All Other Companies

* * * * *

(c) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), or has not furnished an annual report to its security holders under Rule 14a–3 or Rule 14c–3 for the latest fiscal year because of Exchange Act Section 12(i), furnish the financial statements that would be required in an annual report sent to security holders under Rules 14a–3 (b)(1) and (b)(2) if one was required.

Instructions to paragraph (c):

1. If the registrant's security holders will not be voting on the transaction, financial statements for the two fiscal years before the latest fiscal year need be provided only to the extent that security holders of the company being acquired were previously furnished with financial statements (prepared in conformity with GAAP) for those periods.

2. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.

3. If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

* * * * *

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

19. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt,

78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

§ 240.10b–13 [Removed and Reserved]

20. By removing and reserving § 240.10b–13.

21. By revising the section heading and § 240.13e–1 to read as follows:

§ 240.13e–1 Purchase of securities by the issuer during a third-party tender offer.

An issuer that has received notice that it is the subject of a tender offer made under Section 14(d)(1) of the Act (15 U.S.C. 78n), that has commenced under § 240.14d–2 must not purchase any of its equity securities during the tender offer unless the issuer first:

(a) Files a statement with the Commission containing the following information:

(1) The title and number of securities to be purchased;

(2) The names of the persons or classes of persons from whom the issuer will purchase the securities;

(3) The name of any exchange, inter-dealer quotation system or any other market on or through which the securities will be purchased;

(4) The purpose of the purchase;

(5) Whether the issuer will retire the securities, hold the securities in its treasury, or dispose of the securities. If the issuer intends to dispose of the securities, describe how it intends to do so; and

(6) The source and amount of funds or other consideration to be used to make the purchase. If the issuer borrows any funds or other consideration to make the purchase or enters any agreement for the purpose of acquiring, holding, or trading the securities, describe the transaction and agreement and identify the parties;

(b) Sends the statement containing the information in paragraph (a) of this section to all of its equity security holders before purchasing any securities; and

(c) Pays the fee required by § 240.0–11 when it files the initial statement.

Instruction to § 240.13e–1

File eight copies if paper filing is permitted.

22. By amending § 240.13e–3 by revising paragraphs (d) and (e); revising the title of paragraph (f); removing the reference ''Chapter X'' in paragraph (g)(5) and in its place add ''Chapter XI''; removing the reference ''section 174'' in paragraph (g)(5) and in its place add ''section 1125(b)''; and removing the reference ''section 175 of the Act'' in paragraph (g)(5) and in its place add ''section 1125(b) of that Act'', to read as follows:

§ 240.13e–3 Going private transactions by certain issuers or their affiliates.

* * * * *

(d) *Material required to be filed.* The issuer or affiliate engaging in a Rule 13e–3 transaction must file with the Commission:

(1) A Schedule 13E–3 (§ 240.13e–100), including all exhibits;

(2) An amendment to Schedule 13E–3 reporting promptly any material changes in the information set forth in the schedule previously filed; and

(3) A final amendment to Schedule 13E–3 reporting promptly the results of the Rule 13e–3 transaction.

(e) *Disclosure of information to security holders.* (1) In addition to disclosing the information required by any other applicable rule or regulation under the federal securities laws, the issuer or affiliate engaging in a Rule 13e–3 transaction must disclose to security holders of the class that is the subject of the transaction, as specified in paragraph (f) of this section, the following:

(i) The information required by Item 1 of Schedule 13E–3 (§ 240.13e–100) (Summary Term Sheet);

(ii) The information required by Items 7, 8 and 9 of Schedule 13E–3, which must be prominently disclosed in a ''Special Factors'' section in the front of the disclosure document;

(iii) A prominent legend on the outside front cover page that indicates that neither the Securities and Exchange Commission nor any state securities commission has: approved or disapproved of the transaction; passed upon the merits or fairness of the transaction; or passed upon the adequacy or accuracy of the disclosure in the document. The legend also must make it clear that any representation to the contrary is a criminal offense;

(iv) The information concerning appraisal rights required by § 229.1016(f) of this chapter; and

(v) The information required by the remaining items of Schedule 13E–3, except for § 229.1016 of this chapter (exhibits), or a fair and adequate summary of the information.

Instructions to Paragraph (e)(1)

1. If the Rule 13e–3 transaction also is subject to Regulation 14A (§§ 240.14a–1 through 240.14b–2) or 14C (§§ 240.14c–1 through 240.14c–101), the registration provisions and rules of the Securities Act of 1933, Regulation 14D or § 240.13e–4, the information required by paragraph (e)(1) of this section must be combined with the proxy statement, information statement, prospectus or tender offer material sent to security holders.

2. If the Rule 13e–3 transaction involves a registered securities offering, the legend required by § 229.501(b)(7) of this chapter must be combined with the legend required by paragraph (e)(1)(iii) of this section.

3. The required legend must be written in clear, plain language.

(2) If there is any material change in the information previously disclosed to security holders, the issuer or affiliate must disclose the change promptly to security holders as specified in paragraph (f)(1)(iii) of this section.

(f) *Dissemination of information to security holders.* * * *

* * * * *

23. By amending § 240.13e–4 by removing the reference:

a. ''Schedule 13E–4 [§ 240.13E–101]'' that appears in the introductory text of paragraph (a) and paragraph (a)(3) and in its place add ''Schedule TO (§ 240.14d–100)'';

b. ''Schedule 13E–4 Issuer Tender Offer Statement (§ 240.13e–101),'' that appears in paragraph (f)(12) and in its place add ''Schedule TO (§ 240.14d–100),''; ''paragraph (a) of Item 9 of that Schedule'' that appears in paragraph (f)(12) and in its place add ''Item 1016(a)(1) of Regulation M–A (§ 229.1016(a)(1) of this chapter)''; and

c. ''Schedule 13E–4'' that appears in the introductory text of paragraph (g) and in its place add ''Schedule TO (§ 240.14d–100)''.

24. By amending § 240.13e–4 by redesignating paragraph (b) as paragraph (i); removing the reference ''paragraph (b)(1)'' in newly redesignated paragraph (i)(2)(ii) and in its place add ''paragraph (i)(1)''; adding new paragraph (b); revising paragraph (a)(4); and revising the title and text of paragraphs (c), (d) and (e) to read as follows:

§ 240.13e–4 Tender offers by issuers.

(a) *Definitions.* * * *

(4) The term *commencement* means 12:01 a.m. on the date that the issuer or affiliate has first published, sent or given the means to tender to security holders. For purposes of this section, the means to tender includes the transmittal form or a statement regarding how the transmittal form may be obtained.

* * * * *

(b) As soon as practicable on the date of commencement of the issuer tender offer, the issuer or affiliate making the issuer tender offer must comply with:

(1) The filing requirements of paragraph (c)(2) of this section;

(2) The disclosure requirements of paragraph (d)(1) of this section; and

(3) The dissemination requirements of paragraph (e)(1) of this section.

(c) *Material required to be filed.* The issuer or affiliate making the issuer tender offer must file with the Commission:

(1) All written communications made by the issuer or affiliate relating to the issuer tender offer, from and including the first public announcement, as soon as practicable on the date of the communication;

(2) A Schedule TO (§ 240.14d–100), including all exhibits;

(3) An amendment to Schedule TO (§ 240.14d–100) reporting promptly any material changes in the information set forth in the schedule previously filed; and

(4) A final amendment to Schedule TO (§ 240.14d–100) reporting promptly the results of the issuer tender offer.

Instructions to § 240.13e–4(c)

1. Pre-commencement communications must be filed under cover of Schedule TO (§ 240.14d–100) and the box on the cover page of the schedule must be marked.

2. Any communications made in connection with an exchange offer registered under the Securities Act of 1933 need only be filed under § 230.425 of this chapter and will be deemed to have been filed under this section as well.

3. Each pre-commencement communication must include a prominent legend in clear, plain language advising security holders to read the tender offer statement when it is available because it contains important information. The legend also must advise investors that they can get the tender offer statement and other filed documents for free at the SEC's web site and explain which documents are free from the issuer.

4. See §§ 230.135, 230.166, 230.167, 230.168 and 230.169 of this chapter for pre-commencement communications made in connection with registered exchange offers.

5. Communications of the type described under § 230.169 of this chapter need not be filed under this section.

(d) *Disclosure of tender offer information to security holders.* (1) The issuer or affiliate making the issuer tender offer must disclose, in a manner prescribed by paragraph (e)(1) of this section, the following:

(i) The information required by Item 1 of Schedule TO (§ 240.14d–100) (summary term sheet); and

(ii) The information required by the remaining items of Schedule TO for issuer tender offers, except for Item 12 (exhibits), or a fair and adequate summary of the information.

(2) If the issuer or affiliate is registering securities under the Securities Act of 1933 in connection with the issuer tender offer, the prospectus must contain the information specified in paragraph (d)(1) of this section in addition to the information required to be disclosed under the Securities Act and the rules and regulations.

(3) If there are any material changes in the information previously disclosed to security holders, the issuer or affiliate must disclose the changes promptly to security holders in a manner specified in paragraph (e)(2) of this section.

(4) If the issuer or affiliate disseminates the issuer tender offer by means of summary publication as described in paragraph (e)(1)(ii) of this section, the summary advertisement must not include a transmittal letter that would permit security holders to tender securities sought in the offer and must disclose at least the following information:

(i) The identity of the issuer or affiliate making the issuer tender offer;

(ii) The information required by § 229.1004(a)(1) and § 229.1006(a) of this chapter;

(iii) Instructions on how security holders can obtain promptly a copy of the statement required by paragraph (d)(1) of this section, at the issuer or affiliate's expense; and

(iv) A statement that the information contained in the statement required by paragraph (d)(1) of this section is incorporated by reference.

(e) *Dissemination of tender offers to security holders.* (1) An issuer tender offer will be deemed to be published, sent or given to security holders if the issuer or affiliate making the issuer tender offer complies fully with one or more of the methods described in paragraph (e)(1)(i) or (e)(2)(ii) of this section. For purposes of paragraph (e)(1)(ii) of this section, adequate publication of the issuer tender offer may require publication in a newspaper with a national circulation, a newspaper with metropolitan or regional circulation, or a combination of the two, depending upon the facts and circumstances involved.

(i) Dissemination of any issuer tender offer by use of stockholder and other lists:

(A) By mailing or otherwise furnishing promptly a statement containing the information required by paragraph (d)(1) of this section to each security holder whose name appears on the most recent stockholder list of the issuer;

(B) By contacting each participant on the most recent security position listing of any clearing agency within the possession or access of the issuer or affiliate making the issuer tender offer, and making inquiry of each participant as to the approximate number of beneficial owners of the securities sought in the offer that are held by the participant;

(C) By furnishing to each participant a sufficient number of copies of the statement required by paragraph (d)(1)(ii) of this section for transmittal to the beneficial owners; and

(D) By agreeing to reimburse each participant promptly for its reasonable expenses incurred in forwarding the statement to beneficial owners.

(ii) Dissemination of certain cash issuer tender offers by summary publication:

(A) If the issuer tender offer is not subject to § 240.13e–3 (§ 240.13e–3), by making adequate publication of a summary advertisement containing the information required by paragraph (d)(4) of this section in a newspaper or newspapers, on the date of commencement of the issuer tender offer; and

(B) By mailing or otherwise furnishing promptly the statement required by paragraph (d)(1) of this section and a transmittal letter to any security holder who requests a copy of the statement or transmittal letter.

(2) If a material change occurs in the information published, sent or given to security holders, the issuer or affiliate must disseminate promptly disclosure of the change in a manner reasonably calculated to inform security holders of the change.

* * * * *

25. By revising § 240.13e–100 to read as follows:

§ 240.13e–100 Schedule 13E–3, Transaction statement under section 13(e) of the Securities Exchange Act of 1934 and Rule 13e–3 (§ 240.13e–3) thereunder.

Securities and Exchange Commission,
Washington, D.C. 20549

Rule 13e–3 Transaction Statement under Section 13(e) of the Securities Exchange Act of 1934

(Amendment No.) _____
(Name of the Issuer) _____
(Names of Persons Filing Statement) _____
(Title of Class of Securities) _____
(CUSIP Number of Class of Securities) _____

(Name, Address, and Telephone Numbers of Person Authorized to Receive Notices and Communications on Behalf of the Persons Filing Statement)

This statement is filed in connection with (check the appropriate box):

a. [ ] The filing of solicitation materials or an information statement subject to Regulation 14A (§ § 240.14a–1 through 240.14b–2), Regulation 14C (§ § 240.14c–1 through 240.14c–101) or Rule 13e–3(c) (§ 240.13e–3(c)) under the Securities Exchange Act of 1934 (''the Act'').

b. [ ] The filing of a registration statement under the Securities Act of 1933.

c. [ ] A tender offer.

d. [ ] None of the above.

Check the following box if the soliciting materials or information statement referred to in checking box (a) are preliminary copies: [ ]

Check the following box if the filing is a final amendment reporting the results of the transaction: [ ]

CALCULATION OF FILING FEE

Transaction valuation*	Amount of filing fee

*Set forth the amount on which the filing fee is calculated and state how it was determined.

[ ] Check the box if any part of the fee is offset as provided by § 240.0–11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____
Form or Registration No.: _____
Filing Party: _____
Date Filed: _____

General Instructions

A. File eight copies of the statement, including all exhibits, with the Commission if paper filing is permitted.

B. This filing must be accompanied by a fee payable to the Commission as required by § 240.0–11(b).

C. If the statement is filed by a general or limited partnership, syndicate or other group, the information called for by Items 3, 5, 6, 10 and 11 must be given with respect to: (i) each partner of the partnership; (ii) each partner who is, or functions as, a general partner of the limited partnership; (iii) each member of the syndicate or group; and (iv) each person controlling the partner or member. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a corporation, the information called for by the items specified above must be given with respect to: (a) each executive officer and director of the corporation; (b) each person controlling the corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of the corporation.

D. Depending on the type of Rule 13e–3 transaction (§ 240.13e–3(a)(3)), this statement must be filed with the Commission:

1. At the same time as filing preliminary or definitive soliciting materials or an information statement under Regulations 14A or 14C of the Act;

2. At the same time as filing a registration statement under the Securities Act of 1933;

3. As soon as practicable on the date a tender offer is first published, sent or given to security holders; or

4. At least 30 days before any purchase of securities of the class of securities subject to the Rule 13e–3 transaction, if the transaction does not involve a solicitation, an information statement, the registration of securities or a tender offer, as described in paragraphs 1, 2 or 3 of this Instruction; and

5. If the Rule 13e–3 transaction involves a series of transactions, the issuer or affiliate must file this statement at the time indicated in paragraphs 1 through 4 of this Instruction for the first transaction and must amend the schedule promptly with respect to each subsequent transaction.

E. If an item is inapplicable or the answer is in the negative, so state. The statement published, sent or given to security holders may omit negative and not applicable responses, except that responses to Items 7, 8 and 9 of this schedule must be provided in full. If the schedule includes any information that is not published, sent or given to security holders, provide that information or specifically incorporate it by reference under the appropriate item number and heading in the schedule. Do not recite the text of disclosure requirements in the schedule or any document published, sent or given to security holders. Indicate clearly the coverage of the requirements without referring to the text of the items.

F. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item unless it would render the answer misleading, incomplete, unclear or confusing. A copy of any information that is incorporated by reference or a copy of the pertinent pages of a document containing the information must be submitted with this statement as an exhibit, unless it was previously filed with the Commission electronically on EDGAR. If an exhibit contains information responding to more than one item in the schedule, all information in that exhibit may be incorporated by reference once in response to the several items in the schedule for which it provides an answer. Information incorporated by reference is deemed filed with the Commission for all purposes of the Act.

G. If the Rule 13e–3 transaction also involves a transaction subject to Regulation 14A (§ § 240.14a–1 through 240.14b–2) or 14C (§ § 240.14c–1 through 240.14c–101) of the Act, the registration of securities under the Securities Act of 1933 and the General Rules and Regulations of that Act, or a tender offer subject to Regulation 14D (§ § 240.14d–1 through 240.14d–101) or § 240.13e–4, this statement must incorporate by reference the information contained in the proxy, information, registration or tender offer statement in answer to the items of this statement.

H. The information required by the items of this statement is intended to be in addition to any disclosure requirements of any other form or schedule that may be filed with the Commission in connection with the Rule 13e–3 transaction. If those forms or schedules require less information on any topic than this statement, the requirements of this statement control.

I. If the Rule 13e–3 transaction involves a tender offer, then a combined statement on Schedules 13E–3 and TO may be filed with the Commission under cover of Schedule TO (§ 240.14d–100). See Instruction J of Schedule TO (§ 240.14d–100).

J. Amendments disclosing a material change in the information set forth in this statement may omit any information previously disclosed in this statement.

Item 1. Summary Term Sheet

Furnish the information required by Item 1001 of Regulation M–A (§ 229.1001 of this chapter).

Item 2. Subject Company Information

Furnish the information required by Item 1002 of Regulation M–A (§ 229.1002 of this chapter).

Item 3. Identity and Background of Filing Person

Furnish the information required by Item 1003(a) through (c) of Regulation M–A (§ 229.1003 of this chapter).

Item 4. Terms of the Transaction

Furnish the information required by Item 1004(a) and (c) through (f) of Regulation M–A (§ 229.1004 of this chapter).

Item 5. Past Contacts, Transactions, Negotiations and Agreements

Furnish the information required by Item 1005(a) through (c) and (e) of Regulation M–A (§ 229.1005 of this chapter).

Item 6. Purpose of the Transaction and Plans or Proposals

Furnish the information required by Item 1006(b) and (c)(1) through (8) of

Regulation M–A (§ 229.1006 of this chapter).

Instruction to Item 6

In providing the information specified in Item 1006(c) for this item, discuss any activities or transactions that would occur after the Rule 13e–3 transaction.

Item 7. Purposes, Alternatives, Reasons and Effects

Furnish the information required by Item 1013 of Regulation M–A (§ 229.1013 of this chapter).

Item 8. Fairness of the Transaction

Furnish the information required by Item 1014 of Regulation M–A (§ 229.1014 of this chapter).

Item 9. Reports, Opinions, Appraisals and Negotiations

Furnish the information required by Item 1015 of Regulation M–A (§ 229.1015 of this chapter).

Item 10. Source and Amounts of Funds or Other Consideration

Furnish the information required by Item 1007 of Regulation M–A (§ 229.1007 of this chapter).

Item 11. Interest in Securities of the Subject Company

Furnish the information required by Item 1008 of Regulation M–A (§ 229.1008 of this chapter).

Item 12. The Solicitation or Recommendation

Furnish the information required by Item 1012(d) and (e) of Regulation M–A (§ 229.1012 of this chapter).

Item 13. Financial Statements

Furnish the information required by Item 1010(a) through (b) of Regulation M–A (§ 229.1010 of this chapter) for the issuer of the subject class of securities.

Instructions to Item 13

1. The disclosure materials disseminated to security holders may contain the summarized financial information required by Item 1010(c) of Regulation M–A (§ 229.1010 of this chapter) instead of the financial information required by Item 1010(a) and (b). In that case, the financial information required by Item 1010(a) and (b) of Regulation M–A must be disclosed directly or incorporated by reference in the statement. If summarized financial information is disseminated to security holders, include appropriate instructions on how more complete financial information can be obtained. If the summarized financial information is prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, the summarized financial information must be accompanied by a reconciliation as described in Instruction 2.

2. If the financial statements required by this Item are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter).

3. The filing person may incorporate by reference financial statements contained in any document filed with the Commission, solely for the purposes of this schedule, if: (a) the financial statements substantially meet the requirements of this Item; (b) an express statement is made that the financial statements are incorporated by reference; (c) the matter incorporated by reference is clearly identified by page, paragraph, caption or otherwise; and (d) if the matter incorporated by reference is not filed with this Schedule, an indication is made where the information may be inspected and copies obtained. Financial statements that are required to be presented in comparative form for two or more fiscal years or periods may not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is required to be given. *See* General Instruction F to this Schedule.

Item 14. Persons/Assets, Retained, Employed, Compensated or Used

Furnish the information required by Item 1009 of Regulation M–A (§ 229.1009 of this chapter).

Item 15. Additional Information

Furnish the information required by Item 1011(b) of Regulation M–A (§ 229.1011 of this chapter).

Item 16. Exhibits

File as an exhibit to the Schedule all documents specified in Item 1016(a) through (d), (f) and (g) of Regulation M–A (§ 229.1016 of this chapter).

Signature. After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature) _____

(Name and title) _____

(Date) _____

Instruction to Signature:

The statement must be signed by the filing person or that person's authorized representative. If the statement is signed on behalf of a person by an authorized representative (other than an executive officer of a corporation or general partner of a partnership), evidence of the representative's authority to sign on behalf of the person must be filed with the statement. The name and any title of each person who signs the statement must be typed or printed beneath the signature. See § 240.12b-11 with respect to signature requirements.

26. By removing and reserving § 240.13e-101.

§ 240.14a–4 [Amended]

27. By amending § 240.14a-4, paragraph (f), remove the words ‘‘, or mailed for filing to,’’.

28. By amending § 240.14a-6 to remove the phrase ‘‘, or mailed for filing to,’’ from the first sentence of paragraph (b) and paragraph (c); remove the note following paragraph (b); revise paragraphs (e) and (j); remove the phrase ‘‘Form S–4 (17 CFR 229.25) or Form F–4 (17 CFR 229.34),’’ from paragraph (l) and in its place add ‘‘Forms C (§ 239.6 of this chapter) or SB–3 (§ 239.11 of this chapter)’’; and add paragraph (o) to read as follows:

§ 240.14a-6 Filing requirements.

* * * * *

(e) *Public availability of information.* All copies of preliminary proxy statements and forms of proxy filed under paragraph (a) of this section must be clearly marked ‘‘Preliminary Copies,’’ and will be deemed immediately available for public inspection.

* * * * *

(j) *Merger proxies.* Any proxy statement, form of proxy or other soliciting material required to be filed by this section that also is included in a registration statement filed under the Securities Act of 1933 on Forms C (§ 239.6 of this chapter), SB–3 (§ 239.11 of this chapter) or N–14 (§ 239.23 of this chapter) or filed under § § 230.424 or 230.425 of this chapter may be filed only under the Securities Act, and will be deemed to be filed under this section. In that case, the fee required under paragraph (i) of this section need not be paid.

* * * * *

(o) *Solicitations before furnishing a definitive proxy statement.* Solicitations that are published, sent or given to security holders before they have been furnished a definitive proxy statement must be made in accordance with § § 240.14a-11 or 240.14a-12.

§ 240.14a–11 [Amended]

29. By amending § 240.14a-11 in paragraph (c) remove the words ‘‘, or mailed for filing to,’’ from the first sentence.

30. By revising the section heading and § 240.14a-12 to read as follows:

§ 240.14a-12 Solicitation before furnishing written proxy statement.

(a) Notwithstanding the provisions of § 240.14a-3(a), a solicitation (other than one subject to § 240.14a-11) may be

made before furnishing security holders with a written proxy statement meeting the requirements of § 240.14a-3(a) if:

(1) No form of proxy is furnished to security holders before a definitive written proxy statement required by § 240.14a-3(a) is furnished to security holders;

(2) Each communication made in connection with the solicitation includes:

(i) The identity of the participants in the solicitation (as defined in Instruction 3 to Item 4 of Schedule 14A (§ 240.14a-101)) and a description of their interests direct or indirect, by security holdings or otherwise; and

(ii) A prominent legend in clear, plain language advising security holders to read the proxy statement when it is available because it contains important information. The legend also must advise investors that they can get the proxy statement and other filed documents for free at the SEC's web site and explain which documents are free from the issuer; and

(3) A written proxy statement meeting the requirements of this regulation is sent or given to security holders solicited pursuant to this section at the earliest practicable date.

(b) Any soliciting material published, sent or given to security holders in accordance with paragraph (a) of this section must be filed with the Commission no later than the date the material is published, sent or given to security holders. Three copies of the material must at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered. The soliciting material must include a cover page in the form set forth in Schedule 14A (§ 240.14a-101) and the appropriate box on the cover page must be marked. Soliciting material in connection with a registered offering must be filed only under § 230.425 of this chapter, and will be deemed to be filed under this section.

Instructions to § 240.14a-12

1. Communications of the type described by § 230.169 of this chapter need not be filed under this section.

2. If paper filing is permitted, file eight copies of the soliciting material with the Commission.

3. Any communications made under this rule after the definitive proxy statement is on file but before it is disseminated also must specify that the proxy statement is publicly available and the anticipated date of dissemination.

31. By amending § 240.14a-101 on the cover page by removing the box and accompanying text ''Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))''; removing Notes D.3 and D.4; in Note G, redesignate the second paragraph (2)(e) and paragraphs (2)(f), (2)(g) and (2)(h) as paragraphs (2)(f), (2)(g), (2)(h) and (2)(i), in newly redesignated paragraph (2)(f) and paragraph (3)(f), revising the reference ''Items 13 or 14'' to read ''Item 13'', removing newly redesignated paragraphs (2)(h) and (2)(i) and paragraphs (3)(h) and (3)(i), adding the word ''and'' after newly redesignated paragraph (2)(f) and paragraph (3)(f), and removing the semicolons after newly redesignated paragraph (2)(g) and paragraph (3)(g) and in their place add a period; and revising Item 14 to read as follows:

§ 240.14a–101 Schedule 14A Information required in proxy statement.

* * * * *

Item 14. Mergers, consolidations, acquisitions and similar matters. (See Notes A and D at the beginning of this Schedule.)

Instructions to Item 14

1. In transactions in which the consideration consists wholly or in part of securities registered under the Securities Act of 1933, furnish the information required by Form C (§ 239.6 of this chapter) or Form SB–3 (§ 239.11 of this chapter), as applicable, instead of this Item. Only a Form C (or Form SB–3) must be filed in accordance with § 240.14a–6(j).

2. In transactions in which the consideration consists wholly of cash, information about the acquiring company required by paragraph (c)(1) of this Item need not be provided unless the information is material to an informed voting decision (*e.g.*, the security holders of the target company are voting and financing is not assured). Additionally, if only the security holders of the target company are voting:

i. Financial information in paragraphs (b)(8)–(11) of this Item need not be provided; and

ii. Information about the target company in paragraph (c)(2) of this Item need not be provided. However, the information required by paragraph (c)(2) of this Item must be provided if the transaction is a going-private (as defined by § 240.13e–3) or roll-up (as described by Item 901 of Regulation S–K (§ 229.901 of this chapter)) transaction.

3. In transactions in which the consideration consists wholly of securities exempt under the Securities Act of 1933 or partially of exempt securities and partially of cash, information about the acquiring company required by paragraph (c)(1) of this Item need not be provided if only the security holders of the acquiring company are voting, unless the information is material to an informed voting decision. Additionally, if only the security holders of the target company are voting, information about the target company in paragraph (c)(2) of this Item need not be provided. However, the information required by paragraph (c)(2) of this Item must be provided if the transaction is a going-private (as defined by § 240.13e–3) or roll-up (as described by Item 901 of Regulation S–K (§ 229.901 of this chapter)) transaction.

4. The information required by paragraphs (b)(8)–(11) and (c) need not be provided if the plan being voted on involves only the acquiring company and one or more of its totally held subsidiaries and does not involve a liquidation or a spin-off.

5. To facilitate compliance with Rule 2–02(a) of Regulation S–X (§ 210.2–02(a) of this chapter) (technical requirements relating to accountants' reports), one copy of the definitive proxy statement filed with the Commission must include a signed copy of the accountant's report. If the financial statements are incorporated by reference, a signed copy of the accountant's report must be filed with the definitive proxy statement.

6. Notwithstanding the provisions of Regulation S–X, no schedules other than those prepared in accordance with §§ 210.12–15, 210.12–28 and 210.12–29 of this chapter (or, for management investment companies, §§ 210.12–12 through 210.12–14 of this chapter) of that regulation need be furnished in the proxy statement.

7. If the preliminary proxy material incorporates by reference financial statements required by this Item, a draft of the financial statements must be furnished to the Commission staff upon request if the document from which they are incorporated has not been filed with or furnished to the Commission.

8. Unless registered on a national securities exchange or otherwise required to furnish such information, registered investment companies need not furnish the information required by paragraphs (b)(8) and (b)(9) of this Item or paragraphs (h), (i) and (j) of Item 14 of Form C (§ 239.6).

9. A registered management investment company need not comply with paragraphs (a), (d), (h), (i), (j) and (l) of Item 14 of Form C (§ 239.6).

(a) *Applicability.* If action is to be taken with respect to any of the following transactions, provide the information required by this Item:

(1) A merger or consolidation;

(2) An acquisition of securities of another person;

(3) An acquisition of any other going business or the assets of a going business;

(4) A sale or other transfer of all or any substantial part of assets; or

(5) A liquidation or dissolution.

(b) *Transaction information.* Provide the following information for each of the parties to the transaction unless otherwise specified:

(1) *Summary term sheet.* The information required by Item 1001 of Regulation M–A (§ 229.1001 of this chapter).

(2) *Contact information.* The name, complete mailing address and telephone number of the principal executive offices.

(3) *Business conducted.* A brief description of the general nature of the business conducted.

(4) *Terms of the transaction.* The information required by Item 1004(a)(2) of Regulation M–A (§ 229.1004 of this chapter).

(5) *Regulatory approvals.* A statement as to whether any federal or state regulatory

requirements must be complied with or approval must be obtained in connection with the transaction and, if so, the status of the compliance or approval.

(6) *Reports, opinions, appraisals.* If a report, opinion or appraisal materially relating to the transaction has been received from an outside party, and such report, opinion or appraisal is referred to in the proxy statement, furnish the information required by Item 1015(b) of Regulation M–A (§ 229.1015 of this chapter).

(7) *Past contacts, transactions or negotiations.* The information required by Items 1005(b) and 1011(a)(1) of Regulation M–A (§ 229.1005 of this chapter and § 229.1011 of this chapter), for the parties to the transaction and their affiliates during the periods for which financial statements are presented or incorporated by reference under this Item.

(8) *Selected financial data.* The selected financial data required by Item 301 of Regulation S–K (§ 229.301 of this chapter).

(9) *Pro forma selected financial data.* If material, the information required by Item 301 of Regulation S–K (§ 229.301 of this chapter), showing the pro forma effect of the transaction.

(10) *Pro forma information.* In a table designed to facilitate comparison, historical and pro forma per share data of the acquiring company and historical and equivalent pro forma per share data of the target company for the following Items:

(i) Book value per share as of the date financial data is presented pursuant to Item 301 of Regulation S–K (§ 229.301 of this chapter);

(ii) Cash dividends declared per share for the periods for which financial data is presented pursuant to Item 301 of Regulation S–K (§ 229.301 of this chapter); and

(iii) Income (loss) per share from continuing operations for the periods for which financial data is presented pursuant to Item 301 of Regulation S–K (§ 229.301 of this chapter).

Instructions to Paragraphs (b)(9) and (b)(10)

1. For a business combination accounted for as a purchase, present the financial information required by paragraphs (b)(9) and (b)(10) only for the most recent fiscal year and interim period. For a business combination accounted for as a pooling, present the financial information required by paragraphs (b)(9) and (b)(10) (except for information with regard to book value) for the most recent three fiscal years and interim period. For purposes of these paragraphs, book value information need only be provided for the most recent balance sheet date.

2. Calculate the equivalent pro forma per share amounts for one share of the company being acquired by multiplying the exchange ratio times each of:

(i) The pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction;

(ii) The pro forma book value per share; and

(iii) The pro forma dividends per share of the acquiring company.

(11) *Financial information.* If material, financial information required by Article 11 of Regulation S–X (§ 210.10–01 through § 229.11–03 of this chapter) with respect to this transaction.

Instructions to Paragraph (b)(11)

1. Present any Article 11 information required by the other Items of this schedule (where not incorporated by reference) together with the information provided under this Item. In presenting this information, you must clearly distinguish between this transaction and any other.

2. You need only show the pro forma effect that this transaction has on any pro forma financial information that:

(i) Is incorporated by reference; and

(ii) Reflects all prior transactions.

(c) *Information about the parties to the transaction.*

(1) *Acquiring company.* Furnish the information required by Part II (Registrant Information) of Form C (§ 239.6 of this chapter) or Form SB–3 (§§ 239.11 of this chapter) for the acquiring company. However, financial statements need only be presented for the latest two fiscal years and interim period.

(2) *Acquired company.* Furnish the information required by Part III (Information with Respect to the Company Being Acquired) of Form C (§ 239.6 of this chapter).

Instruction to Paragraph (c)

Information may be incorporated by reference to the same extent as permitted by Forms C (§ 239.6 of this chapter) and SB–3 (§ 239.11 of this chapter).

§ 240.14c–2 [Amended]

32. By amending the introductory text in paragraph (a) of § 240.14c–2 by removing the reference ''Form S–4 or F–4 (§ 239.25 or § 239.34 of this chapter)'' and in its place add ''Form C or SB–3 (§ 239.6 or § 239.11 of this chapter)''; removing the reference ''Form S–4 (17 CFR 229.25) or Form F–4 (17 CFR 229.34)'' in paragraph (c) and in its place add ''Form C or SB–3 (§ 239.6 or § 239.11 of this chapter)''.

33. By amending § 240.14c–5 by removing the phrase '', or mailed for filing to,'' from the first sentence of paragraph (b); removing the note following paragraph (b); revising paragraph (d); removing the reference in paragraph (f) ''Form N–14, S–4, or F–4 (§ 239.23, § 239.25 or § 239.34 of this chapter)'' and in its place add ''Form C, SB–3, or N–14 (§ 239.6, § 239.11 or § 239.23 of this chapter)''; removing the reference in paragraph (f) ''Form N–14, S–4, or F–4'' and in its place add ''Form C, SB–3, or N–14 (§ 239.6, § 239.11 or § 239.23 of this chapter)'' to read as follows:

§ 240.14c–5 Filing requirements.

* * * * *

(d) *Public availability of information.* All copies of material filed under paragraph (a) of this section must be clearly marked ''Preliminary Copies,'' and will be deemed immediately available for public inspection.

* * * * *

§ 240.14c–101 [Amended]

34. By amending the cover page of § 240.14c–101 by removing the box and accompanying text ''Confidential, for Use of the Commission Only (as permitted by Rule 14c–5(d)(2))''.

35. By amending § 240.14d–1 by removing the reference ''Schedules 14D–1'' in the introductory text of paragraph (b) and adding in its place ''Schedules TO''; redesignating paragraphs (e)(1), (e)(2), (e)(3), (e)(4), (e)(5), (e)(6) and (e)(7) as paragraphs (e)(2), (e)(7), (e)(5), (e)(1), (e)(9), (e)(3) and (e)(6), respectively; in newly redesignated paragraph (e)(1) remove the reference ''Rule 14d–3, Rule 14d–9(d) and Item 6 of Schedule 14D–1'' and in its place add ''Rule 14d–3 and Rule 14d–9(d)''; and adding new paragraphs (e)(4) and (e)(8) to read as follows:

§ 240.14d–1 Scope of and definitions applicable to regulations 14D and 14E.

* * * * *

(e) *Definitions.* * * *

(4) The term *initial offering period* means the period from the time the offer commences until all minimum time periods, including extensions, required by Regulations 14D (§§ 240.14d–1 through 240.14d–103) and 14E (§§ 240.14e–1 through 240.14e–8) have been satisfied and all conditions to the offer have been satisfied or waived within these time periods.

* * * * *

(8) The term ''subsequent offering period'' means the ten business day period immediately following the initial offering period meeting the conditions specified in § 240.14d–11.

* * * * *

36. By revising the section heading and § 240.14d–2 to read as follows:

§ 240.14d–2 Commencement of a tender offer.

(a) *Date of commencement.* A bidder will have commenced its tender offer for purposes of section 14(d) of the Act (15 U.S.C. 78n) and the rules promulgated thereunder at 12:01 a.m. on the date when the bidder has first published, sent or given the means to tender to security holders. For purposes of this section, the means to tender includes the transmittal form or a statement regarding how the transmittal form may be obtained.

(b) *Pre-commencement communications.* A communication by the bidder will not be deemed to constitute commencement of a tender offer if:

(1) It does not include the means for security holders to tender their shares into the offer; and

(2) All written communications relating to the tender offer, from and including the first public announcement, are filed under cover of Schedule TO (§ 240.14d–100) with the Commission as soon as practicable on the date of the communication. The bidder also must deliver to the subject company and any other bidder for the same class of securities the first communication that discloses the identities of the bidder and the subject company, the amount and class of securities sought, and the price or range of prices offered, as soon as practicable on the date of the communication.

Instructions to Paragraph (b)(2)

1. The box on the front of Schedule TO indicating that the filing contains pre-commencement communications must be checked.

2. Any communications made in connection with an exchange offer registered under the Securities Act of 1933 need only be filed under § 230.425 of this chapter and will be deemed to have been filed under this section as well.

3. Each pre-commencement communication must include a prominent legend in clear, plain language advising security holders to read the tender offer statement when it is available because it contains important information. The legend also must advise investors that they can get the tender offer statement and other filed documents for free at the SEC's web site and explain which documents are free from the issuer.

4. For pre-commencement communications in connection with registered exchange offers, also see §§ 230.135, 230.166, 230.167, 230.168 and 230.169 of this chapter.

5. Communications of the type described under § 230.169 need not be filed under this section.

(c) *Filing and other obligations triggered by commencement.* As soon as practicable on the date of commencement, a bidder must comply with the filing requirements of § 240.14d–3(a), the dissemination requirements of § 240.14d–4(a) or (b), and the disclosure requirements of § 240.14d–6(a).

37. By amending § 240.14d–3 by removing the reference ''Schedule 14D–1'' in paragraphs (a)(1), (a)(2), (a)(2)(ii), the introductory text of (a)(3), and paragraph (c) each time it appears and adding in its place ''Schedule TO''; removing the word ''ten copies of'' in paragraphs (a)(1); and revising paragraph (b) to read as follows:

§ 240.14d–3 Filing and transmission of tender offer statement.

* * * * *

(b) *Post-commencement amendments and additional materials.* The bidder making the tender offer must file with the Commission:

(1) An amendment to Schedule TO (§ 240.14d–100) reporting promptly any material changes in the information set forth in the schedule previously filed and including copies of any additional tender offer materials as exhibits; and

(2) A final amendment to Schedule TO (§ 240.14d–100) reporting promptly the results of the tender offer.

Instruction to Paragraph (b)

A copy of any additional tender offer materials or amendment filed under this section must be sent promptly to the subject company and to any exchange and/or NASD, as required by paragraph (a) of this section, but in no event later than the date the materials are first published, sent or given to security holders.

* * * * *

38. Amend § 240.14d–4 by revising the section heading and adding introductory text to § 240.14d–4; revising the introductory text of paragraph (a); removing paragraph (a)(1); redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(1) and (a)(2); revising newly redesignated paragraph (a)(2); adding an Instruction to paragraph (a); redesignating paragraphs (b) and (c) as paragraphs (c) and (d)(1) and adding a new paragraph (b); revising the heading of newly redesignated paragraph (d); in the first sentence of newly redesignated paragraph (d)(1) remove the phrase ''paragraph (a) of''; and adding paragraph (d)(2) to read as follows:

§ 240.14d–4 Dissemination of tender offers to security holders.

As soon as practicable on the date of commencement of a tender offer, the bidder must publish, send or give the disclosure required by § 240.14d–6 to security holders of the class of securities that is the subject of the offer, by complying with all of the requirements of any of the following:

(a) *Cash tender offers and exempt securities offers.* For tender offers in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 (15 U.S.C. 77c):

(1) *Summary publication.* * * *

(2) *Use of stockholder lists and security position listings.* Any bidder using stockholder lists and security position listings under § 240.14d–5 must comply with paragraph (a)(1) of this section on or before the date of the bidder's request for such lists or listing under § 240.14d–5(a).

Instruction to Paragraph (a)

Tender offers may be published or sent or given to security holders by other methods, but with respect to summary publication and the use of stockholder lists and security position listings under § 240.14d–5, paragraphs (a)(1) and (a)(2) of this section are exclusive.

(b) *Registered securities offers.* For tender offers in which the consideration consists solely or partially of securities registered under the Securities Act of 1933, a registration statement containing all of the required information, including pricing information, has been filed and a preliminary or final prospectus is delivered to security holders. However, for going-private transactions (as defined by § 240.13e–3) and roll-up transactions (as described by Item 901 of Regulation S–K (§ 229.901 of this chapter)), a registration statement registering the securities to be offered must have become effective and only a final prospectus may be delivered to security holders on the date of commencement.

Instructions to Paragraph (b)

1. If the prospectus is being delivered by mail, mailing on the date of commencement is sufficient.

2. A preliminary prospectus used under this section may not omit information under § 230.430 and 230.430A of this chapter.

3. If a preliminary prospectus is used under this section and the bidder must disseminate material changes, the tender offer must remain open for the period specified in paragraph (d)(2) of this section.

4. If a preliminary prospectus is used under this section, tenders may be requested in accordance with § 230.162 of this chapter.

(c) *Adequate publication.* * * *

(d) *Publication of changes and extension of the offer.*

(1) * * *

(2) In a registered securities offer where the bidder disseminates the preliminary prospectus as permitted by paragraph (b) of this section, the offer must remain open from the date that material changes to the tender offer materials are disseminated to security holders, as follows:

(i) Five business days for a supplement containing a material change other than price or share levels;

(ii) Ten business days for a supplement containing a change in price, the amount of securities sought, the dealer's soliciting fee, or other similarly significant change;

(iii) Ten business days for a supplement included as part of a post-effective amendment; and

(iv) Twenty business days for a revised prospectus when the initial prospectus was materially deficient.

39. By amending § 240.14d–5 by revising paragraph (c)(1) to read as follows:

§ 240.14d–5 Dissemination of certain tender offers by the use of stockholder lists and security position listings.

* * * * *

(c) * * *

(1) No later than the third business day after the date of the bidder's request, the subject company must furnish to the bidder at the subject company's principal executive office a copy of the names and addresses of the record holders on the most recent stockholder list referred to in paragraph (a)(2) of this section; the names and addresses of participants identified on the most recent security position listing of any clearing agency that is within the access of the subject company; and the most recent list of names, addresses and security positions of beneficial owners as specified in § 240.14a–13(b), in the possession of the subject company, or that subsequently comes into its possession. All security holder list information must be in the format requested by the bidder to the extent the format is available to the subject company without undue burden or expense.

* * * * *

40. By revising the section heading and § 240.14d–6 to read as follows:

§ 240.14d–6 Disclosure of tender offer information to security holders.

(a) *Information required on date of commencement.* (1) *Summary publication.* If a tender offer is published, sent or given to security holders on the date of commencement by means of summary publication under § 240.14d–4(a)(1):

(i) The summary advertisement must contain at least the information required by paragraph (d)(2) of this section; and

(ii) The tender offer materials furnished by the bidder upon request of any security holder must include the information required by paragraph (d)(1) of this section.

(2) *Use of stockholder lists and security position listings.* If a tender offer is published, sent or given to security holders on the date of commencement by the use of stockholder lists and security position listings under § 240.14d–4(a)(2):

(i) The summary advertisement must contain at least the information required by paragraph (d)(2) of this section; and

(ii) The tender offer materials transmitted to security holders pursuant to such lists and security position listings and furnished by the bidder upon the request of any security holder must include the information required by paragraph (d)(1) of this section.

(3) *Other tender offers.* If a tender offer is published or sent or given to security holders other than pursuant to § 240.14d–4(a), the tender offer materials that are published or sent or given to security holders on the date of commencement of such offer must include the information required by paragraph (d)(1) of this section.

(b) *Information required in other tender offer materials published after commencement.* Except for tender offer materials described in paragraphs (a)(1)(ii) and (a)(2)(ii) of this section, additional tender offer materials published, sent or given to security holders after commencement must include:

(1) The identities of the bidder and subject company;

(2) The amount and class of securities being sought;

(3) The type and amount of consideration being offered; and

(4) The scheduled expiration date of the tender offer, whether the tender offer may be extended and, if so, the procedures for extension of the tender offer.

Instruction to Paragraph (b)

If the additional tender offer materials are summary advertisements, they also must include the information required by paragraphs (d)(2)(v) of this section.

(c) *Material changes.* A material change in the information published or sent or given to security holders must be promptly disclosed to security holders in additional tender offer materials.

(d) *Information to be included.* (1) *Tender offer materials other than summary publication.* The following information is required by paragraphs (a)(1)(ii), (a)(2)(ii) and (a)(3) of this section:

(i) The information required by Item 1 of Schedule TO (§ 240.14d–100) (Summary Term Sheet); and

(ii) The information required by the remaining items of Schedule TO (§ 240.14d–100) for third-party tender offers, except for Item 12 (exhibits) of Schedule TO (§ 240.14d–100), or a fair and adequate summary of the information.

(2) *Summary publication.* The following information is required in a summary advertisement under paragraphs (a)(1)(i) and (a)(2)(i) of this section:

(i) The identity of the bidder and the subject company;

(ii) The information required by Item 1004(a)(1) of Regulation M–A (§ 229.1004(a)(1) of this chapter);

(iii) If the tender offer is for less than all of the outstanding securities of a class of equity securities, a statement as to whether the purpose or one of the purposes of the tender offer is to acquire or influence control of the business of the subject company;

(iv) A statement that the information required by paragraph (d)(1) of this section is incorporated by reference into the summary advertisement;

(v) Appropriate instructions as to how security holders may obtain promptly, at the bidder's expense, the bidder's tender offer materials; and

(vi) In a tender offer published or sent or given to security holders by use of stockholder lists and security position listings under § 240.14d–4(a)(3), a statement that a request is being made for such lists and listings. The summary publication also must state that tender offer materials will be mailed to record holders and will be furnished to brokers, banks and similar persons whose name appears or whose nominee appears on the list of security holders or, if applicable, who are listed as participants in a clearing agency's security position listing for subsequent transmittal to beneficial owners of such securities. If the list furnished to the bidder also included beneficial owners pursuant to § 240.14d–5(c)(1) and tender offer materials will be mailed directly to beneficial holders, a statement to that effect also should be included.

(3) *No transmittal letter.* Neither the initial summary advertisement nor any subsequent summary advertisement may include a transmittal letter (the letter furnished to security holders for transmission of securities sought in the tender offer) or any amendment to the transmittal letter.

41. By amending § 240.14d–7 to redesignate paragraph (a) as (a)(1) and to add paragraph (a)(2) to read as follows:

§ 240.14d–7 Additional withdrawal rights.

(a) * * *

(2) *Exemption during subsequent offering period.* Notwithstanding the provisions of Section 14(d)(5) of the Act (15 U.S.C. 78n(d)(5)) and paragraph (a) of this section, the bidder need not offer withdrawal rights during a subsequent offering period.

* * * * *

42. By amending § 240.14d–9 by revising the section heading; redesignating paragraphs (a) through (f) as paragraphs (b) through (g); adding new paragraph (a); and revising the introductory text of newly redesignated paragraph (b) to read as follows:

§ 240.14d–9 Recommendation or solicitation by the subject company and others.

(a) *Pre-commencement communications.* A communication by persons described in paragraph (e) of this section with respect to a tender offer will not be deemed to constitute a recommendation or solicitation under this section if:

(1) The tender offer has not commenced under § 240.14d–2; and

(2) The communications are filed under cover of Schedule 14D–9 (§ 240.14d–101) with the Commission as soon as practicable on the date of the communication.

Instructions to Paragraph (a)(2)

1. The box on the front of Schedule 14D–9 (§ 240.14d–101) indicating that the filing contains pre-commencement communications must be checked.

2. Any communications made in connection with an exchange offer registered under the Securities Act of 1933 need only be filed under § 230.425 of this chapter and will be deemed to have been filed under this section as well.

3. For pre-commencement communications in connection with registered exchange offers, also see §§ 230.135, 230.166, 230.167, 230.168 and 230.169 of this chapter.

4. Communications of the type described under § 230.169 need not be filed under this section.

(b) *Post-commencement communications.* After commencement by a bidder under § 240.14d–2, no solicitation or recommendation to security holders may be made by any person described in paragraph (e) of this section with respect to a tender offer for such securities unless as soon as practicable on the date such solicitation or recommendation is first published or sent or given to security holders such person complies with the following:

* * * * *

§ 240.14d–9 [Amended]

43. By amending § 240.14d–9 by removing the words ''eight copies of'' in newly redesignated paragraph (b)(1); removing the reference ''14D–1'' in newly redesignated paragraphs (b)(2)(i) and (b)(3)(i) and in its place add ''TO'', removing the reference ''Items 2 and 4(a) of Schedule 14D–9'' in newly redesignated paragraph (b)(2)(ii) and in its place add ''Items 1003(d) and 1012(a) of Regulation M–A (§ 229.1003(d) and § 229.1012(a))''; removing the reference ''paragraph (a)(2) or (3)'' in newly redesignated paragraph (c)(2) and in its place add ''paragraph (b)(2) or (3)''; removing the reference ''Items 1, 2, 3(b), 4, 6, 7 and 8'' in newly redesignated paragraph (d) and in its place add ''Items 1 through 8''; removing the reference ''paragraphs (d)(2) and (e)'' in the introductory text of newly redesignated paragraph (e)(1) and in its place add ''paragraphs (e)(2) and (f)''; removing the reference ''14D–1 (§ 240.14d–101)'' in newly redesignated paragraph (e)(2)(i) and in its place add ''TO (§ 240.14d–100)''; and removing the reference to ''paragraph (e)(3)'' in newly redesignated paragraph (f)(4) and in its place add ''paragraph (f)(3)''.

44. By adding § 240.14d–11 to read as follows:

§ 240.14d–11. Subsequent offering period.

A bidder may elect to provide a ten business day subsequent offering period during which tenders will be accepted if:

(a) The initial offering period has expired;

(b) The offer is for all outstanding securities of the class that is the subject of the tender offer;

(c) When the initial offering period expires, the bidder immediately accepts and promptly pays for all securities tendered during the initial offering period;

(d) The bidder immediately accepts and promptly pays for all securities as they are tendered during the subsequent offering period;

(e) The bidder discloses its intention to offer a subsequent offering period and describes the subsequent offering period in the initial tender offer materials filed and disseminated to security holders. If the bidder elects to offer a subsequent offering period after the initial tender offer materials have been disseminated to security holders, it must amend the tender offer materials to reflect this decision, disseminate the information to security holders in a manner reasonably calculated to inform security holders of this change, and give shareholders a sufficient period of time to consider the information; and

(f) The bidder intends to acquire all securities remaining after the tender offer through a merger or similar transaction, and discloses this intention in the initial or supplemental tender offer materials filed and disseminated to security holders.

45. By revising § 240.14d–100 to read as follows:

§ 240.14d–100 Schedule TO. Tender offer statement under section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934.

Securities and Exchange Commission,
Washington, D.C. 20549

Schedule TO

Tender Offer Statement under Section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934

(Amendment No.)* _____

(Name of Subject Company (issuer)) _____

(Names of Filing Persons (identifying status as offeror, issuer or other person)) _____

(Title of Class of Securities) _____

(CUSIP Number of Class of Securities) _____

(Name, address, and telephone numbers of person authorized to receive notices and communications on behalf of filing persons)

CALCULATION OF FILING FEE

Transaction valuation*	Amount of filing fee

*Set forth the amount on which the filing fee is calculated and state how it was determined.

[ ] Check the box if any part of the fee is offset as provided by Rule 0–11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____

Form or Registration No.: _____

Filing Party: _____

Date Filed: _____

[ ] Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

[ ] third-party tender offer subject to Rule 14d–1.

[ ] issuer tender offer subject to Rule 13e–4.

[ ] going-private transaction subject to Rule 13e–3.

[ ] amendment to Schedule 13D under Rule 13d–2.

Check the following box if the filing is a final amendment reporting the results of the tender offer: [ ]

General Instructions

A. File eight copies of the statement, including all exhibits, with the Commission if paper filing is permitted.

B. This filing must be accompanied by a fee payable to the Commission as required by § 240.0–11.

C. If the statement is filed by a partnership, limited partnership, syndicate or other group, the information called for by Items 3 and 5–9 for a third-party tender offer and Items 5–8 for an issuer tender offer must be given with respect to: (i) each partner of the partnership; (ii) each partner who is, or functions as, a general partner of the limited partnership; (iii) each member of the syndicate or group; and (iv) each person controlling the partner or member. If the statement is filed by a corporation or if a person referred to in

(i), (ii), (iii) or (iv) of this Instruction is a corporation, the information called for by the items specified above must be given with respect to: (a) each executive officer and director of the corporation; (b) each person controlling the corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of the corporation.

D. If the filing contains only preliminary communications made before the commencement of a tender offer, no signature or filing fee is required. The filer need not respond to the items in the schedule. Any pre-commencement communications that are filed under cover of this schedule need not be incorporated by reference into the schedule.

E. If an item is inapplicable or the answer is in the negative, so state. The statement published, sent or given to security holders may omit negative and not applicable responses. If the schedule includes any information that is not published, sent or given to security holders, provide that information or specifically incorporate it by reference under the appropriate item number and heading in the schedule. Do not recite the text of disclosure requirements in the schedule or any document published, sent or given to security holders. Indicate clearly the coverage of the requirements without referring to the text of the items.

F. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item unless it would render the answer misleading, incomplete, unclear or confusing. A copy of any information that is incorporated by reference or a copy of the pertinent pages of a document containing the information must be submitted with this statement as an exhibit, unless it was previously filed with the Commission electronically on EDGAR. If an exhibit contains information responding to more than one item in the schedule, all information in that exhibit may be incorporated by reference once in response to the several items in the schedule for which it provides an answer. Information incorporated by reference is deemed filed with the Commission for all purposes of the Securities Exchange Act of 1934 (''the Act'').

G. A filing person may amend its previously filed Schedule 13D (§ 240.13d–101) on Schedule TO (§ 240.14d–100) if the appropriate box on the cover page is checked to indicate a combined filing and the information called for by the fourteen disclosure items on the cover page of Schedule 13D (§ 240.13d–101) is provided on the cover page of the combined filing with respect to each filing person.

H. The final amendment required by §§ 240.14d–3(b)(2) and 240.13e–4(c)(4) will satisfy the reporting requirements of section 13(d) of the Act with respect to all securities acquired by the offeror in the tender offer.

I. Amendments disclosing a material change in the information set forth in this statement may omit any information previously disclosed in this statement.

J. If the tender offer disclosed on this statement involves a going-private transaction, a combined Schedule TO (§ 240.14d–100) and Schedule 13E–3 (§ 240.13e–100) may be filed with the Commission under cover of Schedule TO. The Rule 13e–3 box on the cover page of the Schedule TO must be checked to indicate a combined filing. All information called for by both schedules must be provided except that Items 1–3, 5, 8 and 9 of Schedule TO may be omitted to the extent those items call for information that duplicates the item requirements in Schedule 13E–3.

K. For purposes of this statement, the following definitions apply:

(1) The term *offeror* means any person on whose behalf a tender offer is made;

(2) The term *issuer tender offer* has the same meaning as in Rule 13e–4(a)(2); and

(3) The term *third-party tender offer* means a tender offer that is not an issuer tender offer.

Special Instructions for Complying With Schedule to:

Under Sections 13(e), 14(d) and 23 of the Act and the rules and regulations of the Act, the Commission is authorized to solicit the information required to be supplied by this schedule.

Disclosure of the information specified in this schedule is mandatory, except for I.R.S. identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of disclosing tender offer and going-private transactions. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. I.R.S. identification numbers, if furnished, will assist the Commission in identifying security holders and, therefore, in promptly processing tender offer and going-private statements.

Failure to disclose the information required by this schedule, except for I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules.

Item 1. Summary Term Sheet

Furnish the information required by Item 1001 of Regulation M–A (§ 229.1001 of this chapter).

Item 2. Subject Company Information

Furnish the information required by Item 1002(a) through (c) of Regulation M–A (§ 229.1002 of this chapter).

Item 3. Identity and Background of Filing Person

Furnish the information required by Item 1003(a) through (c) of Regulation M–A (§ 229.1003 of this chapter) for a third-party tender offer and the information required by Item 1003(a) of Regulation M–A (§ 229.1003 of this chapter) for an issuer tender offer.

Item 4. Terms of the Transaction

Furnish the information required by Item 1004(a) of Regulation M–A (§ 229.1004 of this chapter) for a third-party tender offer and the information required by Item 1004(a) through (b) of Regulation M–A (§ 229.1004 of this chapter) for an issuer tender offer.

Item 5. Past Contacts, Transactions, Negotiations and Agreements

Furnish the information required by Item 1005(a) and (b) of Regulation M–A (§ 229.1005 of this chapter) for a third-party tender offer and the information required by Item 1005(e) of Regulation M–A (§ 229.1005) for an issuer tender offer.

Item 6. Purpose of the Transaction and Plans or Proposals

Furnish the information required by Item 1006(a) and (c)(1) through (7) of Regulation M–A (§ 229.1006 of this chapter) for a third-party tender offer and the information required by Item 1006(a) through (c) of Regulation M–A (§ 229.1006 of this chapter) for an issuer tender offer.

Item 7. Source and Amount of Funds or Other Consideration

Furnish the information required by Item 1007(a), (b) and (d) of Regulation M–A (§ 229.1007 of this chapter).

Item 8. Interest in Securities of the Subject Company

Furnish the information required by Item 1008 of Regulation M–A (§ 229.1008 of this chapter).

Item 9. Persons/Assets, Retained, Employed, Compensated or Used

Furnish the information required by Item 1009(a) of Regulation M–A (§ 229.1009 of this chapter).

Item 10. Financial Statements

If material, furnish the information required by Item 1010(a) and (b) of Regulation M–A (§ 229.1010 of this chapter) for the issuer in an issuer tender offer and for the offeror in a third-party tender offer.

Instructions to Item 10

1. Financial statements must be provided when the offeror's financial condition is material to security holder's decision whether to sell, tender or hold the securities sought. The facts and circumstances of a tender offer, particularly the terms of the tender offer, may influence a determination as to whether financial statements are material, and thus required to be disclosed.

2. Financial statements are *not* considered material when: (a) the consideration offered consists solely of cash; (b) the offer is not subject to any financing condition; *and* either: (c) the offeror is a public reporting company under Section 13(a) or 15(d) of the Act, or (d) the offer is for all outstanding securities of the subject class.

3. The filing person may incorporate by reference financial statements contained in any document filed with the Commission, solely for the purposes of this schedule, if: (a) the financial statements substantially meet the requirements of this item; (b) an express statement is made that the financial statements are incorporated by reference; (c) the matter incorporated by reference is clearly identified by page, paragraph, caption or otherwise; and (d) if the matter incorporated by reference is not filed with this schedule, an indication is made where the information may be inspected and copies obtained. Financial statements that are required to be presented in comparative form for two or more fiscal years or periods may not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is required to be given. *See* General Instruction F to this schedule.

4. If the offeror in a third-party tender offer is a natural person, and such person's financial information is material, disclose the net worth of the offeror. If the offeror's net worth is derived from material amounts of assets that are not readily marketable or there are material guarantees and contingencies, provide appropriate disclosure.

5. If the offeror in a third-party cash tender offer intends to engage in a merger or similar transaction with the subject company after the tender offer and non-tendering security holders will receive securities in the subsequent transaction, the offeror must disclose the financial information specified in Item 3(f), (g) and (h) and Item 5 of Form C (§ 239.6 of this chapter) or Form SB–3 (§ 229.11 of this chapter), as applicable. The disclosure document sent to security holders may include only the information specified in Items 3(f), (g) and (h) so long as the schedule filed with the Commission contains all information required by this instruction and the disclosure document advises security holders where the full financial information can be found.

6. The disclosure materials disseminated to security holders may contain the summarized financial information specified by Item 1010(c) of Regulation M–A (§ 229.1010 of this chapter) instead of the financial information required by Item 1010(a) and (b). In that case, the financial information required by Item 1010(a) and (b) of Regulation M–A must be disclosed directly or incorporated by reference in the statement. If summarized financial information is disseminated to security holders, include appropriate instructions on how more complete financial information can be obtained. If the summarized financial information is prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, the summarized financial information must be accompanied by a reconciliation as described in Instruction 8 of this Item.

7. If the offeror is not subject to the periodic reporting requirements of the Act, the financial statements required by this Item need not be audited if audited financial statements are not available or obtainable without unreasonable cost or expense. Make a statement to that effect and the reasons for their unavailability.

8. If the financial statements required by this Item are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter), unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

Item 11. Additional Information

Furnish the information required by Item 1011 of Regulation M–A (§ 229.1011 of this chapter).

Item 12. Exhibits

File as an exhibit to the Schedule all documents specified by Item 1016(a), (b), (d), (g) and (h) of Regulation M–A (§ 229.1016 of this chapter).

Item 13. Information Required by Schedule 13E–3

If the Schedule TO is combined with Schedule 13E–3 (§ 240.13e–100), set forth the information required by Schedule 13E–3 that is not included or covered by the items in Schedule TO.

Signature

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature) _____

(Name and title) _____

(Date) _____

Instruction to Signature:

The statement must be signed by the filing person or that person's authorized representative. If the statement is signed on behalf of a person by an authorized representative (other than an executive officer of a corporation or general partner of a partnership), evidence of the representative's authority to sign on behalf of the person must be filed with the statement. The name and any title of each person who signs the statement must be typed or printed beneath the signature. See §§ 240.12b–11 and 240.14d–1(f) with respect to signature requirements.

46. By revising § 240.14d–101 to read as follows:

§ 240.14d–101 Schedule 14D–9.

Securities and Exchange Commission,
Washington, D.C. 20549

Schedule 14D–9

Solicitation/Recommendation Statement
under Section 14(d)(4) of the
Securities Exchange Act of 1934

(Amendment No.———) _____

(Name of Subject Company) _____

(Names of Persons Filing Statement) _____

(Title of Class of Securities) _____

(CUSIP Number of Class of Securities) _____

(Name, address, and telephone numbers of person authorized to receive notices and communications on behalf of the persons filing statement)

( ) Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

General Instructions

A. File eight copies of the statement, including all exhibits, with the Commission if paper filing is permitted.

B. If the filing contains only preliminary communications made before the commencement of a tender offer, no signature is required. The filer need not respond to the items in the schedule. Any pre-commencement communications that are filed under cover of this schedule need not be incorporated by reference into the schedule.

C. If an item is inapplicable or the answer is in the negative, so state. The statement published, sent or given to security holders may omit negative and not applicable responses. If the schedule includes any information that is not

published, sent or given to security holders, provide that information or specifically incorporate it by reference under the appropriate item number and heading in the schedule. Do not recite the text of disclosure requirements in the schedule or any document published, sent or given to security holders. Indicate clearly the coverage of the requirements without referring to the text of the items.

D. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item unless it would render the answer misleading, incomplete, unclear or confusing. A copy of any information that is incorporated by reference or a copy of the pertinent pages of a document containing the information must be submitted with this statement as an exhibit, unless it was previously filed with the Commission electronically on EDGAR. If an exhibit contains information responding to more than one item in the schedule, all information in that exhibit may be incorporated by reference once in response to the several items in the schedule for which it provides an answer. Information incorporated by reference is deemed filed with the Commission for all purposes of the Securities Exchange Act of 1934 (''the Act'').

E. Amendments disclosing a material change in the information set forth in this statement may omit any information previously disclosed in this statement.

Item 1. Subject Company Information

Furnish the information required by Item 1002(a) and (b) of Regulation M–A (§ 229.1002 of this chapter).

Item 2. Identity and Background of Filing Person

Furnish the information required by Item 1003(a) and (d) of Regulation M–A (§ 229.1003 of this chapter).

Item 3. Past Contacts, Transactions, Negotiations and Agreements

Furnish the information required by Item 1005(d) of Regulation M–A (§ 229.1005 of this chapter).

Item 4. The Solicitation or Recommendation

Furnish the information required by Item 1012(a) through (c) of Regulation M–A (§ 229.1012 of this chapter).

Item 5. Person/Assets, Retained, Employed, Compensated or Used

Furnish the information required by Item 1009(a) of Regulation M–A (§ 229.1009 of this chapter).

Item 6. Interest in Securities of the Subject Company

Furnish the information required by Item 1008(b) of Regulation M–A (§ 229.1008 of this chapter).

Item 7. Purpose of the Transaction and Plans or Proposals

Furnish the information required by Item 1006(d) of Regulation M–A (§ 229.1006 of this chapter).

Item 8. Additional Information

Furnish the information required by Item 1011(b) of Regulation M–A (§ 229.1011 of this chapter).

Item 9. Exhibits

File as an exhibit to the Schedule all documents specified by Item 1016(a), (e) and (g) of Regulation M–A (§ 229.1016 of this chapter).

Signature

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature) _____

(Name and title) _____

(Date) _____

Instruction to Signature:

The statement must be signed by the filing person or that person's authorized representative. If the statement is Signed on behalf of a person by an authorized representative (other than an executive officer of a corporation or general partner of a partnership), evidence of the representative's authority to sign on behalf of the person must be filed with the statement. The name and any title of each person who signs the statement must be typed or printed beneath the signature. See § 240.14d–1(f) with respect to signature requirements.

47. By amending § 240.14e–1 by revising paragraph (c) to read as follows:

§ 240.14e–1 Unlawful tender offer practices.

* * * * *

(c) Fail to pay the consideration offered or return the securities deposited by or on behalf of security holders promptly after the termination or withdrawal of a tender offer. This paragraph does not prohibit a bidder electing to offer a subsequent offering period under § 240.14d–11 from paying for securities during the subsequent offering period in accordance with that section.

* * * * *

47. By adding § 240.14e–5 to read as follows:

§ 240.14e–5 Prohibiting purchases outside the tender offer.

(a) *Unlawful activity.* As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices in connection with a tender offer for equity securities, no covered person may directly or indirectly purchase or arrange to purchase any subject securities or any related securities, except as part of the offer. This prohibition applies from the time the offer is first publicly announced or otherwise made known to holders of the subject securities until the offer expires.

(b) *Excepted activity.* The following transactions in subject securities or related securities are not prohibited by paragraph (a) of this section:

(1) *Exercises of securities.* Transactions by covered persons to convert, exchange, or exercise related securities into subject securities, if the covered person owned the related securities before the offer was first publicly announced or otherwise made known to security holders;

(2) *Purchases for plans.* Purchases or arrangements to purchase by or for a plan that are made by an agent independent of the issuer;

(3) *Purchases during odd-lot offers.* Purchases or arrangements to purchase if the offer is exempt under § 240.13e–4(h)(5); and

(4) *Unsolicited purchases.* Unsolicited purchases by a dealer-manager that are made on an agency basis.

(c) *Definitions.* For purposes of this section, the term:

(1) *Affiliate* means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the offeror;

(2) *Agent independent of the issuer* has the same meaning as in § 242.100(b);

(3) *Covered person* means:

(i) The offeror and its affiliates;

(ii) The offeror's dealer-manager(s) and other advisors; and

(iii) Any person acting, directly or indirectly, in concert with any of the persons specified in this paragraph (c)(3) in connection with any purchase or arrangement to purchase any subject securities or any related securities;

(4) *Plan* has the same meaning as in § 242.100(b) of this chapter;

(5) *Related securities* means securities that are immediately convertible into, exchangeable for, or exercisable for subject securities; and

(6) *Subject securities* has the same meaning as in § 229.1000 of this chapter.

(d) *Exemptive authority.* Upon written application or upon its own motion, the

Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms or conditions, to any transaction or class of transactions.

49. By adding § 240.14e–8 to read as follows:

§ 240.14e–8 Prohibited conduct in connection with pre-commencement communications.

It is a fraudulent, deceptive or manipulative act or practice within the meaning of section 14(e) of the Act (15 U.S.C. 78n) for any person to publicly announce that the person (or a party on whose behalf the person is acting) plans to make a tender offer that has not yet been commenced, if the person:

(a) Is making the announcement of a potential tender offer without the intention to commence and complete the offer;

(b) Intends, directly or indirectly, for the announcement to manipulate the market price of the stock of the bidder or subject company; or

(c) Does not have the reasonable belief that the person will have the means to purchase securities to complete the offer.

Dated: November 3, 1998.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–30227 Filed 12–3–98; 8:45 am]

BILLING CODE 8010–01–P

Friday
December 4, 1998

Part III

Department of Agriculture

Office of the Secretary

7 CFR Part 15f

Administrative Civil Rights Adjudications Under Section 741; Interim Final Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 15f

Administrative Civil Rights Adjudications Under Section 741

AGENCY: Office of the Secretary, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements the United States Department of Agriculture (USDA) adjudication process for certain civil rights discrimination complaints filed administratively with USDA, as authorized by section 741 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, enacted in Division A, section 101(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277.

DATES: This interim final rule is effective December 4, 1998. Written comments via letter, facsimile, or Internet are invited from interested individuals and organizations, and must be received by January 4, 1999.

ADDRESSES: Comments should be sent to Alyce Boyd-Stewart, Special Assistant to the Director, Office of Civil Rights, 202–720–5212.

FOR FURTHER INFORMATION CONTACT: Alyce Boyd-Stewart, Special Assistant to the Director, Office of Civil Rights, 202–720–5212.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under E.O. 12866, and it has been determined that it is not a ''significant regulatory action'' because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This final rule will not create any serious inconsistencies or otherwise interfere with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in E.O. 12866.

Regulatory Flexibility Act

USDA certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–534, as amended (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

USDA has determined that the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, do not apply to any collections of information contained in this rule because any such collections of information are made during the conduct of administrative action taken by an agency against specific individuals or entities. 5 CFR 1320.4(a)(2).

Background and Purpose

History

During much of the 1980's and 1990's, the USDA administrative processes for review of program civil rights complaints filed against USDA agencies by program participants did not function effectively. As a result, while administrative complaints were pending, the statutes of limitation for certain discrimination statutes under which complainants potentially could obtain relief continued to run and the time periods available for obtaining relief expired, thus foreclosing the possibility for relief for those who had filed discrimination complaints administratively with the Department. Accordingly, the Secretary of Agriculture sought the enactment of legislation to waive the applicable statutes of limitation for those individuals who had filed nonemployment related discrimination complaints with USDA alleging discrimination during that time period.

Requirements of Section 741 Statute

Congress enacted legislation to so waive the applicable statutes of limitation in section 741 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, enacted in Division A, section 101(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277, for a period of two years after the enactment of that Act. The section 741 provisions are available to any person who filed a nonemployment related discrimination complaint with USDA before July 1, 1997, that alleged discrimination by USDA occurring at any time between January 1, 1981, and December 31, 1996, either (1) in violation of the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) with respect to the administration of a farm ownership, farm operating, or emergency loan funded from the Agricultural Credit Insurance Program Account, or with respect to a housing program established under title V of the Housing Act of 1949, or (2) in the administration of a commodity program or a disaster assistance program. Section 741 also allows an eligible complainant to bring suit directly either in the United States Court of Federal Claims or a United States District Court to seek relief on the same bases within two years of enactment of Pub. L. 105–277.

Section 741(b) of the statute also preserves to an eligible complainant the right, in lieu of court proceedings, to first seek an administrative determination by USDA on the merits of his or her complaint. Such an administrative determination then would still be subject to de novo review in either the United States Court of Federal Claims or a United States District Court, if filed within 180 days of the final USDA determination.

Section 741(b) provides some minimal steps that must be a part of this administrative process, but the language of section 741 triggers the application of other law that fills out the balance of the required procedures. Section 741(b)(1) provides the complainant with the right of an opportunity for a hearing on the record before USDA makes a determination on the complaint. A statutory requirement for a determination to be made on the record after opportunity for hearing generally makes an agency administrative process for making a determination subject to section 554(a) of the Administrative Procedure Act (APA), 5 U.S.C. §§ 551–559, and thus specifically triggers the application of the provisions of the APA applicable to formal adjudications, i.e., 5 U.S.C. §§ 554, 556, 557, and 3105. *See, e.g., Lane* v. *U.S. Dept. of Agriculture,* 120 F.3d 106 (8th Cir. 1997); *City of West Chicago, Ill.* v. *U.S. Nuclear Regulatory Comm'n.,* 701 F.2d 632 (7th Cir. 1983). Section 741(g) applies chapter 5 of title 5 of the United States Code generally to these proceedings, except for the standard for judicial review. Both the APA and the Equal Access to Justice Act, 5 U.S.C. § 504 (EAJA), which permits eligible prevailing parties to recover attorneys fees when the position of the agency is not substantially justified in an administrative adversary adjudication, are included in chapter 5 of title 5 of the United States Code.

On the basis of these provisions of section 741, USDA has determined that

the provisions of the APA applicable to formal adjudications, as well as EAJA, are applicable to the formal consideration of administrative complaints processed by USDA under section 741. The regulations promulgated below implement a process for eligible complainants to seek an administrative determination on their complaints from USDA under section 741(b) that complies with the requirements of both the APA and EAJA.

Initiating USDA Consideration of a Complaint Under Section 741

In order for a complaint to be processed under these regulations, it must already have been filed with USDA and be an ''eligible complaint'' as defined in section 741(e). Therefore these regulations presume that there is a pre-existing complaint, and that proceedings under these regulations will be at the request of, or with the consent of, the complainant to consider his or her pre-existing complaint under these procedures. Accordingly, a brief description of the process follows.

The USDA Office of Civil Rights (OCR) has reviewed, or already is in the process of reviewing, many of these eligible complaints. For those already reviewed or in process, OCR automatically will docket them for consideration as ''Section 741 Complaint Requests'' under these rules. OCR will issue a letter notifying the complainants of this action, and their Section 741 Complain Request docket number, by March 1, 1999. Such a letter also will provide further instructions or options for the individual circumstances of each complainant, and may include an offer of settlement for the complaint.

For those complaints not currently under review by OCR, or for those complainants who do not receive letters by March 29, 1999, notifying them that their complaints have been docketed under these rules, complainants must file a Section 741 Complaint Request with OCR seeking review of his or her complaint under these regulations. OCR will assign the Section 741 Complaint Request a docket number, and will so notify the complainant.

OCR Administrative Review and Settlement Opportunities

Until a complainant elects to request a hearing, the Section 741 Complaint Request will be reviewed by OCR. The intent of these regulations is to provide all eligible complainants with every opportunity to seek administrative (informal and formal) and judicial adjudication of their complaints as permitted by Section 741. The Director will review all eligible complaints and consider possible settlement opportunities. Specifically, if the Director finds that your complaint is an eligible complaint, the Director will: (1) review all documents and evidence submitted by you; (2) review all agency or OCR files, if any exist, regarding the circumstances surrounding the alleged discrimination; (3) review any damage claims; and (4) seek any further clarification, if necessary, from either you or the agency. OCR also may refer your eligible complaint for a formal investigation by the OCR Program Investigation Division or by an outside contractor. Based on his or her review, the Director will either (1) undertake negotiations with you to resolve the complaint; or (2) inform you that OCR will not settle the complaint and explain to you your rights, including your right to pursue formal proceedings before an ALJ under these rules. If the complaint is successfully resolved or settled, the Director will issue a final determination disposing of the matter and concluding consideration of the complaint under these procedures.

Notwithstanding the informal settlement process, once OCR dockets a complainant's Section 741 Complaint Request, a complainant may request a hearing before an administrative law judge (ALJ) at any time during consideration of his or her complaint under these rules. These rules provide procedures for the conduct of such hearings.

Proceedings Before an Administrative Law Judge

As noted above, the complainant may request a hearing on the record before an ALJ at any time after his Section 741 Complaint Request is docketed. OCR will turn over to the ALJ its entire file on the complaint, and file a report with the ALJ stating its position with respect to whether the complaint is an eligible complaint, and, if so, its position on the merits of the complaint. If the complainant chooses to have an ALJ consider the complaint, he or she may either request that the ALJ render a proposed determination on the written record consisting of the complaint, the Section 741 Complaint Request, the OCR report, and other submissions of the parties, or proceed with a full hearing.

The ALJ will make a proposed decision that may either deny the complaint or sustain the complaint and recommend award to the complainant of such relief as would be afforded under the applicable statute or regulation under which the eligible complaint was filed, notwithstanding any statute of limitations. The proposed decision of the ALJ will become final within 35 days, unless you request review of the determination by the Assistant Secretary for Administration (ASA). The ASA may also choose to review this on his or her own motion.

Timing of Final Determinations and Judicial Review

Whether with or without a hearing or review by the ASA, the USDA will render a final determination to the maximum extent practicable within 180 days after docketing of the Section 741 Complaint Request. If the complaint is denied by USDA, in whole or in part, the complainant will have at least 180 days to file suit in Federal court seeking a review of the denial, regardless of any applicable statute of limitations.

Determination To Issue an Interim Final Rule

Delay, neglect, and inadequate consideration of these discrimination complaints by USDA in the past created the need for Congress to pass this extraordinary relief statute in the first instance. The waiver of the statute of limitations in section 741(a) is available only for a period of 2 years after the date of enactment which occurred on October 21, 1998. That is, all complaints under section 741 must be filed either in court or with USDA by October 21, 2000. (Those complainants, who initially seek USDA administrative review, then will have 180 days after USDA's issuance of a final determination under section 741 to pursue an action for judicial review even if the USDA review or the 180-day period extends beyond October 21, 2000.) Since less than two years remain for those who allegedly have suffered discrimination to file complaints with USDA, time is of the essence in implementing this procedure as soon as possible. Accordingly, publication of these rules of procedure as interim final, without prior notice and comment, is permissible under either the procedural rules or good cause exceptions to the APA requirement for notice and comment rulemaking. 5 U.S.C. § 553(b)(3) (A) and (B). However, USDA is providing a comment period of 30 days to provide for comment and subsequent modification of this rule, if necessary.

List of Subjects in 7 CFR Part 15f

Administrative practice and procedure, Agriculture, Appeal procedures, Civil rights, Equal access to justice, Ex parte communications, Farmers, Federal aid programs, Guaranteed loans, Insured loans, Loan

programs, Nondiscrimination, Price support programs.

For the reasons set out in the preamble, subtitle A of Title 7 of the Code of Federal Regulations is amended as set forth below:

Part 15f is added to read as follows:

PART 15F—ADJUDICATIONS UNDER SECTION 741

Subpart A—What Is The Purpose Of These Regulations And To Whom And To What Programs Do They Apply?

Sec.
15f.1 What is the purpose of these regulations?
15f.2 Who may use these procedures for processing their discrimination complaint with USDA?
15f.3 If I want to use these procedures to have USDA consider my complaint, how long will it take for USDA to make a decision?
15f.4 What do certain words and phrases in these regulations mean?

Subpart B—I Filed A Complaint With USDA Prior To July 1, 1997, How Do I Request That USDA Consider My Complaint Using These Procedures?

15f.5 How do I request that USDA consider my complaint under these procedures?
15f.6 What must I say or include in my Section 741 Complaint Request?
15f.7 May I be represented by an attorney?

Subpart C—What Happens After I Send In My Request? May I Seek to Resolve My Complaint Informally With OCR?

15f.8 What does the Docketing Clerk do with my request?
15f.9 What will the Director do to settle my Section 741 Complaint Request when it is received?
15f.10 What if I do not want the Director to review my Section 741 Complaint Request and I want to proceed directly to a hearing?

Subpart D—If I Request A Hearing, What Will Happen? How Will The Hearing Be Conducted?

15f.11 Where must I file a hearing request and what happens to it?
15f.12 Am I entitled to a hearing in all circumstances?
15f.13 What is the function of the ALJ and who may communicate with him?
15f.14 What happens after I file a request for a hearing?
15f.15 What Happens After the Docketing Clerk Notifies All Parties?
15f.16 Although I request a hearing, may I request the ALJ to issue a decision without a hearing?
15f.17 What happens before the hearing?
15f.18 May I depose potential witnesses?
15f.19 Other than myself, OCR, and the agency, may any other interested party participate in the proceeding?
15f.20 May I subpoena witnesses to the hearing?
15f.21 What rules are applicable to the actual conduct of the hearing?
15f.22 What happens after the hearing?
15f.23 What will constitute the record for the final determination?
15f.24 When and in what form will a final determination be made on my complaint by USDA?
15f.25 Will USDA pay my attorneys fees if I win?

Subpart E—What If I Do Not Agree With The Final Determination By USDA?

15f.26 May I seek judicial review of the final determination?

Subpart F—How Do I Count Days For Purposes Of Deadlines And What Happens If I Miss A Deadline In These Rules?

15f.27 When is something considered ''filed'' as required by these rules and to whom do I need to give copies of what I file?
15f.28 When I or someone else has to do something within a certain number of days, how will USDA or the ALJ count the days?
15f.29 May I request an extension of a deadline or may I get relief for missing a deadline in these rules?

Authority: 5 U.S.C. 301; section 101(a) of Pub. L. 105–277, 112 Stat. 2681; Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).

Subpart A—What Is The Purpose Of These Regulations And To Whom And To What Programs Do They Apply?

§ 15f.1 What is the purpose of these regulations?

These regulations provide the rights of complainants and the procedures for the processing of certain nonemployment related complaints alleging discrimination by USDA that were filed with USDA prior to July 1, 1997, as authorized under section 741(b) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, enacted in Division A, section 101(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277.

§ 15f.2 Who may use these procedures for processing their discrimination complaint with USDA?

A person may use these procedures if he or she filed a nonemployment related discrimination complaint with USDA prior to July 1, 1997, that alleged discrimination by USDA at any time during the period beginning January 1, 1981 and ending December 31, 1996 :

(a) In violation of the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) in administering—

(1) A farm ownership, farm operating, or emergency loan funded from the Agricultural Credit Insurance Program Account; or

(2) A housing program established under title V of the Housing Act of 1949; or

(b) In the administration of a commodity program or a disaster assistance program.

§ 15f.3 If I want to use these procedures to have USDA consider my complaint, how long will it take for USDA to make a decision?

To the maximum extent practicable, a final determination under these procedures will be issued within 180 days after you have filed your request.

§ 15f.4 What do certain words and phrases in these regulations mean?

Agency means the USDA agency, office, or committee that the complainant alleges has discriminated against the complainant in the administration of a covered program.

ALJ means an Administrative Law Judge appointed pursuant to the Administrative Procedure Act (5 U.S.C. 557(b)(3), 3105) who presides over a hearing if requested by a complainant.

ASA means the Assistant Secretary for Administration.

Complainant means a person who requests that USDA consider his or her complaint under the procedures of this part.

Complaint means a written document filed with USDA by a person alleging discrimination by USDA under a covered program.

Covered program means:

(1) A farm ownership, farm operating, or emergency loan funded from the Agricultural Credit Insurance Program Account;

(2) A housing program established under title V of the Housing Act of 1949; or

(3) A commodity program or disaster assistance program.

Director means the Director of USDA, OCR, or his or her subordinate designee.

Docketing clerk means an employee of the USDA Office of Civil Rights, designated to serve in this capacity.

Eligible complaint means a complaint that was filed with the Department of Agriculture before July 1, 1997, and that alleges discrimination occurring at any time during the period beginning on January 1, 1981 and ending December 31, 1996—

(1) In violation of the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) in administering—

(i) A farm ownership, farm operating, or emergency loan funded from the Agricultural Credit Insurance Program Account; or

(ii) A housing program established under title V of the Housing Act of 1949; or

(2) In the administration of a commodity program or a disaster assistance program.

Ex parte communication means a prohibited communication between a party to a proceeding and the ALJ outside of the presence of, or without notice to, the other parties to the proceeding, as explained more fully in § 15f.13.

Final determination means the final USDA decision made on your complaint under these rules.

Hearing means a proceeding in which you may present your case before the ALJ.

Interested party means a person, other than the complainant, OCR, and the agency, who has an interest in a proceeding under these rules and is admitted to the proceeding under § 15f.20.

OCR means the USDA Office of Civil Rights.

Party or parties means the complainant, OCR, the agency, or a person admitted to the proceeding as an interested party.

Secretary means the Secretary of Agriculture.

Section 741 means section 741 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, enacted in Division A, section 101(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277.

Section 741 Complaint Request (or Request) means a request by a complainant to consider his complaint under these rules.

USDA means the United States Department of Agriculture.

Subpart B—I Filed A Complaint With USDA Prior To July 1, 1997, How Do I Request That USDA Consider My Complaint Using These Procedures?

§ 15f.5 How do I request that USDA consider my complaint under these procedures?

In order for USDA to consider your complaint under these procedures, a Section 741 Complaint Request must be docketed with the Docketing Clerk in the USDA OCR.

(a) *Do I have to file a ''Section 741 Complaint Request'' if USDA is already working on my complaint? Do I have to file again?* If USDA OCR already reviewed or is working on your complaint, you will receive a notice by March 1, 1999, indicating that your complaint automatically has been docketed as a Section 741 Complaint Request for consideration under these procedures. The notice will provide you with the docket number assigned your Request and will give you further instructions with respect to what options you have or what actions you must take.

(b) *What if USDA is not working on my complaint? If I think USDA has reviewed or is working on my complaint, but do not receive a letter by March 1, 1999, what should I do?* If USDA is not already working on your complaint, or you do not receive a letter from USDA by March 1, 1999, or within 30 days thereafter, you should file a Section 741 Complaint Request with the Docketing Clerk at USDA OCR.

(c) *How long do I have to file my Section 741 Complaint Request?* You have until October 21, 2000 to file your Section 741 Complaint Request.

§ 15f.6 What must I say or include in my Section 741 Complaint Request?

If you must file a Section 741 Complaint Request, it should include a copy of your original complaint, a request in writing that USDA consider the complaint in accordance with these procedures, a statement as to when your complaint was filed with USDA, and any other evidence you consider necessary to prove that your complaint is an eligible complaint suitable for consideration under these procedures.

§ 15f.7 May I be represented by an attorney?

(a) If your Section 741 Complaint Request is automatically docketed as set forth in § 15f.5(a), and you already are represented by counsel of whom you have notified USDA, then this section does not apply.

(b) If you are filing your Section 741 Complaint Request with USDA, and if you are represented by an attorney, your Section 741 Complaint Request should also include an authorization signed by you indicating that the attorney is entitled to represent you on your behalf. If USDA receives such an authorization, all documents in connection with consideration of your complaint under these procedures will be sent to your attorney and not to you.

(c) Once your Section 741 Complaint Request is docketed with USDA, and you afterwards retain an attorney, you should forward an authorization to USDA signed by you indicating that the attorney is entitled to represent you on your behalf. If USDA receives such an authorization, all documents in connection with consideration of your complaint under these procedures will be sent to your attorney and not to you.

Subpart C—What Happens After I Send In My Section 741 Complaint Request? May I Seek to Resolve My Complaint Informally With OCR?

§ 15f.8 What does the Docketing Clerk do with my Section 741 Complaint Request?

All Section 741 Complaint Requests docketed by the OCR Docketing Clerk will be referred to the Director for an informal review. The Director will determine if the complaint is one that can be resolved informally, and, if so, the Director will seek to resolve the complaint informally with the complainant.

§ 15f.9 What will the Director do to settle my Section 741 Complaint Request when it is received?

The Director will review each Section 741 Complaint Request. If the Director finds that your complaint is an eligible complaint, the Director will: review all documents and evidence submitted by you; review all agency or OCR files, if any exist, regarding the circumstances surrounding the alleged discrimination; review any damage claims; and seek any further clarification, if necessary, from either you or the agency. OCR also may refer your eligible complaint for a formal investigation by the OCR, Program Investigation Division or by an outside contractor. Based on his or her review, the Director will either undertake negotiations with you to resolve the complaint; or inform you that OCR will not settle the complaint and explain to you your options, including your right to pursue formal proceedings before an ALJ under subpart D. If the complaint is successfully resolved or settled, the Director will issue a final determination disposing of the matter.

§ 15f.10 What if I do not want the Director to review my Section 741 Complaint Request and I want to proceed directly to a hearing?

If you do not want the Director to review your Section 741 Complaint Request, you may request a hearing following the procedures below in subpart D. You may request a hearing at any time during informal review or negotiations with the Director, or at any time during USDA consideration of your Section 741 Complaint Request.

Subpart D—If I Request A Hearing, What Will Happen? How Will The Hearing Be Conducted?

§ 15f.11 Where must I file a hearing request and what happens to it?

If you desire a hearing, you must file a request for a hearing with the Docketing Clerk, citing the docket

number assigned to your Section 741 Complaint Request. When the Docketing Clerk receives your request for a hearing, your Section 741 Complaint Request will be assigned to an ALJ. The Docketing Clerk will send a notice of your hearing request to OCR and the agency, notifying them of the docket number and the assigned ALJ. The Docketing Clerk also will send you a notice of receipt of the hearing request that will inform you of the name of the assigned ALJ.

§ 15f.12 Am I entitled to a hearing in all circumstances?

Under section 741, you have a right to a hearing as part of the process for USDA to render a final determination on your eligible complaint. However, if at any time the ALJ determines that your complaint is not an eligible complaint, he or she may dismiss your complaint with a final determination and USDA review of your complaint will then have been completed. You also are not entitled to a hearing if there are no material issues of fact in dispute between you and USDA. In other words, if the only dispute remaining is a question of law, you will not receive a hearing and the ALJ will make a final determination under § 15f.16.

§ 15f.13 What is the function of the ALJ and who may communicate with him?

(a) *What are the powers of the ALJ?* The ALJ is responsible for conducting a hearing at your request on your Section 741 Complaint Request. He or she will have all powers prescribed in these rules and will make a proposed determination on your complaint. The proposed determination then will become the final determination after 35 days, unless the ASA reviews the proposed determination.

(b) *What is an ex parte communication?* An ex parte communication is a communication by one party to a proceeding with the ALJ outside of the presence of, or without notice to, the other parties to a proceeding. *Ex parte* communications in the proceedings on your complaint are prohibited and will be handled as follows:

(1) The ALJ will not engage in *ex parte* communications regarding the merits of a complaint with any party or with any person having any interest in the proceedings on the complaint, including OCR and any person in an advocacy or investigative capacity, at any time between the assignment of a hearing to him or her and the issuance of a proposed determination. This prohibition does not apply to:

(i) Discussions of procedural matters related to the complaint; or

(ii) Discussions of the merits of the complaint where all parties to the proceeding on the complaint have been given notice and an opportunity to participate.

(2) In the case of a communication described in paragraph (b)(1)(ii) of this section, a memorandum of any such discussion shall be included in the hearing record.

(3) No party to the proceeding or other interested person shall make or knowingly cause to be made to the ALJ an *ex parte* communication relevant to the merits of the complaint.

(4) If the ALJ receives an ex parte communication in violation of this section, the ALJ will place in the written record:

(i) All such written communications;

(ii) Memoranda stating the substance of all such oral communications; and

(iii) All written responses to such communications, and memoranda stating the substance of any oral responses to such communications.

(c) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section the ALJ may, to the extent consistent with the interests of justice and the policy underlying these proceedings, require the party or other interested person making the communication to show cause why such party's claim or interest in the complaint should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

§ 15f.14 What happens after I file a request for a hearing?

Within 20 days after you have filed your request for a hearing, ALJ shall file with the Docketing Clerk a notice stating the time, place, and manner of the hearing. The ALJ will have due regard for the public interest and the convenience and necessity of the parties in determining the time, place, and manner of the hearing. The notice will state whether the hearing will be conducted by telephone, audiovisual telecommunication, or personal attendance of any individual expected to participate in the hearing. The Docketing Clerk will send copies of the notice to the complainant and to all other parties to the proceeding.

§ 15f.15 What happens after the Docketing Clerk notifies all parties?

The first step in this process involves a response to your hearing request by OCR. OCR will turn over its entire file on your complaint to the ALJ. OCR also will file a report with the ALJ stating its position with respect to whether or not your complaint is an eligible complaint, with reasons for its position, as well as stating its position with respect to the merits of your complaint. OCR must turn over its file and make its report on its position on your complaint within 35 days. OCR must provide a copy to you of anything it provides to the ALJ.

§ 15f.16 Although I request a hearing, may I request the ALJ to issue a decision without a hearing?

(a) At any time after the parties have been notified of your hearing request, you may file a request with the ALJ to make a determination based on the written record. With your request, you should file any other arguments or evidence that you wish the ALJ to consider. The agency and OCR will have 35 days after you file your request to file any additional information, arguments, or evidence for the consideration of the ALJ. The ALJ may recommend dismissal of your complaint on the basis of a finding that it is not an eligible complaint; recommend denial of your eligible complaint on the merits; or make a proposed finding of discrimination on your eligible complaint and recommend to award you such relief as would be afforded under the applicable statute or regulation under which the eligible complaint was filed. The ALJ will make a proposed determination on your complaint based on the original complaint, the Section 741 Complaint Request, the OCR report, and any other evidence or written documents filed by the parties. The proposed determination will become the final determination 35 days after it is filed unless you request review of the proposed determination by the ASA. The ASA also may review the proposed determination on his or her own initiative. If the ASA reviews the decision, he or she will allow the parties a reasonable opportunity to file briefs in support of or opposition to the proposed determination, and afterwards will issue a final determination within 35 days after you request review of the proposed determination.

(b) To the maximum extent practicable, a final determination will be made within 180 days of your filing of the Section 741 Complaint Request.

§ 15f.17 What happens before the hearing?

(a) *Do I need to file another answer or pre-hearing brief?* You may file a pre-hearing brief in support of your complaint.

(b) *Will there be a pre-hearing conference?* The ALJ may hold a pre-hearing conference. If such a conference

is to be held, the notice of the pre-hearing conference also will contain a notice to the parties of a time and date for the pre-hearing conference. Pre-hearing conferences normally will be held by telephone. Issues that may be addressed at the pre-hearing conference may include: simplification of the issues; the possibility of obtaining stipulations of fact and of the authenticity of documents; limitation of the number of witnesses; exchange of copies of hearing exhibits; negotiation, compromise or settlement of issues; identification of documents of which official notice will be requested; a schedule for completion of the actions decided upon at the conference; and any other matters that may aid and expedite the conclusion of the proceeding. No transcript of the pre-hearing conference will be made but the ALJ will issue a written memorandum summarizing the results of the pre-hearing conference.

(c) *What else may the ALJ ask for before the hearing?* Prior to the hearing, the ALJ may require each of the parties to furnish any or all of the following: an outline of a party's position with respect to the complaint, the facts upon which the party intends to rely, the legal theories upon which the party intends to rely, copies of or a list of the documents and exhibits which the party anticipates on introducing at the hearing, and a list of anticipated witnesses.

§ 15f.18 May I depose potential witnesses?

(a) A party may request an order from the ALJ to take the testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence. The application for the order must specify the reason and need for taking testimony by deposition.

(b) The time, place, and manner of taking depositions will be as mutually agreed by the parties, or failing agreement, by order of the ALJ.

(c) No testimony taken by depositions will be considered as part of the evidence in the hearing until such testimony is offered and received in evidence at the hearing, and ordinarily it will not be received into evidence if the deponent is present and can testify at the hearing. However, when the deponent is present and can testify, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. Where you have requested a final determination by the ALJ based on the written record without a hearing, the ALJ, in his or her discretion, may receive depositions to supplement the record.

(d) Each party will bear its own expenses associated with the taking of any deposition.

§ 15f.19 Other than myself, OCR, and the agency, may any other interested party participate in the proceeding?

In most cases, there will be no parties to a proceeding under these rules, other than the complainant, OCR, and, and if it so desires, the agency. However, if there are circumstances in which additional parties have an interest in the proceeding, such as a bank which participated in a case involving a guaranteed loan, such other interested parties may be permitted to participate in the proceeding at the discretion of the ALJ.

§ 15f.20 May I subpoena witnesses to the hearings?

No. USDA has no statutory authority to subpoena witnesses to testify at the hearing.

§ 15f.21 What rules are applicable to the actual conduct of the hearing?

(a) *Who may appear at the hearing?* You may appear at the hearing in person or through your attorney. OCR or the agency will appear through a designated representative, which may include a USDA attorney. Any person who appears as counsel must conform to the standards of ethical conduct required of practitioners before the courts of the United States.

(b) *What happens if I fail to show up?* If, after having received notice of the hearing under § 15f.14, you fail to appear at the hearing without good cause, you will have waived your right to a hearing in the proceeding and the ALJ may proceed to issue a final determination based on the written record as provided for under § 15f.16.

(c) *Which party presents its case first at the hearing?* You, as the complainant, will proceed first at the proceeding, unless otherwise determined by the ALJ.

(d) *What kind of evidence will be admitted and how will it be handled?* (1) *In general.* The hearing will be conducted by the ALJ in the manner he or she determines most likely to obtain the facts relevant to the matter or matters at issue. The ALJ may confine the presentation of facts and evidence to pertinent matters and exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions. Each party will have the opportunity to present oral and documentary evidence, oral testimony of witnesses, and arguments in support of the party's position; controvert evidence relied on by any other party; and question all witnesses. The testimony of witnesses at a hearing will be on oath or affirmation and will be subject to cross-examination. Any evidence may be received by the ALJ without regard to whether that evidence could be admitted in judicial proceedings. Upon a finding of good cause, the ALJ may order that any witness be examined separately and apart from all other witnesses except those who may be parties to the proceeding.

(2) *Objections.* (i) If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross-examination or to any other ruling of the ALJ, the party must state briefly the grounds of such objection.

(ii) Only objections made before the ALJ may subsequently be relied upon in the proceeding.

(3) *Depositions.* The deposition of any witness will be admitted in the manner provided in and subject to the provisions of § 15f.18(c) of these rules.

(4) *Exhibits.* Unless the ALJ finds that the furnishing of copies is impracticable, two copies of each exhibit must be filed with the ALJ. A party submitting an exhibit must provide every other party (except interested parties) a copy of the exhibit one week before the hearing. A true copy of an exhibit may be substituted for the original.

(5) *Official records or documents.* An official government record or document or entry therein, if admissible for any purpose, will be admissible in evidence without the production of the person who made or prepared the same, and will be *prima facie* evidence of the relevant facts stated therein. Such record or document must be evidenced by an official publication thereof or a copy certified by a person having legal authority to make such certification.

(6) *Official notice.* Official notice will be taken of such matters as are judicially noted by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character if the parties are given adequate notice of matters so noticed, and the parties will be given adequate opportunity to show that such facts are erroneously noticed.

(7) *Offer of proof.* Whenever evidence is excluded by the ALJ, the party offering such evidence may make an offer of proof, which must be included in the transcript. The offer of proof should consist of a brief statement describing the evidence excluded. If the evidence consists of a brief oral statement, it must be included in the transcript in its entirety. If the evidence

consists of an exhibit, it must be marked for identification and inserted in the hearing record.

(8) *Interlocutory review.* Interlocutory review of rulings by the ALJ will not be permitted.

(9) *Transcript or recording.* (i) Hearings to be conducted by telephone will be recorded verbatim by electronic recording device. Hearings conducted by audio-visual telecommunication or by the personal attendance of parties and witnesses must be transcribed, unless the ALJ finds that recording the hearing verbatim would expedite the proceeding and the ALJ orders the hearing to be recorded verbatim. The ALJ must certify that to the best of his or her knowledge and belief any recording made pursuant to this paragraph with exhibits that were accepted into evidence is the record of the hearing.

(ii) If a hearing is recorded verbatim, a party requests the transcript of a hearing or part of a hearing, and the ALJ determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the ALJ shall order the verbatim transcription of the recording as requested by the party.

(iii) The costs of transcription or verbatim recordings will be paid for by USDA and charged to the agency whose action gave rise to the complaint at issue. Copies of recordings or transcripts of hearings will be made available to any party at the actual cost of duplication.

§ 15f.22 What happens after the hearing?

The ALJ will fix a reasonable time for filing posthearing briefs, proposed findings of fact and conclusions of law, and if permitted, reply briefs. Briefs should include a summary of evidence relied upon together with references to exhibit numbers and citations to the transcript and authorities relied upon. Briefs must be filed with the Docketing Clerk with copies to all parties.

§ 15f.23 What will constitute the record for the final determination?

The original complaint, the Section 741 Complaint Request, the OCR report, the agency answer, the transcript of testimony, exhibits, affidavits, depositions, briefs, memoranda of law, and all pleadings, motions, papers, and requests filed in the proceeding, including rulings, and the proposed determination by an ALJ (if applicable) shall constitute the exclusive record for the final determination.

§ 15f.24 When and in what form will a final determination be made on my complaint by USDA?

(a) The ALJ will make a proposed determination orally at the close of a hearing, or in writing within 35 days. The ALJ may recommend dismissal of your complaint on the basis of a finding that it is not an eligible complaint; recommend denial of your eligible complaint on the merits; or make a proposed finding of discrimination on your eligible complaint and recommend to award you such relief as would be afforded under the applicable statute or regulation under which the eligible complaint was filed. The proposed determination will become the final determination 35 days after it is made, unless you request review of the proposed determination by the ASA. The ASA also may review the proposed determination on his or her own initiative. If the ASA reviews the proposed determination, he or she will allow the parties a reasonable opportunity to file briefs in support or opposition to the proposed determination, and afterwards file a final determination within 35 days after you request review of the proposed determination.

(b) To the maximum extent practicable, a final determination will be filed within 180 days after you filed your Section 741 Complaint Request.

§ 15f.25 Will USDA pay my attorneys fees if I win?

If you prevail on your eligible complaint, either in whole or in part, after a proceeding before an ALJ under the procedures in this subpart, you may be eligible for an award of attorneys fees as a prevailing party under the Equal Access to Justice Act (EAJA), 5 U.S.C. 504. To get an EAJA award, you must file an application for such fees with the ALJ within 30 days after the final determination is made. Instructions for filing an EAJA application and obtaining an EAJA award are contained in 7 CFR part 1, subpart J. The ALJ must follow those rules, and not these Section 741 Complaint Request rules, in making any EAJA award.

Subpart E—What If I Do Not Agree With The Final Determination by USDA?

§ 15f.26 May I seek judicial review of the final determination?

Section 741 provides that you have at least 180 days after a final determination denying your eligible complaint under these rules to seek judicial review in the United States Court of Federal Claims or a United States District Court of competent jurisdiction.

Subpart F—How Do I Count Days For Purposes Of Deadlines and What Happens If I Miss A Deadline In These Rules?

§ 15f.27 When is something considered ''filed'' as required by these rules and to whom do I need to give copies of what I file?

A document, or other item, that must be ''filed'' under these rules is considered filed when postmarked or when it is received and date-stamped by the Docketing Clerk.

§ 15f.28 When I or someone else has to do something within a certain number of days, how will USDA or the ALJ count the days?

Unless otherwise specifically noted, a ''day'' refers to a calendar day and a document that must be filed by a certain date must either be postmarked on that date or received by the Docketing Clerk on that date. For documents that must be or are ''filed'' under these regulations, you count the number of days after filing starting with the day after the filing date as day one. For other time periods, you calculate the time period by counting the day after receipt by the party as day one. If the last day of a time period expires on a Saturday, a Sunday, or a Federal holiday, the last day of the time period will expire on the next business day.

§ 15f.29 May I request an extension of a deadline or may I get relief for missing a deadline in these rules?

You may request that the ALJ extend a deadline in these rules, or afford you relief for missing a deadline, which he or she may do, consistent with the principles of sovereign immunity, the terms of any applicable statute, these rules, and the necessity of expeditious completion of the public business. It is the intent of USDA that the time deadlines expressed in these regulations be construed equitably to ensure resolution of eligible complaints, to the extent permitted by law.

Done at Washington, D.C., this 30th day of November, 1998.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 98–32279 Filed 12–2–98; 1:00 pm]

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LIST OF PUBLIC LAWS

Note: The list of Public Laws for the second session of the 105th Congress has been completed and will resume when bills are enacted into law during the first session of the 106th Congress, which convenes on January 6, 1999.

A cumulative list of Public Laws for the second session of the 105th Congress was published in the **Federal Register** on November 30, 1998.