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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, January 22, 2008
9:00 a.m.–Noon

WHERE: Office of the Federal Register
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 526

Intramammary Dosage Form New Animal Drugs; Pirlimycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pharmacia and Upjohn Co., a Division of Pfizer, Inc. The supplemental NADA extends the dosage regimen for pirlimycin hydrochloride intramammary infusion in lactating dairy cattle to daily treatment for up to 8 days.

DATES: This rule is effective January 4, 2008.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *joan.gotthardt@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., a Division of Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed a supplement to NADA 141–036 that provides for veterinary prescription use of PIRSUE (pirlimycin hydrochloride) Sterile Solution in lactating dairy cattle for the treatment of mastitis. The supplement extends the dosage regimen to daily treatment for up to 8 days. The supplemental NADA is approved as of December 12, 2007, and the regulations are amended in 21 CFR 526.1810 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning on the date of approval.

FDA has determined under 21 CFR 25.33(d)(5) that this action is of a 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.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 526

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 526 is amended as follows:

PART 526—INTRAMAMMARY DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 526 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 526.1810, revise the section heading and paragraphs (a), (b), and (d) to read as follows:

§ 526.1810 Pirlimycin.

(a) *Specifications.* Each 10-milliliter syringe contains 50 milligrams (mg) pirlimycin (as pirlimycin hydrochloride).

(b) *Sponsor.* See No. 000009 in § 510.600(c) of this chapter.

* * * * *

(d) *Conditions of use in cattle*—(1) *Amount.* Infuse 50 mg into each infected quarter. Repeat treatment after 24 hours. Daily treatment may be repeated at 24-hour intervals for up to 8 consecutive days.

(2) *Indications for use.* For the treatment of clinical and subclinical mastitis in lactating dairy cattle associated with *Staphylococcus* species such as *Staphylococcus aureus* and *Streptococcus* species such as *Streptococcus agalactiae*, *Streptococcus dysgalactiae*, and *Streptococcus uberis*.

(3) *Limitations.* Milk taken from animals during treatment and for 36 hours following the last treatment must not be used for food regardless of treatment duration. Following infusion twice at a 24-hour interval, treated animals must not be slaughtered for 9 days. Following any extended duration of therapy (infusion longer than twice at a 24-hour interval, up to 8 consecutive days), animals must not be slaughtered for 21 days. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 20, 2007.

Bernadette Dunham,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. E7–25606 Filed 1–3–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use in Animal Feed; Semduramicin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Phibro Animal Health. The NADA provides for use of a Type A medicated article containing semduramicin (as semduramicin sodium biomass) to manufacture Type C medicated broiler chicken feed for the prevention of coccidiosis.

DATES: This rule is effective January 4, 2008.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary

Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *joan.gotthardt@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Phibro Animal Health, 65 Challenger Rd., 3d floor, Ridgefield Park, NJ 07660, filed NADA 141–281 that provides for the use of AVIAX II (semduramicin) Type A medicated article containing semduramicin (as semduramicin sodium biomass) to manufacture Type C medicated broiler chicken feed for the prevention of coccidiosis caused by *Eimeria tenella, E. acervulina, E. maxima, E. brunetti, E. necatrix,* and *E. mitis.* The NADA is approved as of December 3, 2007, and the regulations are amended in 21 CFR 558.4 and 21 CFR 558.555 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning on the date of approval.

FDA has determined under 21 CFR 25.33(a)(3) that this action is of a 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.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In paragraph (d) of § 558.4, in the "Category I" table, revise the entry for "Semduramicin" and alphabetically add an entry for "Semduramicin (as semduramicin sodium biomass)" to read as follows:

§ 558.4 Requirement of a medicated feed mill license.

* * * * *

(d) * * *

CATEGORY I

Drug	Assay limits percent[1] Type A	Type B maximum (200x)	Assay limits percent[1] Type B/C[2]
* * * * * * *			
Semduramicin (as semduramicin sodium)	90–110	2.27 g/lb (0.50%)	80–110
Semduramicin (as semduramicin sodium biomass)	90–110	2.27 g/lb (0.50%)	80–120
* * * * * * *			

[1]Percent of labeled amount.

[2]Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make a Type C medicated feed.

* * * * *

■ 3. In § 558.555, revise paragraphs (a) and (b); and add paragraph (e) to read as follows:

§ 558.555 Semduramicin.

(a) *Specifications.* Type A medicated article containing:

(1) 22.7 grams (g) per pound (lb) (50 g/kilogram (kg)) semduramicin (as semduramicin sodium).

(2) 22.7 g/lb (50 g/kg) semduramicin (as semduramicin sodium biomass).

(b) *Approvals.* See No. 066104 in § 510.600(c) of this chapter for use of product described in paragraph (a)(1) as in paragraph (d) of this section; for use of product described in paragraph (a)(2) as in paragraph (e) of this section.

* * * * *

(e) *Conditions of use in chickens.* It is used in chicken feed as follows:

Semduramicin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(1) 22.7 (25 ppm)		Broiler chickens: For the prevention of coccidiosis caused by *Eimeria tenella, E. acervulina, E. maxima, E. brunetti, E. necatrix, and E. mitis.*	Do not feed to laying hens.	066104
(2) [Reserved]				

Dated: December 20, 2007.

Bernadette Dunham,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. E7–25605 Filed 1–3–08; 8:45 am]

BILLING CODE 4160–01–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[DA 07–4354]

List of Office of Management and Budget Approved Information Collection Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises the Commission's list of Office of Management and Budget (OMB) approved public information collection requirements with their associated OMB expiration dates. This list will provide the public with a current list of public information collection requirements approved by OMB and their associated control numbers and expiration dates as of September 28, 2007.

DATES: Effective January 4, 2008.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of the Managing Director, (202) 418–0214 or by e-mail to *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document adopted on December 10, 2007 and released on December 10, 2007 by the Managing Director in DA 07–4354 revised 47 CFR 0.408 in its entirety.

1. Section 3507(a)(3) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(3), requires agencies to display a current control number assigned by the Director, Office of Management and Budget ("OMB") for each agency information collection requirement.

2. Section 0.408 of the Commission's rules displays the OMB control numbers assigned to the Commission's public information collection requirements that have been reviewed and approved by OMB.

3. Authority for this action is contained in section 4(i) of the Communications Act of 1934 (47 U.S.C. 154(i)), as amended, and § 0.231(b) of the Commission's rules. Since this amendment is a matter of agency organization procedure or practice, the notice and comment and effective date provisions of the Administrative Procedure Act do not apply. See 5 U.S.C. 553(b)(A)(d). For this reason, this rulemaking is not subject to the Congressional Review Act and will not be reported to Congress and the Government Accountability Office. See 5 U.S.C. 801.

4. Accordingly, *it is ordered, that* section 0.408 of the rules is *revised* as set forth in the revised text effective on January 4, 2008.

5. Persons having questions on this matter should contact Judith B.Herman at (202) 418–0214 or e-mail to *Judith-B.Herman@fcc.gov.*

List of Subjects in 47 CFR Part 0

Reporting, recordkeeping and third party disclosure requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 0 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Section 0.408 is revised to read as follows:

§ 0.408 OMB control numbers and expiration dates assigned pursuant to the Paperwork Reduction Act of 1995.

(a) *Purpose.* This section displays the control numbers and expiration dates for the Commission information collection requirements assigned by the Office of Management and Budget ("OMB") pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission intends that this section comply with the requirement that agencies "display" current control numbers and expiration dates assigned by the Director, OMB, for each approved information collection requirement. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number. Questions concerning the OMB control numbers and expiration dates should be directed to the Associate Managing Director—Performance Evaluation and Records Management, ("AMD–PERM"), Office of Managing Director, Federal Communications Commission, Washington, DC 20554 by sending an e-mail to *Judith-B.Herman@fcc.gov.*

(b) *Display*

OMB Control No.	FCC form number or 47 CFR section or part, docket number or title identifying the collection	OMB expiration date
3060–0004	Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, ET Docket No. 93–62	03/31/08
3060–0009	FCC 316	08/31/08
3060–0010	FCC 323	01/31/09
3060–0016	FCC 346	05/31/08
3060–0017	FCC 347	05/31/09
3060–0027	FCC 301	09/30/08
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3060–0031	FCC 314, FCC 315	08/31/08
3060–0053	FCC 703	08/31/08
3060–0055	FCC 327	10/31/09
3060–0056	Part 68	04/30/08
3060–0057	FCC 731	12/31/08
3060–0059	FCC 740	02/28/10
3060–0061	FCC 325	12/31/08
3060–0065	FCC 442	06/30/08
3060–0068	FCC 702	08/31/08
3060–0075	FCC 345	09/30/08
3060–0076	FCC 395	12/31/07
3060–0084	FCC 323–E	06/30/08
3060–0093	FCC 405	01/31/09

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3060–0106	Part 43	05/31/10
3060–0110	FCC 303–S	01/31/10
3060–0113	FCC 396/396–A	12/31/09
3060–0126	Sec. 73.1820	12/31/08
3060–0132	FCC 1068–A	11/30/09
3060–0139	FCC 854	10/31/08
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3060–0407	Sec. 73.3598	12/31/08
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3060–0423	Sec. 73.3588	11/30/08
3060–0430	Sec. 1.1206	04/30/08
3060–0433	FCC 320	06/30/08
3060–0434	Sec. 90.20(e)(6)	05/31/08
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3060–0436	Equipment Authorization, Cordless Telephone Security Coding	06/30/09
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3060–0454	Regulation of International Accounting Rates	10/31/08
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3060–0466	Secs. 73.1201, 74.783, and 74.1283	06/30/09
3060–0470	Secs. 64.901 and 64.903, and RAO Letters 19 and 26	03/31/08
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3060–0484	Part 4 of the Commission's Rules Concerning Disruptions to Communications	12/31/07
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3060–0496	FCC Report 43–08	03/31/10
3060–0500	Sec. 76.1713	12/31/07
3060–0501	Secs. 73.1942, 76.206 and 76.1611	(1)
3060–0506	FCC 302–FM	04/30/09
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3060–0514	Sec. 43.21(b)	03/31/09
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3060–0519	Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Order, CG Docket No. 02–278.	12/31/07
3060–0526	Density Pricing Zone Plans, Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91–141.	10/31/08
3060–0531	Local Multipoint Distribution Service (LMDS)	01/31/10
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3060–0548	Secs. 76.1708, 76.1709, 76.1620, 76.56, and 76.1614	08/31/08
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3060–0567	Sec. 76.962	03/31/08
3060–0568	Secs. 76.970, 76.971 and 76.975	10/31/09
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3060–0573	FCC 394	06/30/09
3060–0580	Sec. 76.1710	01/31/10
3060–0584	FCC 44 and FCC 45	04/30/09
3060–0589	FCC 159, FCC 159–B, FCC 159–C, and FCC 159–E	06/30/08
3060–0594	FCC 1220	08/31/10
3060–0599	Secs. 90.647 and 90.425	03/31/10
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3060–0607	Sec. 76.922	11/30/09
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3060–0626	Secs. 90.168, 90.425 and 90.483	12/31/07
3060–0627	FCC 302–AM	05/31/09
3060–0633	Secs. 73.1230, 74.165, 74.432, 74.564, 74.664, 74.765, 74.832, 74.965 and 74.1265	11/30/07
3060–0634	Sec. 73.691	02/28/10
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3060–0647	2006 Annual Cable Price Survey and Supplemental Questions	08/31/09
3060–0649	Secs. 76.1601, 76.1617, 76.1697 and 76.1708	02/29/08
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3060–0678	FCC 312, Schedule S	03/31/10
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3060–0686	Streamlining the International Section 214 Authorization Process and Tariff Requirements	02/28/09
3060–0687	Access to Telecommunications Equipment and Services by Persons with Disabilities, CC Docket No. 87–124	05/31/09
3060–0688	FCC 1235	01/31/08
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3060–0715	Telecommunications Carriers' Use of Customer Proprietary Network Information (CPNI) and Other Customer Information—CC Docket No. 96–115.	05/31/08
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3060–0719	Quarterly Report of IntraLATA Carriers Listing Payphone Automatic Number Identifications (ANIs)	01/31/10
3060–0723	Public Disclosure of Network Information by Bell Operating Companies (BOCs)	10/31/09
3060–0725	Quarterly Filing of Nondiscrimination Reports (on Quality of Service, Installation, and Maintenance) by Bell Operating Companies (BOC's).	08/31/09
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3060–0737	Disclosure Requirements for Information Services Provided Under a Presubscription or Comparable Arrangement.	06/30/09
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3060–0741	Implementation of the Local Competition Provisions on the Telecommunications Act of 1996—CC Docket No. 96–98.	11/30/07
3060–0742	Secs. 52.21, 52.22, 52.23, 52.24, 52.25, 52.26, 52.27, 52.28, 52.29, 52.30, 52.31, 52.32 and 52.33	11/30/08

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3060–0743	Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996—CC Docket No. 96–128.	01/31/10
3060–0745	Implementation of the Local Exchange Carrier Tariff Streamlining Provisions of the Telecommunications Act of 1996, CC Docket No. 96–187.	11/30/09
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3060–0751	Reports Concerning International Private Lines Interconnected to the U.S. Public Switched Network	01/31/09
3060–0752	Sec. 64.1510	04/30/10
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3060–0755	Secs. 59.1, 59.2, 59.3 and 59.4	03/31/09
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3060–0758	Amendment of Part 5 of the Commission's Rules to Revise the Experimental Radio Service Regulations, ET Docket No. 96–256.	03/31/10
3060–0760	Access Charge Reform, CC Docket No. 96–262	03/31/09
3060–0761	Sec. 79.1	12/31/08
3060–0763	FCC Report 43–06	04/30/09
3060–0767	Auction Forms and License Transfer Disclosures—Supplement for the 2nd Order on Reconsideration of the 5th R&O in WT Docket No. 97–82.	05/31/08
3060–0768	28 GHz Band Segmentation Plan Amending the Commission's Rules to Redesignate the 27.5—29.5 GHz Frequency Band, to Reallocate the 29.5—30.0 GHz Frequency Band, and to Establish Rules and Policies for Local Multipoint Distribution Services (LMDS) and for the Fixed Satellite Service (FSS).	01/31/09
3060–0770	Price Cap Performance Review for Local Exchange Carriers—CC Docket No. 94–1 (New Services)	11/30/08
3060–0773	Sec. 2.803	02/28/10
3060–0774	Federal-State Joint Board on Universal Service—CC Docket No. 96–45, and 47 CFR Part 54	12/31/07
3060–0775	Sec. 64.1903	01/31/10
3060–0779	Amendment of Part 90 of the Commission's Rules to Provide for Use of the 220 MHz Band by the Private Land Mobile Radio Service (PLMRS), PR Docket No. 89–552.	09/30/10
3060–0782	Petition for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations.	11/30/09
3060–0783	Sec. 90.176	01/31/09
3060–0786	Petitions for LATA Association Changes by Independent Telephone Companies	11/30/09
3060–0787	Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance.	11/30/07
3060–0788	DTV Showings/Interference Agreements	03/31/08
3060–0790	Sec. 68.110(c)	10/31/09
3060–0791	Accounting for Judgments and Other Costs Associated with Litigation, CC Docket No. 93–240	11/30/09
3060–0793	Federal-State Joint Board on Universal Service, Procedures for Self-Certifying as a Rural Carrier, CC Docket No. 96–45.	09/30/08
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3060–0809	Communications Assistance for Law Enforcement Act (CALEA) and Broadband Access and Services	12/31/07
3060–0810	Procedures for Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended.	09/30/09
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3060–0823	Pay Telephone Reclassification, Memorandum Opinion and Order, CC Docket No. 96–128	05/31/08
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3060–0833	Implementation of Section 255 of the Telecommunications Act of 1996: Complaint Filings/Designation of Agents.	03/31/08
3060–0835	FCC 806, FCC 824, FCC 827 and FCC 829	04/30/09
3060–0837	FCC 302–DTV	04/30/08
3060–0841	Public Notice, Additional Processing Guidelines for DTV	04/30/08
3060–0844	Carriage of the Transmissions of Digital Television Broadcast Stations	01/31/08
3060–0848	Deployment of Wireline Services Offering Advanced Telecommunications Capability—CC Docket No. 98–147 ..	04/30/09
3060–0849	Commercial Availability of Navigation Devices, CS Docket No. 97–80	06/30/10
3060–0850	FCC 605	06/30/08
3060–0853	FCC 479, FCC 486, and FCC 500	04/30/10
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3060–0859	Suggested Guidelines for Petitions for Ruling under Section 253 of the Communications Act	06/30/09
3060–0862	Handling Confidential Information	06/30/08
3060–0863	Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act (SHVA).	04/30/09
3060–0865	Wireless Telecommunications Bureau Universal Licensing System Recordkeeping and Third-Party Disclosure Requirements.	07/31/10
3060–0874	FCC 475B, FCC 2000 Series	09/30/10
3060–0876	Sec. 54.703 and Secs. 54.719, 54.720, 54.721, 54.722, 54.723, 54.724 and 54.725	09/30/09
3060–0881	Sec. 95.861	09/30/08
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3060–0888	Secs. 76.7, 76.9, 76.61, 76.914, 76.1003, 76.1302, and 76.1513	05/31/08
3060–0894	Secs. 54.313 and 54.316 and Certification Letter Accounting for Receipt of Federal Support and Rate Comparability Review and Certification.	09/30/10
3060–0895	FCC 502	05/31/10
3060–0896	Broadcast Auction Form Exhibits	12/31/08
3060–0900	Compatibility of Wireless Services with Enhanced 911—CC Docket No. 94–102	02/28/09
3060–0901	Reports of Common Carriers and Affiliates	04/30/09
3060–0905	Secs. 18.213 and 18.307	11/30/08
3060–0906	FCC 317	05/31/09
3060–0910	Third Report and Order in CC Docket No. 94–102 to Ensure Compatibility with Enhanced 911 Emergency Calling Systems.	09/30/09
3060–0912	Cable Attribution Rules	11/30/09
3060–0917	FCC 160	03/31/10
3060–0918	FCC 161	03/31/10
3060–0920	FCC 318	08/31/08
3060–0921	Petitions for LATA Boundary Modification for the Deployment of Advanced Services	09/30/09
3060–0922	FCC 397	09/30/09
3060–0927	Auditor's Annual Independence and Objectivity Certification	04/30/09
3060–0928	FCC 302–CA	01/31/10
3060–0931	Maritime Mobile Services Identity (MMSI)	06/30/09
3060–0932	FCC 301–CA	05/31/08
3060–0936	Secs. 95.1215 and 95.1217	08/31/09
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3060–0938	FCC 319	09/30/09
3060–0939	E911, Second Memorandum Opinion and Order	11/30/07
3060–0942	Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service.	03/31/10
3060–0943	Sec. 54.809	10/31/09
3060–0944	Review of Commission Consideration of Applications Under the Cable Landing License Act	03/31/09
3060–0949	FCC 159–W	03/31/10
3060–0950	Bidding Credits for Tribal Lands, WT Docket No. 99–266	09/30/10
3060–0951	Sec. 1.1204(b) Note, and Sec. 1.1206(a) Note 1	01/31/10
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3060–0953	Wireless Medical Telemetry Service, ET Docket No. 99–255, FCC 00–211	04/30/10
3060–0955	2 GHz Mobile Satellite Service Reports	02/28/10
3060–0957	Wireless Enhanced 911 Service	11/30/07
3060–0960	Secs. 76.122, 76.123, 76.124 and 76.127	05/31/08
3060–0962	Redesignation of the 18 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the Ka-Band, and the Allocation of Additional Spectrum for Broadcast Satellite Service Use.	11/30/08
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3060–0968	FCC 501	09/30/10
3060–0971	Numbering Resource Optimization, CC Docket Nos. 96–98 and 99–200	11/30/07
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3060–0973	Sec. 64.1120(e)	12/31/07
3060–0975	Promotion of Competitive Networks in Local Telecommunications Markets Multiple Environments (47 CFR Parts 1, 64 and 68).	01/31/08
3060–0978	Sec. 20.18, 911 Service, Fourth Report and Order	04/30/09
3060–0979	Spectrum Audit Letter	09/30/09
3060–0980	Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) Rules, Broadcast Signal Carriage Issues, Retransmission Consent Issues.	06/30/08
3060–0982	Implementation of Low Power Television (LPTV) Digital Data Services Pilot Project	01/31/08
3060–0984	Secs. 90.35(b)(2) and 90.175(b)(1)	09/30/10
3060–0986	FCC 525	06/30/08
3060–0987	911 Callback Capability: Non-initialized Phones	10/31/08
3060–0989	Secs. 63.01, 63.03 and 63.04	11/30/08
3060–0991	AM Measurement Data	05/31/08
3060–0992	Secs. 54.507(d)(1)–(4) and CC Docket No. 96–45	01/31/08
3060–0994	Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band.	01/31/10

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3060–0998	Sec. 87.109	08/31/10
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3060–1004	Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems	09/30/09
3060–1005	Numbering Resource Optimization—Phase 3	06/30/08
3060–1007	Streamlining and Other Revisions of Part 25 of the Commission's Rules	07/31/10
3060–1008	Reallocation and Service Rules for the 698–746 MHz Band (Television Channels 52–59)	11/30/08
3060–1009	FCC 499–M	01/31/09
3060–1012	Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02–6, NPRM, Proposed ADA Certification.	06/30/08
3060–1013	Mitigation of Orbital Debris	04/30/08
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3060–1015	Ultra Wideband Transmission Systems Operating Under Part 15	04/30/09
3060–1021	Sec. 25.139	11/30/08
3060–1022	Sec. 101.1403	01/31/09
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3060–1024	Sec. 101.1413	01/31/09
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3060–1028	International Signaling Point Code (ISPC)	10/31/08
3060–1029	Data Network Identification Code (DNIC)	10/31/08
3060–1030	Service Rules for Advanced Wireless Services (AWS) in the 1.7 GHz and 2.1 GHz Bands	06/30/10
3060–1031	Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems—Petition of City of Richardson, TX; Order on Reconsideration II.	10/31/09
3060–1033	FCC 396–C	05/31/10
3060–1034	Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service	01/31/10
3060–1035	FCC 309, FCC 310 and FCC 311	01/31/09
3060–1036	Potential Reporting Requirements on Local Exchange Carriers to Assist Expeditious Implementation of Wireless E911 Service.	05/31/09
3060–1038	Digital Television Transition Information Questionnaires	01/31/10
3060–1039	FCC 620 and FCC 621	(1)
3060–1040	Broadcast Ownership Rules, Report and Order in MB Docket No. 02–777 and MM Docket Nos. 02–235, 02–327, and 00–244.	02/28/10
3060–1041	Remedial Measures for Failure to Construct Digital Television Stations (DTV Policy Statement)	06/30/09
3060–1042	Request for Technical Support—Help Request Form	02/29/08
3060–1043	Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98–67.	03/31/08
3060–1044	Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01–338, and WC Docket No. 04–313, FCC 04–290.	03/31/10
3060–1045	FCC 324	11/30/09
3060–1046	Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128.	05/31/08
3060–1047	Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order, CG Docket Nos. 03–123, FCC 05–203.	02/28/09
3060–1048	Sec. 1.929(c)(1)	03/31/10
3060–1050	New Allocation for Amateur Radio Service, ET Docket No. 02–98	11/30/07
3060–1053	Sec. 64.604, Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Two-Line Captioned Telephone Order.	05/31/10
3060–1054	FCC 422–IB	02/28/10
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3060–1056	FCC 421–IB	02/28/10
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3060–1058	FCC 608	06/30/10
3060–1059	Global Mobile Personal Communications by Satellite (GMPCS)/E911 Call Centers	02/29/08
3060–1060	Wireless E911 Coordination Initiative Letter	10/31/07
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3060–1062	Schools and Libraries Universal Service Support Mechanism—Notification of Equipment Transfers	07/31/10
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3060–1064	Regulatory Fee Assessment True-Ups, NPRM, MD Docket No. 05–59, FCC 05–35	05/31/08
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3060–1066	FCC 312–R	03/31/10
3060–1067	FCC 312–EZ	05/31/10
3060–1068	Enhanced 911 Emergency Calling Systems, Scope of Service for CMRS	11/30/07
3060–1069	Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets, NPRM, MB Docket No. 94–246, FCC 04–173.	08/31/10
3060–1070	Allocations and Service Rules for the 71–76 GHz, 81–86 GHz, and 92–95 GHz Bands	12/31/08

OMB Control No.	FCC form number or 47 CFR section or part, docket number or title identifying the collection	OMB expiration date
3060–1078	Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN–SPAM Act), CG Docket No. 04–53.	12/31/07
3060–1079	Radio Frequency Identification Equipment (RFID)	03/31/08
3060–1080	Improving Public Safety Communications in the 800 MHz Band	08/31/08
3060–1081	Federal-State Joint Board on Universal Service, CC Docket No. 96–45	10/31/08
3060–1083	Request to Update Default Compensation Rate for Dial-Around Calls from Pay Phones, WC Docket No. 03–225.	06/30/08
3060–1084	Rules and Regulations Implementing Minimum Customer Account Record Obligations on All Local and Inter-exchange Carriers (CARE), CG Docket No. 02–386.	06/30/10
3060–1085	Collection of Location Information, Provision of Notice and Reporting on Interconnected Voice Over Internet Protocol (VoIP) E911 Compliance.	01/31/09
3060–1086	Secs. 74.786, 74.787, 74.790, 74.794 and 74.796	09/30/08
3060–1087	Broadband Over Power Lines (BPL), ET Docket No. 04–37	09/30/08
3060–1088	FCC 1088 Series	03/31/10
3060–1089	Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Emergency Access Notice of Proposed Rulemaking and IP Relay/VRS Fraud.	(1)
3060–1090	Order and Implementing Public Notices Requiring BRS Channels 1 and/or 2/2A Licensee to File Data on the Construction Status and/or Operational Parameters of Each System.	04/30/09
3060–1091	Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; VRS Interoperability, Declaratory Ruling and Further Notice of Proposed Rulemaking.	10/31/07
3060–1092	FCC 609–T and FCC 611–T	01/31/10
3060–1094	Licensing, Operation, and Transition of the 2500–2690 MHz Band	10/31/09
3060–1095	Surrenders of Authorization for International Carrier, Space Station and Earth Station Licensees	12/31/09
3060–1096	Prepaid Calling Card Service Provider Certification, WC Docket No. 05–68	02/28/10
3060–1098	Rural Health Care Support Mechanism	03/31/10
3060–1100	Sec. 15.117	09/30/10
3060–1101	Children's Television Requests for Preemption Flexibility	06/30/10
3060–1103	Sec. 76.41	07/31/10
3060–1107	Request To State and Local Public Safety Entities for Information Equipment Operating in Affected Portion of 700 MHz Public Safety Spectrum.	12/31/07
3060–1108	Consummations of Assignments and Transfers of Control Authorization	09/30/10
3060–1109	Information Collection for Emergency Communications Back-Up System Report to Congress	12/31/07

[1]Pending OMB Approval.

[FR Doc. E7–25647 Filed 1–3–08; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070717342–7713–02]

RIN 0648–AV42

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Final 2008–2010 Fishing Quotas for Atlantic Surfclams and Ocean Quahogs

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: NMFS is specifying the final quotas for the Atlantic surfclam and ocean quahog fisheries for 2008, 2009, and 2010. Regulations governing these fisheries require NMFS to publish the final quota specifications for the 2008–2010 fishing years. The intent of this action is to implement final specifications for allowable harvest levels of Atlantic surfclams and ocean quahogs from the Exclusive Economic Zone.

DATES: Effective from January 1, 2008 to December 31, 2010.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. A copy of the RIR/IRFA is accessible via the Internet at *http://www.nero.noaa.gov/nero/regs/com.html*.

The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, and the summary of impacts and alternatives contained in the Classification section of the preamble of this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Timothy A. Cardiasmenos, Fishery Management Specialist, 978–281–9204.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surfclam and Ocean Quahog Fisheries (FMP) requires that NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), specify quotas for surfclams and ocean quahogs for a 3-year period, with an annual review, from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected allow sustainable fishing to continue at that level for at least 10 years for surfclams and 30 years for ocean quahogs. In addition to this constraint, the Council policy also considers the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP (63 FR 27481, May 19, 1998) added Maine ocean quahogs (locally known as mahogany quahogs) to the management unit, and provided for a small artisanal fishery for ocean quahogs in the waters north of 43° 50′ N. lat., with an annual quota within a range of 17,000 to

100,000 Maine bu (5,991 to 35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is allocated separately from the quota specified for the ocean quahog fishery. Regulations implementing Amendment 13 to the FMP (68 FR 69970, December 16, 2003) established the ability to set multi-year quotas. An evaluation, in the form of an annual quota recommendation, is conducted by the Council every year to determine if the multi-year quota specifications remains appropriate. The fishing quotas must be in compliance with overfishing definitions for each species. In proposing these quotas, the Council considered the available stock assessments, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected fishing effort and catches, and areas closed to fishing.

In June 2007, the Council voted to recommend maintaining the 2007 quota levels of 5.333 million bu (284 million L) for the ocean quahog fishery, 3.400 million bu (181 million L) for the Atlantic surfclam fishery, and 100,000 Maine bu (35,240 hL) for the Maine ocean quahog fishery for 2008–2010. The final quotas for the 2008–2010 Atlantic surfclam and ocean quahog fishery are shown in the table below. The Atlantic surfclam and ocean quahog quotas are specified in standard bu of 53.24 L per bu, while the Maine ocean quahog quota is specified in "Maine" bu of 35.24 L per bu. Because Maine ocean quahogs are the same species as ocean quahogs, both fisheries are assessed under the same ocean quahog overfishing definition. When the two quota amounts (ocean quahog and Maine ocean quahog) are added, the total allowable harvest is still lower than the level that would result in overfishing for the entire stock.

2008–2010 ATLANTIC SURFCLAM AND OCEAN QUAHOG[1] QUOTAS

	2008		2009		2010	
	bu	hL	bu	hL	bu	hL
Surfclams[2]	3.400	1.810	3.400	1.810	3.400	1.810
Ocean Quahogs[2]	5.333	2.840	5.333	2.840	5.333	2.840
Maine Ocean Quahogs[3]	100,000	35,240	100,000	35,240	100,000	35,240

[1] Numerical values are in millions, except for Maine ocean quahogs
[2] 1 bu = 1.88 cubic ft. = 53.24 liters
[3] 1 bu = 1.2445 cubic ft. = 35.24 liters

Surfclams

In 1999, the Council expressed its intention to increase the surfclam quota to OY over a period of 5 years (OY = 3.4 million bu (181 million L)). The 2008–2010 status quo surfclam quota was developed after reviewing the results of the 44th Northeast Regional Stock Assessment Workshop (SAW 44) for surfclams, issued in January 2007. The surfclam quota recommendation is consistent with the SAW 44 finding that the Atlantic surfclam stock is not overfished, nor is overfishing occurring. Estimated fishable stock biomass in 2005 was above the management target, and fishing mortality was below the management threshold. Even though the total stock biomass is expected to gradually decline over the next 3 years due to poor recruitment, the total proposed quota of 3.4 million bu (181 million L), if fully harvested, would not exceed the fishing mortality threshold. Based on this information, the Council recommended, and NMFS has approved, maintaining the status quo surfclam quota of 3.4 million bu (181 million L) for 2008–2010. This quota represents the maximum allowable quota under the FMP.

Ocean Quahogs

The final 2008–2010 quota for ocean quahogs also reflects the status quo quota of 5.333 million bu (284 million L) in 2007. SAW 44 found that the ocean quahog stock is not overfished, nor is overfishing occurring. Estimated fishable biomass in 2005 was above the management target, and estimated fishing mortality was well below the target level. Fishing mortality is not expected to reach the target threshold if the proposed quota is harvested each of the 3 years. Similar to surfclams, the ocean quahog biomass is expected to decline over the next 3 years. There is some evidence of recruitment, and small ocean quahogs are found in most regions; however, growth is so slow that initial recruitment of year classes to the fishery is delayed for about 20 years. Based on this information, the Council recommended, and NMFS has approved, maintaining the status quo quota of 5.333 million bu (284 million L) for 2008–2010. This quota level is above current market demand, but allows for growth of the market if conditions change.

The 2008–2010 quota for Maine ocean quahogs is the status quo level of 100,000 Maine bu (35,240 hL). In 2006, the State of Maine completed a stock assessment of the resource within the Maine Mahogany Quahog Zone. This assessment was peer-reviewed as part of SAW 44. Although landings per unit of effort have declined since 2002, they remain relatively high overall. The findings of the Maine quahog survey did not change the status of the entire ocean quahog resource. The quota represents the maximum allowable quota under the FMP.

Comments and Responses

NMFS received no comments on the proposed rule (November 15, 2007; 72 FR 64187) during the comment period that ended on December 17, 2007.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law. This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

A delay in the effective date of this final rule would cause a disruption in the ordinary commerce of the surfclam and ocean quahog fisheries. Individual Transferable Quota (ITQ) shareholders each receive a portion of the overall annual quotas for the two species. An allocation holder receives an amount of cage tags equivalent to his/her share of the overall quota. Fishing for surfclams and ocean quahogs begins on January 1, 2008, regardless of the publication of the annual quota, as tags for the 2008 fishing year have already been issued by the vendor pursuant to § 648.75(b). ITQ allocations are often transferred either

permanently or temporarily to meet changing economic circumstances in the fishery right from the commencement of these fisheries. Without a quota in effect, NMFS cannot make a transfer of part or the entirety of an allocation either permanently or temporarily. This inability on the part of NMFS to make such transfers effective would preclude the intended recipients of such transfers from fishing, thereby engendering a negative economic impact on the surfclam and ocean quahog fisheries. A delay in the effectiveness of this rule would be contrary to the rule's intent to maintain current quota levels that have the full support of the fishing industry and facilitate the transfer of quotas requested by the industry. Every effort was made to publish this final rule as expeditiously as possible. However, the Council could not provide its quota specifications until September of 2007. As a result of that timing, in order for NMFS to provide a proposed rulemaking stage with adequate opportunity for comment, it is necessary to waive the 30 day delay in effectiveness, as it would compromise the start of the fishing year and thereby undermine the intent of the rule. By delaying the transfer of quota to a harvesting vessel, a vessel operator may choose to fish during periods when they may otherwise choose not. Given the increase in foul weather and hazardous seas during the winter months, a vessel's ability to operate safely at sea could be compromised. Therefore, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the implementation of the 2008–2010 surfclam, ocean quahog, and Maine ocean quahog quotas.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of the 2008–2010 Atlantic surfclam and ocean quahog specifications. The FRFA incorporates the economic impacts summarized in the IRFA and the corresponding RIR that were prepared for this action. The IRFA was summarized in the proposed rule and is not repeated here. Copies of the IRFA, FRFA, and RIR prepared for these quota specifications are available from the Northeast Regional Office (see **ADDRESSES**). A description of why this action was taken, the objectives of, and the legal basis for this rule, are contained in the preamble to this final rule, and are not repeated here.

There are no Federal rules that duplicate, overlap, or conflict with this final rule. There were no public comments received regarding the IRFA.

This action implements final fishing quotas for Atlantic surfclams and ocean quahogs for 2008–2010. The Council analyzed four quota alternatives for the Atlantic surfclam fishery, five alternatives for the ocean quahog fishery, and four alternatives for the Maine ocean quahog fishery. Each of the alternative sets included a preferred alternative and a "no action" alternative. The three approved quotas for 2008–2010 are 5.333 million bu (284 million L) for the ocean quahog fishery, 3.400 million bu (181 million L) for the Atlantic surfclam fishery, and 100,000 Maine bu (35,240 hL) for the Maine ocean quahog fishery.

Description and Estimate of the Number of Small Entities to Which This Rule Will Apply

The Small Business Administration (SBA) defines a small commercial fishing entity as a firm with gross annual receipts not exceeding $4 million. In 2006, 38 vessels reported harvesting surfclams and/or ocean quahogs from Federal waters under an Individual Transferable Quota (ITQ) system. In addition, 25 vessels participated in the limited access Maine ocean quahog fishery, for a total of 63 participants in the 2006 fisheries. Average 2006 gross income from surfclam ITQ trips was $1,182,713 per vessel, and from ocean quahog ITQ trips was $1,020,409 per vessel. The Maine ocean quahog fishery reported an average value of $160,698 per vessel. Each vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All 63 commercial fishing entities fall under the SBA size standard for small commercial fishing entities.

In addition to the actual vessels that participate in the fishery, there are 55 ocean quahog quota allocation owners, 67 surfclam allocation owners, and 51 Federal limited access Maine mahogany quahog permit holders. An allocation owner may choose to fish or lease his or her quota allocation.

A Description of the Reporting, Recordkeeping, or other Compliance Requirements of the Final Rule

This rule does not impose any new reporting, recodkeeping, or other compliance requirements. Therefore, the cost of compliance is unchanged.

A Description of the Steps Taken to Minimize the Significant Economic Impact of This Final Action on Small Entities

The final quotas for 2008–2010 reflect the same quota levels set for 2005–2007. Therefore, it is not expected that there will be any different economic impacts beyond status quo resulting from the final quota level. Leaving the ocean quahog quota at the harvest level of 5.333 million bu (284 million L) is not expected to constrain the fishery. In fact, actual ocean quahog landings for 2005 and 2006 did not exceed 60 percent of the available quota. The total 2007 harvest is expected to be similar to that of recent years (as of September 15, 2007, only 45.4 percent of the quota had been harvested). In comparison, 41 percent of the quota had been harvested as of September 15, 2006.

The surfclam quota is to be set to the maximum allowed under the FMP. In contrast to the ocean quahog harvest, the surfclam fishery has harvested over 80 percent of the available quota each year since 2005. The Maine ocean quahog quota is to be also set at the maximum allowed under the FMP. The Maine ocean quahog quota is often fully harvested on an annual basis. It is anticipated that, by maintaining the status quo quota level for the next 3 years, the fishing industry will benefit from the stability of product demand from the seafood processors and being able to predict future fishery performance based on past performance from the last 3 years.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the action a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. Copies of the guide will be sent to all holders of commercial Federal Atlantic surfclam, ocean quahog, and the limited access Maine ocean quahog fishery permits. The guide will also be available on the internet at *http://www.nero.noaa.gov*. Copies of the guide can also be obtained from the Regional Administrator (see **ADDRESSES**).

Reporting and Recordkeeping Requirements

This final rule does not impose any new reporting, recordkeeping, or other compliance requirements. Therefore, the costs of compliance remains unchanged.

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

Dated: December 31, 2007

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 07–6307 Filed 12–31–07; 2:01 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033–7033–01]

RIN 0648–XE78

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2008 Bering Sea Pollock Total Allowable Catch Amount

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2008 total allowable catch amount (TAC) for the Bering Sea pollock fishery. This action is necessary because NMFS has determined this TAC is incorrectly specified. This action will ensure the Bering Sea pollock TAC does not exceed the appropriate amount based on the best available scientific information for pollock in the Bering Sea subarea. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP).

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 31, 2007, through 2400 hrs, A.l.t., December 31, 2008, unless otherwise modified or superceded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 15, 2008.

ADDRESSES: You may submit comments, identified by "RIN 0648–XE78," by any one of the following methods:

- Mail to: P.O. Box 21668, Juneau, AK 99802
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska
- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- FAX to 907–586–7557, Attn: Ellen Sebastian

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (BSAI) according to the FMP prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 pollock TAC in the Bering Sea subarea was set at 1,318,000 metric tons (mt) by the 2007 and 2008 harvest specification for groundfish in the BSAI (72 FR 9451, March 2, 2007).

In December 2007, the Council recommended a 2008 pollock TAC of 1,000,000 mt for the Bering Sea subarea. This amount is less than the 1,318,000 mt established by the 2007 and 2008 harvest specification for groundfish in the BSAI (72 FR 9451, March 2, 2007). The TAC recommended by the Council is based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2007, which NMFS has determined is the best available scientific information for this fishery.

Steller sea lions occur in the same location as the pollock fishery and are listed as endangered under the Endangered Species Act (ESA). Pollock is a principal prey species for Steller sea lions in the BSAI. The seasonal apportionment of pollock harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. The regulations at § 679.20(a)(5)(i)(A) specifies how the pollock TAC shall be apportioned.

In accordance with § 679.25(a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2007 SAFE report for this fishery, the current Bering Sea pollock TAC is incorrectly specified. Consequently, the Regional Administrator is adjusting the 2008 pollock TAC to 1,000,000 mt in the Bering Sea subarea.

Pursuant to § 679.20(a)(5), Table 3 of the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007) is revised for the 2008 pollock TACs consistent with this adjustment.

BILLING CODE 3510–22–S

TABLE 3–2007 AND 2008 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA)[1]

[Amounts are in metric tons]

Area and sector	2007 Allocations	2007 A season[1]		2007 B season[1]	2008 Allocations	2008 A season[1]		2008 B season[1]
		A season DFA	SCA harvest limit[2]	B season DFA		A season DFA	SCA harvest limit[2]	B season DFA
Bering Sea subarea	1,394,000	n/a	n/a	n/a	1,000,000	n/a	n/a	n/a
CDQ DFA	139,400	55,760	39,032	83,640	100,000	40,000	28,000	60,000
ICA[1]	33,129	n/a	n/a	n/a	31,500	n/a	n/a	n/a
AFA Inshore	610,736	243,894	170,726	366,841	434,250	173,700	121,590	260,550
AFA Catcher/Processors[3]	488,588	195,115	136,581	293,473	347,400	138,960	97,272	208,440
Catch by C/Ps	447,058	178,531	n/a	267,796	317,871	127,148	n/a	190,723
Catch by CVs[3]	41,530	16,585	n/a	24,877	29,529	11,812	n/a	17,717
Unlisted C/P Limit[4]	2,443	976	n/a	1,463	1,737	695	n/a	1,042
AFA Motherships	122,147	48,779	34,145	73,368	86,850	34,740	24,318	52,110
Excessive Harvesting Limit[5]	213,757	n/a	n/a	n/a	151,988	n/a	n/a	n/a
Excessive Processing Limit[6]	366,441	n/a	n/a	n/a	260,550	n/a	n/a	n/a
Total Bering Sea DFA	1,221,471	487,788	341,452	733,682	868,501	347,399	243,180	521,100
Aleutian Islands subarea[1]	19,000	n/a	n/a	n/a	19,000	n/a	n/a	n/a
CDQ DFA	1,900	760	n/a	1,140	1,900	760	n/a	1,140
ICA	1,600	800	n/a	800	1,600	800	n/a	800
Aleut Corporation	15,500	15,500	n/a	0	15,500	15,500	n/a	0
Bogoslof District ICA[7]	10	n/a	n/a	n/a	10	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock, after subtraction for the CDQ DFA (10 percent) and the ICA (2.8 percent), is allocated as a DFA as follows: inshore sector - 50 percent, catcher/processor sector - 40 percent, and mothership sector - 10 percent. In the Bering Sea subarea, 40 percent of the DFA is allocated to the A season (January 20-June 10) and 60 percent of the DFA is allocated to the B season (June 10-November 1). Pursuant to § 679.20(a)(5)(iii)(B)(2)(i) and (ii), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2] In the Bering Sea subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If less than 28 percent of the annual DFA is taken inside the SCA before April 1, the remainder will be available to be taken inside the SCA after April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(4), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(4)(iii), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(6), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(7), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the pollock DFAs.

[7] The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only, and are not apportioned by season or sector.

BILLING CODE 3510–22–C

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the appropriate allocations for pollock based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 13, 2007, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 15, 2008.

This action is required by § 679.22 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: December 31, 2007.

William D. Chappell

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 07–6309 Filed 12–31–07; 2:23 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 3
Friday, January 4, 2008

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

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Transportation of Radioactive Material in Quantities of Concern

AGENCY: Nuclear Regulatory Commission.

ACTION: Public meetings and request for comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is holding three public meetings to seek public comment to enhance the development of the technical basis for rulemaking proposing to revise NRC regulations on the security requirements for the transportation of Radioactive Material in Quantities of Concern (RAMQC). The goal of this enhanced participatory process is to ensure effective security measures are in place for the protection of radioactive material shipments given the post-September 11, 2001, threat environment. New requirements for recipient license verification; coordination of shipment information; advance notification of shipments; notification of shipment delays, schedule changes and suspected loss; continuous and active shipment position monitoring; two-way and redundant telecommunication; secondary drivers for certain shipments; contingency procedures; and safeguarding shipment information will be incorporated.

This document also addresses the State of Washington petition to the NRC requesting that NRC consider adopting global positioning satellite (GPS) technology tracking as a national requirement for mobile or portable uses of radioactive material in quantities of concern.

DATES: Submit comments concerning this action by February 8, 2008. Comments received after February 8th will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

The staff will hold three public meetings to discuss RAMQC with other Federal Agencies, State Partners, Stakeholders, and the public. These meetings will be held on Tuesday, January 15, 2008, Thursday, January 17, 2008, and Wednesday, January 23, 2008.

ADDRESSES: The comments may be provided to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Written comments should also be transmitted to the Chief of the Rules and Directives Branch, either by means of facsimile transmission to (301) 415–5144, or by e-mail to *nrcrep@nrc.gov*.

The January 15, 2008, meeting will be held at the U.S. NRC Region III, 2443 Warrenville Road, Suite 210, Lisle, Illinois 60532–4352. The January 17, 2008, meeting will be held at the Edward R. Roybal Auditorium and Conference Center, Ronald V. Dellums Federal Building, 1301 Clay Street, Oakland, California 94612–5217. The January 23, 2008 meeting will be held at U.S. Nuclear Regulatory Commission Auditorium, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738.

FOR FURTHER INFORMATION CONTACT: Susan Bagley, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–5378, e-mail, *RAMQCcomments@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Prior to September 11, 2001, NRC focus was on the safety and security of people and the environment ensuring they were protected from the inadvertent or accidental release of radioactive material. The attacks of September 11, 2001, led the NRC to re-think how far a terrorist would go to hurt the public. This included the purposeful use of medical and industrial radioactive materials to cause harm. The NRC joined with the international community to look at medical and industrial radioactive materials with this as its main consideration. This effort was lead by the International Atomic Energy Agency (IAEA) with active participation by the NRC. As part of this process, the NRC reviewed the chemical, physical, and radiological characteristics of each radioactive material for its attractiveness to a terrorist. This effort identified sixteen radioactive materials which could pose a serious threat to people and the environment in the wrong hands. This effort further identified the different quantities or "thresholds" of materials that could be useful to a terrorist. The IAEA published these results in a document titled "Code of Conduct on the Safety and Security of Radioactive Sources." A link to this document is on the NRC Web site at *http://www.nrc.gov/security/byproduct/enhanced-security.html*.

The NRC refers to these sixteen radioactive materials as "Radioactive Materials in Quantities of Concern" or RAMQC. The RAMQC thresholds are provided in Table 1 in the discussion section below. Once the sixteen radioactive materials were identified by the IAEA, the NRC reviewed and revised its security requirements to prevent unauthorized access to these materials. Several areas where additional requirements could be put in place to improve transportation security were identified and changes were instituted.

Initially the NRC issued advisories to commercial users of radioactive materials (referred to as licensees) and requested that they implement additional security measures on their shipments of radioactive material. Licensees understood the need for additional security and voluntarily implemented the additional security as requested. However, an NRC advisory doesn't carry the weight of a regulation or an Order. The NRC cannot impose penalties if a licensee doesn't meet the recommendations of an NRC advisory.

The Atomic Energy Act authorizes the NRC to impose requirements on commercial users of radioactive materials by two methods, either by the promulgations of regulations which are published in Title 10 of the Code of Federal Regulations or by issuing an Order. An Order carries the same legal authority as a regulation.

Because an NRC advisory is a communication tool rather than an enforcement mechanism, the NRC issued two legally binding Orders to

licensees transporting RAMQC. One Order requires licensees to put in place additional security measures for the transport of Category 2 quantities of radioactive material. These requirements are part of the Increased Controls security enhancements for Category 2 quantities of radioactive materials. The second Order requires licensees to put into place additional security measures for the transportation of Category 1 quantities of material. The second Order is not publicly available because it includes detailed security requirements that are designated as Safeguards Information.

Although the security Order is legally binding on licensees, the NRC is committed to keeping the public informed and values public involvement in our regulatory process. By its nature, the rulemaking process is deliberative and takes substantial time. The process is now started and the first step in this process is for the staff to prepare what is referred to as a "technical basis." The "technical basis" is a document that identifies the regulations the staff agrees need to be revised. Once the "technical basis" is complete, the staff will then prepare a "draft proposed rule" using the technical basis to develop the proposed language for the new rule. The "draft proposed rule" will also be published for public comment and, after all the public comments are resolved, the final rule is published.

II. Discussion

Q 1. What Is RAMQC?

A 1. RAMQC is an acronym for Radioactive Material in Quantities of Concern. RAMQC refers specifically to 16 radioactive materials (fourteen single radionuclides and two combinations). These materials are: Americium-241; Americium-241/Beryllium; Californium-252; Curium-244; Cobalt-60; Cesium-137; Gadolinium-153; Iridium-192; Plutonium-238; Plutonium-230/Beryllium; Promethium-147; Radium-226; Selenium-75; Strontium-90 (Yttrium-90); Thulium-169; and Ytterbium-169. RAMQC does not include spent fuel.

Q 2. What Prompted This New Category of Material Called RAMQC?

A 2. The attacks of September 11, 2001, made everyone re-think how far a terrorist would go to hurt the public. This included reconsidering how a terrorist could use medical and industrial radioactive materials to cause harm. The NRC and the international community, led by the International Atomic Energy Agency (IAEA), took another look at medical and industrial radioactive materials with this as its main consideration. As part of this effort, the NRC reviewed the chemical, physical, and radiological characteristics of radioactive material for its attractiveness to a terrorist. This effort identified 16 radioactive isotopes and combinations of isotopes that could pose a serious threat. This effort further defined different quantities or "thresholds" of materials that could be useful to a terrorist. The IAEA published their results in a document titled "Code of Conduct on the Safety and Security of Radioactive Sources." A link to this document is found on the NRC Web site at *http://www.nrc.gov/security/byproduct/enhanced-security.html.*

After the Code of Conduct was developed, the NRC referred to these 16 radioactive materials as "Radioactive Materials in Quantities of Concern" or RAMQC.

Q 3. What Are the RAMQC Thresholds?

A 3. The RAMQC thresholds are provided in the Figure below.

Radioactive material	Category 1		Category 2	
	Terabequerels (TBq)	Curies (Ci)	Terabequerels (TBq)	Curies (Ci)
Americium-241	60	1,600	0.6	16
Americium-241/Beryllium	60	1,600	0.6	16
Californium-252	20	540	0.2	5.4
Curium-244	50	1,400	0.5	14
Cobalt-60	30	810	0.3	8.1
Cesium-137	100	2,700	1.0	27
Gadolinium-153	1000	27,000	10.0	270
Iridium-192	80	2,200	0.8	22
Plutonium-238	60	1,600	0.6	16
Plutonium-239/Beryllium	60	1,600	0.6	16
Promethium-147	40,000	1,100,000	400	11,000
Radium-226	40	1,100	0.4	11
Selenium-75	200	5,400	2.0	54
Strontium-90 (Yttrium-90)	1,000	27,000	10.0	270
Thulium-170	20,000	540,000	200	5,400
Ytterbium-169	300	8,100	3.0	81

Terabequerels are the official value to be used for determining whether a material is a Category 1 or Category 2 quantity. Curies are provided for practical usefulness only and are rounded after conversion.

Q 4. What Is the Scope of These Public Meetings?

A 4. The NRC is planning to revise its requirements for licensees securely transporting RAMQC. The first step in this process is for the staff to prepare what a "technical basis." The "technical basis" is a document that identifies what improvements are needed in the regulations.

These public meetings are limited to discussion of transportation security for RAMQC. The staff is interested in gathering stakeholder opinion and recommendations in this area.

Q 5. Is This the Only Opportunity for the Public To Provide Comment on This Policy Change?

A 5. No, there will be another opportunity for the public to provide comment on this policy change. Once the "technical basis" is complete, the staff will then prepare a "draft proposed rule" that identifies the proposed

language for the regulations. The draft proposed rule will be published for public comment. After all the public comments on the draft proposed rule are resolved, the final rule will be published.

Q 6. What Doesn't This Policy Change Cover?

A 6. This policy change will not address air and water transport. Transport of this material within airports and by air is regulated by the Federal Aviation Administration. Transport of this material within ports and by waterway is regulated by the U.S. Coast Guard.

This policy change will not address transshipments of this material through the U.S. Transshipments are shipments that originate by a foreign company in one country, pass through the United States and then continue on to a company in another country. The NRC does not regulate these shipments because there is no NRC licensee involved in this activity. Transshipments are regulated by the Department of Transportation and Department of Homeland Security.

Q 7. Will These Meetings Discuss Spent Fuel Shipments?

A 7. These meetings will not address transport of spent fuel. Spent fuel transportation is being handled under a separate rulemaking effort.

Q 8. Will These Meetings Address Fingerprinting for Access to Radioactive Material?

A 8. These meetings will not address the Energy Policy Act of 2005 (EPAct) requirement for fingerprinting of individuals with access to radioactive material. The NRC will address the EPAct requirement for fingerprinting under a separate rulemaking effort.

Q 9. Why Is the NRC Holding Stakeholder Meetings?

A 9. The NRC is holding these stakeholder meetings to ensure the public is given adequate opportunity to comment on issues related to increased transportation security requirements for shipments of RAMQC. Public comments will be used to help develop the technical basis for the RAMQC transportation security rulemaking effort.

Q 10. Who Can Participate in These Meetings?

A 10. Any member of the public at large, industry groups, government officials (Federal, State and local), and NRC licensees may participate.

Q 11. Why Is the NRC Planning To Revise Its Requirements in This Area?

A 11. Prior to 9/11, NRC requirements focused on safety and preventing inadvertent or accidental exposure to both workers and the public by these materials. These requirements also provided security for the material. However, the events of 9/11 made NRC take a broader look at its requirements and re-evaluate what a terrorist might do to attain these materials with the intention of harming the public. From this effort, the NRC identified several areas where additional requirements could be implemented to improve transportation security.

Q 12. What Actions Has NRC Taken To Improve Transportation Security in This Area?

A 12. The NRC has issued both security advisories and Orders to its licensees to improve transportation security in this area.

Q 13. What Is an NRC Advisory?

A 13. An NRC advisory recommends areas for improvement to licensees. Immediately after the events of Sept. 11, 2001, the NRC issued security advisories to licensees and requested that they implement additional security measures on their shipments of RAMQC. The NRC advisories contained specific security upgrades and are not publicly available. Licensees understood the need for additional security and implemented the measures as requested.

However, an NRC advisory is not legally binding and does not carry the weight of a regulation or Order. The NRC cannot impose penalties if a licensee doesn't meet the recommendations of an NRC advisory.

Q 14. What "Legally-Binding" Actions did NRC Take?

A 14. The Atomic Energy Act of 1954, as amended, authorizes the NRC to impose requirements on commercial users of radioactive materials by two methods, either through regulations or by issuing an Order. The NRC can impose penalties when a licensee doesn't meet a requirement of the regulation or an Order. An Order carries the same legal authority as a regulation.

The NRC issued legally binding Orders to licensees transporting RAMQC in 2005. These Orders required licensees to put in place additional security measures in addition to the existing NRC regulations when transporting RAMQC. The Orders issued to licensees transporting RAMQC Category 2 are available on our public Web site at *http://www.nrc.gov/security/byproduct/orders.html.*

The Orders issued to licensees transporting RAMQC Category 1 are designated Safeguards Information and are not publicly available.

Q 15. Is Everything That Was Safeguards Information Going to be Public?

A 15. No. The Orders issued to licensees contained detailed security information that could be useful to an adversary if made public. In order to increase public awareness and participation, NRC staff identified the primary security concepts behind each security measure in order to be able to discuss the security measures in a public forum. Once the new rule is published, the detailed security measures employed by each licensee will be safeguards information or safeguards information-modified.

Q 16. Why Doesn't the NRC Just Keep the Orders in Effect?

A 16. The legally binding Orders issued by the NRC could stay in place indefinitely. Because the Orders are Safeguards Information, this does not meet the NRC commitment to maintain openness and to provide the public an opportunity to comment on policy changes. The NRC is interested in keeping the public informed and highly values public involvement in our process.

Assured that additional security (because of existing regulations and Orders) is in place during transport of this material, the staff is now planning to more formally revise its policy and gather public and stakeholder input in this area. The staff will begin this process by using the additional security measures developed as the basis for these discussions.

Q 17. Why Is This Material Being Shipped?

A 17. In general, RAMQC is shipped to medical institutions, companies that support medical and academic institutions, and companies that manufacture and distribute radioactive material for various industrial applications. As radioactive sources get older, radioactive decay takes place and their strength decreases. Sources lose their effectiveness and have to be replaced or replenished periodically with new sources and older sources must be transported for disposal.

Another, much less transported type of RAMQC is large scale plant equipment (i.e. steam generators and reactor vessels) from commercial power plants.

Q 18. How Is the Public Protected From These Shipments?

A 18. Regulating transport of radioactive material (RAM) is a joint responsibility of the NRC and the DOT.

The quantities of RAM being considered as part of this policy change, in general, are transported in packages (casks) that meet rigorous NRC safety standards. The packages are referred to as "Type B" packages in both NRC and DOT regulations. The NRC fact sheet on transportation of radioactive materials can be found at *http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/transport-spenfuel-radiomats-bg.html.*

In addition to the existing regulations, the NRC imposed additional security measures by Order on licensees. In general, the objectives of these Orders are to: (a) Enhance control over the material; and (b) prevent malevolent use of the material. The Orders address the following attributes: (a) Pre-planning and coordination of shipments; (b) control, monitoring and communications during shipments; and (c) procedures, training and control of security information.

The carrier transporting RAMQC must also meet the DOT's requirements for shipment of the radioactive material. A link to DOT is provided on NRC's Web site at *http://www.nrc.gov/materials/transportation.html.*

Q 19. How Does the NRC Ensure Shippers are Following its Rules?

A 19. The NRC and Agreement State inspectors are aware of the intent of the additional security measures, have received training to ascertain whether shippers are meeting security requirements, and have conducted licensee inspections. These inspections are guided by in-place procedures. The NRC also instituted a security findings review panel, which reviews inspection findings to ensure consistency in the inspection and enforcement process.

Q 20. What Is the Timeline for Implementing a New Rule in This Area?

A 20. The technical basis is scheduled for completion in Spring 2008. The draft proposed rule is scheduled for publication in the Spring of 2009. The new rule is expected to be published in 2010.

III. Proposed Measures

As mentioned earlier, this is the first step of the process to revise the NRC regulations to improve security during transport of RAMQC. This first step consists of writing the "technical basis" and during this step we are gathering input from stakeholders. Using the security Orders as a basis, the general requirements to enhance security during transportation of RAMQC are provided in Table 2. To facilitate discussions, the requirements are categorized by their major attributes: (A) Licensee verification; (B) planning and coordination; (C) notifications; (D) communications; (E) drivers and accompanying individuals; (F) procedures, training and control of information; and (G) additional requirements for portable and mobile devices.

TABLE 2.—GENERAL REQUIREMENTS FOR SECURITY DURING TRANSPORT OF RAMQC

Requirement	Category 1	Category 2
A. Licensee Verification:		
1 Verify recipients are authorized to receive regulated material by direct contact with regulatory authority [1]	✓	
2 Confirm validity of unusual orders	✓	
3 Verify the address for a temporary work site is valid	✓	
B. Planning and Coordination:		
1 Coordinate expected arrival time of the shipment	✓	✓
2 Coordinate expected departure time of the shipment	✓	
3 Confirm receipt of the shipment	✓	✓
4 Use carriers which:		
(a) Use package tracking systems. (Package tracking systems can identify the location of package when queried, however they are not necessarily active monitoring of the package. For example, the U.S. registered mail program is a package tracking system.)		✓
(b) Have continuous and active monitoring systems	✓	
(c) Assure trustworthiness and reliability of drivers	✓	✓
(d) Assure trustworthiness and reliability of personnel with knowledge of the shipment	✓	
(e) Maintain constant control or surveillance during transit	✓	✓
(f) Have capability for immediate communication to summon appropriate response or assistance	✓	✓
5 Pre-plan and coordinate shipment with States through which the shipment will pass	✓	
C. Notifications:		
1 Provide at least 7 days advance notification of the shipment to the NRC and the affected States	✓	
2 If the shipment does not arrive at the expected arrival time, initiate an investigation to find it	✓	✓
3 If the shipment has become lost, stolen, or missing:		
(a) Immediately notify the NRC Operations Center	✓	✓
(b) Immediately notify the local law enforcement agencies and the appropriate Agreement State regulatory authority	✓	
D. Communications:		
1 Establish redundant communications allowing the transport to contact communication center at all times	✓	
2 Ensure back-up communications are not subject to the same interference factors as the primary communication	✓	
3 Ensure shipments are continuously and actively monitored by a telemetric position monitoring system or an alternative tracking system reporting to a communication center.[2]	✓	
4 Communication center provides positive confirmation of location, status and control over the shipment	✓	✓
5 Communication center prepared to implement pre-planned procedures in response to events	✓	✓
E. Drivers and Accompanying Individuals:		
1 Report into the communication center at regular, pre-set intervals	✓	
3 No casual stops during transport	✓	
4 If stopped, perform checks to monitor the shipment	✓	
F. Procedures, Training and Control of Information:		
1 Develop, maintain and implement policies and procedures for proper handling and protection against unauthorized disclosure of transportation security information	✓	✓

TABLE 2.—GENERAL REQUIREMENTS FOR SECURITY DURING TRANSPORT OF RAMQC—Continued

Requirement	Category 1	Category 2
2 Develop normal and contingency procedures to cover; notifications, communications protocols, loss of communications, and response to actual, attempted, or suspicious activities related to theft, loss, diversion or sabotage of a shipment	✓	✓
3 Designate detailed security information as Safeguards Information	✓	
G. Additional Requirements for Portable and Mobile Devices:		
1 Have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee	N/A	✓
2 For devices in or on a vehicle or trailer. Licensees shall also use a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee	N/A	✓

Notes:
[1] In accordance with 10 CFR Part 20, licensees are required to verify that their customers are authorized to possess the material. However, this verification could be by means other than by direct contact with the regulatory authority.
[2] A licensee may use a carrier or third-party communication center in lieu of establishing one itself. A commercial facility must have the capabilities, necessary procedures, training, and personnel background investigations to meet the applicable requirement
[3] Portable or mobile devices are within RAMQC Category 2.

IV. Questions To Consider

The NRC requests that interested parties comment on this policy change to improve security during transport of RAMQC. Besides comments on the security measures provided above, the NRC is also interested in discussing the questions below.

Question 1

Which part of Title 10 of the Code of Federal Regulations (CFR) should the staff revise to include requirements to enhance security during transportation of RAMQC? At this time, the staff is considering revising either the requirements of 10 CFR Part 20 or Part 73.

Question 2

Should the NRC issue these requirements under its authority to protect public health and safety or under its authority to promote the common defense and security?

The NRC can either impose new requirements under its authority in the Atomic Energy Act of 1954, as amended, to protect public health and safety or under its authority to promote the common defense and security. If these enhancements to the regulations are issued under public health and safety, the NRC would co-regulate with the Agreement States. If these enhancements are issued under common defense and security, the NRC would retain its authority and would not co-regulate with the Agreement States in this area.

Question 3

What technologies are in use to track the location of sources, packages or vehicles carrying radioactive material in quantities of concern?

On April 27, 2007, Governor Gregoire, State of Washington, submitted a petition for rulemaking to the NRC. In her petition, Governor Gregoire requested that NRC consider adopting global positioning satellite (GPS) technology tracking as a national requirement for mobile or portable uses of radioactive material in quantities of concern. The NRC is considering this request. The staff is interested gaining a better understanding of the availability, cost and practicality of technologies that could be used to track the location of the source, package or vehicle.

Dated at Rockville, Maryland, this 28th day of December, 2007.

For the Nuclear Regulatory Commission.

Robert K. Caldwell,

Branch Chief, Fuel Cycle and Transportation Security Branch, Division of Security Policy, Office of Nuclear Security and Incident Response.

[FR Doc. E7–25630 Filed 1–3–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0414; Directorate Identifier 2007–NM–340–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), Model CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> Bombardier Aerospace has completed a system safety review of the aircraft fuel system against fuel tank safety standards * * *.
>
> [A]ssessment showed that supplemental maintenance tasks [for the fuel tank wiring harness installation, and the hydraulic system No. 3 temperature transducer, among other items] are required to prevent potential ignition sources inside the fuel system, which could result in a fuel tank explosion. * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by February 4, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the

regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Rocco Viselli, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7331; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2008–0414; Directorate Identifier 2007–NM–340–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2007–28, dated November 22, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Bombardier Aerospace has completed a system safety review of the aircraft fuel system against fuel tank standards introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.
>
> The assessment showed that supplemental maintenance tasks [for the fuel tank wiring harness installation, and the hydraulic system No. 3 temperature transducer, among other items] are required to prevent potential ignition sources inside the fuel system, which could result in a fuel tank explosion. Revision has been made to Canadair Regional Jet Models CL–600–2C10, CL–600–2D15 and CL–600–2D24 Maintenance Requirements Manual, CSP B–053, Part 2, Section 3 "Fuel System Limitations" to introduce the required maintenance tasks.

The corrective action is revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems. You may obtain further information by examining the MCAI in the AD docket.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Bombardier has issued a revision to Canadair Regional Jet Model CL–600–2C10, –2D15, and –2D24 Airworthiness Limitations (ALIs) in the Maintenance Requirements Manual, CSP B–053, Part 2, Section 3, "Fuel System Limitations," Revision 9, dated July 20, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

This proposed AD would also allow accomplishing the AWL revision in accordance with later revisions of the MPD as an acceptable method of compliance if the limit or interval is part of a later approved Maintenance Requirements Manual revision or the limit or interval is approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (g) of this proposed AD.

In most ADs, we adopt a compliance time allowing a specified amount of time after the AD's effective date. In this case, however, the FAA has already issued regulations that require operators to revise their maintenance/inspection programs to address fuel tank safety issues. The compliance date for these regulations is December 16, 2008. To provide for coordinated implementation of these regulations and this proposed AD, we are using this same compliance date in this proposed AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S.

operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 289 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $23,120, or $80 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2008–0414; Directorate Identifier 2007–NM–340–AD.

Comments Due Date

(a) We must receive comments by February 4, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), Model CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes, certificated in any category, all serial numbers.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529–1.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Bombardier Aerospace has completed a system safety review of the aircraft fuel system against fuel tank standards introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.

The assessment showed that supplemental maintenance tasks [for the fuel tank wiring harness installation, and the hydraulic system No. 3 temperature transducer, among other items] are required to prevent potential ignition sources inside the fuel system, which could result in a fuel tank explosion. Revision has been made to Canadair Regional Jet Models CL–600–2C10, CL–600–2D15 and CL–600–2D24 Maintenance Requirements Manual, CSP B–053, Part 2, Section 3 "Fuel System Limitations" to introduce the required maintenance tasks.

The corrective action is revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 60 days after the effective date of this AD, or on or before December 16, 2008, whichever occurs first, revise the ALS of the Instructions for Continued Airworthiness to incorporate the inspection requirements of Canadair Regional Jet Model CL–600–2C10, –2D15, and –2D24 Airworthiness Limitations (ALIs) in the Maintenance Requirements Manual, CSP B–053, Part 2, Section 3, "Fuel System Limitations," Revision 9, dated July 20, 2007 ("the MRM"). For task numbers 24–90–00–601, 24–90–00–602, 28–00–00–601, 28–11–23–601, 28–11–23–602, 28–12–13–601, 29–30–00–601, and 29–30–00–602, the initial compliance times start from the later of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, and the repetitive inspections must be accomplished thereafter at the interval specified in the MRM, except as provided by paragraph (g) of this AD. Accomplishing the revision in accordance with a later revision of the MRM is an acceptable method of compliance if the revision is approved by the Manager, New York Aircraft Certification Office (ACO), FAA.

(i) The effective date of this AD.

(ii) The date of issuance of the original Canadian standard airworthiness certificate or the date of issuance of the original Canadian export certificate of airworthiness.

(2) Except as provided by paragraph (g) of this AD: After accomplishing the actions specified in paragraphs (f)(1) of this AD, no alternative inspections or inspection intervals may be used, unless the limit or interval is part of a later approved revision of the Canadair Regional Jet Model CL–600–2C10, –2D15, and –2D24 Maintenance Requirements Manual, CSP B–053, Part 2,

Section 3, "Fuel System Limitations," Revision 9, dated July 20, 2007, or the limit or interval is approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (g) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *ATTN:* Rocco Viselli, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7331; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2007–28, dated November 22, 2007; and Canadair Regional Jet Model CL–600–2C10, –2D15, and –2D24 Airworthiness Limitations (ALIs) in the Maintenance Requirements Manual, CSP B–053, Part 2, Section 3, "Fuel System Limitations," Revision 9, dated July 20, 2007; for related information.

Issued in Renton, Washington, on December 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–25619 Filed 1–3–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0413; Directorate Identifier 2007–NM–341–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Bombardier Aerospace has completed a system safety review of the aircraft fuel system against fuel tank safety standards * * *.

[A]ssessment showed that supplemental maintenance tasks [for certain bonding jumpers, wiring harnesses, and hydraulic systems, among other items] are required to prevent potential ignition sources inside the fuel system, which could result in a fuel tank explosion. * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by February 4, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Rocco Viselli, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7331; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2008–0413; Directorate Identifier 2007–NM–341–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2007–29, dated November 22, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Bombardier Aerospace has completed a system safety review of the aircraft fuel system against fuel tank standards introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.

The assessment showed that supplemental maintenance tasks [for certain bonding jumpers, wiring harnesses, and hydraulic systems, among other items] are required to prevent potential ignition sources inside the fuel system, which could result in a fuel tank explosion. Revision has been made to Canadair Regional Jet Model CL–600–2B19

Maintenance Requirements Manual, CSP A–053, Part 2, Appendix D, "Fuel System Limitations" to introduce the required maintenance tasks.

The corrective action is revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems. You may obtain further information by examining the MCAI in the AD docket.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Bombardier has issued a revision to Canadair Regional Jet Model CL–600–2B19, Airworthiness Requirements in the Maintenance Requirements Manual, CSP A–053, Part 2, Appendix D, "Fuel System Limitations," Revision 7, dated May 10, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

This proposed AD would also allow accomplishing the AWL revision in accordance with later revisions of the MPD as an acceptable method of compliance if the limit or interval is part of a later approved Maintenance Requirements Manual revision or the limit or interval is approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (g) of this proposed AD.

In most ADs, we adopt a compliance time allowing a specified amount of time after the AD's effective date. In this case, however, the FAA has already issued regulations that require operators to revise their maintenance/inspection programs to address fuel tank safety issues. The compliance date for these regulations is December 16, 2008. To provide for coordinated implementation of these regulations and this proposed AD, we are using this same compliance date in this proposed AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 689 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $55,120, or $80 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2008–0413; Directorate Identifier 2007–NM–341–AD.

Comments Due Date

(a) We must receive comments by February 4, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, all serial numbers.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529–1.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Bombardier Aerospace has completed a system safety review of the aircraft fuel system against fuel tank standards introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.

The assessment showed that supplemental maintenance tasks [for certain bonding jumpers, wiring harnesses, and hydraulic systems, among other items] are required to prevent potential ignition sources inside the fuel system, which could result in a fuel tank explosion. Revision has been made to Canadair Regional Jet Model CL–600–2B19 Maintenance Requirements Manual, CSP A–053, Part 2, Appendix D, "Fuel System Limitations" to introduce the required maintenance tasks.

The corrective action is revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 60 days after the effective date of this AD, or on or before December 16, 2008, whichever occurs first, revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate the inspection and maintenance requirements, as applicable, Canadair Regional Jet Model CL–600–2B19 Airworthiness Requirements in the Maintenance Requirements Manual, CSP A–053, Part 2, Appendix D, "Fuel System Limitations," Revision 7, dated May 10, 2007 ("the MRM"), task numbers 28–11–00–601, 28–11–00–602, 28–11–00–603, 28–11–00–604, 29–33–01–601, and 29–33–01–602. For those task numbers, the initial compliance times start from the later of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, and the repetitive inspections must be accomplished thereafter at the interval specified in the MRM, except as provided by paragraphs (f)(2), (f)(3), (f)(4), and (g) of this AD. Accomplishing the revision in accordance with a later revision of the MRM is an acceptable method of compliance if the revision is approved by the Manager, New York Aircraft Certification Office (ACO), FAA.

(i) The effective date of this AD.

(ii) The date of issuance of the original Canadian standard airworthiness certificate or the date of issuance of the original Canadian export certificate of airworthiness.

(2) For airplanes having more than 15,000 flight hours as of the effective date of this AD, the initial compliance time for Tasks 28–11–00–601, 28–11–00–602, 28–11–00–603, and 28–11–00–604 is within 5,000 flight hours after the effective date of this AD. Thereafter, these tasks must be accomplished within the repetitive interval specified in Canadair Regional Jet Model CL–600–2B19, Airworthiness Requirements in the Maintenance Requirements Manual, CSP A–053, Part 2, Appendix D, "Fuel System Limitations," Revision 7, dated May 10, 2007.

(3) For Task 29–33–01–601, the initial compliance time is within 5,000 flight hours after the effective date of this AD. Thereafter, task 29–33–01–601 must be accomplished within the repetitive interval specified in Canadair Regional Jet Model CL–600–2B19, Airworthiness Requirements in the Maintenance Requirements Manual, CSP A–053, Part 2, Appendix D, "Fuel System Limitations," Revision 7, dated May 10, 2007.

(4) For airplanes having more than 27,500 flight hours as of the effective date of this AD, the initial compliance time for Task 29–33–01–602 is within 2,500 flight hours after the effective date of this AD. Thereafter, this task must be accomplished within the repetitive interval specified in Canadair Regional Jet Model CL–600–2B19, Airworthiness Requirements in the Maintenance Requirements Manual, CSP A–053, Part 2, Appendix D, "Fuel System Limitations," Revision 7, dated May 10, 2007.

(5) Except as provided by paragraph (g) of this AD: After accomplishing the actions specified in paragraphs (f)(1), (f)(2), (f)(3), and (f)(4) of this AD, no alternative inspections or inspection intervals may be used unless the limit or interval is part of a later approved revision of Canadair Regional Jet Model CL–600–2B19, Airworthiness Requirements in the Maintenance Requirements Manual, CSP A–053, Part 2, Appendix D, "Fuel System Limitations," Revision 7, dated May 10, 2007, or the limit or interval is approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (g) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *ATTN:* Rocco Viselli, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7331; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2007–29, dated November 22, 2007, and Canadair Regional Jet Model CL–600–2B19, Airworthiness Requirements in the Maintenance Requirements Manual, CSP A–053, Part 2, Appendix D, "Fuel System Limitations," Revision 7, dated May 10, 2007.

Issued in Renton, Washington, on December 26, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–25617 Filed 1–3–08; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA–HQ–OAR–2005–0172; FRL–8513–1]

Availability of Additional Information Related to the Review of the National Ambient Air Quality Standards for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: The EPA is providing notice that it has placed in the docket for the review of the national ambient air quality standards (NAAQS) for ozone (O_3) (Docket No. EPA–HQ–OAR–2005–0172) additional information relevant to the rulemaking proposing revisions to those standards. See 72 FR 37818, July 11, 2007. Specifically, this notice announces the availability of a memorandum from Abt Associates, Inc. dated November 27, 2007. The subject of the memo is: "Additional Tables: Non-Accidental Mortality and Lung Function Responses Associated with O_3 Concentrations that Just Meet the Current and Alternative 8-Hour Daily Maximum Standards—Totals and Portions Attributable to O_3 Within 0.1 ppm Ranges, Based on 2002 and 2004 Air Quality Data." The docket number for this memo is EPA–HQ–OAR–2005–0172–6942.

DATES: The memorandum was placed in the Ozone NAAQS docket on December 17, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey Richmond, Office of Air Quality Planning and Standards (C–504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711: *telephone:* 919–541–5271; *e-mail: richmond.harvey@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

On July 11, 2007, EPA published a proposed rule to make revisions to the primary and secondary NAAQS for ozone to provide requisite protection of public health and welfare (72 FR 37818). A Technical Support Document (TSD) was completed in July 2007 by Abt Associates, Inc. entitled "Ozone Health Risk Assessment for Selected Urban Areas." This TSD is docket item EPA–HQ–OAR–2005–0172–6794. Since completion of the TSD, Abt Associates, Inc. has prepared an additional analysis to show the non-accidental mortality and lung function risk associated with each 0.01 ppm O_3 concentration or exposure interval for air quality simulating just meeting the current and several alternative standards based on 2002 and 2004 air quality data. The total O_3-related risk for non-accidental mortality and specific lung function responses are also presented in the tables in this memo and are the same as reported in the July 2007 TSD.

B. How Can I Get a Copy of This Document?

1. *Docket.* EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2005–0172. The document entitled "Additional Tables: Non-Accidental Mortality and Lung Function Responses Associated with O_3 Concentrations that Just Meet the Current and Alternative 8–Hour Daily Maximum Standards—Totals and Portions Attributable to O_3 Within 0.1 ppm Ranges, Based on 2002 and 2004 Air Quality Data" has been placed in this docket as docket item EPA–HQ–OAR–2005–0172–6942. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air and Radiation.

List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: December 21, 2007.

Peter Tsirigotis,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 07–6287 Filed 1–3–08; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–0534; FRL–8513–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Merck and Co., Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania to establish and require reasonably available control technology (RACT) for Merck and Co., Inc. (Merck) located in Northumberland County, Pennsylvania. Merck is a major source of volatile organic compounds (VOC) and nitrogen oxides (NO_X). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before February 4, 2008.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0534 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2007–0534, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–0534. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION: On June 13, 2007, the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision to its SIP. This SIP revision consists of a source-specific operating permit issued by PADEP to establish and require RACT for Merck pursuant to Pennsylvania's SIP-approved generic RACT regulations.

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and NO_X sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f), applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

SIP revisions imposing RACT for three classes of VOC sources are required under section 182(b)(2) of the CAA. *The categories are:*

(1) All sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of attainment;

(2) All sources covered by a CTG issued prior to November 15, 1990; and

(3) All major non-CTG sources.

The Pennsylvania SIP already has approved RACT regulations and requirements for all sources and source categories covered by the CTGs. The Pennsylvania SIP also has approved regulations to require major sources of NO_X and additional major sources of VOC emissions (not covered by a CTG) to implement RACT. These regulations are commonly termed the "generic RACT regulations". A generic RACT regulation is one that does not, itself, specifically define RACT for a source or source categories but instead establishes procedures for imposing case-by-case RACT determinations. The Commonwealth's SIP-approved generic RACT regulations consist of the procedures PADEP uses to establish and impose RACT for subject sources of VOC and NO_X. Pursuant to the SIP-approved generic RACT rules, PADEP imposes RACT on each subject source in an enforceable document, usually a plan approval (PA) or operating permit (OP). The Commonwealth then submits these PAs and OPs to EPA for approval as source-specific SIP revisions. EPA reviews these SIP revisions to ensure that PADEP has determined and imposed RACT in accordance with the provisions of the SIP-approved generic RACT rules.

It must be noted that the Commonwealth has adopted and is implementing additional "post RACT requirements" to reduce seasonal NO_X emissions in the form of a NO_X cap and trade regulation, 25 Pa Code Chapters 121 and 123, based upon a model rule developed by the States in the OTR. That regulation was approved as a SIP revision on June 6, 2000 (65 FR 35842). Pennsylvania has also adopted 25 Pa Code Chapter 145 to satisfy Phase I of the NO_X SIP call. That regulation was approved as a SIP revision on August 21, 2001 (66 FR 43795). Federal approval of a source-specific RACT determination for a major source of NO_X in no way relieves that source from any applicable requirements found in 25 Pa Code Chapters 121, 123 and 145.

II. Summary of SIP Revision

Merck is a chemical process facility and is a major source of VOC and NO_X emissions located in Northumberland County, Pennsylvania. The Commonwealth's submittal consists of an operating permit (OP–49–0007B) that imposes VOC and NO_X RACT requirements for Merck. PADEP established and imposed these RACT requirements in accordance with the criteria set forth in its SIP-approved generic RACT regulations applicable to Merck. In accordance with its SIP-approved generic RACT rule, the Commonwealth has also imposed recordkeeping, monitoring, and testing requirements on Merck sufficient to determine compliance with the applicable RACT determinations.

III. Proposed Action

EPA is proposing to approve the Pennsylvania SIP revision submitted by PADEP on June 13, 2007 to establish and require VOC and NO_X RACT for Merck and Co., Inc. (OP–49–0007B) located in Northumberland County, Pennsylvania, pursuant to the Commonwealth's SIP-approved generic RACT regulations. EPA is soliciting public comments on this proposed rule to approve this source-specific RACT determination established and imposed by PADEP in accordance with the criteria set forth in its SIP-approved generic RACT regulation applicable to Merck. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by

state law. Accordingly, the Administrator certifies that this proposed 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.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule approving the VOC and NO_X RACT determinations for Merck and Co., Inc. located in Northumberland County, Pennsylvania, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 19, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7–25641 Filed 1–3–08; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 73, No. 3
Friday, January 4, 2008

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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0122]

Notice of Decision To Issue Permits for the Importation of Arugula Leaves With Stems From Panama Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to begin issuing permits for the importation into the continental United States of arugula leaves with stems from Panama. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of arugula leaves with stems from Panama.

DATES: *Effective Date:* January 4, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Román, Import Specialist, Commodity Import Analysis and Operations Staff, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION: Under the regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–47, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the pest risk analysis that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may begin issuing permits for importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the pest risk analysis; (2) the comments on the pest risk analysis revealed that no changes to the pest risk analysis were necessary; or (3) changes to the pest risk analysis were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice[1] in the **Federal Register** on October 4, 2007 (72 FR 56719–56720, Docket No. APHIS–2007–0122), in which we announced the availability, for review and comment, of a pest risk analysis that evaluates the risks associated with the importation into the continental United States of arugula leaves with stems from Panama. We solicited comments on the notice for 60 days ending on December 3, 2007. We did not receive any comments by that date.

Therefore, in accordance with the regulations in § 319.56–4(c)(2)(ii), we are announcing our decision to begin issuing permits for the importation into the continental United States of arugula leaves with stems from Panama subject to the requirement that each consignment of arugula be accompanied by a phytosanitary certificate issued by Panama's national plant protection organization to document that the consignment has been inspected and found practically free of pests.

This condition will be listed in the fruits and vegetables manual (available at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/fv.pdf*). In addition to this specific measure, the arugula will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Done in Washington, DC, this 26th day of December 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–25554 Filed 1–3–08; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice and the pest risk analysis, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2007–0122.*

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 deletion from the Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a product previously furnished by such agencies.

DATES: *Effective Date:* February 3, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On November 2, and November 9, 2007 the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 62207; 63555) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has

determined that the products 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.

Regulatory Flexibility Act Certification

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 products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. 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 products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Men's Charcoal Colored Cargo Pants HS2347 (All sizes)
Men's Grey Colored Short Sleeve Polo w/pocket 2101-GR (All sizes)
Men's Navy Colored Cargo Pants HS2347 (All sizes)
Men's Navy Colored Labcoat 380 (All sizes)
Men's Navy Colored Long Sleeve Twill 1790-NV (All sizes)
Men's Navy Colored Short Sleeve Polo w/pocket 2101-NV (All sizes)
Men's Navy Colored Side Elastic Pants E–2578 (All sizes)
Men's White Colored Long Sleeve Twill 1790-WT (All sizes)
Men's White Colored Short Sleeve Polo w/pocket 2101-WH (All sizes)
Men's Wine Colored Long Sleeve Twill 1790-WN (All sizes)
Men's Wine Colored Short Sleeve Polo w/pocket 2101-WN (All sizes)
Navy Colored 3–1 Parka w/reflective panels HS3334 (All sizes)
Unisex Grey Colored Hooded Sweatshirt 1805H (All sizes)
Unisex Grey Colored Sweatshirt 73157 (All sizes)
Unisex Hunter Green Colored Hooded Sweatshirt 1805H (All sizes)
Unisex Hunter Green Colored Sweatshirt 73157 (All sizes)
Unisex Long Sleeve Denim 3211DD (All sizes)
Unisex Navy Colored Hooded Sweatshirt 1805H (All sizes)
Unisex Navy Colored Long Sleeve Polo w/pocket 2108-NV (All sizes)
Unisex Navy Colored Sweatshirt 73157 (All sizes)
Unisex Wine Colored Long Sleeve Polo w/pocket 2108-WN (All sizes)
Women's Charcoal Colored Cargo Pants HS2351 (All sizes)
Women's Grey Colored Short Sleeve Polo w/o Pocket OB12-GR (All sizes)
Women's Navy Colored Cargo Pants HS2351 (All sizes)
Women's Navy Colored Labcoat 382 (All sizes)
Women's Navy Colored Long Sleeve Twill 5790-NV (All sizes)
Women's Navy Colored Short Sleeve Polo w/o Pocket OB12-NV (All sizes)
Women's Navy Colored Side Elastic Pants E–8578 (All sizes)
Women's White Colored Long Sleeve Twill 5790-WT (All sizes)
Women's White Colored Short Sleeve Polo w/o Pocket OB12-WH (All sizes)
Women's Wine Colored Long Sleeve Twill 5790-WN (All sizes)
Women's Wine Colored Short Sleeve Polo w/o Pocket OB12-WN (All sizes)

NPA: Human Technologies Corporation, Utica, NY.

Coverage: C-List for the total Government requirements for U.S. Department of Agriculture, Minneapolis, MN.

Contracting Activity: U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), Marketing and Regulatory Programs Business Services (MRPBS), Minneapolis, MN.

Trousers, Men's Navy Work Uniforms (NWU) 03299 (All Sizes)
Trousers, Women's Navy Work Uniforms (NWU) 03299 (All Sizes)
Blouse, Men's Navy Work Uniforms (NWU) 03301 (All Sizes)
Blouse, Women's Navy Work Uniforms (NWU) 03301 (All Sizes)

Coverage: 100,000 sets in any combination of the above products. C-List for the requirements of the Defense Supply Center Philadelphia, Philadelphia, PA.

NPA: ReadyOne Industries, Inc., El Paso, TX.

Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA.

Services

Service Type/Location: Document Destruction, Internal Revenue Service, 227 N. Bronough Street, Tallahassee, FL.

NPA: Challenge Enterprises of North Florida, Inc., Green Cove Springs, FL.

Contracting Activity: Department of the Treasury, Internal Revenue Services, Chamblee, GA.

Service Type/Location: Document Destruction, Southwest VA Consolidated Mail-Out Pharmacy (CMOP), 3675 E. Britania Dr., Tucson, AZ.

NPA: Beacon Group SW, Inc., Tucson, AZ.

Contracting Activity: Department of Veteran Affairs, Consolidated Mail-Out Pharmacy (CMOP), Tucson, AZ.

Deletion

On November 9, 2007 the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 63555) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the product 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.

Regulatory Flexibility Act Certification

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 result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product to the Government.

3. 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 product deleted from the Procurement List.

End of Certification

Accordingly, the following product is deleted from the Procurement List:

Product

Shirt, Women's, Poly/Wool, Blue, Navy, Long Sleeve, Class 2, Tropical, w/o Epaulet

NSN: 8410–01–229–9439
NSN: 8410–01–229–9443
NSN: 8410–01–229–9447
NSN: 8410–01–229–9451
NSN: 8410–01–229–9455
NSN: 8410–01–229–9456
NSN: 8410–01–229–9459
NSN: 8410–01–229–9463
NSN: 8410–01–229–9467
NSN: 8410–01–229–9471
NSN: 8410–01–229–9475

NSN: 8410–01–229–9483
NSN: 8410–01–229–9487
NSN: 8410–01–229–9499
NSN: 8410–01–229–9500

NPA: Middle Georgia Diversified Industries, Inc., Dublin, GA.

Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA.

Patrick Rowe,

Acting Executive Director.

[FR Doc. E7–25632 Filed 1–3–08; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Proposed Addition and Deletion

ACTION: Proposed addition to and deletion from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a product previously furnished by such agencies.

Comments Must be Received On or Before: February 3, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: For Further Information or to Submit Comments Contact: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for each service will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

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. If approved, 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 service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the service to the Government.

3. 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 service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service

Service Type/Location: Document Destruction, Internal Revenue Service, 412 N. Cedar Bluff Rd, Knoxville, TN.

Service Type/Location: Document Destruction, Internal Revenue Service, 710 Locust St., Knoxville, TN.

NPA: Goodwill Industries—Knoxville, Inc., Knoxville, TN.

Contracting Activity: Department of the Treasury, Internal Revenue Service, Chamblee, GA.

Deletion

Regulatory Flexibility Act Certification

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. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the product to the Government.

3. 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 product proposed for deletion from the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product is proposed for deletion from the Procurement List:

Product

Pencil, Mechanical, Bold Point

NSN: 7520–01–354–2304.

NPA: San Antonio Lighthouse for the Blind, San Antonio, TX.

Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr., New York, NY.

Patrick Rowe,

Acting Executive Director.

[FR Doc. E7–25633 Filed 1–3–08; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–823, A–834–807, A–307–820]

Continuation of Antidumping Duty Orders on Silicomanganese from India, Kazakhstan, and Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC) that revocation of the antidumping duty orders on silicomanganese from India, Kazakhstan, and Venezuela would likely lead to continuation or recurrence of dumping, and material injury to an industry in the United States, the Department is publishing notice of continuation of these antidumping duty orders.

DATES: *Effective Date:* November 30, 2007.

Contact Information: Douglas Kirby or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–3782 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department initiated and the ITC instituted sunset reviews of the antidumping duty orders on silicomanganese from India, Kazakhstan, and Venezuela, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-Year ("Sunset") Reviews,* 72 FR 42393 (April 2, 2007) (*Notice of Initiation*).

As a result of its review, the Department found that revocation of the

antidumping duty orders would likely lead to continuation or recurrence of dumping, and notified the ITC of the magnitude of the margins likely to prevail were the orders to be revoked. *See Silicomanganese from India, Kazakhstan, and Venezuela: Final Results of Expedited Five-Year ("Sunset") Review of the Antidumping Duty Orders*, 72 FR 42393 (August 2, 2007).

On November 28, 2007, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on silicomanganese from India, Kazakhstan, and Venezuela would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Silicomanganese from India, Kazakhstan, and Venezuela;* 72 FR 67965 (December 3, 2007), and USITC Publication 3963 (November 2007), (Inv. No. 731–TA–929–931) (Review).

Scope of the Orders

For purposes of these orders, the products covered are all forms, sizes and compositions of silicomanganese, except low-carbon silicomanganese, including silicomanganese briquettes, fines and slag. Silicomanganese is a ferroalloy composed principally of manganese, silicon and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese is sometimes referred to as ferrosilicon manganese. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3 percent phosphorous. Silicomanganese is properly classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Some silicomanganese may also be classified under HTSUS subheading 7202.99.5040.

The low-carbon silicomanganese excluded from this scope is a ferro alloy with the following chemical specifications: minimum 55 percent manganese, minimum 27 percent silicon, minimum 4 percent iron, maximum 0.10 percent phosphorus, maximum 0.10 percent carbon and maximum 0.05 percent sulfur. Low-carbon silicomanganese is used in the manufacture of stainless steel and special carbon steel grades, such as motor lamination grade steel, requiring a very low carbon content. It is sometimes referred to as ferromanganese-silicon. Low-carbon silicomangense is classifiable under HTSUS subheading 7202.99.5040. This scope covers all silicomanganese, regardless of its tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope remains dispositive.

Continuation of Orders

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on silicomanganese from India, Kazakhstan, and Venezuela. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of these orders will be November 30, 2007. Pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of these orders not later than October 2012.

This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: December 10, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. 07–6106 Filed 1–3–08; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

93rd Interim Meeting Notification of the National Conference on Weights and Measures

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of a public meeting of the Conference in January 2008.

SUMMARY: The Interim Meetings of the 93rd National Conference on Weights and Measures (NCWM) will be held January 27 to 30, 2008, in Albuquerque, New Mexico. The majority of the meetings are open to the public, but registration is required. The NCWM is an organization of weights and measures officials of the states, counties, and cities of the United States, federal agencies, and private sector representatives. These meetings bring together government officials and representatives of business, industry, trade associations, and consumer organizations on subjects related to the field of weights and measures technology, administration and enforcement. Pursuant to (15 U.S.C. 272(b)(6)), the National Institute of Standards and Technology (NIST) supports the NCWM as one of the means it uses to solicit comments and recommendations on revising or updating a variety of publications related to legal metrology. NIST participates to promote uniformity among the states in laws, regulations, methods, and testing equipment that comprise the regulatory control of commercial weighing and measuring devices and other practices used in trade and commerce. Publication of this notice on the NCWM's behalf is undertaken as a public service; NIST does not endorse, approve, or recommend any of the proposals contained in this notice or in the publications of the NCWM mentioned below. Please see NCWM Publication 15, which contains detailed meeting agendas and schedules, registration and hotel reservation information at *http://www.ncwm.net.*

DATES: January 27–30, 2008.

ADDRESSES: The Hyatt Regency Albuquerque, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Carol Hockert, Chief, NIST, Weights and Measures Division, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600 or by telephone (301) 975–5507, or *e-mail: Carol.Hockert@nist.gov.*

SUPPLEMENTARY INFORMATION: The following are brief descriptions of some of the significant agenda items that will be considered along with other issues at the NCWM Interim Meeting. Comments will be taken on these and other issues during several public comment sessions. At this stage, the items are proposals. This meeting also includes work sessions in which the Committees may also accept comments and where they will finalize recommendations for NCWM consideration and possible adoption at its Annual Meeting to be held July 13 to 17, 2008, at the Sheraton Burlington Hotel in Burlington, Vermont. The Committees may withdraw or carry over items that need additional development.

The Specifications and Tolerances Committee will consider proposed

amendments to NIST Handbook 44, "Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices (NIST Handbook 44)." Those items address weighing and measuring devices used in commercial measurement applications, that is, devices that are normally used to buy from or sell to the general public or used for determining the quantity of product sold among businesses. Issues on the agenda of the NCWM Laws and Regulations Committee relate to proposals to amend NIST Handbook 130, "Uniform Laws and Regulations in the area of legal metrology and engine fuel quality" and NIST Handbook 133 "Checking the Net Contents of Packaged Goods." This notice contains information about significant items on the NCWM Committee agendas, but is not inclusive of all agenda items. As a result, the following items are not consecutively numbered.

NCWM Specifications and Tolerances Committee

The following items are proposals to amend NIST Handbook 44:

General Code

Item 310–2. Appendix D—Definition of Electronic Devices, Software-Based: This item removes the terms "built-for-purpose" and "not-built-for-purpose" and instead defines software-based devices as either "embedded software devices (Type P)" or "programmable or loadable metrological software devices (Type U)".

Liquid-Measuring Devices

Item 330–1. Temperature Compensation for Liquid-Measuring Devices Code: This is a proposal to add provisions to Handbook 44 to allow retail motor fuel dispensers to be equipped with the automatic means to deliver product with the volume compensated to a reference temperature. (See also Item 232–1 below under the Laws and Regulations Committee.)

Vehicle Tank Meters

Item 331–1. Meter Size (Marking Requirements): This is a proposal to require meter size markings on vehicle tank meters, except for milk meters.

Item 331–3. Automatic Temperature Compensation for Refined Petroleum Products: This proposal adds provisions to Handbook 44, which defines the period of use and conditions of use when selling fuel through a device equipped with automatic temperature compensation capabilities.

Multiple Dimension Measuring Devices

Item 358–1. A.1. General., Note 7 in Table S.4.1.b., and Appendix D. Definitions: This proposal adds new definitions for a "hexahedron" and an "irregularly shaped object" and clarifies a complex marking requirement that currently exists in this code.

Items 358–2. Value of Dimension/Volume Division Value, 358–3 Position Test and 358–4 Test Objects: These proposals add requirements to those devices capable of measuring irregularly shaped objects.

NCWM Laws and Regulations Committee

The following item is a proposal to amend NIST Handbook 130:

Method of Sale of Commodities Regulation

Item 232–1. Temperature Compensation for Petroleum Products: Several proposals will be considered that would allow temperature compensation to take place on a voluntary or mandatory basis or limit compensation to metering systems with certain flow capacities or specific sales applications. Most of the proposals would allow compensation to occur only if certain conditions are met by the seller.

Item 232–2. Biodiesel and Fuel Ethanol Labeling: This item requires the identification and labeling of biodiesel fuels and blends at retail service stations.

Dated: December 19, 2007.

Richard F. Kayser,

Acting Deputy Director.

[FR Doc. E7–25609 Filed 1–3–08; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 071221887–7889–01]

RIN 0648–XE55

Endangered and Threatened Species; "Not Warranted" Endangered Species Act Listing Determination for the Atlantic White Marlin

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of finding under the Endangered Species Act and availability of status review document.

SUMMARY: We, NMFS, announce our finding that listing the Atlantic white marlin (*Tetrapturus albidus*) as an endangered or threatened species under the Endangered Species Act (ESA) is not warranted, and we announce the availability of the status review document.

DATES: The finding announced in this notice was made on December 26, 2007.

ADDRESSES: A copy of the status review document may be downloaded from the following web address: *http://sero.nmfs.noaa.gov*. Requests for a hard copy of the status review document should be addressed to Dr. Stephania Bolden, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Stephania Bolden, NMFS, Southeast Regional Office (727) 824–5312, or Marta Nammack, NMFS, Office of Protected Resources (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

In August 2001, we received a petition from the Biodiversity Legal Foundation (subsequently renamed the Center for Biological Diversity, or CBD) and James R. Chambers requesting us to list the Atlantic white marlin (*Tetrapturus albidus*) as a threatened or endangered species under the ESA. We convened a status review team (SRT) to assess the species' status and the degree of threat to the species with regard to section 4(a)(1) factors in the ESA. The 2002 SRT determined that two of these section 4(a)(1) factors were of concern for white marlin: overutilization and the inadequacy of existing regulatory mechanisms. While the 2002 SRT concluded that the white marlin stock had not declined to levels at which it was then in danger of extinction, it noted that the stock could decline to a level that would warrant ESA protection if fishing mortality was not reduced significantly and relatively quickly. After considering the conclusions of the 2002 SRT, we determined that listing white marlin was not warranted (67 FR 57204; September 9, 2002). Subsequently, CBD and the Turtle Island Restoration Network (TIRN) filed a complaint in the district court for the District of Columbia challenging our listing decision. A settlement agreement was reached wherein it was agreed that we would revisit the status of the white marlin following the 2006 stock assessment by the International Commission for the Conservation of Atlantic Tunas (ICCAT).

Following ICCAT's completion of its 2006 white marlin stock assessment, we announced that a status review of the Atlantic white marlin was initiated and

solicited information regarding the status of and threats to the species (71 FR 76639; December 21, 2006). NMFS' Southest Regional Office (SERO) convened a new biological review team (BRT) to commence a new comprehensive status review. This BRT incorporated results from both the 2002 and 2006 ICCAT stock assessments, and reviewed the 2002 status review document, papers prepared at workshops and symposia to assist in the new stock assessment, current journal articles, reports from the 2004 billfish grant program, information submitted in response to our request for additional information, presentations by invited experts, and existing management of the fisheries in order to determine the status of and threats to the white marlin.

The BRT prepared a status review document that represents their efforts to compile and evaluate the best scientific and commercial data available on white marlin to date. The BRT sought and incorporated peer review comments on the status review document. The BRT submitted their final status review document to SERO on December 10, 2007. Copies of the status review document are available upon request (see **ADDRESSES**).

Life History

White marlin are billfish (Family Istiophoridae) that inhabit the tropical and temperate waters of the Atlantic Ocean and adjacent seas. Distribution of white marlin differs from the blue marlin (*Makaira nigricans*) and sailfish (*Istiophorus platypterus*) that range throughout both the Atlantic and Indo-Pacific regions. White marlin exhibit sexually dimorphic growth patterns, with females growing larger than males. White marlin are primarily general piscivores, but also feed on squid and other prey items. Spawning activity occurs during the spring (March through June) in northwestern Atlantic tropical and sub-tropical waters marked by relatively high surface temperatures (20°-29°C) and salinities (> 35 ppt). It is believed there are at least five spawning areas in the western north Atlantic: northeast of Little Bahama Bank off the Abaco Islands; northwest of Grand Bahama Island; southwest of Bermuda; the Mona Passage, east of the Dominican Republic; and the Gulf of Mexico. There is a paucity of information regarding the age and growth of white marlin.

Recently both morphometric and genetic information has provided evidence that there is a fifth species of Istiophoridae in the western North Atlantic - the roundscale spearfish (*T. georgii*). The roundscale spearfish closely resembles the white marlin, and the two may often be confused. Roundscale spearfish are not hybrids; they have a clearly different genetic lineage to sympatric billfish species. Limited data indicate that the roundscale spearfish is distributed widely in the western North Atlantic and is particularly abundant in the Sargasso Sea. Little is known about the life history of the roundscale spearfish. Further, the so-called "hatchet marlin" (*Tetrapturus* sp.), another putative congener that exhibits truncated dorsal and anal fins, is likely a phenotypic expression exhibited in both roundscale spearfish and white marlin and not a separate species.

We determined that the Atlantic white marlin constitutes a single species throughout the Atlantic Ocean, there are no populations that warrant consideration of listing in a significant portion of the species' range, and there are no populations of the species that meet the discrete and significant standards set forth in our policy regarding recognition of distinct vertebrate population segments (61 FR 4722; February 7, 1996). There is no information that indicates that any segment of the white marlin population is discrete or distinct, or that there is any specific geographic area within the Atlantic Ocean that should be considered more or less significant than another. White marlin are considered to be a panmictic species: individuals move about freely within the Atlantic Ocean, over thousands of miles, and breed freely with other members of the population. Presence of larvae suggests there are at least five spawning areas in the western north Atlantic Ocean, and there is no evidence to suggest special nursery areas. No population of white marlin is markedly separated from other populations of the same taxon, nor is there biological, ecological, or genetic evidence to suggest unusual or unique populations, or populations that are more at risk than others.

Fishery Landings and Management

Atlantic billfish, including white marlin, have historically been landed as incidental catch of foreign and domestic commercial pelagic longline fisheries, or in directed recreational and artisanal fisheries. The majority of billfish fishing mortality in the Atlantic Ocean results from pelagic longline fisheries: total Atlantic-wide longline landings of white marlin mostly range between 1,000 to 2,000 metric tons (mt) annually, of which the United States accounts for about 5 percent. While the directed commercial effort is principally targeted toward tuna species and swordfish, billfish occur in the same area as these other pelagic species, making them susceptible to the gear. Although total Atlantic-wide white marlin landings from longline fisheries have fluctuated between 610 and 1,966 mt over the past 25 years, total landings have declined annually from 1,242 mt to 610 mt between 2000 and 2004 (the last year for which landings data are available). The U.S. proportion of total Atlantic-wide white marlin landings has been reduced from a 25-year average of 5 percent to 3 percent of the 2000–2004 mean reported total (29 mt of 861 mt total).

White marlin, along with other billfish and tunas, are managed internationally by the member nations of theICCAT). ICCAT, through the Standing Committee for Research and Statistics, conducts regular stock assessments for species under its purview: white marlin stock assessments were conducted in 2002 and 2006, and a 2010 assessment is scheduled. By consensus ICCAT adopts binding resolutions and makes recommendations to manage for maximum catch of species under its purview. ICCAT's Compliance Committee tracks landings and makes official determinations of non-compliance.

Recreational fishers seek Atlantic blue marlin, white marlin, and sailfish as highly-prized species in the United States, Venezuela, Bahamas, Brazil, and many countries in the Caribbean Sea and west coast of Africa. White marlin are managed in the United States under the Consolidated Atlantic Highly Migratory Species Fishery Management Plan (FMP) and previously under the Billfish FMP. The FMP prohibits retention, landing, or sale of billfish (including white marlin) caught by commercial fishing vessels in U.S. waters, reserving those species for recreational anglers. The objective of the FMP is to end overfishing and rebuild stocks. In addition, the FMP seeks to coordinate domestic regulations with international management measures to control Atlantic-wide fishing mortality. In the United States, Atlantic blue marlin, white marlin, and Atlantic sailfish can be landed only by recreational fishermen fishing from either private vessels or charterboats.

Status of the Species

Population estimates available for the 2007 status review indicate that the number of white marlin in the size range vulnerable to the commercial longline fishery is between 100,000 and 2,000,000, likely around 200,000, and that the current stock of white marlin is on the order of 20 percent carrying capacity (i.e., K) or greater. Population

abundance trajectories in the 2006 ICCAT stock assessment no longer exhibit the long-term downward trend in population abundance seen in the 2002 ICCAT stock assessment; population estimates indicate both an increase in number and in the ratio of current biomass to unfished biomass (i.e., B/K). Atlantic-wide white marlin landings, as reported by ICCAT, have been continually reduced since 1996, and have been less than 1,000 mt for the last 4 years. The calculated probabilities of white marlin biomass under five fishing mortality projections considered (from 0.16 - 0.32) were more optimistic in 2007 relative to 2002. Estimates of fishing mortality (i.e., F) decreased annually from 17 percent in 2002 to 9 percent in 2006.

We agree with the BRT that white marlin population models likely include a composite of data for white marlin and roundscale spearfish combined, as roundscale spearfish have been recorded as white marlin, and hence, all stock assessment parameters (including abundance, landings, fishing mortality) reflect the status of the two species combined. No information is available describing interspecific competition, or potential geographic overlap/separation, between the roundscale spearfish and white marlin. Limited data suggest the roundscale spearfish is widely distributed in the western North Atlantic, and abundant in the Sargasso Sea area during the winter period. It is unknown whether the proportion of either species has changed over time, and it is not possible to separate the two species in the historical catch records.

It is pragmatic to conclude that the data used in the ICCAT white marlin stock assessments is overwhelmingly dominated by white marlin (*T. albidus*) relative to roundscale spearfish (*T. georgii*). Roundscale spearfish have been intermittently referenced in the scientific literature since 1840. Since then, it has taken more than 150 years to observe a sufficient number of specimens to clearly identify the species via genetic tissues and morphometrics. There is no information available suggesting differences between the species that would indicate that either species has a greater or less susceptibility to be caught in the fishery, nor information regarding likelihood of catchability differences between species by gear type, baits, season, or geographic area. Given the difficulty in visually differentiating the roundscale spearfish from the white marlin (scale morphology and relationship between length of anal fin relative to distance between anus and leading edge of anal fin), it is easy to understand why confusion between the species has occurred. Meanwhile, journal articles noting the roundscale spearfish have been infrequent, indicating rarity of species; a greater number of specimens would have led to an earlier clarification between the two species. The only data available regarding proportion of white marlin to roundscale spearfish are extremely limited in time and space; a genetic re-analysis of specimens identified at the dock as white marlin over the last few years during a single tournament confirmed that 17.5 percent were actually roundscale spearfish. Therefore, we conclude that while based on a composite of the two species, the ICCAT stock assessment indicators (e.g., K) for white marlin overwhelmingly reflect the status of the white marlin.

We concur with the BRT's finding that there is no indication depensation is occurring. There is no evidence that any white marlin size class has been lost, nor any reason to expect one to be lost. Based on catch distributions from 1950 through 2004, there is no evidence of range constriction for white marlin. Both the BRT and NMFS find that compliance with ICCAT requirements by member nations and white marlin population trends improved between 2002 and 2006 as exhibited through real catch reductions and stable/increasing catch per unit effort (CPUE); this is an expected response to reduced fishing mortality. Notably, CPUE would also respond similarly to a large number of year classes in the population and/or surprisingly stable recruitment from year to year. While the extent of compliance with ICCAT recommendations and illegal, unreported, and unregulated (IUU) fishing are not completely understood, the best available information indicates that the current regulatory mechanisms have been sufficient to prevent continued stock decline of white marlin. We conclude that it is likely that, under current management regimes, the white marlin stock will remain stable or continue to increase. It appears that both decreasing population size and biomass, and sustained increase in fishing mortality (i.e., F), have been abated by management efforts.

Factors Affecting Atlantic White Marlin

The 2007 BRT examined the ESA section 4(a)(1) factors as they apply to white marlin: 1) the present or threatened destruction, modification, or curtailment of its habitat or range; 2) overutilization for commercial, recreational, scientific, or educational purposes; 3) disease or predation; 4) the inadequacy of existing regulatory mechanisms; and 5) other natural or manmade factors affecting its continued existence. The two criteria the BRT was most concerned about for white marlin were overutilization and the adequacy of existing regulatory mechanisms. The BRT equated overfishing with overutilization and determined that the white marlin are not being overutilized, as population abundances no longer exhibit the 2002 downward trend, and population estimates indicate both an increase in number and the ratio of current biomass to unfished biomass; we agree that both terms refer to overexploitation to a point of diminishing returns.

We examined the ESA section 4(a)(1) factors relative to white marlin based on the status review document, and our conclusions for each follow: 1) There is no evidence of present or threatened destruction, modification, or curtailment of its range or habitat; 2) overutilization has previously occurred, but is not currently occurring; 3) there is no evidence that predation or disease is affecting the white marlin; 4) current regulatory mechanisms are adequate to prevent continued stock decline of white marlin; and 5) no natural or manmade factors were identified that were affecting the continued existence of the white marlin. While white marlin are almost certainly overfished as evidenced by a long history of exploitation that has probably depleted the population below the management target, overfishing, and thus overutilization, does not appear to be occurring today as current ratios of fishing mortality relative to the largest sustainable catch (i.e., F/Fmsy) estimates are reported as both greater and less than one depending on the index. Once overfishing for a species has ended, it may take several years before the stock will no longer be considered overfished. A population can be considered to be overfished without undergoing overfishing (i.e., there is a lag effect as the population recovers from overfishing).

We concur with the BRT that domestic measures by the United States alone will have a negligible impact on the stock status of white marlin. Mandatory measures implemented by ICCAT for all member countries appear to be having some success, as the most recent stock assessment indicates that a slight increase was observed in the 2001–2004 white marlin abundance estimates. It is noteworthy that this increasing trend was observed even though the 67 percent reduction in white marlin landings mandated by ICCAT in 2000 has not yet been achieved (average catch from 2000 -

2004 was 36 percent of the maximum catch in 1996 or 1999). There is most likely not full compliance by all parties with all management measures, and there may be an unknown impact from IUU fishing. Regardless, real catch reductions are apparent in the data, and, under current management regimes, it is likely the white marlin stock will remain stable or continue to increase.

Population Modeling and Endangerment Assessment

We believe that the metrics developed by the BRT to determine endangered or threatened status of the white marlin after a review of the quantitative and qualitative guidelines used by other conservation organizations (American Fisheries Society (AFS), World Conservation Union (IUCN), and Convention for the International Trade of Endangered Species (CITES)) were appropriate. Because white marlin had medium productivity, the BRT used logic set forth by AFS to determine that biomass at or less than 1 percent of carrying capacity (i.e., $B/K \leq 1$) combined with other biological benchmarks would be an appropriate status-based listing threshold. At this time we have no reason to disagree with this logic and agree that AFS standards are appropriate as they were developed for marine fishes.

The BRT considered many factors in determining that, for white marlin, the proper application of the ESA criterion "foreseeable future" is 10 - 15 years. We have examined the factors identified by the BRT and further considered particular threats, life-history characteristics, and population modeling to determine a projected period by which to consider the species' status and threats. It is consistent with the purpose of the ESA that the time frame for the foreseeable future be adequate to provide for the conservation and recovery of threatened species and the ecosystems upon which they depend. As suggested by IUCN and CITES, the period of time required to replace a spawning individual can be considered to assess risk. The BRT estimated that it would take approximately 3–5 years to replace a spawning white marlin; extrapolating to include three generations (the IUCN forecast period) would be equivalent to about 10 - 15 years. Notably, maximum age of white marlin is unknown and aging techniques are still being developed; a single tagged specimen has been reported at liberty for 18 years. Considering the best available information, we concur with the BRT that the foreseeable future for this species is within 15 years.

The BRT determined that the major threat to the white marlin is fishing mortality. Therefore, it established a two-tiered metric to assess status of white marlin: first establish if B/K was at or less then 0.01, then consider other additive criteria that would be indicative of excessive fishing pressure. If B/K is greater than 0.01, then the white marlin is not in danger of extinction and is not likely to become so in the foreseeable future. The additive criteria included population parameters such as population structure by age class, population size and biomass, depensation; distribution through geographic range; and rate of fishing mortality. The BRT used this tiered approach realizing that B/K was an indicator of the overall viability of the population, but other criteria were also important.

We do not disagree with using biomass relative to carrying capacity as a metric by which to indicate status of a species; by statute we are to use the best available scientific and commercial information available, and we believe the 2006 ICCAT stock assessment presents that information. Carrying capacity (i.e., K) is a metric used in stock assessments to indicate the maximum number of fish that can live in an area; subsequent fishing removes fish, and the biomass (total weight or volume of a species in a given area) is reduced below carrying capacity. In the case of white marlin, stock assessment reference points and models expressed with reference to carrying capacity were widely used and thus made a convenient status metric. We also agree with the BRT's approach of additive metrics: these other status indicators (i.e., decreasing trend in absolute population size or biomass; reduced range; loss of observed size classes or other evidence of recruitment failure; sustained increase in fishing mortality; increasingly rare interactions; or depensation) are sensitive to fishing pressure that complement the overall criterion of B/K with other indices. While this combination of indicators is potentially less conservative than a single population size-based threshold, it is more scientifically rigorous and, we believe, a much sounder basis for this listing decision.

For white marlin, available evidence indicates neither the carrying capacity indicator nor the additive fishing pressure indicators are currently applicable. We used the population modeling requested by the BRT to evaluate the risk of future white marlin population decline based on fishing mortality, as that is considered the major threat to white marlin. These models assessed the probability of population decline to less than 1 percent of carrying capacity at varying fishing mortality levels. Using a fishing mortality rate (i.e., F) of 0.16, which is much greater than the current rate of 0.09, results of the Bayesian Schaefer production model indicated that the probability of the white marlin population falling below a B/K of 0.01 within 15 years, and even the next 30 years was 0.

Consideration of Other Conservation Efforts

ESA section 4(b)(1)(A) requires the Secretary, in making listing determinations, to take into account those efforts, if any, being made by any state or foreign nation, or any political subdivision of such, to protect species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas. The ICCAT manages white marlin throughout the Atlantic Ocean. Resolutions and recommendations are in place to reduce and limit landings of white marlin, encourage voluntary release of live billfish in a manner to maximize survival, rebuild white marlin, and conduct periodic stock assessments. Meanwhile, the ICCAT Compliance Committee continues to make official determinations of non-compliance and to report at the annual ICCAT meetings.

ESA section 4(b)(1)(B) requires us to give consideration to species which have been designated as requiring protection from unrestricted commerce by any foreign nation, or pursuant to any international agreement; or identified as in danger of extinction, or likely to become so within the foreseeable future, by any state agency or any agency of a foreign nation that is responsible for the conservation of the species. We are not aware of any such special protections or designations. White marlin are not afforded any protective measures or special status via the CITES or the IUCN).

Conclusion

We have reviewed the status of Atlantic white marlin, considering the best scientific and commercial data available. We have given consideration to conservation efforts and special designations for white marlin by states and foreign nations. The biological status of the species and consideration of the ESA section 4(a)(1) factors indicate that the species is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become so in the foreseeable

future. We believe that Atlantic white marlin does not meet the ESA definition of an endangered or threatened species; therefore, the listing of Atlantic white marlin under the ESA is not warranted.

References

White Marlin Biological Review Team. 2007. Atlantic White Marlin Status Review. Report to National Marine Fisheries Service, Southeast Regional Office. December 10, 2007. 88 pp.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: December 28, 2007.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E7–25643 Filed 1–3–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–01]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–01 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 27, 2007.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

DEC 1 9 2007
In reply refer to:
I-07/004352

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-01, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to United Arab Emirates for defense articles and services estimated to cost $379 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations

Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations

Transmittal No. 08-01

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) Prospective Purchaser: United Arab Emirates

(ii) Total Estimated Value:

Major Defense Equipment*	$367 million
Other	$ 12 million
TOTAL	$379 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 224 AIM-120C-7 Advanced Medium Range Air-to-Air Missile (AMRAAM) Air Intercept Missiles, 200 GBU-31 Guided Bomb Unit (GBU) Joint Direct Attack Munition tail kits, 224 MK-84 2,000 pound General-Purpose Bombs (GPB), 450 GBU-24 PAVEWAY III with MK-84 2,000 pound GPB, 488 GBU-12 PAVEWAY II with MK-82 500 pound GPB, 1 M61A 20mm Vulcan Cannon with Ammunition Handling System, containers, bomb components, spare/repair parts, publications, documentation, personnel training, training equipment, contractor technical and logistics personnel services, and other related support elements.

(iv) Military Department: Air Force (YAD)

(v) Prior Related Cases, if any:
AE-D-SAA - $114M – 8Aug00
AE-D-YAB - $179M - 20Aug02
AE-D-YAC - $380M - pending

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: DEC 1 9 2007

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates – Various Munitions and Weapon Systems

The Government of the United Arab Emirates has requested a possible sale of 224 AIM-120C-7 Advanced Medium Range Air-to-Air Missile (AMRAAM) Air Intercept Missiles, 200 GBU-31 Guided Bomb Unit (GBU) Joint Direct Attack Munition tail kits, 224 MK-84 2,000 pound General-Purpose Bombs (GPB), 450 GBU-24 PAVEWAY III with MK-84 2,000 pound GPB, 488 GBU-12 PAVEWAY II with MK-82 500 pound GPB, 1 M61A 20mm Vulcan Cannon with Ammunition Handling System, containers, bomb components, spare/repair parts, publications, documentation, personnel training, training equipment, contractor technical and logistics personnel services, and other related support elements. The estimated cost is $326 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country, that has been and continues to be an important force for political stability and economic progress in the Middle East. This proposed sale supports the prior sale of the Block 60 F-16s to the UAE.

The proposed sale of the weapons will strengthen the effectiveness and interoperability of a potential coalition partner, reduce the dependence on U.S. forces in the region and enhance any coalition operations the U.S. may undertake. The United Arab Emirates will have no difficulty absorbing these additional munitions into its armed forces. The proposed sale of these weapon systems will not affect the basic military balance in the region.

The principal contractors are the Raytheon Corporation in Waltham, Massachusetts; Boeing Corporation in St Louis, Missouri; and McAlester Army Ammunition Plant in McAlester, Oklahoma. There are no known offset agreements proposed in connection with this potential sale.

Several U.S. Air Force pilots and maintenance Extended Training Service Specialists already in the United Arab Emirates are expected to remain for the next five years and will be able to support this potential sale.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-01

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AIM-120C-7 Advanced Medium Range Air-to-Air Missile (AMRAAM) is a new generation air-to-air missile. The AIM-120C-7 AMRAAM hardware, including the missile guidance section, is classified Confidential. State-of-the-art technology is used in the AIM-120C-7 to provide the missile with its unique beyond-visual-range capability. Major advances in the latest digital technology and microminiaturized solid state electronics make the AMRAAM more reliable and maintainable. Anti-tempering security measures have been incorporated into the AIM-120C-7 to prevent exploitation of the AMRAAM software.

2. The GBU-12 Guided Bomb Unit (GBU) PAVEWAY II is a laser guidance kit and tail assembly for general-purpose bombs (Mk-82 500 pound bomb). The hardware is Unclassified and the ballistics data are Confidential. The laser seeker allows the user to select a unique code for use in the multi-laser environment.

3. The GBU-24 Guided Bomb Unit PAVEWAY III is a laser guidance kit that allows employment of a general purpose bomb at both medium and low altitudes with terminal impact angle improvements over the PAVEWAY II series. Design features include proportional navigation, increased terminal accuracy, off-axis release envelopes, trajectory shaping, and target re-acquisition capability. The hardware and penetration performance are Secret and the ballistics data are Confidential.

4. The GBU-31 Joint Direct Attack Munitions is actually a guidance kit that converts existing unguided free-fall bombs into precision-guided "smart" munitions. By adding a new tail section containing an Inertial Navigation System (INS) guidance/Global Positioning System (GPS) guidance to existing inventories of MK-84 bombs, the cost effective JDAM provides highly accurate weapon delivery in any "flyable" weather. The INS, using updates from the GPS, helps guide the bomb to the target via the use of movable tail fins. The JDAM All Up Round and all of its components are Unclassified, technical data for JDAM is classified up to Secret. Weapon accuracy is dependent on target coordinates and present position as entered

into the guidance control unit. After weapon release, movable tail fins guide the weapon to the target coordinates. In addition to the tail kit, other elements in the overall system that are essential for successful employment include:

1) Access to accurate target coordinates.
2) INS/GPS capability.
3) Operational Test and Evaluation Plan.

5. If a technologically advanced adversary were to obtain knowledge of the specific hardware in the proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 07–6284 Filed 1–3–08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–27]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–27 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 27, 2007.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

DEC 1 9 2007
In reply refer to:
I-07/014565-CFM

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-27, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the United Kingdom for defense articles and services estimated to cost $1.071 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 08-27

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: United Kingdom**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 130 million
Other	$ 941 million
TOTAL	$1.071 billion

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 10 MQ-9 Unmanned Aerial Vehicle (UAV) aircraft, 5 Ground Control Stations, 9 Multi-Spectral Targeting Systems (MTS-B), 9 AN/APY-8 Lynx Synthetic Aperture Radar/Ground Moving Target Indicator (SAR/GMTI) systems, 3 Satellite Earth Terminal Sub Stations (SETSS), 30 H764 Embedded Global Positioning System Inertial Navigation Systems, Lynx SAR and MTS-B spares, engineering support, test equipment, ground support, operational flight test support, communications equipment, technical assistance, personnel training/equipment, spare and repair parts, and other related elements of logistics support.**

(iv) **Military Department: Air Force (SAC)**

(v) **Prior Related Cases, if any: FMS Case SMI-$101M-14Feb07**
FMS Case SMJ-$ 17M-04Oct07

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress:** DEC 1 9 2007

* **as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION (U)

United Kingdom – (10) MQ-9 Unmanned Aerial Vehicle Aircraft

The Government of the United Kingdom has requested a possible sale of 10 MQ-9 Unmanned Aerial Vehicle (UAV) aircraft, 5 Ground Control Stations, 9 Multi-Spectral Targeting Systems (MTS-B), 9 AN/APY-8 Lynx Synthetic Aperture Radar/Ground Moving Target Indicator (SAR/GMTI) systems, 3 Satellite Earth Terminal Sub Stations (SETSS), 30 H764 Embedded Global Positioning System Inertial Navigation Systems, Lynx SAR and MTS-B spares, engineering support, test equipment, ground support, operational flight test support, communications equipment, technical assistance, personnel training/equipment, spare and repair parts, and other related elements of logistics support. The estimated cost is $1.071 billion.

The United Kingdom is a major political and economic power in NATO and the Atlantic and a key democratic partner of the United States in ensuring peace and stability in this region and around the world.

The United Kingdom requests these capabilities to provide for the defense of deployed troops, regional security, and interoperability with the United States. This program will increase the United Kingdom's ability to contribute to future NATO, coalition, and anti-terrorism operations that the U.S. may undertake. The United Kingdom is a staunch supporter of the U.S. in Iraq and Afghanistan, and in the Global War on Terror. The United Kingdom troops are deployed in support of IRAQI FREEDOM and ENDURING FREEDOM, where U.S. assets currently provide this proposed capability. By acquiring this capability, the United Kingdom will be able to provide the same level of protection for its own forces and those of the United States.

The proposed sale of this equipment and support will not affect the basic military balance in the region. The United Kingdom will have no difficulty absorbing these aircraft into its armed forces.

The principal contractors will be:

General Atomics Aeronautical Systems, Inc.	**San Diego, California**
Raytheon Space and Airborne Systems	**El Segundo, California**
General Atomics Lynx Systems	**San Diego, California**

There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government or contractor representatives to the United Kingdom.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-27

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The MQ-9 Unmanned Aerial Vehicle Aircraft is Unclassified. The highest level of classified information required for training, operation, and maintenance is Secret. The MQ-9 is a long-endurance, high-altitude, remotely operated aircraft that can be used for surveillance, military reconnaissance, and targeting missions. Real-time missions are flown under the control of a pilot in a Ground Control Station (GCS). A data link is maintained that uplinks control commands and downlinks video with telemetry data. The data link can be a C-Band Line-of-Sight (LOS) communication or Ku–Band Over-the-Horizon Satellite Communication (SATCOM). Autonomous missions are preprogrammed by pilots in the GCS and are flown under the control of an onboard suite of redundant computers and sensors. Payload imagery and data are downlinked to a GCS. A pilot initiates autonomous missions once the aircraft is airborne and lands the aircraft when the mission is completed. Pilots can change preprogrammed mission parameters as often as required. The aircraft can also be handed off to other strategically placed ground- or sea-based Ground Control Stations. The MQ-9 is designed to carry 800 pounds of internal payload with maximum fuel and can carry multiple mission payloads aloft. The MQ-9 will be configured for the following payloads: Electro-Optical/Infrared (EO/IR), Synthetic Aperture Radar (SAR), Electronic Support Measures (ESM), Signals Intelligence (SIGINT), laser designators, and various weapons packages. The MQ-9 systems will include the following components:

a. The Ground Control Station (GCS) can be either fixed or mobile. The fixed GCS is enclosed in a customer-specified shelter. It incorporates workstations that allow operators to control and monitor the aircraft, as well as record and exploit downlinked payload data. The mobile GCS allows operators to perform the same functions and is contained on a mobile trailer. Workstations in either GCS can be tailored to meet customer requirements. The GCS, technical data, and documents are Unclassified.

b. The General Atomics AN/APY-8 Synthetic Aperture Radar/Ground Moving Target Indicator (SAR/GMTI) system provides all-weather surveillance, tracking and targeting for military and commercial customers from manned and

unmanned vehicles. The AN/APY-8 operates in the Ku band, using an offset-fed dish antenna mounted on a three-axis stabilized gimbal. It has a large field of regard: 5-60 degrees in depression, ± (45-135) degrees in squint in SAR mode, and ± (0-175) degrees in squint in GMTI mode. The AN/APY-8 has 0.3 to 3 meter resolution in stripmap mode and can image up to a 10-km wide swath (at 3 meter resolution). Swaths from multiple passes are combined for wide-area surveillance. The AN/APY-8 SAR/GMTI radar system and technical data/documents are Unclassified.

c. The Raytheon Multi-Spectral Targeting System (MTS-B) is a multi-use infrared (IR), electro-optical (EO), and laser detecting ranging-tracking set, developed and produced for use by the U. S. Air Force in Predator B. This advanced EO and IR system provides long-range surveillance, high altitude, target acquisition, tracking, range finding, and laser designation for the HELLFIRE missile and for all tri-service and NATO laser-guided munitions.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 07–6285 Filed 1–3–08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Impact Statement (FEIS) for the Renewal of the Special Use Permit (SUP) for Military Activities on the De Soto National Forest and Implementation of Installation Mission Support Activities at Camp Shelby, MS

AGENCY: National Guard Bureau (NGB), Department of the Army, DoD.

ACTION: Notice of Availability.

SUMMARY: This FEIS has been prepared by the NGB and the U.S. Department of Agriculture—Forest Service (USDA–FS). NGB is the lead agency and the USDA–FS is serving as a cooperating agency in the development of this FEIS for the renewal of the current SUP that authorizes military training activities at Camp shelby Training Site.

DATES: The waiting period for the FEIS will end 30 days after publication of an NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Written comments or questions regarding the FEIS may be forwarded to Mr. Tim Powell, Public Affairs Officer, Joint Forces Headquarters, Mississippi National Guard, P.O. Box 5027, Jackson, Mississippi, 39296–5027.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Powell, Public Affairs Officer, at (601) 313–6349. The alternate point of contact for this action is Major Robert A. Lemire, Mississippi Army National Guard, Director Environmental Programs at (601) 313–6228.

SUPPLEMENTARY INFORMATION: This FEIS discusses in-depth two alternatives: the Preferred Alternative and the No-Action Alternative. Under the Preferred Alternative, the Mississippi National Guard (MSNG) proposes the renewal of the USDA–FS SUP for a 20-year timeframe and authorizes current activities and mission requirements to continue on State of Mississippi, DoD, and National Forest lands. This alternative will help meet the Army requirements associated with the Proposed Action by constructing various new ranges and facilities at Camp Shelby and allowing for the continuation of necessary maintenance, repair, and rehabilitation of the infrastructure at Camp Shelby. The No Action Alternative would authorize the renewal of the SUP for a 10-year timeframe (same as previous SUP) and military activities would continue as currently permitted. this alternative would not authorize the proposed construction of new ranges and facilities and improvements and improved management practices. Other alternatives considered but eliminated from detailed study are also addressed in the FEIS. the potential for significant impacts exists for both alternatives; however with the implementation of the ongoing and proposed mitigation and monitoring measures, the unavoidable adverse impacts can be mitigated to an acceptable level. Under the preferred alternative, current activities and mission requirements will continue on State of Mississippi, DoD, and National Forest lands. This alternative includes implementation of the projects and programs discussed in this FEIS, in addition to the continuation of necessary maintenance, repair, and rehabilitation of the military training infrastructure at Camp Shelby. Environmental consequences for the proposed actions; e.g. renewal of the SUP, and construction, operation, and maintenance of several new projects at Camp Shelby have been analyzed. The new project proposals have the potential for the following adverse impacts:

(1) Direct and/or indirect effects on habitat for other proposed, endangered, threatened, and sensitive species such as Louisiana quillwort (federal endangered species), black pine snake (federal candidate species), and other state and USDA–FS sensitive plant species. There would be direct positive effects on the red-cockaded woodpecker when colonies are relocated into the proposed Habitat Management Area at sometime in the future.

(3) Direct and/or indirect effects on approximately 275 acres of wetlands

(requiring fill of an estimated 20 acres of wetlands).

Direct effects by removal of approximately 120 acres for pine and hardwood forested areas.

(5) Direct effects by movement of approximately 250,000 cubic yards of earth and resulting direct and/or indirect effects from erosion and sedimentation.

The proposed Combined Arms ARea (CAA) reconfiguration in this FEIS would result in a 4,300 acre reduction in the amount of unavoidable impacts associated with forest clearing/thinning from the scope of the CAA last addressed and approved for construction in the 1994 SUP EIS. Also associated with the CAA is the proposed Combined Arms Collective Training Facility (CACTF), which would be co-located within the CAA maneuver areas to be cleared and/or thinned and would not require any further significant timber removal. This reduction of approximately 4,300 acres of impacts is an improvement from an environmental standpoint over the original plan and it still meets military training requirements.

The No Action alternative has two subsets, one related to the SUP and the other to actions associated with mission support (construction in the cantonment area and the range and training area). In regards to the SUP, this is defined as renewal of a 10-year SUP for "continuation of military activities as presently permitted." This alternative does not allow for improved and future mission requirements, future military construction funding, improved management practices, and a 20-year SUP permit.

A copy of the FEIS can be found at the following Web site: *http://www.ngms.state.ms.us/env/Natural%20Resources/nat_resources_06.htm.*

Following the 30-day waiting period, a Record of Decision will be signed.

Dated: November 13, 2007.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army, (Environment, Safety, and Occupational Health).

[FR Doc. 07–6286 Filed 01–03–08; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Salt Lake City Area Integrated Projects Firm Power, Colorado River Storage Project Transmission and Ancillary Services Rates—Rate Order No. WAPA–137

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Power Rates.

SUMMARY: The Western Area Power Administration (Western) is proposing adjustments to the Salt Lake City Area Integrated Projects (SLCA/IP) firm power rates and the Colorado River Storage Project (CRSP) Transmission and Ancillary Services Rates. The SLCA/IP consists of the CRSP, Collbran, and Rio Grande projects, which were integrated for marketing and ratemaking purposes on October 1, 1987, and two participating projects of the CRSP that have power facilities, the Dolores and Seedskadee projects. The current rates, under Rate Schedule SLIP–F8, expire September 30, 2010, but are not sufficient to meet the SLCA/IP revenue requirements. The proposed rates will provide sufficient revenue to pay all annual costs, including operation, maintenance, and replacements (OM&R), interest expenses, and the required repayment of investment within the allowable period.

The only proposed changes to the CRSP Transmission and Ancillary Services Rates are to change the expiration dates to September 30, 2010, in alignment with the SLCA/IP firm power rates.

Western will prepare a brochure that provides detailed information on the rates to all interested parties. The proposed rates under Rate Schedules SLIP–F9, SP–PTP7, SP–NW3, SP–NFT6, SP–CF1, SP–SD3, SP–RS3, SP–EI3, SP–FR3, and SP–SSR3 are scheduled to go into effect on October 1, 2008. Publication of this **Federal Register** notice begins the formal process for the proposed rates.

DATES: The consultation and comment period begins today and will end April 3, 2008. Western will present a detailed explanation of the proposed rates at a public information forum to be held on February 5, 2008, at 1:30 p.m. Western will accept oral and written comments at a public comment forum to be held on March 4, 2008, at 1:30 p.m. Western will accept written comments any time during the consultation and comment period.

ADDRESSES: Send written comments to Mr. Bradley S. Warren, CRSP Manager, Colorado River Storage Project Management Center, Western Area Power Administration, 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111–1580, (801) 524–5493, e-mail CRSPMCadj@wapa.gov. Western will post information about the rate process on its Web site under the "FY 2009 SLCA/IP Rate Adjustment" section located at: *http://www.wapa.gov/CRSP/ratescrsp/default.htm.*

Western will post official comments received by letter and e-mail to its Web site after the close of the comment period. Western must receive written comments by the end of the consultation and comment period to ensure consideration in Western's decision process. The public information forum and public comment forum will be held at the Radisson Hotel Salt Lake City Airport, 2177 West North Temple, Salt Lake City, UT 84116–3196.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Loftin, Rates Manager, Colorado River Storage Project Management Center, Western Area Power Administration, 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111–1580, (801) 524–6380, e-mail *loftinc@wapa.gov.*

SUPPLEMENTARY INFORMATION: The proposed rates for SLCA/IP firm power are designed to return an annual amount of revenue to meet the repayment of power investment, payment of interest, purchased power, OM&R expenses, and the repayment of irrigation assistance costs as required by law.

The Deputy Secretary of Energy approved Rate Schedule SLIP–F8 for firm power service on August 1, 2005.[1] Rate Schedule SLIP–F8 became effective on October 1, 2005, for a 5-year period ending September 30, 2010. Under Rate Schedule SLIP–F8, the energy rate is 10.43 mills per kilowatthour (mills/kWh), and the capacity rate is $4.43 per kilowattmonth (kWmonth). The composite rate is 25.28 mills/kWh. The Deputy Secretary of Energy also approved a rate extension for the CRSP Transmission and Ancillary Services Rates through September 30, 2010.[2]

[1] Rate Order No. WAPA–117, 70 FR 47823, August 15, 2005. FERC confirmed and approved the rate schedules on June 13, 2006, under FERC Docket No. EF05–5171–000 (115 FERC 62,271). Approved Rate Schedule SLIP–F8 became effective on October 1, 2005, for a 5-year period ending September 30, 2010.

[2] Rate Order WAPA–132, 72 FR 37758, July 11, 2007. Extended Rate Schedules SP–PTP6, SP–NW2, SP–NFT5, SP–SD2, SP–RS2, SP–E12, SP–FR2, and SP–SSR1 for transmission and ancillary services were previously submitted as Rate Order No. WAPA–99, 67 FR 60656 (September 26, 2002), and approved by FERC on November 14, 2003 (105 FERC 62,093).

Firm Power Rates

The proposed rates are expected to become effective October 1, 2008. The proposed rates revenue requirements are based on the FY 2009 work plans for Western and the Bureau of Reclamation (Reclamation). These work plans form the bases for the FY 2009 Congressional budgets for the two agencies. The most current work plans will be included in the Rate Order submission. The FY 2006 historical data are the latest available for the rate proposal. The final ratesetting study will include the FY 2007 historical data as it becomes available.

The rate increase results primarily from the increase in the operation, maintenance, purchase power expense, and interest expense from the continued drought in the Upper Colorado River region. As in the prior rate adjustment for firm power, Western will determine firming energy purchase expense by using Median Hydrology. The table below displays the current and proposed firm power rates.

COMPARISON OF CURRENT AND PROPOSED FIRM POWER RATES

Rate schedule	Current rate October 1, 2006–September 30, 2010 SLIP–F8	Proposed rate October 1, 2008–September 30, 2013 SLIP–F9	Change (percent)
Base Rate:			
Energy: (mills/kWh)	10.43	11.95	15
Capacity: ($kW/month)	4.43	5.08	15
Composite Rate: (mills/kWh)	25.28	28.85	14

Cost Recovery Charge (CRC)

In setting its firm power rate, Western forecasts generation available from the SLCA/IP units and projects the firming energy purchase expense over the ratesetting period. These firming expense projections are included in the annual revenue requirement of the firm power rate. Over the last several years, both hydropower generation and power prices have been highly volatile. This volatility has caused actual purchased power expenses to be significantly higher than forecasted and has resulted in cost recovery issues for the SLCA/IP. To adequately recover expenses in times of financial hardship, Western will continue to calculate the cost recovery charge as in the current rate (SLIP–F8).

The CRC is an additional charge on all Sustainable Hydropower energy deliveries (long-term SLCA/IP hydropower capacity with energy) that may, at times, be applicable when cost recovery is at risk due to low hydropower generation and high prices for firming power. The conditions that would trigger the CRC, as well as a more detailed formula methodology of how and when the CRC would apply, will be discussed in further detail in the rate brochure and at the information forum.

An environmental impact statement is being conducted by Reclamation for "Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lakes Powell and Mead" is in process, and the preferred alternative will more than likely result in less water releases during certain drought criteria. Therefore, Western has also included a mechanism that allows Western to re-calculate the CRC if the annual water release from Glen Canyon Dam falls below that of 8.23 million acre-feet.

Transmission and Ancillary Service Rates

Western is not proposing at this time to change the formula-based rate for Firm Point-to-Point, Network, and non-firm Transmission Services or Ancillary Services that have been offered in both the WACM and the WALC control areas. These are being included in this rate process, however, to extend these formula rates through September 30, 2013, along with the firm power rates.

Legal Authority

Since the proposed rates constitute a major rate adjustment as defined by 10 CFR Part 903, Western will hold both a public information forum and a public comment forum. After reviewing public comments and making possible amendments or adjustments to its proposed rates, Western will recommend the Deputy Secretary of Energy approve the proposed rates on an interim basis.

Western is establishing firm electric service rates for SLCA/IP under the Department of Energy Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts that specifically apply to the projects involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing Department of Energy (DOE) procedures for public participation in power rate adjustments (10 CFR Part 903) were published on September 18, 1985 (50 FR 37835).

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that Western initiates or uses to develop the proposed rates are available for inspection and copying at the Colorado River Storage Project Management Center, 150 East Social Hall Avenue, Suite 300, Salt Lake City, Utah. Many of these documents and supporting information are also available on its Web site under the "FY 2009 SLCA/IP Rate Adjustment" section located at *http://www.wapa.gov/CRSP/ratescrsp/default.htm.*

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321, *et seq.*; the Council on Environmental Quality Regulations for implementing NEPA (40 CFR Part 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no

clearance of this notice by the Office of Management and Budget is required.

Dated: December 5, 2007.

Timothy J. Meeks,

Administrator.

[FR Doc. E7–25459 Filed 1–3–08; 12:05 pm]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6694–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared 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 6, 2007 (72 FR 17156).

Draft EISs

EIS No. 20070388, ERP No. D–FHW–F40440–00, Blue Water Bridge Plaza Study and Improve to the I–94/1–69 Corridor, To Provide Safe, Efficient and Secure Movement of People and Goods across the Canadian—U.S. Border, Port Huron Area, St. Clair County, MI.

Summary: EPA expressed environmental concerns about impacts to air quality and further recommends the creation and implementation of a sustainable building implementation plan. Rating EC2.

EIS No. 20070404, ERP No. D–NRC–H06006–KS, GENERIC—License Renewal of Nuclear Plants Regarding Wolf Creek Generating Station, (WCGS) Unit 1. Supplement 32 to NUREG 1437, Implementation, Coffey Country, KS.

Summary: EPA expressed environmental concerns about the potential ecological effects of increased concentrations of tritium in Coffee County Lake and the potential tritium contamination of groundwater resources. Rating EC2.

EIS No. 20070437, ERP No. D–NPS–K65334–HI, PROGRAMMATIC EIS—Ala Kahakai National Historic Trail Comprehensive Management Plan, To Provide Long-Term Direction for Natural and Cultural Resource, Island of Hawaii, HI.

Summary: EPA does not object to the proposed project. Rating LO.

EIS No. 20070473, ERP No. D–FHW–J40179–MT, US–212 Reconstruction Project, from Rockvale to Laurel, Proposes to Improve Safety for Local and Regional Traffic Area, Yellowstone and Carbon Counties, MT.

Summary: EPA expressed environmental concerns about impacts to water quality, wetlands, farmland, wildlife habitat, and wildlife movement. EPA recommends that features be designed into the new highway, such as bridges and culverts that facilitate safe wildlife passage under the roadway to allow wildlife movement to and from the Yellowstone River riparian area. Rating EC2.

EIS No. 20070383, ERP No. DA–BLM–J65418–UT, Price Field Resource Management Plan, Supplemental Information for Non-Wilderness Study Area (WSA) Lands with Wilderness Characteristics. Implementation, Carbon and Emery Counties, UT.

Summary: EPA expressed environmental concerns about potential impacts or further decline in function of already impaired lands in Areas of Critical Environmental Concern which overlap non-WSA lands and along suitable river segments for possible wild scenic or recreational designation within non-WSA lands unless management prescriptions to protect wilderness characteristics are applied. Rating EC2.

Final EISs

EIS No. 20070423, ERP No. F–AFS–K61165–00, Great Basin Creek South Rangeland Management Projects, Management of 12 Livestock Grazing Allotments, Bridgeport Ranger District, Humboldt-Toiyabe National Forest, Lyon and Mineral Counties, NV and Mono County, CA.

Summary: EPA continues to have environmental concerns about potential and continued impacts to rangelands and with the lack of specificity of the analyses, monitoring, and mitigation needs discussed in the final EIS. EPA recommends that the ROD include a schedule for the development of revised allotment management plans.

EIS No. 20070427, ERP No. F–AFS–K65316–CA, SPI Road Project, Construction of an Access Road Across National Forest Land, Special Use Permit, Six Rivers National Forest, Lower Trinity Ranger District, Trinity County, CA.

Summary: EPA continues to have environmental concerns about potential cumulative impacts to air quality, water quality, hydrology, fish and wildlife in conjunction with the SPI Timber Harvest Plan and effects of project implementation on proposed the Northern California Coastal Wild Heritage Wilderness Act.

EIS No. 20070466, ERP No. F–FHW–F40436–WI, TIER 1—FEIS—United States Highway 8 Project, Construction from Wis 35(N)to USH 53, Selected the Preferred Segment Alternative, Funding and Right-of-Way Permit, Polk and Barron Counties, WI.

Summary: EPA does not object to the Tier 1 stage of the proposed project. EPA intends to provide further input in subsequent NEPA analyses done on the project corridor.

EIS No. 20070485, ERP No. F–AFS–K65297–CA, Kirkwood Mountain Resort, Proposed 2003 Mountain Master Development Plan, Implementation, Eldorado National Forest, Amador, Alpine and EL Dorado Counties, CA.

Summary: EPA continues to have environmental concerns about potential adverse impacts to water quality and habitat for the yellow-legged frog. EPA recommends consideration of Alternative 3–Limited Emigrant Valley Development, because it minimizes cumulative watershed effects and avoids impacts to Mountain yellow-legged frog caused by the expansion of recreation into known habitat.

EIS No. 20070491, ERP No. F–AFS–J65472–CO, Bull Mountain Natural Gas Pipeline, Construct, Operate and Maintain Natural Gas Pipeline, Issuance of Right-of-Way Grant and Temporary Use Area Permits, Gunnison, Delta, Mesa, Garfield Counties, CO.

Summary: The final EIS addressed EPA's request for information on impacts to wetlands. However, EPA continues to have environmental concerns about the potential environmental impacts to fens, riparian resources, upland areas, and air quality, including project emissions. The ROD should consider adding more detailed information on the monitoring and mitigation measures.

EIS No. 20070493, ERP No. F–AFS–L65533–ID, Sun Valley Resort (Bald Mountain) 2005 Master Plan—Phase I Project, Implementation, Special-Use-Permits, Sawtooth National Forest, Blaine County, ID.

Summary: EPA's concerns were addressed by selection of a modified Alternative 3 as the Preferred Alternative. EPA provided recommendations regarding the

Cumulative Effects Analysis and Best Management Practices for water conservation.

Dated: December 31, 2007.

Clifford Rader,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E7–25637 Filed 1–3–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6694–6]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 12/24/2007 Through 12/28/2007

Pursuant to 40 CFR 1506.9.

EIS No. 20070547, Draft Supplement, COE, TX, Central City Project, Proposed Modification to the Authorized Projects which provides Flood Damage Reduction, Habitat Improvement, Recreation and Urban Revitalization, Upper Trinity River Central City, Upper Trinity River Basin, Trinity River, TX, *Comment Period Ends:* 02/19/2008, Contact: Saji Alummuttil 817–886–1764.

EIS No. 20070548, Final EIS, NPS, CO, Rocky Mountain National Park, Elk and Vegetation Management Plan, Implementation, Grand and Larimer Counties, CO, *Wait Period Ends:* 02/04/2008, *Contact:* Vaughn L. Baker 970–586–1206.

EIS No. 20070549, Final EIS, BLM, UT, Chapita Wells-Stagecoach Area Natural Gas Development, Drilling and Production Operations of Natural Gas Wells and Associated Access Road, and Pipelines, Uintah County, UT, *Wait Period Ends:* 02/04/2008, *Contact:* Stephanie Howard 435–781–4469.

EIS No. 20070550, Draft EIS, FHW, MN, US–14 Reconstruction Project, Improvement to Truck Highway 14 from Front Street in New Ulm to Nicollet County Road 6 in North Mankato Brown and Nicollet Counties, MN, *Comment Period Ends:* 03/15/2008, *Contact:* Cheryl Martin 651–291–6120.

EIS No. 20070551, Final EIS, BLM, UT, Greater Deadman Bench Oil and Gas Producing Region, Proposes to Develop Oil and Gas Resources, Right-of-Way Grants and Applications for Permit to Drill, Vernal, Uintah County, UT, *Wait Period Ends:* 02/04/2008, *Contact:* Stephanie Howard 435–781–4469.

EIS No. 20070552, Final EIS, FHW, MN, Scott County State Aid Highway (CSAH) 21 Project, Extension from CSAH 42 in Prior Lake to CSAH 18 at Southbridge Parkway in Shakopee, U.S. Army COE Section 404 Permit, Scott County, MN, *Wait Period Ends:* 02/04/2008, *Contact:* Cheryl Martin 651–291–6120.

EIS No. 20070553, Final EIS, BLM, WY, Rawlins Field Office Planning Area Resource Management Plan, Addresses the Comprehensive Analysis of Alternatives for the Planning and Management of Public Land and Resource Administered by (BLM), Albany, Carbon, Laramie and Sweetwater Counties, WY, *Wait Period Ends:* 02/04/2008, *Contact:* Ken Peacock 307–775–6113.

EIS No. 20070554, Final EIS, FRC, CO, High Plains Expansion Project, (Docket No. CP07–207–000) Natural Gas Pipeline Facility, Construction and Operation, U.S. Army COE 404, Weld, Adams, and Morgan Counties, CO, *Wait Period Ends:* 02/04/2008, *Contact:* Andy Black 1–866–208–3372.

EIS No. 20070555, Draft EIS, DHS, CA, U.S. Border Patrol San Diego Sector, Proposed Construction, Operation, and Maintenance of Tactical Infrastructure, San Diego County, CA, *Comment Period Ends:* 02/19/2008, *Contact:* Gregory Giddens 202–344–2450.

EIS No. 20070556, Final EIS, NGB, MS, Camp Shelby Joint Force Training Center, Implementation of Installation Mission Support Activities, Renewal of Special Use Permit, De Soto National Forest, in portions of Forrest, George and Perry Counties, MS, *Wait Period Ends:* 02/04/2008, *Contact:* Alisa Dickson 703–607–9620.

EIS No. 20070557, Final EIS, IBW, TX, PROGRAMMATIC—Rio Grande Flood Control Projects, Proposing a Range of Alternatives for Maintenance Activities and Future Improvements, along the Texas-Mexico Border, *Wait Period Ends:* 02/04/2008, *Contact:* Daniel Borunda 915–832–4767.

EIS No. 20070558, Final EIS, NPS, VA, Great Falls Park General Management Plan, Implementation, George Washington Parkway, Fairfax County, VA, *Wait Period Ends:* 2/04/2008, *Contact:* David Vela 703–289–2500.

Amended Notices

EIS No. 20070450, Draft Supplement, WAP, 00, Big Stone II Power Plant and Transmission Project, Addresses the Impacts of Changes to the Proposed Action relative to Cooling Alternatives and the Use of Groundwater as Backup Water Source, U.S. Army COE Section 10 and 404 Permits, Grant County, SD and Big Stone County, MN , *Comment Period Ends:* 02/28/2008, *Contact:* Nancy Werdel 720–962–7251.

Revision of FR Notice Published 10/26/2007: Extending Comment Period from 12/10/2007 to 02/28/2008

EIS No. 20070484, Draft EIS, FHW, 00, Interstate-94, I–43, I–894, and WI–119 (Airport Spur) I–94/USH 41 Interchange to Howard Avenue, To Address Freeway System's Deteriorated Conditions, Funding and U.S. Army COE Section 404 Permit, Kenosha, Racine and Milwaukee Counties, WI and Lake County, IL, *Comment Period Ends:* 01/25/2008, *Contact:* David Scott 608–829–7522.

Revision Notice Published on 11/16/2007: Extending Comment Period from 12/31/2007 to 01/25/2008

Dated: December 31, 2007.

Clifford Rader,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E7–25638 Filed 1–3–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2007–1200; FRL–8513–3]

Board of Scientific Counselors, Executive Committee Meeting—January 2008

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting of the Board of Scientific Counselors (BOSC) Executive Committee.

DATES: The meeting will be held on Thursday, January 24, 2008, from 8:30 a.m. to 5 p.m., and will continue on Friday, January 25, 2008, from 8:30 a.m. until 12 noon. All times noted are eastern time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to 1 business day before the meeting.

ADDRESSES: The meeting will be held at the Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037, *Tel:* (202) 775–

0800. Submit your comments identified by Docket ID No. EPA–HQ–ORD–2007–1200, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Send comments by electronic mail (e-mail) to: ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2007–1200.
- *Fax: Fax comments to:* (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2007–1200.
- *Mail: Send comments by mail to:* Board of Scientific Counselors, Executive Committee Meeting—January 2008 Docket, *Mailcode:* 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–ORD–2007–1200.
- *Hand Delivery or Courier. Deliver comment to:* EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2007–1200. **Note:** this is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–1200. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Board of Scientific Counselors, Executive Committee Meeting—January 2008 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Lorelei Kowalski, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *via phone/voice mail at:* (202) 564–3408; *via fax at:* (202) 565–2911; or *via e-mail at: kowalski.lorelei@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Lorelei Kowalski, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the meeting include, but are not limited to: review of the revised Technology for Sustainability Subcommittee draft report, Endocrine Disrupting Chemicals Mid-Cycle draft report, Particulate Matter/Ozone (Air) Mid-Cycle draft report, and National Center for Environmental Research draft letter report; ORD response to the BOSC Safe Pesticides/Safe Products program review report recommendations; ORD responses to the BOSC Human Health, Eco, and Drinking Water Mid-Cycle report recommendations; update on the BOSC mid-cycle review subcommittees (Global Change and Land); update on the BOSC program review subcommittees (Human Health Risk Assessment and Homeland Security); update on the BOSC standing subcommittees (Computational Toxicology, National Exposure Research Lab, and National Center for Environmental Research); discussion of BOSC performance material requests and rating tool guidance; update on BOSC workgroups; ORD update; an update on EPA's Science Advisory Board activities; and future issues and plans. The meeting is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Lorelei Kowalski (202) 564–3408 or *kowalski.lorelei@epa.gov.* To request accommodation of a disability, please contact Lorelei Kowalski, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: December 27, 2007.

Connie Bosma,

Acting Director, Office of Science Policy.

[FR Doc. 07–6288 Filed 1–3–08; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8513–5]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory Committee Teleconference Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Good Neighbor Environmental Board (GNEB) will meet in a public teleconference on January 28, 2008, from 12 p.m. to 1:30 p.m. Eastern Time. The meeting will be hosted out of the main conference room, Office of Cooperative Environmental Management (OCEM), U.S. Environmental Protection Agency (EPA) East Building, 1201 Constitution Ave., NW., Washington, DC 20004. The meeting is open to the public; however, due to limited space, seating will be on a registration-only basis. For further information regarding the teleconference meeting, please contact the individuals listed below.

Background: GNEB is a federal advisory committee chartered under the Federal Advisory Committee Act, Public Law 92–463. GNEB provides advice and recommendations to the President and Congress on environmental and infrastructure issues along the U.S. border with Mexico.

Purpose of Meeting: After extensive research, analysis, and outreach, GNEB has prepared its final draft Eleventh Report with recommendations on how the federal government can most effectively support communities located along the U.S. border adjoining Mexico with preparation for, and the management of, natural disasters. The purpose of this teleconference is for the Board to conduct a final review and decide whether to approve its draft report.

Availability of Materials: If you wish to receive a copy of the draft report, please contact Designated Federal Officer (DFO), Elaine Koerner, at the address below.

SUPPLEMENTARY INFORMATION: Members of the public wishing to gain access to the conference room on the day of the meeting must contact Elaine Koerner, DFO for GNEB, U.S. Environmental Protection Agency (1601M), OCEM, EPA East Building, 1201 Constitution Ave., NW., Washington, DC 20004; telephone/voice mail at (202) 564–2586 or via e-mail at *koerner.elaine@epa.gov*. If you wish to make oral comments or to submit written comments to the Board, please contact DFO Koerner by January 21, 2008.

General Information: Additional information concerning the GNEB can be found on its web site at *http://www.epa.gov/ocem/gneb*.

Meeting Access: For information on access or services for individuals with disabilities, please contact Elaine Koerner at 202–564–2586. To request accommodation of a disability, please contact Elaine Koerner, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: December 26, 2007.

Elaine Koerner,

Designated Federal Officer.

[FR Doc. E7–25642 Filed 1–3–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 03–123; DA 07–4924]

Consumer & Governmental Affairs Bureau Seeks Comment on Petition for Clarification Concerning the Provision of Deaf Blind Relay Service (DBRS)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission's Consumer & Governmental Affairs Bureau (Bureau) seeks comment on a petition for clarification filed by Hawk Relay (Hawk) concerning the provision of Deaf Blind Relay Service (*DBRS Petition*). Specifically, the Bureau seeks comment on whether DBRS falls within the definition of Telecommunications Relay Services (TRS) as set forth in section 225 of the Communications Act of 1934.

DATES: Comments are due on or before February 4, 2008. Reply comments are due on or before February 19, 2008.

ADDRESSES: Interested parties may submit comments identified by [CG Docket No. 03–123 and/or DA 07–4924], by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site: *http://www.fcc.gov/cgb/ecfs/*, or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and CG Docket No. 03–123. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Parties who choose to file by paper should also submit their filings on compact disc. The compact disc should be submitted, along with three paper copies to: Dana Wilson, Consumer & Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW., Room 3-C418, Washington, DC 20554. Such a submission should be on a compact disc formatted in an IBM compatible format using Word 2003 or a compatible software. The compact disc should be accompanied by a cover letter and should be submitted in "read only" mode. The compact disc should be clearly labeled with the commenter's name, proceeding (CG Docket No. 03–123), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the compact disc. The label should also include the following phrase "CD-Rom Copy—Not an Original." Each compact disc should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters filing by paper must send a compact disc copy to the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan Amann, Consumer & Governmental Affairs Bureau, Disability Rights Office, at (202) 418–1022 (voice), (202) 418–2540 (TTY), or e-mail at *Alan.Amann@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 07–4924. Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section.

Pursuant to 47 CFR 1.1206, this matter shall be treated as a "permit-but-disclose" proceeding in which *ex parte* communications are subject to disclosure.

The full text of document DA 07–4924 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document DA 07–4924 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160. Document DA 07–4924 and subsequently filed documents in this matter may also be found by searching ECFS at *http://www.fcc.gov/cgb/ecfs* (insert CG Docket No. 03–123 into the Proceeding block).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Document DA 07–4924 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.html.*

Synopsis

On May 18, 2007, Hawk filed its *DBRS Petition* for clarification proposing DBRS as a form of TRS compensable from the Interstate TRS Fund. As described by Hawk, its proposed DBRS would use an interpreter (a "Communications Facilitator" (CF)) to sit with the deaf/blind user, place or receive conventional voice-to-voice telephone calls on his or her behalf, and interpret the ensuing conversation(s). The CF would travel to the DBRS consumer's location to assist in placing the call. Alternatively, a DBRS consumer could travel to a regional DBRS center to place a call through a CF.

The Bureau seeks comment on the *DBRS Petition*, including, specifically, whether DBRS falls within the definition of TRS as set forth in section 225(a)(3) of the Communications Act of 1934, 47 U.S.C. 225(a)(3). The Bureau notes, for example, that Hawk's proposed DBRS does not fit within the typical two-leg relay paradigm in which a relay center receives and places inbound and outbound calls between the end users to the relay call. Instead, the DBRS would employ a CF to assist the caller, in person, in making a telephone call.

Federal Communications Commission.

Nicole McGinnis,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. E7–25648 Filed 1–3–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Meeting

ACTION: Amendment of Meeting Announcement, dated December 26, 2007.

SUMMARY: This notice amends the meeting date for the 19th meeting of the American Health Information Community in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.) The American Health Information Community will advise the Secretary and recommend specific actions to achieve a common interoperability framework for health information technology (IT).

Revised Meeting Date: January 22, 2008, from 8:30 to 12:00 p.m. (previously scheduled on January 15, 2008).

ADDRESSES: Hubert H. Humphrey building (200 Independence Avenue, SW., Washington, DC 20201), Conference Room 800.

SUPPLEMENTARY INFORMATION: The meeting will include presentations by the Population Health/Clinical Care Connections Workgroup and Electronic Health Records Workgroup on Recommendations to the Community; an update on the Health IT Physician Adoption Survey results; an update on the Healthcare Information Technology Standards Panel (HITSP) Interoperability Specifications; and an update on the findings from the *Enhancing Data Quality in EHRs Report.*

For further information, visit *http://www.hhs.gov/healthit/ahic.html.* A Web cast of the Community meeting will be available on the NIH Web site at: *http://www.videocast.nih.gov/.*

If you have special needs for the meeting, please contact (202) 690–7151.

Dated: December 27, 2007.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–6281 Filed 1–3–08; 8:45 am]

BILLING CODE 4150–45–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92–463, notice is hereby given of the fifteenth meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 8:30 a.m. to approximately 5:30 p.m. on Tuesday, February 12, 2008 and 8 a.m. to approximately 5 p.m. on Wednesday, February 13, 2008, at the Hubert H. Humphrey Building—200 Independence Avenue, SW., Washington, DC 20201. The meeting will be open to the public with attendance limited to space available. The meeting also will be Web cast.

The main agenda item will involve deliberations on the oversight of genetic testing, including an overview of public comments received on the Committee's draft report *U.S. System of Oversight of Genetic Testing: A Response to the Charge of the Secretary of HHS* and the formulation of final recommendations to the Secretary.

As always, the Committee welcomes hearing from anyone wishing to provide public comment on any issue related to genetics, health and society. Individuals who would like to provide public comment should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or e-mail at *carrs@od.nih.gov.* The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892. Anyone planning to attend the meeting who is in need of special assistance, such as sign language interpretation or other reasonable accommodations, is asked to contact the Executive Secretary.

Under authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic and genomic technologies and, as

warranted, to provide advice on these issues. The draft meeting agenda and other information about SACGHS, including information about access to the Web cast, will be available at the following Web site: *http://www4.od.nih.gov/oba/sacghs.htm.*

Dated: December 21, 2007.

Jennifer Spaeth,

Director, NIH Office of Federal Advisory Committee Policy.

[FR Doc. 07–6274 Filed 1–3–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0485]

Agency Information Collection Activities; Proposed Collection; Comment Request; Application for Food and Drug Administration Approval to Market a New Drug

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements governing applications for FDA approval to market a new drug.

DATES: Submit written or electronic comments on the collection of information by March 4, 2008.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA 305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson,Office of the Chief Information Officer (HFA 250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4816.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Application for FDA Approval to Market a New Drug—(OMB Control Number 0910–0001)—Extension

Under section 505(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(a)), a new drug may not be commercially marketed in the United States, imported, or exported from the United States, unless an approval of an application filed with FDA under section 505(b) or 505(j) of the act is effective with respect to such drug. Under the act, it is the sponsor's responsibility to provide the information needed by FDA to make a scientific and technical determination whether the product is safe and effective for use.

This information collection approval request is for all information requirements imposed on sponsors by the regulations under part 314 (21 CFR part 314), who apply for approval of a new drug application (NDA) or abbreviated new drug application (ANDA) in order to market or to continue to market a drug.

Section 314.50(a) requires that an application form (Form FDA 356h) be submitted that includes introductory information about the drug as well as a checklist of enclosures.

Section 314.50(b) requires that an index be submitted with the archival copy of the application and that it reference certain sections of the application.

Section 314.50(c) requires that a summary of the application be submitted that presents a good general synopsis of all the technical sections and other information in the application.

Section 314.50(d) requires that the NDA contain the following technical sections about the new drug: Chemistry, manufacturing, and controls; nonclinical pharmacology and toxicology; human pharmacokinetics and bioavailability; microbiology; clinical data; and statistical section.

Section 314.50(e) requires the applicant to submit samples of the drug if requested by FDA. In addition, the archival copy of the application must include copies of the label and all labeling for the drug.

Section 314.50(f) requires that case report forms and tabulations be submitted with the archival copy.

Section 314.50(h) requires that patent information, as described under § 314.53, be submitted with the application. (The burden hours for § 314.50(h) are already approved by OMB under OMB control number 0910–0513 and are not included in the burden estimates in table 1 of this document.)

Section 314.50(i) requires that patent certification information be submitted in section 505(b)(2) applications for patents claiming the drug, drug product, or method of use.

Section 314.50(j) requires that applicants that request a period of marketing exclusivity submit certain information with the application.

Section 314.50(k) requires that an archival, review, and field copy of the application be submitted.

Section 314.52 requires that any notice of certification of invalidity or noninfringement of a patent to each patent owner and the NDA holder be sent by a section 505(b)(2) applicant that relies on a listed drug. A 505(b)(2) applicant is required to amend its application at the time notice is provided to include a statement certifying that the required notice has

been provided. A 505(b)(2) applicant also is required to amend its application to document receipt of the required notice.

Section 314.54 sets forth the content requirements for applications filed under section 505(b)(2) of the act. (The information collection burden estimate for 505(b)(2) applications is included in table 1 of this document under the estimates for § 314.50(a), (b), (c), (d), (e), (f), and (k)).

Section 314.60 sets forth reporting requirements for sponsors who amend an unapproved application.

Section 314.65 states that the sponsor must notify FDA when withdrawing an unapproved application.

Sections 314.70 and 314.71 require that supplements be submitted to FDA for certain changes to an approved application.

Section 314.72 requires sponsors to report to FDA any transfer of ownership of an application.

Section 314.80(c)(1) and (c)(2) sets forth requirements for expedited adverse drug experience postmarketing reports and followup reports, as well as for periodic adverse drug experience postmarketing reports (Form FDA 3500A). (The burden hours for § 314.80(c)(1) and (c)(2) are already approved by OMB under OMB control numbers 0910–0230 and 0910–0291 and are not included in the burden estimates in table 1 of this document.)

Section 314.80(i) establishes recordkeeping requirements for reports of postmarketing adverse drug experiences. (The burden hours for § 314.80(i) are already approved by OMB under OMB control numbers 0910–0230 and 0910–0291 and are not included in the burden estimates in table 1 of this document.)

Section 314.81(b)(1) requires that field alert reports be submitted to FDA (Form FDA 3331).

Section 314.81(b)(2) requires that annual reports be submitted to FDA (Form FDA 2252).

Section 314.81(b)(3)(i) requires that drug advertisements and promotional labeling be submitted to FDA (Form FDA 2253). Form FDA 2253 has been revised by FDA as follows: On line 8, "Please check one or both" has been revised to read "Please check only one." In the instruction for line 8, the sentence "Consumer and professional pieces should be submitted separately" has been added.

Section 314.81(b)(3)(iii) sets forth reporting requirements for sponsors who withdraw an approved drug product from sale. (The burden hours for § 314.81(b)(3)(iii) are already approved by OMB under OMB control number 0910–0045 and are not included in the burden estimates in table 1 of this document.)

Section 314.90 sets forth requirements for sponsors who request waivers from FDA for compliance with §§ 314.50 through 314.81. (The information collection burden estimate for NDA waiver requests is included in table 1 of this document under estimates for §§ 314.50, 314.60, 314.70 and 314.71.)

Section 314.93 sets forth requirements for submitting a suitability petition in accordance with 21 CFR 10.20 and 21 CFR 10.30. (The burden hours for § 314.93 are already approved by OMB under 0910–0183 and are not included in the burden estimates in table 1 of this document.)

Section 314.94(a) and (d) requires that an ANDA contain the following information: Application form; table of contents; basis for ANDA submission; conditions of use; active ingredients; route of administration, dosage form, and strength; bioequivalence; labeling; chemistry, manufacturing, and controls; samples; and patent certification.

Section 314.95 requires that any notice of certification of invalidity or noninfringement of a patent to each patent owner and the NDA holder be sent by ANDA applicants.

Section 314.96 sets forth requirements for amendments to an unapproved ANDA.

Section 314.97 sets forth requirements for submitting supplements to an approved ANDA for changes that require FDA approval.

Section 314.98(a) sets forth postmarketing adverse drug experience reporting and recordkeeping requirements for ANDAs. (The burden hours for § 314.98(a) are already approved by OMB under OMB control numbers 0910–0230 and 0910–0291 and are not included in the burden estimates in table 1 of this document.)

Section 314.98(c) requires other postmarketing reports for ANDAs: Field alert reports (Form FDA 3331), annual reports (Form FDA 2252), and advertisements and promotional labeling (Form FDA 2253). (The information collection burden estimate for field alert reports is included in table 1 of this document under § 314.81(b)(1); the estimate for annual reports is included under § 314.81(b)(2); the estimate for advertisements and promotional labeling is included under § 314.81(b)(3)(i).)

Section 314.99(a) requires that sponsors comply with certain reporting requirements for withdrawing an unapproved ANDA and for a change in ownership of an ANDA.

Section 314.99(b) sets forth requirements for sponsors who request waivers from FDA for compliance with §§ 314.92 through 314.99. (The information collection burden estimate for ANDA waiver requests is included in table 1 of this document under estimates for § 314.94(a) and (d) and §§ 314.96 and 314.97.)

Section 314.101(a) states that if FDA refuses to file an application, the applicant may request an informal conference with FDA and request that the application be filed over protest.

Section 314.107(c) requires notice to FDA by the first applicant to submit a substantially complete ANDA containing a certification that a relevant patent is invalid, unenforceable, or will not be infringed of the date of first commercial marketing.

Section 314.107(e) requires that an applicant submit a copy of the entry of the order or judgment to FDA within 10 working days of a final judgment.

Section 314.107(f) requires that ANDA or section 505(b)(2) applicants notify FDA immediately of the filing of any legal action filed within 45 days of receipt of the notice of certification. A patent owner may also notify FDA of the filing of any legal action for patent infringement. If the patent owner or approved application holder who is an exclusive patent licensee waives its opportunity to file a legal action for patent infringement within the 45-day period, the patent owner or approved application holder must submit to FDA a waiver in the specified format.

Section 314.110(a)(3) and (a)(4) states that, after receipt of an FDA approvable letter, an applicant may request an opportunity for a hearing on the question of whether there are grounds for denying approval of the application. (The burden hours for § 314.110(a)(3) and (a)(4) are included under parts 10 through 16 (21 CFR parts 10 through 16) hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.110(a)(5) states that, after receipt of an approvable letter, an applicant may notify FDA that it agrees to an extension of the review period so that it can determine whether to respond further.

Section 314.110(b) states that, after receipt of an approvable letter, an ANDA applicant may request an opportunity for a hearing on the question of whether there are grounds for denying approval of the application. (The burden hours for § 314.110(b) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the

burden estimates in table 1 of this document.)

Section 314.120(a)(3) states that, after receipt of a not approvable letter, an applicant may request an opportunity for a hearing on the question of whether there are grounds for denying approval of the application. (The burden hours for § 314.120(a)(3) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the hour burden estimates in table 1 of this document.)

Section 314.120(a)(5) states that, after receipt of a not approvable letter, an applicant may notify FDA that it agrees to an extension of the review period so that it can determine whether to respond further.

Section 314.122(a) requires that an ANDA or a suitability petition that relies on a listed drug that has been voluntarily withdrawn from sale must be accompanied by a petition seeking a determination whether the drug was withdrawn for safety or effectiveness reasons. (The burden hours for § 314.122(a) are already approved by OMB under OMB control number 0910–0183 and are not included in the burden estimates in table 1 of this document.)

Section 314.122(d) sets forth requirements for relisting petitions for unlisted discontinued products. (The burden hours for § 314.122(d) are already approved by OMB under OMB control number 0910–0183 and are not included in the burden estimates in table 1 of this document.)

Section 314.126(c) sets forth requirements for a petition to waive criteria for adequate and well-controlled studies. (The burden hours for § 314.126(c) are already approved by OMB under 0910–0183 and are not included in the burden estimates in table 1 of this document.)

Section 314.151(a) and (b) set forth requirements for the withdrawal of approval of an ANDA and the applicant's opportunity for a hearing and submission of comments. (The burden hours for § 314.151(a) and (b) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.151(c) sets forth the requirements for withdrawal of approval of an ANDA and the applicant's opportunity to submit written objections and participate in a limited oral hearing. (The burden hours for § 314.151(c) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.152(b) sets forth the requirements for suspension of an ANDA when the listed drug is voluntarily withdrawn for safety and effectiveness reasons, and the applicant's opportunity to present comments and participate in a limited oral hearing. (The burden hours for § 314.152(b) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and is not included in the burden estimates in table 1 of this document.)

Section 314.161(b) and (e) sets forth the requirements for submitting a petition to determine whether a listed drug was voluntarily withdrawn from sale for safety or effectiveness reasons. (The burden hours for § 314.161(b) and (e) are already approved by OMB under OMB control number 0910–0183 and are not included in the burden estimates in table 1 of this document.)

Section 314.200(c), (d), and (e) requires that applicants or others subject to a notice of opportunity for a hearing who wish to participate in a hearing file a written notice of participation and request for a hearing as well as the studies, data, and so forth, relied on. Other interested persons may also submit comments on the notice. This section also sets forth the content and format requirements for the applicants' submission in response to notice of opportunity for hearing. (The burden hours for §§ 314.200(c), (d), and (e) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.200(f) states that participants in a hearing may make a motion to the presiding officer for the inclusion of certain issues in the hearing. (The burden hours for § 314.200(f) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.200(g) states that a person who responds to a proposed order from FDA denying a request for a hearing provide sufficient data, information, and analysis to demonstrate that there is a genuine and substantial issue of fact which justifies a hearing. (The burden hours for § 314.200(g) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and is not included in the burden estimates in table 1 of this document.)

Section 314.420 states that an applicant may submit to FDA a drug master file in support of an application, in accordance with certain content and format requirements.

Section 314.430 states that data and information in an application are disclosable under certain conditions, unless the applicant shows that extraordinary circumstances exist. (The burden hours for § 314.430 is included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and is not included in the burden estimates in table 1 of this document.)

Section 314.530(c) and (e) states that, if FDA withdraws approval of a drug approved under the accelerated approval procedures, the applicant has the opportunity to request a hearing and submit data and information. (The burden hours for § 314.530(c) and (e) are included under parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the burden estimates in table 1 of this document.)

Section 314.530(f) requires that an applicant first submit a petition for stay of action before requesting an order from a court for a stay of action pending review. (The burden hours for § 314.530(f) are already approved by OMB under 0910–0194 and are not included in the burden estimates in table 1 of this document.)

Section 314.610(b)(1) requires that applicants include a plan or approach to postmarketing study commitments in applications for approval of new drugs when human efficacy studies are not ethical or feasible, and provide status reports of postmarketing study commitments. (The information collection burden estimate for § 314.610(b)(1) is included in table 1 of this document under the estimates for §§ 314.50(a), (b), (c), (d), (e), (f), and (k) and 314.81(b)(2)).

Section 314.610(b)(3) requires that applicants propose labeling to be provided to patient recipients in applications for approval of new drugs when human efficacy studies are not ethical or feasible. (The information collection burden estimate for § 314.610(b)(3) is included in table 1 of this document under the estimates for § 314.50(e)).

Section 314.630 requires that applicants provide postmarketing safety reporting for applications for approval of new drugs when human efficacy studies are not ethical or feasible. (The burden hours for § 314.630 are already approved by OMB under OMB control numbers 0910–0230 and 0910–0291 and are not included in the burden estimates in table 1 of this document.)

Section 314.640 requires that applicants provide promotional

materials for applications for approval of new drugs when human efficacy studies are not ethical or feasible. (The information collection burden estimate for § 314.640 is included in table 1 of this document under the estimates for § 314.81(b)(3)(i)).

Respondents to this collection of information are all persons who submit an application or abbreviated application or an amendment or supplement to FDA under part 314 to obtain approval of a new drug, and any person who owns an approved application or abbreviated application.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section [Form Number]	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
314.50(a), (b), (c), (d), (e), (f), and (k)	85	1.41	120	1,917	230,040
314.50(i) and 314.94(a)(12)	96	9.61	923	2	1,846
314.50(j)	71	4.02	286	2	572
314.52 and 314.95	71	3.66	260	16	4,160
314.60	305	15.05	4,590	80	367,200
314.65	13	1.08	14	2	28
314.70 and 314.71	281	9.30	2,613	150	391,950
314.72	69	3.40	235	2	470
314.81(b)(1) [3331]	114	2.68	306	8	2,448
314.81(b)(2) [2252]	724	11.15	8,073	40	322,920
314.81(b)(3)(i) [2253]	390	61.39	23,942	2	47,884
314.94(a)(1) through (a)(11) and (d)	110	7.21	793	480	380,640
314.96	300	28	8,400	80	672,000
314.97	215	20.66	4,442	80	355,360
314.99(a)	40	2.02	81	2	162
314.101(a)	1	1	1	.50	.50
314.107(c) 314.107(e) 314.107(f)	56 25 56	4.1 3.92 4.1	230 98 230	.50 .50 .50	115 49 115
314.110(a)(5)	45	1.15	52	.50	26
314.120(a)(5)	10	1.20	12	.50	6
314.420	487	1.98	964	61	58,804
Total					2,836,795.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Please note that in January 2008, the FDA Web site is expected to transition to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. After the transition date, electronic submissions will be accepted by FDA through the FDMS only. When the exact date of the transition to FDMS is known, FDA will publish a **Federal Register** notice announcing that date.

Dated: December 27, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–25593 Filed 1–3–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0367]

Draft Guidance for Industry on Antibacterial Drug Products: Use of Noninferiority Studies to Support Approval; Availability; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until February 8, 2008, the comment period for the draft guidance for industry entitled "Antibacterial Drug Products: Use of Noninferiority Studies to Support Approval," published in the **Federal Register** of October 15, 2007 (72 FR 58312). The draft guidance informed industry of FDA's current thinking regarding appropriate clinical study designs to evaluate antibacterial drugs, and asked sponsors to amend ongoing or completed studies accordingly. FDA is taking this action in response to a request for an extension of the comment period to allow interested persons additional time to review the draft guidance and submit comments.

DATES: Submit written or electronic comments by February 8, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to either *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Edward Cox, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave.,Bldg. 22, rm. 6412, Silver Spring, MD 20993–0002, 301–796–1300.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 15, 2007 (72 FR 58312), FDA published a notice announcing the availability of a draft guidance for industry entitled "Antibacterial Drug Products: Use of Noninferiority Studies to Support Approval." The purpose of the guidance is to inform industry of FDA's current thinking regarding appropriate clinical study designs to evaluate antibacterial drugs, and to ask sponsors to amend ongoing or completed studies accordingly. The guidance is in response to a number of public discussions in recent years regarding the use of active-controlled studies designed to show noninferiority as a basis for approval of antibacterial drug products. Some of these discussions have focused on specific diseases such as acute bacterial sinusitis, acute bacterial otitis media, and acute bacterial exacerbation of chronic bronchitis. These public discussions have contributed to FDA's evolving understanding of the science of clinical trials and, in particular, the appropriate role of active-controlled studies designed to show noninferiority in the development of antibacterial drug products.

The draft guidance recommends that sponsors provide justification for the treatment effect size and the proposed noninferiority margin for all antibacterial development programs for which approval will rely on noninferiority studies. The initial comment period for this guidance closed on December 14, 2007.

II. Reopening of Comment Period

On November 13, 2007, the Pharmaceutical Research and Manufacturers of America requested an extension beyond the December 14, 2007, deadline for the submission of comments. FDA recognizes the effect this guidance may have on the development of new antimicrobial products and that additional time may be needed for comment. Therefore, FDA has decided to reopen the comment period on the draft guidance until February 8, 2008, to allow the public more time to review and comment on its contents.

III. How to Submit Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that in January 2008, the FDA Web site is expected to transition to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. After the transition date, electronic submissions will be accepted by FDA through the FDMS only. When the exact date of the transition to FDMS is known, FDA will publish a **Federal Register** notice announcing that date.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm*or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: December 27, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–25601 Filed 1–3–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0489]

Request for Comments on the Science and Technology Report; Establishment of Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of docket; request for comments.

SUMMARY: On March 31, 2006, the Food and Drug Administration (FDA) charged the Science Board to evaluate FDA's science-based capacities to meet current and future public health challenges. The Science Board established a subcommittee on science and technology to perform the review and draft a report of findings and preliminary recommendations. The subcommittee report was presented and discussed at the December 3, 2007, Science Board Advisory Committee meeting, at which time the Science Board decided to obtain comments from the public on the subcommittee report. FDA is soliciting public comment on the subcommittee report on behalf of the Science Board.

DATES: To be considered, written or electronic comments on the subcommittee report must be received on or before February 4, 2008. All comments received while the docket is open will be forwarded to the Science Board for their review.

ADDRESSES: Electronic comments should be submitted to *http://www.fda.gov/dockets/ecomments*. Select Docket No. 2007N–0489, "FDA Report on Science and Technology" and follow prompts to submit your statement. Written comments should be submitted to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, by close of

business on (see **DATES**). All comments should be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. All comments received will be posted without change, including any personal information provided. All comments received while the docket is open will be forwarded to the Science Board for their review. All comments will also be discussed at the next Science Board Advisory Committee meeting. A notice of the next Science Board Advisory Committee meeting will be published at a later date. See **SUPPLEMENTARY INFORMATION** section for elctronic access.

FOR FURTHER INFORMATION CONTACT: Carlos Peña, Office of the Commissioner, Food and Drug Administration (HF–33), 5600 Fishers Lane, Rockville, MD 20857, 301–827–6687, FAX: 301–827–3340, e-mail: *carlos.Peña,@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 31, 2006, FDA charged the Science Board to conduct a broad review of FDA scientific capacities, processes, and infrastructure which support FDA's core regulatory functions including the following: (1) Premarket review and consultation during the development of new FDA-regulated products; (2) oversight of marketed product quality; and (3) postmarket product safety surveillance and risk management. The following is the Commissioner of Food and Drugs' charge to the Science Board: "Review and report the broad categories of scientific and technologic capacities that FDA needs to fully support its core regulatory functions and decisionmaking throughout the product life-cycle, today and over the next decade." Specifically:

(1) Are there any important gaps in current scientific capacities in which FDA should substantially increase efforts, to ensure that it can address current or expected scientific demands of FDA's regulatory mission? In what areas should the agency maintain or strengthen its current level of work and capacity?

(2) Are there areas of science in which the agency should consider refocusing its efforts in order to better address current or anticipated future scientific demands of FDA's regulatory mission?

(3) What opportunities exist to enhance the overall effectiveness of FDA's scientific and technologic capacity through coordination of scientific activities and priority setting across FDA components?

(4) What opportunities exist to better leverage FDA's scientific capacity through collaboration with other public agencies and private organizations? Are there other approaches to resource leveraging that FDA could pursue to better support needed scientific capacities?

The review was initiated to obtain advice regarding current science-based capacities and the degree to which they can prepare FDA for anticipated changes in science, technology and population health needs.

To respond to this request from the agency, the Science Board established a subcommittee on science and technology to perform the review. The subcommittee was supported by 30 outside experts, who were drawn from government, academia, and industry. Their efforts culminated in a subcommittee report of findings and preliminary recommendations. The subcommittee report was presented and discussed at the December 3, 2007, Science Board Advisory Committee meeting, at which time the Science Board decided to obtain comments from the public on the subcommittee report (an electronic copy of the subcommittee report is available at *http://www.fda.gov/ohrms/dockets/ac/07/briefing/2007–4329b_02_00_index.html*).

II. Request for Comments

In accordance with 21 CFR 14.35, FDA is soliciting public comment on the subcommittee report, on behalf of the Science Board. Comments received while the docket is open will be forwarded to the Science Board for their review. Comments will also be discussed at the next Science Board Advisory Committee meeting. A notice of the next Science Board Advisory Committee meeting will be published in the **Federal Register** at a later date.

III. Submission of Comments

To help facilitate the public comment process upon the subcommittee report, FDA has established a public docket, on behalf of the Science Board. All comments submitted to the public docket are public information and may be posted to the FDA's Web site at: *http://www.fda.gov* for public viewing. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be reviewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that in January 2008, the FDA Web site is expected to transition to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. After the transition date, electronic submissions will be accepted by FDA through the FDMS only. When the exact date of the transition to FDMS is known, FDA will publish a **Federal Register** notice announcing that date.

Dated: December 28, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–25607 Filed 1–3–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (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: Sickle Cell Disease Treatment Demonstration Program (SCDTDP), Health Resources and Services Administration (HRSA): NEW

In 2004 Congress enacted and the President signed into law Pub. L. 108–

357, the American Jobs Creation Act of 2004. Section 712 of Pub. L. 108–357 authorized a demonstration program for the prevention and treatment of Sickle Cell Disease. The legislation was enacted to (1) create an optional medical assistance program for individuals with Sickle Cell Diseases for treatment and education, genetic counseling and other services to prevent mortality and decrease morbidity from Sickle Cell Disease, and (2) create a demonstration program, the SCDTDP, under HRSA. The SCDTDP provides grants to federally-qualified and nonprofit health care providers to establish geographically distributed regional networks that will work with comprehensive Sickle Cell Disease centers and community-based support organizations to provide coordinated, comprehensive, culturally competent, and family-centered care to families with Sickle Cell Disease. In fiscal year 2006, HRSA awarded four, 4-year grants to the Illinois Sickle Cell Association Network, Alabama Network for Sickle Cell Care, Access, Prevention, and Education, Carolina Partnership for Sickle Cell Treatment Continuum of Care, and the Cincinnati Sickle Cell Network.

Under the authorizing legislation, a National Coordinating Center (NCC) was established to (1) collect, coordinate, monitor, and distribute data, best practices and findings regarding the activities of the demonstration program; (2) identify a model protocol for eligible entities with respect to the prevention and treatment of Sickle Cell Disease; (3) identify educational materials regarding the prevention and treatment of Sickle Cell Disease; and (4) prepare a final report on the efficacy of the demonstration program based on evaluation findings.

As part of the evaluation, pre- and post-utilization and satisfaction data and quality of life assessments will be collected from the demonstration clients during various phases of their participation. These data will be collected through medical record abstractions and self-report using hard copy questionnaires and submitted to the NCC for processing and analysis. The total burden estimate per participant is shown below:

Type of respondent	Form name	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Sickle Cell Disease clients or caregivers.	Utilization Questionnaire (pre-demonstration).	400	1	.75	300 hours.
Sickle Cell Disease clients or caregivers.	Utilization Questionnaire (post-demonstration).	400	1	.50 hours	200 hours.
Sickle Cell Disease clients or caregivers.	SF–36 Health Survey for adults over 18 years of age; PedsQL for children/adolescents 18 years or younger (Quality of Life).	400	2	.25 hours	200 hours.
Sickle Cell Disease clients or caregivers.	The Medical Home Family Index (Health Care Satisfaction).	400	2	.25 hours	200 hours.

The total burden is 900 hours or 2.25 hours per participant. This would be the maximum level of burden since some of the demonstration networks will be able to abstract medical records for some of the data collected on the Utilization Questionnaire.

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 27, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–25603 Filed 1–3–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to OMB for review under the Paperwork Reduction Act of 1995:

Proposed Project: Application for the National Health Service Corps (NHSC) Scholarship Program (OMB No. 0915–0146): Reinstatement With Change

The National Health Service Corps (NHSC) Scholarship Program's mission is to ensure the geographic distribution of physicians and other health practitioners in the United States. Under this program, health professions students are offered scholarships in return for service in a federally designated Health Professional Shortage Area (HPSA). The Scholarship Program provides the NHSC with the health professionals it requires to carry out its mission of providing primary health care to HPSA populations in areas of greatest need. Students are supported who are well qualified to participate in the NHSC Scholarship Program and who want to assist the NHSC in its mission, both during and after their period of obligated service.

The application form is being revised to streamline the application process and collect the most relevant information necessary to make determinations of award. Scholars are selected for these competitive awards based on the information provided in the application and supporting documentation. Awards are made to applicants who demonstrate a high potential for providing quality primary health care services.

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Application	1800	1	1800	3	5,400
Total	1800		1800		5,400

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: December 27, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–25604 Filed 1–3–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Infant Mortality; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Infant Mortality (ACIM).

Dates and Times: January 23, 2008, 9 a.m.–5 p.m. January 24, 2008, 8:30 a.m.–3 p.m.

Place: Westin Washington, DC City Center, 1400 M Street, NW., Washington, DC 20005. (202) 429–1700.

Status: The meeting is open to the public with attendance limited to space availability.

Purpose: The Committee provides advice and recommendations to the Secretary of Health and Human Services on the following: Department of Health and Human Services' programs that focus on reducing infant mortality and improving the health status of pregnant women and infants; and factors affecting the continuum of care with respect to maternal and child health care. It includes outcomes following childbirth; strategies to coordinate the variety of Federal, State, local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start Program and *Healthy People 2010* infant mortality objectives.

Agenda: Topics that will be discussed include the following: HRSA Update, MCHB Update, Healthy Start National Evaluation Update, presentations from a rural Healthy Start project and an urban Healthy Start project, related causes of infant mortality including accidents in the post-neonatal period, and pre-conceptional care. Proposed agenda items are subject to change as priorities indicate.

Time will be provided for public comments limited to five minutes each; comments are to be submitted no later than January 2, 2008.

FOR FURTHER INFORMATION CONTACT: Anyone requiring information regarding the Committee should contact Peter C. van Dyck, M.D., M.P.H., Executive Secretary, ACIM, Health Resources and Services Administration (HRSA), Room 18–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–2170.

Individuals who are submitting public comments or who have questions regarding the meeting and location should contact David S. de la Cruz, Ph.D., M.P.H., HRSA, Maternal and Child Health Bureau, telephone: (301) 443–6332, e-mail: *David.delaCruz@hrsa.hhs.gov.*

Dated: December 27, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–25602 Filed 1–3–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92–463, notice is hereby given of the fifteenth meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 8:30 a.m. to approximately 5:30 p.m. on Tuesday, February 12, 2008 and 8 a.m. to approximately 5 p.m. on Wednesday, February 13, 2008, at the Hubert H. Humphrey Building—200 Independence Avenue SW., Washington, DC 20201. The meeting will be open to the public with attendance limited to space available. The meeting also will be Web cast.

The main agenda item will involve deliberations on the oversight of genetic testing, including an overview of public comments received on the Committee's draft report *U.S. System of Oversight of Genetic Testing: A Response to the Charge of the Secretary of HHS* and the formulation of final recommendations to the Secretary.

As always, the Committee welcomes hearing from anyone wishing to provide public comment on any issue related to genetics, health and society. Individuals who would like to provide public comment should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or e-mail at *carrs@od.nih.gov.* The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892. Anyone planning to attend the meeting who is in need of special assistance, such as sign language interpretation or other reasonable accommodations, is also asked to contact the Executive Secretary.

Under authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic and genomic technologies and, as warranted, to provided advice on these issues. The draft meeting agenda and other information about SACGHS, including information about access to the Web cast, will be available at the following Web site: *http://www4.od.nih.gov/oba/sacghs.htm.*

Dated: December 21, 2007.

Jennifer Spaeth,

Director, NIH Office of Federal Advisory Committee Policy.

[FR Doc. 07–6275 Filed 1–3–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Cancer Institute Clinical Trials Advisory Committee.

The meetings will be open to the public, 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.

Name of Committee: National Cancer Institute Clinical Trials Advisory Committee, Ad Hoc Coordination Subcommittee.
Date: February 3, 2008.
Time: 7 p.m. to 9 p.m.
Agenda: Discussion of the harmonization of SPORE, Cancer Center, and Cooperative Group Guidelines.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Sheila A. Prindiville, MD., Director, Coordinating Center for Clinical Trials, Office of the Director, National Cancer Institute, National Institutes of Health, 6120 Executive Blvd., Suite 507, Bethesda, MD 20892, 301–451–5048, *prindivs@mail.nih.gov.*

Name of Committee: National Cancer Institute Clinical Trials Advisory Committee.
Date: February 4, 2008.
Time: 8 a.m. to 12 p.m.
Agenda: Update on the progress of the implementation of the Clinical Trials Working Group.
Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, Conference Room 10, Bethesda, MD 20892.
Contact Person: Sheila A. Prindiville, MD., Director, Coordinating Center for Clinical Trials, Office of the Director, National Cancer Institute, National Institutes of Health, 6120 Executive Blvd., Suite 507, Bethesda, MD 20892, 301–451–5048, *prindivs@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6270 Filed 1–3–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of 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 meetings of the National Advisory Research Resources Council.

The meetings 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 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/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.
Date: January 30, 2008.
Open: 8 a.m. to 1:40 p.m.
Agenda: Report of the Director, NCRR, reports by four of the NPRC Directors, and other business of the Council.
Place: National Institutes of Health, Building 31, 31 Center Drive, Floor 6C, Conference Room 6, Bethesda, MD 20892.
Closed: 1:40 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Building 31, 31 Center Drive, Floor 6C, Conference Room 6, Bethesda, MD 20892.
Contact Person: Louise E. Ramm, PhD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023, *louiser@ncrr.nih.gov.*

Name of Committee: National Advisory Research Resources Council.
Date: May 14, 2008.
Open: 8 a.m. to 1:30 p.m.
Agenda: Report of the Director, NCRR and other Council business.
Place: National Institutes of Health, Building 31, 31 Center Drive, Floor 6C, Conference Room 10, Bethesda, MD 20892.
Closed: 1:40 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: National Institutes of Health, Building 31, 31 Center Drive, Floor 6C, Conference Room 10, Bethesda, MD 20892.
Contact Person: Louise E. Ramm, PhD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023, *louiser@ncrr.nih.gov.*

Name of Committee: National Advisory Research Resources Council.
Date: September 16, 2008.
Open: 8 a.m. to 1:30 p.m.
Agenda: Report of the Director, NCRR and other Council business.
Place: National Institutes of Health, Building 31, 31 Center Drive, Floor 6C, Conference Room 10, Bethesda, MD 20892.
Closed: 1:40 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: National Institutes of Health, Building 31, 31 Center Drive, Floor 6C, Conference Room 10, Bethesda, MD 20892.
Contact Person: Louise E. Ramm, PhD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023, *louiser@ncrr.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ncrr.nih.gov/newspub/minutes.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine;

93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure; 93.306, 93.333, National Institutes of Health, HHS)

Dated: December 26, 2007.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6272 Filed 1–3–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences Special Emphasis Panel, Large Scale Collaborative Awards.

Date: January 11, 2008.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: C. Craig Hyde, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Building 45, Room 3AN18, Bethesda, MD 20892, 301–435–3825, *ch2v@nih.gov*.

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.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Training Grants.

Date: January 15, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro (7400 Wisconsin Ave.), Bethesda, MD 20814.

Contact Person: Meredith D Temple-O'Connor, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892, 301–594–2772, *templeocm@mail.nih.gov*.

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. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: December 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6269 Filed 1–3–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 Allergy and Infectious Diseases Special Emphasis Panel, U.S.-India Bilateral Collaborative Research Partnerships (CRP) on the Prevention of HIV/AIDS (R21).

Date: January 24, 2008.

Time: 9 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3133, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Sujata Vijh, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–594–0985, *vijhs@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 26, 2007.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6271 Filed 1–3–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 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 Allergy and Infectious Diseases Special Emphasis Panel; Immune Regulation in Autoimmunity.

Date: January 23, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Paul A. Amstad, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–7098, *pamstad@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 21, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6273 Filed 1–3–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel, Nanotechnology.

Date: January 23–24, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Mark Hopkins San Francisco, Number One Noble Hill, 999 California Street, San Francisco, CA 94108.

Contact Person: Joseph D. Mosca, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892 (301) 435–2344, *moscajos@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts in Adult Psychopathology and Disorders of Aging.

Date: January 23, 2008.

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuropsychiatric Mechanisms, Models and Pharmacology.

Date: January 24, 2008.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Boris P. Sokolov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, (301) 435–1197, *bsokolov@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, NIH–RAID Pilot Program.

Date: January 24, 2008.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marc Rigas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7826, Bethesda, MD 20892, (301) 402–1074, *rigasm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, High-End Shared Instrumentation: Imaging.

Date: January 25, 2008.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Express Hotel and Suites, San Francisco Fisherman's Wharf, 550 North Point Street, San Francisco, CA 94133.

Contact Person: Khalid Masood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–2392, *masoodk@csr.nih.gov*.

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Immunopathology and Immunotherapy Study Section.

Date: January 31–February 1, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Double Tree Hotel, Washington, DC, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Steven B. Scholnick, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, (301) 435–1719, *scholnis@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Bacterial Pathogenesis Study Section.

Date: January 31–February 1, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.

Contact Person: Richard G. Kostriken, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, (301) 402–4454, *kostrikr@csr.nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Motor Function, Speech and Rehabilitation Study Section.

Date: February 1, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Pasadena, 168 South Los Robles Avenue, Pasadena, CA 91101.

Contact Person: Weijia Ni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Resource Facility for Population Kinetics (RFPK).

Date: February 3–4, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, Chevy Chase Pavilion, 4300 Military Road, Washington, DC 20015.

Contact Person: Guo Feng Xu, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, (301) 435–1032, *xuguofen@csr.nih.gov*.

Name of Committee: Respiratory Sciences Integrated Review Group, Lung Injury, Repair, and Remodeling Study Section.

Date: February 4–5, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ghenima Dirami, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 594–1321, *diramig@csr.nih.gov*.

Name of Committee: Digestive Sciences Integrated Review Group, Gastrointestinal Mucosal Pathobiology Study Section.

Date: February 4, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Peter J. Perrin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genomics, Computational Biology and Technology Study Section.

Date: February 4–5, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7890, Bethesda, MD 20892, 301–435–1037, *dayc@csr.nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Language and Communication Study Section.

Date: February 4–5, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.
Contact Person: Weijia Ni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, 301–435–1507, *niw@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Biology Structure and Regeneration Study Section.
Date: February 4–5, 2008.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Marriott Marina Del Rey, 4100 Admiralty Way, Marina Del Rey, CA 90292.
Contact Person: Mehrdad M. Tondravi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–435–1173, *tondravm@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Bioengineering, Technology and Surgical Sciences Study Section.
Date: February 4–5, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhindsad@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Biology and Diseases of the Posterior Eye Study Section.
Date: February 4–5, 2008.
Time: 8 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Michael H. Chaitin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.
Date: February 4, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.
Contact Person: Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7759, Bethesda, MD 20892, 301 594–3163, *champoum@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Biobehavioral Regulation, Learning and Ethology Study Section.
Date: February 4–5, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Biao Tian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Neuroscience and Disease.
Date: February 4–5, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn San Francisco-Fisherman's Wharf, 1300 Columbus Avenue, San Francisco, CA 94133.
Contact Person: Rene Etcheberrigaray, MD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *etcheber@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Clinical Neuroscience and Disease Study Section.
Date: February 4–5, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Downtown Washington, DC, 1250 22nd Street, NW., Washington, DC 20037.
Contact Person: Seetha Bhagavan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 435–1121, *bhagavas@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Cellular and Molecular Biology of Gila Study Section.
Date: February 4–5, 2008.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Toby Behar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435–4433, *behart@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neural Oxidative Metabolism and Death Study Section.
Date: February 4–5, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Savoy Suites of Georgetown, 2505 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Carol Hamelink, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5040H, MSC 7850, Bethesda, MD 20892, (301) 451–1328, *hamelinc@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Behavioral Medicine, Interventions and Outcomes Study Section.
Date: February 4–5, 2008.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.
Contact Person: Lee S. Mann, JD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Synthetic and Biological Chemistry B Study Section.
Date: February 4–5, 2008.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, *radtkem@csr.nih.gov.*

Name of Committee: Digestive Sciences Integrated Review Group, Gastrointestinal Cell and Molecular Biology Study Section.
Date: February 5, 2008.
Time: 7:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Najma Begum, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, (301) 435–1243, *begumn@csr.nih.gov.*

Name of Committee: Respiratory Sciences Integrated Review Group, Respiratory Integrative Biology and Translational Research Study Section.
Date: February 5–6, 2008.
Time: 8 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Beacon Hotel and Corporate Quarters, 115 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rom 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, *sinnett@nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Auditory System Study Section.

Date: February 5–6, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Edwin C. Clayton, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5095C, MSC 7844, Bethesda, MD 20892, (301) 402–1304, *claytone@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurotoxicology and Alcohol Study Section.
Date: February 5–6, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC 20036.
Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, (301) 435–2212, *josephru@csr.nih.gov*.

Name of Committee: Health of the Population Integrative Review Group, Nursing Science: Adults and Older Adults Study Section.
Date: February 5–6, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Tysons Corner, 1960 Chain Bridge Road, McLean, VA 22102.
Contact Person: Gertrude K. McFarland, FAAN, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, (301) 435–1784, *mcfarlag@csr.nih.gov*.

Name of Committee: Respiratory Sciences Integrated Review Group, Lung Cellular, Molecular, and Immunobiology Study Section.
Date: February 5–6, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.
Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0696, *barnasg@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 26, 2007.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6276 Filed 1–3–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Availability and Public Open House Announcement for the Draft Environmental Impact Statement for Proposed Construction, Operation, and Maintenance of Tactical Infrastructure, U.S. Border Patrol, San Diego Sector, CA

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), U.S. Customs and Border Protection (CBP) has prepared a Draft Environmental Impact Statement (EIS) identifying and assessing the potential impacts associated with the proposed construction, operation, and maintenance of tactical infrastructure, to include a primary pedestrian fence, supporting patrol roads, and other infrastructure in two distinct sections along the U.S./Mexico international border within CBP's San Diego Border Patrol Sector. The two fence sections would be approximately 0.8 miles and 3.6 miles in length. Newly constructed access and patrol roads to support each fence section would be 0.8 miles and 5.2 miles respectively. This **Federal Register** notice announces the availability of and invites public comments on the draft EIS. This document also announces a public open house on the Draft EIS.

DATES: The Draft EIS will be available for public review and comment for a period of 45 days beginning January 4, 2008. Comments must be received by February 19, 2008.

The public open house will be held on January 17, 2008, at the San Diego Convention Center in San Diego, CA. The public open house will be held from 4:30 p.m. to 8 p.m. Please refer to the **SUPPLEMENTARY INFORMATION** section below for more information.

ADDRESSES: Copies of the Draft EIS can be downloaded from the Internet by visiting *http://www.BorderFenceNEPA.com*, or *https://ecso.swf.usace.army.mil/Pages/Publicreview.cfm*, or requested by e-mailing: *information@BorderFenceNEPA.com*. To request a hard copy of the Draft EIS, you may call toll-free (877) 752–0420. Alternatively, written requests for information may be submitted to: Charles McGregor, U.S. Army Corps of Engineers, Engineering and Construction Support Office, 819 Taylor St., Room 3B10, Fort Worth, Texas 76102; fax: (757) 257–7643. Hard copies of the Draft EIS can be reviewed at the Chula Vista Public Library (365 F Street, Chula Vista, CA 91910, (619) 691–5069); San Diego Central Library (820 E St., San Diego, CA 92101, (619) 236–5800); and San Diego Otay Mesa-Nestor Branch Library (3003 Coronado Ave., San Diego, CA 92154, (619) 424–0474).

The public open house will be held on January 17, 2008, at the San Diego Convention Center, located at 111 W. Harbor Dr., San Diego, CA 92101.

FOR FURTHER INFORMATION CONTACT: Charles McGregor, U.S. Army Corps of Engineers, Engineering and Construction Support Office, 819 Taylor St., Room 3B10, Fort Worth, Texas 76102; and fax: (757) 257–7643.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 2007, U.S. Customs and Border Protection (CBP) published in the **Federal Register** (72 FR 54277) a Notice of Intent to prepare an EIS to identify and assess the potential impacts associated with the construction, operation, and maintenance of tactical infrastructure, to include a primary pedestrian fence, supporting patrol roads, and other infrastructure in two distinct sections along the U.S./Mexico international border within CBP's San Diego Border Patrol Sector (Proposed Action). The EIS complies with NEPA, the Council on Environmental Quality regulations in 40 CFR Parts 1500–1508, and Department of Homeland Security (DHS) Management Directive 5100.1, *Environmental Planning Program*.

The mission of CBP is to prevent terrorists and terrorist weapons from entering the U.S., while also facilitating the flow of legitimate trade and travel. In supporting CBP's mission, the Border Patrol is charged with establishing and maintaining effective control of the U.S. border between ports of entry. The purpose of the Proposed Action is to provide Border Patrol agents with the tools necessary to strengthen their control of the U.S. border between ports of entry in the San Diego Sector. The Proposed Action also provides a safer work environment and enables Border Patrol agents to enhance response time.

The Proposed Action would consist of constructing a primary pedestrian fence, patrol roads, access roads, and other infrastructure in two sections. The first proposed section would be approximately 3.6 miles in length and would start at Puebla Tree and end at Boundary Monument 250. A newly

constructed access and patrol road to support the fence section would be 5.2 miles in length. The first proposed section would be adjacent to and on the Otay Mountain Wilderness (OMW), and would follow the U.S./Mexico international border where topography allows, deviating from the border to follow a newly constructed access road where conditions warrant, such as descent to canyon bottoms. The OMW is on public lands administered by the Bureau of Land Management (BLM). The second proposed section would be approximately 0.8 miles in length and would connect with existing border fence west of Tecate, California. This fence section would be constructed along the border at the southern base of Tecate Peak. This proposed fence section would encroach on a mix of privately owned land parcels and public land administered by the BLM.

Under the No Action Alternative, a proposed tactical infrastructure would not be built and there would be no change in fencing, access roads, or other facilities along the U.S./Mexico international border in the proposed project locations.

Public Open House

CBP will hold a public open house to provide information and invite comments on the Proposed Action and the Draft EIS. A public open house will be held on January 17, 2008, at the San Diego Convention Center, San Diego, CA 92101. The public open house will be held from 4:30 p.m. to 8 p.m. Border Patrol agents and Draft EIS preparers will be available during the open house. Anyone wishing to submit comments may do so orally or in writing at the open house. Comments received at the open house will be recorded and transcribed into the public record for the open house. Commentors must provide their names and addresses. Spanish language translation will be provided. Those who plan to attend the public open house and will need special assistance, such as sign language interpretation or other reasonable accommodation, should notify the U.S. Army Corps of Engineers (see **FOR FURTHER INFORMATION CONTACT**) at least 3 business days in advance. Include contact information, as well as information about specific needs. Those unable to attend may submit comments as described under "Request for Comments" below.

Request for Comments

CBP requests public participation in the EIS process. The public may participate by attending the public open house and submitting comments on the Draft EIS. CBP will consider all comments submitted during the public comment period, and subsequently will prepare the Final EIS. CBP will announce the availability of the Final EIS and once again give interested parties an opportunity to review the document. When submitting comments, please include name and address, and identify comments as for the San Diego Sector EIS. Please use only one of the following methods:

(a) Attendance and submission of comments at the Public Open House to be held January 17, 2008 at the San Diego Convention Center in San Diego, CA.

(b) Electronically through the Web site at *http://www.BorderFenceNEPA.com.*

(c) *By e-mail to: SDcomments@BorderFenceNEPA.com.*

(d) *By mail to:* San Diego Sector Tactical Infrastructure EIS, c/o e²M, 2751 Prosperity Avenue, Suite 200, Fairfax, Virginia 22031.

(e) *By fax to:* (757) 257–7643.

Comments on the Draft EIS should be submitted by February 19, 2008.

Dated: December 28, 2007.

Robert F. Janson,

Acting Executive Director, Asset Management, U.S. Customs and Border Protection.

[FR Doc. E7–25589 Filed 1–3–08; 10:10 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Revocation of Customs Broker Licenses

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General Notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses are canceled with prejudice.

Name	License No.	Issuing port
Henry J. Mandil	20647	New York.
H.J.M. International Corp	22892	New York.
International Drawback Services, Inc	22735	Houston.

Dated: December 21, 2007.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. E7–25611 Filed 1–3–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5186–N–01]

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: January 4, 2008.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; 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 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: December 27, 2007.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E7–25553 Filed 1–3–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–080–2005–9141–EJ]

Notice of Availability of a Final Environmental Impact Statement for the Chapita Wells—Stagecoach Area (CWSA), Uintah County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (FEIS) for the Chapita Wells—Stagecoach Area, Uintah County, Utah.

DATES: The 30-day public availability period will begin on the date the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) in the **Federal Register**. To assure that public comments will be considered, the BLM must receive written comments on the FEIS on or before the end of the comment period at the address listed below.

FOR FURTHER INFORMATION CONTACT: Stephanie Howard, Project Manager, BLM Vernal Field Office, 170 South 500 East, Vernal, UT 84078. Ms. Howard may also be reached at 435–781–4400.

ADDRESSES: Comments on the FEIS may be submitted by any of the following methods:

- *Mail:* Bureau of Land Management, Vernal Field Office, 170 South 500 East, Vernal, Utah 84078.
- *E-mail:* *UT_Vernal_Comments@blm.gov.*
- *Fax:* (435) 781–4410.

Please reference the CWSA when submitting your comments. Comments and information submitted on the FEIS for the CWSA, Uintah County, Utah, including names, e-mail addresses, and street addresses of respondents, will be available for public review at the Vernal Field Office address listed above. The BLM will not accept anonymous comments. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: The CWSA involves approximately 31,872 acres located in Townships 8 to 10 South, Ranges 22 and 23 East, Salt Lake Base Meridian, about 30 miles south of Vernal, in Uintah County, Utah. Approximately 22,693 acres (71%) of surface and mineral estate are administered by the BLM; approximately 6,577 acres (21%) are owned by the Ute Tribe and/or its allottees and administered by the BIA; approximately 1,914 acres (6%) are administered by the State of Utah's School and Institutional Trust Lands Administration (SITLA); and the remaining 688 acres (2%) are privately owned.

The CWSA encompasses an already developed oil and gas field. As of March 2004, the CWSA contained approximately 325 existing gas wells. Also, about 121 miles of roads and 115 miles of pipeline have been constructed within the region.

A Notice of Intent (NOI) to prepare the EIS was published in the **Federal Register** on October 1, 2004, which announced the beginning of the scoping period. Nine scoping letters were received from agencies and organizations during the scoping period. The scoping comments were taken into account during the drafting of the EIS. A summary of the scoping comments can be found in section 1.6 of the FEIS.

A NOA for the Draft EIS was published in the **Federal Register** on January 20, 2006. During the public comment period, eight comment letters were received from various agencies and organizations. Comments received on the Draft EIS, and the responses to those comments, are found in Chapter 6 of the FEIS.

The FEIS analyzes the effects of a natural gas and oil development scenario within the CWSA that is conceptual in nature. The final location of well pads, roads, and pipelines will be determined through future site-specific assessments required for each facility. Any additional environmental analyses will be tiered to this FEIS.

The FEIS analyzes the impacts of the Proposed Action and the No Action Alternative. The following is a summary of the alternatives:

Alternative A—Proposed Action (BLM's preferred alternative): The proposed action includes up to 627 natural gas wells, about 99.5 miles of new roads and 104.5 miles of pipelines, and 5,000 hp of compression. EOG Resources Inc. proposes to drill 627 wells at the rate of 90 wells per year over a period of seven years, or until the resource base is fully developed. Of this total number, 473 wells would be drilled at new locations and 154 wells would be twin wells. In all, approximately 1,735 acres, or 5% of the total project area, would be disturbed by the proposal.

The Proposed Action incorporates standard operating procedures and applicant-committed best management practices currently employed on BLM-administered public lands in the Uintah Basin that mitigate impacts to the environment.

Alternative B—No Action: Oil and gas development on Federal lands proposed under Alternative A would not be implemented. However development would continue to occur under Applications for Permits to Drill (APDs) previously approved by the BLM based upon other NEPA documents. Development would also continue on non-Federal lands. An additional 148 wells would be drilled on 20-acre and 40-acre spacing patterns (91 new wells and 57 twin wells).

Seven additional alternatives were considered but eliminated from detailed analysis because of technical or economical reasons, because of their resource impact, or because they did not meet the purpose and need of BLM's proposed action.

Copies of the FEIS for the CWSA have been sent to Federal, State, and local government agencies, and to parties who commented during the public comment period.

William Stringer,

Field Office Manager.

[FR Doc. E7–25585 Filed 1–3–08; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–080–2003–0369V]

Notice of Availability of a Final Environmental Impact Statement for the Greater Deadman Bench Region, Uintah County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (FEIS) for the Greater Deadman Bench Region, Uintah County, Utah.

DATES: The 30-day public availability period will begin on the date the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) in the **Federal Register**. To assure that public comments will be considered, the BLM must receive written comments on the FEIS on or before the end of the comment period at the address listed below.

FOR FURTHER INFORMATION CONTACT: Stephanie Howard, Project Manager, BLM Vernal Field Office, 170 South 500 East, Vernal, UT 84078. Ms. Howard may also be reached at 435–781–4400.

ADDRESSES: Comments on the FEIS may be submitted by any of the following methods:

- *Mail:* Bureau of Land Management, Vernal Field Office, 170 South 500 East, Vernal, Utah 84078.
- *E-mail:* *UT_Vernal_Comments@blm.gov.*
- *Fax:* (435) 781–4480.

Please reference the QEP GDBR when submitting your comments. Comments and information submitted on the FEIS for the Greater Deadman Bench Region, Uintah County, Utah, including names, e-mail addresses, and street addresses of respondents, will be available for public review at the Vernal Field Office address listed above. The BLM will not accept anonymous comments. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: The Greater Deadman Bench Region involves approximately 98,785 acres located in Townships 6–8 South, Ranges 21–25 East, Salt Lake Base Meridian, about 20 miles south of Vernal, in Uintah County, Utah.

Approximately 83,860 acres (85%) of surface and mineral estate are administered by the BLM; approximately 11,440 acres (12%) are administered by the State of Utah's School and Institutional Trust Lands Administration (SITLA); and the remaining 3,470 acres (4%) consist of various privately owned surface and mineral estate lands.

The Greater Deadman Bench Region encompasses an already developed oil and gas field. At the time of the initiation of the EIS process (in 2003), the Greater Deadman Bench Region contained approximately 278 existing oil or water-injection wells, and 300 gas wells. Also, about 57 miles of primary roads and 314 miles of secondary roads have been constructed within the region.

A Notice of Intent (NOI) to prepare the EIS was published in the **Federal Register** on December 19, 2003, which announced the beginning of the scoping period. Eleven scoping letters were received from agencies, organizations, and individuals during the scoping period. The scoping comments were taken into account during the drafting of the EIS. A summary of the scoping comments can be found in section 1.6 of the FEIS.

A NOA for the Draft EIS was published in the **Federal Register** on February 10, 2006. During the public comment period seven comment letters were received from various agencies and organizations. Comments received on the Draft EIS, and the responses to those comments, are found in Chapter 6 of the FEIS.

The FEIS analyzes the effects of a natural gas and oil development scenario within the Greater Deadman Bench Region that is conceptual in nature. The final location of well pads, roads, and pipelines would be determined through future site-specific assessments required for each facility. Questar Exploration Production (QEP) proposes to drill 1,239 wells at the rate of 100–120 wells per year over a period of 10 years, or until the resource base is fully developed. Of this total number, 891 wells would be drilled at new locations and 348 wells would be drilled from existing well pads. Any additional environmental analyses will tier to this EIS.

The FEIS analyzes the impacts of the Proposed Action and the No Action Alternative. The following is a summary of the alternatives:

Alternative A—Proposed Action (BLM's preferred alternative): Up to 1,020 natural gas and 219 oil wells would be drilled. About 170 miles of new roads and 235 miles of pipelines, 31 miles of power lines, 22 new central tank facilities and 15 new gas compressor stations would be constructed to support this proposed development. In all, approximately 4,561 acres, or 5% of the total project area, would be disturbed by the proposal. The Proposed Action incorporates standard operating procedures and applicant-committed best management practices currently employed on BLM-administered public lands in the Uinta Basin that mitigate impacts to the environment.

Alternative B—No Action: Oil and gas development on Federal lands under Alternative A would not be implemented. However some level of development would continue to occur under Applications for Permits to Drill (APDs) previously approved by the BLM based upon other NEPA documents. An additional 130 wells would be located on land managed by the State of Utah and private leases.

Eight additional alternatives were considered but eliminated from detailed analysis. These alternatives included: No development, suspension of operations, exchange of leases, full-field directional drilling, conventional oil and gas plan development, Best Management Practices (BMP), phased development, and minimum setback distances. These alternatives were eliminated from detailed analysis because of technical or economical reasons, because of their resource impact, or because they did not meet the purpose and need of BLM's proposed action.

Copies of the FEIS for the Greater Deadman Bench Region have been sent to Federal, State, and local government agencies, and to parties who commented during the public comment period.

Howard Cleavinger,

Acting Field Office Manager.

[FR Doc. E7–25578 Filed 1–3–08; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–07–1610-DQ]

Notice of Availability of the Rawlins Proposed Resource Management Plan and Final Environmental Impact Statement, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA) and the Federal Land Policy and Management Act of 1976 (FLPMA), the Bureau of Land Management (BLM) and its cooperating agencies, have prepared a Proposed Resources Management Plan and Final Environmental Impact Statement (PRMP/EIS) for the Rawlins Field Office for public review.

DATES: The BLM Planning regulations set forth the provisions applicable to protests (43 Code of Federal Regulations (CFR) 1610.5–2). A person who meets the conditions as described in the regulations cited above, and who wishes to file a protest, must file said protest within 30 days of the date this notice is published in the **Federal Register**. Additional information on protests is set forth in the Dear Reader letter of the Rawlins PRMP/EIS and in the **SUPPLMENTARY INFORMATION** section of this notice. To ensure compliance with the protest regulations, please consult the BLM's Planning regulations at 43 CFR 1610.5–2.

ADDRESSES: A copy of the PRMP/FEIS has been sent to affected Federal, State, and local government agencies and to interested parties. The document will be available electronically at the following Rawlins RMP revision Web site: *http://www.blm.gov/rmp/wy/rawlins.* Copies of the PRMP/FEIS will be available for public inspection at the following locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.
- Bureau of Land Management, Rawlins Field Office, 1300 N. Third Street, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Mark Storzer, Field Manager, or John Spehar, Rawlins RMP Team Leader, BLM Rawlins Field Office, 1300 N. Third Street, P.O. Box 2407, Rawlins, Wyoming 82301, or by telephone at (307) 328–4200.

SUPPLEMENTARY INFORMATION: The Rawlins Field Office planning area includes all of the public land and Federal mineral ownership in Laramie, Albany, Carbon, and eastern Sweetwater Counties, Wyoming. The area includes approximately 3.5 million acres of BLM-administered surface lands and 4.5 million acres of Federal mineral lands under Federal, State, and private surface.

The Draft RMP/Draft EIS was made available for public review for a 90-day period on December 12, 2004. The Draft RMP/Draft EIS described and analyzed 4 alternatives for the management of the public lands and resources, including the Federal mineral estate administered by the BLM Rawlins Field Office:

Alternative 1 (No Action): Continues to balance the use and development of resources under current management guidance;

Alternative 2: Provides development and use opportunities while minimizing adverse impacts to cultural and natural resources;

Alternative 3: Focuses on greater conservation of natural and cultural resources while providing for compatible development and use; and

Alternative 4: (Agency Preferred Alternative): Provides development opportunities while protecting sensitive resources.

The key issues addressed by the alternatives are: (1) Development of energy resources and minerals; (2) special management designations; (3) public access and transportation planning; (4) wildland-urban interface; (5) management of special status species; (6) water quality; (7) vegetation management; (8) recreation activities; and (9) cultural resources management.

The Draft RMP/Draft EIS includes recommendations regarding Areas of Critical Environmental Concern (ACECs). While the Draft RMP/Draft EIS fully documents the ACECs considered, to ensure that BLM provided the public with the required 60-day comment and review period as required by 43 CFR 1610.7–2, the BLM published a notice of supplemental information describing the proposed ACECs and associated values and use limitations in the **Federal Register** June 5, 2007.

Comments received on the Draft RMP/Draft EIS from the public and internal BLM review comments were incorporated into the proposed plan. Public comments resulted in the addition of clarifying text but did not significantly change proposed land use decisions.

After careful consideration of both public and internal comments received on the Draft RMP/Draft EIS, adjustments and clarifications have been made to Alternative 4, the Preferred Alternative. As modified, Alternative 4 is now presented as the Proposed Rawlins RMP in the Final EIS. The Proposed Rawlins RMP would provide comprehensive, long-range decisions for the use and management of resources in the planning area administered by the BLM and focus on the principles of multiple use and sustained yield.

As noted above, instructions for filing a protest with the Director of the BLM regarding the PRMP/EIS may be found at 43 CFR 1610.5–2. Electronic mail and facsimile protests will be considered only if the protesting party provides BLM with the original letter by either regular or overnight mail postmarked by the close of the protest period. Under those conditions, the BLM will consider the electronic or facsimile version as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at (202) 452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov.* All protests must be in writing and mailed to one of the following addresses:

Regular Mail:	Overnight Mail:
Director (210) *Attention:* Brenda Williams P.O. Box 66538 Washington, DC 20036	Director (210) *Attention:* Brenda Williams 1620 L Street, NW., Suite 1075 Washington, DC 20036

Before including your address, phone number, e-mail address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Donald A. Simpson,

Associate State Director.

[FR Doc. E7–25577 Filed 1–3–08; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–622]

In the Matter of Certain Base Plugs; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 19, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Anchor Sports I, Inc. of Richardson, Texas. A supplement to the complaint was filed on December 10, 2007. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain base plugs by reason of infringement of certain claims of U.S. Patent No. 6,142,882. The complaint, as supplemented, further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, as supplemented, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2007).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 17, 2007, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain base plugs by reason of infringement of one or more of claims 1, 2, 5, 10, 14, and 15 of U.S. Patent No. 6,142,882, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Anchor Sports I, Inc., 801 East Campbell Road, Suite 638, Richardson, Texas 75081.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Schutt Sports, Inc., 606 North State Street, Litchfield, Illinois 62056.

East Texas Sports Center, Inc., 310 N. Washington, Marshall, Texas 75670.

(c) The Commission investigative attorney, party to this investigation, is Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: December 19, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary of the Commission.

[FR Doc. E7–25631 Filed 1–3–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–626]

In the Matter of Certain Noise Cancelling Headphones; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 29, 2007 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Bose Corporation of Framingham, Massachusetts. A letter supplementing the complaint was filed on December 20, 2007. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain noise cancelling headphones by reason of infringement of certain claims of U.S. Patent Nos. 5,181,252 and 6,597,792. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the

Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: T. Spence Chubb, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2575.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2007).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 26, 2007, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain noise cancelling headphones by reason of infringement of one or more of claims 1, 2, and 5 of U.S. Patent No. 5,181,252 and claims 1 and 2 of U.S. Patent No. 6,597,792, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Bose Corporation, 100 The Mountain Road, Framingham, Massachusetts 01701.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Phitek Systems Limited, Level 4, Axon Building, 2 Kingdom Street, Newmarket, Auckland, New Zealand.

Phitek Systems Limited, 3049 Summerhill Court, San Jose, California 95148.

GN Netcom, Inc., 77 Northeastern Boulevard, Nashua, New Hampshire 03062.

Audio Technica U.S., Inc., 1221 Commerce Drive, Stow, Ohio 44224.

Creative Labs, Inc., 1901 McCarthy Boulevard, Milpitas, California 95035.

Logitech Inc., 6505 Kaiser Drive, Fremont, California 94555.

Panasonic Corporation of North America, One Panasonic Way, Secaucus, New Jersey 07094.

(c) The Commission investigative attorney, party to this investigation, is T. Spence Chubb, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: December 27, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary of the Commission.

[FR Doc. E7–25627 Filed 1–3–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Indian and Native American Employment and Training Programs; Solicitation for Grant Applications and Announcement of Competition Waivers for Program Years 2008 and 2009

Announcement Type: New. Notice of Solicitation for Grant Applications and Announcement of Competition Waivers.

Funding Opportunity Number: SGA/DFA–PY–05–05.

Catalog of Federal Domestic Assistance (CFDA) Number: 17.265

DATES: The closing date for receipt of applications under this announcement is by 5 p.m. eastern standard time (EST). Application and submission information is explained in detail in Part IV of this Solicitation for Grant Applications (SGA).

SUMMARY: The United States (U.S.) Department of Labor (DOL or the Department), Employment and Training Administration (ETA), announces the availability of competitive grant funds to provide employment and training services to Indians, Alaska Natives and Native Hawaiians under Section 166 of the Workforce Investment Act (WIA) for Program Years (PY) 2008 and 2009 (July 1, 2008 through June 30, 2010). Competition for section 166 grants is conducted every two years, except that the Secretary may waive the requirement for such competition for current grantees that have performed satisfactorily.

Through this Notice, the Department announces that the Secretary has waived competition for this solicitation for grantees that have performed satisfactorily under their current grant. See Attachment A for a list of grantees receiving waivers. Grantees that receive waivers from competition only need to submit a cover letter, signed by an authorized signatory, and a Standard Form (SF) 424 Application for Federal Assistance (Version 02). These documents will serve as the grantee's "Notice of Intent" (NOI) to continue providing WIA § 166 services.

The Secretary has also waived competition for this solicitation for those grantees operating a WIA § 166 training and employment program as part of a Public Law 102–477 Demonstration Project, which allows Federally-recognized tribes, or entities serving Federally-recognized tribes, to consolidate formula-funded employment, training, and related dollars under a single service plan

administered by the Department of the Interior (DOI). See Attachment B for a list of Public Law 102–477 grantees. Grantees operating a WIA § 166 grant as part of a Public Law 102–477 Demonstration Project only need to submit a cover letter, signed by an authorized signatory, and a Standard Form (SF) 424 Application for Federal Assistance (Version 02). These documents will serve as the Public Law 102–477 grantee's NOI to continue providing WIA § 166 services.

Competition for funding under this solicitation is limited to the geographic areas listed in Attachment C of this SGA. Any eligible entity, including new applicants and current grant recipients, may apply for funding to serve these areas. Current grantees serving these geographic areas are subject to competition and must submit a grant application as specified in Part IV (B) in order to compete for their existing service area.

Important: Organizations seeking WIA § 166 funding for this period must comply with the provisions of this SGA. Late applications from current grantees or new applicants will not be considered for those geographic service areas that are in competition (as listed in Attachment C).

A list of current grantees and the geographic areas they serve can be found at: *http://www.doleta.gov/dinap/cfml/CensusData.cfm.*

ADDRESSES: Applications must be sent to: U.S. Department of Labor, ETA, Room N–4716, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: James Stockton. Applicants are advised that mail delivery in the Washington, DC area may be delayed due to mail decontamination procedures. Hand delivered proposals will be received at the above address. Applications submitted via facsimile (fax) machine will not be accepted.

SUPPLEMENTARY INFORMATION: This solicitation consists of eight parts and three attachments:

- Part I provides the funding description and background information.
- Part II describes the size and nature of the anticipated awards.
- Part III describes eligible applicants and other grant specifications.
- Part IV provides information on the application and submission process.
- Part V describes the criteria against which applications will be reviewed and evaluated, and explains the proposal review process.
- Part VI provides award administration information.
- Part VII contains DOL agency contact information.
- Part VIII lists additional resources of interest to applicants.
- Attachment A lists grantees receiving waivers.
- Attachment B lists Public Law 102–477 grantees receiving waivers.
- Attachment C lists grantees that did not receive a waiver and areas/counties open for competition and associated funding amounts.

I. Funding Opportunity Description

Section 166 of WIA is to make funds available to Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, and Native Hawaiian organizations to support employment and training activities in order to:

(1) Develop more fully the academic, occupational, and literacy skills of Indian, Alaska Natives, and Native Hawaiian individuals;

(2) Make Indian, Alaska Natives, and Native Hawaiian individuals more competitive in the workforce;

(3) Promote the economic and social development of Indian, Alaska Native, and Native Hawaiian communities in accordance with the goals and values of such communities; and

(4) Help Indian, Alaska Natives, and Native Hawaiian individuals achieve personal and economic self-sufficiency.

Requirements for WIA § 166 programs are set forth in WIA § 166 (29 U.S.C. 2911) and its regulations, found at 20 CFR part 668, published at 65 FR 49294, 49435 August 11, 2000.

A. Background on the Workforce Investment Act (WIA), Section 166 Grants (Also Known as Indian and Native American Grants or INA Grants):

The Department's Office of ETA has awarded employment and training grants to Indian tribes, urban Indian centers, and other nonprofit organizations serving Indians, Alaska Natives, and Native Hawaiians for over 30 years. These grants have been authorized under various forms of legislation such as the Job Training Partnership Act (JTPA) enacted in 1982, and its predecessor, the Comprehensive Employment and Training Act (CETA) enacted in 1973. While WIA maintains most of the core program values that existed in previous laws, it also establishes key reforms that are applicable to Native American programs.

One of the key reforms under WIA is the emphasis on the coordination of Federally funded job training programs. The mechanism used to coordinate these various job training programs is the One-Stop delivery system. Under WIA, the Native American Section 166 program is a required partner in the One-Stop delivery system. As such, grantees must execute a Memorandum of Understanding (MOU) with the local workforce investment board that identifies the role of the INA grantee in the One-Stop center. It is important that Section 166 grantees coordinate with their local One-Stop service provider(s).

Applicants to this SGA should also be aware of ETA's move towards results-oriented employment and training programs. In order to better measure performance, ETA has established common measures for all ETA programs. Listed below are the adult performance outcomes that Section 166 grants are measured by:

- Entered Employment.
- Employment Retention.
- Average Earnings.

Applicants which receive supplemental youth funds will be measured by the following criteria:

- Number of Youth Placed in Unsubsidized Employment.
- Number of Youth Placed in Post Secondary Education.
- Number of Youth Attained a High School Diploma or Equivalent.
- Number of Youth Returned to Secondary School Full-Time.

Additional information on performance measures can be found in ETA's Training and Employment Guidance Letter (TEGL) No. 17–05 (February 17, 2006), which can be found at: *http://wdr.doleta.gov/directives/attach/TEGL17–05.pdf.*

B. Waivers

As indicated in the Summary above, the Secretary has the authority to grant waivers from competition to grantees that have performed satisfactorily under their current grant. Incumbent grantees that have performed satisfactorily, both programmatically and administratively, under the last two grant cycles will receive a waiver from competition for the PY 2008–2009 designation period funded under this notice.

However, if the Department has found that the grantee serving a geographic area has failed to perform satisfactorily, that geographic area will be placed in competition, UNLESS the grantee is serving a geographic area over which it has legal jurisdiction.

(1) Criteria for Determining Waivers

The Department will consider the following factors when determining waivers from competition:

(a) Program performance measures.

(b) The responsibility review criteria contained in 20 CFR 667.170.

(c) The factors related to ability to administer funds in 20 CFR 668.220 and 668.230.

The process for determining waivers from competition is independent of the responsibility review and ability to administer funds processes and a deficiency need not rise to the level necessary to support a finding of "not responsible" or "not able to administer" in order to be considered relevant to the waiver determination. Every applicant for assistance, including those receiving priority and those receiving waivers of competition, must undergo a separate determination of its responsibility under 20 CFR 667.170 and its ability to administer funds under 20 CFR 668.220 and 668.230. Grantees that are determined to be "not responsible" as determined by the responsibility review process will not be selected as potential grantees irrespective of the designation processes included in this SGA.

For incumbent organizations that failed to qualify for a waiver of competition, the Grant Officer reserves the right to examine the applicant's responsibility pursuant to 20 CFR 667.170 as part of the initial review of grant applications in order to carry out a more efficient selection process. Incumbent organizations that are found nonresponsible or unable to administer funds, including those receiving priority, will not qualify for designation.

(2) Waivers for Federally Recognized Tribes Serving Areas and/or Populations Over Which They Have Legal Jurisdiction

The determination regarding whether to deny a waiver required some adjustment with respect to Federally recognized Indian tribes or Alaska Native entities serving geographic areas over which they have legal jurisdiction and a priority for designation under 20 CFR 668.210(a). In these situations, the Department determined that it will provide a waiver to such grantees since the Section 166 regulations provide a priority for designation for Federally recognized Indian tribes and Alaska Native entities (or consortia that include such a tribe or Alaska Native entity) regarding geographic areas and/or populations over which they have legal jurisdiction. The Waiver is limited to those geographic areas over which the tribal grantee has legal jurisdiction as defined by 20 CFR 668.210(a). Those geographic areas which the grantee serves but lacks legal jurisdiction are subject to competition.

The Department will address the poor performance of Federally recognized Indian tribes and Alaska Native entities through separate administrative processes. Such processes may include conditional designation or corrective action plans that require tribes and Alaska Native entities to improve performance. Failure to improve performance may result in a tribal and Alaska Native entity losing its designation as a WIA grantee.

(3) Description of Attachments

(a) Attachment A provides a list of current grantees receiving competition waivers (including those tribes and Alaska Native entities that will receive conditional designations).

(b) Attachment B is a list of Public Law 102–477 grantees receiving waivers.

(c) Attachment C lists grantees that did not receive a waiver and areas/counties open for competition and associated funding amounts. If a federally recognized tribe did not receive a waiver from competition, only the service area in which the tribe does not have legal jurisdiction is listed in Attachment C.

C. Procedures After Designation

Being designated as a Section 166 service provider, either under a waiver or through competition will not automatically result in an immediate award of grant funds. Entities that successfully complete the designation process, including winning any competition(s) for service area(s) that may occur as defined in this SGA, must prepare a two-year Comprehensive Services Program (CSP) Plan that must be approved by DOL. Instructions for preparation of the CSP Plan will be issued to all designated service providers under separate guidance.

After a section 166 designee's CSP Plan is approved by the Department, a grant agreement ("Notice of Obligation" or NOO) must be executed in accordance with 20 CFR 668.292. Each NOO will reflect the amount of Section 166 funds awarded as determined in accordance with 20 CFR 668.296 and 668.440.

II. Award Information

Type of assistance instrument: Funds will be awarded under this solicitation through two-year grants. Exact award amounts will be determined by the Department after designation of service areas and service providers, and once funding appropriations for the grant periods have been made by Congress.

The section 166 program is a "formula funded" program that receives an annual appropriation of approximately $54,000,000. For PY 2007, this amount was distributed throughout the U.S. to 180 grantees. The amounts awarded under the CSP (Adult) program in PY 2007 ranged from $15,641 to $5,970,187. The median grant award amount for PY 2007 was $160,426. PY 2007 CSP (adult) award amounts for all section 166 grantees can be found at: *http://wdr.doleta.gov/directives/attach/TEGL/TEGL24–06_Att1.pdf.*

Adult funding: The amount of funding a grantee will receive for adult services is based on a formula specified at 20 CFR 668.296(b). The CSP (Adult) Funding Formula is as follows:

- One-quarter of the funds will be allocated based on the percentage of unemployed Native Americans living in the grantee's designated INA service area (as defined below) compared to the total number of unemployed Native Americans living in the U.S.
- Three-quarters of the funds will be allocated based on the percentage of Native Americans living in poverty in the grantee's designated INA service area compared to the total number of Native Americans living in poverty in the U.S.

A grantee's designated INA service area is the area identified by the DOL Grant Officer in the grant award in which the grant applicant will operate an employment and training program (usually a county or reservation area). Grant applicants must specify the geographic area(s) they wish to serve in their grant application. ETA uses counties and tribal reservations, Alaska Native villages, and Alaska Native regional corporations to identify areas of service. ETA used data from the 2000 Census to determine the number of Native Americans in poverty and unemployed for each service area. Attachment C identifies the service areas in competition for PY 2008–2009, along with the number of Native Americans in each geographic area who are unemployed, in poverty, or in the youth age bracket and the estimated funding associated with each service area.

Youth funding: Grant applicants serving reservation areas and grantees serving any area in the State of Oklahoma also receive Supplemental Youth Services (SYS) program funds. Youth funds are appropriated annually as stated in WIA at § 127(b)(1)(C)(i). Annual appropriations for the SYS program have been between $14,000,000 and $15,000,000, and have been awarded to approximately 136 Native American grantees. The amounts awarded under the SYS program in 2007 ranged from $1,916 to $3,109,199. The median grant award amount for PY 2007 was $36,249. Youth award amounts for all Section 166 grantees can be found at: *http://wdr.doleta.gov/directives/attach/TEGL/TEGL24–06_Att2.pdf.*

The amount of youth funding a grantee will receive is based on a formula specified at 20 CFR 668.440. The SYS Funding Formula is as follows: SYS funding will be allocated to grantees serving reservations (or areas in the State of Oklahoma) based on the percentage of Native American Youth between the ages of 14 and 21 living in poverty in the grantee's designated INA service area compared to the number of Native American youth between the ages of 14 and 21 living in poverty on all reservation areas and the State of Oklahoma.

Award amounts available for areas in competition: Estimated funds to be awarded for those areas in competition are included in Attachment C.

III. Eligibility Information

A. Eligible Applicants

To be eligible for an award of funds under WIA § 166 and this solicitation, an entity must meet all eligibility requirements of WIA § 166 and 20 CFR 668.200, as well as the application and designation requirements found at 20 CFR part 668, subpart B. The Federal regulations are available at: *http://www.doleta.gov/dinap/pdf/wiafinalregsall.pdf.* Potential applicants are expected to thoroughly review and comply with the statute and regulations.

Organizations that are eligible to apply for WIA § 166 funds under this solicitation are:

- Federally recognized Indian Tribes.
- Tribal organizations as defined in 25 U.S.C. 450b.
- Alaskan Native-controlled organizations representing regional or village areas, as defined in the Alaska Native Claims Settlement Act.
- Native Hawaiian-controlled entities.
- Native American-controlled organizations serving Indians, including community and faith-based organizations (see definition of Native American-controlled organizations described below).
- State-recognized tribal organizations serving individuals who were eligible to participate under JTPA § 401, as of August 6, 1998.
- Consortia of eligible entities which individually meet the legal requirements for a consortium (see definition of a consortium described below). Additionally, to be eligible, entities must have a legal status as a government, an agency of a government, a private nonprofit corporation (e.g., incorporated under IRS § 501(c)(3), or a consortium as defined below. Applicants seeking to provide services in a geographic service area for the first time must satisfy the funding threshold identified below.

Definition of Native American-Controlled Organization: A Native American-controlled organization is defined as any organization for which more than 50 percent of the governing board members are Indians or Native Americans. Such an organization can be a tribal government, Native Alaska entity, Native Hawaiian entity, consortium, or public or private nonprofit agency. For the purpose of this award application, the governing board must have decision-making authority for the WIA § 166 program.

Eligible consortium: Each member of a consortium must individually meet the requirement of an eligible applicant, as defined in 20 CFR 668.200 (c), (that is, be a Federally recognized tribe, or tribal organization, or Alaska Native-controlled organization, etc.) and at least one of the consortia members must have a legal status as a government, an agency of a government or a private nonprofit corporation. Additionally, the consortium must meet the following conditions:

- Have members in close proximity to one another but not necessarily in the same State;
- Have an administrative unit legally authorized to run the program and to commit the other members to contracts, grants, and other legally binding agreements; and
- Be jointly and individually responsible for the actions and obligations of the consortium, including debts.

Funding Thresholds: To be eligible for funding, a new (non-incumbent) entity must request one or more geographic service areas in competition that contain an eligible population of sufficient size to result in a funding level of at least $100,000 under the combined adult and youth funding formulas. See § 668.200(a)(3). Current section 166 grantees that do not meet the $100,000 threshold are exempt from this requirement. Federally-recognized tribes currently receiving, or applying for WIA § 166 funds under Public Law 102–477 only need to meet a $20,000 threshold, as long as the combined funding under Public Law 102–477 is at least $100,000. Attachment C provides funding estimates for the geographic areas in competition.

B. Cost Sharing or Matching

The Section 166 program does not require grantees to share costs or provide matching funds.

C. Other Eligibility Criteria

In accordance with 29 CFR Part 98, entities that are debarred or suspended shall be excluded from Federal financial assistance and are ineligible to receive a section 166 grant.

Additionally, the applicant must have the ability to administer section 166 funds. The ability to administer section 166 funds is determined in accordance with 20 CFR 668.220 and 668.230.

Limitations on those served under a WIA § 166 grant are identified in Part IV (E) of this SGA, "Funding Restrictions."

Applicants should be aware that there are specific program regulations and OMB circulars that grantees must adhere to upon receiving a section 166 grant. See Part IV (B) of this SGA below.

IV. Application and Submission Information

A. Address to Request Application Package

This SGA contains all of the information needed to apply for grant funding.

B. Content and Form of Application Submission

Information that must be submitted under this SGA will depend on the applicant's status with DOL/ETA. For the purposes of this SGA, grant applicants are divided into four categories, each of which is addressed separately below: (1) Current grantees receiving a waiver from competition for their service area (see listing in Attachment A); (2) current grantees operating a WIA § 166 grant under Public Law 102–477 (see listing in Attachment B); (3) current grantees not receiving waivers from competition (see listing in Attachment C); and (4) new applicants for areas in competition.

(1). Current Grantees Receiving a Waiver From Competition

Current grantees receiving a waiver of competition, as listed in Attachment A of this SGA, only need to submit the following documents:

- A brief cover letter informing ETA of the organization's interest in applying for WIA § 166 funds, signed by an authorized signatory official.
- A Standard Form (SF) 424 (Version 02) which can be obtained at *http://www.doleta.gov/dinap/cfml/WhatsNew.cfm* (See information regarding the completion of the SF–424 below.)

If a current grantee with a competition waiver for an existing service area wishes to apply for additional geographic service areas, the additional service area(s) must be stated in item #14 of the SF–424 and the procedures in Section V of this SGA must be followed to apply for grant funding for the additional area(s). A current grantee

that has received a waiver from competition does not jeopardize its existing service area by applying for additional service areas nor does it receive any preference for the additional area.

(2). Federally-Recognized Tribes Applying for Section 166 Funds Under Public Law 102–477

Public Law 102–477 authorizes WIA § 166 funds to be awarded to Federally-recognized tribes under a "consolidation" plan administered through the U.S. DOI. Public Law 102–477 allows Federally-recognized tribes to consolidate formula-funded employment and training related funds under a single, consolidated plan. Grantees operating a WIA § 166 grant under Public Law 102–477, as listed in Attachment B of this SGA, only need to submit the following documents:

- A brief cover letter informing ETA of the organization's interest in applying for WIA § 166 funds, signed by an authorized signatory official.
- A Standard Form (SF) 424 (Version 02) which can be obtained at *http://www.doleta.gov/dinap/cfml/WhatsNew.cfm* (See information regarding the completion of the SF–424 below).

These documents indicate their intent to continue receiving section 166 funds. Tribes wishing to apply for WIA § 166 funds under Public Law 102–477 should not apply under this solicitation. Instead, tribes must submit a 477 plan to the U.S. DOI.

New tribal applicants should be aware that in order for ETA to timely obligate funds under Public Law 102–477, a tribe's 477 plan must be received by the DOI no later than April 1, 2008, and approved no later than June 30, 2008. For further information on applying for WIA § 166 funds under Public Law 102–477, please contact Dawn Anderson at (202) 693–3745

(3). Current Grantees Not Receiving a Waiver From Competition

Current grantees not receiving a waiver from competition, as listed in Attachment C of this SGA, only need to submit the following documents to initially express interest in continuing to serve the geographic service area placed in competition:

- A brief cover letter informing ETA of the organization's interest in applying for WIA § 166 funds, signed by an authorized signatory official.
- A Standard Form (SF) 424 (Version 02) which can be obtained at: *http://www.doleta.gov/dinap/cfml/WhatsNew.cfm* (See information regarding the completion of the SF 424 below.)

While these are the only documents initially required, grantees not receiving a waiver should be aware that other entities may apply for their geographic service area(s). In cases where a new applicant (or applicants) applies for a current grantee's service area, the Grant Officer will notify the applicant—no later than 15 days after the SGA deadline date—that there is competition for the grantee's service area. Upon such notification, the applicant will be given 30 days from the date of the notification to submit a competitive grant proposal that responds to the evaluation criteria described in Part V(A) and that complies with requirements for new applicants under Part IV(B)(3) below (except that current grantees need not provide identification or proof of legal status, unless it has changed since the entity's current grant award). Current grantees not receiving a waiver may want to prepare a competitive grant proposal in preparation of a possible notice of competition as some portions of the proposal (such as letters of support) may take longer than the 30 days to prepare.

If there is no competition for a service area currently served by a grantee that did not receive a waiver, the Grant Officer, in consultation with INAP and consistent with 20 CFR 668.210, 668.250, and 668.280, will make a decision to continue funding to the current grantee, or to designate the service area to another WIA § 166 grantee that is willing to serve the area, or to transfer funding into the formula to be distributed among all WIA § 166 grantees.

(4). New applicants for areas in competition. New applicants must submit a complete grant proposal that addresses each of the evaluation criteria indicated in Part V(A) of this SGA. The proposal may not exceed twenty (20) double-spaced, single-sided, 8.5 inch x 11 inch pages with 12 point text font and one inch margins. In addition, attachments may be included but may not exceed 10 pages. The applicant may provide resumes, a list of staff positions to be funded by the grant, letters of support, statistical information, and other related material. The proposal must include within the 20-page limit:

- A brief cover letter informing ETA of the organization's interest in applying for WIA § 166 funds, signed by an authorized signatory official.
- A Standard Form (SF) 424 (Version 02) which can be obtained at: *http://www.doleta.gov/dinap/cfml/WhatsNew.cfm* (see information regarding the completion of the SF–424 below).
- Identification of the applicant's legal status, including articles of incorporation for non-profit organizations or consortium agreement (if applicable).
- A specific description of the geographic area (i.e., county or reservation) being applied for. Only areas placed in competition and identified in Attachment C of this SGA can be applied for. New applicants should identify the area(s) they wish to serve in item #14 of the SF–424. Applicants may include service areas in an attachment to the SF–424 if additional space is needed.

Completing the Standard Form (SF) 424 (Version 02):

The SF–424 is available for downloading at: *http://www.doleta.gov/dinap/cfml/WhatsNew.cfm*. The SF–424 must clearly identify the applicant and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF–424 on behalf of the applicant shall be considered the representative of the applicant.

While the SF–424 requires general information about an applicant, applicants may not be familiar with some required items, or the information may not be readily available. Explanations of these items are provided below:

Item #8(c)—Organization DUNS: All applicants for Federal funds are required to have a Dun and Bradstreet (DUNS) number. The DUNS number is a nine-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number access this Web site: *http://www.dunandbradstreet.com* or call 1–866–705–5711. Many organizations already have a DUNS number. Applicants should verify that their organization does not already have a DUNS number before obtaining a new number.

- *Item #11*—Catalog of Federal Domestic Assistance Number (CFDA): The CFDA number for the WIA § 166 program is 17.265. This number must be provided in item #11.
- *Item #14*—Areas Affected by Project: Applicants must include the specific geographic areas they wish to serve (i.e., counties, reservations, etc.). Current grantees that wish to serve their existing service area and are not applying for additional service areas only need to indicate "Existing Service Area" in this section. Current grantees and new applicants requesting service

areas that are open to competition as indicated in Attachment C of this SGA must include the State, County, and Reservation service area in line item 14. Applicants may include service areas in an attachment to the SF–424 if additional space is needed.

• *Item #17*—Proposed Project Start Date and Ending Date: The WIA § 166 program is funded for a two-year period and is based on a PY period of July 1 through June 30. The proposed start date under this solicitation is July 1, 2008, and the proposed end date is June 30, 2009.

• *Item #18*—Estimated Funding: The WIA § 166 program is a formula funded program and funding is based on population characteristics, geographic service area, and annual congressional appropriations. Since WIA § 166 funding awards are calculated by the DOL/ETA, it is not necessary for applicants to complete Item #18. However, current grantees can view their estimated funding which has been calculated by the DOL/ETA through 2010, at this Web site: *http://www.doleta.gov/dinap/cfml/CensusData.cfm*. Please note that the funding amounts located at the Web sites above are estimates based on the Fiscal Year 2004, congressional appropriation. Funding estimates for those areas in competition are included in Attachment C.

• *Item #19*—Is application Subject to Review by State Under Executive Order (E.O.) 12372 process? The WIA § 166 program is not subject to E.O. 12372.

C. Submission Date, Times, and Addresses

All applications must be submitted with an original signed application, SF–424 (all new applicants must also submit a SF–424A, Budget Form) and one (1) "copy-ready" version. Do not bind, staple, or insert protruding tabs.

The closing date for receipt of applications under this announcement is by 5 p.m. e.t, 30 days after the date of publication, February 4, 2008. Applications must be received at the address below no later than 5 p.m. e.t. Applications sent by e-mail, telegram, or facsimile (fax) will not be accepted. Applications that do not meet the conditions set forth in this notice will not be considered. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: James Stockton, Grant Officer, Reference SGA/DFA–PY–05–05, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand delivered proposals will be received at the above address. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date and time. Proposals submitted on diskette or CD is not encouraged as decontamination procedures may cause damage.

Late Applications: Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it

(1) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an application received after the deadline, but having a U.S. postmark showing an early submittal will not be considered late if received before awards are made), or

(2) Was sent by U.S. Postal Service Express Mail to the addressee not later than 5 p.m. (e.t.) at the place of mailing one working day prior to the date specified for receipt of applications. "Post marked" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the package. Failure to adhere to the above instructions will be a basis for a determination of non-responsiveness.

Note: Except as specifically provided in this Notice, DOL/ETA's acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, OMB Circulars require that an entity's procurement procedures must ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, the DOL/ETA's award does not provide the justification or basis to sole source the procurement, i.e., avoid competition, unless the activity is regarded as the primary work of an official partner to the application.

Important: Organizations seeking WIA § 166 funding for this period must comply with the provisions of this SGA. Late applications from current grantees or new applicants will not be considered for those geographic service areas that are in competition (as listed in Attachment C).

D. Intergovernmental Review

This funding opportunity is not subject to E.O. 12372 "Intergovernmental Review of Federal Programs."

E. Funding Restrictions

Allowable costs: Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, e.g., for tribes, OMB Circular A–87, for nonprofit organizations, OMB Circular A–122. See 20 CFR 668.810 and 668.840 (incorporating WIA cost rules at 20 CFR 667.200 to 667.220). Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowable in accordance with the applicable Federal Cost Principles or other conditions contained in the grant. The WIA § 166 program limits administrative costs to 15 percent but may be negotiated up to 20 percent upon approval from the grantor agency. There are no specific limits on indirect costs; however, since most indirect costs are considered administrative costs, the amount of indirect cost collected, regardless of the approved rate, may be limited by the overall administrative cost limit. WIA funds must not be spent on construction or purchase of facilities or buildings except in specific circumstances specified at § 667.260.

Limitation on the type of individuals served: The regulations at 20 CFR 668.300(a) limit eligibility for WIA § 166 program services to Indians as determined by a policy of the Native American grantee. The grantee's definition must at least include anyone who is a member of a Federally-recognized tribe, or an Alaska Natives, or a Native Hawaiian. Those receiving services must also, under § 668.300(b), be either low income, unemployed, underemployed as defined in 20 CFR 668.150, a recipient of a bona fide layoff notice which has taken effect in the last six months or will take effect in the following six month period, or employed persons in need of employment and training services to achieve self-sufficiency. Grantees must ensure that all eligible population members have equitable access to employment and training services. See 20 CFR 668.650(a). Priority of services must be given to veterans and spouses of certain veterans in accordance with the provisions of the "Jobs for Veterans Act," Public Law 107–288. Since all individuals served by the section 166

program must be an Indian, Native American, Alaska Native, or Native Hawaiian, so must the veterans receiving priority under the "Jobs for Veterans Act" be Indian, Native American, Alaska Native, or Native Hawaiian.

V. Application Review Information

A. Evaluation Criteria

The factors listed below will be considered in evaluating the applicants' approach to providing services and their ability to produce the best outcomes for covered individuals residing in the service area.

B. Review and Selection Process

	Evaluation criteria	Points
(1)(a)	Previous experience or demonstrated capabilities in successfully operating an employment and training program established for and serving Indians and Native Americans.	20
(b)	Previous experience in operating or coordinating with other human resources development programs serving Indians and Native Americans. Applicant should describe other successful Federal, State, or private foundation grants that the applicant has operated in the last two years.	10
(c)	Demonstration of coordination and linkages with Indian and non-Indian employment and training resources within the community.	10
(2)(a)	Description of the entity's planning process	10
(b)	Demonstration of involvement with the INA community	10
(c)	Approach to providing services, including identification of the training and employment problems and needs in the requested area, and approach to addressing such needs.	10
(3)(a)	Demonstration of involvement with local employers and efforts that have been made to link unemployed Native Americans with employers. Applicant should also describe involvement with local Workforce Investment Boards, or if applicable, youth programs, and/or councils.	10
(b)	Applicants should describe efforts that have been made to coordinate their human resource services described under Criteria (1)(b) with State Operated One-Step delivery systems.	10
(4)	Demonstration of support and recognition by the Native American Community and service population, including local tribes and adjacent Indian organizations and the client populations to be served.	10
	Maximum Available Points	100

Overall Review Process: The Grant Officer will conduct an initial review of grant applications for compliance with the statute, regulations, and this SGA. The initial review will consider, among other things, timeliness and completeness of submission, applicant eligibility, eligibility of the requested service area, population size, and funding thresholds as described in Part III (A) of this SGA. The review will also consider the applicant's ability to administer funds as specified at 20 CFR 668.220 and 668.230. Applications that do not satisfy these conditions will not be considered.

For incumbent organizations that failed to qualify for a waiver of competition, the Grant Officer reserves the right to examine the applicant's responsibility pursuant to 20 CFR 667.170, as part of the initial review of grant applications in order to carry out a more efficient selection process. Incumbent organizations that are found nonresponsible or unable to administer funds, will not qualify for designation.

Designation Priority: If two or more applicants satisfy the initial review described above, the Grant Officer will determine whether designation priority exists. In nonreservation areas placed in competition, consistent with 20 CFR 668.210(c), priority for designation will be given to entities with a Native American-controlled governing body and which are representative of the Native American communities that they are applying to serve.

Competitive Selection Procedures: Where two or more applicants satisfy the initial review described above and where equal or no priority for designation exists, then a competitive selection will be made for geographic areas identified in Attachment C using the procedures in this section. When competitive selection is necessary, INAP will notify each applicant of the competing NOI no later than 15 days after the application deadline date. Upon notification of competition, current grantees will be given 30 days from the date of notification to submit a complete proposal, as specified in Part IV (B)(3).

Where a competitive evaluation is required, the Grant Officer will use a formal panel review process to score proposals and any supporting attachments against the evaluation criteria listed in Part V(A). The review panel will include individuals with knowledge of or expertise in programs dealing with Indians and Native Americans. The purpose of the panel is to review and evaluate an organization's potential, based on its application, to provide services to a specific Native American community, and submit recommendations to the Grant Officer.

It is the Department's policy that no information affecting the panel review process will be solicited or accepted after the deadlines for receipt of applications set forth in this SGA. All submitted information must be in writing. This policy does not preclude the Grant Officer from requesting, or considering, additional information independent of the panel review process. During the review, the panel will not give weight to undocumented assertions. Any information must be supported by adequate and verifiable documentation, e.g., supporting references must contain the name of the contact person, an address, and telephone number. Panel ratings and recommendations are advisory to the Grant Officer.

Determination of Designation-Scoring: The Grant Officer will make the final determination of section 166 designees and of the geographic service area for which each designation is made. The Grant Officer will select the entity that demonstrates the ability to produce the best outcomes for its customers, based on all available evidence and in consideration of any designation priorities as described in above. In addition to considering the review panel's rating in those instances in which a panel is convened, the Grant Officer may consider any other available information regarding the applicants' financial and administrative capability, operational capability, and responsibility in order to make funding determinations that are advantageous to the government.

The Grant Officer need not designate an entity for every geographic area. See 20 CFR 668.294. If there are service areas in competition for which no entity submitted a complete application or for

which no entity achieved a score of at least 70, the Grant Officer may either designate no service provider or may designate an entity based on demonstrated capability to provide the best services to the client population. The Department reserves the rights to select applicants with scores lower than 70 or lower than competing applications if such selection would, in the Department's judgment, result in the most effective and appropriate combination of services to the client population, funding, and costs.

An applicant that does not receive WIA § 166 funding, in whole or in part, as a result of this process, will be afforded the opportunity to appeal the Grant Officer's decision as provided at 20 CFR 668.270.

C. Anticipated Announcement and Award Dates

Designation decisions will be made by March 1, 2008.

VI. Award Administration Information

A. Award Notices

The Grant Officer, Mr. James Stockton, will notify applicants of the results of their application as follows:

Designation Award Letter: The designation award letter signed by the Grant Officer will serve as official notice that the applicant has been awarded WIA § 166 funding. The designation award letter will include the geographic service area for which the designation is made.

Nondesignation Award Letter: Any organization not receiving a designated award, in whole or in part, for a requested geographic service area that is in competition (as identified in Attachment C) will be notified formally of the nonaward designation.

Notification by a person or entity, other than the Grant Officer that an applicant has been awarded WIA § 166 funds is not valid.

B. Administrative and National Policy Requirements

Applicants that are awarded WIA § 166 funds and become a Grantee of ETA must comply with the provisions of WIA and its regulations. Particular attention should be given to 20 CFR Part 668, which focuses specifically on programs for Indians and Native Americans under WIA. In addition, all grants will be subject to the following administrative standards and provisions, as applicable to the particular grantee:

- 20 CFR part 667—Administrative provisions under Title I of WIA.
- 29 CFR part 2, subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.
- 29 CFR parts 30, 31, 32, 33, 35 and 36—Equal Employment Opportunity in Apprenticeship and Training; Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964; Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor; Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor; and Nondiscrimination on the Basis of Sex in Education Programs Receiving or Benefiting from Federal Financial Assistance.
- 29 CFR part 37—Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998.
- 29 CFR part 93—Lobbying.
- 29 CFR part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and with Commercial Organizations.
- 29 CFR part 96—Federal Standards for Audit of Federally Funded Grants, Contracts, and Agreements.
- 29 CFR part 97 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- 29 CFR part 98—Government-wide Debarment and Suspension (Non-Procurement) and Government-wide Requirements for Drug-Free Workplace (Grants).
- 29 CFR part 99—Audit of States, Local Governments, and Non-Profit Organizations.

In accordance with WIA § 195(6) and 20 CFR 668.630(f), programs funded under this SGA may not involve political activities. Additionally, in accordance with section 18 of the Lobbying Disclosure Act of 1995, Public Law 104–65 (2 U.S.C. 1611), nonprofit entities incorporated under § 501(c)(4) that engage in lobbying activities are not eligible to receive Federal funds and grants. Further, this program is subject to the provisions of the "Jobs for Veterans Act," Public Law 107–288, which provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by DOL. Please note that, to obtain priority of service, a veteran must meet the program's eligibility requirements. ETA Training and Employment Guidance Letter (TEGL) No. 5–03 (September 16, 2003) provides guidance on the scope of the veterans priority statute and its effect on current employment training programs.

C. Reporting

Applicants that are awarded WIA § 166 funds and become grantees of ETA will be required to submit reports on financial expenditures, program participation, and participant outcomes on no more than a quarterly basis and in accordance with ETA-specified formats, deadlines, and other requirements. Grantee performance will be evaluated on an annual basis.

VII. Agency Contacts

Questions regarding this SGA can be directed to: Serena Boyd, Grants Management Specialist, e-mail: *boyd.serena@dol.gov*; (202) 693–3338; Fax: (202) 693–2879.

VIII. Other Information

Potential applicants may obtain further information on the WIA § 166 program for employment and training of Native Americans through the Web site for DOL's Indian and Native American Programs: *http://www.doleta.gov/dinap/*. Any information submitted in response to this SGA will be subject to the provisions of the Privacy Act and the Freedom of Information Act, as appropriate. The Department is not obligated to make any awards as a result of this SGA, and only the Grant Officer can bind the Department to the provision of funds under WIA § 166. Unless specifically provided in the grant agreement, the Department's acceptance of a proposal and/or award of Federal funds does not waive any grant requirements and/or procedures. OMB Information Collection No. 1205–0458 Expires September 30, 2009.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, the OMB Desk Officer for ETA, Office of Management and Budget, Room 10235,

Washington, DC 20503. Please do not return your completed application to the OMB. Send it to the sponsoring agency as specified in this solicitation.

This information is being collected for the purpose of awarding a grant. The information collected through this "Solicitation for Grant Applications" will be used by the Department of Labor to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted in the respondent's application is not considered to be confidential.

Signed at Washington, DC, this 28th day of December 2007.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

Attachment A—Current Grantees Receiving Waivers

Attachment B—Public Law 102–477 Grantees Receiving Waivers

Attachment C—Current Grantees Not Receiving Waivers and Associated Geographic Areas

ATTACHMENT A.—CURRENT GRANTEES RECEIVING WAIVERS

State	Grantee name
Alabama	Inter-Tribal Council of Alabama, Inc.
Alabama	Poarch Band of Creek Indians.
Alaska	Kenaitze Indian Tribe.
Alaska	Maniilaq Association.
Arizona	Affiliation of Arizona Indian Centers, Inc.
Arizona	American Indian Association of Tucson.
Arizona	Colorado River Indian Tribes.
Arizona	Gila River Indian Community.
Arizona	Hopi Tribal Council.
Arizona	Hualapai Tribe.
Arizona	Inter-Tribal Council of Arizona, Inc.
Arizona	Native Americans for Community Action, Inc.
Arizona	Pascua Yaqui Tribe.
Arizona	Phoenix Indian Center, Inc.
Arizona	Quechan Indian Tribe.
Arizona	Salt River Pima-Maricopa Indian Community.
Arizona	San Carlos Apache Tribe.
Arizona	White Mountain Apache Tribe.
Arkansas	American Indian Center of Arkansas, Inc.
California	California Indian Manpower Consortium, Inc.
California	Candelaria American Indian Council, Inc.
California	Indian Human Resources Center, Inc.
California	Northern California Indian Development Council, Inc.
California	Southern California Indian Center, Inc.
California	Tule River Tribal Council.
California	United Indian Nations, Inc.
California	Ya-Ka-Ama Indian Education and Development, Inc.
Colorado	Denver Indian Center, Inc.
Colorado	Southern Ute Indian Tribe.
Colorado	Ute Mountain Ute Tribe.
Delaware	Nanticoke Indian Association, Inc.
Florida	Florida Governors Council on Indian Affairs, Inc.
Florida	Miccosukee Tribe of Indians of Florida.
Hawaii	Alu Like, Inc.
Indiana	American Indian Center of Indiana, Inc.
Kansas	United Tribes of Kansas and Southeast Nebraska, Inc.
Louisiana	Inter-Tribal Council of Louisiana, Inc.
Maine	Penobscot Indian Nation.
Massachusetts	Mashpee-Wampanoag Indian Tribe.
Massachusetts	North American Indian Center of Boston, Inc.
Michigan	Inter-Tribal Council of Michigan, Inc.
Michigan	Michigan Indian Employment and Training Services, Inc.
Michigan	North American Indian Association of Detroit, Inc.
Michigan	Pokagon Band of Potawatomi Indians.
Michigan	Sault Ste. Marie Tribe of Chippewa Indians.
Michigan	South Eastern Michigan Indians, Inc.
Minnesota	American Indian Opportunities, Inc.
Minnesota	Bois Forte Tribal Council.
Minnesota	Fond Du Lac Reservation.
Minnesota	Leech Lake Band of Ojibwe.
Minnesota	Minneapolis American Indian Center.
Mississippi	Mississippi Band of Choctaw Indians.
Missouri	American Indian Council.
Montana	B.C. of The Chippewa Cree Tribe.
Montana	Blackfeet Tribal Business Council.
Montana	Crow Tribe of Indians.
Montana	Montana United Indian Association.

ATTACHMENT A.—CURRENT GRANTEES RECEIVING WAIVERS—Continued

State	Grantee name
Montana	Northern Cheyenne Tribe.
Nebraska	Indian Center, Inc.
Nebraska	Omaha Tribe of Nebraska.
Nevada	Inter-Tribal Council of Nevada, Inc.
Nevada	Las Vegas Indian Center, Inc.
New Mexico	Alamo Navajo School Board.
New Mexico	Eight Northern Indian Pueblo Council.
New Mexico	Five Sandoval Indian Pueblos, Inc.
New Mexico	Jicarilla Apache Tribe.
New Mexico	Mescalero Apache Tribe.
New Mexico	National Indian Youth Council.
New Mexico	Pueblo of Acoma.
New Mexico	Pueblo of Isleta.
New Mexico	Pueblo of Taos.
New Mexico	Ramah Navajo School Board, Inc.
New Mexico	Santa Clara Indian Pueblo.
New Mexico	Santo Domingo Tribe.
New York	American Indian Community House, Inc.
New York	Native American Community Services of Erie and Niagara Counties.
New York	Native American Cultural Center, Inc.
New York	St. Regis Mohawk Tribe.
North Carolina	Cumberland County Association for Indian People, Inc.
North Carolina	Eastern Band of Cherokee Indians.
North Carolina	Guilford Native American Association.
North Carolina	Haliwa-Saponi Tribe, Inc.
North Carolina	Lumbee Regional Development Association, Inc.
North Carolina	Metrolina Native American Association.
North Carolina	North Carolina Commission on Indian Affairs.
North Dakota	Standing Rock Sioux Tribe.
North Dakota	Turtle Mountain Band of Chippewa Indians.
North Dakota	United Tribes Technical College.
Ohio	North American Indian Cultural Center, Inc.
Oklahoma	Absentee Shawnee Tribe.
Oklahoma	Cheyenne Arapaho Tribes of Oklahoma.
Oklahoma	Comanche Tribe of Oklahoma.
Oklahoma	Creek Nation of Oklahoma.
Oklahoma	Four Tribes Consortium of Oklahoma.
Oklahoma	Inter-Tribal Council of Northeast Oklahoma.
Oklahoma	Kiowa Tribe of Oklahoma.
Oklahoma	Otoe-Missouria Tribe.
Oklahoma	Ponca Tribe of Oklahoma.
Oklahoma	Seminole Nation of Oklahoma.
Oklahoma	Tonkawa Tribe of Oklahoma.
Oklahoma	United Urban Indian Council, Inc.
Oklahoma	Wyandotte Nation.
Oregon	Confederated Tribes of the Umatilla Indian Reservation.
Oregon	Confederated Tribes of Warm Springs.
Oregon	Organization of Forgotten Americans, Inc.
Pennsylvania	Council of Three Rivers American Indian Center, Inc.
Rhode Island	Rhode Island Indian Council, Inc.
South Carolina	South Carolina Indian Development Council, Inc.
South Dakota	Lower Brule Sioux Tribe.
South Dakota	Oglala Sioux Tribe.
South Dakota	Yankton Sioux Tribe.
Texas	Alabama-Coushatta Indian Tribal Council.
Texas	Dallas Inter-Tribal Center.
Texas	Ysleta Del Sur Pueblo.
Utah	Indian Training and Education Center.
Utah	Ute Indian Tribe.
Vermont	Abenaki Self-Help Association/N.H. Indian Council.
Virginia	Mattaponi Pamunkey Monacan Consortium.
Washington	American Indian Community Center.
Washington	Confederated Tribes and Bands of the Yakama Nation.
Washington	Seattle Indian Center, Inc.
Washington	Western Washington Indian Employment and Training.
Wisconsin	Lac Courte Oreilles Tribal Governing Board.
Wisconsin	Lac Du Flambeau Band of Lake Superior Chippewa Indians, Inc.
Wisconsin	Oneida Tribe of Indians.
Wisconsin	Spotted Eagle, Inc.
Wyoming	Northern Arapahoe Business Council.

Total Grantees Receiving Waivers: 127.

ATTACHMENT B.—PUBLIC LAW 102–477 GRANTEES RECEIVING WAIVERS

State	Grantee name
Alaska	Aleutian-Pribilof Islands Association.
Alaska	Association of Village Council Presidents.
Alaska	Bristol Bay Native Association.
Alaska	Tlingit and Haida Central Council.
Alaska	Chugachmiut.
Alaska	Cook Inlet Tribal Council.
Alaska	Copper River Native Association.
Alaska	Kawerak Incorporated.
Alaska	Kodiak Area Native Association.
Alaska	Metlakatla Indian Community.
Alaska	Orutsararmuit Native Council.
Alaska	Tanana Chiefs Conference.
Arizona	Tohono O'odham Nation.
Idaho	Nez Perce Tribe.
Idaho	Shoshone-Bannock Tribes.
Michigan	Grand Traverse Band of Ottawa and Chippewa Indians.
Minnesota	Mille Lacs Band of Ojibwe.
Minnesota	Red Lake Band Nation.
Minnesota	White Earth Reservation Tribal Council.
Montana	Assiniboine and Sioux Tribes.
Montana	Confederated Salish & Kootenai Tribes.
Montana	Fort Belknap Indian Community.
Nebraska	Winnebago Tribe of Nebraska.
Nevada	Reno Sparks Indian Colony.
Nevada	Shoshone-Paiute Tribes.
New Mexico	Pueblo of Laguna.
New Mexico	Pueblo of Zuni.
New York	Seneca Nation of Indians.
North Dakota	Spirit Lake Sioux Nation.
North Dakota	Three Affiliated Tribes.
Oklahoma	Cherokee Nation.
Oklahoma	Chickasaw Nation.
Oklahoma	Choctaw Nation.
Oklahoma	Citizens Potawatomi Nation.
Oklahoma	Osage Nation.
Oklahoma	Pawnee Nation of Oklahoma.
Oregon	Confederated Tribes of Siletz Indians.
South Dakota	Cheyenne River Sioux Tribe.
South Dakota	Sicangu Nation (Rosebud Sioux Tribe).
South Dakota	Sisseton-Wahpeton Sioux Tribe.
Washington	Confederated Tribes of the Colville Reservation.
Washington	Makah Tribal Council.
Washington	Spokane Tribe of Indians.
Washington	Tulalip Tribes of Washington.
Wisconsin	Ho-Chunk Nation.
Wisconsin	Menominee Indian Tribe.
Wisconsin	Stockbridge-Munsee Community.
Wyoming	Eastern Shoshone Tribe.

Total Public Law 102–477 Grantees Receiving Waivers: 48.

ATTACHMENT C.—CURRENT GRANTEES NOT RECEIVING WAIVERS AND AREAS/COUNTIES OPEN FOR COMPETITION AND ASSOCIATED GEOGRAPHIC AREAS

	Unemployed	Poverty	Youth
State: Alaska			
Grantee: Open Area			
Arctic Slope (ANRC) (Anaktuvuk Pass ANVSA)	50	10	4
Arctic Slope (ANRC) (Atqasuk ANVSA)	4	30	4
Arctic Slope (ANRC) (Barrow ANVSA)	220	295	25
Arctic Slope (ANRC) (Kaktovik ANVSA)	20	20	4
Arctic Slope (ANRC) (Nuiqsut ANVSA)	15	10	4
Arctic Slope (ANRC) (Point Hope ANVSA)	80	100	15
Arctic Slope (ANRC) (Point Lay ANVSA)	4	20	0
Arctic Slope (ANRC) (Wainwright ANVSA)	55	70	4
Arctic Slope (ANRC) (Outside ANVSA's)	0	0	0

PY 2008 Adult Funding Estimate: $78,825.00
PY 2009 Adult Funding Estimate: $78,825.00
PY 2008 Youth Funding Estimate: $16,352.73

ATTACHMENT C.—CURRENT GRANTEES NOT RECEIVING WAIVERS AND AREAS/COUNTIES OPEN FOR COMPETITION AND ASSOCIATED GEOGRAPHIC AREAS—Continued

	Unemployed	Poverty	Youth
PY 2009 Youth Funding Estimate: $16,352.73			
State: Florida			
Grantee: Open Area			
Broward County (off reservation)	190	830	0
Broward County (Coconut Creek reservation)	0	0	0
Broward County (Hollywood reservation)	10	120	10
Broward County (Seminole trust land)	0	0	0
Glades County (Brighton reservation)	0	15	10
Glades County (off reservation)	4	0	0
Hendry County (Big Cypress reservation)	10	35	20
Hendry County (off reservation)	4	20	0
PY 2008 Adult Funding Estimate: $85,811.97			
PY 2009 Adult Funding Estimate: $85,811.97			
PY 2008 Youth Funding Estimate: $10,901.82			
PY 2009 Youth Funding Estimate: $10,901.82			
State: South Dakota and Nebraska			
Grantee: United Sioux Tribes of South Dakota Development Corporation			
Knox County (NE—off reservation)	4	25	0
Knox County (NE—Santee Reservation only)	25	210	40
Aurora County	0	4	0
Beadle County	4	50	0
Bon Homme County	4	20	0
Brookings County	15	95	0
Brown County	70	255	0
Brule County	45	110	0
Buffalo County	0	0	0
Butte County	0	15	0
Campbell County	0	4	0
Charles Mix County (off reservation)	0	0	0
Clark County	0	0	0
Clay County	10	235	0
Custer County	15	40	0
Davison County	0	95	0
Deuel County	0	4	0
Douglas County	4	25	0
Edmunds County	4	4	0
Fall River County	20	145	0
Faulk County	0	4	0
Haakon County	4	25	0
Hamlin County	4	20	0
Hand County	0	0	0
Hanson County	0	0	0
Harding County	4	4	0
Hughes County (off reservation)	45	285	0
Hutchinson County	0	4	0
Hyde County (off reservation)	0	4	0
Jackson County (off reservation)	4	45	0
Jerauld County	0	0	0
Jones County	4	10	0
Kingsbury County	0	4	0
Lake County	0	0	0
Lawrence County	20	145	0
Lincoln County	15	45	0
McCook County	0	10	0
McPherson County	0	4	0
Meade County	20	210	0
Miner County	0	0	0
Minnehaha County	190	1100	0
Moody County (Flandreau reservation)	25	35	10
Moody County (off reservation)	15	85	0
Pennington County	565	2835	0
Perkins County	10	30	0
Potter County	0	0	0
Sanborn County	0	0	0
Spink County	4	10	0
Sully County	0	4	0
Turner County	0	0	0
Union County	0	4	0

ATTACHMENT C.—CURRENT GRANTEES NOT RECEIVING WAIVERS AND AREAS/COUNTIES OPEN FOR COMPETITION AND ASSOCIATED GEOGRAPHIC AREAS—Continued

	Unemployed	Poverty	Youth
Walworth County	75	420	0
Yankton County	25	90	0
Native Hawaiian Imputation	0	36	0
PY 2008 Adult Funding Estimate: $552,616.57 PY 2009 Adult Funding Estimate: $552,616.57 PY 2008 Youth Funding Estimate: $13,627.27 PY 2009 Youth Funding Estimate: $13,627.27			
State: Utah *Grantee:* Navajo Nation San Juan County	100	495	0
PY 2008 Adult Funding Estimate: $41,082.20 PY 2009 Adult Funding Estimate: $41,082.20			
State: Washington *Grantee:* Lummi Indian Business Council Whatcom County (off reservation)	185	635	0
PY 2008 Adult Funding Estimate: $58,201.16 PY 2009 Adult Funding Estimate: $58,201.16			
State: Washington *Grantee:* Puyallup Tribe of Indians Pierce County (2/3 of county off reservation)	140	1,085	0
PY 2008 Adult Funding Estimate: $92,129.98 PY 2009 Adult Funding Estimate: $92,129.98			
State: Wisconsin *Grantee:* Wisconsin Indian Consortium			
Ashland County (Bad River reservation)	50	290	45
Ashland County (off reservation)	20	125	0
Bayfield County (Red Cliff reservation)	85	280	35
Forest County (Potawatomi (WI) reservation)	20	35	4
Forest County (Saokogon Chippewa Community)	30	135	15
Forest County (off reservation)	10	110	0
Iron County	4	4	0
Native Hawaiian Imputation	1	1	0
PY 2008 Adult Funding Estimate: $83,309.34 PY 2009 Adult Funding Estimate: $83,309.34 PY 2008 Youth Funding Estimate: $26,982.00 PY 2009 Youth Funding Estimate: $26,982.00			
Total Current Grantees Not Receiving Waivers: 7.			

[FR Doc. E7–25608 Filed 1–3–08; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0028]

MET Laboratories, Inc.; Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Occupational Safety and Health Administration's final decision expanding the recognition of MET Laboratories, Inc., (MET) as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

DATES: The expansion of recognition becomes effective on January 4, 2008.

FOR FURTHER INFORMATION CONTACT: MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of MET Laboratories, Inc., (MET) as a Nationally Recognized Testing Laboratory (NRTL). MET's expansion covers the use of additional test standards. OSHA's current scope of recognition for MET may be found in the following informational Web page: *http://www.osha.gov/dts/otpca/nrtl/met.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in § 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization

can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational Web page for each NRTL that details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html*.

MET submitted an application, dated April 25, 2006 (see Exhibit 41–1, as cited in the preliminary notice), to expand its recognition to include 22 additional test standards. One standard, however, is already included in MET's scope. The NRTL Program staff determined that the remaining 21 standards are "appropriate test standards" within the meaning of 29 CFR 1910.7(c). In connection with this request, OSHA did not perform an on-site review of MET's NRTL testing facilities. However, NRTL Program assessment staff reviewed information pertinent to the request and recommended that MET's recognition be expanded to include the additional test standards listed below (see Exhibit 41–2, as cited in the preliminary notice). Therefore, OSHA is approving these 21 test standards for the expansion.

The preliminary notice announcing the expansion application was published in the **Federal Register** on July 6, 2007 (72 FR 37056). Comments were requested by July 23, 2007, but no comments were received in response to this notice. OSHA is now proceeding with this final notice to grant MET's expansion application.

The most recent application processed by OSHA specifically related to MET's recognition granted an expansion, and the final notice for this expansion was published on February 27, 2007 (72 FR 8797).

You may obtain or review copies of all public documents pertaining to the MET application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210. Docket No. OSHA–2006–0028 (formerly NRTL1–88) contains all materials in the record concerning MET's recognition.

The current address of the MET facility (site) already recognized by OSHA is: MET Laboratories, Inc., 914 West Patapsco Avenue, Baltimore, MD 21230.

Final Decision and Order

NRTL Program staff has examined the application, the assessor's recommendation, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that MET has met the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitation and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of MET, subject to this limitation and these conditions.

Limitation

OSHA limits the expansion of MET's recognition to testing and certification of products for demonstration of conformance to the following test standards, each of which OSHA has determined is an appropriate test standard, within the meaning of 29 CFR 1910.7(c):

ANSI A17.5 Elevator and Escalator Electrical Equipment
UL 250 Household Refrigerators and Freezers
UL 399 Drinking Water Coolers
UL 430 Waste Disposers
UL 474 Dehumidifiers
UL 498A Current Taps and Adapters
UL 563 Ice Makers
UL 749 Household Dishwashers
UL 826 Household Electric Clocks
UL 858 Household Electric Ranges
UL 998 Humidifiers
UL 1005 Electric Flatirons
UL 1082 Household Electric Coffee Makers and Brewing-Type Appliances
UL 1086 Household Trash Compactors
UL 1261 Electric Water Heaters for Pools and Tubs
UL 1640 Portable Power-Distribution Equipment
UL 1741 Inverters, Converters, Controllers and Interconnection System Equipment for Use With Distributed Energy Resources
UL 1994 Luminous Egress Path Marking Systems
UL 2157 Electric Clothes Washing Machines and Extractors
UL 2158 Electric Clothes Dryers
UL 60335–2–8 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Shavers, Hair Clippers, and Similar Appliances

The designations and titles of the above test standards were current at the time of the preparation of the preliminary notice.

OSHA's recognition of MET, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third-party testing and certification before use in the workplace. Consequently, if a test standard also covers any product(s) for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include that product(s).

A test standard listed above may be approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization for the standard as opposed to the ANSI designation. Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. You may contact ANSI to find out whether or not a test standard is currently ANSI-approved.

Conditions

MET must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to MET's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If MET has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

MET must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, MET agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

MET must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

MET will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

MET will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC, this 26th day of December, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary for Occupational Safety and Health.

[FR Doc. E7–25612 Filed 1–3–08; 8:45 am]

BILLING CODE 4510–26–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57057; File No. SR–Amex–2007–94]

Self-Regulatory Organizations; American Stock Exchange, LLC; Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Notes Linked to the Performance of the CBOE S&P 500 PutWrite Index (PUTSM)

December 28, 2007.

I. Introduction

On August 20, 2007, the American Stock Exchange, LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] to list and trade notes, the performance of which is linked to the CBOE S&P 500 PutWrite Index (PUTSM) (the "PUT Index" or "Index"). On November 27, 2007, the Amex submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on December 6, 2007 for a 15-day comment period.[3] This order approves the proposed rule change, as amended on an accelerated basis.

II. Description of the Proposal

The Amex proposes to list for trading under Section 107A of the Amex Company Guide ("Company Guide") notes linked to the performance of the PUT Index (the "Notes"). The Notes are a series of medium-term debt securities of Eksportfinans[4] that provide for a cash payment at maturity or upon earlier exchange at the holder's option, based on the performance of the PUT Index as adjusted by an annual index fee (the "Index Fee"). As described in the Exchange's proposal,[5] the Notes are cash-settled in U.S. dollars and do not give the holder any right to receive any of the component securities, dividend payments, or any other ownership right or interest in the securities comprising the PUT Index. The Notes are designed for investors who desire exposure to a covered put selling options strategy on a broad market index and who are willing to forego principal protection and market interest payments on the Notes during their term.

The PUT Index is determined, calculated and maintained solely by the Chicago Board Options Exchange, Inc. ("CBOE").[6] The PUT Index is a benchmark index designed to measure the performance of a hypothetical investment strategy that overlays short S&P 500 puts over a money market account. The PUT Index tracks the value of an initial investment of $100 in a portfolio that passively follows the CBOE S&P 500 PUT strategy. The PUT Index strategy invests cash at one- and three-month Treasury Bill rates and sells a sequence of one-month at-the-money S&P 500 puts (SPX). The short put position is collateralized by the Treasury bills. The theory of the PUT strategy is to trade a premium over Treasury bill rates for a leveraged exposure to S&P 500 downturns.

The Exchange submits that Section 107A and the continued listing guidelines under Sections 1001–1003 of the Company Guide will accommodate the listing and trading of Notes.[7]

III. Discussion and Commission Findings

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.[8] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.[9] Accordingly, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[11] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The requirements of Section 107A of the Company Guide were designed to address the concerns attendant to the trading of hybrid securities, such as the Notes. For example, Section 107A of the Company Guide provides that only issuers satisfying specified asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's "Other Securities" listing standards further require that the Notes have a market value of at least $4 million.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56853 (November 28, 2007), 72 FR 68914 ("Notice").

[4] Eksportfinans and Standard & Poor's ("S&P"), a division of the McGraw-Hill Companies, Inc. have entered into a non-exclusive license agreement providing for the use of the PUT Index by Eksportfinans in connection with certain securities including the Notes. S&P is not responsible for and will not participate in the issuance and creation of the Notes. Eksportfinans will issue the Notes under the name "Eksportfinans Index-Linked Notes. Eksportfinans has also been appointed to act as the calculation agent.

[5] For a more detailed description of the Notes, including their structure, applicable exchange listing and trading rules, disclosure of pricing information, surveillance, and other regulation, see Notice at 68914–15.

[6] For a more detailed description of the Put Index, including its construction and calculation, see Notice at 68915–17.

[7] Under Section 107A of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants. *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (SR–Amex–89–29).

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] *See* Securities Exchange Act Release Nos. 51426 (March 23, 2005), 70 FR 16315 (March 30, 2005) (approving the listing and trading of Morgan Stanley notes linked to the BXM Index); 50719 (November 22, 2004), 69 FR 69644 (November 30, 2004) (approving the listing and trading of Morgan Stanley notes linked to the BXM Index); 51634 (April 29, 2005), 70 FR 24138 (May 6, 2005) (approving the listing and trading of Wachovia notes linked to the BXM Index); and 51840 (June 14, 2005), 70 FR 35468 (June 20, 2005) (approving the listing and trading of JPMorgan notes linked to the BXD Index). The BXM index is the CBOE S&P 500 BuyWrite IndexSM while the BXD is the equivalent index using the DJIA as the underlying index rather than the S&P 500.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1(a)(1)(C)(iii).

Furthermore, the Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Notes appropriately. As described in the Notice, the Exchange represents that the PUT Index value will be calculated and disseminated by the CBOE once every scheduled trading day after the close. Eksportfinans has agreed to seek to arrange to have the PUT Index calculated and disseminated on a daily basis through a third party if the CBOE ceases to calculate and disseminate the Index. In such an event, the Exchange agrees to obtain Commission approval, pursuant to filing the appropriate Form 19b–4, prior to the substitution of the PUT Index. Further, the Exchange has agreed to undertake to delist the Notes in the event that the CBOE discontinues calculating and disseminating the Index, and Eksportfinans is unable to arrange the calculation and dissemination of the PUT Index.[12]

The daily closing price of the PUT Index is calculated and disseminated by the CBOE on its Web site at *http://www.cboe.com* and via the Options Pricing and Reporting Authority at the end of each trading day.[13] The value of the S&P 500 Index is disseminated at least once every fifteen (15) seconds throughout the scheduled trading day. In addition, as indicated above, the value of the PUT Index is calculated once every scheduled trading day, thereby providing investors with a daily value of such "hypothetical" put selling options strategy on the S&P 500. In addition, the Exchange represents that it will disseminate over the Consolidated Tape Association's Network B, a daily indicative Redemption Amount (the "Indicative Value") to provide investors with a daily reference value of the Index. The Indicative Value, which is not adjusted on an intra-day basis, will be calculated by the Exchange after the close of trading and after the CBOE calculates the PUT Index for use by investors the next scheduled trading day.

Because the PUT Index is not calculated and disseminated every 15 seconds, the Exchange seeks a limited exception from the generic continued listing requirement set forth in Section 107D(h) of the Company Guide. In current Commentary .01 to Section 107, the Exchange provides that although the BXM and BXD Indexes do not satisfy the requirements of Section 107D(h), these Indexes nevertheless may be listed and traded pursuant to the generic standards set forth in Section 107D. The Commission believes that the dissemination of the S&P 500 along with the ability of investors to obtain put option pricing information provides sufficient transparency regarding the Index. Given the large trading volume and capitalization of the compositions of the stocks underlying the S&P 500, the Commission believes that the listing and trading of the Notes that are linked to the PUT Index should not unduly impact the market for the underlying securities comprising the S&P 500 or raise manipulative concerns. Moreover, the issuers of the underlying securities comprising the S&P 500 are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. Accordingly, the Commissions will allow this proposed change to Commentary .01 to Section 107 as a limited exception.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Notes when transparency is impaired. The Exchange will halt trading in the Notes if the circuit breaker parameters of Amex Rule 117 have been reached.[14] In exercising its discretion to halt or suspend trading in the Notes, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) and other relevant factors.[15] The Commission further believes that the trading rules and procedures to which the Notes will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Notes are subject to Amex's rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

(1) The Exchange's surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, Amex will rely on its existing surveillance procedures governing equities and options. Moreover, the Exchange has a general policy which prohibits the distribution of material, non-public information by its employees.

(2) Prior to trading the Notes, the Exchange will distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer; and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, Eksportfinans will deliver a prospectus in connection with the initial sales of the Notes.

This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[16] for approving the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission notes that the present proposal is similar to prior proposals that the Commission has approved.[17] The Commission does not believe that the proposed rule change, as modified by Amendment No. 1, raises any novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit investors to benefit from these additional investment choices without delay. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[18] to approve the proposal, as modified by Amendment No. 1, on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–Amex–2007–94), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Nancy M. Morris,

Secretary.

[FR Doc. E7–25622 Filed 1–3–08; 8:45 am]

BILLING CODE 8011–01–P

[12] *See* Notice at 68917.

[13] The Commission, in connection with BXM and BXD Index Notes, approved the listing and trading of these products where the dissemination of the value of the underlying index occurred once per trading day. *See supra* note 9.

[14] E-mail from Andrea Williams, Assistant General Counsel, Amex and Ronesha Butler, Special Counsel, Division of Trading and Markets, Commission ("Division"), Commission, on December 28, 2007.

[15] *Id.*

[16] 15 U.S.C. 78s(b)(2).

[17] *See, supra*, note 9.

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57054; File No. SR–CBOE–2007–149]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Duration of CBOE Rule 6.45A(b) Pertaining to Orders Represented in Open Outcry

December 27, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 19, 2007, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the CBOE. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission.[5] 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 CBOE proposes to extend the duration of CBOE Rule 6.45A(b) (the "Rule"), relating to the allocation of orders represented in open outcry in equity option classes designated by the Exchange to be traded on the CBOE Hybrid Trading System ("Hybrid") through June 30, 2008. The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and (*http://www.cboe.org/Legal*).

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 CBOE 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In March 2005, the Commission approved revisions to CBOE Rule 6.45A related to the introduction of Remote Market-Makers.[6] Among other things, the Rule, pertaining to the allocation of orders represented in open outcry in equity options classes traded on Hybrid, was amended to clarify that only in-crowd market participants would be eligible to participate in open outcry trade allocations. In addition, the Rule was amended to limit the duration of the Rule until September 14, 2005. The duration of the Rule was thereafter extended through December 31, 2007.[7] As the duration period expires on December 31, 2007, the Exchange proposes to extend the effectiveness of the Rule through June 30, 2008.[8]

2. Statutory Basis

Extension of the duration of the Rule will allow the Exchange to continue to operate under the existing allocation parameters for orders represented in open outcry in Hybrid on an uninterrupted basis. Accordingly, CBOE believes the proposed rule change is consistent with the Act[9] and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will 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 neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange has requested that the Commission waive the 30-day operative delay required by Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii). *See* discussion *infra* Section III.

[6] *See* Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005) (SR–CBOE–2004–75).

[7] *See* Securities Exchange Act Release Nos. 52423 (September 14, 2005), 70 FR 55194 (September 20, 2005) (SR–CBOE–2005–76) (extending the duration of the Rule through December 14, 2005); 52957 (December 15, 2005), 70 FR 76085 (December 22, 2005) (SR–CBOE–2005–102) (extending the Rule through March 14, 2006); 53524 (March 21, 2006), 71 FR 15235 (March 27, 2006) (SR–CBOE–2006–22) (extending the duration of the Rule through July 14, 2006); 54164 (July 17, 2006), 71 FR 42143 (July 25, 2006) (SR–CBOE–2006–60) (extending the duration of the Rule through October 31, 2006); 54680 (November 1, 2006), 71 FR 65554 (November 8, 2006) (SR–CBOE–2006–86) (extending the duration of the Rule through January 31, 2007); 55219 (February 1, 2007), 72 FR 6305 (February 9, 2007) (SR–CBOE–2007–10) (extending the duration of the Rule through April 30, 2007); 55676 (April 27, 2007), 72 FR 25348 (May 4, 2007) (SR–CBOE–2007–40) (extending the duration of the Rule through July 31, 2007) and 56177 (August 1, 2007), 72 FR 44194 (August 7, 2007) (SR–CBOE–2007–89) (extending the duration of the Rule through December 31, 2007).

[8] In order to effect proprietary transactions on the floor of the Exchange, in addition to complying with the requirements of the Rule, members are also required to comply with the requirements of Section 11(a)(1) of the Act, 15 U.S.C. 78k(a)(1), or qualify for an exemption. Section 11(a)(1) restricts securities transactions of a member of any national securities exchange effected on that exchange for (i) the member's own account, (ii) the account of a person associated with the member, or (iii) an account over which the member or a person associated with the member exercises discretion, unless a specific exemption is available. The Exchange has issued regulatory circulars to members informing them of the applicability of these Section 11(a)(1) requirements each time the duration of the Rule was extended. *See* CBOE Regulatory Circulars RG05–103 (November 2, 2005), RG06–001 (January 3, 2006), RG06–34 (April 7, 2006), RG06–79 (July 31, 2006), RG06–115 (November 8, 2006), RG07–21 (February 8, 2007), RG07–53 (May 17, 2007) and RG07–88 (August 15, 2007). The Exchange represents that it expects to issue a similar regulatory circular to members reminding them of the applicability of the Section 11(a)(1) requirements with respect to the proposed rule change.

[9] 15 U.S.C. 78a, *et seq.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) [13] thereunder.[14]

A proposed rule change filed under Commission Rule 19b–4(f)(6) [15] normally does not become operative prior to thirty days after the date of filing. The CBOE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change to become operative immediately to allow the Exchange to continue to operate under the existing allocation parameters for orders represented in open outcry in Hybrid on an uninterrupted basis. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the CBOE to continue to operate under the Rule without interruption. For this reason, the Commission designates the proposed rule change as operative upon filing.[16]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2007–149 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–149. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CBOE–2007–149 and should be submitted on or before January 25, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Nancy M. Morris,

Secretary.

[FR Doc. E7–25621 Filed 1–3–08; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change. *See* 17 CFR 240.19b–4(f)(6)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57062; File Nos. SR–NASDAQ–2007–101; SR–Amex–2007–142; SR–NYSE–2007–122; and SR–NYSEArca–2007–131]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC, The American Stock Exchange LLC, The New York Stock Exchange LLC, and NYSE Arca, Inc; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes To Extend the Deadline Until March 31, 2008 for Issuers To Become Compliant With Listing Requirements Concerning Direct Registration Programs

December 28, 2007.

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 December 26, 2007, The NASDAQ Stock Market LLC ("Nasdaq") and The American Stock Exchange LLC ("Amex") filed and on December 28, 2007, The New York Stock Exchange LLC ("NYSE") and NYSE Arca (the four filers are collectively referred to as the "Exchanges") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which items have been prepared substantially by the Exchanges. The Commission is publishing this notice and order to solicit comments on the proposed rule changes from interested persons and to approve the proposed rule changes on an accelerated basis.

I. Self-Regulatory Organizations' Statement of the Terms of the Substance of the Proposed Rule Changes

The Exchanges propose to extend the deadline until March 31, 2008, for listed issuers to become compliant with the requirement that their securities be made eligible to participate in a direct registration program. The Exchanges will implement the proposed rule changes upon approval by the Commission. The text of the Exchanges' proposed rule changes is available at *http://nasdaq.complinet.com* for Nasdaq's proposal; at *http://www.amex.com* for Amex's proposal; at *http://www.nyse.com/regulation/rules/1160561784294.html* for NYSE's and NYSE Arca's proposals; and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In the filings with the Commission, the Exchanges included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they had received on the proposed rule changes. The text of these statements may be examined at the places specified in Item III below. The Exchanges have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

In August 2006, the Exchanges each adopted listing standards that require listed securities to be eligible to participate in a direct registration program, such as the Direct Registration System ("DRS") administered by The Depository Trust Company ("DTC").[3] These listing standards became effective for new listed securities beginning on January 1, 2007, and are scheduled to become effective for all listed securities on January 1, 2008.

Since adopting these listing standards, the number of issues that are not DRS eligible across these markets has declined from over 5,000 in May 2007 to fewer than 1,000 as of December 14, 2007, and is expected to decline further before January 1, 2008. Nonetheless, there has been some confusion regarding the steps the listed companies need to complete to become compliant with these requirements. As a result, certain listed companies are still in the process of completing the necessary steps, which could include modifying their by-laws or having their boards take other actions, to become DRS eligible. In addition, in some cases, even though a listed company has completed all actions required to be taken by the company to become compliant, the company's transfer agent is still completing the process necessary for the transfer agent to facilitate the company's DRS eligibility.

[3] Securities Exchange Act Release No. 54288 (August 8, 2006), 71 FR 47276 (August 16, 2006) (approving SR–NASDAQ–2006–008); Securities Exchange Act Release No. 54289 (August 8, 2006), 71 FR 47278 (August 16, 2006) (approving SR–NYSE–2006–29); Securities Exchange Act Release No. 54290 (August 8, 2006), 71 FR 47262 (August 16, 2006) (approving SR–AMEX–2006–40); Securities Exchange Act Release No. 54410 (September 7, 2006), 71 FR 54316 (September 14, 2006) (approving SR–NYSEArca–2006–31).

In order to assure that listed companies have adequate opportunity to comply with the listing standards that require listed securities to be eligible for inclusion in a direct registration program, each of the Exchanges is proposing to extend the effective date for its DRS eligibility requirement until March 31, 2008. The Exchanges believe that this short extension will allow those companies whose securities are not yet DRS eligible to become fully compliant with the listing standards and will avoid the investor confusion that could be caused by a number of companies temporarily not being in compliance with their Exchange's listing standards while they complete the DRS eligibility process.

2. Statutory Basis

The Exchanges believe that the proposed rule changes are consistent with the provisions of section 6 of the Act[4] in general and with section 6(b)(5) of the Act[5] in particular in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule changes extend the effective date of each Exchange's DRS eligibility requirement in order to facilitate a smooth transition for companies attempting to comply with the rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchanges do not believe that the proposed rules change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Numbers SR–NASDAQ–2007–101, SR–Amex–2007–142; SR–NYSE–2007–122; and SR–NYSEArca–2007–131 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–NASDAQ–2007–101, SR–Amex–2007–142, SR–NYSE–2007–122, and SR–NYSEArca–2007–131. These file numbers should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of each Exchange's filing also will be available for inspection and copying at the principal office of the submitting Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Numbers SR–NASDAQ–2007–101; SR–Amex–2007–142; SR–NYSE–2007–122; and SR–NYSEArca–2007–131 and should be submitted on or before January 25, 2008.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Changes

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.[6] In particular, the Commission finds that the proposed rule changes are consistent with section 6(b)(5) of the Act, which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The process by which a company makes its securities DRS eligible in order to be in compliance with the Exchanges' listing requirements requires coordination between the company, its transfer agent, and DTC. That process may have been confusing to some issuers or their transfer agents, particularly those that were unfamiliar with DRS. Therefore, the Commission finds that approval of the Exchanges' proposals that provide a short extension of the effective date of the Exchanges' DRS eligibility listing requirements and that in turn should allow companies and their transfer agents the additional time needed to complete the necessary steps to make the companies' securities DRS eligible is consistent with section 6(b)(5) of the Act.

Furthermore, the Commission finds good cause to approve the proposed rule changes prior to the thirtieth day after the date of publication of the notice of filing because by approving the extension of the effective date for the listing standards requiring the securities of listed companies to be DRS eligible from January 1, 2008, to March 31, 2008, sufficient additional time should be provided to those companies whose securities are not yet DRS eligible to become fully compliant with the listing standards and should help to avoid possible confusion that could result if a number of companies were temporarily not in compliance with their Exchange's listing standards.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule changes (SR–Nasdaq–2007–101; SR–Amex–2007–142; SR–NYSE–2007–122; and SR–NYSEArca–2007–131) be and hereby are approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E7–25595 Filed 1–3–08; 8:45 am]

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[6] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57061; File No. SR–NYSE–2007–113]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Annual Fees Applicable to Groups of Real Estate Investment Trusts Under Common External Management

December 28, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2007, the New York Stock Exchange, LLC ("NYSE" or "Exchange") 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 substantially by 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

NYSE proposes to provide a discount on Annual Fees to each company in any group of three or more real estate investment trusts ("REITs") that are under the management of the same external management company. This filing seeks approval to apply the discount retroactively to January 1, 2008. The text of the proposed rule change is available on the NYSE's Web site at *http://www.nyse.com*, at the principal offices of the Exchange, and at the Commission's Public Reference Room.

[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, NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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

The Exchange proposes to amend Section 902 of the Manual by inserting proposed new Section 902.03A. This filing seeks approval to apply the discount retroactively to January 1, 2008. REITs will continue to be subject to the Annual Fees applicable to listed equity securities as set forth in Section 902.03. However, Section 902.03A will provide that, where all of the operations of each of a group of three or more listed REITs are externally managed by the same entity or by affiliated entities, each REIT in the group will receive a 30% discount on the applicable Annual Fees in relation to any year in which the common management relationship exists as of January 1. A newly-listed REIT that qualifies for the discount will receive it in relation to the part of the year for which it pays a prorated Annual Fee upon initial listing. For example, a REIT that lists on July 1 and whose outstanding number of shares would subject it to a $100,000 Annual Fee would normally pay a prorated amount of $50,000 because it would be listed for exactly half of the first year of listing. If that REIT qualifies for the group discount, it would pay $35,000 (70% of the prorated Annual Fee that would otherwise be payable).

A limited number of publicly traded REITs have their operations externally managed by another entity pursuant to a management agreement. Typically, the REIT itself does not have any direct employees. Rather, the external manager is entirely responsible for managing and staffing the operations of the company, in return for management fees and the reimbursement of expenses as set forth in the management agreement. The manager will typically have representation on the board of each REIT under its management and will be compensated in significant part in the form of performance-based incentive

compensation based on the REIT's earnings.

In a limited number of cases, a single entity or affiliated entities may externally manage more than one REIT. As an incentive for all of the REITs in such a group to list on the Exchange, the Exchange proposes to offer a group discount on Annual Fees when there are at least three REITs under common management. The Exchange believes that this will be attractive to management companies that externally manage multiple REITs as it will increase the REITs' earnings and therefore also increase the performance-based management fees received by the external manager. The Exchange expects that external managers and their board representatives will be highly incentivized to encourage the boards of their managed REITs to avail themselves of the discount and that it will therefore motivate eligible REITs to remain listed on the Exchange or to transfer their listing to the Exchange.

The Exchange does not believe that the limitation of the proposed discount to groups of three or more REITs under common management is unfairly discriminatory. While the Exchange perceives a competitive benefit to be obtained by providing the discount, we are also cognizant of the fact that the discount will cause us to lose revenue. We are concerned that the revenue loss we could sustain over time if we applied the discount to circumstances where two REITs shared common management would far exceed the benefit in terms of retaining listings or obtaining new listings, as the number of eligible REITs could broaden significantly. The small reduction in revenue the Exchange expects as a result of the discount will not hinder the Exchange's ability to fulfill its regulatory responsibilities. The Exchange also notes that the Annual Fees applicable to all other REITs and operating companies are remaining unchanged, so no company that is not qualified for the discount is being asked to pay higher Annual Fees than it is currently paying.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act[3] in general and Section 6(b)(4)[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will 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

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 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 self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NYSE–2007–113 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–113. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–113 and should be submitted on or before January 25, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Nancy M. Morris,

Secretary.

[FR Doc. E7–25625 Filed 1–3–08; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57058; File No. SR–NYSE–2007–102]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to NYSE Rule 1500 (NYSE MatchPoint SM)

December 28, 2007.

I. Introduction

On November 8, 2007, the New York Stock Exchange LLC ("NYSE") filed with the Securities and Exchange Commission ("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 to adopt NYSE Rule 1500 to establish NYSE MatchPoint SM ("MatchPoint"), an electronic facility that matches aggregated orders at predetermined, one-minute sessions

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

throughout regular hours and after hours of the Exchange. The proposed rule change was published for comment in the **Federal Register** on November 23, 2007.[3] On December 27, 2007, NYSE filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposal

NYSE proposes to adopt NYSE Rule 1500 to establish NYSE MatchPoint, an electronic facility that matches aggregated orders at seven predetermined, one-minute matching sessions during regular trading hours and one matching session during the after hours of the Exchange.[5] MatchPoint will trade securities listed on NYSE as well as securities listed on other exchanges and admitted to unlisted trading privileges ("UTP") on NYSE.[6] MatchPoint is an anonymous trading platform and no order information will be displayed and clearance and settlement of executions will be anonymous. Trade reports will be disseminated after each matching session.

A. Participation Eligibility

All NYSE members, member organizations and sponsored participants of sponsoring member organizations are automatically eligible for access to MatchPoint.[7] Before access is granted to MatchPoint users, all users must go through a connectivity authorization process.[8] Specialists on the floor of the Exchange are not authorized to access MatchPoint.[9] The off-floor operations of specialist firms may obtain authorized access to MatchPoint provided they have policies and procedures and barriers in place that preclude improper information sharing between the specialist firm and the firm's specialist on the floor of the Exchange.[10]

Members who have authorized access to MatchPoint are not permitted to enter orders into the MatchPoint system from the floor of the Exchange when such orders are for their own accounts, the accounts of associated persons, or accounts over which it or an associated person exercises investment discretion.[11] Similarly, members on the floor may not have such orders entered into MatchPoint by sending them to an off-floor facility for entry. Members with authorized access to MatchPoint may only enter customer orders into MatchPoint from the floor of the Exchange. Members that have authorized access to MatchPoint may enter proprietary and customer orders into MatchPoint from off the floor of the Exchange.[12]

B. MatchPoint Order Parameters

MatchPoint participants ("users") transmit their market and limit orders, which are undisplayed, by means of an electronic interface. MatchPoint users may enter, correct or cancel orders beginning at 3:30 a.m. until 4:45 p.m.[13] The MatchPoint system will not accept any orders before 3:30 a.m. or after 4:45 p.m. MatchPoint will accept and execute single orders and NYSE MatchPoint Portfolios ("portfolios").

MatchPoint orders must be designated for only one of the matching sessions during regular hours of the Exchange or for the single after hours matching session.[14] A user must designate an order for only one matching session at a time. All MatchPoint orders, single and portfolio, must have the following parameters: (1) List name;[15] (2) matching session (if a user fails to designate a specific matching session, the system will provide a default function and direct the order to the next eligible matching session); (3) side of the market (*i.e.*, buy, sell or short side); (4) symbol; and (5) minimum and maximum amount of shares available for execution.[16] Additionally, a user may include an optional constraint (*i.e.*, net cash and internal match constraints) for a MatchPoint order.[17] Orders may be either market or limit orders and must have a minimum size of one round lot. MatchPoint will permit odd lot and partial round lot orders to be entered into the system; however, odd lot orders and the odd lot portion of partial round lot orders will not be executed.[18]

Orders may not be cancelled or replaced while a matching session is in progress or when trading in the

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[3] *See* Securities Exchange Act Release No. 56798 (November 15, 2007), 72 FR 65787 ("Notice").

[4] In Amendment No. 1, NYSE proposed technical and clarifying amendments to the proposed rule change. In Amendment No. 1, NYSE proposes to: (1) *Clarify* that allocation of orders in the MatchPoint system may, during regular trading hours of the Exchange, occur some seconds before or after the end of the one-minute matching session; (2) clarify which securities may be traded on the MatchPoint system and that MatchPoint will not trade securities that are not listed on any securities exchange; (3) clarify that for purposes of the MatchPoint system the "primary market" is the listing market and if a security is dually listed, the "primary market" will be the market in which the particular security is trading the greatest volume of shares; (4) clarify that partial round lots (*i.e.*, "mixed lots") may be entered into MatchPoint as single orders or as part of a portfolio, but the odd lot portion of the order will not be executed; (5) clarify that the NYSE is requesting that the Commission concur with the NYSE's interpretation that MatchPoint orders entered from off the Floor of the Exchange comply with the provisions of Rule 11a2–2(T) of the Act; (6) represent that participation in MatchPoint would be voluntary and open to all eligible NYSE market participants and would not result in any advantage to market participants that participate in matching sessions over those that do not participate; and (7) make conforming technical and clarifying changes to the proposed rule text. Because Amendment No. 1 is technical in nature, the Commission is not publishing it for comment.

[5] MatchPoint matching sessions will occur during the Exchange trading hours at 9:45 a.m., 10 a.m., 11 a.m., 12 p.m., 1 p.m., 2 p.m. and 3 p.m. A MatchPoint after hours matching session will occur at 4:45 p.m. *See* proposed Rule 1500(a)(1). NYSE will need to file a proposed rule change with the Commission if it plans to alter the times of the MatchPoint matching sessions and/or add or eliminate matching sessions.

[6] *See* proposed Rule 1500(b)(2)(E). Securities admitted to unlisted trading privileges could be listed on NYSE Arca, Inc. ("NYSE Arca"), the NASDAQ Stock Market, Inc. ("Nasdaq"), the American Stock Exchange ("Amex"), or other stock exchanges. MatchPoint will not trade securities that are not listed on any securities exchange.

[7] In Amendment No. 1, NYSE represented that participation in MatchPoint will be voluntary and open to all eligible NYSE market participants, and will not result in any advantage to market participants that participate in matching sessions over those market participants that do not participate.

[8] MatchPoint can only be accessed through an electronic Financial Information exchange ("FIX") application and/or an internet based password-protected order entry application. Users must fill out an application for connectivity through either of these two electronic connectivity capabilities. Once granted connectivity through the authorization process, eligible users may access MatchPoint.

[9] *See* proposed Rule 1500(g)(4)(A).

[10] The Exchange stated that, currently, all specialist organizations on the Exchange utilize information barrier procedures pursuant to NYSE Rule 98 (Restrictions on Approved Person Associated with a Specialist's Member Organization). The Exchange has represented that the information barrier procedures that would be utilized to block access by a specialist to any MatchPoint trading information generated by the off-floor personnel of the specialist organization would be similar in design and utilization.

[11] *See* proposed Rule 1500(g)(4)(B).

[12] *Id.*

[13] *See* proposed Rule 1500(d)(1).

[14] If a MatchPoint order does not execute in the designated matching session, it will be cancelled back to the user immediately upon completion of the matching session. If a user fails to designate a particular matching session for a MatchPoint order, the order, by default, will be available for execution in the next scheduled matching session. If an undesignated order does not execute in the next scheduled regular hours matching session it will be cancelled back to the user immediately upon completion of such matching session. If a user fails to designate an order and enters the order after 3 p.m., which is the last regular hours matching session, the order will participate in the after hours matching session at 4:45 p.m. If the order does not execute in the after hours matching session it will be cancelled back to the user immediately upon completion of the after hours matching session.

[15] A portfolio must have a unique portfolio name that is distinct from the names of other portfolios of the same user.

[16] *See* proposed Rule 1500(d)(2)(A).

[17] *Id.*

[18] *See* proposed Rule 1500(d)(2)(C).

applicable security is halted in the MatchPoint system.[19] MatchPoint orders will not be available for execution until the next eligible matching session. All orders must be available for automatic execution. MatchPoint has no order delivery capability and will not route to other market centers. Users, however, would be able to enter eligible orders into MatchPoint through a FIX[20] application and/or an Internet based order entry system provided the orders are available for automatic execution. The Exchange stated that MatchPoint orders will not trade-through a protected bid or protected offer as defined in Regulation NMS.[21]

C. MatchPoint Order Allocation

MatchPoint matching sessions occur through an automated matching mechanism. During the matching sessions, the MatchPoint Reference Price ("Reference Price")[22] is determined and eligible orders are executed at the designated hour at the randomly selected time during the predetermined one-minute trading session.[23] The matching and execution of orders occurs immediately after the algorithm selects a Reference Price.[24] If an order is not executed in a particular matching session it will be immediately cancelled back to the user upon completion of the matching session. The user may resubmit the order in any one of the subsequent matching sessions.

MatchPoint orders will be allocated on a *pro rata* basis.[25] Shares will be allocated *pro rata* in round lots (rounded down to the nearest 100 shares) to eligible orders based on the original size of the order.[26] In this process MatchPoint will honor all user-directed constraints. If the allocation to an eligible order is less than the minimum acceptable execution quantity for that order, the order will not be eligible for execution in that matching session. If additional shares remain after the initial *pro rata* allocation, those shares will continue to be allocated *pro rata* to eligible orders. If additional shares remain thereafter that are the same size or are unexecuted because of rounding or minimum trade size constraints, the remaining shares will be allocated in 100 share lots to the oldest eligible orders.[27]

1. Portfolio Trading

A MatchPoint user may submit NYSE MatchPoint Portfolios into the MatchPoint system for execution.[28] An NYSE MatchPoint Portfolio is a group of linked orders with user-directed parameters and a unique, user-defined portfolio name.[29] The portfolio orders may represent separate and distinct broker-dealer-customer orders and separate and distinct proprietary broker-dealer orders. A user may enter one portfolio of buy and sell/short orders or many portfolios of buy and sell/short orders.

2. Internal Match Constraints

MatchPoint portfolio users may effectuate internal matches and simultaneously match residual shares against orders from other users within a single matching session when using an optional internal match constraint. This type of constraint enables the user to execute trades between the same user's portfolios first before trading with other available orders in a particular matching session. If any residual orders remain after an internal match occurs, the residual portfolios will trade with all other orders. Single orders may be designated for internal matches as well.

Internal matches have priority over other executions. MatchPoint will first process internal matches and then process all other orders in the matching session. All user-directed constraints will be honored in the internal match. An internal match constraint, like a MatchPoint order, is active only for a single matching session. A user may resubmit a new internal match constraint when resubmitting an order for a different matching session.

All orders that are designated with an internal match designation and entered by the same user are eligible for matching with all such orders. For example, single orders that have an internal match designation are capable of matching with all other orders entered by the same user that have an internal match designation. Portfolio orders within a portfolio that are designated for internal matches are also capable of matching with one another when entered by the same user. Such orders are allocated on a *pro rata* basis.[30]

3. Net Cash Constraints

MatchPoint portfolio users may utilize an optional "net cash" constraint.[31] A user entering a single order may also place a net cash constraint on that order. To execute a net cash constraint, a user must enter a specific net buy dollar amount and a specific net sell dollar amount for a portfolio. A net cash constraint is active only for a single matching session. A user may resubmit a new net cash constraint when resubmitting an order for a different matching session.

When calculating a customer's net cash constraint position, the matching algorithm takes into account the eligible portfolio order shares in a specific security, the Reference Price of the security and the customer's net cash constraint. MatchPoint first processes the stock with the largest orders in the largest portfolios. In order to honor all cash constraints, the matching algorithm processes all single and portfolio orders

[19] *See* proposed Rule 1500(d)(2).

[20] FIX Protocol is a messaging standard developed specifically for the real-time electronic exchange of securities transactions.

[21] *See* 17 CFR 242.600(b)(57).

[22] The Reference Price is the single trading price at which MatchPoint orders will execute during a predetermined one-minute "matching session." During the regular hours of the Exchange, the Reference Price will be the midpoint of the national best bid and national best offer ("NBBO") which is randomly selected during a predetermined one-minute pricing period. *See* proposed Rule 1500(b)(2)(I). For the after hours MatchPoint matching session, the Reference Price will be the official closing price of the primary market (*i.e.*, the listing market) for securities listed on the NYSE, NYSE Arca, Amex, Nasdaq, and regional stock exchanges. If, however, there is no official closing price for a particular security, the Reference Price will be the last sale price of the primary market for a particular security. *See* proposed Rule 1500(c)(1)(A) and (c)(2)(A).

[23] *See* proposed Rule 1500(c)(1)(A).

[24] During the Exchange's regular trading hours, the allocation of orders in the matching sessions may occur some seconds after the end of the one-minute matching session, depending on when within the one-minute pricing window the MatchPoint algorithm randomly selects the Reference Price. For example, if the algorithm selects the Reference Price (*i.e.*, the midpoint of the NBBO) early in the one-minute pricing window, the algorithm has sufficient time to allocate all of the orders before the end of the one-minute matching session. If the algorithm selects the Reference Price late in the one-minute pricing window, the one-minute matching session may be extended a few seconds to allow the algorithm to allocate all MatchPoint orders. In any case, execution takes place immediately after the Reference Price is randomly selected, and all orders are executed at the same Reference Price in a given matching session. During the after hours matching session, the Reference Price is the official closing price or the last sale price of a particular security. Because this price is static, there is no need to randomly select a time during the one-minute pricing window to determine the Reference Price. Therefore, the allocation of orders in the after hours matching session will always be completed within the one-minute matching session.

[25] *See* proposed Rule 1500(d)(3).

[26] MatchPoint will execute orders only in round lots. The MatchPoint system will accept odd lot orders but not execute them. Similarly, orders containing partial round lots (*i.e.*, "mixed lots") may be entered into MatchPoint but the odd lot portion of the order will not be executed. The system will permit the entry of odd lot and partial round lot orders to accommodate portfolio orders.

[27] For an example of how MatchPoint allocates shares on a *pro rata* basis, *see* Notice, *supra* note 3, at 65790.

[28] *See* proposed Rule 1500(d)(2)(D).

[29] *See* proposed Rule 1500(b)(2)(g).

[30] For an example of how an internal match is executed, *see* Notice, *supra* note 3, at 65791.

[31] *See* proposed Rule 1500(b)(2)(C) and (d)(2)(D).

in a particular security that have net cash constraints and calculates share allocation by applying a percentage of the original order size to contra side shares that are available to fill the order. The algorithm takes this percentage calculation and multiplies it by the Reference Price. This calculation is then compared to the order's net cash constraint and determines if the allocation of the available contra side shares will violate the order's net cash constraint. If the calculation violates the net cash constraint, these shares will not be allocated to the contra side order but may be allocated to other eligible orders. This algorithmic process continues until all eligible orders are executed.[32] A net cash constraint placed on a portfolio may affect the execution of other orders in the matching session by generally allowing additional shares for such other orders to be executed. In addition, net cash constraints will generally result in fewer executions of a portfolio and may inhibit the maximum order execution potential of a particular security in a particular matching session.

4. Price Collar Threshold in the After Hours Matching Session

In the after hours matching session, the Exchange will place parameters called a "Price Collar Threshold" on the prices of all MatchPoint eligible securities in order to dampen volatility and provide accurate pricing for executions. A Price Collar Threshold is an after hours market price beyond which a MatchPoint order will not be executed.[33] In a situation in which the market has moved significantly from the official closing price of the primary market based on information that becomes available after the market close, the Exchange will cancel the after hours MatchPoint matching session rather than execute the matching session at a price that no longer reflects the market accurately. All unexecuted orders will be immediately cancelled back to the user upon completion of the matching session. The Price Collar Threshold will be set at two percent (2%) initially, and may later be adjusted by the Exchange, up to a maximum of five percent (5%) of the MatchPoint after hours Reference Price.[34]

5. Locked and Crossed Markets

If the NBBO for a particular security is locked at the time of a MatchPoint matching session during the regular trading hours of the Exchange, the matching session will execute orders at the locked price.[35] Unexecuted MatchPoint orders in that security will be cancelled back to the user immediately upon completion of the matching session.

If the NBBO for a particular security is crossed at the time of a MatchPoint matching session during the regular trading hours of the Exchange, the matching session in that particular security will not occur.[36] Unexecuted MatchPoint orders in that security will be cancelled back to the user immediately upon completion of the matching session.

D. Regulatory

1. Halting, Suspending and Closing of MatchPoint Trading on NYSE

Trading on MatchPoint will be halted, suspended or closed[37] when necessary in order to maintain a fair and orderly market, and in certain other conditions, as described below.[38] If trading in a particular security is halted, suspended or closed due to regulatory or unusual market conditions at the time a matching session commences, the matching session will not occur in that security and all unexecuted orders will be immediately cancelled back to the user upon completion of the matching session.

MatchPoint trading may be halted, suspended or closed when: (1) In the exercise of its regulatory capacity, the Exchange determines such action is necessary or appropriate to maintain a fair and orderly market, to protect investors, or otherwise is in the public interest due to extraordinary circumstances or unusual market conditions; (2) in the case of a particular security whenever, for regulatory purposes, trading in the related security has been halted, suspended or closed on the Exchange or the primary listing exchange; (3) in the case of a particular security trading on the Exchange pursuant to UTP, whenever, for regulatory purposes, trading in that security has been halted, suspended or closed on the primary listing exchange; (4) with respect to a particular security trading on the Exchange pursuant to UTP, if the authority under which a security trades on the Exchange or its primary market is revoked (*i.e.*, because it is delisted); or (5) in the after hours matching session, news reports and/or corporate actions are disclosed after the close of the regular hours of the market that have a material impact on a particular security, which may include the following situations: (a) New corporate earnings; (b) major market index company deletions or additions; (c) corporate takeovers; (d) other significant corporate actions; (e) court decisions and injunctions; and (f) governmental announcements.[39] No terms or conditions specified in the proposed rule would be interpreted to be inconsistent with any other rules of the Exchange.

2. Clearance and Settlement of MatchPoint Executions

Details of each MatchPoint trade will be automatically matched and compared by the Exchange and will be submitted to a registered clearing agency for clearing and settlement on a locked-in basis.[40] All executions effected by a member or member organization will be cleared and settled using the member's and member organization's account, and all executions effected by a sponsored participant will be cleared and settled using the relevant sponsoring member organization's account.

MatchPoint transaction reports will indicate the details of the transaction but not to reveal contra party and clearing firm identities, except under the following circumstances: (1) In the event the NSCC[41] ceases to act for a member or member organization, which is the unidentified contra side of any such trade processing; and/or the relevant clearing firm, the NYSE would have the responsibility to identify to members or member organizations the trades included in reports produced by the NSCC which are with the affected member or member organization, and (2) for regulatory purposes or to comply with an order of a court or arbitrator.[42]

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[32] For examples of (1) how portfolios, with and without a net cash constraint, are executed in MatchPoint and (2) a chart comparing the post match customer net cash position results (*i.e.*, total dollars raised and total dollars spent), *see* Notice, *supra* note 3, at 65791–92.

[33] *See* proposed Rule 1500(a)(2)(J) and (c)(2)(B).

[34] The Exchange has represented that it will inform its users of any such adjustment via the NYSE MatchPoint Web site at *http://www.nyse.com/MatchPoint* and the Member Firm Notice, and will provide notice of such adjustments to all users reasonably in advance of any such adjustment. For an example of how the Price Collar Threshold is calculated, *see* Notice, *supra* note 3, at 65793.

[35] *See* proposed Rule 1500(c)(1)(B).

[36] *See* proposed Rule 1500(c)(1)(C).

[37] The use of the word "close" in the context of this rule refers to the intentional closing of the market due to regulatory or other unusual circumstances as described above, and does not refer to the predetermined "close" or end of the regular trading day at 4 p.m.

[38] *See* proposed Rule 1500(f).

[39] *Id.*

[40] *See* proposed Rule 1500(e)(1).

[41] Completed MatchPoint trades will be submitted for clearance and settlement to National Securities Clearing Corporation ("NSCC"), which is a subsidiary of the Depository Trust and Clearing Corporation.

[42] *See* proposed Rule 1500(e)(2) and (e)(3).

The trade reports that the NSCC will receive from MatchPoint for anonymous trades will contain the identities of the parties to the trade. This measure will enable the NSCC to conduct its risk management functions and settle anonymous trades. The trade report sent to the NSCC will contain an indicator noting that the trade is anonymous. On the contract sheets the NSCC issues to its participants, the NSCC will substitute "ANON" for the acronym of the contra-party.

3. Dissemination of Trading Information

The MatchPoint system will report trade information to the Securities Information Processors for all MatchPoint eligible securities. Trades will be reported as one print for each security with the total volume of the transaction reported with the price. Market data for NYSE-listed securities will be disseminated via the consolidated tape pursuant to the Consolidated Tape Association Plan ("CTA Plan").[43] Trade reports of securities that are governed by the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on an Unlisted Trading Privilege Basis ("UTP Plan") will be disseminated pursuant to the UTP Plan.[44] All trades will indicate the market of execution as the NYSE for CTA and UTP purposes.

4. Member Organization and Non-Member Access to MatchPoint

Members and member organizations of the Exchange are automatically eligible for access to MatchPoint by their membership on the Exchange. A non-member who wishes to trade securities on MatchPoint may do so as a "Sponsored Participant" of a member organization, *i.e.*, "Sponsoring Member Organization," and must enter into a written agreement with the Sponsoring Member Organization and with the Exchange.[45] All members, member organizations, and Sponsored Participants of Sponsoring Member Organizations must first obtain connectivity authorization before they can access MatchPoint.[46]

The proposed rule requires the Sponsoring Member Organization and the Sponsored Participant to enter into a sponsorship arrangement and maintain a written "sponsorship agreement." The sponsorship agreement must be agreed to by both the Sponsoring Member Organization and the Sponsored Participant and include provisions for "Authorized Traders."[47] Such written agreement must include the Sponsoring Member's consent to sponsor the Sponsored Participant.[48]

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[49] and, in particular, the requirements of section 6 of the Act.[50] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[51] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. MatchPoint, via both single order and portfolio trading, would provide market participants and investors with an additional mechanism for order execution. The Commission, in relying on NYSE's representation that participation in the matching session would be voluntary and open to all eligible NYSE market participants and would not result in any advantage to market participants that participate in matching sessions over those market participants that do not choose to participate, believes that MatchPoint is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

NYSE has proposed to execute matching session orders at a predetermined Reference Price at a randomly selected point in time during a one-minute trading window. The Commission notes that using the automated and random matching mechanism to execute a matching session cross should minimize the opportunity for manipulation. In addition, the Commission notes that, should NYSE desire to institute additional matching sessions or to modify the time of matching sessions in the future, it must submit a rule change to the Commission pursuant to 19(b) of the Act.[52]

A. Trading Ahead

Because matching session orders that are executed during the regular hours session would be executed at the midpoint of the NBBO, it is possible that a NYSE member would trade ahead of a held customer order by less than $0.01 (*i.e.*, $ 0.005). In the event a MatchPoint order executes at the midpoint of the NBBO and results in a member or member organization's trading ahead of a held customer order at the same price, NYSE Rule 92 (Limitations on Member's Trading Because of Customers' Orders) may be implicated. Rule 92(a) generally restricts a member or member organization from entering a proprietary order while in possession of a customer order. Rule 92(b) through (d) provides several exceptions to the general restrictions of Rule 92(a). The Commission notes that the Exchange has stated that all users must comply with Rule 92(a) when trading on the MatchPoint system unless such trading falls within an applicable exception in NYSE Rule 92(b) through (d).

B. Section 11(a) of the Act

Section 11(a) of the Act prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion ("Covered Accounts") unless an exception applies.[53] Rule 11a2–2(T), known as the "effect versus execute" rule, provides exchange members with an exemption from the section 11(a) prohibition. To comply with Rule 11a2–2(T)'s conditions, a member: (1) Must transmit the order from off the exchange floor; (2) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution; (3) may not be affiliated with the executing member; and (4) with respect to an account over which the member has investment discretion,

[43] *See* proposed Rule 1500(c)(1).

[44] *Id.*

[45] *See* proposed Rule 1500(g)(1).

[46] *See* proposed Rule 1500(g)(2).

[47] *See* proposed Rule 1500(g)(3)(D).

[48] The provisions that must be included in the proposed sponsorship agreement are outlined in the Notice, *supra* note 3. *See* proposed Rule 1500(g)(3)(B).

[49] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[50] 15 U.S.C. 78f.

[51] 15 U.S.C. 78f(b)(5).

[52] 15 U.S.C. 78s(b).

[53] 15 U.S.C. 78k(a).

neither the member nor its associated person may retain any compensation in connection with effecting the transaction without express written consent from the person authorized to transact business for the account in accordance with the Rule. NYSE requests that the Commission concur with its interpretation that MatchPoint orders entered from off the floor of the Exchange comply with these provisions of Rule 11a2–2(T).

1. Off-Floor Transmission

The requirement in Rule 11a2–2(T) for orders to be transmitted from off the exchange floor reflects Congress's intent that section 11(a) should operate to put member money managers and non-member money managers on the same footing for purposes of their transactions for covered accounts. In considering other automated systems, the Commission and the staff have stated that the off-floor transmission requirement would be met if a covered account order is transmitted from off the floor directly to the exchange floor by electronic means.[54] Because all orders for Covered Accounts sent to MatchPoint will be electronically submitted directly to the system from locations other than on the Exchange floor,[55] the Commission believes that orders transmitted for execution on MatchPoint satisfy the off-floor transmission requirement.

2. Non-Participation in Order Execution

Rule 11a2–2(T) further provides that the exchange member and its associated persons may not participate in the execution of the transaction once the order has been transmitted to the exchange floor.[56] This requirement was included to prevent members with their own brokers on the exchange floor from using those persons to influence or guide their orders' execution. This requirement does not preclude members from canceling or modifying orders, or from modifying the instructions for executing orders, after they have been transmitted to the floor. Such cancellations or modifications, however, also must be transmitted from off the exchange floor.[57]

The Commission has stated that the non-participation requirement is satisfied by automated systems when the member's use of such a system entails relinquishing the ability to influence or guide the execution of a covered account order once transmitted into the system.[58] In MatchPoint, matching sessions commence automatically at a predetermined time. Matching, trading and pricing of orders is effectuated through a fixed algorithm, which does not permit entry, correction or cancellation of orders during the matching session. Once a member submits an order to the MatchPoint system, the order will be executed pursuant to the MatchPoint algorithm and in accordance with Exchange rules. Although a member will still have the ability to modify or cancel an order entered into the MatchPoint system (prior to the commencement of the matching session), they will not otherwise have control over their order. Because MatchPoint users will relinquish control of their orders upon transmission to the MatchPoint system, and will not be able to influence or guide the execution of their orders, the Commission believes that the non-participation requirement is met with respect to orders that are executed automatically in MatchPoint.

3. Execution Through Unaffiliated Member

Although Rule 11a2–2(T) contemplates having an order executed by an exchange member who is unaffiliated with the member initiating the order, the Commission has recognized that the requirement is not applicable when automated exchange facilities are used, if the execution of the order is automatic once it has been transmitted into the system, and if the design of the system ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the system.[59] In such instances, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T).[60] The Commission notes that NYSE has represented that the MatchPoint system is designed to ensure that members using MatchPoint

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[54] *See* Securities Exchange Act Release Nos. 54552 (September 29, 2006), 71 FR 59546 (October 10, 2006) (order approving proposed rule change of the American Stock Exchange LLC to establish new hybrid market); 29237 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (regarding the Amex Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX's Communications and Execution System, and the Phlx's Automated Communications and Execution System) ("1979 Release"). *See also* Letter from Paula R. Jensen, Deputy Chief Counsel, Division of Market Regulation, Commission, to Angelo Evangelou, Senior Attorney, Chicago Board Options Exchange ("CBOE"), dated March 31, 2003 (regarding CBOE's CBOEdirect system) ("CBOEdirect Letter"); Letter from Paula R. Jenson, Deputy Chief Counsel, Division, Commission, to Jeffrey P. Burns, Assistant General Counsel, American Stock Exchange LLC ("Amex"), dated July 9, 2002 (regarding Amex's auto-ex system for options); Letter from Paula R. Jenson, Deputy Chief Counsel, Division, Commission, to Richard S. Rudolph, Counsel, Philadelphia Stock Exchange, Inc. ("Phlx"), dated April 15, 2002 (regarding Phlx's AUTOM System and its automatic execution feature AUTO–X); Letter from Paula R. Jenson, Deputy Chief Counsel, Division, Commission, to Kathryn L. Beck, Senior Vice President, Special Counsel and Antitrust Compliance Officer, Pacific Exchange, Inc. ("PCX"), dated October 25, 2001 (regarding Archipelago Exchange ("ArcaEx")) ("ArcaEx Letter"); and Letter from Brandon Becker, Director, Division, Commission, to George T. Simon, Foley & Lardner, dated November 30, 1994 (regarding Chicago Match) ("Chicago Match Letter").

[55] The Commission notes that NYSE Rule 1500(g)(4)(B) will prohibit members from entering orders into the MatchPoint system from the floor of the Exchange when such orders are for their own accounts, the accounts of associated persons, or accounts over which it or an associated person exercises investment discretion. Further, the rule also prohibits members from having such orders entered into MatchPoint by sending them to an off-floor facility for entry. Members with authorized access to MatchPoint may only enter customer orders into the MatchPoint system from the floor of the Exchange.

[56] *See* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (Order approving ArcaEx as the equities trading facility of PCX Equities Inc.); 1979 Release, *supra* note 54. *See also* CBOEdirect Letter, *supra* note 54; Letter from Larry E. Bergmann, Senior Associate Director, Division, Commission, to Edith Hallahan, Associate General Counsel, Phlx, dated March 24, 1999 (regarding Phlx's VWAP Trading System); Letter from Catherine McGuire, Chief Counsel, Division, to David E. Rosedahl, PCX dated November 30, 1998 (regarding OptiMark); Chicago Match Letter, *supra* note 54.

[57] *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978); *see also* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (order approving Nasdaq Stock Market LLC's registration as a national securities exchange) ("Nasdaq Exchange Order").

[58] *See* 1979 Release, *supra* note 54; *see also, e.g.*, Securities Exchange Act Release Nos. 54422 (September 11, 2006), 71 FR 54537 (September 15, 2006) (order approving proposed rule change of CBOE to establish a screen based trading system for non-option securities) ("CBOE STOC Order"); 51666 (May 9, 2005), 70 FR 25631, 25633 (May 13, 2005) (order approving proposed rule change by International Securities Exchange, Inc. to establish facilitation, block order and solicited order mechanism).

[59] In considering the operation of automated execution systems operated by an exchange, the Commission has noted that while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* 1979 Release, *supra* note 54; *see also, e.g.*, Securities Exchange Act Release No. 54365 (August 25, 2006), 71 FR 52192 (September 1, 2006) (order approving initial phase of the Boston Stock Exchange, Inc.'s proposed rule change to establish Boston Equities Exchange Trading System) ("BeX Phase I Order"); CBOE STOC Order, *supra* note 58.

[60] *See* 1979 Release, *supra* note 54; *see also, e.g.*, Securities Exchange Act Release No. 54238 (July 28, 2005), 71 FR 44758 (August 7, 2006) (order approving proposed rule change of NYSE Arca, Inc. to establish the OX trading platform); Nasdaq Exchange Order, *supra* note 57.

will not possess any special or unique trading advantages in the handling of their orders after transmitting them to the MatchPoint system.

4. Non-Retention of Compensation for Discretionary Accounts

The Commission notes that MatchPoint users who intend to rely on Rule 11a2–2(T) in connection with transactions using the MatchPoint system must comply with the requirements of Section (a)(2)(iv) of the Rule.

In reliance on NYSE's representations and for the reasons set forth above, the Commission believes that members entering orders into the MatchPoint system would satisfy the requirements of Rule 11a2–2(T) under the Act.

C. Surveillance

The Commission notes that NYSE Regulation has represented that it has appropriate policies and procedures in place to adequately and effectively regulate the MatchPoint system, and that a surveillance plan will be implemented prior to any trading to monitor the operation of MatchPoint. Also, the Financial Industry Regulatory Authority, Inc. ("FINRA"), as agent for NYSE Group, will perform examinations of specialist firms that trade on MatchPoint.[61]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[62] that the proposed rule change (File No. SR–NYSE–2007–102), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[63]

Nancy M. Morris,

Secretary.

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BILLING CODE 8011–01–P

[61] As stated in the Notice, *supra* note 3, FINRA examiners will perform an on-site review of the combined specialist firm's written policies and procedures and determine if they are adequate in relation to trading on MatchPoint. In addition, FINRA will interview appropriate individuals both within the affected departments as well as other areas of the specialist firm to determine whether firm policies have been appropriately disseminated and appear to be followed in relation to MatchPoint trading. The examination will also determine whether there have been any apparent breaches of the information barriers.

[62] 15 U.S.C. 78s(b)(2).

[63] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57059; File No. SR–NYSEArca–2006–76]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment Nos. 1, 2 and 3 Thereto, Relating to Trading Shares of the Nuveen Commodities Income and Growth Fund Pursuant to Unlisted Trading Privileges

December 28, 2007.

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 27, 2006, NYSE Arca, Inc. (the "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On March 8, 2007, May 4, 2007, and June 12, 2007, NYSE Arca submitted Amendment Nos. 1, 2 and 3, respectively, to the proposed rule change. This order provides notice of the proposed rule change as modified by Amendment Nos. 1, 2, and 3, and approves the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add new NYSE Arca Equities Rule 8.500 to permit the listing and trading of units of a trust or other similar entity ("Trust Units") that invests in the assets of a trust, partnership, limited liability company, corporation or other similar entity constituted as a commodity pool that holds investments comprising or otherwise based on futures contracts, options on futures contracts, forward contracts, commodities and high credit quality short-term fixed income securities or other securities. Pursuant to proposed new NYSE Arca Equities Rule 8.500, the Exchange seeks to trade Trust Units[3] of the Nuveen Commodities Income and Growth Fund ("Trust" or "Fund") pursuant to unlisted trading privileges ("UTP"). The text of the proposed rule change is available at the Exchange's principal office, the Commission's Public Reference Room, and *http://www.nyse.com*.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Trust Units of the Fund are referred to herein as the "Shares."

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 III 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

The Exchange proposes to add new NYSE Arca Equities Rule 8.500 in order to permit trading, either by listing or pursuant to UTP, of Trust Units. When the Exchange is the listing market for the Trust Units, the Trust Units will be subject to the continued listing and trading criteria under proposed new NYSE Arca Equities Rule 8.500(d). In such an event, the Exchange would file a Form 19b–4 to list such Trust Units.

Pursuant to proposed NYSE Arca Equities Rule 8.500, the Exchange proposes to trade pursuant to UTP the Shares, which represent beneficial ownership interests in the assets of the Fund, consisting solely of units ("Master Fund Units") of the Nuveen Commodities Income and Growth Master Fund, LLC (the "Master Fund").[4] The Commission has approved the listing and trading of such Shares on the American Stock Exchange, LLC ("Amex").[5]

The Fund's primary investment objective is to seek total return through broad exposure to the commodities markets. The Fund's secondary objective is to provide investors with monthly income and capital

[4] The Fund and the Master Fund are commodity pools. The Master Fund is managed by Nuveen Commodities Asset Management, LLC (the "Manager"). The Manager is registered as a commodity pool operator (the "CPO") and a commodity trading advisor (the "CTA") with the Commodity Futures Trading Commission ("CFTC") and is a member of the National Futures Association ("NFA").

[5] *See* Securities Exchange Release No. 56880 (December 3, 2007), 72 FR 69259 (December 7, 2007) ("Amex Approval Order"). *See also* Securities Exchange Release No. 56465 (September 19, 2007), 72 FR 54489 ("Notice").

distributions not commonly associated with commodity investments. The Fund intends to pursue these investment objectives by investing all of its assets in the Master Fund, which in turn intends to pursue these investment objectives by utilizing: (a) An actively managed rules-based commodity investment strategy, whereby the Master Fund will invest in a diversified basket of commodity futures and forward contracts with an aggregate notional value substantially equal to the net assets of the Master Fund; and (b) a risk management program designed to moderate the overall risk and return characteristics of the Master Fund's commodity investments.

The NAV for the Fund will be calculated and disseminated daily.[6] In addition, the Web site for the Fund and the Manager, *http://www.nuveen.com*, which is publicly accessible at no charge, will contain the following information: (a) The prior business day's NAV and the reported closing price; (b) calculation of the premium or discount of such price against such NAV; and (c) other applicable quantitative information. During the initial offering period, the Fund's prospectus also will be available on the Fund's Web site.

The Fund's total portfolio holdings will also be disclosed on the Fund's Web site on each business day that the Amex is open for trading.[7] This Web site disclosure of portfolio holdings (as of the previous day's close) will be made daily and will include, as applicable: (a) The name and value of each commodity investment, (b) the value of over-the-counter commodity put options and the value of the collateral as represented by cash, (c) cash equivalents; and (d) debt securities held in the Fund's portfolio. The values of the Fund's portfolio holdings will, in each case, be determined in accordance with the Fund's valuation policies.

The Amex will also make available on its Web site daily trading volume, closing prices, and the NAV, according to the Notice. The closing price and settlement prices of the futures contracts held by the Master Fund are also readily available from the relevant futures exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace in accordance with NYSE Arca Equities Rule 7.34. The Exchange represents that it has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be $0.01. The Exchange represents that trading of the Shares will be subject to NYSE Arca Equities, Inc. Rule 8.500 (f)–(h), which sets forth certain restrictions on ETP Holders[8] acting as registered Market Makers in Trust Units that invest in the Shares to facilitate surveillance.

Because the Exchange is trading the Shares pursuant to UTP, the Exchange will cease trading the Shares if: (a) The listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12; or (b) the listing market delists the Shares. In addition, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading in the underlying related futures contract(s) is not occurring; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, if the Exchange becomes aware that the total portfolio holdings or the NAV are not disseminated to all market participants at the same time, it will immediately halt trading in the Shares.[9]

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG, including Chicago Board of Trade ("CBOT"), Chicago Mercantile Exchange ("CME"), and New York Board of Trade ("NYBOT").[10] In addition, the Exchange has in place Information Sharing Agreements with Intercontinental Exchange ("ICE FUTURES"), London Metals Exchange ("LME"), and New York Mercantile Exchange ("NYMEX") for the purpose of providing information in connection with trading in or related to futures contracts traded on the respective exchanges.

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) What the Shares are; (2) NYSE Arca Equities Rule 9.2(a),[11] which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the requirement that ETP Holders deliver a prospectus to

[6] The NAV will be calculated daily and made available to all market participants at the same time. If the NAV is not being disseminated as required, the Amex has represented that it may halt trading during the day in which the interruption to the dissemination of the NAV occurs. If the interruption to the dissemination of the NAV persists past the trading day in which it occurred, the Amex has represented that it will halt trading no later than the beginning of the trading day following the interruption.

[7] The disclosure of the portfolio holdings will be made to all market participants at the same time. If the portfolio holdings are not being disseminated as required, Amex has represented that it may halt trading during the day in which the interruption to the dissemination of the portfolio holdings occurs. If the interruption to the dissemination of the portfolio holdings persists past the trading day in which it occurred, Amex has represented that it will halt trading no later than the beginning of the trading day following the interruption.

[8] "ETP Holder means a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that has been issued an Equity Trading Permit or "ETP." An ETP Holder must be a registered broker or dealer pursuant to section 15 of the Act. *See* 15 U.S.C. 78o(b).

[9] *See* E-mail from Timothy J. Malinowski, Director, NYSE Euronext, to Ronesha Butler, Special Counsel, Division of Trading and Markets ("Division"), Commission, dated December 27, 2007 ("E-mail from Timothy J. Malinowski").

[10] For a list of the current members and affiliate members of ISG, *see http://www.isgportal.com*. The Exchange notes that not all of the underlying securities may trade on exchanges that are members or affiliate members of the ISG.

[11] The Exchange amended NYSE Arca Equities Rule 9.2(a) to provide that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the proposed rule amendment provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that they believe would be useful to make a recommendation. *See* Securities Exchange Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR–PCX–2005–115).

investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (4) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the registration statement. The Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical commodities, that the SEC has no jurisdiction over the trading of physical commodities, and that the CFTC has regulatory jurisdiction over the trading of futures contracts and options on futures contracts. The Bulletin will also reference that the forward contracts are traded on the LME, which is subject to regulation by the Securities and Investment Board in the United Kingdom and the Financial Services Authority. In addition, the Bulletin will also indicate that OTC instruments or products may effectively be unregulated. The Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. ET each trading day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Exchange believes that the proposed rule change is consistent with Rule 12f–5 under the Act[14] because the Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will 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

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2006–76 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2006–76. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–76 and should be submitted on or before January 25, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as modified, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[16] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[17] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[18] The Commission notes that it has approved the listing and trading of the Shares on Amex.[19] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[20] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 240.12f–5.

[15] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78*l*(f).

[18] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[19] *See* Amex Approval Order, *supra* note 5.

[20] 17 CFR 240.12f–5.

governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[21] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The Exchange represents that futures, forwards and related exchange-traded options quotes and last sale information for the commodity contracts are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange further represents that complete real-time data for such futures, forwards and exchange-traded options is available by subscription from Reuters and Bloomberg. The relevant futures and forward exchanges also provide delayed futures and forward contract information on current and past trading sessions and market news free of charge on their respective Web sites. The specific contract specifications for the futures and forward contracts are also available from the futures and forward exchanges on their Web sites as well as other financial informational sources. Finally, the Web site for the Fund and the Manager, which will be publicly accessible at no charge, will contain the following information: (a) The prior business day's NAV and the reported closing price; (b) calculation of the premium or discount of such price against such NAV; and (c) other applicable quantitative information. Furthermore, the Commission believes that the proposal to list the Trust Units and trade the Shares pursuant to UTP is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. The Exchange represents that trading of the Shares is subject to proposed NYSE Arca Equities Rule 8.500(f) which sets forth certain restrictions to prevent the use of material non-public corporate or market information by ETP Holders acting as registered Market Makers in Trust Units. The Commission notes that if the Exchange is the listing market, the Exchange will obtain a representation from the issuer of each of the series of Trust Units that the NAV will be calculated daily and made available to all market participants at the same time.[22] In addition, the Exchange represents that, if it is the listing market, the disclosure of the portfolio composition of the Trust Units will be made to all market participants at the same time.[23]

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. Proposed NYSE Arca Equities Rule 8.500(d)(2)(i)(B)(ii) provides that the Exchange will halt trading in the Shares if the circuit breaker parameters of Rule 7.12 have been reached. In addition, the Exchange represents that, if the Exchange becomes aware that the total portfolio holdings or the NAV are not disseminated to all market participants at the same time, NYSE Arca shall immediately halt trading in the Shares.[24] If the Exchange is the listing market and the portfolio holdings and NAV are not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the portfolio holdings or NAV occurs.[25] If the Exchange is the listing market and the interruption to the dissemination of the portfolio holdings or NAV persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[26]

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Shares are equity securities subject to NYSE Arca Equities rules governing the trading of equity securities.

The Commission notes that, if the Shares should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's existing surveillance procedures applicable to derivative products are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules. In addition, the Exchange has represented that it has Information Sharing Agreements with ICE FUTURES, LME, and NYMEX and may obtain market surveillance information via the ISG and other from other exchanges that are members or affiliates of ISG, including CBOT, CME, and NYBOT.

2. Prior to the commencement of trading, the Exchange will inform its ETP Holders in a Bulletin of the special characteristics and risks associated with trading the Shares.

3. The Bulletin will discuss the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction.

This approval order is based on the Exchange's representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted above, the Commission has approved the original listing and trading of the Shares on Amex.[27] The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Shares on the Exchange pursuant to UTP. Accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for such Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–NYSEArca–2006–76), as modified, be, and it hereby is, approved, on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Nancy M. Morris,

Secretary.

[FR Doc. E7–25623 Filed 1–3–08; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78k-1(a)(1)(C)(iii).

[22] *See* NYSE Arca Equities Rule 8.500(d)(1)(ii).

[23] *See* E-mail from Timothy J. Malinowski, Director, NYSE Euronext, to Ronesha Butler, Special Counsel, Division, Commission, dated December 21, 2007.

[24] *See* E-mail from Timothy J. Malinowski, *supra* note 9.

[25] *See* NYSE Arca Equities Rule 8.500(d)(2)(ii).

[26] *Id.*

[27] *See* Amex Approval Order, *supra* note 5.

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57047; File No. SR–NYSEArca–2007–127]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Shares of the iShares MSCI Belgium Index Fund

December 27, 2007.

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 December 13, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On December 19, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change, as amended, and approves the amended proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares ("Shares") of the iShares MSCI Belgium Index Fund ("Fund").[3] The text of the proposed rule change is available at the Exchange's principal office, the Commission's Public Reference Room, and *http://www.nyse.com*.

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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Shares are issued by iShares, Inc., an open-ended management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund pursuant to NYSE Arca Equities Rule 5.2(j)(3), the Exchange's listing standards for Investment Company Units ("ICUs").[4] The Shares are currently listed on the New York Stock Exchange LLC ("NYSE")[5] and traded by the Exchange pursuant to unlisted trading privileges ("UTP").[6] The Exchange states that, if the Commission approves this proposed rule change, the listing and trading of the Shares will transfer from NYSE to NYSE Arca, and the Shares will cease trading on NYSE.

The Fund seeks to provide investment results that correspond generally to the price and yield performance, before fees and expenses, of publicly traded securities in the aggregate in the Belgian market, as represented by the MSCI Belgium Investable Market Index (the "Index"). The Index is designed to cover approximately 99% of the investable large-, mid-, and small-cap securities of the Belgian market.

NYSE Arca represents that the Shares meet each of the "generic" listing requirements of Commentary .01(a)(B) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of ICUs based on equity securities comprising international or global indexes, except for the requirements set forth in Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3) that: (1) The most heavily weighted component stock must not exceed 25% of the weight of the index or portfolio; and (2) the five most heavily weighted component stocks must not exceed 60% of the weight of the index or portfolio. The Exchange represents that, as of December 1, 2007, the most heavily weighted component stock represented 28.58% of the weight of the Index, and the five most heavily weighted component stocks represented 61.58% of the weight of the Index. Because the heavily weighted component stocks of the Index fall below the required minimum percentages in Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3), the Exchange has filed the proposed rule change to list and trade the Shares. The Exchange represents that, except for Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3), the Shares currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3) and further represents that the continued listing standards under NYSE Arca Equities Rule 5.5(g)(2) applicable to Investment Company Units shall apply to the Shares.

Detailed descriptions of the Fund, the Index, and the Shares can be found in the Registration Statement[7] or on the Web site for the Fund (*http://www.ishares.com*).

Availability of Information. The Exchange states that quotations for and last-sale information regarding the Shares is disseminated through the facilities of the Consolidated Tape Association ("CTA"). The Index value is calculated by Morgan Stanley Capital International, Inc. ("MSCI"), the Index provider, for each trading day in the applicable foreign exchange markets based on official closing prices in such exchange markets and publicly disseminates the Index values for the previous day's close.[8] MSCI or third-party major market data vendors will make available at least every 60 seconds an updated Index value when foreign trading market hours overlap with the Core Trading Session (9:30 a.m. to 4:15 p.m. ET).[9] When the foreign markets are

[4] An Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). *See* NYSE Arca Equities Rule 5.2(j)(3)(A).

[5] *See* Securities Exchange Act Release No. 52816 (November 21, 2005), 70 FR 71574 (November 29, 2005) (SR–NYSE–2005–70) (approving the listing and trading of the Shares, among others).

[6] *See* Securities Exchange Act Release No. 55017 (December 28, 2006), 72 FR 1044 (January 9, 2007) (SR–NYSEArca–2006–34) (approving the trading of the Shares, among others, pursuant to UTP).

[7] *See* iShares, Inc.'s Registration Statement on Form N–1A, as supplemented through December 6, 2007 (File Nos. 33–97598 and 811–09102) ("Registration Statement").

[8] The Exchange notes that, when a broker-dealer or its affiliate, such as MSCI, is involved in the development and maintenance of a stock index upon which a product such as iShares is based, the broker-dealer or its affiliate should have procedures designed specifically to address the improper sharing of information. *See* Securities Exchange Act Release No. 52178 (July 29, 2005), 70 FR 46244 n.18 (August 9, 2005) (SR–NYSE–2005–41) (describing the procedures which must be in place to prevent the improper sharing of information). The Exchange represents that MSCI has implemented procedures to prevent the misuse of material, non-public information regarding changes to component stocks in the MSCI, in accordance with the requirements of Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3).

[9] *See* NYSE Arca Equities Rule 7.34. The Commission has approved the Shares to trade in all three trading sessions on the Exchange: (1) Opening Session (4 a.m. to 9:30 a.m. Eastern Time or "ET"); (2) Core Trading Session (9:30 a.m. to 4 p.m. ET); and (3) Late Trading Session (4 p.m. to 8 p.m. ET). *See* Securities Exchange Release No. 56627 (October 5, 2007), 72 FR 58145 (October 12, 2007) (SR–

Continued

closed during Exchange trading hours, the Fund will provide closing Index values on *http://www.ishares.com*. iShares, Inc. will cause to be made available daily the names and required number of shares of each of the securities to be deposited in connection with the issuance of the Fund's Shares, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends for the Fund.

In addition, the Indicative Optimized Portfolio Value or "IOPV" on a per-Share basis will be calculated by an independent third party and disseminated through the facilities of the CTA at least every 15 seconds during the Core Trading Session.[10] The Exchange states that, because the Fund utilizes a representative sampling strategy, the IOPV likely will not reflect the value of all securities included in the Index or necessarily reflect the precise composition of the current portfolio of securities held by the Fund at a particular moment. The Exchange notes that the IOPV disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV of the Fund, which is calculated only once a day.

The Fund administrator, State Street Bank and Trust Company, will calculate the net asset value or "NAV" for the Fund once a day on each day that the NYSE is open for trading, generally at 4 p.m. ET. The NAV will also be available to the public on *http://www.ishares.com*, from the Fund distributor by means of a toll-free phone number, and to participants of the National Securities Clearing Corporation.

Information with respect to recent NAV, number of Shares outstanding, estimated cash amount, total cash amount per Creation Unit Aggregation,[11] and other data with respect to the Fund will also be disseminated prior to the opening of the Core Trading Session on a daily basis by means of CTA and Consolidated Quote High Speed Lines. In addition, the Web site for the Fund will contain the following information, on a per-Share basis: (1) The prior business day's NAV, the mid-point of the bid-ask price at the time of calculation of such NAV ("Bid/Ask Price"),[12] and a calculation of the premium or discount of such price against such NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Finally, the Exchange states that MSCI's Web site at *http://www.mscibarra.com* will make available the components of the Index, and the holdings of the Fund will be available at *http://www.ishares.com*. The Exchange represents that the information on the Fund Web site will be available to all market participants at the same time.

Trading Rules and Halts. The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. As stated earlier, the Shares will trade on the Exchange from 4 a.m. to 8 p.m. ET in accordance with NYSE Arca Equities Rule 7.34. The Exchange represents that it has appropriate rules to facilitate transactions in the Shares during all trading sessions, including rules governing trading halts, as provided in NYSE Arca Equities Rule 5.5(g)(2)(b).

Surveillance. The Exchange intends to utilize its existing surveillance procedures applicable to Investment Company Units to monitor trading in the Shares. The Exchange represents that these procedures, which focus on detecting when securities trade outside their normal patterns, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules. The Exchange further represents that it may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members or affiliate members of ISG.[13] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin. Prior to the commencement of trading, the Exchange will inform its ETP Holders[14] in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss: (1) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IOPV is disseminated; (4) the risks involved in trading the shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly available; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement and will also discuss any exemptive, no-action, or interpretive relief granted by the Commission from provisions of the Act and the rules thereunder. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. ET each trading day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, in that it is 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

NYSEArca–2007–75) (approving the Shares, among others, to be traded in all trading sessions).

[10] The Exchange states that there is an overlap in trading hours between the foreign and U.S. markets for the Fund and the foreign market that trades securities in the underlying Index. Therefore, the IOPV calculator will update the IOPV at least every 15 seconds to reflect price changes in the applicable foreign market and convert such prices into U.S. dollars based on the currency exchange rate. When the foreign market is closed and the U.S. markets are open, the IOPV will be updated at least every 15 seconds to reflect changes in currency exchange rates after the foreign market closes.

[11] *See* Registration Statement, *supra* note 7 (providing the definition of Creation Unit Aggregation and the procedures for purchasing and redeeming Shares).

[12] The Bid-Ask Price of the Fund is determined using the highest bid and lowest offer on the Exchange as of the time of calculation of the Fund's NAV.

[13] The Exchange notes that one or more of the securities comprising the Index may trade on exchanges that are not members or affiliate members of ISG, and the Exchange may not have in place comprehensive surveillance sharing agreements with such exchanges.

[14] *See* NYSE Arca Equities Rule 1.1 (defining ETP Holder as a registered broker or dealer that is a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that has been issued an Equity Trading Permit or "ETP").

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange states that written comments on the proposed rule change were neither solicited nor recieved.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–127 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–127. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–127 and should be submitted on or before January 25, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, 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.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[18] which requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Although NYSE Arca Equities Rule 5.2(j)(3) permits the Exchange to list and trade ICUs, the Shares do not meet all of the generic listing requirements[19] under such rule because the components of the Index do not meet the requirements of Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3). Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3) requires that, upon the initial listing of any series of ICUs pursuant to Rule 19b–4(e) under the Act, the most heavily weighted component stock must not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks must not exceed 60% of the weight of the index or portfolio. According to the Exchange, as of December 1, 2007, the most heavily weighted component stock represented 28.58% of the weight of the Index, and the five most heavily weighted component stocks represented 61.58% of the weight of the Index. Such percentages miss the minimum required thresholds by 3.58% and 1.58%, respectively, and therefore the Shares cannot be listed and traded pursuant to the generic listing standards of NYSE Arca Equities Rule 5.2(j)(3).

The Commission believes, however, that the listing and trading of the Shares is consistent with the Act. The Commission notes that, based on the Exchange's representations, the Shares otherwise meet all of the other applicable generic listing standards under NYSE Arca Equities Rule 5.2(j)(3). The Commission further notes that it has previously approved the listing and trading of derivative securities products based on indices that were composed of stocks that did not meet certain quantitative generic listing criteria by only a slight margin.[20]

The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[21] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations and last-sale information for the Shares will be disseminated through the facilities of the CTA. MSCI or third-party market data vendors will make available at least every 60 seconds an updated Index value during the Exchange's Core Trading Session. In addition, an independent third-party calculator will calculate and disseminate the IOPV through the facilities of the CTA at least every 15 seconds during the Exchange's Core Trading Session. Further, the Fund's Web site will disseminate information relating to the NAV and the Bid/Ask Price for the Shares, as well as the specific holdings of the Fund.

The Commission believes that the proposed rule change is reasonably

[17] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] The generic listing requirements under NYSE Arca Equities Rule 5.2(j)(3) permit the listing and trading of ICUs pursuant to Rule 19b–4(e) under the Act (17 CFR 240.19b–4(e)). Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to Rule 19b–4(c)(1), if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class.

[20] *See, e.g.*, Securities Exchange Act Release No. 55953 (June 25, 2007), 72 FR 36084 (July 2, 2007) (SR–NYSE–2007–46) (approving the listing and trading of shares of the HealthShares™ Orthopedic Repair exchange-traded fund where the component stocks comprising the index that individually exceeded the minimum worldwide monthly trading volume of 250,000 shares during each of the last six months accounted, in the aggregate, for 86.2% of the weight of the index, narrowly missing compliance with the initial listing requirement by 3.8%); Securities Exchange Act Release No. 56695 (October 24, 2007), 72 FR 61413 (October 30, 2007) (SR–NYSEArca–2007–111) (approving the listing and trading of shares of the HealthShares™ Ophthalmology exchange-traded fund where the component stocks comprising the index that individually exceeded the minimum worldwide monthly trading volume of 250,000 shares during each of the last six months accounted, in the aggregate, for only 88.2% of the weight of the index, narrowly missing compliance with the generic listing standard by 1.8%).

[21] 15 U.S.C. 78k–1(a)(1)(C)(iii).

designed to promote fair disclosure of information that may be necessary to appropriately price the Shares. Under Rule 5.2(j)(3)(v), the Exchange is required to obtain a representation from iShares, Inc. that the NAV per Share will be calculated daily and made available to all market participants at the same time. In addition, the Exchange represents that the Web site disclosure of the information regarding the Shares and the portfolio composition of the Fund will be made available to all market participants at the same time. The Exchange further represents that MSCI has procedures in place that comply with the requirements of Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3), which relates to restricted access of information concerning changes and adjustments to the Index.

The Commission further believes that the trading rules and procedures to which the Shares would be subject pursuant to this proposal are consistent with the Act. The Shares would trade as equity securities and be subject to NYSE Arca's rules governing the trading of equity securities. The Commission also believes that the Exchange's trading halt rules under NYSE Arca Equities Rule 5.5(g)(2)(b) are reasonably designed to prevent trading in the Shares when transparency is impaired.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange would utilize its existing surveillance procedures applicable to ICUs to monitor trading of the Shares. The Exchange represents that such surveillance procedures are adequate to properly monitor the trading of the Shares. The Exchange may obtain trading information via the ISG from other exchanges that are members or affiliate members of ISG.[22]

2. Prior to the commencement of trading, the Exchange will inform its ETP Holders in the Bulletin of the special characteristics and risks (including the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly available) associated with trading the Shares. The Bulletin will discuss the procedures for purchases and redemptions of Shares, the Exchange's suitability requirements, information regarding the IOPV, and prospectus delivery requirements.

3. The Exchange represents that iShares, Inc. is required to comply with Rule 10A–3 under the Act[23] for the initial and continued listing of the Shares.

This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[24] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission notes that the Shares are currently listed on NYSE and trading on the Exchange pursuant to UTP. This proposal would move the listing from NYSE to NYSE Arca. Given that the Shares comply with all of NYSE Arca's initial generic listing standards for ICUs (except for narrowly missing two requirements of Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3)) the listing and trading of the Shares by NYSE Arca does not appear to present any novel or significant regulatory issues. Therefore, the Commission finds that there is good cause to approve the proposed rule change, as modified by Amendment No. 1 thereto, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) under the Act,[25] that the proposed rule change (SR–NYSEArca–2007–127), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Nancy M. Morris,

Secretary.

[FR Doc. E7–25581 Filed 1–3–08; 8:45 am]

BILLING CODE 8011–01–P

[22] *See supra* note 13.

[23] 17 CFR 240.10A–3.

[24] 15 U.S.C. 78s(b)(2).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket Number PHMSA–2007–28119; Notice No. 07–9]

Proposed Recommended Practices for Bulk Loading and Unloading of Hazardous Materials in Transportation

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA).

ACTION: Notice; request for comments.

SUMMARY: This notice solicits information and comments on proposed recommended practices for loading and unloading operations involving bulk packagings used to transport hazardous materials. In this notice, we summarize incident data related to bulk loading and unloading operations; discuss recommendations issued by the National Transportation Safety Board and the Chemical and Safety Hazard Investigation Board; provide an overview of current Federal regulations applicable to bulk loading and unloading operations; summarize the results of a public workshop we hosted earlier this year; and set forth proposed recommended practices for bulk loading and unloading operations. Based on information and comments received, we plan to consider strategies for enhancing the safety of bulk loading and unloading operations, including whether additional regulatory requirements may be necessary. In addition, we are soliciting comments on whether there are existing gaps and/or overlaps in regulations promulgated by PHMSA, OSHA, EPA and the USCG that adversely affect the safety of these operations, and how any identified gaps and/or overlaps in Federal regulations should be addressed.

DATES: Submit comments by February 8, 2008.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–2007–28119) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor; Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. Note that all comments received will be posted without change to the docket management system, including any personal information provided.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov*, or DOT's Docket Operations Office (see **ADDRESSES**).

PRIVACY ACT: Anyone is able to search the electronic form of any written

communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Boyle, Office of Hazardous Materials Technology, (202) 366–4545 or Kurt Eichenlaub, Office of Hazardous Materials Standards, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration.

SUPPLEMENTARY INFORMATION

I. Background

A recent PHMSA review of hazardous materials transportation incidents occurring over the past decade indicates that roughly one-quarter to one-half of all serious hazardous materials incidents may be associated with loading and unloading operations involving bulk packagings such as cargo tank motor vehicles (CTMV) and rail tank cars. In addition, the National Transportation Safety Board (NTSB) and the Chemical and Safety Hazard Investigation Board (CSB) have investigated a number of accidents associated with these loading and unloading operations. PHMSA's data review and the NTSB and CSB investigations suggest that there may be opportunities to enhance the safety of such operations.

A. PHMSA Analysis of Bulk Loading and Unloading Incidents

On February 8, 2007, PHMSA issued, "A Summary Evaluation of Risk Associated with Bulk Loading/Unloading of Hazmat," a summary report of a risk assessment conducted to identify risks associated with bulk loading and unloading operations for highway and rail transportation. The report provides both a qualitative and quantitative analysis of incident reports involving loading and unloading of bulk packagings submitted to PHMSA in accordance with the reporting criteria specified in § 171.16 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180). The report focuses on highway and rail transportation incidents because 89% of total incidents and 97% of all serious incidents occur during transportation operations in these two modes. Serious incidents in highway and rail transportation include any unintentional release that results in death, major injury, closure of a major transportation artery, release of radioactive material from a Type B package, suspected release of certain infectious substances, or release of a bulk quantity of hazardous material. The data used for the report are from the Hazardous Materials Information System (HMIS), as of January 7, 2007. The results of the data analysis showed that:

- During the 2004–2006 period, 27% of all serious incidents occurred during bulk loading and unloading operations.
- During the 2004–2006 period, hazardous materials shipments transported by highway and rail in bulk packagings were involved in approximately 9 out of 10 high consequence events.
- The number of incidents occurring during the loading and unloading of bulk packagings has remained relatively unchanged over the last 10 years.
- Many of the identified causes of both en route and storage incidents can be attributed to loading and unloading operations (i.e., overfilled, overpressurized, loose closure, component or device, etc.).

PHMSA's summary report and analysis of bulk loading and unloading incident data is available for review in this docket.

B. NTSB Accident Investigations

NTSB has investigated several serious accidents related to bulk loading and unloading operations:

- On July 14, 2001, in Riverview, Michigan, during unloading from a rail tank car, a pipe attached to a fitting on the unloading line fractured and separated, causing the release of methyl mercaptan. The methyl mercaptan ignited, engulfing the tank car in flames. Fire damage to cargo transfer hoses on an adjacent tank car resulted in the release of chlorine. Three plant employees were killed in the accident, and about 2,000 people in the surrounding neighborhood were evacuated from their homes. The fractured piping used for the unloading operation exhibited significant corrosion damage. As a result of this investigation, NTSB issued the following recommendations to DOT:
  - *I–02–1:* Develop, with the assistance of the Environmental Protection Agency and Occupational Safety and Health Administration, safety requirements that apply to the loading and unloading of railroad tank cars, highway cargo tanks, and other bulk containers that address the inspection and maintenance of cargo transfer equipment, emergency shutdown measures, and personal protection requirements.
  - *I–02–2:* Implement, after the adoption of safety requirements developed in response to Safety Recommendation I–02–01, an oversight program to ensure compliance with these requirements.
- On September 13, 2002, in Freeport, Texas, a tank car containing about 6,500 gallons of hazardous waste ruptured at a transfer station. The car had been steam-heated to permit the transfer of the waste to a CTMV for subsequent disposal. As a result of the accident, 28 people received minor injuries, and residents living within one mile of the accident site had to shelter in place for 5½ hours. The tank car, highway cargo tank, and transfer station were destroyed. The force of the explosion propelled a 300-pound tank car dome housing about ⅓ mile away from the tank car. Two storage tanks near the transfer station were damaged; they released about 660 gallons of the hazardous material oleum (fuming sulfuric acid and sulfur trioxide). As a result of its investigation, NTSB issued the following recommendation to PHMSA:
  - *R–04–10:* In cooperation with the Occupational Safety and Health Administration and the Environmental Protection Agency, develop regulations that require safe operating procedures to be established before hazardous materials are heated in a railroad tank car for unloading; at a minimum, the procedures should include the monitoring of internal tank pressure and cargo temperature.

NTSB has also issued previous recommendations I–88–1 and I–88–2 to the Department of Transportation, and R–02–16 to the Federal Railroad Administration related to loading and unloading safety requirements:

- *I–88–1:* Establish safety requirements for the movement and temporary storage of hazardous materials at intermodal transportation facilities.
- *I–88–2:* Strengthen minimum safety requirements for loading and unloading of hazardous materials to provide adequate, uniform safety in all modes of transportation.
- *R–02–16:* Issue a hazardous materials bulletin to warn companies involved in tank car loading and unloading operations that tank car excess flow valves cannot be relied upon to stop leaks that occur during these operations.

C. CSB Accident Investigations

CSB has investigated two incidents in which chlorine was released during rail tank car unloading operations:

• On August 14, 2002, in Festus, Missouri, approximately 24 tons of chlorine was released during a three-hour period following the rupture of an unloading hose. The magnitude of the incident was exacerbated because the emergency shut down system failed to operate properly. Consequently, 48,000 pounds of chlorine was released, resulting in the evacuation or shelter-in-place of hundreds of residents. Three residents were admitted to the hospital.

• On August 11, 2005, in Baton Rouge, Louisiana, a chlorine transfer hose ruptured. However, the emergency shut down system operated properly, and the release ended in under a minute. The successful activation of the emergency shut-down system prevented a major release and off-site impact.

As a result of its investigations, CSB issued DOT the following recommendation:

○ *2006–06–I–LA–RI:* Expand the scope of DOT regulatory coverage to include chlorine rail car unloading operations. Ensure the regulations specifically require remotely operated emergency isolation devices that will quickly isolate a leak in any of the flexible hoses (or piping components) used to unload a chlorine rail car. The shutdown system must be capable of stopping a chlorine release from both the rail car and the facility chlorine receiving equipment. Require the emergency isolation system be periodically maintained and operationally tested to ensure it will function in the event of an unloading system chlorine leak.

D. OSHA/EPA/USCG Requirements

Both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) regulate operations involving the handling of hazardous materials at fixed facilities. For example, OSHA's Process Safety Management (PSM) standard (29 CFR 1910.119) contains requirements for processes that use, store, manufacture, handle, or transport particular chemicals on-site. Bulk loading and unloading operations involving PSM-covered chemicals are subject to the requirements of the PSM standard. The OSHA standards also include requirements for the handling and storage of specific hazardous materials, such as compressed gases, flammable and combustible liquids, explosives and blasting agents, liquefied petroleum gases, and anhydrous ammonia. Similarly, EPA regulations establish a general duty for facility owners or operators to identify hazards associated with the accidental releases of extremely hazardous substances, design and maintain a safe facility as needed to prevent such releases, and minimize the consequences of releases. In addition, stationary sources with more than a threshold quantity of a regulated substance in a process are subject to EPA's accident prevention regulations, including the requirement to develop risk management plans (40 CFR Part 68).

The U.S. Coast Guard (USCG) maintains regulations that apply to hazardous materials directly loaded or unloaded to or from a hold or tank on a vessel without the use of containers or break-bulk packaging (46 CFR Parts 148–154). In addition, the USCG regulations establish requirements for the transfer of hazardous material to or from a portable tank while on a vessel; and, requirements for waterfront facilities engaged in the handling, storage, loading, discharging or transportation of packaged hazardous materials and solid bulk cargo (33 CFR Part 126).

II. PHMSA Regulations

1. Requirements Applicable to Loading and Unloading Operations

The HMR include requirements for loading and unloading railroad tank cars, CTMVs, and other bulk containers. Part 174 of the HMR, which applies to the transportation of hazardous materials by rail, establishes general loading and unloading requirements for hazardous materials and specific loading and handling requirements for shipments of Class 1 (Explosive), Class 2 (Non-flammable, Flammable, and Poison gases), Class 3 (Flammable liquid), Division 6.1 (Poison), and Class 7 (Radioactive) materials. Part 177 of the HMR, which applies to the transportation of hazardous materials by motor carrier, establishes general hazardous materials loading and unloading requirements and specific loading and unloading requirements applicable to Class 1 (Explosive), Class 2 (Non-flammable, Flammable, and Poison gases), Class 3 (Flammable liquid), Class 4 (Flammable solid, Spontaneously combustible, and Dangerous when wet), Class 5 (Oxidizer and Organic peroxide), Division 6.1 (Poison), Class 7 (Radioactive), and Class 8 (Corrosive) materials. The HMR also include additional loading requirements applicable to rail tank cars, portable tanks, cargo tanks, and intermodal bulk containers in §§ 171.31, 173.32, 173.33, and 173.35.

2. Cargo Tank Motor Vehicles and Loading/Unloading Equipment

The HMR include requirements for the inspection and maintenance of cargo transfer equipment, such as piping and transfer hoses, that is part of bulk packaging or carried on a vehicle used to transport a bulk packaging. The HMR require each operator of a CTMV to conduct periodic tests and inspections of the CTMV and its attachments and appurtenances, including piping and transfer hoses used for loading and unloading the CTMV. Each operator must conduct external visual inspections, internal visual inspections, leakage tests, and pressure tests in accordance with the schedule established in § 180.407(c). Section 180.407 also sets forth the specific procedures to be followed for each inspection or test. In addition, for CTMVs used to transport liquefied compressed gases, each operator must visually inspect each CTMV's cargo transfer equipment, including piping and hoses installed or carried on the CTMV, at least once each month (see § 180.416). These periodic inspections and tests help to ensure that each CTMV and its cargo transfer equipment are free of leaks or other defects that could adversely affect the safe operation of the CTMV, including the safety of loading and unloading operations.

3. Cargo Tank Motor Vehicle Emergency Shutdown Requirements

The HMR require DOT specification CTMVs to be equipped with emergency discharge control systems. For example, an MC 330 or 331 CTMV used to transport liquefied compressed gases must be equipped with an emergency discharge control system activated automatically or by remote control in the event of an unloading emergency. In addition, each CTMV operator must carry on the vehicle written emergency discharge control procedures for all delivery operations. An MC 338 CTMV tank must be equipped with a remotely controlled self-closing shutoff valve with both a mechanical and thermal means of automatic closure. On DOT 406, 407, and 412 CTMVs, each loading/unloading outlet must be fitted with a self-closing system capable of closing the outlet(s) in an emergency within 30 seconds of actuation. On DOT 406, 407, and 412 CTMVs used to transport flammable, pyrophoric, oxidizing, or poisonous materials, the remote means of closure must be capable of thermal activation.

4. Training Requirements

Each person who performs a function regulated under the HMR must be trained (see Subpart H of Part 172). This training must include general awareness, function-specific, safety, and security training. Thus, each person who performs a loading or unloading function regulated under the HMR must be trained concerning all aspects of that function, including emergency shutdown procedures. In addition, each person who performs a loading or unloading function regulated under the HMR must be trained concerning specific hazards associated with the materials handled and personal protection measures.

III. Consensus Standards

We are aware of a variety of existing national consensus standards that address bulk loading and unloading operations. For example, the Chlorine Institute has developed loading and unloading procedures for chlorine (e.g., Pamphlet 57, "Emergency Shut-off Systems for Bulk Transfers of Chlorine; Pamphlet 66, "Recommended Practices for Handling Chlorine Tank Cars; Pamphlet 91, "Checklist for Chlorine Packaging Plants, Chlorine Distributors and Tank Car Users of Chlorine"). The Association of American Railroads (AAR) has developed Pamphlet 34, "Recommended Methods for the Safe Loading and Unloading of Tank Cars." The American Chemistry Council has developed the Responsible Care® management system, which establishes an integrated, structured approach to drive results in seven key areas: community awareness and emergency response; security; distribution; employee health and safety; pollution prevention; process safety; and product stewardship. PHMSA reviewed some of these industry standards to ascertain if existing standards provide the necessary amplification of the basic loading and unloading practices proposed in this notice.

The industry standards address a number of topics related to the loading and unloading of hazardous materials and are different based upon the type of hazardous material, the physical form of the material, the mode of transportation, and the type of packaging used to transport the material. While the standards exhibit differences in specific detail, there are a number of common general safety topic areas, such as, risk evaluation, development of operational procedures, maintenance and testing of equipment, training, and emergency response.

The available industry standards clearly demonstrate industry's focus on safety issues associated with loading and unloading operations. Virtually all standards specifically require the use of personal protective equipment, often specifying in detail the equipment that should be used. In addition, most standards include considerable detail concerning activities that appear to be associated with the greatest personal risk (e.g., assuring evacuation of all hazardous material residues from tanks before required interior inspections). The wide variety of industry standards applicable to loading and unloading operations provide useful information on industry standard practices, which we considered in the development of the recommended practices proposed in this notice.

PHMSA recognizes that it reviewed only a sampling of guidelines and standards that are available to the bulk hazardous materials shipping industry. The documents are representative of what is available to industry and were submitted by those industry personnel who believe additional guidance would be useful.

IV. Public Workshop

On June 14, 2007, PHMSA hosted a public workshop to bring stakeholders together for conceptual discussions on the risks associated with loading and unloading bulk hazardous materials and the range of actions that could be taken by the government and industry to address those risks. In the May 11, 2007 public notice advertising this workshop (72 FR 26864), we invited interested persons to submit comments related to the issues discussed at the workshop. Representatives from industry, federal agencies, state and local government, standards organizations, the emergency response community, employee groups, environmental and public interest organizations, and the public participated in the meeting.

The workshop consisted of a series of panel presentations on specific topics followed by discussions of the issues presented. Issues covered at the workshop included: (1) Incident data analysis and evaluation; (2) NTSB and CSB accident reports; (3) loading and unloading procedures and recommended practices; (4) whether there are gaps in the safety and regulatory programs; (5) training; and (6) emergency response.

Many workshop participants voiced strong support for the development of loading and unloading procedures, suggesting that development and adoption of such "recommended practices" or consensus standards could significantly improve the safety of loading and unloading operations. A working group of shippers, carriers, and industrial package organizations (Interested Parties Working Group) developed, and presented for consideration, a draft operating procedures document for the loading, unloading, and incidental storage of hazardous materials in bulk packagings having a capacity of greater than 3,000 liters.

The draft operating procedures document specifies information and processes that the Interested Parties Working Group recommends offerors, consignees, or transloading facility operators address in their operating procedures. Some key elements include recommendations applicable to pre-transfer operations (e.g., securement of the transport unit, and inspection of the transfer equipment and attachments), transfer operations (e.g., monitoring the temperature of the lading and the pressure of the containment vessel), post-transfer operations (e.g., evacuation of the transfer system and depressurization of the containment vessel), storage (e.g., monitoring for leaks and releases), and emergency procedures (e.g., use of emergency shut-down systems). The Interested Parties Working Group recommends that operators and facilities engaged in loading, unloading and incidental storage activities develop and implement written operating procedures inclusive of the elements outlined in the draft operating procedures document, which are based on a safety and security analysis of the functions performed at the particular loading, unloading, or storage location or facility. The complete draft operating procedures document presented by the working group is available for review in this docket. This docket also includes a transcript of the public workshop, presentations made by panel participants, comments presented at the workshop or during the comment period, and a petition for rulemaking submitted by the Dangerous Goods Advisory Council on November 19, 2007 requesting the adoption of operational procedures in the HMR applicable to loading, unloading and incidental storage of hazardous materials in bulk packagings.

Prior to publication, a copy of this notice was provided for review to OSHA, EPA, NTSB, CSB, the International Association of Fire Chiefs, the National Association of State Fire Marshals, DGAC, and the Chlorine Institute. Comments we received from these agencies and organizations are posted on the Docket.

V. Proposed Recommended Practices for Bulk Loading and Unloading Operations

As a result of the collaborative effort between PHMSA and our stakeholders, we are proposing a set of recommended practices that would apply to loading and unloading operations involving hazardous materials in many different types of packagings and a number of different operational and modal contexts. These proposed recommended practices build on the submission from the Interested Parties Working Group, the NTSB and CSB recommendations related to loading and unloading of bulk packagings, and our analysis of bulk loading and unloading incidents. Note that these proposed recommended practices would supplement current HMR requirements applicable to loading and unloading operations. For example, the recommendations applicable to training would not replace the current requirements for general awareness, function specific, safety, and security training established in Subpart H of Part 172, but would be considered as additions to current training requirements and programs.

Proposed Recommended Practices for Loading and Unloading Bulk Quantities of Hazardous Materials

1. Loading/Unloading Safety Analysis

A shipper, carrier, or facility operator should conduct a thorough, orderly, systematic analysis to identify, evaluate and control the hazards associated with specific loading and unloading operations. The analysis should be appropriate to the complexity of the process and the materials involved in the operation. For example, the analysis should consider the hazards of the material to be loaded or unloaded, including any temperature or pressure controls necessary to ensure safe handling of the material, and conditions that could affect the safety of the process, such as access control, lighting, ignition sources, and physical obstructions. The analysis should also assess current procedures utilized to ensure the safety of loading and unloading operations and identify any areas where those procedures could be improved.

2. Loading/Unloading Operational Procedures

Based on the safety analysis, the shipper, carrier, or facility operator should develop a step-by-step guide to loading and unloading that is clear, concise, and appropriate to the level of training and knowledge of its employees. The written guide should address pre-loading/pre-unloading procedures, loading/unloading procedures, and post-loading/post-unloading procedures.

(a) *Pre-loading/Pre-unloading procedures should include:*

(1) Inspection of the transport unit and transfer area. For example, shippers should ensure that a DOT specification packaging is marked to indicate that it has been designed, manufactured and maintained (including periodic inspection and testing) in accordance with specification requirements.

(2) Securing the transport unit against movement.

(3) Grounding and bonding of the transport unit, as warranted.

(4) Inspection of transfer equipment and connections, including hoses and valves, to ensure that they are free of defects, leaks, or other problems that could result in an unsafe condition.

(5) Identification and verification of piping path, equipment lineups and operational sequencing and procedures for connecting piping, hoses, or other transfer connections.

(6) Identification and verification that the materials that are being loaded or unloaded are being transferred into the appropriate packagings, temporary storage facilities, or production containment vessels and that the compatibility of the material to be transferred is appropriate, authorized and consistent with applicable procedures.

(b) *Loading/Unloading procedures should include:*

(1) Measures for initiating and controlling the lading flow. For example, if the material is to be heated prior to its transfer, the facility operator should analyze a sample of the material to ascertain the heat input to be applied, if warranted. The maximum heat input to be applied and the rate at which the heat input will be applied must not result in pressurization to a level that exceeds the packaging's test pressure.

(2) Measures for monitoring the temperature of the lading and pressure of the containment vessel (*e.g.*, cargo tank or rail tank car) and receiving vessel (*e.g.*, storage tank). For example, for loading or unloading operations involving heating of the material to be transferred, during the heating process, the facility operator should monitor the heat input applied to the containment vessel and the pressure inside the containment vessel to ensure that the heating process does not result in over-pressurization or an uncontrolled exothermic reaction.

(3) Measures for monitoring filling limits and ensuring that the quantity to be transferred is appropriate for the receiving vessel.

(4) Measures for terminating lading flow. For example, personnel responsible for monitoring a loading or unloading process should be familiar with shut-off equipment and procedures, and should be trained to take necessary actions to stop the lading flow as efficiently as possible.

(c) *Post-loading/Post-unloading procedures should include:*

(1) Measures for evacuation of the transfer system and depressurization of the containment vessel, as warranted.

(2) Measures for disconnecting the transfer system.

(3) Inspection and securement of transport unit fittings and closures.

(d) *Review and Revision of Procedures:*

The operating procedures should be reviewed as often as necessary to ensure that they reflect current operating practices, materials, technology, personnel responsibilities, and equipment. To guard against outdated or inaccurate operating procedures, the hazmat employer should consider revalidating the operating procedures annually.

3. Emergency Management

Appropriate emergency procedures should be identified and implemented, including identification of emergency response equipment and individuals authorized in its use; incident response procedures and clearly identified personnel responsibilities; personnel protection guidance and use of emergency shut-down systems; and, emergency communication and spill reporting. Emergency instrumentation and equipment appropriate to the loading or unloading operation should be identified, available, and in working order. Emergency procedures should be clear, concise, and available to workers. Emergency training, including the need for drills, should also be provided.

Loading and unloading facilities may want to consider:

(a) Instrumentation to monitor for leaks and releases.

(b) Equipment to isolate leaks and releases and to take other appropriate emergency shutdown measures, remotely if necessary.

(c) Training in the use of emergency response equipment.

(d) Procedures for incident response.

(e) Procedures for use of emergency shut-down systems and the assignment of shut down responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner.

(f) Procedures for emergency communication and spill reporting.

(g) Procedures of safe startup after an emergency shut down.

(h) Procedures and schedules for conducting drills and exercises necessary to demonstrate the efficacy of the plan, and to ensure a timely and efficient emergency response.

(i) Emergency procedures should be reviewed and updated as often as necessary to ensure that they reflect current operating practices, materials, technology, personnel responsibilities, and emergency response information.

4. Maintenance and Testing of Equipment

Loading and unloading equipment and systems need to be properly maintained and tested. Shippers and carriers should develop and implement a periodic maintenance schedule to prevent deterioration of equipment and conduct periodic operational tests to ensure that the equipment functions as intended. Equipment and system repairs should be completed promptly.

5. Training

Personnel involved in loading and unloading and emergency response operations need to know and understand their specific responsibilities during loading and unloading operations, including attendance or monitoring responsibilities. Consider training in the following areas:

(a) Overview of the loading/unloading process and, specifically, the portions of the process for which the employee is responsible;

(b) Safety systems and their functions;

(c) Emergency operations and procedures, including shutdown procedures;

(d) Additional safe work practices.

(e) Recurrent training as necessary to address changes to the procedures or personnel responsibilities.

VI. Request for Comments

Based on our analysis of Incident data, the NTSB and CSB recommendations, and information and recommendations presented at the June 14 public workshop, we are considering strategies for enhancing the safety of bulk loading and unloading operations, including whether additional regulatory requirements may be necessary. To assist us in developing such strategies, we invite interested persons to submit comments on the issues and questions listed below:

1. PHMSA Proposed Recommended Practices

As summarized above, the HMR include a number of requirements applicable to loading and unloading operations. We invite commenters to address whether the proposed recommended practices adequately address the safety concerns discussed in this notice and to suggest how the proposed recommended practices should be revised and strengthened. We are particularly interested in comments concerning whether our proposed recommended practices are consistent with Federal regulations and guidance or industry consensus standards applicable to bulk loading and unloading operations. We also welcome comments concerning the potential costs that may be incurred to implement our proposed recommended practices. Based on comments received, we will revise the recommended practices and may issue them as a guidance document for hazardous materials shippers and carriers that conduct bulk loading and unloading operations.

In addition, we are considering whether additional regulatory requirements, similar to the measures in our proposed recommended practices, are necessary. We invite comments to address whether the recommended practices proposed in this notice should be incorporated into the HMR and, if so, how that could best be accomplished. Should the recommended practices apply to all bulk loading and unloading operations, or should the scope of the recommended practices be dependant upon the volume and/or type of bulk packaging being loaded or unloaded? Should the recommended practices apply to the shipper, carrier, and loading/unloading facility; or, should the recommended practices apply only to the facilities at which loading/unloading operations take place? What costs, if any, would be imposed on the regulated community if we choose to adopt regulations similar to these proposed recommended practices in the HMR?

2. PHMSA Regulations

As described above, the HMR currently include a number of requirements applicable to bulk loading and unloading operations. In addition, the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA) and the U.S. Coast Guard regulate operations involving the handling of certain hazardous materials at fixed facilities. We invite commenters to address whether the existing loading and unloading requirements in the HMR adequately address the risks associated with bulk loading and unloading operations. Are there gaps or overlaps in the standards and regulations promulgated by PHMSA, OSHA, EPA and the USCG that adversely affect the safety of these operations? If so, how should these gaps or overlaps be addressed?

3. National Consensus Standards

We invite commenters to compare national consensus standards with which they are familiar to current Federal standards and regulations applicable to bulk loading and unloading operations and to the recommended practices proposed in this notice. Commenters should indicate whether and to what extent the national consensus standards are consistent with current Federal standards and regulations and the proposed recommended practices. Should we consider incorporating consensus standards applicable to bulk loading and unloading operations into the HMR? If so, how could this be accomplished, and which standards are appropriate?

4. Accident and Incident Information

As indicated above, PHMSA conducted an analysis of bulk loading and unloading accidents submitted to the agency in accordance with the reporting criteria specified in § 171.16 of the HMR. This analysis did not consider accidents that may have occurred outside of transportation, as that term is defined for purposes of the HMR. We plan to work with the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) to fill that data gap by including incident data on bulk loading and unloading accidents that may have occurred outside of transportation, and therefore, were not reported to PHMSA in accordance with § 171.16. We invite commenters to submit any information on safety problems or incidents that may not have been reported, but that could help us to refine our assessment of the safety risks associated with loading and unloading operations and develop appropriate strategies for addressing those risks. We also ask commenters to suggest other data sources that could support this effort.

Issued in Washington, DC on December 27, 2007.

Theodore L. Willke,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 07–6300 Filed 1–3–07; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–2007–28505]

Pipeline Safety: Requests for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: The Federal pipeline safety laws allow a pipeline operator to request PHMSA to waive compliance with any part of the Federal pipeline safety regulations. We are publishing this notice to provide a list of requests we have received from pipeline operators seeking relief from compliance with certain pipeline safety regulations. This notice seeks public comment on these requests, including comments on any environmental impacts. In addition, this notice reminds the public that we have changed what we call a decision granting such a request to a special permit. At the conclusion of the comment period, PHMSA will evaluate each request individually to determine whether to grant a special permit or deny the request.

DATES: Submit any comments regarding any of these requests for special permit by February 4, 2008.

ADDRESSES: Comments should reference the docket number for the request and may be submitted in the following ways:

- *E-Gov Web Site: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* DOT Docket Management System; U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket ID for the request you are commenting on at the beginning of your comments. If you submit your comments by mail, submit two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov.*

Note: Comments are posted without changes or edits to *http://www.regulations.gov,* including any personal information provided. There is a privacy statement published on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Lemoi by telephone at (404) 832–1160; or, e-mail at *wayne.lemoi@dot.gov.*

SUPPLEMENTARY INFORMATION:

Change in Nomenclature

PHMSA changed the name of a decision we made granting a request for waiver of compliance from "decision granting waiver" to "special permit" to reflect that granting the request will not reduce safety. We commonly add safety conditions to decisions granting waivers to ensure that waiving compliance with an existing pipeline safety standard is consistent with pipeline safety. The change was simply a name change for a decision granting waiver under 49 U.S.C. 60118(c)(1).

Comments Invited on Requests for Waiver

PHMSA has filed in the Federal Docket Management System (FDMS) requests for waivers we have received from pipeline operators seeking relief from compliance with certain pipeline safety regulations. Each request has been assigned a separate docket ID in the FDMS. We invite interested persons to participate by reviewing these requests and by submitting written comments, data or other views. Please include any comments on the environmental impacts that granting the requests may have.

Before acting on any request, PHMSA will evaluate all comments received on or before the comment closing date. We will consider comments received after this date if it is possible to do so without incurring additional expense or delay. We may grant or deny these requests based on the comments we receive.

PHMSA has received the following requests for waivers of compliance with pipeline safety regulations.

Docket ID	Requester	Regulation(s)	Nature of waiver
PHMSA–2007–29033	ExxonMobil Pipeline Company.	49 CFR 195.452(h) ...	To allow certain anomalies discovered on the New Iberia to Sunset Pipeline in Louisiana to remain "as-is" by permanently maintaining an operating pressure reduction taken on January 3, 2007. The anomalies were discovered using In-Line Inspection (ILI) tools during Integrity Management Program (IMP) assessments.
PHMSA–2007–29034	ConocoPhillips Pipe Line Company.	49 CFR 195.452(h) ...	To waive repair requirements for one dent located on the top of the BL–01 pipeline from Hardtner, KS to Wichita, KS and for one dent located on the top of the CM–01 pipeline from Kingfisher, OK to Medford, OK. The dents were discovered using ILI tools during IMP assessments.
PHMSA–2007–0038 ..	ConocoPhillips Alaska, Inc. (CPAI).	49 CFR 195.583	To waive atmospheric corrosion inspection requirements for certain non-piggable sections of CPAI's above ground pipelines on the North Slope of Alaska.
PHMSA–2007–28994	Gulf South Pipeline Company, L.P.	49 CFR 192.111 ..... 49 CFR 192.201 ..... 49 CFR 192.619	To authorize operation of the Southeast Expansion Project, a 110.8-mile gas transmission pipeline, from Harrisville, MS to Choctaw County, AL at a maximum allowable operating pressure (MAOP) of 80% of the specified minimum yield strength (SMYS).
PHMSA–2007–29078	Kern River Gas Transmission Company.	49 CFR 192.111 ..... 49 CFR 192.201 ..... 49 CFR 192.505 ..... 49 CFR 192.619	To authorize operation of approximately 1,380 miles of the Kern River pipeline system and 300 miles of Common Facilities running from Lincoln County, WY through Utah and into San Bernardino County, CA at an MAOP of 80% SMYS in Class 1 locations, 67% SMYS in Class 2 locations, and 56% SMYS in Class 3 locations and compressor stations.

Docket ID	Requester	Regulation(s)	Nature of waiver
PHMSA–2007–29032	Texas Eastern Transmission, L.P. (a Spectra Energy Company).	49 CFR 192.611	To authorize operation of 19 pipeline segments at 6 sites along Lines 14, 18, and 31 downstream of the Union Church and Clinton compressor stations in Mississippi without reducing operating pressure as a result of a change from Class 1 to Class 2 locations.
PHMSA–2007–0039 ..	Gulf South Pipeline Company, L.P.	49 CFR 192.611	To authorize operation of 3 pipeline segments on the TPL 880 pipeline in Marion County, AL without reducing operating pressure as a result of a change from Class 1 to Class 3 locations.

Authority: 49 U.S.C. 60118(c)(1) and 49 CFR 1.53.

Issued in Washington, DC, on December 27, 2007.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. E7–25634 Filed 1–3–08; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35081]

Canadian Pacific Railway Company, et al.—Control—Dakota, Minnesota & Eastern Railroad Corp., et al.

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 4 in STB Finance Docket No. 35081; Notice of Acceptance of Application; Issuance of Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the application filed on December 5, 2007, by Canadian Pacific Railway Corporation (CPRC), Soo Line Holding Company, a Delaware Corporation and indirect subsidiary of CPRC (Soo Holding), Dakota, Minnesota & Eastern Railroad Corporation (DM&E), and Iowa, Chicago & Eastern Railroad Corporation, a wholly owned rail subsidiary of DM&E (IC&E). The application filed on December 5 seeks Board approval under 49 U.S.C. 11321–26 of the acquisition of control of DM&E and IC&E by Soo Holding (and, indirectly, by CPRC). This proposal is referred to as the "transaction," and CPRC, Soo Holding, DM&E, and IC&E are referred to collectively as "Applicants."[1]

The Board finds that the transaction is a "significant transaction" under 49 CFR 1180.2(b), and adopts a procedural schedule for consideration of the application, under which the Board's final decision would be issued by September 30, 2008.

DATES: The effective date of this decision is January 4, 2008. Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than January 25, 2008, a notice of intent to participate if they have not already done so. Descriptions of anticipated responsive applications (including inconsistent applications) and any petitions for waiver or clarification with respect to such applications are also due by January 25, 2008. Applicants shall file a proposed Safety Integration Plan (SIP) with the Board's Section of Environmental Analysis (SEA) and the Federal Railroad Administration (FRA) by February 4, 2008. All environmental comments must also be filed by February 4, 2008, addressed to the attention of SEA. All responsive applications, requests for conditions, and any other evidence and argument in opposition to the application, including filings by DOJ and DOT, must be filed by March 4, 2008. Replies to responsive applications, requests for conditions, and other opposition, and rebuttal in support of the application must be filed by April 18, 2008. DOJ and DOT will be allowed to file, on the response due date (here, April 18), their comments in response to the comments of other parties, and Applicants will be allowed to file a response to any such comments filed by DOJ and/or DOT by April 25, 2008. Rebuttals in support of responsive applications, requests for conditions, and other opposition must be filed by May 19, 2008. Final briefs, if any, will be due by July 2, 2008. If a public hearing or oral argument is held, it will be held on a date to be determined by the Board. The Board will issue its final decision by September 30, 2008. For further information respecting dates, see Appendix A (Procedural Schedule).

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format as provided for in the Board's rules. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's Web site at *http://www.stb.dot.gov* at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an electronic version) to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each filing in this proceeding must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) Terence M. Hynes (representing CPRC), Sidley Austin LLP, 1501 K Street, NW., Washington, DC 20005; (4) William C. Sippel (representing DM&E), Fletcher & Sippel, 29 North Wacker Drive, Suite 920, Chicago, IL 60606; and (5) any other person designated as a POR on the service list notice (as explained below, the service list notice will be issued as soon as practicable).

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 245–0359. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: CPRC is a Canadian corporation whose stock is publicly held and traded on the New York and Toronto stock exchanges. CPRC and its U.S. rail carrier subsidiaries, Soo Line Railroad Company (Soo) and Delaware and

[1] In Decision No. 1 in this proceeding, served September 21, 2007, the Board issued a Protective Order to facilitate the discovery process and establish appropriate procedures for the submission of evidence containing confidential or proprietary information. On October 5, 2007, Applicants submitted an application for the proposed transaction and requested that the Board treat the transaction as a "minor transaction." In Decision No. 2, served November 2, 2007, and published in the **Federal Register** on November 8, 2007, at 72 FR 63232–63236, the Board found the proposed transaction to be "significant" and considered the October 5 submission as a prefiling notification, thus allowing Applicants to perfect their application by submitting the difference between the filing fee for a "minor" transaction and "significant" transaction, as well as any supplemental materials or information. On December 5, 2007, applicants submitted the difference in filing fees and other supplemental material. We will refer to the October 5 prefiling notification, as supplemented on December 5, as "the December 5 application."

Hudson Railway Company, Inc. (D&H), operate a transcontinental rail network over 13,000 miles in Canada and the United States. (CPRC, Soo, and D&H are referred to collectively as CPR.) CPR serves the principal business centers of Canada and 14 U.S. states in the Northeast and Midwest. The major commodities transported by CPR include bulk commodities such as grain, coal, sulfur, and fertilizers; merchandise freight including finished vehicles and automotive parts, forest products, industrial products, and consumer products; and intermodal traffic. In fiscal year 2006, the freight revenues of CPR were approximately $4.4 billion.

DM&E is a privately held Class II rail carrier headquartered in Sioux Falls, SD. DM&E and its subsidiary, IC&E, operate over 2,500 miles of rail lines serving eight U.S. states, including the major Midwestern gateways of Chicago, IL, Minneapolis/St. Paul, MN, and Kansas City, MO. Together, DM&E and IC&E interchange rail traffic with all seven U.S. Class I railroads.

DM&E was created in 1986 from lines formerly owned by Chicago and North Western Transportation Company (CNW) in South Dakota, Minnesota, and Iowa. In 1996 DM&E acquired CNW's Colony Line, running from Eastern Wyoming through Western South Dakota and into Northwestern Nebraska. DM&E subsequently acquired the lines now operated by IC&E from the former Iowa and Minnesota Rail Link in 2002. IC&E owns or operates approximately 1,322 route miles of rail lines that were once part of the CPR system, in Illinois, Minnesota, Missouri, and Wisconsin.

In 2006, the Board granted DM&E authority to construct and operate 282 miles of new railroad lines to serve coal origins in Wyoming's Powder River Basin (PRB). DM&E states that it is currently pursuing the process of acquiring the right-of-way needed to build the PRB line. It must execute agreements with PRB mines on terms for operations by DM&E over their loading track and facilities. DM&E must also secure sufficient contractual commitments from prospective coal shippers to route their traffic over the PRB line to justify the large investment to build it. Finally, DM&E must arrange financing for the project and comply with the environmental conditions imposed by the Board. If the proposed transaction is approved, CPR states that it plans to work diligently with DM&E to accomplish these necessary prerequisites to construction of the proposed PRB line but has not committed to constructing the line.

The proposed transaction for which Applicants seek approval involves the acquisition of control of DM&E and IC&E by Soo Holding (and, indirectly, by CPRC). On October 4, 2007, Soo Line Properties Company, a Delaware corporation and wholly owned subsidiary of Soo Holding (Soo Properties), merged with and into DM&E, subject to the voting trust described below. At the time of closing, DM&E shareholders received cash consideration of approximately $1.48 billion, subject to certain working capital adjustments in accordance with the Agreement and Plan of Merger (Merger Agreement). As part of the $1.48 billion paid at closing, DM&E and IC&E repaid certain obligations to third party creditors, including $250 million to the FRA. The Merger Agreement provides for future contingent payments by CPR to DM&E's shareholders of up to approximately $1 billion. Specifically, an additional payment of $350 million will become due if construction starts on the PRB line prior to December 31, 2025. Further contingent payments of up to approximately $707 million will become due upon the movement of specified volumes of PRB coal over the PRB line prior to December 31, 2025.

Financial Arrangements. No new equity securities will be issued in connection with the transaction. The purchase price was funded by CPRC from available cash and credit facilities. In connection with the closing, Soo Holdings advanced $250 million to DM&E to enable it to repay outstanding indebtedness to FRA. DM&E's obligation to FRA was replaced by an intercompany private loan from Soo Holdings to DM&E in the amount of $250 million.

Passenger Service Impacts. Applicants state that no commuter or passenger service is provided over the lines currently operated by DM&E. Applicants do not anticipate that any CPR line over which passenger operations are presently conducted would be materially affected by the proposed transaction. Applicants state that CPR's freight train schedules are built around passenger and commuter operations, in order to avoid freight train interference with passenger train service. Applicants further assert that no such line will be downgraded, eliminated, or operated on a consolidated basis as a result of the transaction. The Board notes that both IC&E and CPR share tracks with the Commuter Rail Division of the Regional Transportation Authority (Metra), a commuter rail authority serving the Chicago metropolitan area. The Board also notes that the National Railroad Passenger Corporation (Amtrak) operates over CPR between Minneapolis/St. Paul and Chicago, with heavier traffic between Milwaukee and Chicago.

Discontinuances/Abandonments. Applicants state that they do not presently plan any line abandonments or the elimination of any duplicative facilities in connection with the transaction.

Public Interest Considerations. Applicants contend that the transaction would not result in any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States. Rather, Applicants state that CPR's acquisition of DM&E and IC&E (collectively referred to as DME) would be strongly pro-competitive. Most significantly, Applicants note that the transaction would create new single-system rail options where none currently exist. Applicants contend that CPR's plan to invest $300 million in capital improvements on DME's existing lines would enhance safety and the efficiency of its operations, thereby strengthening the competitive ability of DME. Applicants state that this investment would allow DME to upgrade track, bridges, and other rail facilities and to bring its safety performance closer to CPR standards, thus improving the fluidity of their train operations. The transaction would restore CPR's direct access to the Kansas City gateway, enhancing its ability to compete effectively for rail traffic moving between CPR's current network and points in the U.S. Southwest and Mexico. Applicants assert that the transaction would enable CPR to assist DM&E in possibly bringing to fruition its proposal to introduce a third rail competitor to the PRB, which is currently served by UP and BNSF.

According to the application, the geographic limitations of DME's existing rail network restrict the ability of its shippers to compete in distant end markets for their products. Currently, DME must interchange traffic moving beyond its service territory with other railroads at busy rail gateways, including Chicago, Kansas City, and Minneapolis/St. Paul, thus requiring longer transit times. As a result of the transaction, Applicants state that DME would become part of a transcontinental Class I rail system with direct access to major metropolitan centers of the U.S. Midwest (including Chicago, Detroit, MI, Milwaukee, WI, and Minneapolis/St. Paul), U.S. Northeast (including Buffalo, NY, and Philadelphia, PA), and Canada (including Calgary, Montreal, Toronto, and Vancouver), positioning DME shippers to take advantage of future opportunities for growth.

Applicants state that the new single system routings created by the proposed transaction will give DME shippers—for the first time—direct rail access to all of these potential destinations, enhancing their ability to compete in distant end markets for their products.

Applicants state that CPR shippers would likewise gain the ability to ship products to/from points served by DME on a single-system basis. Specifically, Applicants assert that CPR's acquisition of IC&E's lines would give CPR the ability to participate in the growing transportation of ethanol. Applicants also state that the transaction would give CPR the opportunity to increase its participation in the substantial volume of bentonite clay traffic that originates at the western end of DM&E's system. Applicants state that CPR would also gain greater diversification in the U.S. grain network with IC&E's coverage of Iowa and Southern Minnesota corn origins.

Applicants state that DME and its customers would also benefit from access to CPR's large, modern car and locomotive fleet. The ability to draw upon CPR's fleet of almost 70,000 cars, and improved equipment utilization made possible by coordinating CPR and DME operations, would produce cost savings for DME and help it to meet the needs of its customers. The transaction would also generate substantial benefits for shippers of a variety of commodities, including grain, ethanol, bentonite clay, silica sand, steel, and plastics. In support of this, Applicants submit numerous statements of shippers who testify as to the opportunities for growth, increased access to markets, and improved ability to compete in distant markets, as potential benefits of the proposed transaction.

Applicants assert that the transaction would not result in any lessening of effective rail competition because the transaction is almost entirely "end-to-end," in that there is minimal overlap in Applicants' current rail systems. Applicants note that both CPR and DME operate between Minneapolis/St. Paul and Chicago, but several other rail carriers also operate between those points now, and they will continue to do so if the proposed transaction is approved and consummated. CPR and DME intersect at only four locations: Chicago, St. Paul, Minnesota City, MN, and La Crescent, MN. Thus, Applicants state that the rail networks of CPR and DME are complementary, not competitive. While intermodal shipments and motor vehicles are major commodities of CPR, Applicants argue that DME does not participate in significant volumes of such traffic. Conversely, steel shipments account for a far greater portion of traffic for DME than for CPR.

There are five U.S. states in which both CPR and DME offer rail service (either directly or through a haulage agreement or other commercial arrangement): Illinois, Minnesota, Missouri, South Dakota, and Wisconsin. In Wisconsin, CPR and DME do not serve any common stations. Within Illinois, Minnesota, Missouri, and South Dakota, Applicants believe that 30 stations are commonly served by CPR and DME. Of those 30 stations, ten stations are served by CPR, DME, and one other railroad. Fifteen stations are served by the Applicants and two additional carriers. Five stations, according to the *Official Railway Station List (ORSL)*, are served exclusively by CPR and DME.

Based on the Board's *Carload Waybill Sample* for the year 2005, Applicants state that none of the five stations exclusively served by CPR and DME would lose competitive rail service as a result of the proposed transaction due to the fact that at least one of the carriers was not active at each station.

Applicants also assert that none of the ten stations served by CPR, DME, and one additional rail carrier (which are located in Illinois, Minnesota, Missouri, and South Dakota) would experience a loss of competitive rail service as a result of the transaction, due to a variety of reasons, including the fact that several stations served solely as a point of interchange for CPR and/or DME. Additionally, according to the *Carload Waybill Sample*, rail traffic that originated or terminated at several of the stations was not handled by both CPR and DME.

Regarding the 14 short line carriers in DME's service territory, Applicants state that none will be left without competitive routing options involving non-Applicant carriers following the proposed transaction. Thirteen of these short line carriers have the ability to interchange with at least one railroad other than Applicants. One short line carrier, the Iowa Traction Railroad Company, can connect only with IC&E today, so its options would not be affected by the transaction.

In response to comments filed by Iowa Northern Railway Company (IANR) on October 26, 2007, challenging the rigor and completeness of their station-specific analysis, Applicants also submitted an analysis of the impact on geographic (i.e., source or destination) competition, as well as further analysis of possible horizontal competitive issues, by examining Applicants' participation in rail traffic at the Bureau of Economic Analysis Economic Area (BEA) level. Applicants assert that the transaction would not reduce or eliminate source or destination competition for the traffic in which Applicants participate today.

Independent Voting Trust. On October 4, 2007, Soo Properties was merged with and into DM&E. At that time, all the common shares of DM&E were deposited into an independent voting trust, pending Board approval of the proposed transaction, in order to avoid unlawful control of DM&E and IC&E in violation of 49 U.S.C. 11323. On or after the effective date of a Board final order authorizing the transaction, the voting trust would be terminated; DM&E's shares would be transferred to Soo Holding; and DM&E would become a wholly owned subsidiary of Soo Holding (and an indirect subsidiary of CPRC). In the event that the Board does not approve the transaction, Soo Holding would use its reasonable best efforts to sell or direct the trustee to sell the trust interests to one or more eligible purchasers or otherwise dispose of the trust interests during a period of 2 years after such a decision becomes final.

With the exception of the Board's final approval of the transaction, all conditions precedent to closing of the merger have been satisfied.

Environmental Impacts. Applicants contend that the transaction would not result in any increases in rail traffic, train operations, or yard activity that would exceed the Board's thresholds for environmental review in 49 CFR 1105.7(e)(5). Applicants therefore assert that the transaction does not require the preparation of environmental documentation under 49 CFR 1105.6(b)(4). However, Applicants plan to prepare a Safety Integration Plan (SIP) under the Board's rules at 49 CFR 1106 and 49 CFR 1180.1(f)(3) setting out how they would ensure that safe operations are maintained throughout the acquisition-implementation process, if the proposed transaction is approved.

Applicants propose that the Board defer any required analysis of the environmental impacts of the movement of DM&E PRB coal trains over the lines of IC&E and/or CPR because definitive information regarding the likely volume, destination, and routing of DM&E PRB coal trains beyond DM&E's existing line remains speculative.

The City of Winona, Mayo Clinic, and BNSF Railway Company (BNSF) have filed comments on Applicants' proposed environmental approach. Applicants replied to BNSF's comments. The Board will consider these comments in its review of the

transaction; there is no need for the commenters to refile those submissions.

Historic Preservation Impacts. Applicants contend that a historic review is not required for this transaction.

Labor Impacts. Applicants do not anticipate that the transaction would result in any operational changes that would adversely affect any Soo employees. The operational change involving the handling by Soo of traffic between Minnesota City and Chicago would likely have no significant effect on Soo employees because cars moving from or to Minnesota City would simply be added to trains currently operated by Soo over its own lines.

The transaction involves an operational change that would affect the handling of certain DME traffic to and from Chicago, which would affect DME employees in two ways. First, there would be a reduction of two crew starts per day on trains operating on the lines from Waseca, MN, to Nora Springs, IA. This would affect employees who report for work at Waseca and draw their assignments from a crew board maintained there. However, there would be an offsetting addition of two crew starts per day on trains operating from Waseca to Minnesota City, which would be available to employees who report to Waseca. Second, there would be a reduction of four crew starts per day on IC&E because two daily IC&E trains, each requiring two crews, would no longer operate between Nora Springs and Chicago. That reduction would affect IC&E train and engine service employees who currently report for work at Mason City, IA, and Dubuque, IA, and draw their assignments from crew boards maintained at those locations.

Applicants further state that it is possible that, as a result of this operational change, there would be a need for fewer active IC&E train and engine service employees at Mason City and Dubuque, for at least a short time. Because affected IC&E train and engine service employees have seniority covering all of IC&E's territory, they would be entitled, and expected, to take work assignments elsewhere on IC&E. Applicants expect sufficient work to be available on IC&E for all of the carrier's active train and engine service employees.

Applicants state that any carrier employees who are adversely affected by the proposed transaction would be entitled to the benefits of a fair arrangement in accordance with the requirements of 49 U.S.C. 11326. *New York Dock Ry.—Control—Brooklyn Eastern District Terminal*, 360 I.C.C. 60, *aff'd sub nom. New York Dock Ry.* v. *United States*, 609 F.2d 83 (2d Cir. 1979). Applicants note that neither CPR nor DME has negotiated a protective agreement with any labor organization in connection with the proposed transaction.

Application Accepted. For the reasons outlined in Decision No. 2, the Board finds that the transaction would be a "significant transaction," under 49 CFR 1180.2(b), and accepts the December 5 application for consideration because it is in substantial compliance with the applicable regulations governing a significant transaction. *See* 49 U.S.C. 11321–26; 49 CFR 1180. The Board reserves the right to require the filing of additional supplemental information, if necessary for a full record.

Public Inspection. The application is available for inspection in the library (Room 131) at the offices of the Surface Transportation Board, 395 E Street, SW., in Washington, DC. In addition, the application may be obtained from Mr. Hynes (representing CPRC) and Mr. Sippel (representing DM&E) at the addresses indicated above.

Procedural Schedule. On November 13, 2007, Applicants filed a petition to establish a revised procedural schedule as directed by the Board in Decision No. 2. On November 26, 2007, the Board issued a notice of the proposed procedural schedule and requested public comments (Decision No. 3). The Board's proposed procedural schedule was the same as the Applicants' proposed procedural schedule, except that the record would close with the filing of briefs on July 2, 2008, and would provide for a possible oral argument or public hearing to be held on a date to be determined by the Board. No comments were received in opposition to the Board's proposed procedural schedule.

Accordingly, the Board adopts the procedural schedule as previously proposed in Decision No. 3. Under the procedural schedule adopted by the Board: Any person who wishes to participate in this proceeding as a POR must file, no later than January 25, 2008, a notice of intent to participate; descriptions of anticipated responsive applications (including inconsistent applications) and any petitions for waiver or clarification with respect to such applications are also due by January 25, 2008; applicants shall file a proposed SIP with SEA and FRA by February 4, 2008; all environmental comments must also be filed by February 4, 2008, addressed to the attention of SEA; responsive applications, requests for conditions, and any other evidence and argument in opposition to the application, including filings by DOJ and DOT, must be filed by March 4, 2008; replies to responsive applications, requests for conditions, and other opposition, and rebuttal in support of the application must be filed by April 18, 2008; DOJ and DOT will be allowed to file, on the response due date (here, April 18), their comments in response to the comments of other parties, and Applicants will be allowed to file a response to any such comments filed by DOJ and/or DOT by April 25, 2008; rebuttals in support of responsive applications, requests for conditions, and other opposition must be filed by May 19, 2008; final briefs, if any, will be due by July 2, 2008. Under this schedule, a public hearing or oral argument may be held on a date to be determined by the Board. The Board will issue its final decision by September 30, 2008, and that decision will be effective October 30, 2008. For further information respecting dates, see Appendix A (Procedural Schedule).

Notice of Intent to Participate. Any person who wishes to participate in this proceeding as a POR must file with the Board, no later than January 25, 2008, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of Transportation, the Attorney General of the United States, Mr. Hynes (representing CPRC), and Mr. Sippel (representing DM&E). Notices of intent to participate received to date have been compiled in a preliminary service list. Parties who have already submitted a notice of intent to participate are not required to resubmit an additional notice.

If a request is made in the notice of intent to participate to have more than one name added to the service list as a POR representing a particular entity, the extra name will be added to the service list as a "Non-Party." The final list will reflect the Board's policy of allowing only one official representative per party to be placed as a POR on the service list, as specified in Press Release No. 97–68 dated August 18, 1997, announcing the implementation of the Board's "One Party-One Representative" policy for service lists. Any person designated as a Non-Party will receive copies of Board decisions, orders, and notices but not copies of official filings. Persons seeking to change their status must accompany that request with a written certification that he or she has complied with the service requirements set forth at 49 CFR 1180.4 and any other requirements set forth in this decision.

Service List Notice. The Board will serve, as soon after January 25, 2008, as

practicable, a notice containing the official service list (the service-list notice). Parties should review the preliminary service list, in Decision No. 4, served on December 27, 2007, and notify the Board of any corrections.

Each POR will be required to serve upon all other PORs, within 10 days of the service date of the service-list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each POR also will be required to file with the Board, within 10 days of the service date of the service-list notice, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a POR after the service date of the service-list notice must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record and need not be served with copies of filings, unless any Member or Governor has requested to be, and is designated as, a POR.

Environmental Comments. All environmental comments must be filed by February 4, 2008, and addressed to the attention of SEA.

Descriptions of Anticipated Responsive Applications and Petitions for Waiver or Clarification. Descriptions of anticipated responsive, including inconsistent, applications and petitions for waiver or clarification with respect to such applications must be filed by January 25, 2008.

Responsive Applications, Requests for Conditions, and Other Opposition Evidence and Argument, Including Filings by DOJ and DOT. All responsive applications, requests for conditions, and any other evidence and argument in opposition to the application, including filings by DOJ and DOT, must be filed by March 4, 2008.

Protesting parties are advised that, if they seek either the denial of the application or the imposition of conditions upon any approval thereof, on the theory that approval (or approval without conditions) would harm competition and/or their ability to provide essential services, they must present substantial evidence in support of their positions. *See Lamoille Valley R.R. Co.* v. *ICC*, 711 F.2d 295 (D.C. Cir. 1983).

Replies to Responsive Applications, Requests for Conditions, and Other Opposition, and Rebuttal in Support of the Application. Replies to responsive applications, requests for conditions, and other opposition, and rebuttal in support of the application must be filed by April 18, 2008.

Rebuttals in Support of Responsive Applications, Requests for Conditions, and Other Opposition. Rebuttals in support of responsive applications, requests for conditions, and other opposition must be filed by May 19, 2008.

Final Briefs and Public Hearing/Oral Argument. Final briefs, if any, will be due by July 2, 2008. The Board may hold a public hearing or an oral argument in this proceeding on a date to be determined by the Board.

Discovery. Discovery may begin immediately. The parties are encouraged to resolve all discovery matters expeditiously and amicably.

Environmental Matters. Under both the regulations of the Council on Environmental Quality (CEQ) implementing the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA), and the Board's own environmental rules, actions whose environmental effects are ordinarily insignificant may be excluded from NEPA review across the board, without a case-by-case review. Such activities are said to be covered by a "categorical exclusion," which CEQ defines at 40 CFR 1508.4 as:

> [A] category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no effect in procedures adopted by a federal agency in implementation of these regulations * * * and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

An agency's procedures for categorical exclusions "shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect," thus requiring preparation of either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). *Id. See also* 49 CFR 1105.6(d). But absent extraordinary circumstances, once a project is found to fit within a categorical exclusion, no further NEPA procedures are warranted.

In its environmental rules, the Board has promulgated various categorical exclusions. As pertinent here, a rail line acquisition is a classification of action that normally requires no environmental review if certain thresholds would not be exceeded.[2] *See* 49 CFR 1105.6(c)(2)(i). The Board's regulations also provide that historic review normally is not required for acquisitions where there will be no significant change in operations and properties 50 years old and older will not be affected. *See* 49 CFR 1105.8.

The Proposed Acquisition. Applicants assert in their application that most of the rail lines of DME and CPR are located in attainment areas.[3] They project that the proposed transaction would not increase the level of train operations by more than 1 additional train per day along any segment of the combined CPR-DME system over the next 5 years (by 2012),[4] and therefore maintain that the 3 or 8-train-per-day threshold in the Board's environmental rules would not be met in this case.[5] Applicants assert that their traffic projections account for both (1) traffic that would move beyond DME's service territory on CPR's lines, and (2) projected growth in rail traffic on certain segments of DME lines that would likely occur in any case (e.g., anticipated growth of ethanol production).

Applicants also project only small increases in annual gross ton miles as a result of the proposed transaction, which would be well below the thresholds for preparation of environmental documentation. For example, Applicants maintain that the proposed acquisition would result in an increase of 5,800 carloads of "extended haul" traffic by the year 2010. All of this increase, Applicants state, would occur on the lines of CPR (either on Soo's lines east of Chicago, or its lines north of Minneapolis/St. Paul). According to

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[2] The thresholds differ depending on whether a rail line segment is in an area designated as in "attainment" or "nonattainment" with the National Ambient Air Quality Standards established under the Clean Air Act. For rail lines located in attainment areas, environmental documentation normally will be prepared if the proposed action would result in (1) an increase of at least 8 trains per day, (2) an increase in rail traffic of at least 100 percent (measured in annual gross ton miles), or (3) an increase in carload activity at rail yards of at least 100 percent. *See* 49 CFR 1105.7(e)(5)(i). For rail lines in nonattainment areas, environmental documentation typically is required when the proposed action would result in (1) an increase of at least 3 trains per day, (2) an increase in rail traffic of at least 50 percent (measured in annual gross ton miles), or (3) an increase in carload activity at rail yards of at least 20 percent. *See* 49 CFR 1105.7(e)(5)(ii).

[3] According to Applicants, the only nonattainment areas where traffic might change as a result of the proposed transaction are in the following counties: Cook and Lake Counties, IL; Lake and Porter Counties, IN; Kenosha, Milwaukee, Racine, and Waukesha Counties, WI; and Lenawee, Monroe, Washtenaw, and Wayne Counties, MI.

[4] Applicants project an increase of 1.5 trains per day with an empty back haul.

[5] Indeed, Applicants state that there could be a reduction in train activity along certain segments as traffic moving in shorter trains run by DME today between Huron, SD, and Chicago (via Owatonna, MN, Nora Springs, IA, and Dubuque) could be consolidated with CPR traffic at Minnesota City and moved to/from Chicago in existing Soo trains that operate between Minneapolis/St. Paul and Chicago.

Applicants, this modest traffic increase would translate into an increase of about 0.5 million gross ton miles, less than a 50 or 100 percent increase in gross ton miles over any portion of Applicants' rail lines. In addition, Applicants project only a modest increase by 2010 in gross ton miles over CPR's line between Milwaukee and Chicago as a result of the consolidation of DM&E carloads at Minnesota City onto existing CPR trains that operate between Minneapolis/St. Paul and Chicago. Further, Applicants contend that, even if the projected traffic growth that likely would occur regardless of this proposal were considered, the CPR line would only see an increase of about 17 percent (about 503 million gross ton miles), and the increase on the DME lines would be about 8.4 percent in gross ton miles between Davis Junction, IL, and Chicago (approximately 153 million gross ton miles).

Finally, Applicants anticipate only minor increases in rail yard activity.

Historic Review. According to Applicants, the proposed transaction would not involve any line abandonments or elimination of duplicative rail facilities. Any future line abandonment by Applicants would require Board authorization or exemption. Furthermore, Applicants state that they have no new plans to alter or dispose of properties 50 or more years old.[6]

Other Actions

1. *The DM&E PRB Rail Line.* In 2006, DM&E obtained authority to build and operate its new rail line into the PRB.[7] Applicants argue that because the Board has already fully considered the environmental impacts of the construction and operation of that line in *DM&E PRB Construction*—in an environmental review process that encompassed the rehabilitation of DM&E's existing lines in South Dakota and Minnesota—there is no need for a further environmental review of the same lines considered in *DM&E PRB Construction* here.

2. *The Movement of DM&E Coal Trains Over the Lines of IC&E and CPR.* Applicants note that in a separate proceeding the Board previously imposed a condition prohibiting the movement of DM&E's PRB coal trains over IC&E's rail lines until an environmental review of the potential impacts of such operations was conducted.[8] Subsequently, the Board determined that an EIS would be needed to comply with this condition.[9] At the request of DM&E, preparation of that EIS was put on hold.

Applicants assert that it would be appropriate to continue to defer preparation of that EIS because it is not possible at this time to evaluate any potential environmental issues that might be associated with the transportation of DM&E PRB coal traffic over the lines of IC&E and/or CPR. Applicants explain that DM&E has not yet secured contracts with shippers for the movement of PRB coal over the newly authorized DM&E PRB line, and that Applicants have not yet made a decision to build it. According to Applicants, in the absence of definitive transportation commitments, the identity of the CPR-DME system's future coal customers, the volume of coal that would be transported to particular locations, the destinations to which such shipments would move, and the routing of such shipments beyond DM&E's lines remain speculative. Without such information, Applicants state, it would not be possible for the Board to evaluate in a meaningful fashion the potential environmental impacts of such future coal transportation operations.

At the same time, Applicants recognize the Board's obligation under NEPA to examine the environmental impacts of the transportation of DM&E PRB coal trains over the lines of IC&E and/or CPR. Accordingly, Applicants propose that the Board impose a condition on any decision authorizing this transaction that would defer any required analysis of the environmental impacts of the movement of DM&E PRB coal trains over the lines of IC&E and/or CPR until such time as more definitive information regarding the likely volume and routing of those trains becomes available.

On October 19, 2007, Winona requested that the Board impose environmental mitigation for Winona as part of this acquisition proceeding, or alternatively, that it impose mitigation for Winona in connection with the currently deferred analysis of the movement of DM&E PRB coal trains over the lines of IC&E and/or CPR.

On October 24, 2007, BNSF submitted comments asserting that the application is incomplete because it fails to address the environmental effects of CPR's acquisition of DM&E's authority to construct a new rail line into the PRB. Further, according to BNSF, the Board would not meet its NEPA obligations by deferring its environmental review of the effects of DM&E PRB coal traffic operating over the IC&E and/or CPR lines. BNSF asserts that the entire acquisition—both rail traffic moving now and DM&E PRB coal traffic that might eventually move over IC&E and/or CPR lines—should be examined now and together.

On October 24, 2007, as noted previously, Mayo Clinic filed a reply alleging that the Board should compel the Applicants to provide "meaningful information" that addresses the future movement of DM&E PRB coal trains through Rochester, MN, where the Mayo Clinic is located; that now is the time to address the potential increase in DM&E PRB coal traffic (and ethanol traffic) moving through Rochester; and that the Board should require the Applicants to prepare a SIP pursuant to the Board's regulations at 49 CFR 1106.

On October 29, 2007, Applicants filed a reply to BNSF's environmental comments.

Preliminary Conclusions. Based on the information provided to date and after consultations with SEA, the Board preliminarily concludes that, for the reasons discussed below, the environmental review process proposed by Applicants would allow the Board to meet its NEPA obligations. Specifically, the Board preliminarily determines that an environmental and historic review for the proposed acquisition is not warranted because it does not appear that the thresholds triggering an

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[6] Applicants note that CPR would make available to DM&E $300 million to upgrade and rehabilitate its tracks, structures (bridges) and rail facilities. Applicants maintain, however, that the work funded by this investment relates to rail facility improvements that already have been the subject of extensive environmental and historic review by the Board in connection with the DM&E Powder River Basin construction project, authorizing DM&E to build a new 280-mile rail line extension of its current system to reach the PRB area of Wyoming.

Applicants note that the work to be funded by CPR would involve substantially the same type of work, on the same properties, that was reviewed and is being addressed pursuant to the Programmatic Agreement for the DM&E PRB construction case, which sets forth the historic review process for both DM&E's new line and the rehabilitation of DM&E's existing line in South Dakota and Minnesota. Thus, Applicants argue, there is no need for a separate, duplicative historical review for the planned rail line upgrades related to this case.

[7] *See Dakota, MN & Eastern RR—Construction—Powder River Basin*, 3 S.T.B. 847 (1998) (preliminary consideration); *Dakota, MN & Eastern RR—Construction—Powder River Basin*, 6 S.T.B. 8 (2002) (first approval), *remanded sub nom. Mid States Coalition for Progress* v. *STB*, 345 F.3d 520 (8th Cir. 2003) (requiring further consideration of four environmental issues), reauthorized *Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin*, STB Finance Docket No. 33407 (STB served Feb. 15, 2006), *aff'd, Mayo Foundation* v. *STB*, 472 F.3d 545 (8th Cir. 2006) (referred to as *DM&E PRB Construction*).

[8] *Iowa, Chicago & Eastern Railroad Corporation—Acquisition and Operation Exemption—Lines of I&M Rail Link, LLC*, STB Finance Docket No. 34177 (STB served July 22, 2002), *modified* (STB served Oct. 18, 2006) (*IC&E*).

[9] *See IC&E*; STB Press Release No. 07–07, available on the Board's Web site.

environmental review would be met, and there is nothing in the available environmental information to indicate the potential for significant environmental impacts resulting from the proposed acquisition.

With respect to the handling of DM&E PRB coal trains over the lines of IC&E and/or CPR, the Board preliminarily concludes, based on the available information, that there is no need to conduct any further environmental review here of the rail lines considered in *DM&E PRB Construction*,[10] and that the Board should defer the preparation of environmental documentation on routing DM&E PRB coal traffic over the rail lines of IC&E and/or CPR (including the consideration of mitigation for Winona) until more information is available.

BNSF's assertion that the application is incomplete because it does not adequately describe the potential environmental effects of running DM&E PRB coal trains over the IC&E and/or CPR rail lines ignores the fact that sufficient information does not appear to be currently available to conduct a meaningful environmental review now. Applicants state that they have not yet made a decision to build the new PRB line approved in DM&E PRB Construction. They note that numerous steps (including acquisition of the right-of-way and agreements with PRB mines) would have to be completed before the project would be justified. Moreover, it does not appear that there would be any harm to interested persons, potentially affected communities, or to the environment by deferring the environmental review because the Board would preclude Applicants from operating any DM&E PRB coal trains over lines of IC&E and/or CPR until the Board conducts an appropriate environmental review and issues a final decision addressing the impacts of such coal train operations and allowing such operations to begin.[11]

Specifically, Applicants proposed two environmental conditions to address the potential movement of DM&E PRB coal trains operating over the lines of IC&E and/or CPR. After reviewing the application, the Board preliminarily intends to impose the following modified conditions on any decision authorizing the proposed transaction:

Applicants may not transport coal unit trains originating on the new rail line approved for construction in *DM&E PRB Construction* over lines currently operated by IC&E and/or CPR until the Board has prepared an Environmental Impact Statement, and has issued a final decision addressing the environmental impacts of such coal operations and allowed such operations to begin.

Prior to commencing any construction of the new rail line approved in *DM&E PRB Construction*, Applicants shall notify the Board of Applicants' intent to begin construction, and shall submit to the Board reasonably foreseeable projections regarding the movement of DM&E PRB coal traffic on the rail lines of IC&E and/or CPR, so that the environmental review can begin.

Finally, regarding Mayo Clinic's argument that preparation of a SIP is warranted here, Applicants expressly state in their application that they intend to prepare a SIP and submit it to the Board. Under the Board's SIP rules, Applicants are to file a proposed SIP with SEA and FRA within 60 days of the filing date of the application, setting out how they intend to ensure that safe operations are maintained throughout the acquisition implementation process. 49 CFR 1106.4(a). Accordingly, the procedural schedule requires the proposed SIP to be filed no later than February 4, 2008.

The proposed SIP is normally part of the environmental record, is reviewed by SEA, and is put out for public review and comment during the environmental review process. 49 CFR 1106.4(b). If the Board authorizes the proposed transaction and adopts the SIP, the Board requires compliance with the SIP as a condition to its authorization. 49 CFR 1106.4(b)(4). The Board's rules also specifically provide that, in cases where no formal environmental review is required under NEPA, the Board will develop appropriate case-specific SIP procedures based on the facts and circumstances presented. 49 CFR 1106.4(c). Thus, the SIP process will take place here whether or not preparation of an EA or EIS is found to be warranted for the proposed transaction.

The Board is requesting comments from all interested parties on these preliminary determinations regarding how to handle the environmental review here. Environmental comments must be submitted to the Board by February 4, 2008, addressed to the attention of SEA. SEA will make a final recommendation to the Board regarding the level of environmental review that is needed to meet the Board's NEPA responsibilities, and how to conduct the SIP process, after considering any public comments received during the environmental comment period.

Filing/Service Requirements. Persons wishing to participate in this proceeding must file with the Board and serve on other parties: a notice of intent to participate (due by January 25, 2008) and a certificate of service indicating service of prior pleadings on persons designated as PORs on the service-list notice (due by the 10th day after the service date of the service-list notice). Such persons may file responsive applications, requests for conditions, and any other evidence and argument in opposition to the application (due by March 4); and any replies to responsive applications, etc. (due by April 18), any rebuttal in support of responsive applications, etc. (due by May 19), and any final briefs (due by July 2).

Filing Requirements. Any document filed in this proceeding must be filed either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's Web site at *http://www.stb.dot.gov* at the "E-FILING" link. Any person filing a document in the traditional paper format should send an original and 10 paper copies of the document (and also an electronic version) to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

Service Requirements. One copy of each document filed in this proceeding must be sent to each of the following (any copy may be sent by e-mail only if service by e-mail is acceptable to the recipient): (1) Secretary of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) Terence M. Hynes (representing CPRC), Sidley Austin LLP, 1501 K Street, NW., Washington, DC 20005; (4) William C. Sippel (representing DM&E), Fletcher & Sippel, 29 North Wacker Drive, Suite 920, Chicago, IL 60606; and (5) any other person designated as a POR on the service-list notice.

Service of Decisions, Orders, and Notices. The Board will serve copies of its decisions, orders, and notices only on those persons who are designated on

[10] Mayo Clinic's suggestion that the Board should look again at DM&E's movement of PRB coal traffic through Rochester ignores the extensive environmental review of those movements (at traffic levels of up to 100 million tons of PRB coal per year) that has already taken place. *See DM&E PRB Construction* (imposing extensive mitigation for Rochester and the Mayo Clinic to minimize the potential impacts of that traffic). Moreover, even if there is a potential for more than the 100 million tons of coal per year analyzed in *DM&E PRB Construction*, there is no basis for Mayo Clinic's assumption that all of this traffic would move through Rochester, given the numerous interchange points on DM&E's existing system.

DM&E's movement of ethanol would likely take place regardless of the proposed acquisition and, therefore, does not require NEPA review in this case or the *DM&E PRB Construction* case.

[11] The Board's environmental review process will provide ample opportunity for all to participate.

the official service list as either POR, MOC, GOV, or Non-Party. All other interested persons are encouraged either to secure copies of decisions, orders, and notices via the Board's Web site at *http://www.stb.dot.gov* under "E-LIBRARY/Decisions & Notices" or to make advance arrangements with the Board's copy contractor, ASAP Document Solutions (mailing address: Suite 103, 9332 Annapolis Rd., Lanham, MD 20706; e-mail address: *asapdc@verizon.net*; telephone number: 202–306–4004), to receive copies of decisions, orders, and notices served in this proceeding. ASAP Document Solutions will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service.

Access to Filings. An interested person does not need to be on the service list to obtain a copy of the primary application or any other filing made in this proceeding. Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished by the filing party to interested persons on request, unless subject to a protective order. 49 CFR 1180.4(a)(3). The primary application and other filings in this proceeding will also be available on the Board's Web site at *http://www.stb.dot.gov* under "E-LIBRARY/Filings."

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application in STB Finance Docket No. 35081 is accepted for consideration.

2. The parties to this proceeding must comply with the procedural schedule adopted by the Board in this proceeding as shown in Appendix A.

3. The parties to this proceeding must comply with the procedural requirements described in this decision.

4. This decision is effective on January 4, 2008.

Decided: December 21, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

APPENDIX A: PROCEDURAL SCHEDULE

September 10, 2007.	Motion for Protective Order filed.
September 21, 2007.	Protective Order issued.
October 5, 2007.	Prefiling notification and Motion to Establish Procedural Schedule filed.
November 8, 2007.	Notice of receipt of prefiling notification published in the **Federal Register**.
November 29, 2007.	Proposed procedural schedule published in the **Federal Register**.
December 5, 2007.	Application filed.
January 4, 2008.	Board notice of acceptance of application to be published in the **Federal Register**.
January 25, 2008.	Notices of intent to participate in this proceeding due. Descriptions of anticipated responsive applications (including inconsistent applications) due. Petitions for waiver or clarification with respect to such applications due.
February 4, 2008.	Proposed SIP to be filed with SEA and FRA. Environmental comments due, addressed to the attention of SEA.
March 4, 2008	All responsive applications, requests for conditions, and any other evidence and argument in opposition to the application, including filings of DOJ and DOT, due.
April 18, 2008	Replies to responsive applications, requests for conditions, and other opposition due. Rebuttal in support of the application due. Response of DOJ and DOT to other parties' comments due.
April 25, 2008	Applicants' response to responsive comments of DOJ and DOT due.
May 19, 2008	Rebuttals to responsive applications, requests for conditions, and other opposition due.
TBD	A public hearing or oral argument may be held.
July 2, 2008	Final briefs, if any, due.
September 30, 2008.	Date of service of final decision.
October 30, 2008.	Effective date of final decision.

[FR Doc. E7–25480 Filed 1–3–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–1014]

Denver & Rio Grande Railway Historical Foundation—Adverse Abandonment—in Mineral County, CO

On December 17, 2007, the City of Creede, CO (the City), filed an application under 49 U.S.C. 10903, requesting that the Surface Transportation Board (Board) authorize the third-party or adverse abandonment of approximately 1.0 mile of rail line, extending from near milepost 320.9 to near milepost 319.9, a run-around track, and a spur track (the Line), all located in the City, in Mineral County, CO. The Line is owned by the Denver & Rio Grande Railway Historical Foundation (D&RGHF).[1] The Line traverses United States Postal Service Zip Code 81130, and includes no stations.

The City states that there has been no rail service or request for service over the Line since approximately 1970 and claims that there is no foreseeable need for rail service. Additionally, the City asserts that, since D&RGHF acquired the Line, D&RGHF has yet to identify any shippers or operate any trains.

In a decision served in this proceeding on October 18, 2007, the City was granted exemptions from several statutory provisions as well as waivers of certain Board regulations at 49 CFR 1152 that were not relevant to its adverse abandonment application or that sought information not available to it. Specifically, the City was granted a fee waiver; waivers of and exemptions from the notice requirements at 49 CFR 1152.20(a)(2), 49 U.S.C. 10903(a)(3)(D), 49 CFR 1152.20(a)(3), 49 U.S.C. 10903(a)(3)(B), and 49 CFR 1152.21; waivers of and exemptions from the application requirements of 49 CFR 1152.22(a)(5), 49 U.S.C. 10903(c), 49 CFR 1152.22(b) (except that the City must submit evidence on the physical condition of the Line other than information regarding cost of deferred maintenance and needed rehabilitation), 49 CFR 1152.22(d), and 49 CFR 1152.29(e)(2); waivers of and exemptions from the OFA requirements and public use procedures at 49 CFR 1152.27–28 and 49 U.S.C. 10904–05; and waiver of portions of the **Federal Register** notice language requirements at 49 CFR 1152.22(i).

[1] D&RGHF acquired the Line through an offer of financial assistance (OFA). *See Union Pacific Railroad Company—Abandonment Exemption—in Rio Grande and Mineral Counties, CO*, STB Docket No. AB–33 (Sub-No. 132X) (STB served May 11, 1999).

A portion of the track is on a Federally issued right-of-way. According to the City, the land underlying the Federal right-of-way in the city limits was deeded to the City by the United States in 1901, subject to the right-of-way grant. The City states that it also owns the land adjacent to the Line and asserts that it has reversionary interests in the Line under state law. Any documentation in the City's possession will be made available promptly to those requesting it. The City states that it filed its entire case for abandonment with its application.

The interests of affected railroad employees, if there are any employees on the Line, will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Any interested person may file written comments concerning the proposed abandonment or protests (including the protestant's entire opposition case), by January 31, 2008. The City's reply is due by February 15, 2008. Because this is an adverse abandonment proceeding, OFAs and public use requests are not appropriate and will not be entertained.

The Board has not yet had occasion to decide whether the issuance of a certificate of interim trail use in an adverse abandonment would be consistent with the grant of such an application. Accordingly, any request for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by January 31, 2008, and should address that issue. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

Persons opposing the proposed abandonment who wish to participate actively and fully in the process should file a protest. Persons who may oppose the abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons seeking information concerning the filing of protests should refer to 49 CFR 1152.25.

All filings in response to this notice must refer to STB Docket No. AB–1014 and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; (2) Ronald M. Johnson, Akin, Gump, Strauss, Hauer & Feld LLP, 1333 New Hampshire Ave., NW., Washington, DC 20036; and (3) Clyde Dooley, City Manager, City of Creede, P.O. Box 457, Creede, CO 81130. Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's *http://www.stb.dot.gov* Web site, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 CFR part 1152, every document filed with the Board must be served on all parties to this adverse abandonment proceeding. 49 CFR 1104.12(a).

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Board's Section of Environmental Analysis (SEA) will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Governmental and Public Affairs at (202) 245–0230 or refer to the full abandonment/discontinuance regulations at 49 CFR 1152. Questions concerning environmental issues may be directed to SEA at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: December 28, 2007.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–25588 Filed 1–3–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34554 (Sub-No. 8)]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF), pursuant to a modified written trackage rights agreement entered into between BNSF and Union Pacific Railroad Company (UP), has agreed to extend the expiration date of the local trackage rights granted to UP [1] over BNSF's line of railroad extending from BNSF milepost 579.3 near Mill Creek, OK, to BNSF milepost 631.1 near Joe Junction, TX, a distance of approximately 51 miles.[2]

The transaction is scheduled to be consummated on January 20, 2008.

The purpose of this transaction is to modify the temporary trackage rights exempted in STB Finance Docket No. 34554 (Sub-No. 6) to further extend the expiration date to on or before December 31, 2008. The modified trackage rights will permit UP to continue to move loaded and empty ballast trains for use in its maintenance-of-way projects.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of

[1] UP submits that the trackage rights being granted here are only temporary rights, but, because they are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). *See Railroad Consolidation Procedures*, 6 S.T.B. 910 (2003). Therefore, UP and BNSF concurrently have filed a petition for partial revocation of this exemption in STB Finance Docket No. 34554 (Sub-No. 9), *Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company*, wherein UP, with the support of BNSF, requests that the Board permit the proposed local trackage rights arrangement described in the present proceeding to expire on or about December 31, 2008. That petition will be addressed by the Board in a separate decision.

[2] The original trackage rights granted in *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34554 (STB served Oct. 7, 2004), also extended from BNSF milepost 579.3 near Mill Creek, OK, to BNSF milepost 631.1 near Joe Junction, TX. By decisions served on November 24, 2004, in STB Finance Docket No. 34554 (Sub-No. 1), on March 25, 2005, in STB Finance Docket No. 34554 (Sub-No. 3), on March 23, 2006, in STB Finance Docket No. 34554 (Sub-No. 5), and on March 13, 2007, in STB Finance Docket No. 34554 (Sub-No. 7), the Board granted exemptions to permit the trackage rights authorized in STB Finance Docket No. 34554 and extended in STB Finance Docket No. 34554 (Sub-No. 2), served on February 11, 2005, in STB Finance Docket No. 34554 (Sub-No. 4), served on March 3, 2006, and in STB Finance Docket No. 34554 (Sub-No. 6), served on January 12, 2007, to expire. At the time of the last extension, it was anticipated by the parties that the rights would expire on or about December 31, 2007. However, this authority has not yet been exercised.

a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by January 11, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34554 (Sub-No. 8), must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Gabriel S. Meyer, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 27, 2007.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–25529 Filed 1–3–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: ULLICO Casualty Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 5 to the Treasury Department Circular 570, 2007 Revision, published July 2, 2007, at 72 FR 36192.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company: ULLICO Casualty Company (NAIC # 37893). Business Address: 1625 Eye St., NW., Washington DC 20006. Phone: (202) 682–4992. Underwriting Limitation b/: $5,819,000. Surety Licenses c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. Incorporated In: Delaware. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 ("Circular"), 2007 Revision, to reflect this addition.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (*see* 31 CFR part 223). A list of qualified companies is published annually as of July 1 in the Circular, which outlines details as to underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: December 21, 2007.

Vivian L. Cooper,

Director, Financial Accounting and Services Division.

[FR Doc. 07–6278 Filed 1–3–08; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INSTITUTE OF PEACE

Notice of Meeting

Date/Time: Thursday, January 10, 2008, 9:15 a.m.–3:30 p.m.

Location: 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011.

Status: Open Session—Portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Agenda: January 10, 2008 Board Meeting; Approval of Minutes of the One Hundred Twenty-Eighth Meeting (September 20, 2007) of the Board of Directors; Chairman's Report; President's Report; Budget Discussion; Selection of National Peace Essay contest topic; Other General Issues.

Contact: Tessie F. Higgs, Executive Office, Telephone (202) 429–3836.

Dated: December 27, 2007.

Patricia P. Thomson,

Executive Vice President, United States Institute of Peace.

[FR Doc. 07–6291 Filed 1–3–08; 8:45 am]

BILLING CODE 6820–AR–M

Federal Register

Friday,
January 4, 2008

Part II

Securities and Exchange Commission

17 CFR Parts 210, 228 et al.
Smaller Reporting Company Regulatory Relief and Simplification; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229, 230, 239, 240, 249, 260, and 269

[Release Nos. 33–8876; 34–56994; 39–2451; File No. S7–15–07]

RIN 3235–AJ86

Smaller Reporting Company Regulatory Relief and Simplification

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to its disclosure and reporting requirements under the Securities Act of 1933 and the Securities Exchange Act of 1934 to expand the number of companies that qualify for its scaled disclosure requirements for smaller reporting companies. Companies that have less than $75 million in public equity float will qualify for the scaled disclosure requirements under the amendments. Companies without a calculable public equity float will qualify if their revenues were below $50 million in the previous year. To streamline and simplify regulation, the amendments move the scaled disclosure requirements from Regulation S–B into Regulation S–K.

DATES: *Effective Date:* February 4, 2008, except for amendments § 249.308b and Form 10–QSB, which are effective October 31, 2008, and amendments Part 228, § 249.310b, and Form 10–KSB, which are effective March 15, 2009.

Compliance Dates: For information on compliance, see the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Kevin M. O'Neill, Special Counsel, or Johanna Vega Losert, Attorney-Advisor, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628, (202) 551–3460.

SUPPLEMENTARY INFORMATION: After the effective date of the rule amendments, companies currently qualifying as "small business issuers" under Regulation S–B will have the option to file their next annual report for a fiscal year ending on or after December 15, 2007 on either Form 10–KSB, using the scaled disclosure requirements in Regulation S–B, or Form 10–K, using the new scaled disclosure requirements in Regulation S–K. After a "small business issuer" files that next annual report, it will be required to file quarterly reports on Form 10–Q and annual reports on Form 10–K, and may elect to comply with the new scaled disclosure requirements of Regulation S–K. Companies newly qualifying as "smaller reporting companies" will have the option to use the new scaled Regulation S–K requirements when filing their next periodic report due after the effective date of the amendments. These companies will determine eligibility for smaller reporting company status based on the last business day of their most recent second fiscal quarter, or based on the alternative initial registration statement calculation discussed in Section IV. If a registration statement was filed on an "SB" form before the effective date of the rule amendments, and the company seeks to amend it after the effective date of the rule amendments, the company must file the amendment on the appropriate form available to the issuer without an "SB" designation. As discussed in Section IV, to provide a transition period, these issuers will be able to continue using the disclosure format and content based on the "SB" form until six months after the effective date.

We are adopting amendments to Regulation S–K,[1] and rules and forms under the Securities Act of 1933,[2] Securities Exchange Act of 1934,[3] and Trust Indenture Act of 1939.[4] In Regulation S–K, we are adopting amendments to Items 10, 101, 102, 201, 301, 302, 303, 305, 401, 402, 404, 407, 503, 504, 512, 601, 701, and 1118.[5] We are adopting amendments to Securities Act Rules 110, 138, 139, 158, 175, 405, 415, 428, 430B, 430C, 455, and 502.[6] Further, we are rescinding Regulation S–B[7] and eliminating the forms associated with it, Forms SB–1, SB–2, 10–SB, 10–QSB, and 10–KSB.[8] We are amending Securities Act Forms 0–1, S–1, S–3, S–4, S–8, S–11, 1–A, and F–X,[9] Exchange Act Rules 0–2, 0–12, 3b–6, 10A–1, 10A–3, 12b–2, 12b–23, 12b–25, 12h–3, 13a–10, 13a–13, 13a–14, 13a–16, 13a–20, 14a–3, 14a–5, 14a–8, 14c–3, 14d–3, 15d–10, 15d–13, 15d–14, 15d–20, and 15d–21,[10] and Exchange Act Forms 0–1, 8–A, 8–K, 10, 10–Q, 10–K, 11–K, 20–F, and SE.[11] We are amending Schedules 14A and 14C.[12] In Regulation S–X,[13] we are amending Rules 210.3–01, 210.3–05, 210.3–10, 210.3–12, 210.3–14, 210.4–01, and 210.10–01 and adding a new Article 8 containing thefinancial statement requirements available to smaller reporting companies.[14] Finally, we are amending Trust Indenture Act Rules 0–11, 4d–9, and 10a–5[15] and Section 269.0–1 of the Trust Indenture Act Forms.[16]

Table of Contents

[1] 17 CFR 229.10–229.1123.

[2] 15 U.S.C. 77a *et seq.*

[3] 15 U.S.C. 78a *et seq.*

[4] 15 U.S.C. 77aaa *et seq.*

[5] 17 CFR 229.10, 229.101, 229.102, 229.201, 229.301, 229.302, 229.303, 229.305, 229.401, 229.402, 229.404, 229.407, 229.503, 229.504, 229.512, 229.601, 229.701, and 229.1118.

[6] 17 CFR 230.110, 230.138, 230.139, 230.158, 230.175, 230.405, 230.415, 230.428, 230.430B, 230.430C, 230.455, and 230.502.

[7] 17 CFR 228.10–228.703.

[8] 17 CFR 239.9, 239.10, 249.210b, 249.308b, and 249.310b.

[9] 17 CFR 239.0–1, 239.11, 239.13, 239.25, 239.16b, 239.18, 239.90, and 239.42.

[10] 17 CFR 240.0–2, 240.0–12, 240.3b–6, 240.10A–1, 240.10A–3, 240.12b–2, 240.12b–23, 240.12b–25, 240.12h–3, 240.13a–10, 240.13a–13, 240.13a–14, 240.13a–16, 240.13a–20, 240.14a–3, 240.14a–5, 240.14a–8, 240.14c–3, 240.14d–3, 240.15d–10, 240.15d–13, 240.15d–14, 240.15d–20, and 240.15d–21.

[11] 17 CFR 249.0–1, 249.208a, 249.210, 249.308, 249.308a, 239.310, 249.311, 249.220f, and 249.444.

[12] 17 CFR 240.14a–101 and 240.14c–101.

[13] 17 CFR 210.3–01—210.12–29.

[14] 17 CFR 210.3–01, 210.3–05, 210.3–10, 210.3–12, 210.3–14, 210.4–01, 210.10–01, and new Article 8 210.8–01–8–08.

[15] 17 CFR 260.0–11, 260.4d–9, and 260.10a–5.

[16] 17 CFR 269.0–1.

I. Background and Summary

At an open Commission meeting on May 23, 2007, we approved publication of eight releases designed to update and improve federal securities regulations that significantly affect smaller companies and their investors in today's capital markets.[17] These releases reflected our efforts during the past few years to provide responsive solutions addressing the special characteristics and needs of smaller companies and their investors. One of the releases (the "Proposing Release") proposed rule amendments intended to provide general regulatory relief and simplification for smaller companies reporting under our rules.[18] In that release, we proposed a series of amendments to our scaled disclosure and reporting requirements for smaller reporting companies. The release had three stated objectives:

- Expanding the number of smaller companies eligible to use scaled disclosure requirements;
- Reducing unnecessary complexity in our regulations by combining the category of "small business issuers" with the category of "non-accelerated filers" to the extent feasible; and
- Simplifying disclosure requirements by moving our scaled disclosure requirements for smaller companies from Regulation S–B into Regulation S–K, the integrated disclosure system for other companies.

Several of the amendments in the Proposing Release had their genesis in the recommendations made by the Advisory Committee on Smaller Public Companies in 2006. The Commission had chartered the Advisory Committee in March 2005 to assess the current regulatory system for smaller companies under the federal securities laws and make recommendations for changes.[19] Among the specific charges of the Committee was to consider the corporate disclosure and reporting requirements for smaller companies, including differing regulatory requirements based on market capitalization, and other measurements of size or market characteristics.[20] In its Final Report, the Advisory Committee made several recommendations relating to scaling securities regulation for smaller companies and labeled them as priority items.[21]

In 2006, 3,395 reporting companies elected to take advantage of our current scaled disclosure and reporting requirements for small business issuers by filing their annual reports on Form 10–KSB.[22] We estimate that a total of 4,976 companies will be eligible to use our scaled disclosure requirements under today's amendments, a difference of 1,581 additional companies.[23] The 1,581 companies would represent about 13% of the total 11,898 reporting companies that filed annual reports with us in 2006.

The amendments that we are adopting address the need to revisit and adjust the Commission's small company policies to reflect changes in our securities markets as well as changes to the regulatory landscape since 1992, when the Commission first adopted an integrated scaled disclosure system for small business in Regulation S–B.[24] The Commission adopted Regulation S–B and its associated Forms SB–1 and SB–2 based upon the success of Form S–18, which was a simplified registration form for smaller companies under the Securities Act that preceded Forms SB–1 and SB–2.[25] Regulation S–B was designed to reduce compliance costs and improve the ability of start-ups and other small businesses to obtain financing through the public capital markets.

The amendments we are adopting will result in the substantive changes highlighted below. The new provisions:

- Establish a category of "smaller reporting companies" eligible to use our scaled disclosure requirements. The primary determinant for eligibility will be that the company have less than $75 million in public float. When a company is unable to calculate public float, however, such as if it has no common equity outstanding or no

[17] These releases included (1) Release No. 33–8812 (June 20, 2007) (72 FR 35118) (proposing to expand eligibility requirements of Forms S–3 and F–3 to permit registration of annual primary offerings of up to a specified percentage of public float by companies with a public float of less than $75 million). The Commission voted to approve this proposal at a December 11, 2007 open meeting (archived webcast available at *http://www.sec.gov/news/openmeetings.shtml*); (2) Release No. 33–8813 (June 22, 2007) (72 FR 36822] (proposing amendments to Rule 144 to revise the holding period for the resale of restricted securities, simplify compliance for non-affiliates, revise the Form 144 filing thresholds, and codify certain staff interpretations, as well as to amend Rule 145). This proposal was adopted in Release No. 33–8869 (Dec. 6, 2007) (72 FR 71546); (3) Release No. 33–8814 (June 29, 2007) (72 FR 37376) (proposing revisions to Form D and to mandate electronic filing of Form D). The Commission voted to approve this proposal at the December 11, 2007 open meeting (archived webcast available at *http://www.sec.gov/news/openmeetings.shtml*); (4) Release No. 33–8819 (July 5, 2007) (72 FR 39670) (proposing to increase the number of companies eligible for our scaled disclosure and reporting requirements for smaller companies); (5) Release No. 33–8828 (Aug. 3, 2007) (72 FR 45116] (proposing new Regulation D exemption for offers and sales of securities to a newly defined category of "large accredited investors," as well as proposing revisions to the Regulation D definition of "accredited investor," disqualification provisions, and integration safe harbor); (6) Release No. 34–56010 (July 5, 2007) (72 FR 37608] (proposing exemptions from requirement to register class of securities for compensatory stock options granted by reporting and non-reporting companies). This proposal was adopted in Release No. 34–56887 (Dec. 3, 2007) (72 FR 69554); (7) Release No. 33–8810 (June 20, 2007) [72 FR 35324] (providing interpretive guidance regarding management's report on internal control over financial reporting under Section 13(a) or 15(d) of the Securities Exchange Act of 1934); and (8) Release No. 33–8811 (June 20, 2007) [72 FR 35346) (requesting additional comment on the definition of a significant deficiency). The last proposal was adopted in Release No. 33–8829 (Aug. 3, 2007) [72 FR 44927) (adopting definition of "significant deficiency").

[18] Release No. 33–8819 (July 5, 2007) (72 FR 39670].

[19] See SEC Advisory Committee on Smaller Public Companies, Final Report (2006) ("Advisory Committee Final Report"), available at *http://www.sec.gov/info/smallbus/acspc.shtml*.

[20] Advisory Committee Final Report (p. 1).

[21] Advisory Committee Final Report Recommendations II.P.1 (pp. 14–22), IV.P.1 (pp. 60–64), and IV.P.2 (pp. 65–68).

[22] As stated in the Proposing Release, these statistics are based on 2006 data from the Commission's EDGAR (Electronic Data Gathering, Analysis and Retrieval) filing system.

[23] As we noted in the Proposing Release, these statistics are based on Thomson Financial (Datastream). The data includes available information on registered public firms trading on the New York Stock Exchange, the American Stock Exchange, the Nasdaq, the Over-the-Counter Bulletin Board, and the Pink Sheets and excludes closed end funds, exchange traded funds, American depositary receipts, and direct foreign listings.

[24] See Release No. 33–6949 (July 30, 1992) (57 FR 36442).

[25] The Commission adopted Forms SB–1 and SB–2 after 10 years of issuers using Form S–18, an experimental form the Commission created to benefit small issuers in raising capital. Release No. 33–6924, p. 40 (Mar. 20, 1992) (57 FR 9768].

market price for its outstanding common equity exists at the time of the determination, the standard will be less than $50 million in revenue in the last fiscal year;

- Move 12 non-financial scaled disclosure item requirements from Regulation S–B into Regulation S–K.[26] These scaled requirements will be available only for smaller reporting companies. The remaining 24 item requirements of Regulation S–B[27] are substantially the same as their corresponding Regulation S–K item requirements. We therefore are not amending them except in one minor instance explained below;[28]
- Move the scaled financial statement requirements in Item 310 of Regulation S–B into new Article 8 of Regulation S–X, and amend these requirements to provide a scaled disclosure option for smaller reporting companies, requiring two years of balance sheet data instead of one year, and make other minor adjustments after considering comments we received;[29]
- Permit smaller reporting companies to elect to comply with scaled financial and non-financial disclosure on an item-by-item or "a la carte" basis. As adopted, eligible companies may elect to follow scaled financial statement requirements or to provide the larger company financial statement presentation on a quarterly basis, rather than require companies to elect the full fiscal year's financial presentation in the first quarterly report of the fiscal year, as was proposed;
- Eliminate our current "SB" forms but allow a phase-out period for small business issuers transitioning to smaller reporting company status;
- Combine elements relating to the accelerated filer definition with qualifying standards for the smaller reporting company determination and transition provisions to promote uniformity and consistency with current regulations and, therefore, simplify regulation;
- Permit all foreign companies to qualify as "smaller reporting companies" if they otherwise qualify and choose to file on domestic company forms and provide financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles ("U.S. GAAP"); and
- Eliminate the transitional small business issuer format.

II. Description of Proposed Amendments

We proposed an eligibility standard for our scaled disclosure requirements for "smaller reporting companies" to replace the "small business issuer" definition found in Item 10 of Regulation S–B.[30] Under the proposals, the new definition of "smaller reporting company" would have established eligibility for companies with less than $75 million in public common equity float. We provided an alternative revenue test for those companies unable to calculate public common equity float, basing eligibility on whether the company had annual revenues of less than $50 million in its last fiscal year. In contrast, our previous eligibility requirements for "small business issuer" status required that companies have both less than $25 million in public common equity float and less than $25 million in annual revenues.

Under the proposals, which we are adopting in modified form, each company would determine its eligibility based on whether the company is: (1) A reporting company already filing periodic and annual reports;[31] (2) a non-reporting company filing a registration statement under either the Securities Act or Exchange Act; or (3) a reporting or non-reporting company that had no public float, such as if it had no public common equity outstanding or no market price for its common equity existed. A reporting company determining its eligibility as a smaller reporting company would calculate its public float as of the last business day of its most recently completed second fiscal quarter. Non-reporting companies filing a registration statement would calculate their public float as of a date within 30 days of the date of the filing of the registration statement.

Under the proposals, investment companies and asset-backed issuers would be excluded from eligibility for smaller reporting company status, as was the case under the definition of "small business issuer" in Regulation S–B.[32] As proposed, foreign companies could qualify as smaller reporting companies and provide scaled disclosure if they elected to use domestic company forms and provide financial statements prepared in accordance with U.S. GAAP. Removing the exclusion of foreign companies would make scaled treatment available to additional smaller companies.[33]

We proposed that smaller reporting companies be required to exit the scaled disclosure system the fiscal year after their public float rose above $75 million as of the last business day of their second fiscal quarter.[34] Smaller reporting companies attempting to establish eligibility to enter the scaled disclosure system again would be required to determine that their public float fell below $50 million as of the last business day of their second fiscal quarter, and would be able to use scaled disclosure again in the next fiscal year following the determination, starting

[26] The 12 scaled item requirements are: (1) Description of Business (Item 101); (2) Market Price of and Dividends on Registrant's Common Equity and Related Stockholder Matters (Item 201); (3) Selected Financial Data (Item 301); (4) Supplementary Financial Information (Item 302); (5) Management's Discussion and Analysis of Financial Condition and Results of Operations (Item 303); (6) Quantitative and Qualitative Disclosures about Market Risk (Item 305); (7) Executive Compensation (Item 402); (8) Transactions with Related Persons, Promoters and Certain Control Persons (Item 404); (9) Corporate Governance (Item 407); (10) Prospectus Summary, Risk Factors, and Ratio of Earnings to Fixed Charges (Item 503); (11) Use of Proceeds (Item 504); and (12) Exhibits (Item 601).

[27] We did not propose changes to the following items of Regulation S–K because we believe our analysis showed that the disclosure standards in these items currently are substantially the same as the Regulation S–B requirements: (1) Description of Property (Item 102); (2) Legal Proceedings (Item 103); (3) Description of Registrant's Securities (Item 202); (4) Changes In and Disagreements with Accountants on Accounting and Financial Disclosure (Item 304); (5) Disclosure Controls and Procedures (Item 307); (6) Internal Control Over Financial Reporting (Item 308); (7) Internal Control Over Financial Reporting (Item 308T); (8) Directors, Executive Officers, Promoters and Control Persons (Item 401); (9) Security Ownership of Certain Beneficial Owners and Management (Item 403); (10) Compliance with Section 16(a) of the Exchange Act (Item 405); (11) Code of Ethics (Item 406); (12) Forepart of Registration Statement and Outside Front Cover Page of Prospectus (Item 501); (13) Inside Front and Outside Back Cover Pages of Prospectus (Item 502); (14) Determination of Offering Price (Item 505); (15) Dilution (Item 506); (16) Selling Security Holders (Item 507); (17) Plan of Distribution (Item 508); (18) Interest of Named Experts and Counsel (Item 509); (19) Disclosure of Commission Position on Indemnification for Securities Act Liabilities (Item 510); (20) Other Expenses of Issuance and Distribution (Item 511); (21) Recent Sales of Unregistered Securities; Use of Proceeds from Registered Securities (Item 701); (22) Indemnification of Directors and Officers (Item 702); and (23) Purchases of Equity Securities by the Issuer and Affiliated Purchasers (Item 703). In addition, although we proposed to amend Undertakings (Item 512), we are not adopting this change because we believe it is clear which undertakings may and may not apply to a smaller reporting company.

[28] See the discussion of Description of Property (Item 102) below. In addition, we are making technical changes to numerous item requirements to remove references to Regulation S–B and its associated "SB" forms.

[29] The amendments also rescind Regulation S–B, since all of its substantive requirements will now be contained in Regulation S–K or new Article 8 of Regulation S–X.

[30] 17 CFR 228.10.

[31] A reporting company is required to file reports under Section 13(a) and 15(d) of the Exchange Act. 15 U.S.C. 78m and 15 U.S.C. 78o.

[32] Item 10(a)(1)(iii) of Regulation S–B, 17 CFR 228.10(a)(1)(iii).

[33] Item 10(a)(1)(ii) of Regulation S–B only permits U.S. or Canadian issuers to qualify as "small business issuers."

[34] The entering and exiting rules in the smaller reporting company system are modeled after the method of determining accelerated filer status set forth in Rule 12b–2. 17 CFR 240.12b–2.

with the first Form 10–Q of the next fiscal year.

An objective of our proposals was to simplify and improve our disclosure and reporting rules for smaller companies by moving the Regulation S–B disclosure requirements for smaller companies into Regulation S–K, as recommended by the SEC Advisory Committee on Smaller Public Companies. As a result of our rulemaking, we identified 13 item requirements in Regulation S–B that provided scaled disclosure for smaller companies.[35] We reasoned that consolidation of the Regulation S–K and S–B disclosure requirements would provide a more unified set of rules that would be easier to use. To accomplish this, we proposed to move item requirements in Regulation S–B containing substantive scaled non-financial disclosure requirements into Regulation S–K by adding a new paragraph to the items of Regulation S–K that would contain separate disclosure standards for smaller reporting companies. We did not propose any major substantive changes to the items we were moving from Regulation S–B into Regulation S–K, but sought comment from the public on substantive changes they would recommend.

One of the item requirements in Regulation S–B providing scaled disclosure requirements did not have a similar disclosure item requirement in Regulation S–K. Consequently, our specific proposals included adding a new Item 310 in Regulation S–K for financial statements. Item 310 of Regulation S–K would have set forth the alternative requirements on form and content of financial statements for smaller companies that formerly appeared in Item 310 of Regulation S–B.

The proposals also allowed a smaller reporting company to choose, on an item-by-item basis or "a la carte" basis, to comply with either the scaled disclosure and financial reporting requirements made available in Regulation S–K for smaller reporting companies or the requirements for other companies in Regulation S–K, when the requirements for other companies were more rigorous.

The proposal, like the amendments we are adopting, would rescind all of our forms designated with the letters "SB." Smaller reporting companies would be eligible to file on Form S–1, rather than on Form SB–1 or SB–2 as before, to offer securities to the public. This would provide a smaller reporting company the ability to incorporate by reference its previously filed Exchange Act reports if the company meets the requirements set forth under General Instruction VII of Form S–1.[36]

Finally, the proposals, like the amendments we are adopting, would eliminate the "transitional small business issuer format" associated with Form SB–1 and annual reports on Form 10–KSB.[37] A small business issuer using the transitional format followed disclosure based on Model A or B found in Regulation A. These two disclosure models were intended to ease transition from non-reporting to reporting status for small business issuers preparing disclosure on initial registration statements and annual reports. In our Proposing Release we noted, however, that the number of companies registering on Form SB–1 and following the disclosure format within Form 10–KSB had significantly declined over time.[38]

We received 21 comment letters on the proposals,[39] including six from public accounting firms. We also received comment letters from professional and trade associations, a law firm, an associate professor of finance, two small business owners, and the Small Business Administration's Office of Advocacy. In general, the comment letters strongly supported our efforts to simplify our scaled disclosure requirements for smaller reporting companies and expand eligibility for them.

III. Discussion of Amendments We Are Adopting

After considering the public comments, we are adopting the amendments substantially as we proposed them, with the modifications discussed below.

A. Moving Scaled Disclosure Item Requirements From Regulation S–B Into Regulation S–K

Many of the comment letters supported moving our scaled disclosure requirements from Regulation S–B into Regulation S–K.[40] In general, the comments in these letters viewed moving the requirements as having a positive impact by reducing complexity and promoting more streamlined regulation. One letter noted that combining the two disclosure systems would allow smaller reporting companies to more easily evaluate the extent of the differences between the requirements for smaller reporting companies and larger companies and consider which requirement better meets the needs of their investors.[41]

A few comment letters opposed moving the scaled disclosure requirements into Regulation S–K, indicating that having all of the smaller company rules in one place was convenient for smaller companies.[42] These comment letters expressed concern that the migration into Regulation S–K would increase legal and accounting costs for smaller companies and make the rules more complex for smaller companies to understand. A few comment letters suggested providing the scaled smaller reporting company disclosure requirements in a separate section of Regulation S–K.[43]

We are adopting our proposal to move our Regulation S–B scaled disclosure requirements into Regulation S–K. After considering the comments, we believe combining the two disclosure systems and setting out the smaller reporting company scaled item requirements in separate paragraphs within Regulation S–K is appropriate. We believe our amendments eliminate redundancies and provide a more streamlined disclosure system for smaller reporting companies. In response to the concern that moving the item requirements will create complexity for smaller companies, we are including an index of

[35] See note 26 above.

[36] General Instruction VII of Form S–1 sets forth the eligibility criteria to qualify for incorporation by reference. The registrant must be required to file reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 and must have filed all reports and materials during the preceding 12 months. The company must have filed an annual report for its most recently completed fiscal year. Section D of the instruction disqualifies companies that, in the past three years, were any of the following:

(a) A blank check company as defined in Rule 419(a)(2);

(b) A shell company, other than a business combination related shell company, each as defined in Rule 405; or

(c) A registrant for any offering of penny stock as defined in Rule 3a51–1 under the Exchange Act.

[37] See Proposing Release Release No. 33–8819, pp. 40–41 (July 5, 2007) [72 FR 39680].

[38] For example, during the past five years, the Commission has received only 56 Form SB–1 registration statements. For years 2000 through 2005, two small business issuers out of 56 filed a Form 10–KSB using the transitional disclosure format.

[39] The public comments we received are available for inspection in our Public Reference Room at 100 F Street, NE, Washington, DC 20549 in File No. S7–15–07, or may be viewed at *http://www.sec.gov/comments/s7-15-07/s71507.shtml*.

[40] See, *e.g.*, Letter from the American Bar Association, Section of Business Law (ABA).

[41] See Letter from PricewaterhouseCoopers LLP.

[42] See, *e.g.*, Letters from the Chamber of Commerce and New York State Society of Certified Public Accountants (NYSSCPA).

[43] See, *e.g.*, Letter from KPMG.

scaled disclosure requirements in the definition of smaller reporting company at the beginning of Regulation S–K [44] to highlight items of the Regulation that contain the scaled disclosure requirements specific to smaller reporting companies.

Regulation S–B has 12 non-financial item requirements that provide scaled disclosure options to smaller reporting companies. Under this rulemaking, these 12 item requirements are being moved to separate paragraphs within Regulation S–K. In some cases, smaller reporting companies are not required to provide disclosures required of larger companies. For example, while larger companies are required to provide disclosure under Item 305 on quantitative and qualitative disclosures about market risk, smaller companies are not currently required to do so under the same item requirement in Regulation S–B. In cases like this, we include a paragraph in the relevant item of Regulation S–K indicating that smaller reporting companies are not required to respond to the item.

In addition to the Regulation S–B and S–K differences, the forms themselves may contain different disclosure requirements for smaller reporting companies. Currently, Forms 10–SB, 10–KSB and 10–QSB do not require risk factor disclosure from small business issuers. The amendments carry this difference in disclosure requirements over to Forms 10, 10–K and 10–Q by adding instructions indicating that smaller reporting companies are not required to provide risk factor disclosure in these Exchange Act forms.

B. Moving Smaller Reporting Company Financial Statement Requirements From Item 310 of Regulation S–B Into New Article 8 of Regulation S–X; Additional Regulation S–X Changes

Several comment letters recommended moving the rules on form and content of financial statements for smaller reporting companies now in Item 310 of Regulation S–B into Regulation S–X, rather than into a new Item 310 of Regulation S–K, as proposed. Several comment letters also agreed with the Advisory Committee recommendation to require smaller reporting companies to provide two years of comparative audited balance sheet data in annual financial statements under these rules, rather than one year, as is currently required under Regulation S–B.[45] The comment letters are persuasive that we should adopt these recommendations as part of our rule amendments. Accordingly, we are moving the financial statement rules for smaller reporting companies into a new Article 8 of Regulation S–X [46] and will require two years of comparative audited balance sheet data of smaller reporting companies. Comparative balance sheets will provide a much more meaningful presentation for investors without a significant additional burden on smaller reporting companies, since the earlier year data should be readily available for the purposes of preparing the other financial statements.[47] We also are making technical and language changes to the rules on form and content of financial statements for smaller public companies to facilitate their placement in Article 8 of Regulation S–X rather than in Regulation S–B or Regulation S–K.

We also are adopting technical amendments to Rule 3–05(b)(2)(iv) of Regulation S–X that were tied conceptually to the small business issuer threshold in Regulation S–B that we are replacing with the definition of smaller reporting company in Regulation S–K. Rule 3–05 of Regulation S–X requires the inclusion of financial statements of businesses acquired or to be acquired, so-called "target companies," in registration statements and Form 8–K reports. The number of years of audited financial statements to be included for a target company is determined using the conditions specified in the definition of significant subsidiary in Rule 1–02(w) of Regulation S–X. If the net revenues reported by the target company for the latest fiscal year are less than $25 million and three years of financial statements would otherwise be required, the earliest of the three fiscal years may be omitted pursuant to Rule 3–05(b)(2)(iv) of Regulation S–X.

Several comment letters noted that in light of the $50 million in revenues threshold proposed for determining a company's qualification as a smaller reporting company if a company is unable to calculate public float, the Commission should consider revising this rule to raise to $50 million the $25 million threshold currently used to limit to two the periods required for audited financial statements of an acquired business.[48] The $25 million threshold was based on the $25 million in revenues standard in Regulation S–B that we are rescinding.[49] We are amending this standard to increase the threshold to $50 million in revenues, as suggested by the commenters.

C. Adopting Scaled Disclosure Item Requirements in Regulation S–K

1. Overview

The following is a list of item requirements we are amending in Regulation S–K to include the substance of the scaled standards for smaller reporting companies now in the same item number of Regulation S–B. The adopted amendments are substantially as described in the Proposing Release, but with the changes discussed below:

Item 101 (Description of Business). We are adding a new paragraph (h) to this item to set forth the alternative disclosure standards for smaller companies that appeared in Item 101 of Regulation S–B. Generally, the different requirements for smaller reporting companies under Item 101 involve providing a less detailed description of the company's business. For example, the Regulation S–K standard for Item 101 requires financial information about segments, which the standard for smaller reporting companies does not require.[50] In addition, smaller reporting companies will be required to provide and disclose business development activities for only three years, instead of the five-year disclosure required of larger companies by Item 101 of Regulation S–K.

We also are implementing additional minor revisions that replace the reference to Canadian issuers. Since we are making the smaller reporting company standards available to foreign issuers generally, we are requiring that these issuers provide disclosure on enforceability of civil liability against foreign persons. Previously, Item 101 of Regulation S–B had required this disclosure from Canadian issuers only because those were the only foreign issuers eligible for Regulation S–B disclosure standards. The item requirement applicable to smaller reporting companies also will no longer

[44] See new Item 10(f) of Regulation S–K (Index of Scaled Disclosure Available to Smaller Reporting Companies).

[45] We had specifically asked for comments on this recommendation in the Proposing Release. See Proposing Release Release No. 33–8819, p. 26 [72 FR 39676].

[46] To be codified at 17 CFR 210.8–01—.8–08.

[47] Although the earlier year data would be readily available, auditors must undertake appropriate audit procedures related to the prior fiscal year.

[48] See, *e.g.*, Letter from Center for Audit Quality (CAQ).

[49] In 1996, the Commission adopted revisions to rules that streamlined requirements with respect to financial statements of significant business acquisitions in filings made under the Securities Act and the Exchange Act. The $25 million threshold limit was intended to be consistent with criteria for small business issuers. Release No. 33–7355, p. 36 (Oct. 10, 1996).

[50] Application of U.S. GAAP (FAS 131) may, however, require segment information in the notes to the financial statements. 17 CFR 229.101(b).

refer to the foreign private issuer requirement to disclose whether the report will include a reconciliation of financial information with U.S. generally accepted accounting principles, because smaller reporting companies must provide financial statements prepared in accordance with U.S. GAAP.

Item 201 (Market Price of and Dividends on Registrant's Common Equity and Related Stockholder Matters). We are revising Instruction 6 to paragraph (e) of this Regulation S–K item requirement to reflect that smaller reporting companies (instead of "small business issuers") are not required to provide a performance graph.

Item 301 (Selected Financial Data); Item 302 (Supplementary Financial Information). We are adding a new paragraph (c) to each item requirement, providing that smaller reporting companies are not required to present the information required by these item requirements.

Item 303 (Management's Discussion and Analysis of Financial Condition and Results of Operations). As provided in new paragraph (d), this item sets forth the scaled requirements.[51] For example, under this item requirement, smaller reporting companies will:

- Provide only two years of analysis if the company is presenting only two years of financial statements, instead of the three years of analysis required of larger companies that are required to provide three years of financial statements; and
- Not be required to provide tabular disclosure of contractual obligations.

Item 305 (Quantitative and Qualitative Disclosures about Market Risk). New paragraph (e) in this item specifies that smaller reporting companies are not required to disclose Item 305 information.

Item 402 (Executive Compensation). New paragraphs (*l*) through (r) set forth the alternative standards for smaller reporting companies for disclosure of compensation of executives and directors that were in Item 402 of Regulation S–B.[52] Smaller reporting companies will:

- Provide executive compensation disclosure for only three named executive officers (specifically including the principal executive officer but not the principal financial officer), rather than the five required of larger companies;
- Provide the Summary Compensation Table disclosure for only two years, rather than the three years required of larger companies;
- Not be required to provide a Compensation Discussion and Analysis;
- Provide only three of the seven tables[53] required of larger companies;
- Provide alternative narrative disclosures; and
- Not be required to include footnote disclosure of the grant date fair value of equity awards in the Director Compensation Table.

Item 404 (Transactions with Related Persons, Promoters and Certain Control Persons). We are making changes to the introductory text of paragraph (c)(1), and adding paragraph (d) before the instructions to this item to change the calculation of total assets for smaller reporting companies from 1% of their total assets based on the average of total assets at year end for the last *three* completed fiscal years to the last *two* completed fiscal years. We believe this standard is more consistent with the two years of financial statements required of smaller reporting companies. Under new Item 404(d) of Regulation S–K, smaller reporting companies will:[54]

- Not be required to disclose policies and procedures for reviewing related person transactions, which is required of larger companies;
- Be required to provide disclosure regarding a transaction where the amount exceeds the lesser of 1% of a smaller company's total assets or $120,000;
- Be required to provide additional specific information about underwriting discounts and commissions, and corporate parents; and
- Be required to provide disclosure regarding promoters and certain control persons.

Item 407 (Corporate Governance). New paragraph (g) to Item 407 of Regulation S–K specifies that smaller reporting companies are:

- Not required to provide Compensation Committee Interlock and Insider Participation disclosure or a Compensation Committee Report; and
- Not required to provide an Audit Committee Report until the first annual report after their initial registration statement is filed with the Commission and becomes effective.

Item 503 (Prospectus Summary, Risk Factors, and Ratio of Earnings to Fixed Charges). New paragraph (e) to this item specifies that smaller reporting companies need not provide the information required by paragraph (d) of Item 503 regarding the ratio of earnings to fixed charges when a registrant issues debt, or the ratio of combined fixed charges and preference dividends to earnings when a registrant issues preference equity securities. In addition, we have added instructions to the risk factor disclosure requirements set forth in Exchange Act Forms 10, 10–K and 10–Q to indicate that smaller reporting companies are not required to provide Item 503 risk factor disclosure in these filings.[55]

Item 504 (Use of Proceeds). We are revising Instruction 6 to this item to clarify that new Article 8 of Regulation S–X, rather than the other articles of Regulation S–X, will govern whether financial statements of businesses proposed to be acquired must be included in the filings of smaller reporting companies.

Item 601 (Exhibits). New paragraph (c) reflects that smaller reporting companies need not provide Exhibit 12 (Statements re Computation of Ratios).

Other Regulation S–K Items. We identified 24 item requirements in Regulation S–B that were substantially similar or identical to the same numbered item requirements in Regulation S–K. In these cases, we determined it was appropriate to require that smaller reporting companies follow the same item requirements as larger companies. In the Proposing Release, we identified Item 512 (Undertakings) as a scaled item requirement for smaller reporting companies; however, we now believe no change is needed because it is clear which undertakings may apply to a smaller reporting company's filings. We are, therefore, not including a new paragraph (m) in Regulation S–K, as proposed.

In addition, as described below, we are amending Item 102 (Description of Property) of Regulation S–K to include references to the Industry Guides[56]

[51] As discussed below, we are also adding references to two Industry Guides to this item.

[52] As proposed, the scaled disclosure for this item would have been in new paragraph (l), but in order to clarify the requirements, the adopted Item restates the requirements for smaller reporting companies in several paragraphs.

[53] These are the Summary Compensation Table, the Outstanding Equity Awards at Fiscal Year End Table, and the Director Compensation Table.

[54] See Section III.C.2, clarifying that to the extent the smaller reporting company scaled disclosure requirement is more rigorous than the same larger company item requirement, smaller reporting companies will be required to comply with the more rigorous smaller reporting company requirement.

[55] See Section III.A above. The Securities Offering Reform final rule amendments stated that the risk factor disclosure requirement did not apply to small business issuers filing on Form 10–KSB or Form 10–SB. The amendments we are adopting carry this difference in disclosure requirements over to the Forms 10, 10–K and 10–Q for smaller reporting companies. See Securities Offering Reform Release 33–8591 (July 19, 2005) [70 FR 44722, 44786–87].

[56] The Industry Guides serve as expressions of the policies and practices of the Division of Corporation

Continued

noted below and highlighting the requirements of Item 401 (Directors, executive officers, promoters and control persons). To further maintain consistency with references to other industry guides in the disclosure item requirements, we also are adding instructions to Item 303 directing companies' attention to:

- Industry Guide 3—Statistical disclosure by bank holding companies; and
- Industry Guide 6—Disclosure concerning unpaid claims and claim adjustment expenses of property-casualty insurance underwriters.

The Regulation S–B item requirement on the Description of Property in Item 102 included detailed instructions specific to small business issuers engaged in: (1) Significant mining operations; (2) oil and gas producing activities; and (3) real estate activities. Under Item 102 of Regulation S–B, mining companies are directed to the information called for in Industry Guide 7; oil and gas producing issuers are directed to the information called for in Industry Guide 2; and real estate companies are directed to the information called for in Industry Guide 5. Regulation S–K, however, does not include any references to these industry guides. Several commenters suggested that we revise Item 102 of Regulation S–K to include references to industry guides.[57] We agree, and are amending Item 102 of Regulation S–K to include references to the following industry guides:

- Industry Guide 2—Disclosure of oil and gas operations;
- Industry Guide 4—Prospectus relating to interests in oil and gas programs;
- Industry Guide 5—Preparation of registration statements relating to interests in real estate limited partnerships; and
- Industry Guide 7—Description of property by issuers engaged or to be engaged in significant mining operations.

Item 401 of Regulation S–K (Directors, executive officers, promoters and control persons), differs from Regulation S–B in one respect. Under Regulation S–B, the disclosure pertaining to Federal bankruptcy laws or state insolvency laws related only to "any bankruptcy petition filed by or against any business of which such person was a general partner or executive officer either at the time of the bankruptcy or within two years prior to that time." [58] Under Regulation S–K, disclosure must be provided pertaining to any petitions filed under the Federal bankruptcy laws or any state insolvency laws filed by or against a director or officer of the company.[59] We believe it is appropriate to require disclosure about a personal bankruptcy petition filed by or against a director or officer of a smaller reporting company given that, in light of the generally smaller level of operations of smaller reporting companies, it may be material to an evaluation of the ability or integrity of any director or person to be nominated to become a director or executive officer of the smaller reporting company. Accordingly, smaller reporting companies now will be required to comply with the slightly different disclosure requirement of the Regulation S–K item.

2. Electing Scaled Disclosure Standards on "A La Carte" Basis

Commenters generally supported the proposal to allow smaller reporting companies to choose compliance with either the smaller reporting company scaled disclosure requirements or the larger company disclosure requirements in Regulation S–K on an item-by-item or "a la carte" basis.[60] One comment letter expressed the view that the smaller reporting company disclosure requirements would serve as a baseline that would allow companies to provide any additional disclosure they deemed important to investors.[61] Another set of comments noted that the "a la carte" approach is already sanctioned by disclosure rules generally.[62] This letter explained that line-item disclosure requirements generally permit providing more disclosure than is required by the line items. Additionally, issuers are required to disclose all material facts that are necessary to make the statements included in the document not misleading, which may require disclosures in excess of line item requirements.[63]

Some accounting firms commenting on the a la carte approach requested that we address what one commenter referred to as the "lock-in" aspect of the proposal. In the Proposing Release, we explained that a smaller reporting company would have the option to take advantage of the smaller reporting company requirements for one, some, all or none of the item requirements, at its election, in any one filing. We proposed to require, however, that a smaller reporting company provide its financial statements on the basis of the scaled financial statement requirements or the larger company financial statement requirements for a single fiscal year, and not be permitted to switch back and forth from one to another in different filings within a single fiscal year.

One accounting firm noted that it was unclear how the a la carte approach would work if issuers were required to elect in the first quarterly report whether they would follow the scaled financial statement requirements or the larger company Regulation S–X requirements in that same fiscal year's annual report on Form 10–K.[64] According to this letter, making a determination in this manner would require a smaller reporting company that wants to preserve the option of following the smaller reporting company requirements in its annual report on Form 10–K to adhere to the smaller reporting company rules and not provide any additional information in the first quarterly report on Form 10–Q. Another accounting firm expressed the concern that a smaller reporting company might elect to provide more than the minimum disclosures only in periods when the additional disclosures tended to be favorable.[65] These comment letters agreed that the a la carte approach would work if the Commission clarified that although the smaller reporting company disclosure and financial statement requirements would appear to establish the minimum disclosure requirements, Rule 12b–20 under the Exchange Act[66] would require that a smaller reporting company provide any additional

Finance. They are of assistance to issuers, their counsel and others preparing registration statements and reports, as well as to the Commission's staff. The Industry Guides are not rules, regulations, or statements of the Commission. The Commission has neither approved nor disapproved these interpretations. See Release 33–6384 (Mar. 16, 1982).

[57] See, *e.g.*, Letters from KPMG and Grant Thornton.

[58] See Item 401(d)(1) of Regulation S–B. 17 CFR 228.401(d)(1). Under Regulation S–B, issuers provide legal proceedings disclosure about promoters and control persons for the past five years. Regulation S–K requires disclosure on legal proceedings for control persons and promoters for registrants that have not been subject to the reporting requirements for Section 13(a) or 15(d) of the Exchange Act for the twelve months immediately before the filing of the registration statement, report or statement. 17 CFR 229.401(f) and (g).

[59] See Item 401(f)(1) of Regulation S–K. 17 CFR 229.401(f)(1).

[60] See, *e.g.*, Letter from Independent Community Bankers of America (ICBA).,

[61] See Letter from Deloitte & Touche LLP (Deloitte).

[62] See Letter from ABA.

[63] The ABA cited the following in support of this statement: Sections 11 and 12(a)(2) of the Securities Act and Rule 408 under the Securities Act, and Rules 10b–5 and 12b–20 under the Exchange Act.

[64] See Letter from BDO Seidman, LLP (BDO).

[65] See Letter from Ernst & Young LLP (E&Y).

[66] 17 CFR 240.12b–20.

information beyond those minimum disclosure requirements, in order to avoid a misleading presentation.[67] The accounting firms suggested that we encourage smaller reporting companies to provide consistent disclosures in succeeding periods in order to respond to investor expectations and allow period-to-period comparisons.

The proposals would have required companies to make the determination whether to report financial statement disclosure on a scaled basis in the first quarter due after the fiscal year covering the determination date. After reviewing the suggestions in several comment letters, however, we believe it is appropriate to permit smaller reporting companies to choose to comply with both the non-financial and financial item requirements on an item-by-item basis when these disclosures are provided consistently and when they are consistent with the legal requirements under the federal securities laws, including Securities Act Rule 408 and Exchange Act Rule 12b–20. Additionally, we stress the importance of providing disclosure that permits investors to make period-to-period comparisons, whether quarterly or annually.

We continue to expect that our staff will evaluate item-by-item compliance by smaller reporting companies with only the Regulation S–K requirements applicable to smaller reporting companies, and not with the requirements applicable to larger companies. This will be the case even if the company whose filing is being reviewed chooses to comply with the larger company requirements. Finally, as we noted in the Proposing Release, the a la carte approach will have no effect on the legal requirements and liabilities that apply to all disclosures made by issuers.[68]

We are further clarifying that to the extent the smaller reporting company scaled item requirement is more rigorous than the same larger company item requirement, smaller reporting companies will be required to comply with the more rigorous, smaller reporting company item requirement. Also, we do not believe it is appropriate for a smaller reporting company to comply with a larger reporting company Regulation S–K item requirement if that requirement sets a higher threshold obviating the need for the smaller reporting company to provide disclosure. For example, unlike the larger company requirement under Item 404 of Regulation S–K, smaller reporting companies are required to disclose additional specific information about underwriting discounts and commissions and corporate parents.[69] In this case, a smaller reporting company would be required to provide the additional Item 404 disclosure.

Currently, the smaller reporting company requirements under Item 404 of Regulation S–K[70] present the only instance where the scaled requirements could be more rigorous than the larger company standard. This is because a smaller reporting company is required to provide disclosure on a related person transaction since the beginning of the company's last fiscal year if the amount involved in the transaction exceeds the lesser of $120,000 or 1% of the average of the company's total assets at year end for the last two completed fiscal years. In contrast, a larger company reporting under the same Item 404 Regulation S–K requirement is required to provide disclosure on a related person transaction since the beginning of the last fiscal year if the transaction exceeds $120,000.[71] A smaller reporting company's related person transaction may more easily exceed 1% of the average of the smaller reporting company's total assets than $120,000, as required for larger companies under the same item requirement. We believe this may be the case because 1% of a smaller company's total assets might be appreciably lower than $120,000.

D. Eliminating "SB" Forms Associated With Regulation S–B

While some comment letters appeared to support the elimination of the forms designated with the letters "SB" associated with Regulation S–B,[72] along with moving the smaller reporting company requirements from Regulation S–B into Regulation S–K, others questioned whether this approach would reduce compliance burdens and lower costs for smaller companies.[73] Some of the letters questioning the elimination of the SB forms recommended a two-year phase-in period to help smaller companies adjust to the transition. Some letters expressed a general perception that eliminating the SB forms would lead to increased costs for smaller reporting companies because Forms 10, 10–K, 10–Q and S–1, which would be used by smaller companies if the SB forms were eliminated, appeared to have more item disclosure requirements.[74] One commenter stated, however, that eliminating the "SB" forms would provide both time and cost savings to smaller reporting companies that will be eligible to incorporate information from their previously filed Exchange Act periodic reports into a Form S–1 registration statement.[75] None of the comment letters explained how using Forms 10, 10–K, 10–Q, and S–1 would increase costs for smaller reporting companies. One letter noted, however, that a smaller company probably would take longer to go through Form 10–K and Form 10–Q to figure out exactly what applied to the company and what did not apply in terms of required disclosures.[76] In contrast, another comment letter noted that the elimination of "SB" forms would allow smaller reporting companies to incorporate information from their previously filed Exchange Act reports into a Form S–1 registration statement, which would result in time and cost savings to the smaller reporting company.[77]

Some of the comment letters apparently misperceived that the SB forms are simpler and shorter than forms larger companies use. This is not the case. The SB forms themselves are not necessarily simpler to use than the forms that larger companies use. The scaling and increased simplicity for smaller companies generally occurs in the item requirements of Regulation S–B, rather than the associated SB forms, and we are moving the item requirements into Regulation S–K with very few changes.[78]

Nevertheless, after considering the comments, we have decided not to eliminate the Exchange Act reporting SB forms immediately, but to phase them out to ease the transition for smaller companies. We considered commenters' concerns regarding current small business issuers moving to the Forms 10–K and 10–Q, and concluded that our transition schedule will provide an

[67] See Letters from E&Y and CAQ.

[68] Release No. 33–8819, n. 76 p. 33 [72 FR 39678].

[69] See Instructions to Item 404(d) of Regulation S–K, 17 CFR 229.404(d).

[70] New Regulation S–K Item 404(d)(1) related person disclosure requirement for smaller reporting companies.

[71] 17 CFR 229.404(a).

[72] See, *e.g.*, Letter from ABA.

[73] See, *e.g.*, Letter from Office of Advocacy of the U.S. Small Business Administration (SBA Advocacy Office).

[74] See, *e.g.*, Letter from the International Association of Small Business Broker Dealers and Advisors ("IASBDA").

[75] See Letter from ABA.

[76] See Letter from James J. Angel, Ph.D., CFA ("Prof. James Angel").

[77] See Letter from ABA.

[78] Moreover, the SB forms are not necessarily substantially shorter than the comparable forms for larger companies. Form 10–SB is actually longer, at 4½ pages, than Form 10, which is less than 4 full pages long; Form 10–KSB is 11 pages long, while Form 10–K is 12; Form SB–2 is 5 pages long, while Form S–1 is just over 6 pages, not including instructions on summary prospectuses.

adequate period for these companies to continue to file reports on these forms, if they so desire.[79] Further, to help current small business issuers make the transition, the Division of Corporation Finance's Office of Small Business Policy plans to provide an informational brochure to assist their transition to the new smaller reporting company form requirements.

E. Qualifying Standards for Treatment as "Smaller Reporting Company"

Many of the comment letters in favor of our proposed definition of "smaller reporting company" agreed that combining the categories of non-accelerated filers with small business issuers for purposes of the definition provided a convenient and simple approach because it tracks the accelerated filer definition and reduces regulatory complexity.[80] In the Proposing Release, we reasoned that requiring only a public float test for most companies to qualify would provide additional simplicity, consistency and certainty. Eliminating a revenue test also would broaden the category of eligible companies. Our decision to focus on a company's non-affiliate common equity market capitalization or "public float" was also consistent with the Commission's current regulatory standards for purposes of Form 10–K, Form S–3, and the accelerated filer definition. Setting the public float ceiling at $75 million for smaller reporting companies further aligns the smaller reporting company definition with the non-accelerated filer definition.

The Advisory Committee recommended that we require companies to determine eligibility based on total equity market capitalization rather than public float. Although the Advisory Committee acknowledged that the Commission has historically and consistently used public float as a measurement in analogous regulatory contexts, it stated that equity market capitalization would better measure total financial exposure to investors.[81] The Advisory Committee recommended extending the Commission's non-financial scaled disclosure requirements, covering disclosure and reporting, to companies in the lowest 1% of market capitalization. Some of the comment letters we received on the Proposing Release agreed with the Advisory Committee equity market capitalization preference, stating that it was simpler and more widely understood than the calculation of public float. The majority of comment letters supported our proposals to require a public float standard only, agreeing we should require a revenue test only if a company is unable to calculate public float.

Several comment letters opposed increasing the public float ceiling to a level higher than $75 million.[82] One comment letter explained that because smaller companies typically do not have a large analyst following, financial information provided by the company takes on greater importance in communicating results to investors.[83] Another letter noted that to balance protecting investors and promoting capital formation by small businesses, "reduced" disclosures should be limited to those public companies with relatively limited and less complex operations.[84] Most comment letters, however, supported a higher public float ceiling than $75 million.[85] Some of these comment letters argued that many companies with a public float greater than $75 million are still quite small. Several commenters suggested that the Commission provide scaled regulation to companies with up to $787 million in equity market capitalization, as they seemed to believe the Advisory Committee had recommended.[86]

We are adopting, as proposed, a definition for "smaller reporting companies" that requires companies to have a public float of less than $75 million. We believe this standard is appropriately scaled in that it reduces costs to smaller companies caused by unnecessary information requirements, consistent with investor protection.

As adopted, the definition will make eligibility for smaller reporting company status contingent solely on public float for most companies. Alternatively, for companies that are unable to calculate public float, we are, as proposed, providing a revenue test. If a company has no common equity outstanding or no market price for its outstanding common equity exists at the time of its eligibility determination, the company would qualify as a smaller reporting company if it had less than $50 million in revenues in the last fiscal year. This is a departure from the dual eligibility test under the Regulation S–B system, which required separate calculations under public float and annual revenues. By eliminating the revenue test for most companies, the new definition of smaller reporting company simplifies and streamlines the definition while expanding the number of companies eligible to qualify.

As adopted, Item 10(f) of Regulation S–K will set forth the definition for "smaller reporting company." We are further streamlining the definition and clarifying technical inconsistencies in the Proposing Release. We are also modifying the proposed introduction of Item 10, which indicated that smaller reporting companies would be permitted to choose to comply with either the requirements applicable to smaller reporting companies or the requirements applicable to other companies. Companies may make a choice on most of the scaled disclosure item requirements, unless the requirements for smaller reporting companies specify that smaller reporting companies must comply with the smaller reporting company requirements.[87] If the item requirement does not require specific compliance, then the smaller reporting company will be permitted to choose scaled or standard disclosure requirements.

1. Eligibility and Exclusions

Currently, under Item 10 of Regulation S–B, small business issuer eligibility is limited to U.S. and Canadian issuers. This has been the case since 1992, when we adopted Regulation S–B and its associated forms and maintained eligibility for small business issuer status for Canadian companies because these companies had been able to use the Form SB–2 precursor, Form S–18. As adopted, we are expanding eligibility for smaller reporting company status to non-U.S.

[79] See Section IV below on compliance dates.

[80] See, *e.g.*, Letters from PricewaterhouseCoopers and E&Y.

[81] Advisory Committee Final Report 19.

[82] See Letters from PricewaterhouseCoopers and E & Y.

[83] See Letter from PricewaterhouseCoopers.

[84] See Letter from E&Y.

[85] See, *e.g.*, Letters from SBA Advocacy Office and ABA.

[86] The Advisory Committee recommended extending the Commission's scaled disclosure regime to the lowest 6% of total U.S. equity market capitalization, which would have included companies with less than $787 million in market capitalization as of March 31 and June 10, 2005. But the Advisory Committee only identified the rules on form and content of financial statements in Item 310 of Regulation S–B as appropriate for application to that category of companies. The Advisory Committee recommended extending the Commission's other scaled disclosure rules, covering disclosure and reporting, to companies in the lowest 1% of market capitalization, which, as explained in the Proposing Release at page 16 [72 FR 39673], is essentially the same group and proposal contained in the Proposing Release—reporting companies with less than $75 million in public equity float—which we are adopting with few changes today. As calculated from data obtained from Thomson Financial (Datastream), the overlap between reporting companies with $128 million in market capitalization and reporting companies with $75 million in public float is approximately 98%.

[87] See the discussion of Item 404 at the end of Part III.C.2.

companies using domestic company forms. Foreign companies will qualify as smaller reporting companies if they are eligible to file on a form that permits disclosure based on the standards for smaller reporting companies, such as Forms S–1, S–3, S–4, 10–Q, and 10–K. Companies filing on forms available only to "foreign private issuers," such as Forms F–1, F–3, F–4, and 20-F, will be ineligible for the smaller reporting company scaled disclosure requirements.

Several commenters objected to the proposal requiring that Canadian and other foreign private issuers provide financial statements prepared according to U.S. GAAP if they want to use the scaled rules available to smaller reporting companies, which they may use only if they file on a form available to U.S. domestic companies. Generally, these comment letters stated that the proposals would eliminate an accommodation already enjoyed by Canadian companies filing on Form SB–2. Currently, Canadian companies are permitted to provide Canadian GAAP financial statements that are reconciled to U.S. GAAP on domestic forms. Some of the comment letters urged that we consider allowing all foreign private issuers to provide their own country's GAAP with U.S. GAAP reconciliation.

To the extent that a foreign company qualifies as a smaller reporting company, it may make filings with us on forms available to domestic U.S. companies if it presents financial statements pursuant to U.S. GAAP. We continue to believe that because we are extending eligibility for scaled disclosure on domestic forms to all foreign issuers, it is important to require that this significantly larger group of foreign filers provide financial data in accordance with U.S. GAAP on domestic forms at this time. Other than in limited situations, foreign filers using domestic forms are required to prepare their financial statements in accordance with U.S. GAAP. Unlike our filing forms that are specifically designed for foreign private issuers that permit the use of financial statements prepared in accordance with bases of accounting other than U.S. GAAP so long as U.S. GAAP reconciling information is presented, the disclosure and other requirements under our domestic filing forms do not contemplate the use of accounting principles other than U.S. GAAP. We believe eligible foreign registrants that choose to avail themselves of the option to provide scaled disclosure should comply fully with the scaled disclosure and financial statement presentation requirements applicable to domestic issuers.[88] Finally, the regulatory scheme for foreign private issuers on the "F" forms is specifically tailored to address their special circumstances, and we believe the scheme provides the accommodations most useful to these companies.

We will continue to exclude investment companies, including business development companies, and asset-backed issuers from eligibility for scaled treatment under our rules for smaller reporting companies. We requested comment on these exclusions and received none.

2. Determination Dates

The smaller reporting company determination dates we are adopting today are based on three categories of companies: reporting companies with a public float, non-reporting companies filing a registration statement, probably an initial registration statement, under either the Securities Act or the Exchange Act, and reporting or non-reporting companies without a public float.[89] We are amending the definition of smaller reporting company to remove the reference to an issuer having "no significant public common equity outstanding," based on a commenter's belief that it was confusing. Instead, the definition will indicate that in the case of an issuer whose public float as calculated under the definition was zero, most likely because the issuer had no public common equity outstanding or no market price for its common equity existed, the issuer must have had annual revenues of less than $50 million in its last fiscal year.

In the case of a reporting company, we are requiring the same public float calculation currently used to determine accelerated filer status, $75 million in public float computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity in the principal market for the common equity.

a. Reporting Companies

To determine smaller reporting company eligibility, reporting companies will follow the accelerated filer determination date in Rule 12b-2 under the Exchange Act—the last business day of a company's second fiscal quarter.[90] We believe this approach simplifies regulation and promotes consistency and uniformity with current Commission rules. The public float of a reporting company will be calculated by using the price at which the shares of its common equity were last sold or the average of the bid and asked prices of such shares in the principal market for the shares as of the last business day of the company's second fiscal quarter, multiplied by the number of outstanding shares held by non-affiliates. We are adopting, as proposed, a rule providing that if a reporting company determines it qualifies as a larger reporting company rather than a smaller reporting company on the last day of its second fiscal quarter, it will be required to comply with the larger company disclosure standards when it files its first quarterly report in the fiscal year following the fiscal year of the determination date. We are permitting larger reporting companies, however, to opt for the scaled disclosure requirements beginning with the Form 10–Q covering the second fiscal quarter corresponding to the measurement date establishing eligibility as a smaller reporting company.[91]

b. Non-Reporting Companies Filing an Initial Registration Statement

Companies determining eligibility in connection with the filing of their initial registration statement with the Commission will have to choose a date within 30 days of filing to determine eligibility.[92] Under Regulation S–B, we had required companies to choose a public float calculation during a 60-day window before the filing. We believe requiring a 30-day window will lead to more accuracy and less uncertainty for filers, Commission staff, and investors.

The calculation methodology we are adopting for non-reporting companies varies slightly from the Regulation S–B standard we are rescinding. The Regulation S–K standards will require computing public float based on three components:

- Estimated offering price per share at the time of filing the registration statement;

[88] We have published a concept release on whether U.S. companies should be permitted to use International Financial Reporting Standards as published by the International Accounting Standards Board in their filings with the Commission. If we proceed with proposed rules in this area, we may consider the impact of any proposal on filers that use scaled disclosure. See Release No. 33–8831 (Aug. 7, 2007) [72 FR 45600].

[89] See new Item 10(f) of Regulation S–K.

[90] New Item 10(f)(2)(i) of Regulation S–K explains how the determination dates work for companies already filing reports under the Exchange Act.

[91] See Section III.E.2.d below, explaining how a company enters and exits the smaller reporting company disclosure status.

[92] See new Item 10(f)(1)(ii) of Regulation S–K.

• Number of shares of common stock outstanding that are held by non-affiliates before the offering; and
• Number of shares of common stock to be sold at the estimated offering price.

As adopted, the rule will require that non-reporting companies base the calculation on the estimated number of registered shares for offering to the public. For example, as we illustrated in the Proposing Release, a company that registers 7,000,000 shares in its initial public offering will be required to add that number to the total number of shares held by non-affiliates before the offering. If a company has 25,000,000 shares of common stock outstanding held by non-affiliates before the offering, it would add the 7,000,000 and 25,000,000 shares of common stock. The result would mean that the 32,000,000 shares of common stock outstanding would be multiplied by the estimated offering price per share in the initial public offering.

One commenter raised questions regarding the proposed method of calculation.[93] This commenter noted that the estimated public offering price and the number of shares being offered tends to change during the time between the initial filing of the registration statement and the final prospectus. The uncertainty raised by the final estimated public offering price and number of shares being offered caused the commenter to question whether an issuer would be required to switch midway through the process from using smaller reporting company disclosure standards to using more extensive regular disclosure standards. Conversely, this commenter noted that if the price range and/or the number of shares being offered decreased, the issuer will have satisfied a more extensive disclosure standard than it turns out it was required to satisfy.

We considered these comments, and believe it is appropriate to provide initial public offering registrants the option to recalculate their public float at the time the company completes the initial public offering. Our intention in providing this flexibility is to permit (but not require) these issuers to recalculate their eligibility based on the results of the initial public offering for purposes of filing the next periodic report. For example, if an issuer files an initial public offering registration statement under the Securities Act based on the larger company Regulation S–K item requirements but then determines after the close of the initial public offering that its public float is below $75 million, then this issuer would be a smaller reporting company and would be eligible to provide scaled disclosure in the first periodic report due after the initial public offering registration statement was declared effective.[94]

To address the commenter's concern that a smaller reporting company would be required to transition its disclosure to the larger company requirements if its public float rose above $75 million during the pre-effective stage of the filing, we are clarifying that this would not be the case if the issuer made a bona fide eligibility determination at the time it filed the initial public offering registration statement. The issuer will continue to be a smaller reporting company until its next annual determination date—the end of its second fiscal quarter.

With regard to a company's initial registration statement under the Exchange Act covering a class of securities, the company would calculate its public float as of a date within a 30-day window of the registration statement being filed. Because such an Exchange Act registration statement would not directly affect the issuer's public float, if an issuer that files such an Exchange Act registration statement does not have a public float or its public float cannot be calculated because there is no market price for the issuer's equity securities, the issuer's eligibility for the scaled disclosure would be based on its revenue, as proposed.[95]

c. Alternative Revenue Test for Reporting and Non-Reporting Companies

As we stated in the Proposing Release, situations may arise in which a reporting company would be unable to calculate public float because it has no public common equity outstanding or no market price for its common equity exists. As adopted, the definition provides a third eligibility category to qualify for smaller reporting company status—companies unable to calculate a public float. To qualify as smaller reporting companies, this group of companies will be required to have annual revenues of less than $50 million during the last fiscal year before filing the registration statement.[96]

d. Entering and Exiting Smaller Reporting Company Status

The rules we are adopting on entering and exiting smaller reporting company status in Item 10 of Regulation S–K are less restrictive than the Regulation S–B requirements of Item 10. Item 10 of Regulation S–B currently requires issuers to calculate eligibility based on public float and revenue levels for two consecutive fiscal years. The Regulation S–B system had a significantly longer transition period to enter or exit the smaller company disclosure system.

We are adopting transition rules for entering and exiting smaller reporting company status that track the accelerated filer definition. The Proposing Release suggested that the accelerated filer transition rules were the same as the smaller reporting company transition requirements to move back and forth from larger company disclosure standards to smaller reporting company standards. One comment letter requested clarification, pointing out that accelerated filers are required to change to their new status when determining the due date of the annual report covering the year of the status change, but, as proposed, the smaller reporting company determination would not take effect until the first fiscal quarter of the next fiscal year.

As adopted, the rules provide that a larger reporting company that determines it is a smaller reporting company as of the last business day of its most recently completed second fiscal quarter is permitted to transition to the scaled disclosure requirements in the Form 10–Q quarterly report corresponding to the determination date's second fiscal quarter rather than, as proposed, the following fiscal year's first quarterly report. A smaller reporting company required to transition to the larger reporting system after its determination date calculation will not be required to satisfy the larger reporting company disclosure requirements until the first quarter after the determination date fiscal year.[97]

To illustrate, a larger reporting company with a fiscal year end of December 31, 2008 that qualified as a smaller reporting company on the last business day of its most recently completed second fiscal quarter in 2008 would be able to provide scaled disclosure beginning with the Form 10–Q for the same second fiscal quarter in which the company determined its eligibility, which would be due in August 2008. Conversely, a smaller reporting company with a fiscal year end of December 31, 2008 that is required to transition out of the scaled disclosure system into the larger company disclosure system will be required to do so beginning with the

[93] See Letter from ABA.

[94] See new Item 10(f)(2)(ii) of Regulation S–K.

[95] See new Item 10(f)(1)(iii) of Regulation S–K.

[96] *Id.*

[97] See new Item 10(f)(2)(i) of Regulation S–K.

Form 10–Q for the first fiscal quarter of 2009, which would be due in May 2009.

As adopted, once an issuer fails to qualify for smaller company status, it will remain unqualified unless it determines that its public float, as calculated in accordance with the definition, was less than $50 million as of the last business day of its second fiscal quarter. Where an issuer does not have a public float or no public market for its common equity securities exists and it has less than $50 million in revenue, it will qualify to use the scaled disclosure item requirements until it exceeds $50 million in annual revenue. Once such an issuer fails to qualify as a smaller reporting company because its revenues exceed $50 million, that issuer will not become eligible for smaller reporting company status until it has annual revenues of less than $40 million in its last fiscal year.[98]

F. Miscellaneous[99]

1. Indexing for Inflation

Many comment letters favored the inflation adjustments to the public float levels and revenue ceilings in the definition of smaller reporting company, but noted that the accelerated filer definition also should be indexed in order to keep these two categories aligned. We are not adopting the indexing proposal, but will consider whether these suggestions should be the subject of a future rulemaking project to collectively index several thresholds in current Commission rules.

2. Eliminating Transitional Small Business Issuer Format

We are eliminating the transitional small business issuer format, as proposed. No commenters objected to this proposal.

3. Checking the "Smaller Reporting Company" Box

A company that qualifies as a smaller reporting company based on the appropriate eligibility test under the definition will be required to check the "smaller reporting company" box on the registration statement or periodic report filed, whether or not it chooses to rely on the scaled disclosure standards of the amended Regulation S–K requirements. Several comment letters supported this proposal.[100]

[98] See new Item 10(f)(2)(iii) of Regulation S–K. 17 CFR 229.10(f)(2).

[99] In addition to the matters discussed in this release, we are amending a number of rules to eliminate references to Regulation S–B and the SB forms and to make other technical changes, such as providing the Commission's current mailing address.

[100] See, *e.g.*, Letters from CAQ and ABA.

IV. Compliance Dates

Transition for Current Small Business Issuers. We are providing current small business issuers the option to file their next annual report for a fiscal year ending on or after December 15, 2007 on either Form 10–KSB or Form 10–K. A small business issuer may continue to file its periodic reports using Regulation S–B and the "SB" forms until its next annual report is filed. After a small business issuer files that next annual report, subsequent periodic reports must be filed on a form that does not have the "SB" designation. This will provide an optional transition period for companies that were small business issuers as of the effective date.

As a result of this transition period, Regulation S–B, Form 10–QSB, and Form 10–KSB need to be maintained while eligible small business issuers may continue to use them. Accordingly, while most of the amendments are effective on February 4, 2008. Form 10–QSB will not be removed until October 31, 2008 and Regulation S–B and Form 10–KSB will not be removed until March 15, 2009.

We are making numerous changes to rules and forms to implement these rule amendments, including replacing references to small business issuers with references to smaller reporting companies. During the optional transition period, small business issuers have the same reporting obligations as they had before these rule amendments, except to the extent that they voluntarily move to the new smaller reporting company system before being required to do so.

The "SB" Securities Act and Exchange Act registration statement forms, SB–1, SB–2, and 10–SB, will be rescinded on the effective date. Companies filing a registration statement after this date will be required to file on the appropriate form without an "SB" designation. If a registration statement was filed on an "SB" form before the effective date, and the company seeks to amend it after the effective date, the company must file the amendment on a correct form without an "SB" designation, but may continue to use the disclosure format and content based on the "SB" form until six months after the effective date.[101]

General Transition Provisions. Companies that qualify as smaller reporting companies after the effective date, whether or not they currently are small business issuers, will have the option to comply with the scaled disclosure item requirements for smaller reporting companies in their registration statements and periodic reports filed after the effective date. To determine their status after the effective date, reporting companies will refer to their most recent second fiscal quarter to calculate public float. In these cases, reporting companies have already calculated public float for purposes of determining accelerated filer status and, therefore, no additional computation is necessary. Current small business issuers will be deemed to qualify as smaller reporting companies and need not make this calculation. Companies that recently became reporting companies before the effective date, but have not yet had a completed second fiscal quarter, will base eligibility on the public float calculated after the initial public offering. In all cases, companies that qualify for smaller reporting company status will continue to have this status until they make their annual determination at the end of the second fiscal quarter.

[101] For example, a company that filed on Form SB–2 before the effective date would be required to file any pre-or post-effective amendments on Form S–1, but would be able to maintain the item requirement format of its Form SB–2 for up to six months after the effective date.

V. Paperwork Reduction Act

A. Background

The amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[102] As discussed in the Proposing Release, we submitted a request for approval of the "collection of information" requirements contained in the proposed amendments to the Office of Management and Budget in accordance with the PRA.[103] Some of the revisions that we are making to the original proposal affect these collections of information, but the revisions do not affect the burden estimates that we submitted to the OMB in connection with the Proposing Release. The titles of the collections of information are:[104]

(1) "Regulation S–B" (OMB Control No. 3235–0417);

(2) "Regulation S–K" (OMB Control No. 3235–0071);

(3) "Regulation C" (OMB Control No. 3235–0074);

(4) "Form SB–1" (OMB Control No. 3235–0423);

[102] 44 U.S.C. 3501 *et seq.*

[103] 44 U.S.C. 3507(d); 5 CFR 1320.11.

[104] The paperwork burden from Regulation S–K and S–B is imposed through the forms that are subject to the requirements in those regulations and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to Regulations S–K and S–B.

(5) "Form SB–2" (OMB Control No. 3235–0418);
(6) "Form S–1" (OMB Control No. 3235–0065);
(7) "Form S–3" (OMB Control No. 3235–0073);
(8) "Form S–4" (OMB Control No. 3235–0324);
(9) "Form S–8" (OMB Control No. 3235–0066);
(10) "Form S–11" (OMB Control No. 3235–0067);
(11) "Form 1–A" (OMB Control No. 3235–0286);
(12) "Form 10" (OMB Control No. 3235–0064);
(13) "Form 10–SB" (OMB Control No. 3235–0419);
(14) "Form 10–K" (OMB Control No. 3235–0063);
(15) "Form 10–KSB" (OMB Control No. 3235–0420);
(16) "Form 8–K" (OMB Control No. 3235–0060);
(17) "Form 8–A" (OMB Control No. 3235–0056);
(18) "Form 10–Q" (OMB Control No. 3235–0070);
(19) "Form 10–QSB" (OMB Control No. 3235–0416);
(20) "Form 11–K" (OMB Control No. 3235–0082); and
(21) "Form SE" (OMB Control No. 3235–0327).

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 hours and costs associated with preparing disclosure, filing information required by forms, and retaining records constitute reporting and cost burdens imposed by collection of information requirements. The information collections related to annual, periodic, and current reports and registration statements will be mandatory for larger reporting companies; some of the requirements, however, will be voluntary for smaller reporting companies. There is no mandatory retention period for the information disclosed, and the information disclosed will be made publicly available on the Commission's EDGAR filing system or in the Commission's public reference room in the case of a Form 1–A or Form SE filing.

For purposes of the Paperwork Reduction Act, as adopted, the burden changes are insignificant for companies that currently meet the small business issuer definition. We did not receive any comment letters providing data or other information concerning legal or accounting costs that would cause us to change our view.

We adopted existing Regulation S–B to provide an integrated disclosure system for small business issuers and Regulation S–K to provide an integrated disclosure system for larger reporting companies. Forms SB–1, SB–2, S–1, S–3, S–4, S–8, and S–11 are registration statements that are prepared by eligible issuers to provide investors with the information they need to make informed investment decisions in registered offerings. Form 1–A is the form required when a non-reporting company seeks to use the Regulation A exemption from the Securities Act. Regulation A is a conditional small issues exemption available to eligible issuers. Forms 10, 10–SB, 10–K, 10–KSB, 8–K, 8–A, 10–Q, 10–QSB, and 11–K are forms that set forth disclosure requirements for companies filing reports with the Commission pursuant to the Exchange Act. Finally, Form SE is a notice to the Commission by an EDGAR electronic filer that it is filing paper format exhibits.

Consistent with the information that we previously submitted to the OMB we estimate that the total increase in burden hours for Form 10–K, Form 10–Q, Form 10, Form S–1, and Form S–11 will be 7,857,948 and that the total increase in cost will be $1,114,044,563. These increases are offset by the total decrease in burden hours for Form 10–KSB, Form 10–QSB, Form 10–SB, Form SB–1, and Form SB–2 of 7,853,542.5 burden hours and a total decrease in cost of $1,108,787,363. The net difference between the increase and decrease is an increase of 4,405.5 burden hours and a cost of $5,257,200.[105] The net increase of 4,405.5 burden hours and costs of $5,257,200 is outweighed by the possible decrease of 356,290 burden hours and costs of $47,479,000 for the 1,581 newly eligible smaller reporting companies.

The table below sets forth our current hourly and cost burden estimates for Forms 10–K, 10–Q, 10, S–1, and S–11 after these amendments.[106]

Form	Burden hours	Annual costs
10–K	23,430,170	$3,124,022,763
10–Q	4,583,290	513,829,600
10	11,725	14,070,000
S–1	167,912	201,493,800
S–11	37,069	44,484,000

B. Summary of Comment Letters and Revisions to the Proposals

We requested comment on the Paperwork Reduction Act analysis contained in the Proposing Release. One commenter[107] stated that the substitution of the Regulation S–K disclosure framework would only be beneficial to small issuers if there were no increase in legal and accounting costs. The commenter noted that the Commission does not guarantee that moving the current Regulation S–B disclosure requirements into Regulation S–K will be more cost effective. The commenter also disagreed with the Commission's average costs estimates, stating that costs vary between New York City and smaller communities throughout the country. Several other commenters[108] raised similar concerns that costs may increase as a result of these proposals. None of these commenters, however, provided any data or other information to show that legal and accounting costs will increase.

Our estimates of the average number of hours each entity spends completing the affected forms, allocation of burden between outside counsel and internal personnel, and the average hourly rate for outside securities counsel were obtained by contacting a number of law firms and other persons regularly involved in completing the forms and reflect regional variances.

[105] As explained in the Proposing Release, the net difference arises primarily from the increased burden on real estate companies that previously could use Form SB–2, but under these amendments would now be required to use Form S–11, the form tailored to issuers in the real estate industry.

[106] Collection affected by the rulemaking, but not included in the table, were either rescinded or their estimated burden was not changed.

[107] See Letter from the IASBDA.

[108] See Letters from SBA Office of Advocacy, Center for Capital Markets (U.S. Chamber of Commerce), and Prof. James Angel.

Commenters who raise a concern about the transition from Regulation S–B and the "SB" forms to Regulation S–K and the "SK" forms wanted us to consider a phase-in period. The amendments, as adopted, will allow a former "SB" filer a choice to file its first annual report on Form 10–K or Form 10–KSB during the transition period, but thereafter it will no longer be able to use the "SB" forms. For example, after the effective date of these amendments, an eligible calendar year company will be able to choose to file its first annual report on Form 10–K or Form 10–KSB. An eligible non-calendar company may file its quarterly reports on Form 10–Q or Form 10–QSB until its next annual report due after the effective date of the amendments. That next annual report may be filed on Form 10–K or Form 10–KSB, but thereafter the company may no longer use the "SB" forms.

We also received comment letters[109] expressing concern that legal and accounting costs will increase as a result of the proposals. We do not believe that legal or accounting costs should increase since, small business issuers generally will be providing the same disclosure as currently filed. In the case of a newly eligible smaller reporting company that previously filed under Regulation S–K using "SK" forms, the disclosure burden will decrease if the company elects to use the scaled disclosure available to smaller reporting companies. Otherwise the issuer may also file roughly the same information as it does currently. The Commission is providing an index to the scaled disclosure requirements in new Item 10(f) of Regulation S–K and plans to publish a brochure to assist smaller reporting companies in transitioning to the new scaled disclosure requirements.

In response to these comments, we decided to revise four items that were part of the original proposal.

First, we are persuaded by the letters of the public accounting firms[110] that Item 310 should be placed in a separate section within Regulation S–X, instead of creating a new Item 310 within Regulation S–K. We agree that having all financial information requirements within one Regulation seems logical and appropriate.

Second, several commenters[111] cite the Advisory Committee's recommendation to require two years of balance sheets to go along with audited statements of income, cash flows, and changes in stockholders' equity for each of the latest two fiscal years, as required by Regulation S–X. We have been convinced by the comment letters and the Advisory Committee's report that two years of balance sheets will provide investors with valuable comparative information with minimal additional costs.

A third revision will allow a smaller reporting company to provide its financial statements on an "a la carte" basis like the other non-financial statement disclosure items. This revision differs from the Proposing Release, where the Commission proposed to require a smaller reporting company to provide its financial statements on the basis of Item 310 of Regulation S–K or Regulation S–X for an entire fiscal year, and not be permitted to switch back and forth from one to the other in different filings within a single fiscal year. A commenter[112] pointed out that this inflexibility within the "a la carte" system and requiring a smaller reporting company to "lock in" to one approach or the other when it files its first Form 10–Q for a year seems contrary to the proposed "a la carte" approach. As we proposed, if a smaller reporting company wanted to preserve the option of following the smaller reporting company rules in its filings, it perhaps could not provide the additional information required of larger companies in its first quarterly report or risk losing the ability to use the scaled disclosure requirements for the year. As adopted, we will allow "a la carte" disclosure for financial statements so that smaller reporting companies can provide additional information over and above the financial disclosure required by Article 8 of Regulation S–X.

The fourth revision requested by commenters[113] is to amend Rule 3–05 of Regulation S–X. Rule 3–05 provides the requirements for Financial Statements of Businesses Acquired or to be Acquired, and paragraph (b)(2)(iv) allows issuers to omit the financial statements for the earliest of three fiscal years required if the net revenues of the business to be acquired are less than $25 million. We agree with the commenters that the $25 million ceiling was related to the small business issuer definition, and since we are creating a new definition of smaller reporting company to replace the small business issuer definition that contains a $50 million revenue ceiling, it is appropriate to raise the Rule 3–05 ceiling to $50 million.

For purposes of the Paperwork Reduction Act, as adopted, the burden changes are insignificant for companies that currently meet the small business issuer definition. We did not receive any comment letters providing data or other information concerning legal or accounting costs that would cause us to change our view.

VI. Cost-Benefit Analysis

A. Background

We have adopted amendments to eliminate our "SB" forms and move the Regulation S–B item requirements into amended Regulations S–K and S–X. The amendments will amend all relevant rules and forms under the Securities Act, the Exchange Act, and the Trust Indenture Act to replace the existing references to "small business issuer" to reference to "smaller reporting company." The new "smaller reporting company" definition will replace the current "small business issuer" eligibility standards to allow a greater number of public companies to provide disclosure based on the scaled disclosure requirements. The new definition for smaller reporting company will include companies with a public float of less than $75 million and will therefore be a significant increase from the $25 million levels for public float and revenue under the current "small business issuer" definition. For companies without a public float, we are requiring an alternative ceiling of below $50 million in revenue in the previous year.

B. Summary of Rules

As noted above, the amendments will eliminate the separate disclosure framework of Regulation S–B by moving those requirements into Regulation S–K and the financial disclosure into Regulation S–X. The new definition for "smaller reporting company" will expand the number of filers that will qualify to provide disclosure under the scaled item requirements of the current Regulation S–B framework. Smaller reporting companies and non-accelerated filers will both be subject to Regulation S–K, but smaller reporting companies will have the option to provide disclosure on an item-by-item basis according to the scaled item requirements of amended Regulation S–K. The newly adopted amendments will allow eligible smaller reporting companies to do the following:

- Provide three years rather than five years of business development activities, and not be required to

[109] See Letters from IASBDA, SBA Office of Advocacy, Center for Capital Markets (U.S. Chamber of Commerce), and Prof. James Angel.

[110] See Letters from Grant Thornton, BDO, KPMG, PricewaterhouseCoopers LLP, and CAQ.

[111] See Letters from Grant Thornton, BDO, PricewaterhouseCoopers, and CAQ.

[112] See Letter from BDO.

[113] See Letters from Grant Thornton, KPMG, and CAQ.

provide segment disclosure under amended Item 101 of Regulation S–K;

- Not provide disclosure required by Items 301 and 302 relating to selected financial data and supplementary financial information;
- Provide more streamlined disclosure for management's discussion and analysis of financial condition and results of operations found in Item 303 by requiring only two years of analysis if the company is presenting only two years of financial statements, instead of three years currently required of larger companies;
- Provide audited balance sheets, audited statements of income, cash flows and changes in stockholders' equity for each of the last two fiscal years in new Article 8 of Regulation S–X instead of an audited balance sheet as of the end of the last two fiscal years and audited statement of income, cash flows and changes in stockholders' equity for each of the last three fiscal years as required by other parts of Regulation S–X;
- Provide disclosure about the chief executive officer and two other highly compensated executive officers only, rather than the information for the Chief Executive Officer, Chief Financial Officer and three other executive officers required of larger registrants;
- Not provide a Compensation Discussion and Analysis required of larger reporting companies;
- Provide only three of the seven tables (Summary Compensation, Outstanding Equity Awards, and Director Compensation) required of larger reporting companies; and
- Not provide disclosure regarding the company's policies and procedures for approving related person transactions. Smaller reporting companies will be required, however, to provide disclosure regarding a transaction where the amount exceeds the lesser of 1% of a smaller company's total assets or $120,000. They also will be required to provide additional specific information about underwriting discounts and commissions and corporate parents. Additionally, smaller reporting companies will be required to provide disclosure regarding promoters and certain control persons.

C. Benefits

As discussed above, the amendments adopted today will promote regulatory simplification by eliminating all "SB" forms and consolidating the Regulation S–B disclosure item requirements into Regulation S–K. The integrated Regulation S–K regime will enable a larger category of public companies to have more flexibility in tailoring disclosure standards to fit the need of investors and the realities of their company. We believe investors will benefit from the scaled disclosure amendments to Regulation S–K because the amendments allow issuers to make disclosure based on the size, business operations, and financial condition of the smaller reporting company. Allowing smaller reporting companies to choose scaled disclosure on an item-by-item basis allows companies to tailor their disclosure to reduce costs and thereby benefit shareholders. The increased public float standards in the definition of smaller reporting company will allow more companies the flexibility to choose between scaled item requirements such as financial statement information and executive compensation disclosure. By doing so, these newly eligible companies can appropriately determine the information needs of their investors in light of the costs of providing that information. Thus, moving the scaled disclosure requirements of Regulation S–B into Regulations S–K and S–X will provide regulatory flexibility that gives companies the ability to allocate resources to increased disclosure only in instances where they believe doing so would provide a benefit to shareholders.

Eliminating the "SB" forms will mitigate any perceived notion that smaller companies are currently reporting under a completely different and inferior disclosure framework. If current Regulation S–B filers are inappropriately penalized by the market for this perceived notion, as some commenters have suggested, then integrating Regulation S–B and Regulation S–K should benefit shareholders by decreasing the company's cost of capital. To the extent that these amendments eliminate the perceived notion of an inferior disclosure framework, we believe that these amendments will increase the benefits and in some instances, reduce the costs of being a public company and will benefit the capital markets by encouraging private companies to consider offerings that are registered under the Securities Act or to enter the Exchange Act reporting system.

As amended, an integrated disclosure system for all companies filing forms using Regulation S–K will promote efficiency because practitioners and investors will refer to one disclosure framework. Filers and their practitioners will have one consolidated regulation to find all relevant disclosure item requirements, which will reduce complexity and improve regulatory efficiencies. Although some commenters [114] were concerned that finding the scaled disclosure provisions in Regulation S–K would be inefficient, the index of scaled disclosure in new Item 10(f) should mitigate this concern. For some smaller reporting companies, legal and accounting costs may decrease.

As discussed earlier in this release, we estimate that approximately 1,581 new companies will have an opportunity to use the restructured scaled disclosure requirements for smaller reporting companies and may experience significant burden and cost savings if they use them.[115] We assume that approximately 50% of the 1,581 companies (or 790 companies) will use the scaled disclosure requirements. For purposes of the Paperwork Reduction Act, we estimate that these 790 smaller reporting companies may save 356,290 internal burden hours and costs in the amount of $47,479,000 by using the scaled disclosure requirements. [116]

Finally, another benefit to smaller reporting companies is that by using Registration Statement Form S–1, a company may be permitted to incorporate by reference its previously filed periodic reports. We believe that this will result in some cost savings and efficiencies in preparing registration statements for smaller reporting companies.

D. Costs

In our view, the elimination of the "SB" forms and moving the Regulation S–B disclosure standards into Regulation S–K and financial disclosure into Regulation S–X will not significantly increase the costs of complying with the Commission's rules.

The disclosure requirements will not change except in minor ways for current small business issuers that previously

[114] See *e.g.* Letters from Grant Thornton and BDO.

[115] We estimate that 1,227 companies would be newly eligible to use the scaled disclosure available to smaller reporting companies in addition to another 354 companies that currently are eligible for scaled disclosure but do not use it, resulting in a total of 1,581 companies. Approximately 1,227 companies have a public float between $25 and $75 million, in addition to approximately 354 companies with a public float below $25 million that currently use the "SK" forms rather than the "SB" forms.

[116] This estimate of a decrease in the compliance burden by 356,290 hours is based upon 790 responses by companies using regular Regulation S–K disclosure × 1,723 internal hours per company = 1,361,170 hours minus 790 responses by companies × 1,272 internal hours per company = 1,004,880 hours for smaller reporting companies and a decrease in the annual cost by $47,479,000 (574.25 professional hours × $400 per hour = $229,700 cost per response using regular Regulation S–K disclosure × 790 responses minus 424 professional hours × $400 per hour = $169,600 cost per response using the scaled disclosure × 790 annual responses).

filed under Regulation S–B, so we do not anticipate any increase in costs due to the change in disclosure requirements.[117]

Four commenters[118] stated that these proposals may have unintended consequences, such as extra legal and accounting costs. One of these commenters[119] expressed concern that moving the disclosure requirements of Regulation S–B into Regulation S–K would only benefit small issuers if the legal and accounting costs do not increase. The commenter did not provide any data or information to support its position that costs could increase. The amount of disclosure a former small business issuer will provide on the "SK" forms should not increase unless the issuer chooses to provide additional disclosure above the required disclosure. We have added a heading entitled "Smaller Reporting Companies" to Items where scaled disclosure is available for smaller reporting companies. This will alleviate the concern that small issuers need guidance in determining what disclosure requirements apply to them.[120] Thus, we do not believe that there should be any significant additional out-of-pocket costs associated with compliance.

We recognize that some of the 1,581 companies may choose to avail themselves of the scaled disclosure requirements when they have complied with standard Regulation S–K previously. In addition, the amount of disclosure reviewed by the Commission's staff may change for these companies. The staff will now evaluate compliance with Regulation S–K on the scaled disclosure requirements available to smaller reporting companies even if the company previously chose to comply with the larger company Regulation S–K disclosure requirements. If the amount of disclosure and corresponding SEC review under the prior reporting standard was valued by investors, using scaled disclosure may increase a company's cost of capital. Because the differences in smaller and larger company disclosure standards are small, however, we believe that any such costs will be minimal.

Investors may face additional costs in determining whether a newly eligible smaller reporting company has changed the amount of disclosure it provides to investors or whether the company continues to provide the maximum required disclosure. Allowing smaller reporting companies to choose financial statement items on an "a la carte" basis in a quarterly report may create additional costs for investors to determine whether the company has changed the type of disclosure from quarter to quarter. Since smaller reporting companies will be required to check a box indicating they qualify as such, however, investors will be alerted that these issuers are eligible to use the scaled disclosure requirements.

Another possible cost is requiring Canadian issuers, who seek to use the new scaled disclosure requirements, to provide their financial statements using U.S. GAAP rather than home country GAAP reconciled to U.S. GAAP. Based upon the Form 10–KSB filings received from Canadian issuers on the Commission's EDGAR filing system we estimate that under 50 Canadian issuers will be affected by this change. This change could increase audit costs for these companies if they chose to continue to file on the domestic forms which will now require financial statements in accordance with U.S. GAAP. Other cost increases could include staff training, administrative costs, and minor transition costs.

VII. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act requires us to consider the impact that any new rule will have on competition.[121] Section 23(a)(2) also prohibits us from adopting any rule that will impose a burden on competition not necessary or appropriate to carry out the purposes of the Exchange Act.

Furthermore, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act require the Commission to consider whether the action will promote efficiency, competition and capital formation.

We expect that the amendments adopted today will result in regulatory simplification and efficiency by removing the duplicative sections of Regulation S–B and consolidating the scaled item requirements of Regulation S–B, such as executive compensation, into amended Regulation S–K. As adopted, the financial statement requirements for small business issuers previously found in Item 310 will be in a separate section of Regulation S–X. As amended, Regulations S–K and S–X will consolidate these requirements into a simplified framework applicable to all filers that are subject to the reporting requirements of Sections 13 and 15 of the Exchange Act and companies filing registration statements under the Securities Act. To comply with disclosure item requirements, practitioners and companies will no longer need to refer to two disclosure frameworks. Practitioners and companies will benefit from the ease of reference that a single disclosure framework will provide.

It is expected that the amendments will promote capital formation for smaller reporting companies and improve their ability to compete with larger companies for capital. For example, we believe capital formation will be improved by providing flexibility to more smaller reporting companies to tailor their disclosure to their investors' needs. In addition, the costs to raise capital may be reduced to the extent compliance costs, but not benefits, are reduced as a result of the scaled disclosure requirements. If smaller reporting companies allocate the capital they raise and save as a result of our scaled disclosure requirements to business development in an effective manner, these companies will be more competitive. More companies will be able to take advantage of more scaled disclosure item requirements, such as those contained currently in Item 310 and Item 402 of Regulation S–B. Smaller reporting companies that avail themselves of the scaled disclosure requirements will provide tailored disclosure that may better meet the needs of their investors.

VIII. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with the Regulatory Flexibility Act.[122] It relates to amendments to the rules and forms under the Securities Act and Exchange Act, which include a new definition of "smaller reporting company" under Regulation S–K. The new definition will expand the group of smaller companies that qualify to provide disclosure in accordance with the scaled

[117] For current "SB" filers, we estimate the net difference of reporting under Regulation S–K will be an increase of 4,405.5 burden hours and a cost of $5,257,200 for purposes of the Paperwork Reduction Act.

[118] See Letters from IASBDA, SBA Office of Advocacy, Center for Capital Markets (U.S. Chamber of Commerce), and Prof. James Angel.

[119] See Letter from IASBDA.

[120] See Letter from Prof. James Angel.

[121] 15 U.S.C. 78w(a)(2).

[122] 5 U.S.C. 604.

requirements of the current Regulation S–B disclosure framework.

As adopted, a smaller reporting company is defined as a company that meets all of the following criteria: Is not an investment company, an asset-backed issuer, or the majority-owned subsidiary of a parent that was not a smaller reporting company; had a public float of less than $75 million as of the last business day of its most recently completed second fiscal quarter; and in the case of an issuer whose public float was zero, had annual revenues of less than $50 million during its most recently completed fiscal year for which audited financial statements are available on the date of the filing.

The amendments also will eliminate the separate disclosure regime of Regulation S–B by removing all related "SB" forms and merging the Regulation S–B item requirements into Regulation S–K, except for Item 310 (Financial statements) which move into Regulation S–X. The revisions to Regulations S–K and S–X include revising item requirements to offer smaller reporting companies optional disclosure alternatives that are designed to provide flexibility, cost efficiencies and regulatory simplification.

A. Reasons for and Objectives of Amendments

1. The Advisory Committee on Smaller Public Companies Recommended Scaled Federal Securities Regulation for Smaller Companies

In March 2005, the Commission chartered the Advisory Committee on Smaller Public Companies to assess the current regulatory system for smaller companies under the federal securities laws, including the disclosure and reporting requirements applicable to smaller companies, and to make recommendations for changes to improve regulatory conditions for smaller companies.

After receiving public input, the Advisory Committee made three recommendations in the disclosure area, which included making the scaled disclosure accommodations available to small business issuers available to all microcap companies, incorporating Regulation S–B into Regulation S–K, and incorporating Item 310 of Regulation S–B into Regulation S–K or Regulation S–X to make the scaled financial statement accommodations available to a much larger group of smaller companies.

2. Expanding Eligibility for Smaller Company Scaled Regulation Under Amended Regulation S–K

To make the scaled requirements of the Regulation S–B disclosure framework applicable to many more companies, the Advisory Committee recommended revising the definition of "small business issuer" to include a company with a higher public float threshold than the $25 million ceiling currently required in the small business issuer definition found in Item 10 of Regulation S–B.

Although the Advisory Committee did not recommend that we use a public float threshold, the $75 million public float threshold adopted is based on the reference to that number in the accelerated filer definition set forth in Rule 12b–2 of the Exchange Act. To maintain consistency with current regulation, we believe setting a public float threshold based on the current levels established for non-accelerated filers is practical and avoids regulatory complexity.

3. Integrating Substantive Requirements of Regulation S–B Into Regulations S–K and S–X

The overall goal of the rule amendments is to integrate the scaled disclosure requirements of Regulation S–B into Regulation S–K and make these scaled disclosure requirements available to more companies as smaller reporting companies. We believe the amendments will:

- Further the goals of regulatory simplification by eliminating the current Regulation S–B framework as a separate stand-alone disclosure standard for the smallest reporting companies;
- Update the public float threshold and eliminate the revenue threshold restriction in the current "small business issuer" definition to accommodate many more companies that are contemplating an offering registered under the Securities Act or entry into the Exchange Act reporting system;
- Streamline and modernize forms under the Securities Act and the Exchange Act by eliminating all of the "SB" forms; and
- Provide regulatory flexibility by permitting smaller reporting companies to provide the same financial statement information previously found in Item 310 of Regulation S–B into Regulation S–X.

B. Significant Issues Raised by Public Comment

The initial Regulatory Flexibility Act analysis appeared in the Proposing Release. We requested comment on any aspect of the Initial Regulatory Flexibility Act analysis, especially empirical data on the impact on small businesses.

In the Proposing Release we stated that the proposed elimination of Regulation S–B and the "SB" forms will not increase significantly the costs of complying with the Commission's rules. While we still believe this is the case, we received four comment letters [123] expressing concern that the proposals could increase legal and accounting costs. One of these commenters [124] stated that "this type of one-size-fits-all regulation may have unintended consequences such as extra legal and accounting costs." Another commenter [125] stated that the proposals would not increase costs and that the backwards incorporation by reference on Form S–1 would save burden hours and costs.

As stated above, in response to the commenters' concerns about the transition from Regulation S–B and the "SB" forms to Regulation S–K and the "SK" forms, we have added a transition provision for companies that are current "SB" filers. These companies will have the choice of filing their next annual report due after the effective date on either a Form 10–KSB or a Form 10–K. Similarly, they may file any quarterly reports for periods before the next annual report due on either Form 10–QSB or Form 10–Q. Reports filed after the next annual report due may no longer be on the "SB" forms.

C. Small Entities Subject to the Amendments

The amendments will affect small entities, the securities of which are registered under Section 12 of the Exchange Act or that are required to file reports under Section 15(d) of the Exchange Act. The amendments also will affect small entities that file, or have filed, a registration statement that has not yet become effective under the Securities Act and that has not been withdrawn. Securities Act Rule 157 [126] and Exchange Act Rule 0–10(a) [127] define an issuer to be a "small entity" for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year. We believe the amendments will affect some small entities. We estimate that there are

[123] See Letters from IASBDA, SBA Office of Advocacy, Center for Capital Markets (U.S. Chamber of Commerce), and Prof. James Angel.

[124] See Letter from the SBA Office of Advocacy.

[125] See Letter from ABA.

[126] 17 CFR 230.157.

[127] 17 CFR 240.0–10(a).

approximately 1,100 issuers that may be considered small entities.[128] Further, we estimate that virtually all of the 1,100 small entities would be below $75 million in public equity float and will qualify for the scaled disclosure requirements.

D. Reporting, Recordkeeping, and Other Compliance Requirements

As adopted, moving Regulation S–B requirements into Regulations S–K and S–X and rescinding all of the "SB" forms will shift the location of disclosure requirements and will require smaller reporting companies to adapt to new formats in preparing their disclosure for Form S–1. The amendments to Regulation S–K include a new definition for smaller reporting company, which broadens the category of filers preparing disclosure to comply with the scaled item requirements of amended Regulation S–K. Companies with public floats between $25 and $75 million will be included in the class of filers that is eligible to provide disclosure based on the scaled requirements of proposed revisions to amended Regulation S–K. As adopted today, the scope and presentation of information disclosed based on the item requirements of amended Regulations S–K and S–X will differ in a number of significant ways from the current Regulation S–K disclosure framework. Amended Regulation S–K will allow smaller reporting companies to:

- Provide three years rather than five years of business development activities, and not be required to provide segment disclosure under amended Item 101 of Regulation S–K;
- Not provide disclosure required by Items 301 and 302 relating to selected financial data and supplementary financial information;
- Provide more streamlined disclosure for management's discussion and analysis of financial condition and results of operations found in Item 303 by requiring only two years of analysis if the company is presenting only two years of financial statements, instead of the three years currently required of larger companies;
- Provide audited balance sheets, audited statements of income, cash flows and changes in stockholders' equity for each of the last two fiscal years in new Article 8 of Regulation S–X instead of an audited balance sheet as of the end of the last two fiscal years and audited statement of income, cash flows and changes in stockholders' equity for each of the last three fiscal years as required by other parts of Regulation S–X;
- Provide disclosure about the chief executive officer and two other highly compensated executive officers only, rather than the information for the Chief Executive Officer, Chief Financial Officer and three other executive officers required of larger registrants;
- Not provide a Compensation Discussion and Analysis required of larger reporting companies;
- Provide only three of the seven tables (Summary Compensation, Outstanding Equity Awards, and Director Compensation) required of larger reporting companies; and

Not provide disclosure regarding the company's policies and procedures for approving related person transactions. Smaller reporting companies will be required, however, to provide disclosure regarding a transaction where the amount exceeds the lesser of 1% of a smaller company's total assets or $120,000. They also will be required to provide additional specific information about underwriting discounts and commissions and corporate parents. Additionally, smaller reporting companies will be required to provide disclosure regarding promoters and certain control persons. The amendments to Regulation S–K will not generally increase the disclosure requirements for former small business issuers, and could decrease the disclosure required for issuers with public float levels between $25 million and $75 million.

Amended Item 404 of Regulation S–K is the only example where it is possible that the disclosure required for smaller reporting companies will be more extensive than for standard Regulation S–K filers. In addition to a longer time period for required disclosure, as discussed above, Item 404 contains a provision that requires disclosure of transactions with related persons that exceed the lesser of $120,000 or 1% of the average of the smaller reporting company's total assets at the fiscal year end for the last two completed fiscal years. This requirement may be more burdensome to a smaller reporting company if 1% of total assets are less than $120,000. We believe transactions involving related persons are important to disclose, especially for smaller reporting companies, which generally have lower materiality thresholds. We believe these differences are important for the protection of investors. This disclosure issue will only affect smaller reporting companies that have related person transactions.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that will accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposals, we considered the following alternatives:

(a) Establishing different compliance or reporting requirements which take into account the resources available to smaller entities;

(b) The clarification, consolidation or simplification of disclosure for small entities;

(c) Use of performance standards rather than design standards; and

(d) Exempting smaller entities from coverage of the disclosure requirements or any part thereof.

As adopted, our amendments are intended to maintain current disclosure standards for small entities while further expanding the scope of eligibility for companies that elect to comply with the scaled disclosure item requirements currently set forth in Regulation S–B. These changes do not exempt smaller entities from coverage of the disclosure requirements; rather, they provide a greater number of smaller reporting companies the choice to provide scaled disclosure within Regulations S–K and S–X.

As adopted, the new definition for smaller reporting company will eliminate the current $25 million revenue threshold and increase the public float threshold requirement up to $75 million from the $25 million level currently set forth in the small business issuer definition of Regulation S–B. We believe that the $75 million threshold will appropriately result in reduced costs to smaller companies caused by unnecessary information requirements, consistent with investor protection. This is also consistent with our current regulatory system.

We considered alternatives such as including a revenue cap in the new definition of smaller reporting company, but currently believe that only requiring less than $75 million in public float is preferable, given its ease of reference and consistency with current rules under the Securities Act and the Exchange Act. We also seriously considered the comment letters submitted by the public. Some of the letters urged the Commission to use market capitalization instead of public float as a metric to determine eligibility as a smaller reporting company, but

[128] The estimated number of reporting small entities is based on 2007 data including the Commission's internal computerized filing system and Thomson Financials Worldscope database. This represents an update from the number of reporting small entities estimated in prior rulemakings.

again, use of a float test provides more regulatory consistency.

As adopted, we will consolidate, clarify, and simplify our disclosure requirements by moving Regulation S–B into Regulations S–K and S–X. These amendments include a new definition of smaller reporting company, which greatly expands the number of small entities that will qualify to provide disclosure based on the scaled disclosure item requirements of the current Regulation S–B framework. We considered maintaining the Regulation S–B framework and making it available to many more companies, but we were not convinced by commenters that the Commission should not eliminate Regulation S–B and the "SB" forms. We still believe a single disclosure framework will be more cost effective and more efficient. The elimination of the "SB" forms will result in regulatory simplification for smaller entities by requiring all registrants to rely on one set of forms, such as Forms S–1, S–3, 10–K and 10–Q. These forms will include scaled item requirements for smaller reporting companies under the amendments adopted today for Regulations S–K and S–X.

Finally, we considered the use of performance rather than design standards but concluded that, although we allow some tailoring, investors need a basic level of consistency, uniformity and comparability among issuers in order to make appropriate investment decisions.

IX. Statutory Basis and Text of Amendments

The rule amendments described in this release are being adopted pursuant to Sections 6, 7, 10, and 19(a) of the Securities Act, as amended, Sections 12, 13, 14(a), 15(d), and 23(a) of the Exchange Act, as amended, and Section 319(a) of the Trust Indenture Act, as amended.

List of Subjects

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 210, 229, 230, 239, 240, 249, 260, and 269

Reporting and recordkeeping requirements, Securities.

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

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, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78l, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78ll, 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, unless otherwise noted.

■ 2. Amend § 210.3–01 by revising paragraphs (b), paragraph (c) introductory text and (f) to read as follows:

§ 210.3–01 Consolidated balance sheets.

* * * * *

(b) If the filing, other than a filing on Form 10–K or Form 10, is made within 45 days after the end of the registrant's fiscal year and audited financial statements for the most recent fiscal year are not available, the balance sheets may be as of the end of the two preceding fiscal years and the filing shall include an additional balance sheet as of an interim date at least as current as the end of the registrant's third fiscal quarter of the most recently completed fiscal year.

(c) The instruction in paragraph (b) of this section is also applicable to filings, other than on Form 10–K or Form 10, made after 45 days but within the number of days of the end of the registrant's fiscal year specified in paragraph (i) of this section: *Provided,* that the following conditions are met:

* * * * *

(f) Any interim balance sheet provided in accordance with the requirements of this section may be unaudited and need not be presented in greater detail than is required by § 210.10–01. Notwithstanding the requirements of this section, the most recent interim balance sheet included in a filing shall be at least as current as the most recent balance sheet filed with the Commission on Form 10–Q.

* * * * *

■ 3. Amend § 210.3–05 by revising paragraph (b)(2)(iv) to read as follows:

§ 210.3–05 Financial statements of businesses acquired or to be acquired.

* * * * *

(b) * * *

(2) * * *

(iv) If any of the conditions exceed 50 percent, the full financial statements specified in §§ 210.3–01 and 210.3–02 shall be furnished. However, financial statements for the earliest of the three fiscal years required may be omitted if net revenues reported by the acquired business in its most recent fiscal year are less than $50 million.

* * * * *

■ 4. Amend § 210.3–10 by revising paragraphs (h)(3) and (h)(4) to read as follows:

§ 210.3–10 Financial statements of guarantors and issuers of guaranteed securities registered or being registered.

* * * * *

(h) * * *

(3) *Annual report* refers to an annual report on Form 10–K or Form 20–F (§ 249.310 or 249.220f of this chapter).

(4) *Quarterly report* refers to a quarterly report on Form 10–Q (§ 249.308a of this chapter).

* * * * *

■ 5. Amend § 210.3–12 by revising paragraphs (a) and (d) to read as follows:

§ 210.3–12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

(a) If the financial statements in a filing are as of a date the number of days specified in paragraph (g) of this section or more before the date the filing is expected to become effective, or proposed mailing date in the case of a proxy statement, the financial statements shall be updated, except as specified in the following paragraphs, with a balance sheet as of an interim date within the number of days specified in paragraph (g) of this section and with statements of income and cash flows for the interim period between the end of the most recent fiscal year and the date of the interim balance sheet provided and for the corresponding period of the preceding fiscal year. Such interim financial statements may be unaudited and need not be presented in greater detail than is required by § 210.10–01. Notwithstanding the above requirements, the most recent interim financial statements shall be at least as current as the most recent financial statements filed with the Commission on Form 10–Q.

* * * * *

(d) The age of the registrant's most recent audited financial statements included in a registration statement filed under the Securities Act of 1933 or filed on Form 10 (17 CFR 249.210) under the Securities Exchange Act of 1934 shall not be more than one year and 45 days old at the date the

registration statement becomes effective if the registration statement relates to the security of an issuer that was not subject, immediately before the time of filing the registration statement, to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

■ 6. Amend § 210.3–14 by removing the authority citations following the section and revising paragraph (b) to read as follows:

§ 210.3–14 Special instructions for real estate operations to be acquired.

* * * * *

(b) Information required by this section is not required to be included in a filing on Form 10–K.

■ 7. Amend § 210.4–01 by revising paragraphs (a)(3)(i)(A) and (a)(3)(i)(B) to read as follows:

§ 210.4–01 Form, order, and terminology.

(a) * * *

(3)(i) * * *

(A) The first interim or annual reporting period of the registrant's first fiscal year beginning on or after June 15, 2005, provided the registrant does not file as a smaller reporting company; and

(B) The first interim or annual reporting period of the registrant's first fiscal year beginning on or after December 15, 2005, provided the registrant files as a smaller reporting company.

* * * * *

■ 8. An undesignated center heading and §§ 210.8–01 through 210.8–08 are added before the undesignated heading "Bank Holding Companies" to read as follows:

Article 8 Financial Statements of Smaller Reporting Companies

Sec.

* * * * *

§ 210.8–01 Preliminary Notes to Article 8.

Sections 210.8–01 to 210.8–08 shall be applicable to financial statements filed for smaller reporting companies. These sections are not applicable to financial statements prepared for the purposes of Item 17 or Item 18 of Form 20–F.

Note 1 to § 210.8: Financial statements of a smaller reporting company, as defined by § 229.10(f)(1) of this chapter, its predecessors or any businesses to which the smaller reporting company is a successor shall be prepared in accordance with generally accepted accounting principles in the United States.

Note 2 to § 210.8: Smaller reporting companies electing to prepare their financial statements with the form and content required in this article need not apply the other form and content requirements in Regulation S–X with the exception of the following:

a. The report and qualifications of the independent accountant shall comply with the requirements of Article 2 of this part;

b. The description of accounting policies shall comply with Article 4–08(n) of this part; and

c. Smaller reporting companies engaged in oil and gas producing activities shall follow the financial accounting and reporting standards specified in Article 4–10 of this part with respect to such activities.

To the extent that Article 11–01 of this part (Pro Forma Presentation Requirements) offers enhanced guidelines for the preparation, presentation and disclosure of pro forma financial information, smaller reporting companies may wish to consider these items.

Note 3 to § 210.8: Financial statements for a subsidiary of a smaller reporting company that issues securities guaranteed by the smaller reporting company or guarantees securities issued by the smaller reporting company must be presented as required by § 210.3–10, except that the periods presented are those required by § 210.8–02.

Note 4 to § 210.8: Financial statements for a smaller reporting company's affiliates whose securities constitute a substantial portion of the collateral for any class of securities registered or being registered must be presented as required by § 210.3–16, except that the periods presented are those required by § 210.8–02.

Note 5 to § 210.8: The Commission, where consistent with the protection of investors, may permit the omission of one or more of the financial statements or the substitution of appropriate statements of comparable character. The Commission by informal written notice may require the filing of other financial statements where necessary or appropriate.

Note 6 to § 210.8: Section 210.4–01(a)(3) shall apply to the preparation of financial statements of smaller reporting companies.

§ 210.8–02 Annual financial statements.

Smaller reporting companies shall file an audited balance sheet as of the end of each of the most recent two fiscal years, or as of a date within 135 days if the issuer has existed for a period of less than one fiscal year, and audited statements of income, cash flows and changes in stockholders' equity for each of the two fiscal years preceding the date of the most recent audited balance sheet (or such shorter period as the registrant has been in business).

§ 210.8–03 Interim financial statements.

Interim financial statements may be unaudited; however, before filing, interim financial statements included in quarterly reports on Form 10–Q (§ 249.308(a) of this chapter) must be reviewed by an independent public accountant using professional standards and procedures for conducting such reviews, as established by generally accepted auditing standards, as may be modified or supplemented by the Commission. If, in any filing, the issuer states that interim financial statements have been reviewed by an independent public accountant, a report of the accountant on the review must be filed with the interim financial statements. Interim financial statements shall include a balance sheet as of the end of the issuer's most recent fiscal quarter, a balance sheet as of the end of the preceding fiscal year, and income statements and statements of cash flows for the interim period up to the date of such balance sheet and the comparable period of the preceding fiscal year.

(a) *Condensed format.* Interim financial statements may be condensed as follows:

(1) Balance sheets should include separate captions for each balance sheet component presented in the annual financial statements that represents 10% or more of total assets. Cash and retained earnings should be presented regardless of relative significance to total assets. Registrants that present a classified balance sheet in their annual financial statements should present totals for current assets and current liabilities.

(2) Income statements should include net sales or gross revenue, each cost and expense category presented in the annual financial statements that exceeds 20% of sales or gross revenues, provision for income taxes, discontinued operations, extraordinary items and cumulative effects of changes in accounting principles or practices. (Financial institutions should substitute net interest income for sales for purposes of determining items to be disclosed.) Dividends per share should be presented.

(3) Cash flow statements should include cash flows from operating, investing and financing activities as well as cash at the beginning and end of each period and the increase or decrease in such balance.

(4) Additional line items may be presented to facilitate the usefulness of the interim financial statements,

including their comparability with annual financial statements.

(b) *Disclosure required and additional instructions as to content*—(1) *Footnotes.* Footnote and other disclosures should be provided as needed for fair presentation and to ensure that the financial statements are not misleading.

(2) *Material subsequent events and contingencies.* Disclosure must be provided of material subsequent events and material contingencies notwithstanding disclosure in the annual financial statements.

(3) *Significant equity investees.* Sales, gross profit, net income (loss) from continuing operations and net income must be disclosed for equity investees that constitute 20% or more of a registrant's consolidated assets, equity or income from continuing operations.

(4) *Significant dispositions and purchase business combinations.* If a significant disposition or purchase business combination has occurred during the most recent interim period and the transaction required the filing of a Form 8–K (§ 249.308 of this chapter), pro forma data must be presented that reflects revenue, income from continuing operations, net income and income per share for the current interim period and the corresponding interim period of the preceding fiscal year as though the transaction occurred at the beginning of the periods.

(5) *Material accounting changes.* Disclosure must be provided of the date and reasons for any material accounting change. The registrant's independent accountant must provide a letter in the first Form 10–Q (§ 249.308a of this chapter) filed after the change indicating whether or not the change is to a preferable method. Disclosure must be provided of any retroactive change to prior period financial statements, including the effect of any such change on income and income per share.

(6) *Development stage companies.* A registrant in the development stage must provide cumulative financial information from inception.

Instruction 1 to § 210.8–03: Where Article 8 is applicable to a Form 10–Q and the interim period is more than one quarter, income statements must also be provided for the most recent interim quarter and the comparable quarter of the preceding fiscal year.

Instruction 2 to § 210.8–03: Interim financial statements must include all adjustments that, in the opinion of management, are necessary in order to make the financial statements not misleading. An affirmative statement that the financial statements have been so adjusted must be included with the interim financial statements.

§ 210.8–04 Financial statements of businesses acquired or to be acquired.

(a) If a business combination accounted for as a "purchase" has occurred or is probable, financial statements of the business acquired or to be acquired shall be furnished for the periods specified in paragraph (c) of this section:

(1) The term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method.

(2) Acquisitions of a group of related businesses that are probable or that have occurred subsequent to the latest fiscal year end for which audited financial statements of the issuer have been filed shall be treated as if they are a single business combination for purposes of this section. The required financial statements of related businesses may be presented on a combined basis for any periods they are under common control or management. A group of businesses is deemed to be related if:

(i) They are under common control or management;

(ii) The acquisition of one business is conditioned on the acquisition of each other business; or

(iii) Each acquisition is conditioned on a single common event.

(3) Annual financial statements required by this rule shall be audited. The form and content of the financial statements shall be in accordance with §§ 210.8–02 and 8–03.

(b) The periods for which financial statements are to be presented are determined by comparison of the most recent annual financial statements of the business acquired or to be acquired and the smaller reporting company's most recent annual financial statements filed at or before the date of acquisition to evaluate each of the following conditions:

(1) Compare the smaller reporting company's investments in and advances to the acquiree to the total consolidated assets of the smaller reporting company as of the end of the most recently completed fiscal year.

(2) Compare the smaller reporting company's proportionate share of the total assets (after intercompany eliminations) of the acquiree to the total consolidated assets of the smaller reporting company as of the end of the most recently completed fiscal year.

(3) Compare the smaller reporting company's equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the acquiree to such consolidated income of the smaller reporting company for the most recently completed fiscal year.

Computational note to § 210.8–04(b): For purposes of making the prescribed income test the following guidance should be applied: If income of the smaller reporting company and its subsidiaries consolidated for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

(c)(1) If none of the conditions specified in paragraph (b) of this section exceeds 20%, financial statements are not required. If any of the conditions exceed 20%, but none exceeds 40%, financial statements shall be furnished for the most recent fiscal year and any interim periods specified in § 210.8–03. If any of the conditions exceed 40%, financial statements shall be furnished for the two most recent fiscal years and any interim periods specified in § 210.8–03.

(2) The separate audited balance sheet of the acquired business is not required when the smaller reporting company's most recent audited balance sheet filed is for a date after the acquisition was consummated.

(3) If the aggregate impact of individually insignificant businesses acquired since the date of the most recent audited balance sheet filed for the registrant exceeds 50%, financial statements covering at least the substantial majority of the businesses acquired shall be furnished. Such financial statements shall be for the most recent fiscal year and any interim periods specified in § 210.8–03.

(4) Registration statements not subject to the provisions of § 230.419 of this chapter (Regulation C) and proxy statements need not include separate financial statements of the acquired or to be acquired business if it does not meet or exceed any of the conditions specified in paragraph (b) of this section at the 50 percent level, and either:

(i) The consummation of the acquisition has not yet occurred; or

(ii) The effective date of the registration statement, or mailing date in the case of a proxy statement, is no more than 74 days after consummation of the business combination, and the financial statements have not been filed previously by the registrant.

(5) An issuer that omits from its initial registration statement financial statements of a recently consummated business combination pursuant to paragraph (c)(4) of this section shall furnish those financial statements and any pro forma information specified by § 210.8–05 under cover of Form 8–K (§ 249.308 of this chapter) no later than

75 days after consummation of the acquisition.

(d) If the smaller reporting company made a significant business acquisition after the latest fiscal year end and filed a report on Form 8–K, which included audited financial statements of such acquired business for the periods required by paragraph (c) of this section and the pro forma financial information required by § 210.8–05, the determination of significance may be made by using pro forma amounts for the latest fiscal year in the report on Form 8–K rather than by using the historical amounts of the registrant. The tests may not be made by "annualizing" data.

(e) If the business acquired or to be acquired is a foreign business, financial statements of the business meeting the requirements of Item 17 of Form 20–F (§ 249.220f of this chapter) will satisfy this section.

§ 210.8–05 Pro forma financial information.

(a) Pro forma information showing the effects of the acquisition shall be furnished if financial statements of a business acquired or to be acquired are presented.

(b) Pro forma statements should be condensed, in columnar form showing pro forma adjustments and results, and should include the following:

(1) If the transaction was consummated during the most recent fiscal year or subsequent interim period, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any; or

(2) If consummation of the transaction has occurred or is probable after the date of the most recent balance sheet required by § 210.8–02 or § 210.8–03, a pro forma balance sheet giving effect to the combination as of the date of the most recent balance sheet. For a purchase, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, are required.

§ 210.8–06 Real estate operations acquired or to be acquired.

If, during the period for which income statements are required, the smaller reporting company has acquired one or more properties that in the aggregate are significant, or since the date of the latest balance sheet required by § 210.8–02 or § 210.8–03, has acquired or proposes to acquire one or more properties that in the aggregate are significant, the following shall be furnished with respect to such properties:

(a) Audited income statements (not including earnings per unit) for the two most recent years, which shall exclude items not comparable to the proposed future operations of the property such as mortgage interest, leasehold rental, depreciation, corporate expenses and federal and state income taxes; *Provided, however,* that such audited statements need be presented for only the most recent fiscal year if:

(1) The property is not acquired from a related party;

(2) Material factors considered by the smaller reporting company in assessing the property are described with specificity in the registration statement with regard to the property, including source of revenue (including, but not limited to, competition in the rental market, comparative rents, occupancy rates) and expenses (including but not limited to, utilities, *ad valorem* tax rates, maintenance expenses, and capital improvements anticipated); and

(3) The smaller reporting company indicates that, after reasonable inquiry, it is not aware of any material factors relating to the specific property other than those discussed in response to paragraph (a)(2) of this section that would cause the reported financial information not to be necessarily indicative of future operating results.

(b) If the property will be operated by the smaller reporting company, a statement shall be furnished showing the estimated taxable operating results of the smaller reporting company based on the most recent twelve-month period, including such adjustments as can be factually supported. If the property will be acquired subject to a net lease, the estimated taxable operating results shall be based on the rent to be paid for the first year of the lease. In either case, the estimated amount of cash to be made available by operations shall be shown. Disclosure must be provided of the principal assumptions that have been made in preparing the statements of estimated taxable operating results and cash to be made available by operations.

(c) If appropriate under the circumstances, a table should be provided that shows, for a limited number of years, the estimated cash distribution per unit, indicating the portion reportable as taxable income and the portion representing a return of capital with an explanation of annual variations, if any. If taxable net income per unit will be greater than the cash available for distribution per unit, that fact and the approximate year of occurrence shall be stated, if significant.

§ 210.8–07 Limited partnerships.

(a) Smaller reporting companies that are limited partnerships must provide the balance sheets of the general partners as described in paragraphs (b) through (d) of this section.

(b) Where a general partner is a corporation, the audited balance sheet of the corporation as of the end of its most recently completed fiscal year must be filed. Receivables, other than trade receivables, from affiliates of the general partner should be deducted from shareholders' equity of the general partner. Where an affiliate has committed itself to increase or maintain the general partner's capital, the audited balance sheet of such affiliate must also be presented.

(c) Where a general partner is a partnership, there shall be filed an audited balance sheet of such partnership as of the end of its most recently completed fiscal year.

(d) Where the general partner is a natural person, there shall be filed, as supplemental information, a balance sheet of such natural person as of a recent date. Such balance sheet need not be audited. The assets and liabilities should be carried at estimated fair market value, with provisions for estimated income taxes on unrealized gains. The net worth of such general partner(s), based on such balance sheet(s), singly or in the aggregate, shall be disclosed in the registration statement.

§ 210.8–08 Age of financial statements.

At the date of filing, financial statements included in filings other than filings on Form 10–K must be not less current than the financial statements that would be required in Forms 10–K and 10–Q if such reports were required to be filed. If required financial statements are as of a date 135 days or more before the date a registration statement becomes effective or proxy material is expected to be mailed, the financial statements shall be updated to include financial statements for an interim period ending within 135 days of the effective or expected mailing date. Interim financial statements must be prepared and presented in accordance with paragraph (b) of this section.

(a) When the anticipated effective or mailing date falls within 45 days after the end of the fiscal year, the filing may include financial statements only as current as of the end of the third fiscal quarter; *Provided, however,* that if the audited financial statements for the recently completed fiscal year are available or become available before effectiveness or mailing, they must be included in the filing; and

(b) If the effective date or anticipated mailing date falls after 45 days but within 90 days of the end of the smaller reporting company's fiscal year, the smaller reporting company is not required to provide the audited financial statements for such year end provided that the following conditions are met:

(1) If the smaller reporting company is a reporting company, all reports due must have been filed;

(2) For the most recent fiscal year for which audited financial statements are not yet available, the smaller reporting company reasonably and in good faith expects to report income from continuing operations before taxes; and

(3) For at least one of the two fiscal years immediately preceding the most recent fiscal year the smaller reporting company reported income from continuing operations before taxes.

■ 9. Amend § 210.10–01 by revising paragraphs (b)(6) and the introductory text of paragraph (c) to read as follows:

§ 210.10–01 Interim financial statements.

* * * * *

(b) * * *

(6) In addition to meeting the reporting requirements specified by existing standards for accounting changes, the registrant shall state the date of any material accounting change and the reasons for making it. In addition, for filings on Form 10–Q, a letter from the registrant's independent accountant shall be filed as an exhibit (in accordance with the provisions of Item 601 of Regulation S–K, 17 CFR 229.601) in the first Form 10–Q after the date of an accounting change indicating whether or not the change is to an alternative principle which, in the accountant's judgment, is preferable under the circumstances; except that no letter from the accountant need be filed when the change is made in response to a standard adopted by the Financial Accounting Standards Board that requires such change.

* * * * *

(c) *Periods to be covered.* The periods for which interim financial statements are to be provided in registration statements are prescribed elsewhere in this Regulation (see §§ 210.3–01 and 3–02). For filings on Form 10–Q, financial statements shall be provided as set forth in this paragraph (c):

* * * * *

PART 228 [REMOVED]

■ 10. Part 228 is removed and reserved.

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

■ 11. 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, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 777iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.*; 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 12. Amend § 229.10 by adding paragraph (f) to read as follows:

§ 229.10 (Item 10) General.

* * * * *

(f) *Smaller reporting companies.* The requirements of this part apply to smaller reporting companies. A smaller reporting company may comply with either the requirements applicable to smaller reporting companies or the requirements applicable to other companies for each item, unless the requirements for smaller reporting companies specify that smaller reporting companies must comply with the smaller reporting company requirements. The following items of this part set forth requirements for smaller reporting companies that are different from requirements applicable to other companies:

INDEX OF SCALED DISCLOSURE AVAILABLE TO SMALLER REPORTING COMPANIES

Item 101	Description of business.
Item 201	Market price of and dividends on registrant's common equity and related stockholder matters.
Item 301	Selected financial data.
Item 302	Supplementary financial information.
Item 303	Management's discussion and analysis of financial condition and results of operations.
Item 305	Quantitative and qualitative disclosures about market risk.
Item 402	Executive compensation.
Item 404	Transactions with related persons, promoters and certain control persons.
Item 407	Corporate governance.
Item 503	Prospectus summary, risk factors, and ratio of earnings to fixed charges.
Item 504	Use of proceeds.
Item 601	Exhibits.

(1) *Definition of smaller reporting company.* As used in this part, the term *smaller reporting company* means an issuer that is not an investment company, an asset-backed issuer (as defined in § 229.1101), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that:

(i) Had a public float of less than $75 million as of the last business day of its most recently completed second fiscal quarter, computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity; or

(ii) In the case of an initial registration statement under the Securities Act or Exchange Act for shares of its common equity, had a public float of less than $75 million as of a date within 30 days of the date of the filing of the registration statement, computed by multiplying the aggregate worldwide number of such shares held by non-affiliates before the registration plus, in the case of a Securities Act registration statement, the number of such shares included in the registration statement by the estimated public offering price of the shares; or

(iii) In the case of an issuer whose public float as calculated under paragraph (i) or (ii) of this definition was zero, had annual revenues of less than $50 million during the most recently completed fiscal year for which audited financial statements are available.

(2) *Determination:* Whether or not an issuer is a smaller reporting company is determined on an annual basis.

(i) For issuers that are required to file reports under section 13(a) or 15(d) of the Exchange Act, the determination is based on whether the issuer came within the definition of smaller reporting company, using the amounts specified in paragraph (f)(2)(iii) of this Item, as of the last business day of the second fiscal quarter of the issuer's previous fiscal year. An issuer in this category must reflect this determination in the information it provides in its quarterly report on Form 10–Q for the first fiscal quarter of the next year, indicating on the cover page of that filing, and in subsequent filings for that fiscal year, whether or not it is a smaller reporting company, except that, if a determination based on public float indicates that the issuer is newly eligible to be a smaller reporting company, the issuer may choose to reflect this determination beginning

with its first quarterly report on Form 10–Q following the determination, rather than waiting until the first fiscal quarter of the next year.

(ii) For determinations based on an initial Securities Act or Exchange Act registration statement under paragraph (f)(1)(ii) of this Item, the issuer must reflect the determination in the information it provides in the registration statement and must appropriately indicate on the cover page of the filing, and subsequent filings for the fiscal year in which the filing is made, whether or not it is a smaller reporting company. The issuer must redetermine its status at the end of its second fiscal quarter and then reflect any change in status as provided in paragraph (f)(2)(i) of this Item. In the case of a determination based on an initial Securities Act registration statement, an issuer that was not determined to be a smaller reporting company has the option to redetermine its status at the conclusion of the offering covered by the registration statement based on the actual offering price and number of shares sold.

(iii) Once an issuer fails to qualify for smaller reporting company status, it will remain unqualified unless it determines that its public float, as calculated in accordance with paragraph (f)(1) of this Item, was less than $50 million as of the last business day of its second fiscal quarter or, if that calculation results in zero because the issuer had no public equity outstanding or no market price for its equity existed, if the issuers had annual revenues of less than $40 million during its previous fiscal year.

■ 13. Amend § 229.101 by:

■ a. Revising (a)(2) introductory text, (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) introductory text; and

■ b. Adding paragraph (h) before the Instructions to Item 101.

The revision and addition read as follows:

§ 229.101 (Item 101) Description of business.

* * * * *

(a)(1) * * *

(2) Registrants:

(i) Filing a registration statement on Form S–1 (§ 239.11 of this chapter) under the Securities Act or on Form 10 (§ 249.210 of this chapter) under the Exchange Act;

(ii) Not subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act immediately before the filing of such registration statement; and

(iii) That (including predecessors) have not received revenue from operations during each of the three fiscal years immediately before the filing of such registration statement, shall provide the following information:

* * * * *

(h) *Smaller reporting companies.* A smaller reporting company, as defined by § 229.10(f)(1), may satisfy its obligations under this Item by describing the development of its business during the last three years. If the smaller reporting company has not been in business for three years, give the same information for predecessor(s) of the smaller reporting company if there are any. This business development description should include:

(1) Form and year of organization;

(2) Any bankruptcy, receivership or similar proceeding; and

(3) Any material reclassification, merger, consolidation, or purchase or sale of a significant amount of assets not in the ordinary course of business.

(4) *Business of the smaller reporting company.* Briefly describe the business and include, to the extent material to an understanding of the smaller reporting company:

(i) Principal products or services and their markets;

(ii) Distribution methods of the products or services;

(iii) Status of any publicly announced new product or service;

(iv) Competitive business conditions and the smaller reporting company's competitive position in the industry and methods of competition;

(v) Sources and availability of raw materials and the names of principal suppliers;

(vi) Dependence on one or a few major customers;

(vii) Patents, trademarks, licenses, franchises, concessions, royalty agreements or labor contracts, including duration;

(viii) Need for any government approval of principal products or services. If government approval is necessary and the smaller reporting company has not yet received that approval, discuss the status of the approval within the government approval process;

(ix) Effect of existing or probable governmental regulations on the business;

(x) Estimate of the amount spent during each of the last two fiscal years on research and development activities, and if applicable, the extent to which the cost of such activities is borne directly by customers;

(xi) Costs and effects of compliance with environmental laws (federal, state and local); and

(xii) Number of total employees and number of full-time employees.

(5) *Reports to security holders.* Disclose the following in any registration statement you file under the Securities Act of 1933:

(i) If you are not required to deliver an annual report to security holders, whether you will voluntarily send an annual report and whether the report will include audited financial statements;

(ii) Whether you file reports with the Securities and Exchange Commission. If you are a reporting company, identify the reports and other information you file with the Commission; and

(iii) That the public may read and copy any materials you file with the Commission at the SEC's Public Reference Room at 100 F Street, NE., Washington, DC 20549, on official business days during the hours of 10 a.m. to 3 p.m. State that the public may obtain information on the operation of the Public Reference Room by calling the Commission at 1–800–SEC–0330. State that the Commission maintains an Internet 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 address, if available.

(6) *Foreign issuers.* Provide the information required by Item 101(g) of Regulation S–K (§ 229.101(g)).

* * * * *

■ 14. Amend § 229.102 by adding Instructions 7, 8, and 9 to read as follows:

§ 229.102 (Item 102) Description of property.

* * * * *

Instructions to Item 102:

* * * * *

7. The attention of issuers engaged in significant mining operations is directed to the information called for in Guide 7 (§ 229.801(g) and § 229.802(g)).

8. The attention of issuers engaged in oil and gas producing activities is directed to the information called for in Guides 2 and 4 (§ 229.801(b), § 229.802(b) and § 299.801(d), § 229.802(d)).

9. The attention of issuers engaged in real estate activities is directed to the information called for in Guide 5 (§ 229.801(e) of this chapter).

■ 15. Amend § 229.201 by:

■ a. Revising paragraph (a)(1)(ii); and

■ b. Revising paragraph (a)(2); and

■ c. Revising Instruction 6 to Item 201(e).

The revision and addition read as follows:

§ 229.201 (Item 201) Market price of and dividends on the registrant's common equity and related stockholder matters.

(a) * * *

(1) * * *

(ii) If the principal United States market for such common equity is an exchange, state the high and low sales prices for the equity for each full quarterly period within the two most recent fiscal years and any subsequent interim period for which financial statements are included, or are required to be included by Article 3–01 through 3–04 of Regulation S–X (§ 210.3–01 through 3–04 of this chapter), or Article 8–02 through 8–03 of Regulation S–X (§ 210.8–02 through 8–03 of this chapter) in the case of smaller reporting companies, as reported in the consolidated transaction reporting system or, if not so reported, as reported on the principal exchange market for such equity.

* * * * *

(2) If the information called for by this paragraph (a) is being presented in a registration statement on Form S–1 (§ 239.11 of this chapter) under the Securities Act or on Form 10 (§ 249.210 of this chapter) under the Exchange Act relating to a class of common equity for which at the time of filing there is no established United States public trading market, indicate the amount(s) of common equity:

(i) That is subject to outstanding options or warrants to purchase, or securities convertible into, common equity of the registrant;

(ii) That could be sold pursuant to § 230.144 of this chapter or that the registrant has agreed to register under the Securities Act for sale by security holders; or

(iii) That is being, or has been publicly proposed to be, publicly offered by the registrant (unless such common equity is being offered pursuant to an employee benefit plan or dividend reinvestment plan), the offering of which could have a material effect on the market price of the registrant's common equity.

* * * * *

Instructions to Item 201(e):

* * * * *

(6) *Smaller reporting companies.* A registrant that qualifies as a smaller reporting company, as defined by § 229.10(f)(1), is not required to provide the information required by paragraph (e) of this Item.

* * * * *

■ 16. Amend § 229.301 by removing the authority citation following the section and adding paragraph (c) before the Instruction to Item 301 to read as follows:

§ 229.301 (Item 301) Selected financial data.

* * * * *

(c) *Smaller reporting companies.* A registrant that qualifies as a smaller reporting company, as defined by § 229.10(f)(1), is not required to provide the information required by this Item.

* * * * *

■ 17. Amend § 229.302 by adding paragraph (c) to read as follows:

§ 229.302 (Item 302) Supplementary financial information.

* * * * *

(c) *Smaller reporting companies.* A registrant that qualifies as a smaller reporting company, as defined by § 229.10(f)(1), is not required to provide the information required by this Item.

■ 18. Amend § 229.303 by:

■ a. Revising a sentence to Instruction 1 to paragraph 303(a);

■ b. Adding Instructions 13 and 14;

■ c. Revising a sentence to Instruction 1 to paragraph 303(b); and

■ d. Adding paragraph (d) to read as follows:

§ 229.303 (Item 303) Management's discussion and analysis of financial condition and results of operations.

* * * * *

Instructions to paragraph 303(a): 1. The registrant's discussion and analysis shall be of the financial statements and other statistical data that the registrant believes will enhance a reader's understanding of its financial condition, changes in financial condition and results of operations. Generally, the discussion shall cover the three-year period covered by the financial statements and shall use year-to-year comparisons or any other formats that in the registrant's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five-year selected financial data appearing pursuant to Item 301 of Regulation S–K (§ 229.301) may be necessary. A smaller reporting company's discussion shall cover the two-year period required in Article 8 of Regulation S–X and shall use year-to-year comparisons or any other formats that in the registrant's judgment enhance a reader's understanding.

* * * * *

13. The attention of bank holding companies is directed to the information called for in Guide 3 (§ 229.801(c) and § 229.802(c)).

14. The attention of property-casualty insurance companies is directed to the information called for in Guide 6 (§ 229.801(f)).

* * * * *

Instructions to paragraph 303(b): 1. If interim financial statements are presented together with financial statements for full fiscal years, the discussion of the interim financial information shall be prepared pursuant to this paragraph (b) and the discussion of the full fiscal year's information shall be prepared pursuant to paragraph (a) of this Item. Such discussions may be combined.

* * * * *

(d) *Smaller reporting companies.* A smaller reporting company, as defined by § 229.10(f)(1), may provide the information required in paragraph (a)(3)(iv) of this Item for the last two most recent fiscal years of the registrant if it provides financial information on net sales and revenues and on income from continuing operations for only two years. A smaller reporting company is not required to provide the information required by paragraph (a)(5) of this Item.

■ 19. Amend § 229.305 by revising paragraph (e) to read as follows:

§ 229.305 (Item 305) Quantitative and qualitative disclosures about market risk.

* * * * *

(e) *Smaller reporting companies.* A smaller reporting company, as defined by § 229.10(f)(1), is not required to provide the information required by this Item.

* * * * *

■ 20. Amend § 229.401 by revising Instruction 3 to paragraph (b) to read as follows:

§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

(b) * * *

Instructions to Paragraph (b) of Item 401:

* * * * *

3. The information regarding executive officers called for by this Item need not be furnished in proxy or information statements prepared in accordance with Schedule 14A under the Exchange Act (§ 240.14a–101 of this chapter) by registrants relying on General Instruction G of Form 10–K under the Exchange Act (§ 249.310 of this chapter); *Provided*, that such information is furnished in a separate item captioned "Executive officers of the registrant" and included in Part I of the registrant's annual report on Form 10–K.

* * * * *

■ 21. Amend § 229.402 by adding paragraphs (l), (m), (n), (o), (p), (q), and (r) before the Instruction to Item 402 to read as follows:

§ 229.402 (Item 402) Executive compensation.

* * * * *

(l) *Smaller reporting companies.* A registrant that qualifies as a "smaller reporting company," as defined by Item 10(f) (§ 229.10(f)(1)), may provide the scaled disclosure in paragraphs (m) through (r) instead of paragraphs (a) through (k) of this Item.

(m) *Smaller reporting companies—General*—(1) *All compensation covered.* This Item requires clear, concise and understandable disclosure of all plan

and non-plan compensation awarded to, earned by, or paid to the named executive officers designated under paragraph (m)(2) of this Item, and directors covered by paragraph (r) of this Item, by any person for all services rendered in all capacities to the smaller reporting company and its subsidiaries, unless otherwise specifically excluded from disclosure in this Item. All such compensation shall be reported pursuant to this Item, even if also called for by another requirement, including transactions between the smaller reporting company and a third party where a purpose of the transaction is to furnish compensation to any such named executive officer or director. No amount reported as compensation for one fiscal year need be reported in the same manner as compensation for a subsequent fiscal year; amounts reported as compensation for one fiscal year may be required to be reported in a different manner pursuant to this Item.

(2) *Persons covered.* Disclosure shall be provided pursuant to this Item for each of the following (the "named executive officers"):

(i) All individuals serving as the smaller reporting company's principal executive officer or acting in a similar capacity during the last completed fiscal year ("PEO"), regardless of compensation level;

(ii) The smaller reporting company's two most highly compensated executive officers other than the PEO who were serving as executive officers at the end of the last completed fiscal year; and

(iii) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (m)(2)(ii) of this Item but for the fact that the individual was not serving as an executive officer of the smaller reporting company at the end of the last completed fiscal year.

Instructions to Item 402(m)(2).

1. *Determination of most highly compensated executive officers.* The determination as to which executive officers are most highly compensated shall be made by reference to total compensation for the last completed fiscal year (as required to be disclosed pursuant to paragraph (n)(2)(x) of this Item) reduced by the amount required to be disclosed pursuant to paragraph (n)(2)(viii) of this Item, *provided, however,* that no disclosure need be provided for any executive officer, other than the PEO, whose total compensation, as so reduced, does not exceed $100,000.

2. *Inclusion of executive officer of a subsidiary.* It may be appropriate for a smaller reporting company to include as named executive officers one or more executive officers or other employees of subsidiaries in the disclosure required by this Item. See Rule 3b–7 under the Exchange Act (17 CFR 240.3b–7).

3. *Exclusion of executive officer due to overseas compensation.* It may be appropriate in limited circumstances for a smaller reporting company not to include in the disclosure required by this Item an individual, other than its PEO, who is one of the smaller reporting company's most highly compensated executive officers due to the payment of amounts of cash compensation relating to overseas assignments attributed predominantly to such assignments.

(3) *Information for full fiscal year.* If the PEO served in that capacity during any part of a fiscal year with respect to which information is required, information should be provided as to all of his or her compensation for the full fiscal year. If a named executive officer (other than the PEO) served as an executive officer of the smaller reporting company (whether or not in the same position) during any part of the fiscal year with respect to which information is required, information shall be provided as to all compensation of that individual for the full fiscal year.

(4) *Omission of table or column.* A table or column may be omitted if there has been no compensation awarded to, earned by, or paid to any of the named executive officers or directors required to be reported in that table or column in any fiscal year covered by that table.

(5) *Definitions.* For purposes of this Item:

(i) The term *stock* means instruments such as common stock, restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or any similar instruments that do not have option-like features, and the term *option* means instruments such as stock options, stock appreciation rights and similar instruments with option-like features. The term *stock appreciation rights* ("*SARs*") refers to SARs payable in cash or stock, including SARs payable in cash or stock at the election of the smaller reporting company or a named executive officer. The term *equity* is used to refer generally to stock and/or options.

(ii) The term *plan* includes, but is not limited to, the following: Any plan, contract, authorization or arrangement, whether or not set forth in any formal document, pursuant to which cash, securities, similar instruments, or any other property may be received. A plan may be applicable to one person. Smaller reporting companies may omit information regarding group life, health, hospitalization, or medical reimbursement plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the smaller reporting company and that are available generally to all salaried employees.

(iii) The term *incentive plan* means any plan providing compensation intended to serve as incentive for performance to occur over a specified period, whether such performance is measured by reference to financial performance of the smaller reporting company or an affiliate, the smaller reporting company's stock price, or any other performance measure. An equity incentive plan is an incentive plan or portion of an incentive plan under which awards are granted that fall within the scope of Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment*, as modified or supplemented ("FAS 123R"). A *non-equity incentive plan* is an incentive plan or portion of an incentive plan that is not an equity incentive plan. The term *incentive plan award* means an award provided under an incentive plan.

(iv) The terms *date of grant* or *grant date* refer to the grant date determined for financial statement reporting purposes pursuant to FAS 123R.

(v) *Closing market price* is defined as the price at which the smaller reporting company's security was last sold in the principal United States market for such security as of the date for which the closing market price is determined.

(n) *Smaller reporting companies—Summary compensation table*—(1) *General.* Provide the information specified in paragraph (n)(2) of this Item, concerning the compensation of the named executive officers for each of the smaller reporting company's last two completed fiscal years, in a Summary Compensation Table in the tabular format specified below.

SUMMARY COMPENSATION TABLE

Name and principal position	Year	Salary ($)	Bonus ($)	Stock awards ($)	Option awards ($)	Nonequity incentive plan compensation ($)	Nonqualified deferred compensation earnings ($)	All other compensation ($)	Total ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
A									
B									

(2) The Table shall include:

(i) The name and principal position of the named executive officer (column (a));

(ii) The fiscal year covered (column (b));

(iii) The dollar value of base salary (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (c));

(iv) The dollar value of bonus (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (d));

Instructions to Item 402(n)(2)(iii) and (iv).

1. If the amount of salary or bonus earned in a given fiscal year is not calculable through the latest practicable date, a footnote shall be included disclosing that the amount of salary or bonus is not calculable through the latest practicable date and providing the date that the amount of salary or bonus is expected to be determined, and such amount must then be disclosed in a filing under Item 5.02(f) of Form 8–K (17 CFR 249.308).

2. Smaller reporting companies shall include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer under which stock, equity-based or other forms of non-cash compensation instead have been received by the named executive officer. However, the receipt of any such form of non-cash compensation instead of salary or bonus must be disclosed in a footnote added to the salary or bonus column and, where applicable, referring to the narrative disclosure to the Summary Compensation Table (required by paragraph (o) of this Item) where the material terms of the stock, option or non-equity incentive plan award elected by the named executive officer are reported.

(v) For awards of stock, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (e));

(vi) For awards of options, with or without tandem SARs, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (f));

Instruction to Item 402(n)(2)(v) and (vi). For awards reported in columns (e) and (f), disregard the estimate of forfeitures related to service-based vesting conditions. Include a footnote describing all forfeitures during the year, and disclosing all assumptions made in the valuation. Disclose assumptions made in the valuation by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

(vii) The dollar value of all earnings for services performed during the fiscal year pursuant to awards under non-equity incentive plans as defined in paragraph (m)(5)(iii) of this Item, and all earnings on any outstanding awards (column (g));

Instructions to Item 402(n)(2)(vii).

1. If the relevant performance measure is satisfied during the fiscal year (including for a single year in a plan with a multi-year performance measure), the earnings are reportable for that fiscal year, even if not payable until a later date, and are not reportable again in the fiscal year when amounts are paid to the named executive officer.

2. All earnings on non-equity incentive plan compensation must be identified and quantified in a footnote to column (g), whether the earnings were paid during the fiscal year, payable during the period but deferred at the election of the named executive officer, or payable by their terms at a later date.

(viii) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans (column (h));

Instruction to Item 402(n)(2)(viii). Interest on deferred compensation is above-market only if the rate of interest exceeds 120% of the applicable federal long-term rate, with compounding (as prescribed under section 1274(d) of the Internal Revenue Code, (26 U.S.C. 1274(d))) at the rate that corresponds most closely to the rate under the smaller reporting company's plan at the time the interest rate or formula is set. In the event of a discretionary reset of the interest rate, the requisite calculation must be made on the basis of the interest rate at the time of such reset, rather than when originally established. Only the above-market portion of the interest must be included. If the applicable interest rates vary depending upon conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all conditions to receiving interest at the highest rate. Dividends (and dividend equivalents) on deferred compensation denominated in the smaller reporting company's stock ("deferred stock") are preferential only if earned at a rate higher than dividends on the smaller reporting company's common stock. Only the preferential portion of the dividends or equivalents must be included. Footnote or narrative disclosure may be provided explaining the smaller reporting company's criteria for determining any portion considered to be above-market.

(ix) All other compensation for the covered fiscal year that the smaller reporting company could not properly report in any other column of the Summary Compensation Table (column (i)). Each compensation item that is not properly reportable in columns (c) through (h), regardless of the amount of the compensation item, must be included in column (i). Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All "gross-ups" or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the smaller reporting company or its subsidiaries purchased from the smaller reporting company or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the smaller reporting company, the compensation cost, if any, computed in accordance with FAS 123R;

(D) The amount paid or accrued to any named executive officer pursuant to a plan or arrangement in connection with:

(*1*) Any termination, including without limitation through retirement,

resignation, severance or constructive termination (including a change in responsibilities) of such executive officer's employment with the smaller reporting company and its subsidiaries; or

(2) A change in control of the smaller reporting company;

(E) Smaller reporting company contributions or other allocations to vested and unvested defined contribution plans;

(F) The dollar value of any insurance premiums paid by, or on behalf of, the smaller reporting company during the covered fiscal year with respect to life insurance for the benefit of a named executive officer; and

(G) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value for the stock or option award; and

Instructions to Item 402(n)(2)(ix).

1. Non-equity incentive plan awards and earnings and earnings on stock or options, except as specified in paragraph (n)(2)(ix)(G) of this Item, are required to be reported elsewhere as provided in this Item and are not reportable as All Other Compensation in column (i).

2. Benefits paid pursuant to defined benefit and actuarial plans are not reportable as All Other Compensation in column (i) unless accelerated pursuant to a change in control; information concerning these plans is reportable pursuant to paragraph (q)(1) of this Item.

3. Reimbursements of taxes owed with respect to perquisites or other personal benefits must be included in the columns as tax reimbursements (paragraph (n)(2)(ix)(B) of this Item) even if the associated perquisites or other personal benefits are not required to be included because the aggregate amount of such compensation is less than $10,000.

4. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the smaller reporting company.

5. For purposes of paragraph (n)(2)(ix)(D) of this Item, an accrued amount is an amount for which payment has become due.

(x) The dollar value of total compensation for the covered fiscal year (column (j)). With respect to each named executive officer, disclose the sum of all amounts reported in columns (c) through (i).

Instructions to Item 402(n).

1. Information with respect to the fiscal year prior to the last completed fiscal year will not be required if the smaller reporting company was not a reporting company pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) at any time during that year, except that the smaller reporting company will be required to provide information for any such year if that information previously was required to be provided in response to a Commission filing requirement.

2. All compensation values reported in the Summary Compensation Table must be reported in dollars and rounded to the nearest dollar. Reported compensation values must be reported numerically, providing a single numerical value for each grid in the table. Where compensation was paid to or received by a named executive officer in a different currency, a footnote must be provided to identify that currency and describe the rate and methodology used to convert the payment amounts to dollars.

3. If a named executive officer is also a director who receives compensation for his or her services as a director, reflect that compensation in the Summary Compensation Table and provide a footnote identifying and itemizing such compensation and amounts. Use the categories in the Director Compensation Table required pursuant to paragraph (r) of this Item.

4. Any amounts deferred, whether pursuant to a plan established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), or otherwise, shall be included in the appropriate column for the fiscal year in which earned.

(o) *Smaller reporting companies—Narrative disclosure to summary compensation table.* Provide a narrative description of any material factors necessary to an understanding of the information disclosed in the Table required by paragraph (n) of this Item. Examples of such factors may include, in given cases, among other things:

(1) The material terms of each named executive officer's employment agreement or arrangement, whether written or unwritten;

(2) If at any time during the last fiscal year, any outstanding option or other equity-based award was repriced or otherwise materially modified (such as by extension of exercise periods, the change of vesting or forfeiture conditions, the change or elimination of applicable performance criteria, or the change of the bases upon which returns are determined), a description of each such repricing or other material modification;

(3) The waiver or modification of any specified performance target, goal or condition to payout with respect to any amount included in non-stock incentive plan compensation or payouts reported in column (g) to the Summary Compensation Table required by paragraph (n) of this Item, stating whether the waiver or modification applied to one or more specified named executive officers or to all compensation subject to the target, goal or condition;

(4) The material terms of each grant, including but not limited to the date of exercisability, any conditions to exercisability, any tandem feature, any reload feature, any tax-reimbursement feature, and any provision that could cause the exercise price to be lowered;

(5) The material terms of any non-equity incentive plan award made to a named executive officer during the last completed fiscal year, including a general description of the formula or criteria to be applied in determining the amounts payable and vesting schedule;

(6) The method of calculating earnings on nonqualified deferred compensation plans including nonqualified defined contribution plans; and

(7) An identification to the extent material of any item included under All Other Compensation (column (i)) in the Summary Compensation Table. Identification of an item shall not be considered material if it does not exceed the greater of $25,000 or 10% of all items included in the specified category in question set forth in paragraph (n)(2)(ix) of this Item. All items of compensation are required to be included in the Summary Compensation Table without regard to whether such items are required to be identified.

Instruction to Item 402(o). The disclosure required by paragraph (o)(2) of this Item would not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

(p) *Smaller reporting companies—Outstanding equity awards at fiscal year-end table.* (1) Provide the information specified in paragraph (p)(2) of this Item, concerning unexercised options; stock that has not vested; and equity incentive plan awards for each named executive officer outstanding as of the end of the smaller reporting company's last completed fiscal year in the following tabular format:

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

Name	Option awards					Stock awards			
	Number of securities underlying unexercised options (#) exercisable	Number of securities underlying unexercised options (#) unexercisable	Equity incentive plan awards: Number of securities underlying unexercised unearned options (#)	Option exercise price ($)	Option expiration date	Number of shares or units of stock that have not vested (#)	Market value of shares of units of stock that have not vested ($)	Equity incentive plan awards: Number of unearned shares, units or other rights that have not vested (#)	Equity incentive plan awards: Market or payout value of unearned shares, units or other rights that have not vested ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
A									
B									

(2) The Table shall include:

(i) The name of the named executive officer (column (a));

(ii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are exercisable and that are not reported in column (d) (column (b));

(iii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are unexercisable and that are not reported in column (d) (column (c));

(iv) On an award-by-award basis, the total number of shares underlying unexercised options awarded under any equity incentive plan that have not been earned (column (d));

(v) For each instrument reported in columns (b), (c) and (d), as applicable, the exercise or base price (column (e));

(vi) For each instrument reported in columns (b), (c) and (d), as applicable, the expiration date (column (f));

(vii) The total number of shares of stock that have not vested and that are not reported in column (i) (column (g));

(viii) The aggregate market value of shares of stock that have not vested and that are not reported in column (j) (column (h));

(ix) The total number of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned, and, if applicable the number of shares underlying any such unit or right (column (i)); and

(x) The aggregate market or payout value of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned (column (j)).

Instructions to Item 402(p)(2).

1. Identify by footnote any award that has been transferred other than for value, disclosing the nature of the transfer.

2. The vesting dates of options, shares of stock and equity incentive plan awards held at fiscal-year end must be disclosed by footnote to the applicable column where the outstanding award is reported.

3. Compute the market value of stock reported in column (h) and equity incentive plan awards of stock reported in column (j) by multiplying the closing market price of the smaller reporting company's stock at the end of the last completed fiscal year by the number of shares or units of stock or the amount of equity incentive plan awards, respectively. The number of shares or units reported in column (d) or (i), and the payout value reported in column (j), shall be based on achieving threshold performance goals, except that if the previous fiscal year's performance has exceeded the threshold, the disclosure shall be based on the next higher performance measure (target or maximum) that exceeds the previous fiscal year's performance. If the award provides only for a single estimated payout, that amount should be reported. If the target amount is not determinable, smaller reporting companies must provide a representative amount based on the previous fiscal year's performance.

4. Multiple awards may be aggregated where the expiration date and the exercise and/or base price of the instruments is identical. A single award consisting of a combination of options, SARs and/or similar option-like instruments shall be reported as separate awards with respect to each tranche with a different exercise and/or base price or expiration date.

5. Options or stock awarded under an equity incentive plan are reported in columns (d) or (i) and (j), respectively, until the relevant performance condition has been satisfied. Once the relevant performance condition has been satisfied, even if the option or stock award is subject to forfeiture conditions, options are reported in column (b) or (c), as appropriate, until they are exercised or expire, or stock is reported in columns (g) and (h) until it vests.

(q) *Smaller reporting companies—Additional narrative disclosure.* Provide a narrative description of the following to the extent material:

(1) The material terms of each plan that provides for the payment of retirement benefits, or benefits that will be paid primarily following retirement, including but not limited to tax-qualified defined benefit plans, supplemental executive retirement plans, tax-qualified defined contribution plans and nonqualified defined contribution plans.

(2) The material terms of each contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) to a named executive officer at, following, or in connection with the resignation, retirement or other termination of a named executive officer, or a change in control of the smaller reporting company or a change in the named executive officer's responsibilities following a change in control, with respect to each named executive officer.

(r) *Smaller reporting companies—Compensation of directors.* (1) Provide the information specified in paragraph (r)(2) of this Item, concerning the compensation of the directors for the smaller reporting company's last completed fiscal year, in the following tabular format:

DIRECTOR COMPENSATION

Name	Fees earned or paid in cash ($)	Stock awards ($)	Option awards ($)	Non-equity incentive plan compensation ($)	Nonqualified deferred compensation earnings ($)	All other compensation ($)	Total ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
A							
B							
C							
D							
E							

(2) The Table shall include:

(i) The name of each director unless such director is also a named executive officer under paragraph (m) of this Item and his or her compensation for service as a director is fully reflected in the Summary Compensation Table pursuant to paragraph (n) of this Item and otherwise as required pursuant to paragraphs (o) through (q) of this Item (column (a));

(ii) The aggregate dollar amount of all fees earned or paid in cash for services as a director, including annual retainer fees, committee and/or chairmanship fees, and meeting fees (column (b));

(iii) For awards of stock, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (c));

(iv) For awards of stock options, with or without tandem SARs, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (d));

Instruction to Item 402(r)(2)(iii) and (iv). For each director, disclose by footnote to the appropriate column, the aggregate number of stock awards and the aggregate number of option awards outstanding at fiscal year end.

(v) The dollar value of all earnings for services performed during the fiscal year pursuant to non-equity incentive plans as defined in paragraph (m)(5)(iii) of this Item, and all earnings on any outstanding awards (column (e));

(vi) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans (column (f));

(vii) All other compensation for the covered fiscal year that the smaller reporting company could not properly report in any other column of the Director Compensation Table (column (g)). Each compensation item that is not properly reportable in columns (b) through (f), regardless of the amount of the compensation item, must be included in column (g) and must be identified and quantified in a footnote if it is deemed material in accordance with paragraph (o)(7) of this Item. Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All "gross-ups" or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the smaller reporting company or its subsidiaries purchased from the smaller reporting company or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the smaller reporting company, the compensation cost, if any, computed in accordance with FAS 123R;

(D) The amount paid or accrued to any director pursuant to a plan or arrangement in connection with:

(*1*) The resignation, retirement or any other termination of such director; or

(*2*) A change in control of the smaller reporting company;

(E) Smaller reporting company contributions or other allocations to vested and unvested defined contribution plans;

(F) Consulting fees earned from, or paid or payable by the smaller reporting company and/or its subsidiaries (including joint ventures);

(G) The annual costs of payments and promises of payments pursuant to director legacy programs and similar charitable award programs;

(H) The dollar value of any insurance premiums paid by, or on behalf of, the smaller reporting company during the covered fiscal year with respect to life insurance for the benefit of a director; and

(I) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value for the stock or option award; and

Instruction to Item 402(r)(2)(vii). Programs in which smaller reporting companies agree to make donations to one or more charitable institutions in a director's name, payable by the smaller reporting company currently or upon a designated event, such as the retirement or death of the director, are charitable awards programs or director legacy programs for purposes of the disclosure required by paragraph (r)(2)(vii)(G) of this Item. Provide footnote disclosure of the total dollar amount payable under the program and other material terms of each such program for which tabular disclosure is provided.

(viii) The dollar value of total compensation for the covered fiscal year (column (h)). With respect to each director, disclose the sum of all amounts reported in columns (b) through (g).

Instruction to Item 402(r)(2). Two or more directors may be grouped in a single row in the Table if all elements of their compensation are identical. The names of the directors for whom disclosure is presented on a group basis should be clear from the Table.

(3) *Narrative to director compensation table.* Provide a narrative description of any material factors necessary to an understanding of the director compensation disclosed in this Table. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) A description of standard compensation arrangements (such as fees for retainer, committee service, service as chairman of the board or a committee, and meeting attendance); and

(ii) Whether any director has a different compensation arrangement, identifying that director and describing the terms of that arrangement.

Instruction to Item 402(r). In addition to the Instruction to paragraph (r)(2)(vii) of this Item, the following apply equally to paragraph (r) of this Item: Instructions 2 and 4 to paragraph (n) of this Item; the

Instructions to paragraphs (n)(2)(iii) and (iv) of this Item; the Instruction to paragraphs (n)(2)(v) and (vi) of this Item; the Instructions to paragraph (n)(2)(vii) of this Item; the Instruction to paragraph (n)(2)(viii) of this Item; the Instructions to paragraph (n)(2)(ix) of this Item; and paragraph (o)(7) of this Item. These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to disclosures under paragraph (r) of this Item that correspond to analogous disclosures provided for in paragraph (n) of this Item to which they refer.

■ 22. Amend § 229.404 by revising the introductory text of paragraph (c)(1) and adding paragraph (d) before the Instructions to Item 404 to read as follows:

§ 229.404 (Item 404) Transactions with related persons, promoters and certain control persons.

* * * * *

(c) *Promoters and certain control persons.* (1) Registrants that are filing a registration statement on Form S–1 under the Securities Act (§ 239.11 of this chapter) or on Form 10 under the Exchange Act (§ 249.210 of this chapter) and that had a promoter at any time during the past five fiscal years shall:

* * * * *

(d) *Smaller reporting companies.* A registrant that qualifies as a "smaller reporting company," as defined by § 229.10(f)(1), must provide the following information in order to comply with this Item:

(1) The information required by paragraph (a) of this Item for the period specified there for a transaction in which the amount involved exceeds the lesser of $120,000 or one percent of the average of the smaller reporting company's total assets at year end for the last two completed fiscal years;

(2) The information required by paragraph (c) of this Item; and

(3) A list of all parents of the smaller reporting company showing the basis of control and as to each parent, the percentage of voting securities owned or other basis of control by its immediate parent, if any.

Instruction to Item 404(d)

1. Include information for any material underwriting discounts and commissions upon the sale of securities by the smaller reporting company where any of the persons specified in paragraph (a) of this Item was or is to be a principal underwriter or is a controlling person or member of a firm that was or is to be a principal underwriter.

2. For smaller reporting companies information shall be given for the period specified in paragraph (a) of this Item and, in addition, for the fiscal year preceding the small reporting company's last fiscal year.

* * * * *

■ 23. Amend § 229.407 by revising paragraphs (a)(1)(iii), (d)(4)(i)(B) and adding paragraph (g) before the Instructions to Item 407 to read as follows:

§ 229.407 (Item 407) Corporate governance.

(a) * * *

(1) * * *

(iii) If the information called for by paragraph (a) of this Item is being presented in a registration statement on Form S–1 (§ 239.11 of this chapter) under the Securities Act or on a Form 10 (§ 249.210 of this chapter) under the Exchange Act where the registrant has applied for listing with a national securities exchange or in an inter-dealer quotation system that has requirements that a majority of the board of directors be independent, the definition of independence that the registrant uses for determining if a majority of the board of directors is independent, and the definition of independence that the registrant uses for determining if members of the specific committee of the board of directors are independent, that is in compliance with the independence listing standards of the national securities exchange or inter-dealer quotation system on which it has applied for listing, or if the registrant has not adopted such definitions, the independence standards for determining if the majority of the board of directors is independent and if members of the committee of the board of directors are independent of that national securities exchange or inter-dealer quotation system.

* * * * *

(d) * * *

(4)(i) * * *

(B) The registrant is filing an annual report on Form 10–K (§ 249.310 of this chapter) or a proxy statement or information statement pursuant to the Exchange Act (15 U.S.C. 78a *et seq.*) if action is to be taken with respect to the election of directors; and

* * * * *

(g) *Smaller reporting companies.* A registrant that qualifies as a "smaller reporting company," as defined by § 229.10(f)(1), is not required to provide:

(1) The disclosure required in paragraph (d)(5) of this Item in its first annual report filed pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) following the effective date of its first registration statement filed under the Securities Act (15 U.S.C. 77a *et seq.*) or Exchange Act (15 U.S.C. 78a *et seq.*); and

(2) Need not provide the disclosures required by paragraphs (e)(4) and (e)(5) of this Item.

* * * * *

■ 24. Amend § 229.503 by adding paragraph (e) before the Instruction to Item 503 to read as follows:

§ 229.503 (Item 503) Prospectus summary, risk factors, and ratio of earnings to fixed charges.

* * * * *

(e) *Smaller reporting companies.* A registrant that qualifies as a smaller reporting company, as defined by § 229.10(f), need not comply with paragraph (d) of this Item.

* * * * *

■ 25. Amend § 229.504 by revising Instruction 6 to Item 504 to read as follows:

§ 229.504 (Item 504) Use of proceeds.

* * * * *

Instructions to Item 504:

* * * * *

6. Where the registrant indicates that the proceeds may, or will, be used to finance acquisitions of other businesses, the identity of such businesses, if known, or, if not known, the nature of the businesses to be sought, the status of any negotiations with respect to the acquisition, and a brief description of such business shall be included. Where, however, pro forma financial statements reflecting such acquisition are not required by Regulation S–X (17 CFR 210.01 through 210.12–29), including Rule 8–05 for smaller reporting companies, to be included in the registration statement, the possible terms of any transaction, the identification of the parties thereto or the nature of the business sought need not be disclosed, to the extent that the registrant reasonably determines that public disclosure of such information would jeopardize the acquisition. Where Regulation S–X, including Rule 8–04 for smaller reporting companies, as applicable, would require financial statements of the business to be acquired to be included, the description of the business to be acquired shall be more detailed.

* * * * *

■ 26. Amend § 229.512 by revising the introductory text of paragraph (e) to read as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(e) *Incorporated annual and quarterly reports.* Include the following if the registration statement specifically incorporates by reference (other than by indirect incorporation by reference through a Form 10–K (§ 249.310 of this chapter) report) in the prospectus all or any part of the annual report to security holders meeting the requirements of Rule 14a–3 or Rule 14c–3 under the

Exchange Act (§ 240.14a–3 or § 240.14c–3 of this chapter):

* * * * *

■ 27. Amend § 229.601 by:

■ a. Revising paragraph (a)(4); the Exhibit Table; and paragraphs (b)(4)(ii), (b)(4)(v), (b)(10)(iii)(C)(*6*), introductory text (b)(13), (b)(13)(i), (b)(15), (b)(19), and (b)(22); and

■ b. Adding paragraph (c) to read as follows:

§ 229.601 (Item 601) Exhibits.

(a) * * *

(4) If a material contract or plan of acquisition, reorganization, arrangement, liquidation or succession is executed or becomes effective during the reporting period reflected by a Form 10–Q or Form 10–K, it shall be filed as an exhibit to the Form 10–Q or Form 10–K filed for the corresponding period. Any amendment or modification to a previously filed exhibit to a Form 10, 10–K or 10–Q document shall be filed as an exhibit to a Form 10–Q and Form 10–K. Such amendment or modification need not be filed where such previously filed exhibit would not be currently required.

* * * * *

Exhibit Table

Instructions to the Exhibit Table.

1. The exhibit table indicates those documents that must be filed as exhibits to the respective forms listed.

2. The "X" designation indicates the documents which are required to be filed with each form even if filed previously with another document, *Provided, However,* that such previously filed documents may be incorporated by reference to satisfy the filing requirements.

3. The number used in the far left column of the table refers to the appropriate subsection in paragraph (b) where a description of the exhibit can be found. Whenever necessary, alphabetical or numerical subparts may be used.

EXHIBIT TABLE

	Securities Act forms								Exchange Act forms				
	S–1	S–3	S–4[1]	S–8	S–11	F–1	F–3	F–4[1]	10	8–K[2]	10–D	10–Q	10–K
(1) Underwriting agreement	X	X	X	.....	X	X	X	X	.....	X	.....	.....	.....
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X	.....	X	X	X	X	X	X	.....	X	X
(3)(i) Articles of incorporation	X	.....	X	.....	X	X	.....	X	X	X	X	X	X
(ii) Bylaws	X	.....	X	.....	X	X	.....	X	X	X	X	X	X
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X	X	X	X	X	X	X	.....	.....	.....	.....	.....
(6) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) Correspondence from an independent accountant regarding non-reliance on a previously issued audit report or completed interim review	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	.....	.....	.....
(8) Opinion re tax matters	X	X	X	.....	X	X	X	X	.....	.....	.....	.....	.....
(9) Voting trust agreement	X	.....	X	.....	X	X	.....	X	X	.....	.....	.....	X
(10) Material contracts	X	.....	X	.....	X	X	.....	X	X	.....	X	X	X
(11) Statement re computation of per share earnings	X	.....	X	.....	X	X	.....	X	X	.....	.....	X	X
(12) Statements re computation of ratios	X	X	X	.....	X	X	.....	X	X	.....	.....	.....	X
(13) Annual report to security holders, Form 10–Q or quarterly report to security holders[3]	.....	.....	X	.....	.....	.....	.....	.....	.....	.....	.....	.....	X
(14) Code of Ethics	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	.....	.....	X
(15) Letter re unaudited interim financial information	X	X	X	X	X	X	X	X	.....	.....	.....	X	.....
(16) Letter re change in certifying accountant[4]	X	.....	X	.....	X	.....	.....	.....	X	X	.....	.....	X
(17) Correspondence on departure of director	.....	.....	.....	.....	.....	.....	.....	.....	.....	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	.....	X	X	.....	.....	.....	X
(22) Published report regarding matters submitted to vote of security holders	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X	X
(23) Consents of experts and counsel	X	X	X	X	X	X	X	X	.....	[5]X	[5]X	[5]X	[5]X
(24) Power of attorney	X	X	X	X	X	X	X	X	X	X	.....	X	X
(25) Statement of eligibility of trustee	X	X	X	.....	.....	X	X	X	.....	.....	.....	.....	.....

EXHIBIT TABLE—Continued

	Securities Act forms								Exchange Act forms				
	S–1	S–3	S–4[1]	S–8	S–11	F–1	F–3	F–4[1]	10	8–K[2]	10–D	10–Q	10–K
(26) Invitation for competitive bids	X	X	X			X	X	X					
(27) through (30) [Reserved]													
(31)(i) Rule 13a–14(a)/15d–14(a) Certifications												X	X
(ii) Rule 13a–14/15d–14 Certifications													X
(32) Section 1350 Certifications[6]												X	X
(33) Report on assessment of compliance with servicing criteria for asset-backed issuers													X
(34) Attestation report on assessment of compliance with servicing criteria for asset-backed securities													X
(35) Servicer compliance statement													X
(36) through (98) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(99) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X	X	X
(100) XBRL-Related Documents									X	X		X	X

[1] An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Form S–4 or F–4 to provide information about such company at a level prescribed by Form S–3 or F–3; and (2) the form, the level of which has been elected under Form S–4 or F–4, would not require such company to provide such exhibit if it were registering a primary offering.

[2] A Form 8–K exhibit is required only if relevant to the subject matter reported on the Form 8–K report. For example, if the Form 8–K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

[3] 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.

[4] If required pursuant to Item 304 of Regulation S–K.

[5] Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.

[6] Pursuant to §§ 240.13a–13(b)(3) and 240.15d–13(b)(3) of this chapter, asset-backed issuers are not required to file reports on Form 10–Q.

(b) * * *

(4) * * *

(ii) Except as set forth in paragraph (b)(4)(iii) of this Item for filings on Forms S–1, S–4, S–11, N–14, and F–4 under the Securities Act (§ 239.11, 239.25, 239.18, 239.23 and 239.34 of this chapter) and Forms 10 and 10–K under the Exchange Act (§§ 249.210 and 249.310 of this chapter) all instruments defining the rights of holders of long-term debt of the registrant and its consolidated subsidiaries and for any of its unconsolidated subsidiaries for which financial statements are required to be filed.

* * * * *

(v) With respect to Forms 8–K and 10–Q under the Exchange Act that are filed and that disclose, in the text of the Form 10–Q, the interim financial statements, or the footnotes thereto the creation of a new class of securities or indebtedness or the modification of existing rights of security holders, file all instruments defining the rights of holders of these securities or indebtedness. However, there need not be filed any instrument with respect to long-term debt not being registered which meets the exclusion set forth in paragraph (b)(4)(iii)(A) of this Item.

* * * * *

(10) * * *

(iii) * * *

(C) * * *

(6) Any compensatory plan, contract, or arrangement if the registrant is a wholly owned subsidiary of a company that has a class of securities registered pursuant to section 12 or files reports pursuant to section 15(d) of the Exchange Act and is filing a report on Form 10–K or registering debt instruments or preferred stock that are not voting securities on Form S–1.

* * * * *

(13) *Annual report to security holders, Form 10–Q or quarterly report to security holders.*

(i) The registrant's annual report to security holders for its last fiscal year, its Form 10–Q (if specifically incorporated by reference in the prospectus) or its quarterly report to security holders, if all or a portion thereof is incorporated by reference in the filing. Such report, except for those portions thereof that are expressly incorporated by reference in the filing, is to be furnished for the information of the Commission and is not to be deemed "filed" as part of the filing. If the financial statements in the report have been incorporated by reference in the filing, the accountant's certificate shall be manually signed in one copy. *See* Rule 411(b) (§ 230.411(b) of this chapter).

* * * * *

(15) *Letter re unaudited interim financial information.* A letter, where applicable, from the independent accountant that acknowledges awareness of the use in a registration statement of a report on unaudited interim financial information that pursuant to Rule 436(c) under the Securities Act (§ 230.436(c) of this chapter) is not considered a part of a registration statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of sections 7 and 11 of that Act. Such letter may be filed with the registration statement, an amendment thereto, or a report on Form 10–Q which is incorporated by reference into the registration statement.

* * * * *

(19) *Report furnished to security holders.* If the registrant makes available to its security holders or otherwise publishes, within the period prescribed for filing the report, a document or

statement containing information meeting some or all of the requirements of Part I of Form 10–Q, the information called for may be incorporated by reference to such published document or statement, provided copies thereof are included as an exhibit to the registration statement or to Part I of the Form 10–Q report.

* * * * *

(22) *Published report regarding matters submitted to vote of security holders.* Published reports containing all of the information called for by Item 4 of Part II of Form 10–Q or Item 4 of Part I of Form 10–K that is referred to therein in lieu of providing disclosure in Form 10–Q or 10–K, that are required to be filed as exhibits by Rule 12b–23(a)(3) under the Exchange Act (§ 240.12b–23(a)(3) of this chapter).

* * * * *

(c) *Smaller reporting companies.* A smaller reporting company need not provide the disclosure required in paragraph (b)(12) of this Item, Statements re computation of ratios.

■ 28. Amend § 229.701 by revising paragraph (e) to read as follows:

§ 229.701 (Item 701) Recent sales of unregistered securities; use of proceeds from registered securities.

* * * * *

(e) *Terms of conversion or exercise.* If the information called for by this paragraph (e) is being presented on Form 8–K, Form 10–Q, Form 10–K, or Form 10–D under the Exchange Act (§ 249.308, § 249.308(a), § 240.310 or § 249.312) of this chapter, and where the securities sold by the registrant are convertible or exchangeable into equity securities, or are warrants or options representing equity securities, disclose the terms of conversion or exercise of the securities.

* * * * *

■ 29. Amend § 229.1118 by revising paragraph (b)(2) to read as follows:

§ 229.1118 (Item 1118) Reports and additional information.

* * * * *

(b) * * *

(2) State that the public may read and copy any materials filed with the Commission at the Commission's Public Reference Room at 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. State that the public may obtain information on the operation of the Public Reference Room by calling the Securities and Exchange Commission at 1–800–SEC–0330. State that the Commission maintains an Internet 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*).

* * * * *

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

■ 30. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 31. Amend § 230.110 by revising paragraph (a) to read as follows:

§ 230.110 Business hours of the Commission.

(a) *General.* The principal office of the Commission, at 100 F Street, NE., Washington, DC 20549, is open each day, except Saturdays, Sundays, and Federal holidays, from 9 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, *provided that* hours for the filing of documents pursuant to the Act or the rules and regulations thereunder are as set forth in paragraphs (b), (c) and (d) of this section.

* * * * *

■ 32. Amend § 230.138 by revising paragraph (a)(2)(i) to read as follows:

§ 230.138 Publications or distributions of research reports by brokers or dealers about securities other than those they are distributing.

(a) * * *

(2) * * *

(i) Is required to file reports, and has filed all periodic reports required during the preceding 12 months (or such shorter time that the issuer was required to file such reports) on Forms 10–K (§ 249.310 of this chapter), 10–Q (§ 249.308a of this chapter), and 20–F (§ 249.220f of this chapter) pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); or

* * * * *

■ 33. Amend § 230.139 by revising paragraph (a)(1)(i)(A)(2) to read as follows:

§ 230.139 Publications or distributions of research reports by brokers or dealers distributing securities.

(a) * * *

(1) * * *

(i) * * *

(A) * * *

(*2*) As of the date of reliance on this section, has filed all periodic reports required during the preceding 12 months on Forms 10–K (§ 249.310 of this chapter), 10–Q (§ 249.308a of this chapter), and 20–F (§ 249.220f of this chapter) pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); or

* * * * *

■ 34. Amend § 230.158 by revising paragraphs (a)(1)(i), (a)(2)(i), and (b) to read as follows:

§ 230.158 Definitions of certain terms in the last paragraph of section 11(a).

(a) * * *

(1) * * *

(i) In Item 8 of Form 10–K (§ 239.310 of this chapter), part I, Item 1 of Form 10–Q (§ 240.308a of this chapter), or Rule 14a–3(b) (§ 240.14a–3(b) of this chapter) under the Securities Exchange Act of 1934;

* * * * *

(2) * * *

(i) On Form 10–K, Form 10–Q, Form 8–K (§ 249.308 of this chapter), or in the annual report to security holders pursuant to Rule 14a–3 under the Securities Exchange Act of 1934 (§ 240.14a–3 of this chapter); or

* * * * *

(b) For purposes of the last paragraph of section 11(a) only, the "earning statement" contemplated by paragraph (a) of this section shall be deemed to be "made generally available to its security holders" if the registrant:

(1) Is required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 and

(2) Has filed its report or reports on Form 10–K and Form 10–KSB, Form 10–Q and Form 10–QSB, Form 8–K, Form 20–F, Form 40–F, or Form 6–K, or has supplied to the Commission copies of the annual report sent to security holders pursuant to Rule 14a–3(c), (§ 240.14a–3(c) of this chapter) containing such information.

A registrant may use other methods to make an earning statement "generally available to its security holders" for purposes of the last paragraph of section 11(a).

* * * * *

■ 35. Amend § 230.175 by revising paragraphs (b)(1), (b)(1)(i), and (b)(2) to read as follows:

§ 230.175 Liability for certain statements by issuers.

* * * * *

(b) * * *

(1) A forward-looking statement (as defined in paragraph (c) of this section)

made in a document filed with the Commission, in Part I of a quarterly report on Form 10–Q, (§ 249.308a of this chapter), or in an annual report to security holders meeting the requirements of Rule 14a–3(b) and (c) or 14c–3(a) and (b) under the Securities Exchange Act of 1934 (§§ 240.14a–3(b) and (c) or 240.14c–3(a) and (b) of this chapter), a statement reaffirming such forward-looking statement after the date the document was filed or the annual report was made publicly available, or a forward-looking statement made before the date the document was filed or the date the annual report was publicly available if such statement is reaffirmed in a filed document, in Part I of a quarterly report on Form 10–Q, or in an annual report made publicly available within a reasonable time after the making of such forward-looking statement; *Provided,* that

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a–1 or 15d–1 (§§ 239.13a–1 or 239.15d–1 of this chapter) thereunder, if applicable, to file its most recent annual report on Form 10–K, Form 20–F, or Form 40–F; or if the issuer is not subject to the reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Act, offering statement or solicitation of interest, written document or broadcast script under Regulation A or pursuant to sections 12(b) or (g) of the Securities Exchange Act of 1934; and

* * * * *

(2) Information that is disclosed in a document filed with the Commission, in Part I of a quarterly report on Form 10–Q (§ 249.308a of this chapter) or in an annual report to shareholders meeting the requirements of Rules 14a–3 (b) and (c) or 14c–3 (a) and (b) under the Securities Exchange Act of 1934 (§§ 240.14a–3(b) and (c) or 240.14c–3(a) and (b) of this chapter) and that relates to:

(i) The effects of changing prices on the business enterprise, presented voluntarily or pursuant to Item 303 of Regulation S–K (§ 229.303 of this chapter), "Management's Discussion and Analysis of Financial Condition and Results of Operations," Item 5 of Form 20–F (§ 249.220(f) of this chapter), "Operating and Financial Review and Prospects," Item 302 of Regulation S–K (§ 229.302 of this chapter), "Supplementary Financial Information," or Rule 3–20(c) of Regulation S–X (§ 210.3–20(c) of this chapter); or

(ii) The value of proved oil and gas reserves (such as a standardized measure of discounted future net cash flows relating to proved oil and gas reserves as set forth in paragraphs 30–34 of Statement of Financial Accounting Standards No. 69) presented voluntarily or pursuant to Item 302 of Regulation S–K (§ 229.302 of this chapter).

* * * * *

■ 36. Amend § 230.405 by removing the definition of "small business issuer" and adding the definition of "smaller reporting company" in alphabetical order to read as follows:

§ 230.405 Definitions of terms.

* * * * *

Smaller reporting company: As used in this part, the term *smaller reporting company* means an issuer that is not an investment company, an asset-backed issuer (as defined in § 229.1101 of this chapter), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that:

(1) Had a public float of less than $75 million as of the last business day of its most recently completed second fiscal quarter, computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity; or

(2) In the case of an initial registration statement under the Securities Act or Exchange Act for shares of its common equity, had a public float of less than $75 million as of a date within 30 days of the date of the filing of the registration statement, computed by multiplying the aggregate worldwide number of such shares held by non-affiliates before the registration plus, in the case of a Securities Act registration statement, the number of such shares included in the registration statement by the estimated public offering price of the shares; or

(3) In the case of an issuer whose public float as calculated under paragraph (1) or (2) of this definition was zero, had annual revenues of less than $50 million during the most recently completed fiscal year for which audited financial statements are available.

(4) *Determination:* Whether or not an issuer is a smaller reporting company is determined on an annual basis.

(i) For issuers that are required to file reports under section 13(a) or 15(d) of the Exchange Act, the determination is based on whether the issuer came within the definition of smaller reporting company using the amounts specified in paragraph (f)(2)(iii) of Item 10 of Regulation S–K (§ 229.10(f)(1)(i) of this chapter), as of the last business day of the second fiscal quarter of the issuer's previous fiscal year. An issuer in this category must reflect this determination in the information it provides in its quarterly report on Form 10–Q for the first fiscal quarter of the next year, indicating on the cover page of that filing, and in subsequent filings for that fiscal year, whether or not it is a smaller reporting company, except that, if a determination based on public float indicates that the issuer is newly eligible to be a smaller reporting company, the issuer may choose to reflect this determination beginning with its first quarterly report on Form 10–Q following the determination, rather than waiting until the first fiscal quarter of the next year.

(ii) For determinations based on an initial Securities Act or Exchange Act registration statement under paragraph (f)(1)(ii) of Item 10 of Regulation S–K (§ 229.10(f)(1)(ii) of this chapter), the issuer must reflect the determination in the information it provides in the registration statement and must appropriately indicate on the cover page of the filing, and subsequent filings for the fiscal year in which the filing is made, whether or not it is a smaller reporting company. The issuer must redetermine its status at the end of its second fiscal quarter and then reflect any change in status as provided in paragraph (4)(i) of this definition. In the case of a determination based on an initial Securities Act registration statement, an issuer that was not determined to be a smaller reporting company has the option to redetermine its status at the conclusion of the offering covered by the registration statement based on the actual offering price and number of shares sold.

(iii) Once an issuer fails to qualify for smaller reporting company status, it will remain unqualified unless it determines that its public float, as calculated in accordance with paragraph (f)(1) of this definition, was less than $50 million as of the last business day of its second fiscal quarter or, if that calculation results in zero because the issuer had no public equity outstanding or no market price for its equity existed, if the issuer had annual revenues of less than $40 million during its previous fiscal year.

* * * * *

■ 37. Amend § 230.415 by revising paragraph (a)(3) to read as follows:

§ 230.415 Delayed or continuous offerings and sale of securities.

(a) * * *

(3) The registrant furnishes the undertakings required by Item 512(a) of Regulation S–K (§ 229.512(a) of this chapter), except that a registrant that is an investment company filing on Form N–2 must furnish the undertakings required by Item 34.4 of Form N–2 (§ 239.14 and § 274.11a–1 of this chapter).

* * * * *

■ 38. Amend § 230.428 by revising paragraphs (b)(2)(ii), (b)(2)(iii), (b)(2)(iv), and (b)(4) to read as follows:

§ 230.428 Documents constituting a section 10(a) prospectus for Form S–8 registration statement; requirements relating to offerings of securities registered on Form S–8.

* * * * *

(b) * * *

(2) * * *

(ii) The registrant's annual report on Form 10–K (§ 249.310 of this chapter), 20–F (§ 249.220f of this chapter) or, in the case of registrants described in General Instruction A.(2) of Form 40–F (§ 249.240f of this chapter), for its latest fiscal year;

(iii) The latest prospectus filed pursuant to Rule 424(b) (§ 230.424(b)) under the Act that contains audited financial statements for the registrant's latest fiscal year, *Provided* that the financial statements are not incorporated by reference from another filing, and *Provided* further that such prospectus contains substantially the information required by Rule 14a–3(b) (§ 240.14a–3(b) of this chapter) or the registration statement was on Form S–1 (§ 239.11 of this chapter) or F–1 (§ 239.31 of this chapter); or

(iv) The registrant's effective Exchange Act registration statement on Form 10 (§ 249.210 of this chapter), 20–F or, in the case of registrants described in General Instruction A.(2) of Form 40–F, containing audited financial statements for the registrant's latest fiscal year.

* * * * *

(4) Where interests in a plan are registered, the registrant shall deliver or cause to be delivered promptly, without charge, to each employee to whom information is required to be delivered, upon written or oral request, a copy of the then latest annual report of the plan filed pursuant to section 15(d) of the Exchange Act, whether on Form 11–K (§ 249.311 of this chapter) or included as part of the registrant's annual report on Form 10–K.

* * * * *

■ 39. Amend § 230.430B by revising paragraphs (f)(4) introductory text, (ii), and (i) to read as follows:

§ 230.430B Prospectus in a registration statement after effective date.

* * * * *

(f) * * *

(4) Except for an effective date resulting from the filing of a form of prospectus filed for purposes of including information required by section 10(a)(3) of the Act or pursuant to Item 512(a)(1)(ii) of Regulation S–K (§ 229.512(a)(1)(ii) of this chapter), the date a form of prospectus is deemed part of and included in the registration statement pursuant to this paragraph shall not be an effective date established pursuant to paragraph (f)(2) of this section as to:

(i) * * *

(ii) Any person signing any report or document incorporated by reference into the registration statement, except for such a report or document incorporated by reference for purposes of including information required by section 10(a)(3) of the Act or pursuant to Item 512(a)(1)(ii) of Regulation S–K (such person except for such reports being deemed not to be a person who signed the registration statement within the meaning of section 11(a) of the Act).

* * * * *

(i) Issuers relying on this section shall furnish the undertakings required by Item 512(a) of Regulation S–K.

* * * * *

■ 40. Amend § 230.430C by revising paragraph (d) to read as follows:

§ 230.430C Prospectus in a registration statement pertaining to an offering other than pursuant to Rule 430A or Rule 430B after the effective date.

* * * * *

(d) Issuers subject to paragraph (a) of this section shall furnish the undertakings required by Item 512(a) of Regulation S–K (§ 229.512(a) of this chapter) or Item 34.4 of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), as applicable.

■ 41. Revise § 230.455 to read as follows:

§ 230.455 Place of filing.

All registration statements and other papers filed with the Commission shall be filed at its principal office. Such material may be filed by delivery to the Commission; provided, however, that only registration statements and post-effective amendments thereto filed pursuant to Rule 462(b) (§ 230.462(b)) and Rule 110(d) (§ 230.110(d)) may be filed by means of facsimile transmission.

■ 42. Amend § 30.502 by revising paragraphs (b)(2)(i)(B)(*1*), (b)(2)(i)(B)(*2*), (b)(2)(ii)(A), (b)(2)(ii)(B), and (b)(2)(iii) to read as follows:

§ 230.502 General conditions to be met.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) *Financial statement information. (1) Offerings up to $2,000,000.* The information required in Article 8 of Regulation S–X (§ 210.8 of this chapter), except that only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited.

(2) *Offerings up to $7,500,000.* The financial statement information required in Form S–1 (§ 239.10 of this chapter) for smaller reporting companies. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited. If the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of Federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

* * * * *

(ii) * * *

(A) The issuer's annual report to shareholders for the most recent fiscal year, if such annual report meets the requirements of Rules 14a–3 or 14c–3 under the Exchange Act (§ 240.14a–3 or § 240.14c–3 of this chapter), the definitive proxy statement filed in connection with that annual report, and if requested by the purchaser in writing, a copy of the issuer's most recent Form 10–K (§ 249.310 of this chapter) under the Exchange Act.

(B) The information contained in an annual report on Form 10–K (§ 249.310 of this chapter) under the Exchange Act or in a registration statement on Form S–1 (§ 239.11 of this chapter) or S–11 (§ 239.18 of this chapter) under the Act or on Form 10 (§ 249.210 of this chapter) under the Exchange Act, whichever filing is the most recent required to be filed.

* * * * *

(iii) Exhibits required to be filed with the Commission as part of a registration statement or report, other than an annual report to shareholders or parts of

that report incorporated by reference in a Form 10–K report, need not be furnished to each purchaser that is not an accredited investor if the contents of material exhibits are identified and such exhibits are made available to a purchaser, upon his or her written request, a reasonable time before his or her purchase.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 43. 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, 77z–3, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 44. Amend § 239.0–1 by revising paragraph (b) to read as follows:

§ 239.0–1 Availability of forms.

* * * * *

(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549. Any persons may inspect the forms at this address and at the Commission's regional offices. (*See* § 200.11 of this chapter for the addresses of the SEC regional offices.)

■ 45. By removing and reserving §§ 239.9 and 239.10 and removing Form SB–1 and Form SB–2.

Note: The text of Forms SB–1 and SB–2 does not appear in the Code of Federal Regulations.

■ 46. Amend Form S–1 (referenced in § 239.11) by:

■ a. Adding to the cover page, above the calculation of the registration fee table, check boxes requesting the registrant to indicate whether it is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company; and

■ b. Revising Items 11(e), 11A, and 12(a)(1) in Part I.

The revisions and addition read as follows:

Note: The text of Form S–1 does not and this amendment will not appear in the Code of Federal Regulations.

* * * * *

FORM S–1—REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b–2 of the Exchange Act. (Check one):

☐ Large accelerated filer
☐ Accelerated filer
☐ Non-accelerated filer
☐ Smaller reporting company

(Do not check if a smaller reporting company)

* * * * *

PART I—INFORMATION REQUIRED IN PROSPECTUS

* * * * *

Item 11. Information With Respect to the Registrant

* * * * *

(e) Financial statements meeting the requirements of Regulation S–X (17 CFR part 210) (Schedules required under Regulation S–X shall be filed as "Financial Statements Schedules" pursuant to Item 15, Exhibits and Financial Statement Schedules, of this form), as well as any financial information required by Rule 3–05 and Article 11 of Regulation S–X. A smaller reporting company may provide the information in Rule 8–04 and 8–05 of Regulation S–X in lieu of the financial information required by Rule 3–05 and Article 11 of Regulation S–X;

* * * * *

Item 11A. Material Changes

If the registrant elects to incorporate information by reference pursuant to General Instruction VII, describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest Form 10–K and that have not been described in a Form 10–Q or Form 8–K filed under the Exchange Act.

Item 12. Incorporation of Certain Information by Reference

* * * * *

(a) * * *

(1) The registrant's latest annual report on Form 10–K filed pursuant to Section 13(a) or Section 15(d) of the Exchange Act that contains financial statements for the registrant's latest fiscal year for which a Form 10–K was required to have been filed; and

* * * * *

■ 47. Amend Form S–3 (referenced in § 239.13) by adding to the cover page, above the calculation of the registration fee table, check boxes requesting the registrant to indicate whether it is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company and revising General Instruction II C., and in Part I, Items 11(a) and 12(a)(1) to read as follows.

Note: The text of Form S–3 does not and this amendment will not appear in the Code of Federal Regulations.

* * * * *

FORM S–3—REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b–2 of the Exchange Act. (Check one):

☐ Large accelerated filer
☐ Non-accelerated filer
☐ Accelerated filer
☐ Smaller reporting company

(Do not check if a smaller reporting company)

* * * * *

GENERAL INSTRUCTIONS

* * * * *

II. Application of General Rules and Regulations

* * * * *

C. A smaller reporting company, defined in Rule 405 (17 CFR 230.405), that is eligible to use Form S–3 shall use the disclosure items in Regulation S–K (17 CFR 229.10 *et seq.*) with specific attention to the scaled disclosure provided for smaller reporting companies, if any. Smaller reporting companies may provide the financial information called for by Article 8 of Regulation S–X in lieu of the financial information called for by Item 11 in this form.

* * * * *

PART I—INFORMATION REQUIRED IN PROSPECTUS

* * * * *

Item 11. Material Changes

(a) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest annual report to security holders and that have not been described in a report on Form 10–Q (§ 249.308a of this chapter) or Form 8–K (§ 249.308 of this chapter) filed under the Exchange Act.

* * * * *

Item 12. Incorporation of Certain Information by Reference

(a) * * *

(1) The registrant's latest annual report on Form 10–K (17 CFR 249.310) filed pursuant to Section 13(a) or 15(d) of the Exchange Act that contains financial statements for the registrant's latest fiscal year for which a Form 10–K was required to be filed; and

* * * * *

■ 48. Amend Form S–8 (referenced in § 239.16b) by adding to the cover page, above the calculation of registration fee table, check boxes requesting the registrant to indicate whether a registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company and

revising General Instructions A.1(a)(6) and B.3. 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 OF SECURITIES UNDER THE SECURITIES ACT OF 1933

* * * * *

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b–2 of the Exchange Act. (Check one):

☐ Large accelerated filer
☐ Non-accelerated filer
☐ Accelerated filer
☐ Smaller reporting company

(Do not check if a smaller reporting company)

* * * * *

GENERAL INSTRUCTIONS

A. Rule as to Use of Form S–8

1. * * *

(a) * * *

(6) The term "Form 10 information" means the information that is required by Form 10 or Form 20–F (§ 249.210 or § 249.220f of this chapter), as applicable to the registrant, to register under the Securities Exchange Act of 1934 each class of securities being registered using this form. A registrant may provide the Form 10 information in another Commission filing with respect to the registrant.

* * * * *

B. Application of General Rules and Regulations

* * * * *

3. A "smaller reporting company," defined in § 230.405, shall use the disclosure items in Regulation S–K (17 CFR 229.10 *et seq.*) with specific attention to the scaled disclosure provided for smaller reporting companies, if any.

* * * * *

■ 49. Amend Form S–11 (referenced in § 229.18) by:

■ a. Adding to the cover page, above the calculation of registration fee table, check boxes requesting the registrant to indicate whether it is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company; and

■ b. Revising Item 27.

The revision and addition read as follows:

Note: The text of Form S–11 does not and this amendment will not appear in the Code of Federal Regulations.

FORM S–11—FOR REGISTRATION UNDER THE SECURITIES ACT OF 1933 OF SECURITIES OF CERTAIN REAL ESTATE COMPANIES

* * * * *

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b–2 of the Exchange Act. (Check one):

☐ Large accelerated filer
☐ Non-accelerated filer
☐ Accelerated filer
☐ Smaller reporting company

(Do not check if a smaller reporting company)

* * * * *

Item 27. Financial Statements and Information

Include in the prospectus the financial statements required by Regulation S–X, the supplementary financial information required in Item 302 of Regulation S–K (§ 229.302 of this chapter) and the information concerning changes in and disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S–K (§ 229.304 of this chapter). Although all schedules required by Regulation S–X are to be included in the registration statement, all such schedules other than those prepared in accordance with Rules 12–12, 12–28, and 12–29 of Regulation S–X (§§ 210.12–12, 12–28, and 12–29 of this chapter) may be omitted from the prospectus. A smaller reporting company may provide the information in Article 8 of Regulation S–X (§ 210.8 of this chapter) in lieu of the financial information required by other parts of Regulation S–X, and need not provide the supplementary financial information required in Item 302 of Regulation S–K.

* * * * *

■ 50. Amend Form S–4 (referenced in § 239.25) by:

■ a. Adding to the cover page, above the calculation of the registration fee table, check boxes requesting the registrant to indicate whether it is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company;

■ b. Removing paragraph 4 of General Instruction D; and

■ c. Revising paragraph 1 of General Instruction I and in Part I Item 4(b), Item 5, Item 12(a) before the Instruction, the introductory text of Item 12(b), paragraph 3 of Item 12(c), Item 17(b)(8), Item 18(b), and Item 19(c).

The addition and revisions read as follows:

* * * * *

Note: The text of Form S–4 does not and this amendment will not appear in the Code of Federal Regulations.

* * * * *

FORM S–4—REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b–2 of the Exchange Act. (Check one):

☐ Large accelerated filer
☐ Non-accelerated filer
☐ Accelerated filer
☐ Smaller reporting company

(Do not check if a smaller reporting company)

* * * * *

GENERAL INSTRUCTIONS

* * * * *

I. Roll-Up Transactions

1. If securities to be registered on this Form will be issued in a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)), then the disclosure provisions of Subpart 229.900 of Regulation S–K (17 CFR 229.900) shall apply to the transaction in addition to the provisions of this Form. A smaller reporting company, defined in § 230.405, that is engaged in a roll-up transaction shall refer to the disclosure items in subpart 900 of Regulation S–K. To the extent that the disclosure requirements of Subpart 229.900 are inconsistent with the disclosure requirements of any other applicable forms or schedules, the requirements of Subpart 229.900 are controlling.

* * * * *

PART I—INFORMATION REQUIRED IN THE PROSPECTUS

* * * * *

A. Information About the Transaction

* * * * *

Item 4. Terms of the Transaction

* * * * *

(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, furnish the same information as would be required by Item 1015(b) of Regulation M–A (§ 229.1015(b) of this chapter).

Item 5. Pro Forma Financial Information

Furnish financial information required by Article 11 of Regulation S–X (§ 210.11–01 *et seq.* of this chapter) with respect to this transaction. A smaller reporting company may provide the information in Rule 8–05 of Regulation S–X (§ 210.8–05 of this chapter) in lieu of the financial information required by Article 11 of Regulation S–X.

* * * * *

Item 12. Information With Respect to S–3 Registrants

* * * * *

(a) If the registrant elects to deliver this prospectus together with a copy of either its latest Form 10–K filed pursuant to Section 13(a) or 15(d) of the Exchange Act or its latest annual report to security holders, which at the time of original preparation met the requirements of either Rule 14a–3 or Rule 14c–3:

(1) Indicate that the prospectus is accompanied by either a copy of the registrant's latest Form 10–K or a copy of its latest annual report to security holders, whichever the registrant elects to deliver pursuant to paragraph (a) of this Item.

(2) Provide financial and other information with respect to the registrant in the form required by Part I of Form 10–Q as of the end of the most recent fiscal quarter which ended after the end of the latest fiscal year for which certified financial statements were included in the latest Form 10–K or the latest report to security holders (whichever the registrant elects to deliver pursuant to paragraph (a) of this Item), and more than forty-five days before the effective date of this registration statement (or as of a more recent date) by one of the following means:

(i) Including such information in the prospectus;

(ii) Providing without charge to each person to whom a prospectus is delivered a copy of the registrant's latest Form 10–Q; or

(iii) Providing without charge to each person to whom a prospectus is delivered a copy of the registrant's latest quarterly report that was delivered to security holders and included the required financial information.

(3) If not reflected in the registrant's latest Form 10–K or its latest annual report to security holders (whichever the registrant elects to deliver pursuant to paragraph (a) of this Item) provide information required by Rule 3–05 (§ 210.3–05 of this chapter) and Article 11 (§ 210.11–01 through 210.11.03 of this chapter) of Regulation S–X. Smaller reporting companies may provide the information required by Rules 8–04 and 8–05 of Regulation S–X.

(4) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest Form 10–K or latest annual report to security holders (whichever the registrant elects to deliver pursuant to paragraph (a) of this Item) and that were not described in a Form 10–Q or quarterly report delivered with the prospectus in accordance with paragraph (a)(2)(ii) or (iii) of this Item.

* * * * *

(b) If the registrant does not elect to deliver its latest Form 10–K or its latest annual report to security holders:

* * * * *

(c) * * *

(3) Such restatement of financial statements or disposition of assets was not reflected in the registrant's latest annual report to security holders and/or in its latest Form 10–K filed pursuant to Section 13(a) or 15(d) of the Exchange Act.

* * * * *

Item 17. Information With Respect to Companies Other Than S–3 Companies

* * * * *

(b) * * *

(8) The quarterly financial and other information that would have been required had the company being acquired been required to file Part I of Form 10–Q (§ 249.308a of this chapter) for the most recent quarter for which such a report would have been on file at the time the registration statement becomes effective or for a period ending as of a more recent date.

* * * * *

Item 18. Information if Proxies, Consents or Authorizations Are To Be Solicited

* * * * *

(b) If the registrant or the company being acquired meets the requirements for use of Form S–3, any information required by paragraphs (a)(5)(ii) and (7) of this Item with respect to such company may be incorporated by reference from its latest annual report on Form 10–K.

Item 19. Information if Proxies, Consents or Authorizations Are Not To Be Solicited or in an Exchange Offer

* * * * *

(c) If the registrant or the company being acquired meets the requirements for use of Form S–3, any information required by paragraphs (a)(5) and (7) of this Item with respect to such company may be incorporated by reference from its latest annual report on Form 10–K.

* * * * *

■ 51. Revise § 239.42 to read as follows:

§ 239.42 Form F–X, for appointment of agent for service of process and undertaking for issuers registering securities on Form F–8, F–9, F–10, or F–80 (§§ 239.38, 239.39, 239.40, or 239.41), or registering securities or filing periodic reports on Form 40–F (§ 249.240f of this chapter), or by any issuer or other non-U.S. person filing tender offer documents on Schedule 13E–4F, 14D–1F, or 14D–9F (§§ 240.13e–102, 240.14d–102, or 240.14d–103 of this chapter), by any non-U.S. person acting as trustee with respect to securities registered on Form F–7 (§ 239.37), F–8, F–9, F–10, or by a Canadian issuer qualifying an offering statement pursuant to Regulation A (§ 230.251 et seq. of this chapter) on Form 1–A (§ 239.90), or by any non-U.S. issuer providing Form CB (§ 249.480 of this chapter) to the Commission in connection with a tender offer, rights offering or business combination.

Form F–X shall be filed with the Commission:

(a) By any issuer registering securities on Form F–8, F–9, F–10, or F–80 under the Securities Act of 1933;

(b) By any issuer registering securities on Form 40–F under the Securities Exchange Act of 1934;

(c) By any issuer filing a periodic report on Form 40–F, if it has not previously filed a Form F–X in connection with the class of securities in relation to which the obligation to file a report on Form 40–F arises;

(d) By any issuer or other non-U.S. person filing tender offer documents on Schedule 13E–4F, 14D–1F, or 14D–9F;

(e) By any non-U.S. person acting as trustee with respect to securities registered on Form F–7, F–8, F–9, F–10, or F–80;

(f) By a Canadian issuer qualifying an offering statement pursuant to the provisions of Regulation A; and

(g) By any non-U.S. issuer providing Form CB to the Commission in connection with a tender offer, rights offering or business combination.

■ 52. Amend Form F–X (referenced in § 239.42) by revising General Instructions I.(e) and II.F.(a) and (c) to read as follows:

Note: The text of Form F–X does not and this amendment will not appear in the Code of Federal Regulations.

FORM F–X—APPOINTMENT OF AGENT FOR SERVICE OF PROCESS AND UNDERTAKING

GENERAL INSTRUCTIONS

I. * * *

* * * * *

(e) By any non-U.S. person acting as trustee with respect to securities registered on Form F–7, F–8, F–9, F–10, or F–80; and

* * * * *

II. * * *

F. Each person filing this Form in connection with:

(a) The use of Form F–9, F–10, or 40–F or Schedule 13E–4F, 14D–1F, or 14D–9F stipulates and agrees to appoint a successor agent for service of process and file an amended Form F–X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time until six years have elapsed from the date the issuer of the securities to which such Forms and Schedules relate has ceased reporting under the Exchange Act;

* * * * *

(c) Its status as trustee with respect to securities registered on Form F–7, F–8, F–9, F–10, or F–80 stipulates and agrees to appoint a successor agent for service of process and file an amended Form F–X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time during which any of the securities subject to the indenture remain outstanding; and

* * * * *

■ 53. Amend Form 1–A (referenced in § 239.90) by revising paragraph B in Part II to read as follows:

Note: The text of Form 1–A does not and this amendment will not appear in the Code of Federal Regulations.

FORM 1–A—REGULATION A OFFERING STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

PART II—OFFERING CIRCULAR

* * * * *

B. For all other issuers and for any issuer that so chooses—the information required by either Part I of Form S–1, (17 CFR 239.11), except for the financial statements called for there, or Model B of this Part II of Form 1–A. Offering circulars prepared pursuant to

this instruction need not follow the order of the items or other requirements of the disclosure form. Such information shall not, however, be set forth in such a fashion as to obscure any of the required information or information necessary to keep the required information from being incomplete or misleading. Information requested to be presented in a specified tabular format shall be given in substantially the tabular form specified in the item.

* * * * *

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

■ 54. The authority citations for part 240 continue to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 55. Amend § 240.0–2 by revising paragraph (a) to read as follows:

§ 240.0–2 Business hours of the Commission.

(a) The principal office of the Commission, at 100 F Street, NE, Washington, DC 20549, is open each day, except Saturdays, Sundays, and Federal holidays, from 9 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever currently is in effect in Washington, DC, *provided that* hours for the filing of documents pursuant to the Act or the rules and regulations thereunder are as set forth in paragraphs (b) and (c) of this section.

* * * * *

■ 56. Amend § 240.0–12 by revising the second sentence of paragraph (c) to read as follows:

§ 240.0–12 Commission procedures for filing applications for orders for exemptive relief under Section 36 of the Exchange Act.

* * * * *

(c) * * * Five copies of every paper application and every amendment to such an application must be submitted to the Office of the Secretary at 100 F Street, NE., Washington, DC 20549–1090. * * *

* * * * *

■ 57. Amend § 240.3b–6 by revising the introductory text of paragraph (b)(1), paragraphs (b)(1)(i) and (b)(2) to read as follows:

§ 240.3b–6 Liability for certain statements by issuers.

* * * * *

(b) * * *

(1) A forward-looking statement (as defined in paragraph (c) of this section) made in a document filed with the Commission, in Part I of a quarterly report on Form 10–Q, § 249.308a of this chapter, or in an annual report to security holders meeting the requirements of Rules 14a–3(b) and (c) or 14c–3(a) and (b) (§§ 240.14a–3(b) and (c) or 240.14c–3(a) and (b)), a statement reaffirming such forward-looking statement after the date the document was filed or the annual report was made publicly available, or a forward-looking statement made before the date the document was filed or the date the annual report was made publicly available if such statement is reaffirmed in a filed document, in Part I of a quarterly report on Form 10–Q, or in an annual report made publicly available within a reasonable time after the making of such forward-looking statement; *Provided,* that:

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of Section 13(a) or 15(d) of the Act and has complied with the requirements of Rule 13a–1 or 15d–1 thereunder, if applicable, to file its most recent annual report on Form 10–K, Form 20–F or Form 40–F; or if the issuer is not subject to the reporting requirements of Section 13(a) or 15(d) of the Act, the statements are made in a registration statement filed under the Securities Act of 1933 offering statement or solicitation of interest, written document or broadcast script under Regulation A or pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934; and

* * * * *

(2) Information that is disclosed in a document filed with the Commission in Part I of a quarterly report on Form 10–Q (§ 249.308a of this chapter) or in an annual report to security holders meeting the requirements of Rules 14a–3(b) and (c) or 14c–3(a) and (b) under the Act (§§ 240.14a–3(b) and (c) or 240.14c–3(a) and (b) of this chapter) and that relates to:

(i) The effects of changing prices on the business enterprise, presented voluntarily or pursuant to Item 303 of Regulation S–K (§ 229.303 of this chapter), "Management's Discussion and Analysis of Financial Condition and Results of Operations," Item 5 of Form 20–F (§ 240.220(f) of this chapter), "Operating and Financial Review and Prospects," Item 302 of Regulation S–K (§ 229.302 of this chapter) "Supplementary Financial Information," or Rule 3–20(c) of Regulation S–X (§ 210.3–20(c) of this chapter); or

(ii) The value of proved oil and gas reserves (such as a standardized measure of discounted future net cash flows relating to proved oil and gas reserves as set forth in paragraphs 30–34 of Statement of Financial Accounting Standards No. 69), presented voluntarily or pursuant to Item 302 of Regulation S–K (§ 229.302 of this chapter).

* * * * *

■ 58. Amend § 240.10A–1 by revising paragraphs (a)(4)(ii) and (b)(3) to read as follows:

§ 240.10A–1 Notice to the Commission Pursuant to Section 10A of the Act.

(a)(1) * * *

(4) * * *

(ii) The disclosure requirements of Item 304 of Regulation S–K, § 229.304 of this chapter.

(b)(1) * * *

(3) Submission of the report (or documentation) by the independent accountant as described in paragraphs (b)(1) and (b)(2) of this section shall not replace, or otherwise satisfy the need for, the newly engaged and former accountants' letters under Items 304(a)(2)(D) and 304(a)(3) of Regulation S–K, §§ 229.304(a)(2)(D) and 229.304(a)(3) of this chapter, respectively, and shall not limit, reduce, or affect in any way the independent accountant's obligations to comply fully with all other legal and professional responsibilities, including, without limitation, those under generally accepted auditing standards and the rules or interpretations of the Commission that modify or supplement those auditing standards.

* * * * *

■ 59. Amend § 240.10A–3 by revising paragraph (a)(5)(i)(A) to read as follows:

§ 240.10A–3 Listing standards relating to audit committees.

(a) * * *

(5) * * *

(i) * * *

(A) July 31, 2005 for foreign private issuers and smaller reporting companies (as defined in § 240.12b–2); and

* * * * *

■ 60. Amend § 240.12b–2 by:

■ a. Revising paragraphs (1)(iv) and (2)(iv) in the definition of *accelerated filer* and *large accelerated filer*;

■ b. Removing the definition of *small business issuer*; and

■ c. Adding the definition of *smaller reporting company* in alphabetical order.

The revisions and addition to read as follows:

§ 240.12b–2 Definitions.

* * * * *

Accelerated filer and large accelerated filer

(1) * * *

(iv) The issuer is not eligible to use the requirements for smaller reporting companies in Part 229 of this chapter for its annual and quarterly reports.

(2) * * *

(iv) The issuer is not eligible to use the requirements for smaller reporting companies in Part 229 of this chapter for its annual and quarterly reports.

* * * * *

Smaller reporting company: As used in this part, the term *smaller reporting company* means an issuer that is not an investment company, an asset-backed issuer (as defined in § 229.1101 of this chapter), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that:

(1) Had a public float of less than $75 million as of the last business day of its most recently completed second fiscal quarter, computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity; or

(2) In the case of an initial registration statement under the Securities Act or Exchange Act for shares of its common equity, had a public float of less than $75 million as of a date within 30 days of the date of the filing of the registration statement, computed by multiplying the aggregate worldwide number of such shares held by non-affiliates before the registration plus, in the case of a Securities Act registration statement, the number of such shares included in the registration statement by the estimated public offering price of the shares; or

(3) In the case of an issuer whose public float as calculated under paragraph (1) or (2) of this definition was zero, had annual revenues of less than $50 million during the most recently completed fiscal year for which audited financial statements are available.

(4) *Determination:* Whether or not an issuer is a smaller reporting company is determined on an annual basis.

(i) For issuers that are required to file reports under section 13(a) or 15(d) of the Exchange Act, the determination is based on whether the issuer came within the definition of smaller reporting company using the amounts specified in paragraph (f)(2)(iii) of Item 10 of Regulation S–K (§ 229.10(f)(1)(i) of this chapter), as of the last business day of the second fiscal quarter of the issuer's previous fiscal year. An issuer in this category must reflect this determination in the information it provides in its quarterly report on Form 10–Q for the first fiscal quarter of the next year, indicating on the cover page of that filing, and in subsequent filings for that fiscal year, whether or not it is a smaller reporting company, except that, if a determination based on public float indicates that the issuer is newly eligible to be a smaller reporting company, the issuer may choose to reflect this determination beginning with its first quarterly report on Form 10–Q following the determination, rather than waiting until the first fiscal quarter of the next year.

(ii) For determinations based on an initial Securities Act or Exchange Act registration statement under paragraph (f)(1)(ii) of Item 10 of Regulation S–K (§ 229.10(f)(1)(ii) of this chapter), the issuer must reflect the determination in the information it provides in the registration statement and must appropriately indicate on the cover page of the filing, and subsequent filings for the fiscal year in which the filing is made, whether or not it is a smaller reporting company. The issuer must redetermine its status at the end of its second fiscal quarter and then reflect any change in status as provided in paragraph (4)(i) of this definition. In the case of a determination based on an initial Securities Act registration statement, an issuer that was not determined to be a smaller reporting company has the option to redetermine its status at the conclusion of the offering covered by the registration statement based on the actual offering price and number of shares sold.

(iii) Once an issuer fails to qualify for smaller reporting company status, it will remain unqualified unless it determines that its public float, as calculated in accordance with paragraph (f)(1) of this definition, was less than $50 million as of the last business day of its second fiscal quarter or, if that calculation results in zero because the issuer had no public equity outstanding or no market price for its equity existed, if the issuers had annual revenues of less than $40 million during its previous fiscal year.

* * * * *

■ 61. Amend § 240.12b–23 by revising paragraphs (a)(3)(i) and (b) to read as follows:

§ 240.12b–23 Incorporation by reference.

(a) * * *

(3) * * *

(i) A proxy or information statement incorporated by reference in response to Part III of Form 10–K (17 CFR 249.310);

* * * * *

(b) Any incorporation by reference of matter pursuant to this section shall be subject to the provisions of § 229.10(d) of this chapter restricting incorporation by reference of documents that incorporate by reference other information. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, and caption or otherwise. Where only certain pages of a document are incorporated by reference and filed as an exhibit, the document from which the material is taken shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement or report where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement or report incomplete, unclear or confusing.

■ 62. Amend § 240.12b–25 by revising the section heading and paragraphs (a) and (b)(2)(ii) to read as follows:

§ 240.12b–25 Notification of inability to timely file all or any required portion of a Form 10–K, 20–F, 11–K, N–SAR, N–CSR, 10–Q, or 10–D.

(a) If all or any required portion of an annual or transition report on Form 10–K, 20–F or 11–K (17 CFR 249.310, 249.220f or 249.311), a quarterly or transition report on Form 10–Q (17 CFR 249.308a), or a distribution report on Form 10–D (17 CFR 249.312) required to be filed pursuant to Section 13 or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) and rules thereunder, or if all or any required portion of a semi-annual, annual or transition report on Form N–CSR (17 CFR 249.331; 17 CFR 274.128) or Form N–SAR (17 CFR 249.330; 17 CFR 274.101) required to be filed pursuant to Section 13 or 15(d) of the Act or section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29) and the rules thereunder, is not filed within the time period prescribed for such report, the registrant, no later than one business day after the due date for such report, shall file a Form 12b–25 (17 CFR 249.322) with the Commission which shall contain disclosure of its inability to file the report timely and the reasons therefore in reasonable detail.

(b) * * *

(2) * * *

(ii) The subject annual report, semi-annual report or transition report on Form 10–K, 20–F, 11–K, N–SAR, or N–CSR, or portion thereof, will be filed no

later than the fifteenth calendar day following the prescribed due date; or the subject quarterly report or transition report on Form 10–Q or distribution report on Form 10–D, or portion thereof, will be filed no later than the fifth calendar day following the prescribed due date; and

* * * * *

■ 63. Amend § 240.12h–3 by revising paragraph (e) to read as follows:

§ 240.12h–3 Suspension of duty to file reports under section 15(d).

* * * * *

(e) If the suspension provided by this section is discontinued because a class of securities does not meet the eligibility criteria of paragraph (b) of this section on the first day of an issuer's fiscal year, then the issuer shall resume periodic reporting pursuant to section 15(d) of the Act by filing an annual report on Form 10–K for its preceding fiscal year, not later than 120 days after the end of such fiscal year.

■ 64. Amend § 240.13a–10 by revising paragraphs (c), (d)(2)(ii), (d)(2)(iii), the introductory text of paragraph (e), paragraphs (e)(1), (e)(2), (e)(4), the Note to paragraphs (c) and (e) and the introductory text of paragraph (j)(2) to read as follows:

§ 240.13a–10 Transition reports.

* * * * *

(c) If the transition period covers a period of less than six months, in lieu of the report required by paragraph (b) of this section, a report may be filed for the transition period on Form 10–Q (§ 249.308a of this chapter) not more than the number of days specified in paragraph (j) of this section after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report on Form 10–Q shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements filed therewith need not be audited but, if they are not audited, the issuer shall file with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flows covering the transition period. The notes to financial statements for the transition period included in such first annual report may be integrated with the notes to financial statements for the full fiscal period. A separate audited balance sheet as of the end of the transition period shall be filed in the annual report only if the audited balance sheet as of the end of the fiscal year prior to the transition period is not filed. Schedules need not be filed in transition reports on Form 10–Q.

(d) * * *

(2) * * *

(ii) The first report required to be filed by the issuer for the newly adopted fiscal year after the date of the determination to change the fiscal year end is a quarterly report on Form 10–Q; and

(iii) Information on the transition period is included in the issuer's quarterly report on Form 10–Q for the first quarterly period (except the fourth quarter) of the newly adopted fiscal year that ends after the date of the determination to change the fiscal year. The information covering the transition period required by Part II and Item 2 of Part I may be combined with the information regarding the quarter. However, the financial statements required by Part I, which may be unaudited, shall be furnished separately for the transition period.

(e) Every issuer required to file quarterly reports on Form 10–Q pursuant to § 240.13a–13 of this chapter that changes its fiscal year end shall:

(1) File a quarterly report on Form 10–Q within the time period specified in General Instruction A.1. to that form for any quarterly period (except the fourth quarter) of the old fiscal year that ends before the date on which the issuer determined to change its fiscal year end, except that the issuer need not file such quarterly report if the date on which the quarterly period ends also is the date on which the transition period ends;

(2) File a quarterly report on Form 10–Q within the time specified in General Instruction A.1. to that form for each quarterly period of the old fiscal year within the transition period. In lieu of a quarterly report for any quarter of the old fiscal year within the transition period, the issuer may file a quarterly report on Form 10–Q for any period of three months within the transition period that coincides with a quarter of the newly adopted fiscal year if the quarterly report is filed within the number of days specified in paragraph (j) of this section after the end of such three month period, provided the issuer thereafter continues filing quarterly reports on the basis of the quarters of the newly adopted fiscal year;

* * * * *

(4) Unless such information is or will be included in the transition report, or the first annual report on Form 10–K for the newly adopted fiscal year, include in the initial quarterly report on Form 10–Q for the newly adopted fiscal year information on any period beginning on the first day subsequent to the period covered by the issuer's final quarterly report on Form 10–Q or annual report on Form 10–K for the old fiscal year. The information covering such period required by Part II and Item 2 of Part I may be combined with the information regarding the quarter. However, the financial statements required by Part I, which may be unaudited, shall be furnished separately for such period.

Note to paragraphs (c) and (e): If it is not practicable or cannot be cost-justified to furnish in a transition report on Form 10–Q or a quarterly report for the newly adopted fiscal year financial statements for corresponding periods of the prior year where required, financial statements may be furnished for the quarters of the preceding fiscal year that most nearly are comparable if the issuer furnishes an adequate discussion of seasonal and other factors that could affect the comparability of information or trends reflected, an assessment of the comparability of the data, and a representation as to the reason recasting has not been undertaken.

* * * * *

(j) * * *

(2) For transition reports to be filed on Form 10–Q (§ 249.308a of this chapter) the number of days shall be:

* * * * *

■ 65. Amend § 240.13a–13 by revising the section heading, paragraph (a), the introductory text of paragraph (c), and paragraph (d) to read as follows:

§ 240.13a–13 Quarterly reports on Form 10–Q (§ 249.308a of this chapter).

(a) Except as provided in paragraphs (b) and (c) of this section, every issuer that has securities registered pursuant to section 12 of the Act and is required to file annual reports pursuant to section 13 of the Act, and has filed or intends to file such reports on Form 10–K (§ 249.310 of this chapter), shall file a quarterly report on Form 10–Q (§ 249.308a of this chapter) within the period specified in General Instruction A.1. to that form for each of the first three quarters of each fiscal year of the issuer, commencing with the first fiscal quarter following the most recent fiscal year for which full financial statements were included in the registration statement, or, if the registration statement included financial statements for an interim period subsequent to the most recent fiscal year end meeting the requirements of Article 10 of Regulation S–X and Rule 8–03 of Regulation S–X for smaller reporting companies, for the first fiscal quarter subsequent to the quarter reported upon in the registration statement. The first quarterly report of the issuer shall be filed either within 45 days after the effective date of the registration statement or on or before the date on which such report would have

been required to be filed if the issuer has been required to file reports on Form 10–Q as of its last fiscal quarter, whichever is later.

* * * * *

(c) Part I of the quarterly reports on Form 10–Q need not be filed by:

* * * * *

(d) Notwithstanding the foregoing provisions of this section, the financial information required by Part I of Form 10–Q shall not be deemed to be "filed" for the purpose of Section 18 of the Act or otherwise subject to the liabilities of that section of the Act, but shall be subject to all other provisions of the Act.

■ 66. Amend § 240.13a–14 by revising paragraph (a) to read as follows:

§ 240.13a–14 Certification of disclosure in annual and quarterly reports.

(a) Each report, including transition reports, filed on Form 10–Q, Form 10–K, Form 20–F or Form 40–F (§§ 249.308a, 249.310, 249.220f or 249.240f of this chapter) under Section 13(a) of the Act (15 U.S.C. 78m(a)), other than a report filed by an Asset-Backed Issuer (as defined in § 229.1101 of this chapter) or a report on Form 20–F filed under § 240.13a–19, must include certifications in the form specified in the applicable exhibit filing requirements of such report and such certifications must be filed as an exhibit to such report. Each principal executive and principal financial officer of the issuer, or persons performing similar functions, at the time of filing of the report must sign a certification. The principal executive and principal financial officers of an issuer may omit the portion of the introductory language in paragraph 4 as well as language in paragraph 4(b) of the certification that refers to the certifying officers' responsibility for designing, establishing and maintaining internal control over financial reporting for the issuer until the issuer becomes subject to the internal control over financial reporting requirements in § 240.13a–15 or 240.15d–15.

* * * * *

■ 67. Amend § 240.13a–16 by revising paragraph (a)(3) to read as follows:

§ 240.13a–16 Reports of foreign private issuers on Form 6–K (17 CFR 249.306).

(a) * * *

(3) Issuers filing periodic reports on Form 10–K, Form 10–Q, and Form 8–K; or

* * * * *

■ 68. Amend § 240.13a–20 by revising the introductory text of paragraph (a) to read as follows:

§ 240.13a–20 Plain English presentation of specified information.

(a) Any information included or incorporated by reference in a report filed under section 13(a) of the Act (15 U.S.C. 78m(a)) that is required to be disclosed pursuant to Item 402, 403, 404 or 407 of Regulation S–K (§ 229.402, 229.403, 229.404 or 229.407 of this chapter) must be presented in a clear, concise and understandable manner. You must prepare the disclosure using the following standards:

* * * * *

■ 69. Amend § 240.14a–3 by:

■ a. Removing the Note to Small Business Issuers following the introductory text of paragraph (b);

■ b. Revising paragraph (b)(1) and Note 1;

■ c. Revising the heading "Note 2" to read "Note 2 to Paragraph (b)(i)"; and

■ d. Revising paragraphs (b)(5)(ii), (b)(10) and its Note, and (d) to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) * * *

(1) The report shall include, for the registrant and its subsidiaries, consolidated and audited balance sheets as of the end 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 (part 210 of this chapter), except that the provisions of Article 3 (other than §§ 210.3–03(e), 210.3–04 and 210.3–20) and Article 11 shall not apply. Any financial statement schedules or exhibits or separate financial statements which may otherwise be required in filings with the Commission may be omitted. If the financial statements of the registrant and its subsidiaries consolidated in the annual report filed or to be filed with the Commission are not required to be audited, the financial statements required by this paragraph may be unaudited. A smaller reporting company may provide the information in Article 8 of Regulation S–X (§ 210.8 of this chapter) in lieu of the financial information required by this paragraph 9(b)(1).

Note 1 to Paragraph (b)(1): If the financial statements for a period prior to the most recently completed fiscal year have been examined by a predecessor accountant, the separate report of the predecessor accountant may be omitted in the report to security holders, provided the registrant has obtained from the predecessor accountant a reissued report covering the prior period presented and the successor accountant clearly indicates in the scope paragraph of his or her report (a) that the financial statements of the prior period were examined by other accountants, (b) the date of their report, (c) the type of opinion expressed by the predecessor accountant and (d) the substantive reasons therefore, if it was other than unqualified. It should be noted, however, that the separate report of any predecessor accountant is required in filings with the Commission. If, for instance, the financial statements in the annual report to security holders are incorporated by reference in a Form 10–K, the separate report of a predecessor accountant shall be filed in Part II or in Part IV as a financial statement schedule.

* * * * *

(5) * * *

(ii) The report shall contain management's discussion and analysis of financial condition and results of operations required by Item 303 of Regulation S–K (§ 229.303 of this chapter).

* * * * *

(10) The registrant's proxy statement, or the report, shall contain an undertaking in bold face or otherwise reasonably prominent type to provide without charge to each person solicited upon the written request of any such person, a copy of the registrant's annual report on Form 10–K, including the financial statements and the financial statement schedules, required to be filed with the Commission pursuant to Rule 13a–1 (§ 240.13a–1 of this chapter) under the Act for the registrant's most recent fiscal year, and shall indicate the name and address (including title or department) of the person to whom such a written request is to be directed. In the discretion of management, a registrant need not undertake to furnish without charge copies of all exhibits to its Form 10–K, provided that the copy of the annual report on Form 10–K furnished without charge to requesting security holders is accompanied by a list briefly describing all the exhibits not contained therein and indicating that the registrant will furnish any exhibit upon the payment of a specified reasonable fee, which fee shall be limited to the registrant's reasonable expenses in furnishing such exhibit. If the registrant's annual report to security holders complies with all of the disclosure requirements of Form 10–K and is filed with the Commission in satisfaction of its Form 10–K filing requirements, such registrant need not furnish a separate Form 10–K to security holders who receive a copy of such annual report.

Note to Paragraph (b)(10): Pursuant to the undertaking required by paragraph (b)(10) of this section, a registrant shall furnish a copy of its annual report on Form 10–K (§ 249.310

of this chapter) to a beneficial owner of its securities upon receipt of a written request from such person. Each request must set forth a good faith representation that, as of the record date for the solicitation requiring the furnishing of the annual report to security holders pursuant to paragraph (b) of this section, the person making the request was a beneficial owner of securities entitled to vote.

* * * * *

(d) An annual report to security holders prepared on an integrated basis pursuant to General Instruction H to Form 10–K (§ 249.310 of this chapter) may also be submitted in satisfaction of this section. When filed as the annual report on Form 10–K, responses to the Items of that form are subject to section 18 of the Act notwithstanding paragraph (c) of this section.

* * * * *

■ 70. Amend § 240.14a–5 by removing the authority citation following the section and revising paragraph (f) to read as follows:

§ 240.14a–5 Presentation of information in proxy statement.

* * * * *

(f) If the date of the next annual meeting is subsequently advanced or delayed by more than 30 calendar days from the date of the annual meeting to which the proxy statement relates, the registrant shall, in a timely manner, inform shareholders of such change, and the new dates referred to in paragraphs (e)(1) and (e)(2) of this section, by including a notice, under Item 5, in its earliest possible quarterly report on Form 10–Q (§ 249.308a of this chapter), or, in the case of investment companies, in a shareholder report under § 270.30d–1 of this chapter under the Investment Company Act of 1940, or, if impracticable, any means reasonably calculated to inform shareholders.

■ 71. Amend § 240.14a–8, by revising paragraph (e)(1) to read as follows:

§ 240.14a–8 Shareholder proposals.

* * * * *

(e) * * *

(1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10–Q (§ 249.308a of this chapter), or in shareholder reports of investment companies under § 270.30d–1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

* * * * *

■ 72. Amend § 240.14a–101 by:

■ a. Revising Notes C. and D.1, and the introductory text of Note E.;

■ b. Removing Notes F. and G. to the cover page;

■ c. Revising paragraph (e)(1) of Item 9, and revising paragraph (a)(1) of Item 13.

The revisions to read as follows:

§ 240.14a–101 Schedule 14A. information required in proxy statement.

* * * * *

Schedule 14A Information

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

* * * * *

Notes: * * *

C. Except as otherwise specifically provided, where any item calls for information for a specified period with regard to directors, executive officers, officers or other persons holding specified positions or relationships, the information shall be given with regard to any person who held any of the specified positions or relationship at any time during the period. Information, other than information required by Item 404 of Regulation S–K (§ 229.404 of this chapter), need not be included for any portion of the period during which such person did not hold any such position or relationship, provided a statement to that effect is made.

D. * * *

1. Any incorporation by reference of information pursuant to the provisions of this schedule shall be subject to the provisions of § 229.10(d) of this chapter restricting incorporation by reference of documents that incorporate by reference other information. A registrant incorporating any documents, or portions of documents, shall include a statement on the last page(s) of the proxy statement as to which documents, or portions of documents, are incorporated by reference. Information shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

* * * * *

E. In Item 13 of this Schedule, the reference to "meets the requirement of Form S–3" shall refer to a registrant who meets the following requirements:

* * * * *

Item 9. Independent public accountants.

* * * * *

(e)(1) Disclose, under the caption *Audit Fees*, the aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the registrant's annual financial statements and review of financial statements included in the registrant's Form 10–Q (17 CFR 249.308a) or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years.

* * * * *

Item 13. Financial and other information. (*See* Notes D and E at the beginning of this Schedule.)

(a) * * *

(1) Financial statements meeting the requirements of Regulation S–X, including financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than pursuant to which action is to be taken as described in this proxy statement (A smaller reporting company may provide the information in Rules 8–04 and 8–05 of Regulation S–X (§ 210.8–04 and § 210.8–05 of this chapter) in lieu of the financial information required by Rule 3–05 and Article 11 of Regulation S–X);

* * * * *

§ 240.14c–3 [Amended]

■ 73. Amend § 240.14c–3 by removing the Note to Small Business Issuers following paragraph (a)(2).

■ 74. Amend § 240.14c–101 by revising the Note that follows the cover page to read as follows:

§ 240.14c–101 Schedule 14C. Information required in information statement.

Schedule 14C Information

Information Statement Pursuant to Section 14(c) of the Securities Exchange Act of 1934

* * * * *

Note to Cover Page: Where any item, other than Item 4, calls for information with respect to any matter to be acted upon at the meeting or, if no meeting is being held, by written authorization or consent, such item need be answered only with respect to proposals to be made by the registrant. Registrants and acquirees that meet the definition of "smaller reporting company" under Rule 12b–2 of the Exchange Act (§ 240.12b–2) shall refer to the disclosure items in Regulation S–K (§§ 229.10 through 229.1123 of this chapter) with specific attention to the scaled disclosure requirements for smaller reporting companies, if any. A smaller reporting company may provide the information in Article 8 of Regulation S–X in lieu of any financial statements required by Item 1 of § 240.14c–101.

* * * * *

■ 75. Amend § 240.14d–3 by removing the authority citation following the section and revising paragraph (a)(3)(i) to read as follows:

§ 240.14d–3 Filing and transmission of tender offer statement.

(a) * * *

(3) * * *

(i) To each national securities exchange where such class of the subject company's securities is registered and listed for trading (which may be based upon information contained in the subject company's

most recent Annual Report on Form 10–K (§ 249.310 of this chapter) filed with the Commission unless the bidder has reason to believe that such information is not current), which telephonic notice shall be made when practicable before the opening of each such exchange; and

* * * * *

■ 76. Amend § 240.15d–10 by revising paragraphs (c), (d)(2)(ii), (d)(2)(iii), the introductory text of (e), paragraphs (e)(1), (e)(2), (e)(4), the Note to paragraphs (c) and (e), paragraph (f), and the introductory text of (j)(2) to read as follows:

§ 240.15d–10 Transition reports.

* * * * *

(c) If the transition period covers a period of less than six months, in lieu of the report required by paragraph (b) of this section, a report may be filed for the transition period on Form 10–Q (§ 249.308 of this chapter) not more than the number of days specified in paragraph (j) of this section after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report on Form 10–Q shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements filed therewith need not be audited but, if they are not audited, the issuer shall file with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flows covering the transition period. The notes to financial statements for the transition period included in such first annual report may be integrated with the notes to financial statements for the full fiscal period. A separate audited balance sheet as of the end of the transition period shall be filed in the annual report only if the audited balance sheet as of the end of the fiscal year before the transition period is not filed. Schedules need not be filed in transition reports on Form 10–Q.

(d) * * *

(2)(i) * * *

(ii) The first report required to be filed by the issuer for the newly adopted fiscal year after the date of the determination to change the fiscal year end is a quarterly report on Form 10–Q; and

(iii) Information on the transition period is included in the issuer's quarterly report on Form 10–Q for the first quarterly period (except the fourth quarter) of the newly adopted fiscal year that ends after the date of the determination to change the fiscal year. The information covering the transition period required by Part II and Item 2 of Part I may be combined with the information regarding the quarter. However, the financial statements required by Part I, which may be unaudited, shall be furnished separately for the transition period.

* * * * *

(e) Every issuer required to file quarterly reports on Form 10–Q pursuant to § 240.15d–13 that changes its fiscal year end shall:

(1) File a quarterly report on Form 10–Q within the time period specified in General Instruction A.1. to that form for any quarterly period (except the fourth quarter) of the old fiscal year that ends before the date on which the issuer determined to change its fiscal year end, except that the issuer need not file such quarterly report if the date on which the quarterly period ends also is the date on which the transition period ends;

(2) File a quarterly report on Form 10–Q within the time specified in General Instruction A.1 to that form for each quarterly period of the old fiscal year within the transition period. In lieu of a quarterly report for any quarter of the old fiscal year within the transition period, the issuer may file a quarterly report on Form 10–Q for any period of three months within the transition period that coincides with a quarter of the newly adopted fiscal year if the quarterly report is filed within the number of days specified in paragraph (j) of this section after the end of such three month period, provided the issuer thereafter continues filing quarterly reports on the basis of the quarters of the newly adopted fiscal year;

* * * * *

(4) Unless such information is or will be included in the transition report, or the first annual report on Form 10–K for the newly adopted fiscal year, include in the initial quarterly report on Form 10–Q for the newly adopted fiscal year information on any period beginning on the first day after the period covered by the issuer's final quarterly report on Form 10–Q or annual report on Form 10–K for the old fiscal year. The information covering such period required by Part II and Item 2 of Part I may be combined with the information regarding the quarter. However, the financial statements required by Part I, which may be unaudited, shall be furnished separately for such period.

Note to Paragraphs (c) and (e): If it is not practicable or cannot be cost-justified to furnish in a transition report on Form 10–Q or a quarterly report for the newly adopted fiscal year financial statements for corresponding periods of the prior year where required, financial statements may be furnished for the quarters of the preceding fiscal year that most nearly are comparable if the issuer furnishes an adequate discussion of seasonal and other factors that could affect the comparability of information or trends reflected, an assessment of the comparability of the data, and a representation as to the reason recasting has not been undertaken.

(f) Every successor issuer that has a different fiscal year from that of its predecessor(s) shall file a transition report pursuant to this section, containing the required information about each predecessor, for the transition period, if any, between the close of the fiscal year covered by the last annual report of each predecessor and the date of succession. The report shall be filed for the transition period on the form appropriate for annual reports of the issuer not more than the number of days specified in paragraph (j) of this section after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (b) of this section. If the transition period covers a period of less than six months, in lieu of a transition report on the form appropriate for the issuer's annual reports, the report may be filed for the transition period on Form 10-Q not more than the number of days specified in paragraph (j) of this section after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (c) of this section. Notwithstanding the foregoing, if the transition period covers a period of one month or less, the successor issuer need not file a separate transition report if the information is reported by the successor issuer in conformity with the requirements set forth in paragraph (d) of this section.

* * * * *

(j) * * *

(2) For transition reports to be filed on Form 10–Q (§ 249.308 of this chapter), the number of days shall be:

* * * * *

■ 77. Amend § 240.15d–13 by revising the section heading, paragraph (a), the introductory text of (c), and paragraphs (d) and (e) to read as follows:

§ 240.15d–13 Quarterly reports on Form 10–Q (§ 249.308 of this chapter).

(a) Except as provided in paragraphs (b) and (c) of this section, every issuer that has securities registered pursuant to the Securities Act and is required to file annual reports pursuant to section 15(d) of the Act on Form 10–K (§ 249.310 of this chapter) shall file a quarterly report on Form 10–Q (§ 249.308 of this chapter) within the period specified in General Instruction A.1 to that form for each of the first three quarters of each fiscal year of the issuer, commencing

with the first fiscal quarter following the most recent fiscal year for which full financial statements were included in the registration statement, or, if the registration statement included financial statements for an interim period after the most recent fiscal year end meeting the requirements of Article 10 of Regulation S–X, or Rule 8–03 of Regulation S–X for smaller reporting companies, for the first fiscal quarter after the quarter reported upon in the registration statement. The first quarterly report of the issuer shall be filed either within 45 days after the effective date of the registration statement or on or before the date on which such report would have been required to be filed if the issuer had been required to file reports on Form 10–Q as of its last fiscal quarter, whichever is later.

* * * * *

(c) Part I of the quarterly reports on Form 10-Q need not be filed by:

* * * * *

(d) Notwithstanding the foregoing provisions of this section, the financial information required by Part I of Form 10–Q shall not be deemed to be "filed" for the purpose of section 18 of the Act or otherwise subject to the liabilities of that section of the Act, but shall be subject to all other provisions of the Act.

(e) Notwithstanding the foregoing provisions of this section, the financial information required by Part I of Form 10–Q, or financial information submitted in lieu thereof pursuant to paragraph (d) of this section, shall not be deemed to be "filed" for the purpose of section 18 of the Act or otherwise subject to the liabilities of that section of the Act, but shall be subject to all other provisions of the Act.

■ 78. Amend § 240.15d–14 by revising paragraph (a) to read as follows:

§ 240.15d–14 Certification of disclosure in annual and quarterly reports.

(a) Each report, including transition reports, filed on Form 10–Q, Form 10–K, Form 20–F or Form 40–F (§ 249.308a, 249.310, 249.220f or 249.240f of this chapter) under section 15(d) of the Act (15 U.S.C. 78o(d)), other than a report filed by an Asset-Backed Issuer (as defined in § 229.1101 of this chapter) or a report on Form 20–F filed under § 240.15d–19, must include certifications in the form specified in the applicable exhibit filing requirements of such report, and such certifications must be filed as an exhibit to such report. Each principal executive and principal financial officer of the issuer, or persons performing similar functions, at the time of filing of the report must sign a certification. The principal executive and principal financial officers of an issuer may omit the portion of the introductory language in paragraph 4 as well as language in paragraph 4(b) of the certification that refers to the certifying officers' responsibility for designing, establishing and maintaining internal control over financial reporting for the issuer until the issuer becomes subject to the internal control over financial reporting requirements in § 240.13a–15 or 240.15d–15.

* * * * *

■ 79. Amend § 240.15d–20 by revising the introductory text of paragraph (a) to read as follows:

§ 240.15d–20 Plain English presentation of specified information.

(a) Any information included or incorporated by reference in a report filed under section 15(d) of the Act (15 U.S.C. 78o(d)) that is required to be disclosed pursuant to Item 402, 403, 404 or 407 of Regulation S–K (§ 229.402, 229.403, 229.404 or 229.407 of this chapter) must be presented in a clear, concise and understandable manner. You must prepare the disclosure using the following standards:

* * * * *

■ 80. Amend § 240.15d–21 by revising paragraph (a)(1) to read as follows:

§ 240.15d–21 Reports for employee stock purchase, savings and similar plans.

(a) * * *

(1) The issuer of the stock or other securities offered to employees through their participation in the plan files annual reports on Form 10–K (§ 249.310 of this chapter); and

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 81. The authority citations for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.*, 7202, 7233, 7241, 7262, 7264, and 7265; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 82. Amend § 249.0–1 by revising paragraph (b) to read as follows:

§ 249.0–1 Availability of forms.

* * * * *

(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549. Any person may inspect the forms at this address and at the Commission's regional offices. (*See* § 200.11 of this chapter for the addresses of SEC regional offices).

■ 83. Amend Form 8–A (referenced in § 249.208a) by revising Item 1 before the Instruction 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.

FORM 8–A—FOR REGISTRATION OF CERTAIN CLASSES OF SECURITIES PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES ACT OF 1934

* * * * *

Item 1. Description of Registrant's Securities to be Registered

Furnish the information required by Item 202 of Regulation S–K (§ 229.202 of this chapter), as applicable.

* * * * *

■ 84. Amend Form 10 (referenced in § 249.210) by:

■ a. Adding check boxes to the cover page, above the Information Requested in Registration Statement, requesting the registrant indicate by check mark whether it is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company;

■ b. Revising Item 1A; and

■ c. Revising Item 13.

The addition and revision read as follows:

Note: The text of Form 10 does not and this amendment will not appear in the Code of Federal Regulations.

FORM 10—GENERAL FORM FOR REGISTRATION OF SECURITIES

Pursuant to Section 12(b) or (g) of The Securities Exchange Act of 1934

* * * * *

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b–2 of the Exchange Act. (Check one):

☐ Large accelerated filer
☐ Non-accelerated filer
☐ Accelerated filer
☐ Smaller reporting company

(Do not check if a smaller reporting company)

* * * * *

Item 1A. Risk Factors

Set forth, under the caption "Risk Factors," where appropriate, the risk factors described in Item 503(c) of Regulation S–K (§ 229.503(c) of this chapter) applicable to the registrant. Provide any discussion of risk factors in plain English in accordance with Rule 421(d) of the Securities Act of 1933 (§ 230.421(d) of this chapter). Smaller reporting companies are not required to provide the information required by this item.

* * * * *

Item 13. Financial Statements and Supplementary Data

Furnish all financial statements required by Regulation S–X and supplementary financial information required by Item 302 of Regulation S–K (§ 229.302 of this chapter). Smaller reporting companies may provide the financial information required by Article 8 of Regulation S–X in lieu of the information required by in other parts of Regulation S–X.

* * * * *

§ 249.210b [Removed]

■ 85. By removing and reserving § 249.210b and removing Form 10–SB.

Note: The text of Form 10–SB does not appear in the Code of Federal Regulations.

■ 86. Amend Form 20–F (referenced in § 249.220f) by adding instruction (f) to the General Instructions B 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.

FORM 20–F

* * * * *

GENERAL INSTRUCTIONS

* * * * *

B. General Rules and Regulation That Apply to this Form

* * * * *

(f) A foreign private issuer that is a smaller reporting company, as defined in Rule 12b–2 under the Exchange Act (17 CFR 240.12b–2), may not use the scaled disclosure requirements in Regulation S–X and Regulation S–K available to smaller reporting companies for the purposes of preparing this form.

* * * * *

■ 87. Amend Form 8–K (referenced in § 249.308) by revising General Instruction B.4.; removing General Instruction C.3; revising Item 2.01 paragraph (f) before the Instructions; Instructions 2 and 4 to Item 2.02; Item 2.03 paragraph (d); Item 3.02 paragraphs (a) and (b) before the Instructions and Instruction 2; Item 4.01 paragraphs (a) and (b) before the Instructions; Item 4.02 the introductory text of paragraph (a); Item 5.01 paragraphs (a)(8) and (b); Item 5.02 paragraphs (c)(2), (d)(4), (f), and Instruction 4; in Item 5.03 paragraph (b), revise the phrase "Form 10–K, Form 10–KSB, Form 10–Q or Form 10–QSB" to read "Form 10–K or Form 10–Q", and revise Instruction 1; Item 5.05 paragraph (a); and Item 9.01 paragraphs (a)(1), (a)(3), (b)(1) and (d) before the Instruction

The revisions read as follows:

FORM 8–K—CURRENT REPORT

Pursuant to Section 13 OR 15(d) of the Securities Exchange Act of 1934

* * * * *

GENERAL INSTRUCTIONS

* * * * *

B. Events to be Reported and Time for Filing of Reports

* * * * *

4. Copies of agreements, amendments or other documents or instruments required to be filed pursuant to Form 8–K are not required to be filed or furnished as exhibits to the Form 8–K unless specifically required to be filed or furnished by the applicable Item. This instruction does not affect the requirement to otherwise file such agreements, amendments or other documents or instruments, including as exhibits to registration statements and periodic reports pursuant to the requirements of Item 601 of Regulation S–K.

* * * * *

Item 2.01 Completion of Acquisition or Disposition of Assets

* * * * *

(f) If the registrant was a shell company, other than a business combination related shell company, as those terms are defined in Rule 12b–2 under the Exchange Act (17 CFR 240.12b–2), immediately before the transaction, the information that would be required if the registrant were filing a general form for registration of securities on Form 10 under the Exchange Act reflecting all classes of the registrant's securities subject to the reporting requirements of Section 13 (15 U.S.C. 78m) or Section 15(d) (15 U.S.C. 78o(d)) of such Act upon consummation of the transaction, with such information reflecting the registrant and its securities upon consummation of the transaction. Notwithstanding General Instruction B.3 to Form 8–K, if any disclosure required by this Item 2.01(f) is previously reported, as that term is defined in Rule 12b–2 under the Exchange Act (17 CFR 240.12b–2), the registrant may identify the filing in which that disclosure is included instead of including that disclosure in this report.

* * * * *

Item 2.02 Results of Operations and Financial Condition

* * * * *

Instructions.

* * * * *

2. The requirements of paragraph (e)(1)(i) of Item 10 of Regulation S–K (17 CFR 229.10(e)(1)(i)) shall apply to disclosures under this Item 2.02.

* * * * *

4. This Item 2.02 does not apply in the case of a disclosure that is made in a quarterly report filed with the Commission on Form 10–Q (17 CFR 249.308a) or an annual report filed with the Commission on Form 10–K (17 CFR 249.310).

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

* * * * *

(d) For purposes of this Item 2.03, *off-balance sheet arrangement* has the meaning set forth in Item 303(a)(4)(ii) of Regulation S–K (17 CFR 229.303(a)(4)(ii)).

* * * * *

Item 3.02 Unregistered Sales of Equity Securities

(a) If a registrant sells equity securities in a transaction that is not registered under the Securities Act, furnish the information set forth in paragraphs (a) and (c) through (e) of Item 701 of Regulation S–K (17 CFR 229.701(a) and (c) through (e)). For purposes of determining the required filing date for the Form 8–K under this Item 3.02(a), the registrant has no obligation to disclose information under this Item 3.02 until the registrant enters into an agreement enforceable against the registrant, whether or not subject to conditions, under which the equity securities are to be sold. If there is no such agreement, the registrant must provide the disclosure within four business days after the occurrence of the closing or settlement of the transaction or arrangement under which the equity securities are to be sold.

(b) No report need be filed under this Item 3.02 if the equity securities sold, in the aggregate since its last report filed under this Item 3.02 or its last periodic report, whichever is more recent, constitute less than 1% of the number of shares outstanding of the class of equity securities sold. In the case of a smaller reporting company, no report need be filed if the equity securities sold, in the aggregate since its last report filed under this Item 3.02 or its last periodic report, whichever is more recent, constitute less than 5% of the number of shares outstanding of the class of equity securities sold.

Instructions.

* * * * *

2. A smaller reporting company is defined in Item 10(f)(1) of Regulation S–K (17 CFR 229.10(f)(1)).

* * * * *

Item 4.01 Changes in Registrant's Certifying Accountant

(a) If an independent accountant who was previously engaged as the principal accountant to audit the registrant's financial statements, or an independent accountant upon whom the principal accountant expressed reliance in its report regarding a significant subsidiary, resigns (or indicates that it declines to stand for re-appointment after completion of the current audit) or is dismissed, disclose the information required by Item 304(a)(1) of Regulation S–K (§ 229.304(a)(1) of this chapter), including compliance with Item 304(a)(3) of Regulation S–K (§ 229.304(a)(3) of this chapter).

(b) If a new independent accountant has been engaged as either the principal accountant to audit the registrant's financial statements or as an independent accountant on whom the principal accountant is expected to express reliance in its report regarding a significant subsidiary, the registrant must disclose the information required by Item 304(a)(2) of Regulation S–K (17 CFR 229.302(a)(2)).

* * * * *

Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review

(a) If the registrant's board of directors, a committee of the board of directors or the officer or officers of the registrant authorized to take such action if board action is not required, concludes that any previously issued financial statements, covering one or more years or interim periods for which the registrant is required to provide financial statements under Regulation S–X (17 CFR 210) should no longer be relied upon because of an error in such financial statements as addressed in Accounting Principles Board Opinion No. 20, as may be modified, supplemented or succeeded, disclose the following information:

* * * * *

Item 5.01 Changes in Control of the Registrant

(a) * * *

(8) if the registrant was a shell company, other than a business combination related shell company, as those terms are defined in Rule 12b–2 under the Exchange Act (17 CFR 240.12b–2), immediately before the change in control, the information that would be required if the registrant were filing a general form for registration of securities on Form 10 under the Exchange Act reflecting all classes of the registrant's securities subject to the reporting requirements of Section 13 (15 U.S.C. 78m) or Section 15(d) (15 U.S.C. 78o(d)) of such Act upon consummation of the change in control, with such information reflecting the registrant and its securities upon consummation of the transaction. Notwithstanding General Instruction B.3. to Form 8–K, if any disclosure required by this Item 5.01(a)(8) is previously reported, as that term is defined in Rule 12b–2 under the Exchange Act (17 CFR 240.12b–2), the registrant may identify the filing in which that disclosure is included instead of including that disclosure in this report.

(b) Furnish the information required by Item 403(c) of Regulation S–K (17 CFR 229.403(c)).

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

* * * * *

(c) * * *

(2) the information required by Items 401(b), (d), (e) and Item 404(a) of Regulation S–K (17 CFR 229.401(b), (d), (e) and 229.404(a); and

* * * * *

(d) * * *

(4) the information required by Item 404(a) of Regulation S–K (17 CFR 229.404(a)).

* * * * *

(f) If the salary or bonus of a named executive officer cannot be calculated as of the most recent practicable date and is omitted from the Summary Compensation Table as specified in Instruction 1 to Item 402(c)(2)(iii) and (iv) of Regulation S–K, disclose the appropriate information under this Item 5.02(f) when there is a payment, grant, award, decision or other occurrence as a result of which such amounts become calculable in whole or in part. Disclosure under this Item 5.02(f) shall include a new total compensation figure for the named executive officer, using the new salary or bonus information to recalculate the information that was previously provided with respect to the named executive officer in the registrant's Summary Compensation Table for which the salary and bonus information was omitted in reliance on Instruction 1 to Item 402(c)(2)(iii) and (iv) of Regulation S–K (17 CFR 229.402(c)(2)(iii) and (iv)).

Instructions to Item 5.02

* * * * *

(4) For purposes of this Item, the term "named executive officer" shall refer to those executive officers for whom disclosure was required in the registrant's most recent filing with the Commission under the Securities Act (15 U.S.C. 77a *et seq.*) or Exchange Act (15 U.S.C. 78a *et seq.*) that required disclosure pursuant to Item 402(c) of Regulation S–K (17 CFR 229.402(c)).

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

* * * * *

Instructions to Item 5.03

1. Refer to Item 601(b)(3) of Regulation S–K (17 CFR 229.601(b)(3)) regarding the filing of exhibits to this Item 5.03.

* * * * *

Item 5.05 Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics

(a) Briefly describe the date and nature of any amendment to a provision of the registrant's code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in Item 406(b) of Regulation S–K (17 CFR 229.406(b)).

* * * * *

Item 9.01 Financial Statements and Exhibits

* * * * *

(a) * * *

(1) For any business acquisition required to be described in answer to Item 2.01 of this form, financial statements of the business acquired shall be filed for the periods specified in Rule 3–05(b) of Regulation S–X (17 CFR 210.3–05(b)) or Rule 8–04(b) of Regulation S–X (17 CFR 210.8–04(b)) for smaller reporting companies.

* * * * *

(2) * * *

(3) With regard to the acquisition of one or more real estate properties, the financial statements and any additional information specified by Rules 3–14 (17 CFR 210.3–14) or Rule 8–06 of Regulation S–X (17 CFR 210.8–06) for smaller reporting companies.

(b) * * *

(1) For any transaction required to be described in answer to Item 2.01 of this form, furnish any pro forma financial information that would be required pursuant to Article 11 of Regulation S–X (§ 210.11 of this chapter) or Rule 8–05 of Regulation S–X (§ 210.8–05 of this chapter) for smaller reporting companies.

* * * * *

(d) *Exhibits.* The exhibits will be deemed to be filed or furnished, depending upon the relevant item requiring such exhibit, in accordance with the provisions of Item 601 of Regulation S–K (17 CFR 229.601) and Instruction B.2 of this form.

* * * * *

88. Amend Form 10–Q (referenced in § 249.308a) by:

■ a. Revising the cover page of Form 10–Q to add, above Part I Financial Information, check boxes requesting the registrant to indicate whether it is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company;

■ b. In Part I, revising the text of Item 1; and

■ c. In Part II, revising the text of Item 1A.

The revisions and addition read as follows:

Note: The text of Form 10–Q does not and this amendment will not appear in the Code of Federal Regulations.

FORM 10–Q

* * * * *

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b–2 of the Exchange Act. (Check one):

☐ Large accelerated filer
☐ Non-accelerated filer
☐ Accelerated filer
☐ Smaller reporting company

(Do not check if a smaller reporting company)

Part I—Financial Information

Item 1. Financial Statements

Provide the information required by Rule 10–01 of Regulation S–X (17 CFR 210). A smaller reporting company, defined in Rule 12b–2 (§ 240.12b–2 of this chapter) may provide the information required by Article 8–03 of Regulation S–X (§ 210.8–03 of this chapter).

* * * * *

Part II—Other Information

* * * * *

Item 1A. Risk Factors

Set forth any material changes from risk factors as previously disclosed in the registrant's Form 10–K (§ 249.310) in response to Item 1A to Part 1 of Form 10–K. Smaller reporting companies are not required to provide the information required by this item.

§ 249.308b [Removed]

■ 89. By removing and reserving § 249.308b and removing Form 10–QSB.

Note: The text of Form 10–QSB does not appear in the Code of Federal Regulations.

■ 90. Amend Form 10–K (referenced in § 249.310) by:
■ a. Revising the cover page of Form 10–K to add, above the line asking the registrant to indicate whether it is a shell company, check boxes requesting the registrant to indicate whether it is a large accelerated filer, or an accelerated filer; a non-accelerated filer, or a smaller reporting company;
■ b. Revising Item 1A; and
■ c. Revising Item 5 paragraph (a), Item 8 and Item 14 paragraph (1).

The additions and revisions read as follows:

Note: The text of Form 10–K does not and this amendment will not appear in the Code of Federal Regulations.

Form 10–K—Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Form 10–K

* * * * *

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b–2 of the Exchange Act. (Check one):

☐ Large accelerated filer
☐ Non-accelerated filer
☐ Accelerated filer
☐ Smaller reporting company

(Do not check if a smaller reporting company)

* * * * *

Item 1A. Risk Factors

Set forth, under the caption "Risk Factors," where appropriate, the risk factors described in Item 503(c) of Regulation S–K (§ 229.503(c) of this chapter) applicable to the registrant. Provide any discussion of risk factors in plain English in accordance with Rule 421(d) of the Securities Act of 1933 (§ 230.421(d) of this chapter). Smaller reporting companies are not required to provide the information required by this item.

* * * * *

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

(a) Furnish the information required by Item 201 of Regulation S–K (17 CFR 229.201) and Item 701 of Regulation S–K (17 CFR 229.701) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act. If the Item 701 information previously has been included in a Quarterly Report on Form 10–Q (17 CFR 249.308a) or in a Current Report on Form 8–K (17 CFR 249.308), it need not be furnished.

* * * * *

Item 8. Financial Statements and Supplementary Data

(a) Furnish financial statements meeting the requirements of Regulation S–X (§ 210 of this chapter), except § 210.3–05 and Article 11 thereof, and the supplementary financial information required by Item 302 of Regulation S–K (§ 229.302 of this chapter). Financial statements of the registrant and its subsidiaries consolidated (as required by Rule 14a–3(b)) shall be filed under this item. Other financial statements and schedules required under Regulation S–X may be filed as "Financial Statement Schedules" pursuant to Item 15, Exhibits, Financial Statement Schedules, and Reports on Form 8–K, of this Form.

(b) A smaller reporting company may provide the information required by Article 8 of Regulation S–X in lieu of any financial statements required by Item 8 of this Form.

* * * * *

Item 14. Principal Accounting Fees and Services

* * * * *

(1) Disclose, under the caption *Audit Fees*, the aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the registrant's annual financial statements and review of financial statements included in the registrant's Form 10–Q (17 CFR 249.308a) or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years.

* * * * *

§ 249.310b [Removed]

■ 91. By removing and reserving § 249.310b and removing Form 10–KSB.

Note: The text of Form 10–KSB does not appear in the Code of Federal Regulations.

■ 92. Amend Form 11–K (referenced in § 249.311) by removing General Instruction E(b) and redesignating the text of General Instruction E(a) as General Instruction E.

■ 93. Amend Form SE (referenced in § 249.444) by revising General Instruction 3.C to read as follows:

* * * * *

Form SE—Form for Submission of Paper Format Exhibits by Edgar Electronic Filers

* * * * *

Form SE General Instructions

* * * * *

3. Filing of Form SE

* * * * *

C. Identify the exhibit being filed. Attach to the Form SE the paper format exhibit and an exhibit index if required by Item 601 of Regulation S–K (§ 229.601 of this chapter).

* * * * *

PART 260—GENERAL RULE AND REGULATIONS, TRUST INDENTURE ACT OF 1939

■ 94. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78ll(d), 80b–3, 80b–4, and 80b–11.

■ 95. Amend § 260.0–11 by revising the introductory text of paragraph (b)(1), paragraphs (b)(1)(i) and (b)(2) to read as follows:

§ 260.0–11 Liability for certain statements by issuers.

* * * * *

(b) * * *

(1) A forward-looking statement (as defined in paragraph (c) of this section) made in a document filed with the Commission, in Part I of a quarterly report on Form 10–Q, § 249.308a of this chapter, or in an annual report to security holders meeting the requirements of Rules 14a–3(b) and (c) or 14c–3(a) and (b) under the Securities Exchange Act of 1934 (§ 240.14a–3(b) and (c) or § 240.14c–3(a) and (b) of this chapter), a statement reaffirming such forward-looking statement after the date the document was filed or the annual report was made publicly available, or a forward-looking statement made before the date the document was filed or the date the annual report was made publicly available if such statement is reaffirmed in a filed document, in Part I of a quarterly report on Form 10–Q, or in an annual report made publicly available within a reasonable time after the making of such forward-looking statement; *Provided, that:*

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a–1 or 15d–1 (§ 240.13a–1 or § 240.15d–1 of this chapter) thereunder, if applicable, to file its most recent annual report on Form 10–K, Form 20–F, or Form 40–F; or if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933 or pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934; and

* * * * *

(2) Information relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S–K (§ 229.303 of this chapter), Item 5 of Form 20–F (§ 249.220f of this chapter), "Operating and Financial Review and

Prospects," Item 302 of Regulation S–K (§ 229.302 of this chapter), "Supplementary Financial Information," or Rule 3–20(c) of Regulation S–X (§ 210.3–20(c) of this chapter), and disclosed in a document filed with the Commission, in Part I of a quarterly report on Form 10–Q, or in an annual report to shareholders meeting the requirements of Rules 14a–3(b) and (c) or 14c–3(a) and (b) (§ 240.14a–3(b) and (c) or § 240.14c–3(a) and (b)) under the Securities Exchange Act of 1934.

* * * * *

■ 96. Amend § 260.4d–9 by revising the introductory text to read as follows:

§ 260.4d–9 Exemption for Canadian Trust indentures from Specified Provisions of the Act.

Any trust indenture filed in connection with offerings on a registration statement on Form S–1, (§ 239.1 of this chapter) F–7, F–8, F–9, F–10 or F–80 (§§ 239.37 through 239.41 of this chapter) shall be exempt from the operation of sections 310(a)(3) and 310(a)(4), sections 310(b) through 316(a), and sections 316(c) through 318(a) of the Act; provided that the trust indenture is subject to:

* * * * *

■ 97. Amend § 260.10a–5 by revising paragraph (a) to read as follows:

§ 260.10a–5 Eligibility of Canadian Trustees.

(a) Subject to paragraph (b) of this section, any trust company, acting as trustee under an indenture qualified or to be qualified under the Act and filed in connection with offerings on a registration statement on Form S–1 (§ 239.11 of this chapter) F–7, F–8, F–9, F–10 or F–80 (§§ 239.37 through 239.41 of this chapter) that is incorporated and regulated as a trust company under the laws of Canada or any of its political subdivisions and that is subject to supervision or examination pursuant to the Trust Companies Act (Canada), R.S.C. 1985, or the Canada Deposit Insurance Corporation Act, R.S.C. 1985 shall not be subject to the requirement of domicile in the United States under section 310(a) of the Act (15 U.S.C. 77jjj(a)).

* * * * *

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

■ 98. The authority citation for part 269 is revised to read as follows:

Authority: 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss, and 78ll(d), unless otherwise noted.

■ 99. Amend § 260.01 by revising paragraph (b) to read as follows:

§ 269.0–1 Availability of forms.

* * * * *

(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Any person may inspect the forms at this address and at the Commission's regional offices. (See § 200.11 of this chapter for the addresses of SEC regional offices.)

By the Commission.

Dated: December 19, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–24965 Filed 1–3–08; 8:45 am]

BILLING CODE 8011–01–P

Federal Register

Friday,
January 4, 2008

Part III

Securities and Exchange Commission

17 CFR Parts 210, 230, 239 and 249

Acceptance From Foreign Private Issuers of Financial Statements Prepared in Accordance With International Financial Reporting Standards Without Reconciliation to U.S. GAAP; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 230, 239 and 249

[Release Nos. 33–8879; 34–57026; International Series Release No. 1306; File No. S7–13–07]

RIN 3235–AJ90

Acceptance From Foreign Private Issuers of Financial Statements Prepared in Accordance With International Financial Reporting Standards Without Reconciliation to U.S. GAAP

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting rules to accept from foreign private issuers in their filings with the Commission financial statements prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB") without reconciliation to generally accepted accounting principles ("GAAP") as used in the United States. To implement this, we are adopting amendments to Form 20–F, conforming changes to Regulation S–X, and conforming amendments to other regulations, forms and rules under the Securities Act and the Securities Exchange Act. Current requirements regarding the reconciliation to U.S. GAAP do not change for a foreign private issuer that files its financial statements with the Commission using a basis of accounting other than IFRS as issued by the IASB.

EFFECTIVE DATE: March 4, 2008.

Compliance Date: Amendments regarding acceptance of financial statements prepared in accordance with IFRS as issued by the IASB are applicable to financial statements for financial years ending after November 15, 2007 and interim periods within those years contained in filings made after the effective date. Amendments to General Instruction G of Form 20–F relating to first-time adopters of IFRS are applicable to filings made after the effective date.

FOR FURTHER INFORMATION CONTACT: Michael D. Coco, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, at (202) 551–3450, or Katrina A. Kimpel, Professional Accounting Fellow, Office of the Chief Accountant, at (202) 551–5300, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: The Commission is amending Form 20–F [1] under the Securities Exchange Act of 1934 (the "Exchange Act"),[2] Rules 1–02, 3–10 and 4–01 of Regulation S–X,[3] Forms F–4 and S–4 under the Securities Act of 1933 (the "Securities Act"),[4] and Rule 701 under the Securities Act.[5]

Table of Contents

I. Executive Summary

A. Proposed Amendments

The Commission has long viewed reducing the disparity between the accounting and disclosure practices of the United States and other countries as an important objective both for the protection of investors and the efficiency of capital markets.[6] The use

[1] 17 CFR 249.220f.

[2] 15 U.S.C. 78a *et seq.* Form 20–F is the combined registration statement and annual report form for foreign private issuers under the Exchange Act. It also sets forth disclosure requirements for registration statements filed by foreign private issuers under the Securities Act of 1933. 15 U.S.C. 77a *et seq.*

The term "foreign private issuer" is defined in Exchange Act Rule 3b–4(c) [17 CFR 240.3b–4(c)]. A foreign private issuer means any foreign issuer other than a foreign government except an issuer that meets the following conditions: (1) More than 50 percent of the issuer's outstanding voting securities are directly or indirectly held of record by residents of the United States; and (2) any of the following: (i) The majority of the executive officers or directors are United States citizens or residents; (ii) more than 50 percent of the assets of the issuer are located in the United States; or (iii) the business of the issuer is administered principally in the United States.

[3] 17 CFR 210.1–02, 17 CFR 210.3–10 and 17 CFR 210.4–01. Regulation S–X sets forth the form and content of requirements for financial statements.

[4] 17 CFR 239.34 and 17 CFR 239.13.

[5] 17 CFR 230.701.

[6] *See* "Acceptance from Foreign Private Issuers of Financial Statements Prepared in Accordance with

of a single set of high-quality globally accepted accounting standards by issuers will help investors understand investment opportunities outside the United States more clearly and with greater comparability than if those issuers disclosed their financial results under a multiplicity of national accounting standards, and it will enable issuers to access capital markets worldwide at a lower cost.

Towards this end, the Commission has undertaken several measures to foster the use of International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB") and fully supports the efforts of the IASB and the Financial Accounting Standards Board ("FASB") to converge their accounting standards.[7] Specifically, the Commission has adopted rules to encourage the use of IFRS, which has become increasingly widespread throughout the world. Approximately 100 countries now require or allow the use of IFRS, and many other countries are replacing their national standards with IFRS. Following the adoption of a regulation in the European Union ("EU") to require companies incorporated in one of its Member States and whose securities are listed on an EU regulated market to use IFRS beginning with their 2005 financial year,[8] we adopted an accommodation to allow any foreign private issuer preparing its financial statements using IFRS for the first time to provide two years rather than three years of financial statements in their filings with the Commission.[9] Acknowledging the significant efforts expended by many foreign private issuers in their transition to IFRS, we also extended compliance dates for management's report on internal control over financial reporting.[10]

Most recently, on July 11, 2007, the Commission issued for public comment a proposal to amend Form 20–F and Regulation S–X to accept financial statements of foreign private issuers that are prepared on the basis of the English language version of IFRS as published by the IASB without a reconciliation to U.S. GAAP.[11] We did not propose to change existing reconciliation requirements for foreign private issuers that file their financial statements under other sets of accounting standards, or that are not in full compliance with IFRS as issued by the IASB.[12] As part of our efforts to foster a single set of globally accepted accounting standards, we are now adopting amendments to accept from foreign private issuers financial statements prepared in accordance with IFRS as issued by the IASB in filings with the Commission without reconciliation to U.S. GAAP.

B. Overview of Comments Received

In the Proposing Release we sought comment on a number of issues, including the goal of achieving a single set of global accounting standards, the role of the IASB as standard setter, the potential effect of the proposed rule changes on convergence, the ability of investors and others to understand and use IFRS financial statements without a U.S. GAAP reconciliation, and the application of IFRS by preparers of financial statements. We received approximately 125 comment letters in response to the Proposing Release from a wide variety of respondents, including investors, analysts, foreign and U.S. issuers, business associations, accounting firms, law firms, credit rating agencies and regulators.[13] The majority of commenters agreed that, overall, the use of high-quality, internationally accepted accounting standards was an important and worthwhile goal. In general, commenters supporting the proposal, which included many foreign private issuers, accounting firms, legal firms and foreign standard setters, as well as some investors, agreed that IFRS were suitable to be used as an internationally accepted set of standards. Further, they expressed that allowing IFRS without a U.S. GAAP reconciliation would be perceived as recognition of the adequacy of the convergence process to date and would promote and encourage the ongoing convergence process. However, the views of several other commenters, including those representing some institutional investors and analysts, were mixed. While these commenters also expressed the view that IFRS have the potential to fulfill the role of a set of high-quality, international standards at some time in the future, some thought the time was not yet ripe for accepting those financial statements without a U.S. GAAP reconciliation. Among the varying reasons cited by those who believed the time had not yet come were that the convergence process is insufficient to date and adopting the proposal would likely slow, and possibly halt, the convergence process. Other commenters did think that the time was ripe to accept financial statements prepared in accordance with IFRS as issued by the IASB without a U.S. GAAP reconciliation.

Regarding the effect on information quality if the U.S. GAAP reconciliation was removed, many commenters in support of the proposal stated that the reconciliation information is highly technical and not widely understood. These commenters also generally expressed confidence in the quality of application of IFRS in practice. On the other hand, commenters that expressed concerns with the proposal supported the usefulness of both the quantitative and qualitative aspects of the U.S. GAAP reconciliation. These commenters cited the presence of significant differences in important line items, such as net income, in the U.S. GAAP reconciliations of many foreign private issuers as evidence that the convergence process is not sufficiently complete. In their view, such differences would be more difficult to discern without the U.S. GAAP reconciliation. They also asserted that the U.S. GAAP reconciliation is helpful to financial statement quality, and they advocated further cross-jurisdictional structural and enforcement efforts regarding IFRS, including efforts to strengthen governance of the IASB and funding of the International Accounting Standards Committee ("IASC") Foundation, the stand-alone

International Financial Reporting Standards without Reconciliation to U.S. GAAP," Release No. 33–8818 (July 2, 2007) [72 FR 37962 (July 11, 2007)] (the "Proposing Release") for a summary of the Commission's past consideration of a single set of globally accepted accounting standards.

[7] *See* the Proposing Release for a summary of the IASB, the FASB and the process of convergence.

[8] Consistent with Form 20–F, IFRS and general usage outside the United States, we use the term "financial year" to refer to a fiscal year. *See* Instruction 2 to Item 3 of Form 20–F.

[9] Release No. 33–8567 (April 12, 2005) [70 FR 20674 (April 20, 2005)] (the "2005 Adopting Release"). Other than first-time adopters of IFRS eligible to rely on that accommodation, foreign private issuers that register securities with the SEC, and that report on a periodic basis thereafter under Section 13(a) or 15(d) of the Exchange Act, are required to present audited statements of income, changes in shareholders' equity and cash flows for each of the past three financial years.

[10] Release No. 33–8545 (March 2, 2005) [70 FR 11528 (March 8, 2005)].

[11] As used in this release the phrase "IFRS as issued by the IASB" refers to the authoritative text of IFRS, which, according to the IASC Foundation Constitution, is published in English. *See* "International Financial Reporting Standards (IFRSs), including International Accounting Standards (IASs) and Interpretations as at 1 January 2007," Preface to International Financial Reporting Standards, at 23. As described below in Section III.A.2., the Proposing Release used the phrase "IFRS as published by the IASB" to refer to the authoritative text of IFRS.

[12] *See* Items 17 and 18 of Form 20–F; *see also* Article 4 of Regulation S–X. *See* the Proposing Release for a history of the reconciliation requirement.

[13] These comment letters are available on the Commission's Internet Web site, located at *http://www.sec.gov/comments/s7-13-07/s71307.shtml*, and in the Commission's Public Reference Room in its Washington, DC headquarters.

organization responsible for overseeing the activities of the IASB.

Many commenters that supported the proposal also urged the Commission to make amendments that go further than those we proposed. These commenters suggested that the Commission also accept from foreign private issuers financial statements prepared using jurisdictional adaptations of IFRS without a U.S. GAAP reconciliation, jurisdictional adaptations of IFRS with a reconciliation to IFRS as issued by the IASB, or any home country GAAP with a reconciliation to IFRS as issued by the IASB.

C. Summary of Final Amendments

The Commission has considered the comments received and believes it is appropriate at this time to adopt revisions, substantially as proposed, to Items 17 and 18 of Form 20–F to allow foreign private issuers to include in their filings with the Commission financial statements prepared in accordance with IFRS as issued by the IASB without reconciliation to U.S. GAAP. However, the amendments adopted differ in some areas in consideration of the responses we received to questions we asked in the Proposing Release.

In summary, the Commission is adopting amendments that:

- Permit foreign private issuers to file financial statements prepared in accordance with IFRS as issued by the IASB without reconciliation to U.S. GAAP;
- Require that foreign private issuers taking advantage of this option state explicitly and unreservedly in the notes to their financial statements that such financial statements are in compliance with IFRS as issued by the IASB and provide an unqualified auditor's report that opines on that compliance;
- Allow these foreign private issuers also to file financial statements for required interim periods without reconciliation to U.S. GAAP (and without providing disclosure under Article 10 of Regulation S–X) if the interim financial statements fully comply with IAS 34;
- Extend indefinitely the two-year accommodation contained in General Instruction G of Form 20–F to all first-time adopters of IFRS as issued by the IASB; and
- Make conforming amendments to Rules 1–02, 3–10 and 4–01 of Regulation S–X, Securities Act Forms F–4 and S–4, and Securities Act Rule 701.

II. Acceptance of IFRS Financial Statements From Foreign Private Issuers Without a U.S. GAAP Reconciliation

In the Proposing Release, the Commission requested comment on a number of broad areas with regard to whether we should proceed with our proposal to accept from foreign private issuers IFRS financial statements without a reconciliation to U.S. GAAP. Commenters had a range of views on these areas and offered useful input, and we considered many factors in our determination to adopt these amendments. We received mixed views on the utility of the information provided by the U.S. GAAP reconciliation of IFRS financial statements. Some commenters expressed concern about the overall quality of IFRS, either due to institutional considerations such as the governance or funding of the IASB or due to operational considerations such as the future of the convergence process. As described below, there are initiatives that directly address these concerns. We believe these initiatives will be more effective in addressing concerns than any indirect effects of retaining the reconciliation requirement to U.S. GAAP for financial statements that comply with IFRS as issued by the IASB.

We believe that it is appropriate to adopt these amendments at this time because we expect our acceptance of IFRS financial statements without a U.S. GAAP reconciliation will encourage more foreign issuers to prepare financial statements in accordance with IFRS. We also expect it will facilitate capital formation for foreign private issuers that are registered with the Commission. Adopting these amendments now may serve as an incentive to encourage the use of IFRS as issued by the IASB, as well as to support their development as a truly globally accepted set of high-quality accounting standards.

A. The IASB

In the Proposing Release we noted that the IASB's sustainability, governance and continued operation in a stand-alone manner as a standard setter are significant considerations in our acceptance of IFRS financial statements without a U.S. GAAP reconciliation, as those factors relate to the ability of the IASB to continue to develop high-quality globally accepted standards. We solicited comment on ways in which the Commission could further support the IFRS standard-setting and interpretive processes, and also how the Commission should consider its role with regard to the IASB.

1. Governance and Structure

Commenters generally agreed that the IASB is a stand-alone standard setter with a robust due process in its standard-setting procedures.[14] Although most commenters did not express concerns over governance, a few commenters identified several concerns relating to the organization, governance and operation of the IASB as standard setter. Specifically, these commenters felt that improvements were needed to enhance the geographic diversity of the board,[15] and to better align its membership with investor interests.[16]

In reflection on these comments and its own considerations, the Commission has joined other authorities responsible for capital market regulation—the European Commission, the Financial Services Agency of Japan and the International Organization of Securities Commissions ("IOSCO")—to work together to achieve a means of greater accountability for the IASB and the IASC Foundation to those governmental authorities charged with protecting investors and regulating capital markets.[17] This interest in increasing the accountability of the IASB and the IASC Foundation is a reflection of the widespread acceptance of IFRS. The increased use of IFRS has raised interest in establishing formal ties between securities regulatory stakeholders and the IASC Foundation.

The authorities described in the paragraph above propose to utilize the occasion of the IASC Foundation's 2008 Constitution review to put forward, in collaboration with the IASC Foundation, certain changes to strengthen the IASC Foundation's governance framework, while emphasizing the continued importance of an independent standard-setting process. Central to this effort is the establishment of a new monitoring body within the governance structure of the IASC Foundation to reinforce the existing public interest oversight function of the IASC Foundation Trustees. Likewise we note the IASC Foundation Trustees' announcement of their proposals, following a strategy

[14] *See*, for example, letters from American Bankers Association, Georg Merkl ("Merkl"), and UBS AG ("UBS").

[15] *See*, for example, letter from Korean Accounting Institute and Korean Accounting Standards Board ("KAI–KASB").

[16] *See*, for example, letter from CFA Institute Centre for Financial Market Integrity ("CFA Institute").

[17] *See*, SEC Press Release No. 2007–226, November 7, 2007, available at: *http://www.sec.gov/news/press/2007/2007-226.htm*.

review over recent months, to enhance the organization's governance arrangements and reinforce the organization's public accountability.[18]

As described in the Proposing Release, the Commission participates in the development of IFRS primarily through its participation in IOSCO, in which it takes an active role in reviewing and contributing to comments on exposure drafts of standards issued by the IASB and in contributing to its working groups. The Commission staff, as an IOSCO representative, serves as a non-voting observer at International Financial Reporting Interpretations Committee ("IFRIC") meetings.[19] The Commission also is an observer of the IASB Standards Advisory Council, whose responsibilities include consulting with the IASB as to technical issues on the IASB's agenda and project priorities. Most commenters that addressed the role of the Commission with respect to the IASB felt that the Commission should continue to participate in the IASB and IFRIC's due process.[20] Many felt that continued interaction with the IASB through IOSCO was appropriate.[21]

One commenter noted that in July 2006, following the reaffirmation of the IASB and the FASB of their commitment to convergence, the IASB announced that it would not require the application of new standards before January 1, 2009.[22] The establishment of that lead time for the application of major new standards was intended to allow increased opportunity for consultation, to set a clear target date for adoption, and to provide stability in the IFRS platform of standards for issuers that had already adopted IFRS. The commenter expressed concern that the 2009 effective date would delay improvement in the quality of financial statements and disclosures, and argued that our acceptance of IFRS financial statements without reconciliation should not occur until after the IASB lifted its "moratorium" on new standards.[23] We note, however, that the IASB continues to issue new standards even if it does not require their application before January 1, 2009, and that voluntary early adoption of new standards prior to their mandatory effective date generally is allowed.

2. Funding

Several comment letters, including those from financial statement users and investors, raised the independence of IASB funding as an issue.[24] Most of these commenters were concerned that the current voluntary nature of contributions might impact at least the appearance of the IASB's independence as well as the quality and timeliness of its standards.[25] A few commenters pointed out that the concentration of private contributions was a concern that led to the FASB's current funding mechanism.[26]

We support a strong, independent IASB, and as we noted in the Proposing Release, there are initiatives underway to address its funding structure. We believe promotion of these efforts is a more efficient and productive course of action than continuing to require a U.S. GAAP reconciliation for financial statements prepared in accordance with IFRS as issued by the IASB. Currently the operations of the IASC Foundation are financed by a combination of voluntary, private contributions and levied funds. Trustees of the IASC Foundation have indicated that a long-term objective of its funding plan is to move away from relying on voluntary, private contributions. In June 2006, the IASC Foundation Trustees agreed on four elements that should govern the establishment of a funding approach that would enable the IASC Foundation to remain a stand-alone, private sector organization with the necessary resources to conduct its work in a timely fashion.[27] The Trustees continue to make progress in obtaining stable funding that satisfies those elements. Commenters have indicated that such a change would be beneficial to the stability of the organization, as it would spread the costs more equitably.[28]

In light of the comments received and its own considerations, the Commission has taken note of the IASC Foundation's funding progress as most recently announced following an October 31, 2007 IASC Foundation Trustee meeting.[29] The Commission is encouraged by the progress in diversifying the sources of the IASC Foundation's funding among and within jurisdictions, as well as by the number of jurisdictions (such as Australia, the Netherlands, New Zealand and the United Kingdom) that have moved away from a voluntary funding scheme either to a levy or national payment.

B. The Convergence Process

As discussed in the Proposing Release, continued progress towards convergence between U.S. GAAP and IFRS as issued by the IASB is another consideration in our acceptance of IFRS financial statements without a U.S. GAAP reconciliation. We believe that investors can understand and work with both IFRS and U.S. GAAP and that these two systems can co-exist in the U.S. public capital markets in the manner described in this rulemaking, even though convergence between IFRS and U.S. GAAP is not complete and there are differences between reported results under IFRS and U.S. GAAP. As we

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[18] *See*, IASC Foundation Press Release, "Trustees Announce Strategy to Enhance Governance—Report on Conclusions at Trustees Meeting," November 6, 2007, available at *http://www.iasb.org/News/Press+Releases/Trustees+Announce+Strategy+to+Enhance+Governance+-+Report+on+Conclusions+at+Trustees++Meeting.htm* (the "IASC Foundation November 6 Press Release").

[19] IFRIC interprets IFRS and reviews accounting issues that are likely to receive divergent or unacceptable treatment in the absence of authoritative guidance, with a view to reaching consensus on the appropriate accounting treatment. The IFRIC is currently comprised of twelve voting members, and the IASC Foundation has recently approved an increase to fourteen voting members. All IFRIC members are appointed by the IASC Foundation Trustees for renewable terms of three years. IFRIC Interpretations are ratified by the IASB prior to becoming effective.

[20] *See*, for example, letters from Deloitte Touche Tohmatsu ("Deloitte"), Institute of International Finance, London Investment Banking Association ("LIBA"), PricewaterhouseCoopers LLP ("PwC") and the Swedish Export Credit Corporation ("SEK").

[21] *See*, for example, letters from UBS and PwC.

[22] The press release in which the IASB made this announcement is available at: *http://www.iasb.org/News/Press+Releases/IASB+takes+steps+to+assist+adoption+of+IFRSs+and+reinforce+consultation+No+new+IFRSs+effective+until.htm*.

[23] *See* letter from CFA Institute.

[24] *See*, for example, letters from California Public Employees' Retirement System, CFA Institute, and Goldman Sachs.

[25] *See*, for example, letters from Colgate-Palmolive Company and Investors Technical Advisory Committee ("ITAC").

[26] *See*, for example, letters from Council of Institutional Investors ("CII"), Lawrence A. Cunningham, and Gaylen R. Hansen.

[27] The Trustees determined that "characteristics of the new scheme for 2008 would be:

- Broad-based: Fewer than 200 companies and organizations participate in the current financing system. A sustainable long-term financing system must expand the base of support to include major participants in the world's capital markets, including official institutions, in order to ensure diversification of sources.
- Compelling: Any system must carry with it enough pressure to make free riding very difficult. This could be accomplished through a variety of means, including official support from the relevant regulatory authorities and formal approval by the collecting organizations.
- Open-ended: The financial commitments should be open-ended and not contingent on any particular action that would infringe on the independence of the IASC Foundation and the International Accounting Standards Board.
- Country-specific: The funding burden should be shared by the major economies of the world on a proportionate basis, using Gross Domestic Product as the determining factor of measurement. Each country should meet its designated target in a manner consistent with the principles above."

See http://www.iasb.org/About+Us/About+the+Foundation/Future+Funding.htm.

[28] *See* the letter from KPMG IFRG Limited ("KPMG").

[29] *See* the IASC Foundation November 6 Press Release.

stated in the Proposing Release, we do not believe that eliminating the reconciliation should be contingent upon achieving a particular degree of convergence. Rather, the robustness of the convergence process over time, among other factors, is of greater importance.

The majority of commenters agreed that attaining a single set of high-quality global accounting standards was a worthwhile goal, with several agreeing that a specific level of convergence was not required to eliminate the reconciliation requirement.[30] In highlighting that acceptance of IFRS financial statements without a U.S. GAAP reconciliation should not be contingent on achieving a particular level of convergence, one commenter noted, "[e]ven today users cannot assume that the U.S. GAAP reconciliation always ensures direct comparability with U.S. GAAP financial statements of other entities."[31]

We received a variety of viewpoints about the level of convergence between U.S. GAAP and IFRS as issued by the IASB and about the potential effect of eliminating the reconciliation requirement on the convergence process. Respondents in favor of the amendments generally felt that acceptance of IFRS financial statements[32] without a reconciliation to U.S. GAAP would be perceived as an indication of the adequacy of convergence and the convergence process to date.[33] Many of those not in favor of the amendments believed that convergence to date was insufficient to merit the removal of the reconciliation requirement at this time,[34] or that acceptance of IFRS financial statements without reconciliation would impede progress on further convergence.[35] Some commenters who took the latter view cited the presence of substantial differences in important items in the reconciliation as evidence that the convergence process is not sufficiently complete, and gave examples of several items that are disclosed in the reconciliation of which they would be unaware if they had to rely on IFRS financial statements alone.[36] Several commenters suggested that if we accept IFRS financial statements without reconciliation, users of financial statements would benefit if issuers continued to provide qualitative disclosure of the nature of the differences between IFRS and the unreported U.S. GAAP results.[37] Other commenters representing users of financial statements, though, noted that the reconciling information is not very useful to them in evaluating IFRS financial statements,[38] and many foreign issuers commented that they rarely receive questions from securities analysts and others relating to their U.S. GAAP reconciliations.[39] Many commenters believed that market forces and demand for comparable information in global capital markets will continue to provide sufficient incentive for further convergence of U.S. GAAP and IFRS as issued by the IASB.[40]

IFRS as issued by the IASB and U.S. GAAP are both sets of high-quality accounting standards that are similar to one another in many respects, and the convergence efforts to date have progressed in eliminating many differences. We recognize, however, that there are still a number of differences between U.S. GAAP and IFRS as issued by the IASB, and that there remain specific accounting subjects that IFRS has yet to address fully. One goal of the convergence effort underway with the FASB and IASB is to remove the remaining differences and to avoid creating significant new differences as standard setters continue to address existing and emerging accounting issues.

These rule amendments are based on many factors, including the progress of the IASB and the FASB towards convergence, the joint commitment that both boards have expressed to achieving further convergence of accounting standards in the future, and our belief that investors and capital markets are best served with high-quality accounting standards. Our focus is on whether IFRS is a set of high-quality accounting standards established through a robust process, the application of which yields information investors can understand and work with despite any differences with U.S. GAAP.

We anticipate that the process towards convergence will continue, because capital markets will provide an ongoing incentive for a common set of high-quality globally accepted accounting standards, regardless of the existence of an IFRS to U.S. GAAP reconciliation requirement. The IASB and the FASB are now developing standards in areas where improvement is warranted. These circumstances exist regardless of whether the U.S. GAAP reconciliation requirement is in place. The IASB and the FASB have, in 2002 and 2006, issued Memoranda of Understanding that acknowledge their joint commitment to developing high-quality global standards, the establishment of which remains a long-term strategic priority for both Boards. In November 2007, the Trustees of the IASC Foundation reiterated their support for continuing the convergence work program described in these Memoranda, noting that future work is largely focused on areas in which the objective is to develop new world-class international standards.[41]

It also is important to note that some reconciling differences between IFRS and U.S. GAAP will continue to exist independent of the U.S. GAAP reconciliation and the convergence process. Due to their sources, these differences between U.S. GAAP and IFRS will remain regardless of the level of future convergence that can be attained. These differences include the effects of legacy transactions, such as business combinations, that occurred before U.S. GAAP and IFRS became more converged, and of self-selected differences that arise as a function of differing accounting elections (*e.g.* hedge accounting) that foreign private issuers make under IFRS and U.S. GAAP.

C. Investor Understanding and Education

In the Proposing Release we posed several questions about the ability of investors to understand and use financial statements prepared in accordance with IFRS as issued by the IASB without a U.S. GAAP reconciliation, and whether that ability would depend on the size or nature of

[30] *See*, for example, letters from the American Insurance Group, Inc. ("AIG"), Ernst & Young LLP ("Ernst & Young"), PwC, American Accounting Association—Financial Accounting Standards Committee.

[31] *See* letter from KPMG.

[32] The phrase "IFRS financial statements" as used in this release refers to financial statements prepared in accordance with IFRS as issued by the IASB, unless otherwise specified.

[33] *See*, for example, letters from Institute of Chartered Accountants in England and Wales ("ICAEW"), Siemens Aktiengesellschaft ("Siemens"), KPMG, Goldman Sachs, and Federation of European Accountants ("FEE").

[34] *See*, for example, letters from New York State Society of Certified Public Accountants ("NYSSCPA"), Maverick Capital ("Maverick"), and ITAC.

[35] *See*, for example, letters from CFA Institute, ITAC, NYSSCPA, R.G. Associates, and Terry Warfield ("Warfield").

[36] *See*, for example, letters from the CFA Institute, Maverick, and R.G. Associates.

[37] *See*, for example, letters from AIG, BP plc ("BP"), and Fitch Ratings.

[38] *See*, for example, letters from Corporate Reporting Users' Forum ("CRUF"), Goldman Sachs, and Merrill Lynch & Company.

[39] *See*, for example, letters from Novartis and Nokia.

[40] *See*, for example, letters from British Bankers' Association, Microsoft Corporation ("Microsoft"), Ernst & Young, PwC, Prudential plc ("Prudential"), and Fitch Ratings.

[41] *See* the IASC Foundation November 6 Press Release.

the investor, the value of the investment, or other considerations.

Commenters noted that investors vary considerably in their ability to understand and use IFRS financial statements and that the same is true of their ability to understand and use financial statements prepared using U.S. GAAP.[42] However, many commenters were encouraged by the apparent lack of difficulty with transition to IFRS in the EU from many different country-specific GAAPs.[43] One respondent took an opposing view and asserted that the present lack of investor understanding of IFRS should be a factor in deciding whether to eliminate the reconciliation requirement.[44] That commenter believed that eliminating the reconciliation will require more work (and possibly self-education) by investors to understand IFRS financial statements, which may result in investment decisions becoming more costly.[45] Another commenter indicated its belief that currently there is a lack of IFRS-based educational programs.[46]

As is also the case with U.S. GAAP, we understand investors and other users of financial statements do not all possess the same level of understanding of IFRS or the resources that would facilitate gaining such an understanding. We anticipate, however, that by encouraging the use of IFRS as issued by the IASB, these amendments will help investors to understand international investment opportunities more clearly and with greater comparability in the long-term than if they had to continue to rely on a multiplicity of national accounting standards. The disclosures provided pursuant to the U.S. GAAP reconciliation are not an exact substitute for an issuer preparing its financial statements in U.S. GAAP. While some commenters have indicated that the U.S. GAAP reconciliation is useful, it is not the equivalent of U.S. GAAP financial statements. Investors currently must make use of IFRS financial statements and financial statements under various national GAAPs, even when accompanied by a U.S. GAAP reconciliation. We are encouraged by comments from other institutional investors indicating their degree of comfort and familiarity with IFRS financial statements.[47]

The present use of IFRS financial statements described above does not diminish the importance of recognizing that some investors are not as familiar with using IFRS financial statements as they are with using U.S. GAAP financial statements or the information provided in the U.S. GAAP reconciliation. These investors may need to obtain training or education in IFRS before they are comfortable working without the U.S. GAAP reconciliation. In this regard, we note the amendments we are adopting will affect a small number of issuers relative to the overall size of the U.S. public capital markets. In addition, we are allowing only financial statements prepared in accordance with IFRS as issued by the IASB to be filed without a U.S. GAAP reconciliation, so concern over having to learn multiple jurisdictional variations of IFRS is not a factor. More broadly, as companies increasingly move to IFRS, investors that have gained familiarity with IFRS should see an increasing return on their investment in education. A number of accounting firms and other organizations currently provide information about IFRS as issued by the IASB on their web sites free of charge. As more countries adopt IFRS as the basis of accounting for their listed companies, we anticipate that investors who are not yet familiar with IFRS will have the opportunity to gain such familiarity.

D. Consistent and Faithful Application of IFRS in Practice

The degree of consistency and faithfulness with which IFRS is applied is another consideration in our acceptance of IFRS financial statements without reconciliation to U.S. GAAP. The Commission staff has gained an increasing understanding of the application of IFRS standards through its regular review of the periodic reports of publicly registered companies, a number of which prepare their financial statements in accordance with IFRS.[48] The Commission staff will continue to review and comment on IFRS financial statements and disclosure as part of its normal review function.[49]

Commenters had a range of views with regard to our request for comments on the application of IFRS as issued by the IASB. Some commenters who favored the amendments highlighted the fact that IFRS has been applied for more than two years by thousands of companies throughout the world, including approximately seven thousand in the EU, and that investors are already employing information from IFRS financial statements to make investment decisions.[50] In contrast, some commenters who were not supportive of the proposal noted that the U.S. GAAP reconciliation offers auditors a quality control mechanism that identifies IFRS application issues, and referred to the staff's "Observations in the Review of IFRS Financial Statements" as evidence that supports their concerns about the consistent application of IFRS by reporting issuers.[51] One such commenter also felt that it would be difficult to audit for compliance with IFRS as issued by the IASB because of the current state of IFRS-based training for auditors.[52] Auditors, however, generally commented that they do have sufficient experience and familiarity with IFRS to be able to opine on IFRS financial statements, and that the elimination of the U.S. GAAP reconciliation would provide an incentive to develop IFRS capabilities faster than if the U.S. GAAP reconciliation were retained.[53] Some respondents believed that latitude in the application of IFRS results in inconsistent reporting,[54] while several supporters of the proposal believed application of IFRS did not vary between companies that are registered under the Exchange Act and those that are not.[55] One firm, while acknowledging diversity in the application of IFRS, felt that such diversity should diminish with time as application and interpretive issues are identified and addressed.[56]

As described in the Proposing Release, the Commission has a long

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[42] *See*, for example, letters from BDO Global Coordination B.V. ("BDO"), ICAEW, Merkl, and Shell International B.V. ("Shell").

[43] *See*, for example, letters from British Bankers' Association, LIBA, International Swaps and Derivatives Association ("ISDA"), and Financial Reporting Council.

[44] *See* letter from ITAC.

[45] *Id.*

[46] *See* letter from CFA Institute.

[47] *See*, for example, letter from CRUF.

[48] The Staff of the Commission's Division of Corporation Finance has published its observations on the review of IFRS financial statements included in the annual reports of more than 100 foreign private issuers. Those observations are available at *http://www.sec.gov/divisions/corpfin/ifrs_staffobservations.htm*.

[49] Pursuant to Section 408 of the Sarbanes-Oxley Act of 2002, the Commission is required to review disclosures made by reporting issuers with securities listed on a national securities exchange or traded on an automated quotation facility of a national securities association on a regular and systematic basis for the protection of investors. Such review shall include a review of the issuer's financial statements.

[50] *See*, for example, letters from Deutsche Bank, Ernst & Young, HSBC Holdings plc ("HSBC"), SEK, and Siemens.

[51] *See*, for example, letters from ITAC, R.G. Associates, CFA Institute.

[52] *See* letter from CFA Institute.

[53] *See*, for example, letter from Grant Thornton LLP ("Grant Thornton").

[54] *See*, for example, letters from Robert Mladek, and Fund for Stockowners Rights.

[55] *See*, for example, letters from HSBC, Cleary Gottlieb Steen & Hamilton ("Cleary"), Syngenta AG ("Syngenta").

[56] *See* letter from Deloitte.

history of supporting the work of the IASB and its predecessor the International Accounting Standards Committee in developing high-quality global accounting standards. In addition to understanding the standards, the Commission staff has developed a growing familiarity with their application. The Commission staff has reviewed and commented upon the filings of foreign private issuers that prepare their financial statements using IFRS. The staff has indicated that issues that it has observed in its ordinary review of IFRS financial statements do not appear to be more pervasive or significant than those it has identified in U.S. GAAP financial statements. We anticipate that the increasing use of IFRS as issued by the IASB will lead to even greater consistency of application, as well as to increased training opportunities for preparers, auditors, and investors.

E. Regulatory Processes and Infrastructure to Promote Consistent and Faithful Application of IFRS

In the Proposing Release, we discussed the cooperative infrastructure that regulators have put in place to identify and avoid inconsistent or inaccurate applications of IFRS globally so as to foster the consistent and faithful application of IFRS around the world. This infrastructure includes IOSCO, in which the Commission participates, which has established a database among member regulators for sharing regulators' decisions on the application of IFRS.[57] The Commission and the Committee of European Securities Regulators ("CESR"), which the European Commission has charged with evaluating the implementation of IFRS in the EU, have established a work plan in which they agree to consult with one another with the goal of avoiding conflicting conclusions regarding the application and enforcement of IFRS.[58]

In the Proposing Release, we asked for feedback regarding our work with other regulators to provide for the enforcement of IFRS as issued by the IASB. Many commenters did not express concern with the current processes and infrastructure that have been established between regulators to promote consistent and faithful application of IFRS. Most commenters responding on this topic believed that the infrastructure is in place to identify and avoid inconsistent and inaccurate applications of IFRS globally.[59] Some of these commenters noted the Commission's involvement and leadership role in IOSCO and encouraged the Commission to continue to work through IOSCO to coordinate with other regulators in bringing matters to the IASB and to IFRIC.[60] Several of these commenters also supported the Commission's continued involvement in information sharing arrangements with other regulators and the interaction with CESR.[61] Some commenters who did not support the proposal believed that the lack of a global enforcement mechanism means that the necessary controls to successfully implement global standards are currently lacking.[62] The Commission believes the current system can be effective, and will continue its work in this area to support multilateral and bilateral efforts, including its participation in IOSCO and its collaboration with CESR and other regulators as appropriate.

III. Discussion of the Amendments

We are adopting the amendments substantially as proposed. We have, however, in response to comments, made some modification in certain areas, as discussed below.

A. Eligibility and Implementation

1. Foreign Private Issuer Status

The amendments the Commission is adopting will apply only to foreign private issuers that file on Form 20–F, regardless of whether the issuer complies with IFRS as issued by the IASB voluntarily or in accordance with the requirements of the issuer's home country regulator or exchange on which its securities are listed.

A large number of comment letters addressed eligibility requirements and commenters almost unanimously supported the applicability of the proposed amendments to all foreign private issuers.[63] Some commenters indicated that other types of issuers also should be permitted to file IFRS financial statements without a U.S. GAAP reconciliation, for example reporting U.S. subsidiaries of foreign private issuers that use IFRS to prepare their consolidated financial statements[64] or reporting foreign issuers that did not fall within the definition of foreign private issuer under Rule 3b–4 under the Exchange Act.[65] We note that the scope of our proposal was limited to foreign private issuers, for which the Commission has an established disclosure regime distinct from that applicable to companies that are not foreign private issuers. The question of which disclosure regime an entity should report under was beyond the scope of the proposal, and thus we are not extending the application of the adopted amendments to entities that do not satisfy the definition of foreign private issuer under Rule 3b–4, or foreign private issuers that do not file their annual report on Form 20–F. We are examining the possibility of the broader use of IFRS by entities that are not foreign private issuers in the Concept Release on Allowing U.S. Issuers to Prepare Financial Statements in Accordance with International Financial Reporting Standards.[66]

We requested comment as to whether we should place limitations on the eligibility of a foreign private issuer to file financial statements prepared in accordance with IFRS as issued by the IASB without a U.S. GAAP reconciliation. We also asked whether our acceptance of IFRS financial statements without a U.S. GAAP reconciliation should be phased in based on, for example, issuer size or other criteria. Most commenters opposed any limitations on the application of any final rules, and did not see any benefit to a transition approach that phases in registrants.[67] One commenter pointed out that appropriate application of IFRS would not be dependent on an issuer's size,[68] while others stated that smaller companies face a greater relative burden in preparing a U.S. GAAP reconciliation.[69] One commenter also opposed a phase-in based on issuers' experience with IFRS, as it would be difficult to establish meaningful criteria to evaluate that experience.[70] We are not adopting any issuer limitations or phase-in for the application of the

[57] *See* IOSCO's press release regarding its IFRS database at *http://www.iosco.org/news/pdf/IOSCONEWS92.pdf.*

[58] The press release announcing the SEC–CESR work plan, and the text of the work plan, are available at *http://www.sec.gov/news/press/2006/2006-130.htm.*

[59] *See,* for example, letters from HSBC, LIBA, and SIFMA.

[60] *See,* for example, letters from Business Europe, BP, HSBC, and UBS.

[61] *See,* for example, letters from International Finance, LIBA, PwC, and Securities Industry and Financial Markets Association ("SIFMA").

[62] *See,* for example, letters from CFA Institute, and Brent Kobayashi.

[63] *See,* for example, letters from Grant Thornton, Microsoft, and Sullivan & Cromwell LLP ("Sullivan & Cromwell").

[64] *See,* for example, letter from Financial Security Assurance Holdings Ltd.

[65] *See* memorandum from the Executive Staff on a meeting with representatives of INVESCO plc.

[66] Release No. 33-8831 (August 7, 2007) [72 FR 45600 (August 14, 2007)], available on the Commission Web site at *http://www.sec.gov/rules/concept/2007/33-8831.pdf.*

[67] *See,* for example, letters from Cleary, Deloitte, Fitch Ratings, PwC, and Sullivan & Cromwell.

[68] *See* letter from Fitch Ratings.

[69] *See,* for example, letters from Cleary, Deloitte, Grant Thornton, and Sullivan & Cromwell.

[70] *See* letter from Grant Thornton.

adopted amendments, as we believe that to do so would not effectively encourage the use by foreign private issuers of IFRS as issued by the IASB and may create inappropriate disparity in our treatment of foreign private issuers.

2. IFRS as Issued by the IASB

We are adopting as proposed the amendments to Items 17 and 18 of Form 20–F. Under the amendments, a foreign private issuer is eligible to omit the reconciliation to U.S. GAAP if it states, unreservedly and explicitly in an appropriate note to the financial statements, that its financial statements are in compliance with IFRS as issued by the IASB.[71] Also, the independent auditor must opine in its report on whether those financial statements comply with IFRS as issued by the IASB. As described in the Proposing Release, the auditor's report can include this language in addition to any opinion relating to compliance with standards required by the home country.

The majority of commenters believed that auditors should be able to provide audit opinions that financial statements were fully compliant with IFRS as issued by the IASB.[72] Several commenters indicated that they were not aware of any reason why the auditor and the issuer would not be able to provide the dual statement of compliance with both IFRS as issued by the IASB and a jurisdictional variation of IFRS in cases where accounting policy choices ensure compliance with both IFRS as issued by the IASB and the jurisdictional variation of IFRS.[73] One commenter, however, believed that the additional opinion in the auditor's report relating to compliance with IFRS as issued by the IASB would be both duplicative and unnecessary, as the auditor would already be expected to issue a qualified opinion if it found deviations from IFRS as issued by the IASB given an issuer's unreserved statement of compliance.[74] We believe that in cases where there is no discrepancy between IFRS as issued by the IASB and a jurisdictional variation, the issuer and the auditor should be able to provide the dual statements without undue difficulty.

A foreign private issuer will continue to be required to provide a reconciliation to U.S. GAAP under these amendments if its financial statements include deviations from IFRS as issued by the IASB, if it does not state unreservedly and explicitly that its financial statements are in compliance with IFRS as issued by the IASB, if the auditor does not opine on compliance with IFRS as issued by the IASB, or if the auditor's report contains any qualification relating to compliance with IFRS as issued by the IASB. A foreign private issuer using a jurisdictional or other variation of IFRS will be able to rely on the amendments if that issuer also is able to state compliance with both IFRS as issued by the IASB and a jurisdictional variation of IFRS (and does so state), and its auditor opines that the financial statements comply with both IFRS as issued by the IASB and the jurisdictional variation, as long as the statement relating to the former is unreserved and explicit.

Many commenters supported the objective of encouraging the development of a single set of high-quality international accounting standards, but suggested that we also accept without a U.S. GAAP reconciliation financial statements prepared in accordance with a jurisdictional variation of IFRS, and in particular IFRS as adopted by the EU.[75] Some of these and other commenters thought it would be appropriate also to permit a reconciliation from a jurisdictional variation of IFRS to IFRS as issued by the IASB. Further, some commenters suggested the Commission also permit a reconciliation from any home country GAAP to IFRS as issued by the IASB. Commenters did not suggest that accepting financial statements that comply with IFRS as issued by the IASB from foreign private issuers was dependent on implementing any of these additional suggested approaches. We are not extending the proposal to these variations because we believe that allowing any of these approaches would not as effectively foster the development and use of a single set of high-quality global accounting standards.

In the Proposing Release, the phrase we used to describe the authoritative text of IFRS was "the approved English language version of IFRS as published by the IASB." The final amendments refer to the same authoritative text of IFRS as it is provided for by the IASC Foundation Constitution, although we are using the phrase "IFRS as issued by the IASB" to describe it. As one commenter pointed out, according to the IASC Foundation Constitution, "the authoritative text of any Exposure Draft or International Accounting Standard or International Financial Reporting Standards or Draft or final Interpretation shall be that published by the IASB in the English language" and, for this reason, there is no need to make reference to language when describing the authoritative text.[76] Further, because the standards are issued by the Board and published by the IASC Foundation, it is to standards "issued" that we refer.

3. Implementation

In the Proposing Release we sought input on what commenters thought might be an appropriate compliance date if the Commission were to adopt the proposed amendments, as well as on issues relating to the timing of implementation for any adopted amendments.

Of the commenters who provided feedback relating to implementation and timing, a majority of those who supported acceptance of IFRS financial statements without reconciliation

[71] The amendments would not encompass use of the IASB's proposed IFRS for Small and Medium-sized Entities ("IFRS for SMEs"), because those proposed standards relate only to smaller issuers that do not have debt or equity securities listed on a public market. More information on IFRS for SMEs is available on the IASB Web site at *http://www.iasb.org/Current+Projects/IASB+Projects/Small+and+Medium-sized+Entities/Small+and+Medium-sized+Entities.htm*.

[72] *See*, for example, letters from Galileo Global Advisors LLC, Grant Thornton, Microsoft, PwC, and UBS.

[73] *See*, for example, letters from PwC and UBS.

[74] *See* letter from CESR.

[75] Many commenters noted that issuers listed in the EU are required to prepare their statutory financial statements using IFRS as adopted by the EU. Commenters noted that presently the only difference between IFRS as issued by the IASB and IFRS as adopted by the EU relates to IAS 39, "Financial Instruments: Recognition and Measurement," whereby IFRS as adopted by the EU offers greater flexibility with respect to hedge accounting for certain financial instruments than does IFRS as issued by the IASB. We understand that few companies make use of this ability to "carve-out" these provisions of IAS 39 from IFRS as issued by the IASB. As the European Commission noted in its comment letter, "[f]or the vast majority of EU issuers listed in the U.S., this carve-out has no practical significance and as such their financial statements prepared under *IFRS as adopted by the EU* would be identical to those prepared under *IFRS as published by the IASB*." As a practical matter, this difference applies only to foreign financial institutions, several of which have commented that they do not avail themselves of the approach afforded by the EU-endorsed standard (*see* letters from Deutsche Bank, HSBC, Lloyds), and that therefore they would be able to assert compliance with both IFRS as endorsed by the EU and IFRS as issued by the IASB. Other commenters either did not address the issue or did not express concern about their ability to assert dual compliance at the present time.

Issuers expressed concern, however, that they may not be able to express dual compliance in the future if the timing of the EU's endorsement of new standards, or an EU decision not to endorse a standard, were to create differences between EU IFRS and IFRS as issued by the IASB such that compliance with EU IFRS necessarily precluded compliance with IFRS as issued by the IASB.

See Section III.A.3. below for a discussion of transition provisions applicable to European companies that make use of the EU's carve-out from IAS 39.

[76] *See* letter from KPMG.

indicated that the amendments should be effective for filings covering the 2008 financial year, with some of those commenters indicating that such timing would allow investors and other affected parties more time to familiarize themselves with IFRS.[77] A significant portion of commenters that supported the proposed rules felt that the amendments should be effective at the earliest date possible.[78]

Commenters did not indicate that the number of issuers that prepare their financial statements in accordance with IFRS should be a factor in determining the implementation of any adopted rules, and some stated that acceptance of IFRS financial statements without a U.S. GAAP reconciliation would encourage other issuers to adopt IFRS, which may assist in promoting the achievement of a single set of high-quality internationally accepted accounting standards.[79] Most commenters responding to our question as to whether the timing of any rule should be based on further experience and knowledge of IFRS stated that these should not be factors in determining the implementation timing,[80] with some noting that there was already sufficient experience in the application of IFRS to warrant immediate effectiveness of the amendments.[81] Some commenters, including some from the investor community, however, felt that elimination of the reconciliation may be premature, or thought deferral of adopting the amendments would be appropriate until more experience was gained with IFRS even if they supported the idea of accepting IFRS without reconciliation as a move towards the use of a single set of high-quality international accounting standards.[82] Those that thought taking action at this time was premature cited the "readiness" concerns described in Part II above; namely concerns regarding IASC Foundation's governance and funding, the state of and prospects for convergence of IFRS and U.S. GAAP, investor education, regulators' mechanisms for interaction, and so forth. The Commission's consideration of those comments is noted in Part II with respect to its decision to adopt rule amendments at this time.

The Commission has concluded that the amendments to accept financial statements from foreign private issuers prepared in accordance with IFRS as issued by the IASB will be applicable to annual financial statements for financial years ending after November 15, 2007, and to interim periods within those years, that are contained in filings made after the effective date of these rule amendments.

In deciding to make the rule amendments available for financial statements that cover the 2007 financial year for many foreign private issuers, the Commission considered the fact that it was not awaiting any particular event to support its policy decision and, further, by making the rule amendments available for the 2007 financial year for many foreign private issuers, the Commission's objectives in implementing this policy decision would begin to be realized that much sooner.

The Commission notes that there may be foreign private issuers that are existing Commission registrants who—pursuant to policy decisions the European Union made in its role as an "early adopter" of IFRS—have already been preparing their financial statements by applying the EU's "carve out" from IAS 39 with respect to hedge accounting for certain financial instruments (the "IAS 39 carve out"), as described above in Section III.A.2.[83] Given the timing of this decision, registrants who may have taken advantage of the IAS 39 carve out would have done so without the knowledge that its use would be at odds with the IFRS reporting alternative that the Commission is adopting today. Accordingly, the Commission is making available temporary transition relief to these existing registrants. Specifically, for only their first two financial years that end after November 15, 2007, the Commission will accept from existing SEC registrants from the EU that have already utilized the IAS 39 carve out in financial statements previously filed with the Commission financial statements that do not include a reconciliation to U.S. GAAP, if those financial statements otherwise comply with IFRS as issued by the IASB and contain a reconciliation to IFRS as issued by the IASB. This reconciliation to IFRS as issued by the IASB is to contain information relating to financial statement line items and footnote disclosure based on full compliance with IFRS as issued by the IASB. It is to be prepared and disclosed in the same manner that foreign private issuers presently provide reconciliations of their financial statements to U.S. GAAP under Item 17 and Item 18 of Form 20–F. All financial statements of foreign private issuers that used the IAS 39 carve out for periods prior to the financial year that ends after November 15, 2007 must continue to be reconciled to U.S. GAAP. At the end of this transition period, these registrants will have the same financial statement reporting choices as that of any foreign private issuer (*e.g.*, if they continue to use the IAS 39 carve out as described in Section III.A.2., above, they will remain subject to the U.S. GAAP reconciliation requirements of Items 17 and 18). The Commission has adopted an amendment to Items 17 and 18 of Form 20–F to accommodate this transition provision.

The Commission observes that the IAS 39 carve out relates to hedge accounting for certain financial instruments. The Commission and its staff have had several opportunities to consult and discuss with different constituencies regarding the accounting for derivative and hedging transactions. The Commission will make its staff available to the staffs of the IASB, FASB and European Commission to identify any ways to address this area.

B. Amendments To Effect Acceptance of IFRS Financial Statements Without Reconciliation to U.S. GAAP

1. General

The basic financial statement requirements for foreign private issuers are described in Items 17 and 18 of Form 20–F. Under Item 17(c), a foreign private issuer must either prepare its financial statements and schedules in accordance with U.S. GAAP or, if the financial statements and schedules are prepared using another basis of accounting, include a reconciliation to U.S. GAAP as described under Item 17(c)(2). This reconciliation includes a narrative discussion of reconciling differences,[84] a reconciliation of net income for each year and any interim periods presented,[85] a reconciliation of major balance sheet captions for each year and any interim periods,[86] and a reconciliation of cash flows for each year and any interim periods.[87] The Commission is adopting as proposed amendments to Item 17(c) so that a reconciliation will no longer be required from foreign private issuers that prepare

[77] *See*, for example, letter from Syngenta.

[78] *See*, for example, letters from Citigroup, Financial Reporting Counsel, and PwC.

[79] *See*, for example, letters from BP, British Bankers' Association, and UBS.

[80] *See*, for example, letters from Deutsche Bank, Fitch Ratings, and ICAEW.

[81] *See*, for example, letter from Deloitte.

[82] *See*, for example, letters from CFA Institute, William Craven, Gaylen R. Hansen, and ITAC.

[83] *See http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_363/l_36320041209en00010065.pdf.*

[84] *See* Item 17(c)(1) of Form 20–F.

[85] *See* Item 17(c)(2)(i) of Form 20–F.

[86] *See* Item 17(c)(2)(ii) of Form 20–F.

[87] *See* Item 17(c)(2)(iii) of Form 20–F, containing the exception relating to IAS 7 "Cash Flow Statements."

financial statements that comply with IFRS as issued by the IASB.

Several subparagraphs of Item 17(c)(2) relate to reconciling disclosures that rely on certain International Accounting Standards ("IAS") and were available to foreign private issuers that use home country GAAP or IFRS. We proposed to delete Items 17(c)(2)(iv)(B) and (C), which relate to reconciling disclosures from issuers that rely on IAS 21, "The Effects of Changes in Foreign Exchange Rates." Because some commenters recommended that the IAS 21 accommodation could continue to be useful to foreign private issuers that may operate in a hyperinflationary economy, we are retaining that provision.[88] We are eliminating Item 17(c)(2)(viii), which relates to reconciling disclosures to be provided by issuers that use IAS 22, "Business Combinations," as IAS 22 has been superseded by IFRS 3, "Business Combinations." Because IAS 22 may no longer be used by an issuer preparing IFRS financial statements, we also are deleting Instruction 6 to Item 17 as proposed.

A reconciliation to U.S. GAAP under Item 18 of Form 20–F requires that an issuer provide all information required by U.S. GAAP and Regulation S–X, in addition to the reconciling information for line items specified in Item 17(c). Because our acceptance of financial statements prepared using IFRS as issued by the IASB without a U.S. GAAP reconciliation is intended to apply equally to an Item 18 reconciliation, we are revising Item 18(b) as proposed to indicate that U.S. GAAP and Regulation S–X disclosures will not be required if the issuer files financial statements using IFRS as issued by the IASB.

2. Interim Period Financial Statements

We are adopting as proposed that a foreign private issuer that is eligible to omit a U.S. GAAP reconciliation from its audited annual financial statements also will be able to omit a reconciliation from its unaudited interim period financial statements which, to the extent such financial statements are required,[89] also will have to be prepared in accordance with IFRS as issued by the IASB. Based on the responses that we received to questions posed in the Proposing Release relating to the ability of issuers to prepare interim period financial statements that are in accordance with IFRS as issued by the IASB,[90] we believe that the preparation of interim period financial statements in accordance with the provisions of IFRS as issued by the IASB that pertain to interim financial reporting will not create difficulties for issuers, and that issuers that have changed to IFRS as issued by the IASB for their annual financial statements and prepare interim financial statements will do so in accordance with IFRS as issued by the IASB.

a. Financial Information in Securities Act Registration Statements and Prospectuses and Initial Exchange Act Registration Statements Used Less Than Nine Months After the Financial Year End

In registration statements and prospectuses under the Securities Act and initial registration statements under the Exchange Act, if the document is dated less than nine months after the end of the last audited financial year, foreign private issuers are not required to include interim period financial information. If a foreign private issuer has published interim period financial information, however, Item 8.A.5 of Form 20–F requires these registration statements and prospectuses to include that information.[91] The intent of this requirement is to make information available in U.S. offering documents as current as information that is available elsewhere.

The instructions to Item 8.A.5 require that an issuer which provides published interim financial information describe any material variations between the accounting principles used and U.S. GAAP and quantify any material variations that have not been quantified in the annual financial statements. We are adopting as proposed an instruction to Item 8.A.5 of Form 20–F to clarify that interim period financial information that is made public by a foreign private issuer need not be reconciled to U.S. GAAP if the basis of accounting used in the audited annual financial statements and the published interim information is IFRS as issued by the IASB.

b. Financial Statements in Securities Act Registration Statements and Prospectuses and Initial Exchange Act Registration Statements Used More Than Nine Months After the Financial Year End

In registration statements and prospectuses under the Securities Act and initial registration statements under the Exchange Act, if the document is dated more than nine months after the end of the last audited financial year, foreign private issuers must provide consolidated interim period financial statements covering at least the first six months of the financial year and the comparative period for the prior financial year.[92] These unaudited financial statements must be prepared using the same basis of accounting as the audited financial statements contained or incorporated by reference in the document and include or incorporate by reference a reconciliation to U.S. GAAP.[93]

We proposed a new instruction to Item 8.A.5 to clarify that an issuer would not need to provide that reconciliation if it prepares its interim financial statements using IFRS as issued by the IASB. Under the proposed amendment, an issuer relying on the new instruction to provide IFRS financial statements for an interim period without reconciliation would continue to be required to comply with Article 10 of Regulation S–X with regard to the minimum content of the financial statements for interim periods, when that information is required under Item 8.A.5 of Form 20–F.

In the Proposing Release we enumerated several differences between the requirements of Article 10 of Regulation S–X and IAS 34, "Interim Financial Reporting," which prescribes the minimum content of an interim financial report and the principles for recognition and measurement in interim period financial statements. These differences relate primarily to the detail required for major headings and subtotals used in the financial statements, statements regarding the sufficiency of the interim disclosures, minimum contingent liability disclosures, and footnote disclosure of summarized data for equity investees.

Many commenters did not view differences between IAS 34 and Article 10 as significant[94] and felt that IAS 34

[88] *See*, for example, letters from Deloitte and Shell.

[89] *See* Item 8.A.5 of Form 20–F for requirements relating to interim period financial statements.

[90] *See*, for example, letters from BP, Deutsche Bank, Shell, and UBS.

[91] Under Item 512(a)(4) of Regulation S–K [17 CFR 22.512(a)(4)], a foreign private issuer that registers securities on a shelf registration statement also is required to undertake to include any financial statements required by Item 8.A of Form 20–F at the start of any delayed offering or throughout a continuous offering.

[92] *See* Item 8.A.5 of Form 20–F and Item 512(a)(4) of Regulation S–K.

[93] *See* Items 17(c) and 18 of Form 20–F.

[94] *See*, for example, letters from BP, British Bankers Association, Ernst & Young, and Royal Bank of Scotland Group plc.

information was sufficient without needing to require compliance with Article 10 when preparing IFRS financial statements for interim periods.[95] Accordingly, under the rules we are adopting a foreign private issuer that relies on the new instruction to provide IFRS financial statements for an interim period without reconciliation to U.S. GAAP will not be required to comply with Article 10 of Regulation S–X for interim period financial statements provided pursuant to Item 8.A.5 of Form 20–F, if it complies with and explicitly states compliance with IAS 34.

c. Transition Period Interim Financial Statements in Securities Act Registration Statements and Prospectuses and Initial Exchange Act Registration Statements

Eligible foreign private issuers will be able to omit the U.S. GAAP reconciliation from their unaudited financial statements relating to interim periods only if the audited annual financial statements included or incorporated by reference for all required periods are prepared in accordance with IFRS as issued by the IASB, as described in Section III.A.2. above. If the audited annual financial statements are not so prepared, then in order to be able to omit the U.S. GAAP reconciliation from required interim period financial statements, an issuer would amend prior filings in order to appropriately revise the audited financial statements.[96]

C. Related Accounting and Disclosure Issues

1. Selected Financial Data

Under Item 3.A. of Form 20–F, issuers must provide five years of selected financial data. We proposed to revise the instruction to Item 3.A. to clarify that selected financial data based on the U.S. GAAP reconciliation is required only if the issuer prepares its primary financial statements using a basis of accounting other than IFRS as issued by the IASB.

Almost all commenters that addressed the issue believed that U.S. GAAP selected financial data should not be required if an issuer prepares its primary financial statements in accordance with IFRS as issued by the IASB.[97] One commenter noted that efforts to keep the previously filed selected U.S. GAAP financial information current, for example due to retrospective effects of changes of accounting methods or discontinued operations, would not be cost-effective.[98]

We are amending Item 3.A. of Form 20–F as proposed to clarify that selected financial data based on the U.S. GAAP reconciliation is required only if the issuer prepares its primary financial statements using a basis of accounting other than IFRS as issued by the IASB.

2. Other Form 20–F Disclosure

a. Reference to U.S. GAAP Pronouncements in Form 20–F

Several non-financial statement disclosure items in Form 20–F refer to specific U.S. GAAP pronouncements.[99] We proposed to add an Instruction to Item 5 and Item 11 stating that an IFRS filer that will not be required to provide a U.S. GAAP reconciliation will continue to respond to those items of Form 20–F that make reference to U.S. GAAP pronouncements. Under the proposed instruction, in providing that disclosure the issuer would apply the appropriate corresponding IFRS pronouncements that embody the principles contained in the referenced U.S. GAAP pronouncement.

A number of commenters suggested that individual issuers may reach different determinations as to which IFRS pronouncement to look to in response to Form 20–F item requirements that refer to U.S. GAAP provisions. To facilitate the use of Form 20–F by IFRS users, those commenters recommended that we revise the non-financial statement disclosure requirements to itemize the specific IFRS pronouncements that correspond to the referenced U.S. GAAP pronouncements.[100]

In evaluating these comments, we concluded that in responding to the non-financial statement disclosure requirements of Form 20–F, issuers should continue to meet the objective of the stated disclosure regardless of the basis on which the financial statements are prepared. We believe issuers should not have undue difficulty in determining the objective of those disclosure requirements. We therefore are adopting instructions to Item 5 and Item 11 to indicate that issuers preparing their financial statements in accordance with IFRS as issued by the IASB should provide, in responding to paragraphs of those items that refer to specific pronouncements of U.S. GAAP, disclosure that satisfies the objective of the item's disclosure requirements. If information called for by the non-financial statement requirements of Form 20–F duplicates information that is contained in the IFRS financial statements, an issuer need not repeat such information but may cross-reference to the appropriate footnote in the audited financial statements. We will continue to evaluate whether specific changes to the non-financial statement disclosure items of Form 20–F would be beneficial.

b. Disclosure From Oil and Gas Companies

We proposed to amend Item 18 of Form 20–F to expressly require that any issuer that provides disclosure under FAS 69, "Disclosures about Oil and Gas Producing Activities," continue to provide that disclosure even if the issuer is preparing financial statements in accordance with IFRS as issued by the IASB without a reconciliation to U.S. GAAP.[101] We are adopting this amendment as proposed to continue to require FAS 69 disclosure. Most commenters responding to our question on this matter supported our proposal to continue to require FAS 69 disclosure, which they felt was useful to investors and analysts.[102] Some issuers indicated, however, that FAS 69 disclosure should cease to be required once the IASB issues disclosure requirements for oil and gas related activities.[103] We will continue to consider appropriate revisions to our requirements in this area in light of future developments.

c. Market Risk Disclosure and the Safe Harbor Provisions

We recognize that IFRS filers have expressed particular concerns related to the applicability of the safe harbor for forward-looking statements provided under Section 27A of the Securities Act[104] and Section 21E of the Exchange

[95] *See*, for example, letters from AXA, Deloitte, KAI–KASB, and Group of 100.

[96] For example, an issuer that previously had filed an annual report on Form 20–F containing financial statements which were not prepared in accordance with IFRS as issued by the IASB, as described in Section III.A.2. above, could file an amendment to that annual report which included financial statements that were so prepared.

[97] *See*, for example, letters from BP, DaimlerChrysler, Deloitte, and KAI-KASB.

[98] *See* letter from PwC.

[99] *See*, for example, Item 5 ("Operating and Financial Review and Prospects"), which contains references to FASB Interpretations No. 45 "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others" and No. 46 "Consolidation of Variable Interest Entities," and Item 11, which contains reference to multiple FASs.

[100] *See*, for example, letters from Accounting Standards Committee of Germany and Germany Accounting Standards Board, and Center for Audit Quality ("CAQ").

[101] Disclosure provided pursuant to FAS 69 is supplementary information that is provided with the financial statements.

[102] *See*, for example, letters from Ernst &Young and Deloitte.

[103] *See*, for example, letters from BP and Shell.

[104] 15 U.S.C. 77z–2.

Act.[105] Those safe harbor provisions expressly exclude any information "included in a financial statement prepared in accordance with generally accepted accounting principles."[106] Because forward-looking market risk disclosure required by IFRS 7, "Financial Instruments: Disclosure," will appear in the footnotes to audited IFRS financial statements, it is not covered by the safe harbor provisions. In contrast, market risk disclosure provided pursuant to Item 11 of Form 20–F is not included as part of the financial statements in a filing and is expressly subject to the safe harbor provisions.

In the Proposing Release, while we did not propose any changes, we did solicit feedback on the non-availability of the safe harbor provisions to financial statement information, including disclosure required by IFRS 7. In response, a number of commenters indicated that the Commission should address the implications of the safe harbor provisions and financial statement disclosure, including forward-looking information called for by IFRS 7.[107] This is an issue that exists currently even with a U.S. GAAP reconciliation, and therefore is distinct from our acceptance of IFRS financial statements without a U.S. GAAP reconciliation and affects foreign private issuers generally.[108] We therefore believe the question warrants further consideration and, if appropriate, we may address it through a separate rulemaking initiative.

3. IFRS Treatment of Certain Areas

In the Proposing Release we noted that although IFRS as issued by the IASB constitutes a comprehensive basis of accounting that may be used by foreign private issuers in the preparation of their financial statements contained in Commission filings, there are certain areas in which the IASB has yet to develop standards or in which IFRS permits disparate options. As discussed in the Proposing Release, IFRS does not have a specific standard or interpretation on accounting treatment for common control mergers, recapitalization transactions, reorganizations, acquisitions of minority shares not resulting in a change of control and similar transactions.[109] While IFRS does include a standard on financial statement presentation, it lacks specific conventions as to the form and content of the income statement.[110] We did not receive extensive comments in these areas. Other examples given in the Proposing Release include accounting for insurance contracts and extractive activities.

IFRS 4, "Insurance Contracts," provides some requirements in accounting for issued insurance contracts and held reinsurance contracts. As IFRS 4 was the first part of a two-phase project, the standard generally permits a company to continue to apply its home country accounting principles for insurance contracts, though it imposes certain accounting requirements in order to eliminate certain inconsistencies in application, and establishes many disclosure requirements. The IASB has a project to further address the accounting for insurance contracts and has issued a discussion paper on its preliminary views on such a standard.[111]

IFRS 6, "Exploration for and Evaluation of Mineral Resources," provides some requirements in accounting for exploration and evaluation activities of oil and gas and mining companies. For limited areas of accounting for extractive activities, IFRS 6 establishes guidelines under which preparers can continue to apply home country accounting principles.

In the Proposing Release we solicited comment as to whether there are any accounting subject areas that the IASB should address before we accept IFRS financial statements without reconciliation, and whether investors can understand and use IFRS financial statements which include activities in areas for which IFRS does not have a specific standard. Some commenters noted that IFRS is not alone in having gaps in accounting for certain areas, and gave as examples the lack of standards for property, plant and equipment, revenue recognition, consolidation and joint venture accounting under U.S. GAAP.[112]

Several commenters indicated that, where gaps might exist in IFRS, preparers may look to accounting guidance issued by other standards, such as U.S. GAAP, pursuant to IAS 8, "Accounting Policies, Changes in Accounting Estimates and Errors."[113] In areas for which an IFRS does not exist, IAS 8 requires preparers to use judgment in developing accounting policies such that financial information is provided that, among other things, is relevant to the needs of users and the financial statements reliably reflect the economic substance of transactions. In applying such judgment, preparers must consider other guidance found in IFRS and, if no analogous guidance is found, the definitions, criteria and concepts in the IFRS conceptual framework. Finally, IAS 8 allows preparers to consider pronouncements of other standard-setting bodies to the extent that such guidance does not conflict with the concepts underlying IFRS. In areas that are not addressed by IFRS, we expect companies, consistent with IAS 1 and IAS 8, to provide full and transparent disclosure in the financial statements and operating and financial review and prospects disclosure[114] about the accounting policies selected and the effects of those policies on the IFRS financial statements.[115]

Accounting for insurance contracts was the area most frequently cited by commenters as lacking complete standards, and some letters addressed extractive activities as well.[116] However, most of the commenters believed that, while IFRS 4 has not addressed many recognition and measurement items for insurance contracts, the rule amendments to allow the filing of IFRS financial statements without reconciliation to U.S. GAAP should not be delayed and noted that European investors are currently using financial statements prepared under IFRS by

[105] 5 U.S.C. 78u–5.

[106] *See* Securities Act Section 27A(b)(2)(A) and Exchange Act Section 21E(b)(2)(A).

[107] *See*, for example, letters from American Bar Association, CAQ, and PwC.

[108] Some foreign private issuers have early adopted IFRS 7 in their financial statements relating to their 2006 financial years.

[109] The IASB and the FASB are expected to issue a final standard for the accounting for business combinations and non-controlling interests. This joint project is expected to converge numerous areas of application and reduce certain alternative treatments currently available under IFRS, but will not address all areas listed herein.

[110] Early in 2008, the IASB and the FASB are expected to publish a discussion document relating to financial statement presentation, including the presentation of information on the face of the financial statements.

[111] The IASB currently has projects underway addressing accounting for insurance contracts and extractive activities. *See* the IASB work plan for further detail at *http://www.iasb.org/Current+Projects/IASB+Projects/IASB+Work+Plan.htm*.

[112] *See*, for example, letter from Kurt S. Schulzke.

[113] *See*, for example, letters from Diageo plc ("Diageo") and Ernst & Young.

[114] *See* Item 5 of Form 20–F.

[115] For example, the embedded deposit component of certain types of insurance contracts written by an insurance company might be unbundled as a liability, or might not be unbundled and thus included in premium revenues and policy benefit expenses. Similarly, exploration and evaluation costs of a company in the extractive industries might be expensed as incurred, or capitalized as assets and subsequently depreciated. Similarly, common control mergers, reorganizations or recapitalizations might be reported at the historical cost basis of the entit(ies) involved or at a new basis in whole or in part.

[116] *See*, for example, letters from CFA Institute and Fitch Ratings.

insurance companies to make financial decisions.[117] One commenter noted that even though the implementation of an insurance standard may occur after the Commission's acceptance of IFRS financial statements without reconciliation to U.S. GAAP, global practices in this area are sufficiently developed to not require reconciliation.[118] Another commenter indicated that IFRS 4 does provide minimum requirements for insurance contracts accounting and requires extensive disclosure of the accounting policies used and other matters so that investors can inform themselves. The commenter noted that in some areas these disclosures are more extensive than those called for under U.S. GAAP.[119] Another commenter indicated that although IFRS provides more options in the selection of accounting policies in some areas compared to U.S. GAAP, it also provides sufficient transparency of the options chosen such that the U.S. GAAP reconciliation does not provide added benefit.[120]

In a few cases, commenters recommended that some or all insurance companies be excluded from the scope of the proposed amendments or that additional disclosure requirements be imposed because IFRS 4 may not provide the same level of transparency to investors as other IFRS applicable to other sectors of the financial services industry.[121] Another commenter said that once there is a robust IFRS on insurance, the lack of convergence should not further delay the elimination of the reconciliation.[122]

The IASB continues to make progress towards developing standards under IFRS for both insurance and extractive activities. As we accept and support the use of IFRS as issued by the IASB as a comprehensive basis of accounting for the preparation of financial statements included in filings with the Commission by foreign private issuers, we do not believe that the IFRS standards in these or other discrete areas should delay our full acceptance of IFRS as issued by the IASB without a U.S. GAAP reconciliation.

4. Other Considerations Relating to IFRS and U.S. GAAP Guidance

As discussed in the Proposing Release and in Section III.C.3. of this release, the Commission recognizes that an issuer that will not be required to reconcile its IFRS financial statements to U.S. GAAP may, nevertheless, pursuant to the application of IAS 8 look for guidance from Commission sources, such as rules and regulations, and including Accounting Series Releases ("ASRs") and Financial Reporting Releases ("FRRs").[123] In addition, such an issuer may look to the guidance that the Commission staff provides in Staff Accounting Bulletins ("SABs"), and, if the company is engaged in certain lines of business, various Industry Guides.[124]

As described in the Proposing Release, we believe that a company that is no longer required to reconcile its IFRS financial statements to U.S. GAAP under the adopted amendments, and its auditor, must continue to follow any Commission guidance that relates to auditing issues.[125]

5. First-Time Adopters of IFRS

General Instruction G to Form 20–F provides for an accommodation that permits a foreign private issuer in its first year of reporting under "IFRS as published by the IASB" to file two years rather than three years of statements of income, changes in shareholders' equity and cash flows prepared in accordance with IFRS, with appropriate related disclosure in its registration statements or annual report filed with the Commission.[126] The amendments to accept financial statements prepared in accordance with IFRS as issued by the IASB that we are adopting today will apply to, among others, foreign private issuers that are able to rely on the accommodation to first-time adopters of IFRS contained in General Instruction G. As a conforming amendment, we are changing all references to "IFRS as published by the IASB" contained in General Instruction G to "IFRS as issued by the IASB," which has the same definition.

We proposed to amend General Instruction G to provide consistency with the proposed acceptance of financial statements prepared in accordance with IFRS as issued by the IASB without a U.S. GAAP reconciliation. Commenters were supportive of the conforming amendments as proposed, which we are adopting. Specifically, we are revising paragraph (a) of General Instruction G, "Omission of Certain Required Financial Statements," to provide for this. We also are revising paragraph (d) of General Instruction G, "Information on the Company," to refer to "a U.S. GAAP reconciliation" rather than "the U.S. GAAP reconciliation" to avoid any inference that a reconciliation would be required. In addition, we are revising paragraph (e) to eliminate the reference to the U.S. GAAP reconciliation, which will no longer be required.

Contained in paragraph (f) of General Instruction G are three options by which an issuer relying on the two-year accommodation could satisfy the interim financial statement requirements of Item 8.A.5 of Form 20–F in a transitional registration statement. One of these options allows for two years of audited financial statements and interim financial statements prepared in accordance with IFRS as issued by the IASB and reconciled to U.S. GAAP as required by Item 17(c) or 18 of Form 20–F. We proposed to eliminate the reconciliation requirement from this option in a manner consistent with the proposed amendments to Items 17 and 18. We did not receive extensive comment on this aspect of the proposal, and are eliminating the reconciliation requirement from this option as proposed. We are retaining the other options as they currently stand, and note that few if any issuers appeared to use the option requiring condensed U.S. GAAP financial information as a bridge between three years of previous GAAP financial statements and two years of IFRS interim information. We also note that issuers may continue to contact the staff if they are unable to comply with one of the options but have comparable information available.[127]

We are adopting as proposed the revisions to paragraph (h) of General Instruction G to eliminate the U.S.

[117] *See*, for example, letters from Allianz, Prudential, and PwC.

[118] *See* letter from AIG.

[119] *See* letter from ING.

[120] *See* letter from PwC.

[121] *See*, for example, letters from ACLIG, American Academy of Actuaries, and GNAIE.

[122] *See* letter from Fitch Ratings.

[123] FRRs contain the Commission's views and interpretations relating to financial reporting. Prior to 1982, the Commission published its views and interpretations relating to financial reporting in Accounting Series Releases (ASRs). In FRR 1, Adoption of the Financial Reporting Release Series and Codification of Currently Relevant ASRs, the Commission codified certain previously issued ASRs on financial reporting matters.

[124] Staff Accounting Bulletins reflect the Commission staff's views regarding accounting-related disclosure practices. They represent interpretations and policies followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the federal securities laws. Industry Guides serve as expressions of the policies and practices of the Division of Corporation Finance. They are of assistance to issuers, their counsel and others preparing registration statements and reports, as well as to the Commission's staff. SABs and Industry Guides are not rules, regulations, or statements of the Commission. The Commission has neither approved nor disapproved these interpretations.

[125] In addition, foreign private issuers are required to have audits conducted in accordance with the Standards of the PCAOB (U.S.) regardless of the comprehensive basis of accounting they use to prepare their financial statements.

[126] *See* the 2005 Adopting Release.

[127] *See* the Instruction to General Instruction G(f) of Form 20–F.

GAAP reconciliation requirement for the two most recent financial years for which financial statements prepared in accordance with IFRS as issued by the IASB are filed. We also are adopting the conforming amendment to Instruction 2.b of General Instruction G(h) to specify that disclosure on operating and financial review and prospects provided in response to Item 5 of Form 20–F need not refer to a reconciliation to U.S. GAAP. That revision is intended to clarify that disclosure should not refer to any U.S. GAAP reconciling information prepared for previous years.

As we noted in the Proposing Release, the accommodation to first-time adopters of IFRS contained in General Instruction G was scheduled to expire after the first financial year starting on or after January 1, 2007. That timing was intended to comport with the requirements of the EU Regulation relating to the transition to IFRS of European companies, although the accommodation is available to an eligible first-time adopter of IFRS from any jurisdiction. As many other countries are expected to adopt IFRS in the coming years, we proposed to extend the accommodation contained in General Instruction G to Form 20–F for five years to cover financial statements for the 2012 financial year or earlier that are included in annual reports or registration statements. We also solicited comment as to whether extending the accommodation for a longer or indefinite period would be appropriate.

All commenters addressing this matter supported extension of the accommodation contained in General Instruction G.[128] Rather than the five-year extension as proposed, most commenters believed that the accommodation should be extended indefinitely to provide an ongoing incentive for the adoption of IFRS as issued by the IASB in filings with the Commission.[129] We agree with this view, and therefore are extending the accommodation to first-time adopters of IFRS as issued by the IASB contained in General Instruction G for an indefinite period.

One accounting firm commented that temporary or permanent recognition or measurement differences between IFRS as issued by the IASB and local variations of IFRS may create difficulties in the ability of an issuer to rely on IFRS 1, "First-time Adoption of International Financial Reporting Standards."[130] The firm indicated that similar difficulties may arise if an entity that prepares its financial statements in accordance with a local GAAP that has converged with IFRS over time has not gone through the adoption process of IFRS 1 with appropriate transition adjustments. We recognize that a specific issuer may need to make a determination as to when it may rely on IFRS 1 as a first-time adopter of IFRS. We believe that an issuer may rely on the provisions of General Instruction G if and only if that issuer has not previously stated its reliance on IFRS 1. Further, an issuer may only rely on the provisions of General Instruction G once.

Paragraph (i) of General Instruction G contains a special instruction that requires European issuers that prepare their financial statements using IFRS as adopted by the EU to reconcile their financial statements to IFRS as issued by the IASB to qualify for the accommodation. A U.S. GAAP reconciliation also is required. This paragraph presently applies only to issuers incorporated in an EU Member State, and would cease to be applicable after the 2007 financial year, at which time the mandatory switch to IFRS under the EU Regulation will be complete. Because the provisions will no longer be applicable after that time, we are deleting General Instruction G(i) of Form 20–F.[131]

6. Check Boxes on the Cover Page of Form 20–F

We proposed adding check boxes to the cover page of Form 20–F in which a filer would indicate whether the financial statements included in the filing have been prepared using U.S. GAAP, IFRS as issued by the IASB, or another basis of accounting. If, in response to this check box, an issuer has indicated that it uses a basis of accounting other than U.S. GAAP or IFRS as issued by the IASB, the issuer would then indicate in response to a subsequent check box whether it follows Item 17 or 18 to prepare its U.S. GAAP reconciliation.

We also proposed to revise the cover page of Form 20–F to require that issuers provide contact information for a person to whom Commission or staff enquiries may be directed.[132] This information would include the name of an individual at the company or its legal counsel and the telephone, e-mail, and/or facsimile number, or other means by which that person can be contacted. Information provided on the Form 20–F in response to the proposed check boxes and the company contact information will constitute required disclosure that is subject to all applicable federal securities laws.

We did not receive extensive comment on these proposed revisions to Form 20–F. One commenter thought that the naming of individuals on the cover page would be viewed as sensitive because of potential exposure to litigation, and suggested that we obtain contact information by non-public means.[133] Because identification on the cover page does not expose that individual to additional liability or responsibility for the contents of the filing, we are adopting the amendments as proposed.[134] We also note that forms for domestic issuers already require contact information. Consistent with the usage throughout the amendments we are adopting today, however, the reference in the check boxes on the Form 20–F cover page has been changed to "IFRS as issued by the IASB" rather than the proposed "IFRS as published by the IASB."[135]

D. Regulation S–X

Regulation S–X contains, among other things, the form and content requirements for financial statements included in filings made with the Commission. It also includes many provisions that do not relate to U.S. GAAP, for example, requirements for auditor qualifications and reports. Regulation S–X will continue to apply to the filings of all foreign private issuers, including those who file financial statements prepared using IFRS as issued by the IASB without reconciliation to U.S. GAAP.[136]

1. Application of the Amendments to Rules 3–05, 3–09, and 3–16

Under Rules 3–05, 3–09 and 3–16 of Regulation S–X, an issuer, in certain

[128] *See*, for example, letters from CAQ and Deloitte.

[129] *See*, for example, letters from BDO, CAQ, Deloitte, Ernst & Young, Grant Thornton, ICAEW, PwC, and Shell.

[130] *See* letter from Ernst & Young.

[131] The transition provisions discussed in Section III.A.3. relating to IFRS as adopted by the EU are available only for existing registrants, all of whom have already been first-time adopters of IFRS.

[132] An example of this enquiry would be a staff comment letter. Identifying the person on the cover page would not make that person an agent for service of process.

[133] *See* letter from Fried, Frank, Harris, Shriver & Jacobson (London), LLP.

[134] We will consider the possibility of including this information as an EDGAR header.

[135] EU companies using the transition provisions discussed in Section III.A.3. should check the "IFRS as issued by the IASB" box.

[136] Foreign private issuers that file financial statements prepared in accordance with IFRS as issued by the IASB will comply with IASB requirements for form and content within the financial statements, rather than with the specific presentation and disclosure provisions in Articles 4, 5, 6, 7, 9, and 10 of Regulation S–X.

circumstances, must include the financial statements of another entity in its filings.[137] We did not propose any changes to Rules 3–05, 3–09, and 3–16 of Regulation S–X, although the amendments that we are adopting to accept IFRS financial statements without a U.S. GAAP reconciliation will apply equally in their application. In response to our questions, respondents found the description in the Proposing Release of how the new amendments would apply to the preparation of financial statements provided under Rules 3–05, 3–09, and 3–16 to be sufficiently clear. We have summarized below the guidance provided in the Proposing Release.

a. Significance Testing

Requirements for significance testing are governed by the financial statements of the issuer.[138] Generally, a foreign private issuer that prepares its own financial statements using IFRS as issued by the IASB also would perform the significance tests under Rules 3–05, 3–09, and 3–16 using IFRS as issued by the IASB, regardless of the basis of accounting used by the other entity. If the significance thresholds under Rule 3–05, 3–09, or 3–16 are met, then the issuer must provide on a separate basis audited annual financial statements of the subject entity.

Some commenters pointed out that significance testing under Rule 1–02(w) has historically been performed using U.S. GAAP amounts and, notwithstanding the amendments we are adopting today, an issuer would still need to prepare a U.S. GAAP reconciliation for the purpose of significance testing even if such a reconciliation was no longer required to be disclosed.[139] In order to clarify our intent and to implement fully our acceptance from foreign private issuers of financial statements prepared in accordance with IFRS as issued by the IASB, we are revising Rule 1–02(w) to specify significance testing using amounts determined under IFRS as issued by the IASB when the issuer's financial statements are prepared in accordance with IFRS as issued by the IASB.

b. Separate Historical Financial Statements of Another Entity Provided Under Rule 3–05 or 3–09

Generally, the historical financial statement requirements for a foreign acquired business or investee under Rule 3–05 or 3–09 are governed by the status of that entity, and do not impose a higher presentation burden on a non-issuer entity than on an issuer. In applying the amendments, if the entity's audited financial statements are in accordance with IFRS as issued by the IASB, those financial statements will not be required to be reconciled to U.S. GAAP. For example, under Rule 3–05 both foreign private issuers and U.S. companies that acquire a "significant" foreign business will be permitted, under the adopted rules, to include the acquiree's financial statements prepared in accordance with IFRS as issued by the IASB without reconciliation to U.S. GAAP, in accordance with U.S. GAAP, or in accordance with another comprehensive basis of accounting reconciled to U.S. GAAP. The same is true for the financial statements of a "significant" foreign investee under Rule 3–09.

An issuer that includes financial statements for a foreign entity under Rule 3–05 or Rule 3–09 currently is permitted to omit the reconciliation to U.S. GAAP for that entity, regardless of the comprehensive basis of accounting in which that entity's financial statements are presented, if the significance of that entity, as defined in Rule 1–02(w) of Regulation S–X, does not exceed 30 percent of the registrant.[140] Although we are not amending Rules 3–05 or 3–09, we are revising Items 17(c)(2)(v) and (vi) of Form 20–F as proposed to clarify, respectively, that if the financial statements of a foreign entity filed under Rule 3–05 or 3–09 are presented in accordance with IFRS as issued by the IASB, those financial statements may omit the reconciling information specified under Item 17(c)(2)(i)–(iii) regardless of the significance of the entity.

2. Pro Forma Financial Statements Provided Under Article 11

Article 11 of Regulation S–X requires issuers to prepare unaudited pro forma financial information that is intended to give effect as if a particular transaction, such as a significant recent or probable business combination, had occurred at the beginning of the financial period. Following the adoption of the amendments described in this release, requirements for pro forma financial information under Article 11 continue to be governed by the financial statements of the issuer rather than of the acquiree or other entity, as the pro forma results must be presented using the same basis of accounting as the issuer. Similarly, the rules that we are adopting do not impose a higher presentation burden on pro forma financial information than would be imposed on the historical financial statements of the issuer.

As proposed, we are not amending Article 11, although the amendments that we are adopting will affect the application of Article 11. Accordingly, a foreign private issuer using IFRS as issued by the IASB as its basis of accounting will not be required to reconcile to U.S. GAAP its pro forma financial information. Therefore, an issuer using IFRS as issued by the IASB will prepare the pro forma financial information by presenting its IFRS results and converting the financial statements of the business acquired (or to be acquired) into IFRS as issued by the IASB.

3. Financial Statements Provided Under Rule 3–10

Rule 3–10 of Regulation S–X specifies financial statement requirements for issuers of guaranteed securities and guarantors.[141] Generally, under this rule both the issuer of the guaranteed security and the guarantor must follow the financial statement requirements of a registrant. If both entities are reporting foreign private issuers filing on Form 20–F, we will accept financial statements prepared in accordance with IFRS as issued by the IASB without reconciliation from each one under the rules we are adopting.[142]

Rule 3–10 permits modified reporting by subsidiary issuers of guaranteed

[137] Rule 3–05 specifies the requirements for financial statements of businesses acquired or to be acquired. Rule 3–09 specifies the requirements for financial statements of unconsolidated majority-owned subsidiaries and 50 percent or less owned investments accounted for by the equity method. Both Rule 3–05 and 3–09 require financial statements when the applicable entity is significant to the issuer.

Rule 3–16 specifies the requirement for financial statements of affiliates whose securities collateralize an issue registered or being registered. The requirement to provide separate financial statements under Rule 3–16 is based upon whether or not the securities are a substantial portion (as defined) of the collateral for the class of securities registered or being registered.

[138] An entity is significant to the issuer if the issuer's investment in the entity exceeds 20% of the issuer's total assets, the entity's income (as defined) exceeds 20% of the issuer's corresponding income, or (for Rule 3–05 only) the entity's total assets exceed 20% of the issuer's total assets.

[139] *See*, for example, letter from CAQ.

[140] *See* Item 17(c)(2)(v) and (vi) of Form 20–F.

[141] A guarantee of a registered security is itself a security, so a guarantor of a registered security is itself considered an issuer of a security. *See* Securities Act Section 2(a)(1).

[142] In this situation, when an issuer of a guaranteed security and a guarantor each file complete audited financial statements, the separate financial statements of each entity also may be on a different basis of accounting and, if not prepared under U.S. GAAP or IFRS as published by the IASB, must be reconciled to U.S. GAAP.

securities and subsidiary guarantors. Separate financial statements need not be filed for subsidiaries meeting the applicable conditions contained in Rules 3–10(b) through 3–10(f). Instead, condensed consolidating financial information is presented in the parent company's reports in an additional audited footnote to the financial statements. In applying modified reporting under Rule 3–10, however, the reconciliation requirement would be based on the consolidated financial statements of the parent company, as under current rules. A parent issuer or guarantor that presents consolidated financial statements in accordance with IFRS as issued by the IASB would present the condensed consolidating financial information on the basis of IFRS as issued by the IASB, without reconciliation to U.S. GAAP. As noted in the Proposing Release, we do not believe that any substantive revision to Rule 3–10 is necessary to implement the acceptance of financial statements prepared using IFRS as issued by the IASB without reconciliation.

As a conforming amendment, we did propose to revise the reference to the reconciliation to U.S. GAAP of the condensed consolidating financial information contained in Rule 3–10 to clarify that we would accept the condensed consolidating financial information without a U.S. GAAP reconciliation if it is prepared using IFRS as issued by the IASB. Commenters generally agreed that this change was sufficient, and we are adopting it as proposed.[143]

4. Conforming Amendment to Rule 4–01

Rule 4–01 of Regulation S–X sets out the general requirements for financial statements included in Commission filings and requires that foreign private issuers include an Item 18 reconciliation if they use a basis of accounting other than U.S. GAAP, except as otherwise stated in the applicable form.[144] In order to implement fully the proposed acceptance of financial statements prepared using IFRS as issued by the IASB and to avoid ambiguity for issuers, we proposed to revise Rule 4–01 to clarify that financial statements of foreign private issuers may be prepared using IFRS as issued by the IASB without reconciliation to U.S. GAAP. Commenters generally agreed that this approach was sufficient, and we are adopting the revision to Rule 4–01 as proposed.

E. Application of the Amendments to Other Forms, Rules and Schedules

1. Conforming Amendments to Securities Act Forms F–4 and S–4

In order to implement fully our acceptance of financial statements prepared in accordance with IFRS as issued by the IASB without reconciliation to U.S. GAAP,[145] we proposed to make certain conforming amendments to references to the U.S. GAAP reconciliation that are contained in Securities Act Forms F–4 and S–4.[146]

Based on the comments received, our acceptance of IFRS financial statements from foreign private issuers in both Exchange Act and Securities Act filings appears to be well understood. Many of the commenters that responded to the questions we posed indicated that the proposed changes were sufficiently clear, and did not believe that any other rules or forms would need to be specifically amended to permit the filing of IFRS financial statements without a reconciliation to U.S. GAAP.[147] A few commenters thought that various other forms, rules and regulations would require modification, and set forth the changes they thought would be necessary in their comment letters.[148] After considering the suggestions, we continue to believe that the proposed revisions to other rules and forms were sufficiently clear, and therefore we do not believe additional revisions are necessary and are adopting the revisions proposed.

We therefore are adopting as proposed the revisions to the references to the U.S. GAAP reconciliation contained in Items 10, 12 and 17 of Form F–4 to make that form consistent with the amendments we are adopting to Items 17(c) and 18(b) of Form 20–F to indicate that the referenced U.S. GAAP reconciliation would be required only for financial statements prepared using a basis of accounting other than U.S. GAAP or IFRS as issued by the IASB. We also are adopting as proposed the analogous revision to the reference to the U.S. GAAP reconciliation contained in the instruction to Item 17 of Form S–4.

2. Conforming Amendment to Rule 701

Rule 701 under the Securities Act provides an exemption from registration for offers and sales made under certain compensatory benefit plans. The exemption generally is not available to issuers that have a reporting obligation under the Exchange Act and does not involve the filing of any information with the Commission. However, an issuer conducting an offering under Rule 701 must deliver to investors certain information, including financial statements, if more than $5 million in securities are sold over a 12-month period. For foreign private issuers, financial statements provided under Rule 701 must include a reconciliation under Item 17 of Form 20–F if they are not prepared in accordance with U.S. GAAP. To implement fully our acceptance of IFRS financial statements without reconciliation to U.S. GAAP, we proposed to amend Rule 701 to clarify that a foreign private issuer that conducts an offering under Rule 701 and prepares its financial statements using IFRS as issued by the IASB should not be required to present a U.S. GAAP reconciliation. Commenters were supportive of the revision to Rule 701 as a means of facilitating stock ownership and compensatory plans for employees of foreign private issuers,[149] which we are adopting as proposed.

3. Schedule TO and Schedule 13E–3

Schedule TO, the tender offer statement under the Exchange Act, and Schedule 13E–3, the transaction statement under Section 13(e) of the Exchange Act, both contain a reference to U.S. GAAP reconciliation in accordance with Item 17 of Form 20–F.

Respondents who commented on the issue, including accounting firms and foreign private issuers, generally felt that changes to Schedule TO and Schedule 13E–3 were not necessary where changes to Item 17 of Form 20–F were made.[150] Other accounting firms and law firms suggested additional specific revisions to those schedules to clarify that no reconciliation or discussion of differences from U.S. GAAP would be necessary if financial statements that complied with IFRS as issued by the IASB were included.[151]

The amendments we are adopting to Form 20–F to implement our acceptance

[143] *See*, for example, letters from Ernst & Young and UBS.

[144] As noted above, Item 17 reconciliation is permitted in various circumstances.

[145] Form 20–F serves as the combined registration statement and annual report for foreign private issuers under the Exchange Act, and also sets forth the disclosure requirements for registration statements filed by foreign private issuers under the Securities Act.

[146] Form F–4 is the registration statement for securities of foreign private issuers in certain business combinations, and Form S–4 is the registration statement for securities of domestic issuers issued in business combinations.

[147] *See*, for example, letters from UBS and Deutsche Bank.

[148] *See*, for example, letters from Ernst & Young and Cleary.

[149] *See*, for example, letter from Cleary.

[150] *See*, for example, letters from PwC, Deloitte, Deutsche Bank, and UBS.

[151] *See*, for example, letters from Cleary and Ernst & Young.

of IFRS financial statements without reconciliation to U.S. GAAP are intended to apply to all Securities Act and Exchange Act filings that reference the U.S. GAAP reconciliation requirement contained in Item 17 or Item 18 of Form 20–F. We therefore are not adopting any revision to Schedule TO or Schedule 13E–3.

4. Small Business Issuers

Under rules currently in effect, a Canadian foreign private issuer that qualifies as a small business issuer under Regulation S–B may elect to provide disclosure in its registration statements and annual reports, in compliance with forms based on Regulation S–B rather than on Form 20–F.[152] Regulation S–B describes the financial statement requirements for a small business issuer, which must be prepared in accordance with U.S. GAAP or, if filed by a foreign private issuer that also is a small business issuer, reconciled to U.S. GAAP in accordance with the requirements of Items 17 or 18 of Form 20–F, as appropriate.[153]

We recently adopted amendments under which disclosure requirements for smaller companies previously contained in Regulation S–B are integrated into Regulation S–K [154] and smaller reporting companies that file annual reports on Form 20–F or a Securities Act registration statement based on Form 20–F will be able to file financial statements prepared using U.S. GAAP, IFRS as issued by the IASB without a U.S. GAAP reconciliation, or another comprehensive basis of accounting with a U.S. GAAP reconciliation. If that issuer chooses to file a registration statement or annual report on a domestic form based on Regulation S–K, financial statements prepared using U.S. GAAP would be required. Because we adopted these amendments for smaller company regulatory simplification, we are not making any revisions to Regulation S–B as part of our final rules to accept IFRS financial statements from foreign private issuers.

In the Proposing Release we solicited comment asking whether we should permit the use in Form 1–A of financial statements prepared in accordance with IFRS as issued by the IASB without a reconciliation.[155] Presently, a Canadian issuer that files a Form 1–A may use unaudited financial statements reconciled to U.S. GAAP. We received several comment letters noting that it would be appropriate to make such an amendment to Form 1–A once Canada officially adopts IFRS,[156] with one commenter indicating that requiring a reconciliation could make a Regulation A offering cost prohibitive for a Canadian issuer that did not use U.S. GAAP.[157] Some issuers supported immediate revision to Form 1–A in this way as a means of furthering our acceptance of IFRS.[158] While we fully support the use of financial statements prepared in accordance with IFRS as issued by the IASB in filings with the Commission by foreign private issuers, we are not at this time revising Form 1–A as it appears that Canadian issuers filing on that form would not be able to avail themselves of the adopted amendments until Canadian accounting standards setters permit the use of IFRS, as discussed below in Section III.F.

F. Application to Filings Under the Multijurisdictional Disclosure System

Certain Canadian foreign private issuers file registration statements and annual reports under the Multijurisdictional Disclosure System ("MJDS"), which permits eligible Canadian companies to use their disclosure documents prepared in accordance with Canadian requirements in filings with the Commission. Certain filings under the MJDS are not required to contain a reconciliation to U.S. GAAP.[159] A U.S. GAAP reconciliation is required, however, in registration statements and annual reports on Form 40–F [160] and registration statements on Form F–10,[161] each when used for common equity securities, securities convertible into common equity securities and other securities not rated investment grade. Canadian issuers that participate in the MJDS generally use either Canadian GAAP, with a U.S. GAAP reconciliation when required, or U.S. GAAP in their filings with the Commission.

Canadian accounting standards setters have indicated that they expect to permit the use of IFRS as issued by the IASB as the basis of accounting for all Canadian public companies. The date for application of IFRS in Canada has not yet been confirmed, but is expected to be 2011.[162] A number of commenters therefore have felt that it would be too early to describe acceptance of IFRS by a Canadian company before Canadian requirements allow the use of IFRS.[163] Canadian issuers supported the acceptance of IFRS financial statements without reconciliation, and urged that it should apply equally to MJDS filers.[164]

We are not adopting any revisions to the MJDS forms. As described in the Proposing Release, we do not believe any amendments to Forms 40–F and F–10 would be necessary to permit an MJDS issuer to file financial statements prepared in accordance with IFRS as issued by the IASB without reconciliation. Some commenters shared this view, as Forms 40–F and F–10 already contain a cross-reference to the U.S. GAAP reconciliation requirement under Items 17 and 18 of Form 20–F which are being amended.[165]

G. Periodic Reporting Deadlines for Foreign Private Issuers

In the Proposing Release we solicited comment on periodic reporting due dates for foreign private issuers, including whether it would be appropriate to shorten the current six-month deadline for annual reports on Form 20–F if a reconciliation were not required. We received significant feedback from commenters raising a number of considerations applicable to reporting deadlines for foreign private issuers that are independent of the reconciliation requirement, including annual report deadlines in home jurisdictions and time needed for

[152] 17 CFR 228. A "small business issuer" is defined in Item 10 of Regulation S–B (17 CFR 228.10) as a company that (i) has revenues of less than $25,000,000; (ii) is a U.S. or Canadian issuer; and (iii) is not an investment company and is not an asset-backed issuer; and (iv) if a majority owned subsidiary, the parent corporation is also a small business issuer. An entity that meets all of these criteria is not a small business issuer if it has a public float (defined as the aggregate market value of the issuer's outstanding voting and non-voting common equity held by non-affiliates) of $25,000,000 or greater.

[153] *See* Notes 1 and 2 to Item 310 of Regulation S–B.

[154] *See* "Smaller Reporting Company Regulatory Relief and Simplification," Release No. 33-8819 (July 5, 2007), available at *http://www.sec.gov/rules/proposed/2007/33–8819.pdf.*

[155] Form 1–A is the Securities Act form for offerings made under Regulation A, a conditional exemption from Securities Act registration for securities offerings not exceeding $5 million. Regulation A may be used by eligible U.S. or Canadian issuers that do not have a reporting obligation under the Exchange Act.

[156] *See,* for example, letter from CAQ.

[157] *See* letter from CAQ.

[158] *See,* for example, letters from BP and Deloitte.

[159] A U.S. GAAP reconciliation is not required under Form F–7 relating to rights offers, Forms F–8 and F–80 for exchange offers and business combinations, Form F–9 relating to investment-grade securities, and Form 40–F when used as an annual report relating to an issuer's Section 15(d) reporting obligations for any of the these offerings or a Section 13(a) reporting obligation relating to investment-grade securities.

[160] 17 CFR 249.240f.

[161] 17 CFR 239.40.

[162] *See* letter from Canadian Accounting Standards Board.

[163] *See,* for example, letters from PwC and Ernst & Young.

[164] *See* letter from Manulife Financial.

[165] *See,* for example, letter from Deloitte.

language translation, among others.[166] Most commenters indicated that in no event should the Form 20–F deadline be earlier than in an issuer's home jurisdiction, and ideally the Form 20–F should be due after the home country filing deadline.[167] A number of commenters support consideration of deadlines for Form 20–F in a separate rulemaking.[168] Given the many considerations that may affect our consideration of periodic reporting deadlines, which may apply to foreign private issuers generally, we believe it is appropriate to consider the issue in a separate rulemaking initiative so as to obtain broader public input.

H. Quality Control Issues

As part of the quality control standards of the PCAOB, Appendix K applies to PCAOB-registered firms that are associated with international firms and establishes procedures to enhance the quality of SEC filings by registrants whose financial statements are audited by foreign associated firms.[169] Appendix K procedures require that the international organization or individual foreign associated firm of PCAOB-registered firms adopt policies and procedures that address the review of filings by persons knowledgeable about U.S. GAAP, U.S. generally accepted auditing standards, and independence matters. We did not propose and are not adopting any amendments to our rules that relate to the continued need for compliance with standards of the PCAOB, including Appendix K. However, in the Proposing Release we did provide commenters the opportunity to address compliance with PCAOB standards, including Appendix K, in the context of the proposed acceptance of IFRS financial statements without a U.S. GAAP reconciliation. In particular, we asked whether we should be concerned about PCAOB-registered firm requirements to have persons knowledgeable in U.S. auditing and independence standards review IFRS financial statements filed with the Commission.

Several commenters, including those from registered public accounting firms, pointed out that since the Appendix K procedures were adopted in 1999 the concerns that it sought to address have been mitigated by developments in the global financial reporting environment.[170] Because of these changes, they believed that it is no longer necessary for the Appendix K procedures to require the involvement of a filing reviewer. Commenters also pointed out that if U.S. GAAP information were no longer required, then a primary focus of Appendix K filing reviews would no longer apply.[171] However, some commenters believe that Appendix K procedures would still be useful because U.S. auditing standards, independence rules, and SEC rules still would apply.[172] We understand that the PCAOB is aware of this matter.[173]

IV. Paperwork Reduction Act

A. Background

The final amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[174] We are submitting the amendments to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[175] The titles for the affected collections of information are:

(1) "Form 20–F" (OMB Control No. 3235–0288);

(2) "Form F–1" (OMB Control No. 3235–0258);

(3) "Form F–4" (OMB Control No. 3235–0325);

(4) "Form S–4" (OMB Control No. 3235–0324); and

(5) "Rule 701" (OMB Control No. 3235–0522).

These forms were adopted pursuant to the Exchange Act and the Securities Act and set forth the disclosure requirements for annual reports and registration statements filed by foreign private issuers. The hours and costs associated with preparing, filing and sending these forms constitute reporting and cost burdens imposed by each collection of information. 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 amendments will allow a foreign private issuer that prepares its financial statements in accordance with IFRS as issued by the IASB to file those financial statements in its registration statements and periodic reports filed with the Commission without reconciliation to U.S. GAAP. These amendments are collections of information for purposes of the Paperwork Reduction Act. For purposes of this Paperwork Reduction Analysis, these amendments will result in a decrease in the hour and cost burden calculations. We believe these amendments will eliminate potential burdens and costs for foreign issuers that use IFRS. The disclosure will be mandatory. There will be no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

We are adopting the amendments substantially as proposed, and do not believe any differences between the proposed and adopted amendments will impact our burden estimates for purposes of the Paperwork Reduction Act. We solicited comments on the Paperwork Reduction Analysis included in the Proposing Release. The few commenters who addressed the issue thought, based on their experience in preparing their U.S. GAAP reconciliation, that we had underestimated the number of hours by which registrant burdens would be reduced if the amendments were adopted.[176] We note, however, that the time required to prepare a U.S. GAAP reconciliation may vary greatly between issuers. We are not changing our estimates of the percentage of incremental decrease in the burden resulting from our amendments. Our Paperwork Reduction Analysis for Form F–1 and Rule 701 is unchanged from the Proposing Release. However, we are revising our estimates for Forms 20–F, F–4, and S–4. For Form 20–F, we have revised our estimate of the number of filers affected by the amendments from 110 to 140. For Form F–4, the total burden hour estimates were revised from 24,503 hours to 24,599 hours subsequent to the issuance of the Proposing Release. We are revising our analysis for Form F–4 accordingly, although we are not changing our estimate of the percentage of incremental decrease in burden that we expect to result from the adopted

[166] *See*, for example, letters from HSBC, ING, and Sullivan & Cromwell.

[167] *See*, for example, letters from European Association of Listed Companies and Union of Issues Quoted in Europe, UNIQUE, New York City Bar, and ING.

[168] *See*, for example, letters from Ernst & Young, and LIBA.

[169] The text of Appendix K is available at: *http://www.pcaobus.org/Standards/Interim_Standards/Quality_Control_Standards/SECPS_1000.08_Appendicies_bookmarks.pdf#nameddest=k.*

[170] *See*, for example, letters from CAQ, KPMG, PwC, and Deloitte.

[171] *See*, for example, letter from KPMG.

[172] *See*, for example, letters from ICAEW and Syngenta.

[173] The audit implications of IFRS financial statements in SEC filings was a matter on the agenda of the PCAOB Standing Advisory Group Meeting on October 18, 2007. *See http://www.pcaobus.org/News_and_Events/Events/2007/10-18.aspx.* A PCAOB briefing paper on the subject is available at: *http://www.pcaobus.org/Standards/Standing_Advisory_Group/Meetings/2007/10-18/IFRS_Briefing_Paper.pdf.*

[174] 44 U.S.C. 3501 *et seq.*

[175] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[176] *See*, for example, letters from Diageo and Syngenta.

amendments. For Form S–4, we are revising the analysis to reflect an assumption that 25% of the burden to prepare financial statements for that form is borne by the registrant and 75% is borne by outside professionals retained by the registrant at an average cost of $400 per hour.

For purposes of the Paperwork Reduction Act, we estimate that the incremental decrease in the paperwork burden for all foreign private issuers that use IFRS and issuers that acquire foreign private issuers that use IFRS will be approximately 4,945 hours of company time and approximately $5,934,000 for the services of outside professionals. We estimated the average number of hours each entity spends completing the forms and the average hourly rate for outside professionals. That estimate includes the time and the cost of in-house preparers, reviews by executive officers, in-house counsel, outside counsel, independent auditors and members of the audit committee.[177] Our estimates of the number of affected foreign private issuers are based on the number of recent filings received from issuers that we believe may be immediately eligible to rely on the adopted amendments.

B. Burden and Cost Estimates Related to the Accommodation

1. Form 20–F

We estimate that currently foreign private issuers file 942 Form 20–Fs each year. We assume that 25% of the burden required to produce the Form 20–Fs is borne internally by foreign private issuers, resulting in 619,601 annual burden hours borne by foreign private issuers out of a total of 2,478,404 annual burden hours. Thus, we estimate that 2,631 total burden hours per response currently are required to prepare the Form 20–F. We further assume that 75% of the burden to produce the Form 20–Fs is carried by outside professionals retained by foreign private issuers at an average cost of $400 per hour, for a total cost of $743,520,600.

We estimate that approximately 140 companies that file Form 20–F may be currently impacted by the amendment.[178] We expect that the amendment would cause those foreign private issuers to have fewer burden hours. We estimate that for each of the companies affected by the proposal, there would occur a decrease of 5% (132 hours) in the number of burden hours required to prepare their Form 20–F, for a total decrease of 18,480 hours. We expect that 25% of these decreased burden hours (4,620 hours) will be saved by foreign private issuers. We further expect that 75% of these decreased burden hours (13,860 hours) will be saved by outside firms, at an average cost of $400 per hour, for a total of $5,544,000 in decreased costs to the respondents of the information collection.

Thus, we estimate that the amendment to Form 20–F will decrease the annual burden borne by foreign private issuers in the preparation of Form 20–F from 619,601 hours to 614,981 hours. We further estimate that the amendment will decrease the total annual burden associated with Form 20–F preparation to 2,459,924 burden hours, which will decrease the average number of burden hours per response to 2,611. We further estimate that the amendment will decrease the total annual costs attributed to the preparation of Form 20–F by outside firms to $737,977,200.

2. Form F–1

We estimate that currently foreign private issuers file 42 registration statements on Form F–1 each year. We assume that 25% of the burden required to produce a Form F–1 is borne by foreign private issuers, resulting in 18,999 annual burden hours incurred by foreign private issuers out of a total of 75,996 annual burden hours. Thus, we estimate that 1,809 total burden hours per response currently are required to prepare a registration statement on Form F–1. We further assume that 75% of the burden to produce a Form F–1 is carried by outside professionals retained by foreign private issuers at an average cost of $400 per hour, for a total cost of $22,798,800.

We estimate that currently approximately five companies that file registration statements on Form F–1 will be impacted by the amendment.[179] We expect that the proposed amendment will cause those foreign private issuers to have fewer burden hours. We estimate that each company affected by the amendment would have a 5% decrease (90.45 hours) in the number of burden hours required to prepare their registration statements on Form F–1, for a total decrease of 452 hours. We expect that 25% of these decreased burden hours (113 hours) will be saved by foreign private issuers. We further expect that 75% of the decreased burden hours (339 hours) will be saved by outside firms, at an average cost of $400 per hour, for a total of $135,600 in decreased costs to the respondents of the information collection.

Thus, we estimate that the amendment to Form 20–F will decrease the annual burden incurred by foreign private issuers in the preparation of Form F–1 from 18,999 hours to 18,886 hours. We further estimate that the amendment will decrease the total annual burden associated with Form F–1 preparation to 75,544 burden hours, which will decrease the average number of burden hours per response to 1,799. We further estimate that the amendment will decrease the total annual costs attributed to the preparation of Form F–1 by outside firms to $22,663,200.

3. Form F–4

We estimate that currently foreign private issuers file 68 registration statements on Form F–4 each year. We assume that 25% of the burden required to produce a Form F–4 is borne internally by foreign private issuers, resulting in 24,599 annual burden hours incurred by foreign private issuers out of a total of 98,396 annual burden hours. Thus, we estimate that 1,447 total burden hours per response currently are required to prepare a registration statement on Form F–4. We further assume that 75% of the burden to produce a Form F–4 is carried by outside professionals retained by foreign private issuers at an average cost of $400 per hour, for a total cost of $29,518,800.

We estimate that currently approximately 5 companies that file registration statements on Form F–4 will be impacted by the amendment.[180] We expect that the amendment will cause those foreign private issuers to have fewer burden hours. We estimate that each of the affected companies will have a decrease of 5% (72 hours) in the number of burden hours required to prepare their registration statements on Form F–4, for a total decrease of 360 hours. We expect that 25% of these decreased burden hours (90 hours) will be saved by foreign private issuers. We further expect that 75% of the decreased

[177] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $400 as the cost to companies for the services of outside professionals retained to assist in the preparation of these disclosures. For Securities Act registration statements, we also consider additional reviews of the disclosure by underwriter's counsel and underwriters.

[178] We are using this figure for purposes of the Paperwork Reduction Analysis based on the number of Form 20–Fs that were filed with IFRS financial statements during the last twelve months. As additional jurisdictions adopt IFRS as their basis of accounting in the future, the number of issuers that use IFRS is expected to increase.

[179] This figure is based on our estimate of the number of Form F–1s that were filed with IFRS financial statements during the 2006 calendar year.

[180] This figure is based on our estimate of the number of Form F–4s that were filed with IFRS financial statements during the 2006 calendar year.

burden hours (270 hours) will be saved by outside firms at an average cost of $400 per hour, for a total of $108,000 in decreased costs to the respondents of the information collection.

Thus, we estimate that the amendment to Form 20–F will decrease the annual burden incurred by foreign private issuers in the preparation of Form F–4 from 24,599 hours to 24,509 hours. We further estimate that the amendment will decrease the total annual burden associated with Form F–4 preparation to 98,036 burden hours, which will decrease the average number of burden hours per response to 1,441. We further estimate that the amendment will decrease the total annual costs attributed to the preparation of Form F–4 by outside firms to $29,410,800.

4. Form S–4

When a domestic issuer files a registration statement on Form S–4 for the acquisition of a foreign business, the domestic issuer may be required to include the financial statements of the acquired business in the Form S–4. If those financial statements are prepared using a basis of accounting other than U.S. GAAP, the domestic issuer must provide a reconciliation to U.S. GAAP, unless a U.S. GAAP reconciliation is unavailable or not obtainable without unreasonable cost or expense.

We estimate that issuers file 619 registration statements on Form S–4 each year. We estimate that 4,065 total burden hours per response currently are required to prepare a registration statement on Form S–4. We assume that 25% of the burden required to prepare the financial statements for use in a Form S–4 is borne by the registrant, resulting in 629,059 annual burden hours incurred by registrants out of a total of 2,516,236 annual burden hours. We further assume that 75% of the burden to produce financial statements for a Form S–4 is carried by outside professionals retained by the issuer at an average cost of $400 per hour for a total cost of $754,871,000.

We estimate that currently approximately 6 registration statements filed on Form S–4 will contain the financial statements of a foreign target that will be impacted by the amendment.[181] We expect that the amendment will cause registrants that file Form S–4 registration statements to have fewer burden hours. We estimate that for each of these registrants, there will be a decrease of 2% (81 hours) in the number of burden hours required to prepare their registration statements on Form S–4, for a total decrease of 486 hours.[182] We expect that 25% of these decreased burden hours (122 hours) will be saved by issuers. We further expect that 75% of the decreased burden hours (364 hours) will be saved by outside professionals at an average cost of $400 per hour for a total of $145,600 in decreased costs to the respondents of the information collection.

Thus, we estimate that the amendment will decrease the annual burden incurred by issuers in the preparation of Form S–4 from 629,059 hours to 628,937 hours. We further estimate that the amendment will decrease the total annual burden associated with Form S–4 preparation to 2,515,748 burden hours, which will decrease the average number of burden hours per response to 4,064. We further estimate that the amendment will decrease the total annual costs attributed to the preparation of Form S–4 by outside firms to $754,725,400.

5. Rule 701

Rule 701 provides an exemption from registration for offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation. Issuers conducting employee benefit plan offerings in excess of $5 million in reliance on Rule 701 are required to provide employees covered by the plan with certain disclosures, including financial statement disclosures. This disclosure is a collection of information.

We estimate that currently 300 issuers provide information under Rule 701, and that the estimated number of burden hours per respondent is two. Therefore, we estimate an aggregate of 600 burden hours per year. We believe that the reduction in burden hours caused by the rules will be insignificant. Therefore, we do not believe the rules will alter current burden estimates associated with Rule 701.

V. Cost-Benefit Analysis

The adopted amendments provide foreign private issuers the option of not including a U.S. GAAP reconciliation in their Commission filings if their financial statements comply with IFRS as issued by the IASB. We are not amending the current reconciliation requirements for foreign private issuers that prepare their financial statements using a basis of accounting other than IFRS as issued by the IASB.

The amendments apply to a foreign private issuer's financial statements contained in annual reports and registration statements on Form 20–F as well as to financial statements included in Securities Act registration statements filed by foreign private issuers or, when applicable, included in a registration statement or reported pursuant to Rules 3–05, 3–09 or 3–16 of Regulation S–X. We also are adopting a conforming amendment to Rule 701, which provides an exemption from Securities Act registration for securities offered in certain employee benefit plans, to clarify that a foreign private issuer conducting an offering in excess of $5 million in reliance on that rule may furnish investors with financial statements prepared using IFRS as issued by the IASB without reconciliation.

The amendments are available to any foreign private issuer that files financial statements that comply with IFRS as issued by the IASB, whether voluntarily or in accordance with the requirements of the issuer's home country regulator or exchange on which its securities are listed.

We recognize that the acceptance of financial statements that comply with IFRS as issued by the IASB without reconciliation does not affect all foreign private issuers equally, as there are some issuers that will continue to find it more attractive to reconcile their financial statements to U.S. GAAP or to continue to prepare financial statements in U.S. GAAP. Approximately 140 of approximately 1,100 foreign private issuers currently file financial statements in which they represent in the footnotes to the financial statements that the financial statements either comply with IFRS as issued by the IASB or a jurisdictional variation of IFRS where such jurisdictional variation may not prevent compliance with IFRS as issued by the IASB. If these issuers are able to state, and their auditors are able to opine, that the financial statements comply with IFRS as issued by the IASB, then these issuers will be able to file their IFRS financial statements without reconciliation to U.S. GAAP. In coming years, as more countries adopt IFRS as their basis of accounting or permit companies to use IFRS as issued by the IASB as their basis of accounting, we believe that the number of foreign private issuers that will be eligible to rely on the adopted amendments will increase. For instance, approximately 80

[181] This figure is based on our estimate of the number of Form S–4s that were filed during the 2006 calendar year that contained IFRS financial statements.

[182] We estimate the burden decrease for purposes of this Paperwork Reduction Analysis would be less for Form S–4 than for other forms described in this section because, in the case of Form S–4, the registrant is obtaining the U.S. GAAP reconciliation from the foreign private issuer. Further, the registrant is not required to provide the reconciliation if it is unavailable or unobtainable without unreasonable cost or expense.

foreign private issuers from Israel [183] and approximately 500 from Canada [184] file financial statements with the Commission and both of these countries have announced moves to IFRS reporting. Additionally, foreign private issuers incorporated in other jurisdictions would be able to take advantage of the adopted amendments by preparing financial statements in accordance with IFRS as issued by the IASB for purposes of Commission filings. Finally, approximately 40 additional foreign private issuers that are incorporated in jurisdictions that have moved to IFRS historically have included in their filings with the Commission financial statements prepared using U.S. GAAP. Some of these issuers also may be in a position to file financial statements that comply with IFRS as issued by the IASB without a U.S. GAAP reconciliation under the amendments.[185]

Although few commenters provided quantitative data to support their views,[186] the Commission has revised the proposed amendments in response to the concerns that the commenters expressed. The Commission expects that the adopted amendments will result in the following benefits and costs to investors.

A. Expected Benefits

Our acceptance of financial statements prepared using IFRS as issued by the IASB is expected to help foster the use of IFRS as issued by the IASB as a way of moving to a single set of globally accepted accounting standards, which we believe will have positive effects on investors. Financial statements prepared using a common, high-quality set of accounting standards are expected to help investors better understand and compare investment opportunities as compared to financial statements prepared under differing sets of national accounting standards. Without a common standard, global investors are likely to incur the extra costs of time and effort to understand financial statements reported using different bases of accounting so that they can compare opportunities. While financial statements filed with the Commission and prepared under a set of home country accounting standards have included a reconciliation to U.S. GAAP, this reconciliation is not a complete substitute for comparing financial statements prepared using U.S. GAAP.

The benefits of a single set of globally accepted, high-quality accounting standards that improve financial statement comparability may be diminished if there is a wide latitude in application of IFRS that results in inconsistent reporting. This latitude potentially harms investors' ability to compare financial statements across companies and potentially allows more opportunity for obfuscatory reporting as noted by one commenter.[187] As noted in Section II., the Commission and its staff continue to be involved in efforts to promote consistent and faithful application of IFRS. We believe, based on the staff's review of IFRS financial statements, that financial statements prepared in accordance with IFRS as issued by the IASB are of sufficient quality. Investors therefore should be able to understand and work with them, a situation which will contribute to the use of globally accepted accounting standards, likely resulting in a more efficient allocation of capital.

The amendments are expected to increase the likelihood of realizing the net benefits to investors of the use of globally accepted accounting standards. This benefit is due to potential network effects of the proposed amendments: the more issuers that use IFRS as issued by the IASB, the greater the incentive for other issuers to do so. The utility for investors of a set of accounting standards increases as the number of issuers using it increases. For example, a foreign private issuer may be concerned about public perception costs, as it may be perceived as being the outlier if companies with which it competes for capital report using a different basis of accounting. The perception costs of being an outlier in such a case are likely to be smaller if a critical mass of issuers with whom the issuer competes for capital (such as those in its industry sector) report pursuant to the same set of standards, such as IFRS as issued by the IASB. In such situations, the use of IFRS as issued by the IASB is expected to make it more efficient for investors to analyze an issuer's financial results in comparison with the results of others with whom that issuer competes for capital. At the same time, the issuers reporting in home country GAAP may experience higher perception costs if a critical mass of comparable issuers adopts IFRS as issued by the IASB.

We believe that issuers will be affected by the amendments in a number of ways, including needing fewer resources to prepare Commission filings.[188] Issuers that commented on our estimates of the cost of reconciliation believe we underestimated these costs suggesting that accepting IFRS financial statements without a U.S. GAAP reconciliation will result in greater than expected savings to issuers.[189] Investors will benefit to the extent that an issuer relying on the amendments can reallocate its cost savings from not preparing a reconciliation to U.S. GAAP or possibly a second set of financial statements in U.S. GAAP to higher earning opportunities and not suffer an even greater increase in its cost of capital relative to the cost of reconciling to U.S. GAAP.

The amendments are expected to facilitate capital formation by foreign companies in the United States capital markets. Our amendments to accept IFRS financial statements without reconciliation to U.S. GAAP are expected to reduce regulatory burdens for foreign private issuers that rely on them, thereby lowering the information disclosure preparation cost of raising capital in the United States for those issuers. We believe that foreign private issuers therefore may be more likely to enter or remain in the U.S. capital markets. To the extent our acceptance of IFRS financial statements without reconciliation encourages foreign private issuers to enter or remain in the U.S. capital markets, investors also will benefit from the protections of the U.S. regulatory and disclosure system relative to the protections they may receive if purchasing those securities overseas and the ease of investing in these opportunities in the United States.

[183] Israel Accounting Standard No. 29 "Adoption of International Financial Reporting Standards," stipulating that Israeli public companies that prepare their primary financial statements in accordance with Israeli GAAP are obliged to adopt IFRS unreservedly for years starting on January 1, 2008.

[184] *See* "Implementation Plan for Incorporating International Financial Reporting Standards into Canadian GAAP," available at *http://www.acsbcanada.org/client_asset/document/3/2/7/3/5/document_8B452E12-FAF5-7113-C4CB8F89B38BC6F8.pdf?sfgdata=4.*

[185] The figures contained in this paragraph are per staff estimates based on the jurisdiction of the filers.

[186] *See*, for example, letters from Diageo and Syngenta.

[187] *See* letter from Maverick.

[188] For purposes of the Paperwork Reduction Analysis, as described above, we have estimated that the incremental decrease in the paperwork burden for all foreign private issuers that currently use IFRS and issuers that acquire foreign private issuers that currently use IFRS would be approximately 3,943 hours of company time and approximately $4,731,120 for the services of outside professionals. For purposes of these calculations, we estimated the average number of hours each entity spends completing the forms and the average hourly rate for outside professionals, including the time and the cost of in-house preparers, reviews by executive officers, in-house counsel, outside counsel, independent auditors and members of the audit committee. The impact on an individual issuer may vary, based on its specific circumstances.

[189] *See*, for example, letters from Diageo and Syngenta.

The expected benefits of a single set of high quality accounting standards may be mitigated if the standards were not to continue to be of a high quality. Investors may face uncertainty about the future quality of IFRS. Factors that could affect the quality of IFRS are both institutional with respect to the IASC Foundation including its governance and funding, as discussed in Section II. above, as well as operational with respect to the actual standard setting process. We recognize that our relationship with the IASB is less direct than our relationship with the FASB and that there are more and varied constituents of the IASB than of the FASB. The result may be that our view will be one of many views that the IASB receives from around the world and considers when developing future standards. We continue to support the IASC Foundation's objectives for its work to achieve a stable and independent funding structure.

B. Expected Costs

Under the amendments, the minimum required financial information that investors in the U.S. capital markets receive from any foreign private issuer will differ from what it was previously. The extent to which an investor receives less information for a particular foreign private issuer who reports under the amendments will depend upon how the issuer previously reported its financial statements. For instance, if the foreign private issuer currently files financial statements prepared in U.S. GAAP and transitions to reporting in IFRS, then this may or may not represent a loss of required information in absolute terms. Whether there is an absolute loss of information will depend upon whether IFRS financial statements yielded more or less information about a particular issuer than the U.S. GAAP financial statements yielded. On the other hand, if the foreign private issuer currently prepares its financial statements in IFRS and includes reconciling information to U.S. GAAP, then a loss of information will result as the reconciling information is omitted. A potential cost could be incurred if an investor loses information contained in the reconciliation that the investor would use to understand differences in certain financial results under IFRS and U.S. GAAP for a particular issuer. The usefulness of this omitted information depends on the extent to which the investor uses the information provided by the reconciliation to U.S. GAAP. Some investors, including investors who appear to be familiar with IFRS, currently make use of the information provided in the U.S. GAAP reconciliation by quantifying or estimating differences in certain financial results under IFRS and U.S. GAAP and comparing results in certain line items such as net income of foreign private issuers with those of domestic issuers.[190] Alternatively, other investors are familiar with IFRS as a basis of accounting and therefore may make limited use of the reconciliation from IFRS to U.S. GAAP.[191] Because investors may be differently situated in the market and have varying levels of familiarity with IFRS and with the information provided in the U.S. GAAP reconciliation, investors may not all bear the cost from the amendments equally and some commenters recognized this.[192] The use that a particular investor may make of the reconciliation will depend on many factors including the size and nature of the investor and the industry to which the issuer in question belongs.

Additionally, under the amendments, the comparability of IFRS and U.S. GAAP results may change. To the extent that an issuer elected IFRS accounting policies that were consistent with U.S. GAAP solely to avoid having to disclose a U.S. GAAP reconciling item, future accounting policy elections may not be influenced by this incentive. This may result in future IFRS financial information from that issuer differing from U.S. GAAP. Eligible foreign private issuers who register their securities after this rulemaking is effective will not be influenced by this incentive.

The amendments may lead to some costs to both investors and to issuers. If the investor community prefers the information communicated by a U.S. GAAP reconciliation, a foreign private issuer that uses IFRS as issued by the IASB to prepare financial statements may face a reduced following in the marketplace. Investors that are not sufficiently familiar with IFRS accounting standards may prefer a U.S. GAAP reconciliation. In addition, unfamiliarity with IFRS as issued by the IASB may have an adverse effect on investors' confidence in the reported results which may lead them to insist on a risk premium.

The reconciliation may highlight the areas in which IFRS and U.S. GAAP are not converged, thus providing a possible benchmark to gauge convergence, although the efficacy of this benchmark could be affected by many other factors, and convergence may not eliminate all differences. With respect to IFRS financial statements, there are generally three sources for differences identified in the reconciliation to U.S. GAAP:

- Legacy differences arising from transactions that occurred before U.S. GAAP and IFRS became more converged;
- Self-selected differences that arise as a function of differing accounting elections that foreign private issuers make in accounting for the same area under IFRS and U.S. GAAP; and
- Regenerating differences that continue to recur each year in areas in which the standards are not converged.

With the differing reasons for reconciling items, we do not believe that the reconciliation solely or primarily provides investors or the IASB and FASB with an understanding of areas that are not yet converged.

There may be differing incentives for the convergence of IFRS and U.S. GAAP to continue. We believe, however, that the needs of the marketplace will support the IASB and the FASB working together to develop the best international standards to be used in the U.S. and internationally regardless of our regulatory requirement to reconcile financial statements. The current convergence work program includes topics such as revenue recognition, financial statement presentation, and leases. These are topics on which both the IASB and the FASB seek to develop better standards (rather than using the existing U.S. GAAP or IFRS standards). We believe that investors and issuers seek comparable information in global capital markets thereby providing an incentive for continued convergence of U.S. GAAP and IFRS.

This rulemaking also may create costs to investors in domestic issuers required by the Commission's rules to prepare their financial statements under U.S. GAAP. The desire of potential investors for comparability of financial information among companies that report in IFRS and domestic issuers that report in U.S. GAAP may create an incentive for domestic issuers to provide financial information prepared under IFRS as issued by the IASB in addition to U.S. GAAP financial statements. If domestic issuers make this choice, their investors bear additional preparation cost, while benefiting from additional information provided. Domestic issuers currently compete internationally for capital with companies who provide financial information prepared under IFRS. In spite of this international competition for capital, we do not believe it is currently a widespread practice for

[190] *See*, for example, letters from ITAC, Maverick, R.G. Associates, and Standard & Poor's.

[191] *See*, for example, letter from CRUF.

[192] *See*, for example, letters from CFA Institute and ITAC.

domestic issuers to provide financial information under IFRS.

VI. Regulatory Flexibility Act Certification

Under Section 605(b) of the Regulatory Flexibility Act,[193] the Commission certified that the proposed amendments to Form 20–F under the Exchange Act, Forms F–4 and S–4 and Rule 701 under the Securities Act and Regulation S–X contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. It included this certification in Part VII of the Proposing Release. While the Commission encouraged written comments regarding this certification, none of the commenters responded to this request.

VII. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation Analysis

Section 2(b) of the Securities Act [194] and Section 3(f) of the Exchange Act[195] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. When adopting rules under the Exchange Act, Section 23(a)(2) of the Exchange Act [196] requires us to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In the Proposing Release we considered the proposed amendments in light of the standards set forth in the above statutory sections. We solicited comment on whether, if adopted, the proposed rule amendments would result in any anti-competitive effects or promote efficiency, competition and capital formation. We further encouraged commenters to provide empirical data or other facts to support their views on any anti-competitive effects or any burdens on efficiency, competition or capital formation that might result from adoption of the proposed amendments.

We did not receive any comments or any empirical data in this regard concerning the proposed amendments. Accordingly, since the adopted rules are substantially similar to the proposed rules, we continue to believe the new rules will contribute to efficiency, competition and capital formation. The purpose of the amendments to Form 20–F under the Exchange Act, Forms F–4 and S–4 and Rule 701 under the Securities Act, and Regulation S–X is to allow foreign private issuers that prepare financial statements that comply with IFRS as issued by the IASB to include those financial statements in their annual reports and registration statements filed with the Commission without reconciliation to U.S. GAAP. These amendments are designed to increase efficiency, competition and capital formation by helping to move towards a set of globally accepted accounting standards, as well as by alleviating the burden and cost that eligible companies would face if required to prepare a U.S. GAAP reconciliation for inclusion in annual reports and registration statements filed with us. Due to the cost to issuers of preparing the reconciliation to U.S. GAAP from IFRS, we believe that the amendments are likely to promote efficiency by eliminating financial disclosure that is costly to produce. We believe that investors would have adequate information on which to base their investment decisions and that capital may be allocated on a more efficient basis.

The amendments are expected to facilitate capital formation by foreign companies in the U.S. capital markets by reducing regulatory compliance burdens for foreign private issuers that rely on them. Reduced compliance burdens are expected to lower the cost of preparing disclosure for purposes of raising capital in the United States for those issuers.

The amendments also may have other impacts on efficiency and capital formation, which may not be felt equally by all market participants. For example, the amendments may have a more favorable competitive impact on foreign private issuers from jurisdictions in which the use of IFRS is already required or permitted. Issuers from such jurisdictions may be able to benefit from the amendments more quickly than issuers from jurisdictions that do not permit the use of IFRS. Also, some foreign private issuers may be concerned about the public perception costs of not including a U.S. GAAP reconciliation, particularly if they compete for capital with other foreign companies that provide a reconciliation or that prepare financial statements that comply with U.S. GAAP.

The amendments also are expected to have effects on efficiency and capital formation to the extent that investors need to increase their familiarity with IFRS in order to compare investment opportunities without reference to a U.S. GAAP reconciliation. If investors prefer the information provided in a U.S. GAAP reconciliation, a foreign private issuer that uses IFRS as issued by the IASB without reconciliation may face adverse competitive effects in the capital markets. For example, investor unfamiliarity with IFRS may adversely affect investor confidence in issuers that prepare IFRS financial statements without reconciliation to U.S. GAAP. This may lead investors to insist on a risk premium in those companies, which would affect their competitiveness in the capital markets. Also, if investors must incur costs in order to understand IFRS financial statements without a U.S. GAAP reconciliation, there may be an incentive for intermediary parties to provide U.S. GAAP reconciliation services.

VIII. Statutory Basis and Text of Final Amendments

We are adopting the amendments to Exchange Act Form 20–F, Regulation S–X Rules 1–02, 3–10 and 4–01, Securities Act Forms F–4 and S–4, and Securities Act Rule 701 pursuant to Sections 6, 7, 10, and 19 of the Securities Act of 1933 as amended, Sections 3, 12, 13, 15, 23 and 36 of the Securities Exchange Act of 1934, and Sections 3(c)(2) and 108(c) of the Sarbanes Oxley Act of 2002.

Text of Amendments

List of Subjects in 17 CFR Parts 210, 230, 239 and 249

Accounting, Reporting and recordkeeping requirements, Securities.

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

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

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78*l*, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78*ll*, 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202, 7218 and 7262, unless otherwise noted.

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[193] 5 U.S.C. 605(b).

[194] 15 U.S.C. 77b(b).

[195] 15 U.S.C. 78c(f).

[196] 15 U.S.C. 78w(a)(2).

■ 2. Section 210.1–02 is amended by adding a note following paragraph (w)(3) before the computational note to read as follows.

§ 210.1–02 Definitions of terms used in Regulation S–X (17 CFR Part 210).

* * * * *

(w) * * *

(3) * * *

Note to paragraph (w): A registrant that files its financial statements in accordance with or provides a reconciliation to U.S. Generally Accepted Accounting Principles shall make the prescribed tests using amounts determined under U.S. Generally Accepted Accounting Principles. A foreign private issuer that files its financial statements in accordance with IFRS as issued by the IASB shall make the prescribed tests using amounts determined under IFRS as issued by the IASB.

* * * * *

■ 3. Section 210.3–10 is amended by:

■ a. Revising the introductory text of paragraph (i), and

■ b. Revising paragraph (i)(12).

The revisions read as follows.

§ 210.3–10 Financial statements of guarantors and issuers of guaranteed securities registered or being registered.

* * * * *

(i) Instructions for preparation of condensed consolidating financial information required by paragraphs (c), (d), (e) and (f) of this section.

* * * * *

(12) Where the parent company's consolidated financial statements are prepared on a comprehensive basis other than U.S. Generally Accepted Accounting Principles or International Financial Reporting Standards as issued by the International Accounting Standards Board, reconcile the information in each column to U.S. Generally Accepted Accounting Principles to the extent necessary to allow investors to evaluate the sufficiency of the guarantees. The reconciliation may be limited to the information specified by Item 17 of Form 20–F (§ 249.220f of this chapter). The reconciling information need not duplicate information included elsewhere in the reconciliation of the consolidated financial statements.

■ 4. Amend § 210.4–01 by revising paragraph (a)(2) to read as follows:

§ 210.4–01 Form, order and terminology.

(a) * * *

(2) In all filings of foreign private issuers (see § 230.405 of this chapter), except as stated otherwise in the applicable form, the financial statements may be prepared according to a comprehensive set of accounting principles, other than those generally accepted in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, if a reconciliation to U.S. Generally Accepted Accounting Principles and the provisions of Regulation S–X of the type specified in Item 18 of Form 20–F (§ 249.220f of this chapter) is also filed as part of the financial statements. Alternatively, the financial statements may be prepared according to U.S. Generally Accepted Accounting Principles or International Financial Reporting Standards as issued by the International Accounting Standards Board.

* * * * *

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

■ 5. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, 80a–37, 7202 and 7218, unless otherwise noted.

* * * * *

■ 6. Amend § 230.701 by revising paragraph (e)(4) to read as follows:

§ 230.701 Exemption for offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation.

* * * * *

(e) * * *

(4) Financial statements required to be furnished by Part F/S of Form 1–A (Regulation A Offering Statement) (§ 239.90 of this chapter) under Regulation A (§§ 230.251 through 230.263). Foreign private issuers as defined in Rule 405 must provide a reconciliation to generally accepted accounting principles in the United States (U.S. GAAP) if their financial statements are not prepared in accordance with U.S. GAAP or International Financial Reporting Standards as issued by the International Accounting Standards Board (Item 17 of Form 20–F (§ 249.220f of this chapter)). The financial statements required by this section must be as of a date no more than 180 days before the sale of securities in reliance on this exemption.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 7. 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, 77z–3, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, 80a–37, 7202 and 7218, unless otherwise noted.

* * * * *

■ 8. Amend Form S–4 (referenced in § 239.25) by revising instruction 2 to Item 17 to read as follows:

Note: The text of Form S–4 does not and this amendment will not appear in the Code of Federal Regulations.

FORM S–4

* * * * *

Item 17. Information with Respect to Companies other than S–3 Companies.

* * * * *

Instructions:

* * * * *

2. 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 or International Financial Reporting Standards as issued by the International Accounting Standards Board, 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, provide 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. when the financial statements are prepared on a basis other than U.S. GAAP.

* * * * *

■ 9. Amend Form F–4 (referenced in § 239.34) by:

■ a. Revising Item 10(c)(2);

■ b. Revising Item 10(c)(3);

■ c. Revising Item 12(b)(2)(iii) and (iv); and

■ d. Revising the Instruction to Item 17(b)(5) and (b)(6).

The revisions read as follows.

Note: The text of Form F–4 does not and this amendment will not appear in the Code of Federal Regulations.

FORM F–4

* * * * *

Item 10. Information With Respect to F–3 Companies.

* * * * *

(c) * * *

(2) Restated financial statements prepared in accordance with or, if prepared using a basis of accounting other than International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB"), reconciled to U.S. GAAP and Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(3) Restated financial statements prepared in accordance with or, if prepared using a

basis of accounting other than IFRS as issued by the IASB, reconciled to U.S. GAAP and Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X (§ 210.11–01(b) of this chapter); or

* * * * *

Item 12. Information With Respect to F–3 Registrants.

* * * * *

(b) * * *

(2) * * *

(iii) Restated financial statements prepared in accordance with or, if prepared using a basis of accounting other than IFRS as issued by the IASB, reconciled to U.S. GAAP and Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(iv) Restated financial statements prepared in accordance with or, if prepared using a basis of accounting other than IFRS as issued by the IASB, reconciled to U.S. GAAP and Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X; and

* * * * *

Item 17. Information With Respect to Foreign Companies Other Than F–3 Companies.

* * * * *

Instruction to paragraph (b)(5) and (b)(6): If the financial statements required by paragraphs (b)(5) and (b)(6) are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP or IFRS as issued by the IASB, 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, provide 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. when the financial statements are prepared on a basis other than U.S. GAAP.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 10. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.*, 7202, 7218, 7233, 7241, 7262, 7264, and 7265; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 11. Amend Form 20–F (referenced in § 249.220f) as follows:

■ a. Add issuer contact information to the cover page below the address line;

■ b. Add a check box to the cover page indicating the basis of accounting used to prepare the financial statements below the accelerated filer line;

■ c. Revise the check box on the cover page indicating whether Item 17 or Item 18 was used below the new check box indicating the basis of accounting;

■ d. Revise General Instruction G.(a);

■ e. Remove General Instruction G.(b)(1)(A) and G.(b)(2)(A);

■ f. Redesignate General Instructions G.(b)(1)(B) and (G).(b)(1)(C) as General Instructions (G).(b)(1)(A) and G.(b)(1)(B) and redesignate General Instructions (G).(b)(2)(B) and (G).(b)(2)(C) as General Instructions (G).(b)(2)(A) and G.(b)(2)(B);

■ g. Revise General Instructions G.(d) and (e);

■ h. Revise General Instructions G.(f)(2)(B)(ii) and G.(f)(2)(B)(iii);

■ i. Revise General Instruction G.(h)(2);

■ j. Revise Instruction 2.b. to General Instruction G.(h);

■ k. Remove General Instruction G.(i);

■ l. Revise Item 3.A, Instruction 2;

■ m. Add Instruction 5 to Item 5;

■ n. Add a sentence to the end of Instruction 3 in Item 8.A.5;

■ o. Add Instruction 4 to Item 8.A.5;

■ p. Add an Instruction to Item 11 before Instruction to Item 11(a);

■ q. Revise the introductory text of Item 17(c);

■ r. Add a sentence at the end of Items 17(c)(2)(v) and (c)(2)(vi);

■ s. Remove Item 17(c)(2)(viii);

■ t. Remove Item 17, Instruction 6;

■ u. Add a Special Instruction to the end of Item 17;

■ v. Revise Item 18(b);

■ w. Revise the Instruction to Item 18; and

■ x. Add a Special Instruction to the end of Item 18.

The additions and revisions read as follows.

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 20–F

* * * * *

(Name, Telephone, E-mail and/or Facsimile number and Address of Company Contact Person)

* * * * *

Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing:

U.S. GAAP _____. International Financial Reporting Standards as issued by the International Accounting Standards Board _____. Other _____.

If "Other" has been checked in response to the previous question, indicate by check mark which financial statement item the registrant has elected to follow.

Item 17 _____. Item 18 _____.

* * * * *

GENERAL INSTRUCTIONS

* * * * *

G. First-Time Application of International Financial Reporting Standards

(a) *Omission of Certain Required Financial Statements.* An issuer that changes the body of accounting principles used in preparing its financial statements presented pursuant to Item 8.A.2 ("Item 8.A.2") to International Financial Reporting Standards ("IFRS") issued by the International Accounting Standards Board ("IASB") may omit the earliest of three years of audited financial statements required by Item 8.A.2 if the issuer satisfies the conditions set forth in this Instruction G. For purposes of this instruction, the term "financial year" refers to the first financial year beginning on or after January 1 of the same calendar year.

* * * * *

(d) *Information on the Company.* The reference in Item 4.B to the "body of accounting principles used in preparing the financial statements," means IFRS as issued by the IASB and not the basis of accounting that was previously used ("Previous GAAP") or accounting principles used only to prepare a U.S. GAAP reconciliation.

(e) *Operating and Financial Review and Prospects.* The issuer shall present the information provided pursuant to Item 5. The discussion should focus on the financial statements for the two most recent financial years prepared in accordance with IFRS as issued by the IASB. No part of the discussion should relate to financial statements prepared in accordance with Previous GAAP.

(f) *Financial Information.*

* * * * *

(2) * * *

(B) * * *

(ii) Two financial years of audited financial statements and interim financial statements (which may be unaudited) for the current and comparable prior year period, prepared in accordance with IFRS as issued by the IASB;

(iii) Three financial years of audited financial statements prepared in accordance with Previous GAAP; interim statements (which may be unaudited) for the current and comparable prior year period prepared in accordance with IFRS as issued by the IASB; and condensed financial information prepared in accordance with U.S. GAAP for the most recent financial year and the current and comparable prior year interim period (the form and content of this financial information shall be in a level of detail substantially similar to that required by Article 10 of Regulation S–X).

* * * * *

(h) *Financial Statements.*

* * * * *

(2) *U.S. GAAP Information.* The U.S. GAAP reconciliation referenced in Item 17(c) or 18 shall not be required for periods presented in accordance with IFRS as issued by the IASB.

Instructions:

* * * * *

2. * * *

b. *Present or incorporate by reference operating and financial review and prospects information pursuant to Item 5 that focuses*

on the financiol stotements for the two most recent financial years prior to the most recent financial yeor thot were prepared in accordance with Previous GAAP. The discussion should not refer to a reconciliation to U.S. GAAP. No part of the discussion should relate to financial statements prepared in accordance with IFRS.

* * * * *

Item 3. Key Information

* * * * *

Instructions to Item 3.A:

* * * * *

2. You may present the selected financial data on the basis of the occounting principles used in your primary financiol statements. If you use a basis of accounting other than IFRS as issued by the IASB, however, you also must include in this summary any reconciliations of the data to U.S. generally accepted accounting principles and Regulation S–X, pursuont to Item 17 or 18 of this Form. For financial statements prepared using a basis of accounting other than IFRS as issued by the IASB, you only have to provide selected financial data on a basis reconciled to U.S. generally accepted occounting principles for (i) those periods for which you were required to reconcile the primary annual financial statements in a filing under the Securities Act or the Exchange Act, and (ii) any interim periods.

* * * * *

Item 5. Operating and Financial Review and Prospects

* * * * *

Instructions to Item 5:

* * * * *

5. An issuer filing financial statements that comply with IFRS as issued by the IASB should, in providing informotion in response to paragraphs of this Item 5 that refer to pronouncements of the FASB, provide disclosure thot sotisfies the objective of the Item 5 disclosure requirements. In responding to this Item 5, on issuer need not repeot informotion contoined in finoncial stotements thot comply with IFRS os issued by the IASB.

* * * * *

Item 8. Financial Information

* * * * *

Instructions to Item 8.A.5:

* * * * *

3. * * *

(a) * * *

(b) * * *

A registrant filing financial information that complies with IFRS os issued by the IASB is not required to provide the information described in paragraphs 3(a) and (b) to this Instruction to Item 8.A.5. if thot registrant prepares its onnuol finoncial statements in accordance with IFRS os issued by the IASB.

4. A registrant that files interim period finonciol statements pursuant to Item 8.A.5 is not required to comply with Article 10 of Regulation S–X if that registront prepares its onnuol finoncial stotements in accordonce with IFRS os issued by the IASB, prepores its interim period financial statements in compliance with IAS 34 "Interim Financial Reporting," and explicitly states its complionce with IAS 34 in the notes to the interim financial stotements.

* * * * *

Item 11. Quantitative and Qualitative Disclosures About Market Risk.

* * * * *

Instruction to Item 11: An issuer filing financial statements that comply with IFRS os issued by the IASB should, in providing informotion in response to poragraphs of this Item 11 that refer to pronouncements of the FASB, provide disclosure that satisfies the objective of the Item 11 disclosure requirements. In responding to this Item 11, an issuer need not repeat information contained in financial statements that comply with IFRS as issued by the IASB.

* * * * *

Item 17. Financial Statements.

* * * * *

(c) The financial statements and schedules required by paragraph (a) above may be prepared according to U.S. generally accepted accounting principles or IFRS as issued by the IASB. If the financial statements comply with IFRS as issued by the IASB, such compliance must be unreservedly and explicitly stated in the notes to the financial statements and the auditor's report must include an opinion on whether the financial statements comply with IFRS as issued by the IASB. If the notes and auditor's report of an issuer do not contain the information in the preceding sentence, then the U.S. GAAP reconciliation information described in paragraphs (c)(1) and (c)(2) must be provided. Alternatively, such financial statements and schedules may be prepared according to a comprehensive body of accounting principles other than those generally accepted in the United States or IFRS as issued by the IASB if the following are disclosed:

* * * * *

(c)(2)(v) * * * Issuers that prepare financial statements using IFRS as issued by the IASB that are furnished pursuant to § 210.3–05 may omit the disclosures specified by paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this Item regardless of the size of the business acquired or to be acquired.

(c)(2)(vi) * * * Issuers that prepare financial statements using IFRS as issued by the IASB that are furnished pursuant to § 210.3–09 may omit the disclosures specified by paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this Item regardless of the size of the investee.

* * * * *

Special Instruction for Certain European Issuers:

An issuer incorporated in a Member State of the European Union that has complied with the carve out to IAS 39 "Financial Instruments: Recognition and Measurement," as adopted by the European Union, in financial statements previously filed with the Commission, may file financial statements for its first two financial years that end after November 15, 2007 without reconciling to U.S. GAAP if that issuer's financial statements otherwise comply with IFRS as issued by the IASB and the issuer provides an audited reconciliation to IFRS as issued by the IASB. This reconciliation to IFRS as issued by the IASB is to contain information relating to financial statement line items and footnote disclosure based on full compliance with IFRS as issued by the IASB, and is to be prepared and disclosed in the same manner that an issuer would provide a reconciliation to U.S. GAAP, following the requirements in Item 17(c)(2). All financial statements of such an issuer for periods prior to the financial year that ends after November 15, 2007 must continue to be reconciled to U.S. GAAP. For financial years following the two financial years ending after November 15, 2007, such an issuer will be required to include reconciliations to U.S. GAAP unless the issuer complies with the requirements in Item 17(c).

Item 18. Financial Statements.

* * * * *

(b) If the financial statements are prepared using a basis of accounting other than IFRS as issued by the IASB, all other information required by U.S. generally accepted accounting principles and Regulation S–X unless such requirements specifically do not apply to the registrant as a foreign issuer. However, information may be omitted (i) for any period in which net income has not been presented on a basis reconciled to United States generally accepted accounting principles, or (ii) if the financial statements are furnished pursuant to § 210.3–05 or less-than-majority owned investee pursuant to § 210.3–09 of this chapter.

Instructions to Item 18:

1. All of the instructions to Item 17 also apply to this Item, except Instruction 3 to Item 17, which does not apply.

2. An issuer that is required to provide disclosure under FASB Statement of Accounting Standards No. 69, "Disclosures about Oil and Gas Producing Activities," shall do so regardless of the basis of accounting on which it prepares its financial statements.

Speciol Instruction for Certain Europeon Issuers:

An issuer incorporated in a Member State of the European Union that has complied with the carve out to IAS 39 "Financial Instruments: Recognition and Measurement," as adopted by the European Union, in financial statements previously filed with the Commission, may file financial statements for its first two financial years that end after November 15, 2007 without reconciling to U.S. GAAP if that issuer's financial statements otherwise comply with IFRS as issued by the IASB and the issuer provides an audited reconciliation to IFRS as issued by the IASB. This reconciliation to IFRS as issued by the IASB is to contain information relating to financial statement line items and footnote disclosure based on full compliance with IFRS as issued by the IASB, and is to be prepared and disclosed in the same manner that an issuer would provide a reconciliation to U.S. GAAP, following the requirements in Item 18. All financial statements of such an issuer for periods prior to the financial year that ends after November

15, 2007 must continue to be reconciled to U.S. GAAP. For financial years following the two financial years ending after November 15, 2007, such an issuer will be required to include reconciliations to U.S. GAAP unless the issuer complies with the requirements in Item 18(a).

Dated: December 21, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–25250 Filed 1–3–08; 8:45 am]

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January 4, 2008

Part IV

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 260, 284, and 385
Transparency Provisions of Section 23 of the Natural Gas Act; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 260, 284 and 385

[Docket No. RM07–10–000; Order No. 704]

Transparency Provisions of Section 23 of the Natural Gas Act

Issued December 26, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule.

SUMMARY: In the final rule, the Commission promulgates regulations that require certain natural gas market participants to report information regarding their reporting of transactions to price index publishers and their blanket sales certificate status, and to report annually certain information regarding their wholesale, physical natural gas transactions for the previous calendar year. Certain market participants engaged in a *de minimis* volume of transactions will not be required to report information regarding their transactions for the calendar year. The reported information will make it possible to estimate the size of the physical U.S. natural gas market, to assess the use of index pricing in that market, and to determine the size of the fixed-priced trading market that produces the information. These regulations facilitate price transparency in markets for the wholesale sale of physical natural gas in interstate commerce.

DATES: *Effective Date:* This rule will become effective February 4, 2008.

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Eric Ciccoretti (Legal), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8493, *Eric.Ciccoretti@ferc.gov.*

SUPPLEMENTARY INFORMATION: Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

I. Background

1. In this final rule, the Commission promulgates regulations that require certain natural gas market participants to report annually certain information regarding their wholesale, physical natural gas transactions, their reporting of transactions to price index publishers, and their blanket certificate status. This rule arises from a Notice of Proposed Rulemaking (NOPR) issued on April 19, 2007, which set forth two proposals, an annual reporting requirement proposal and a daily pipeline posting proposal.[1] This rule addresses the annual reporting requirement. The Commission addresses the daily pipeline posting proposal concurrently in a Notice of Proposed Rulemaking in a separate docket, Docket No. RM08–2–000.

2. The Commission largely adopts the annual reporting proposal in the NOPR issued in this docket, with a few changes and a few clarifications. The final rule requires that any buyer or seller of more than a *de minimis* volume of natural gas report aggregate volumes of relevant transactions in an annual filing using a new form, Commission Form No. 552. A market participant buying or selling less than a *de minimis* volume that operates under blanket sales certificate authority pursuant to § 284.402 or § 284.284 of the Commission's regulations must also submit a Form No. 552 for identification and certain reporting purposes, but is not required to report aggregate volumes of relevant transactions. A market participant that buys or sells less than a *de minimis* volume but that does not operate under blanket sales certificate authority need not submit a Form No. 552. Filings of the form will be due on May 1 of each year, starting on May 1, 2009 for the calendar year 2008.

3. The significant changes from the proposal in the NOPR fall generally into four categories. The first category of changes focuses the reporting requirement solely on wholesale buyers and sellers by excluding retail transactions. The second category of changes, intended to focus on price formation in the spot markets, narrows the questions on new Form No. 552 to obtain information about the amount of daily or monthly fixed-priced trading that are eligible to be reported to price index publishers as compared to the amount of trading that uses or refers to price indices. The third category of changes expands the number of companies that must state publicly whether or not they report to index price publishers. The last category involves other clarifications of questions raised in comments and changes made to streamline completion of the form.

4. In promulgating the final rule, the Commission exercises its new transparency authority under section 23 of the Natural Gas Act (transparency provisions).[2] Congress added the transparency provisions in enacting the Energy Policy Act of 2005 (EPAct 2005).[3] The transparency provisions direct the Commission "to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce, having due regard for the public interest, the integrity of those markets, and the protection of consumers,"[4] and further allow the Commission to "prescribe such rules as the Commission determines necessary and appropriate to carry out the purposes of [the transparency provisions]"—rules that "shall provide for the dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, and the public."[5]

5. The final rule will facilitate transparency of the price formation process in natural gas markets by collecting information to understand in broad terms the size of the natural gas market and the use of fixed prices and of index prices. Currently, because of the way transactions take place in the natural gas industry, there is no way to estimate in even the broadest terms the overall size of the natural gas market or its breakdown by types of contract provision, including pricing and term (*e.g.*, spot or for delivery farther in the future).[6] As noted by the price index developer Platts, the question of what is the total size of the traded market has "hung over the gas market for years."[7] More particularly, there is no way to determine important volumetric relationships between (a) the fixed-

[1] *Transparency Provisions of Section 23 of the Natural Gas Act*, 72 FR 20791 (Apr. 26, 2007), FERC, Stats. and Regs. ¶ 32,614 (2007).

[2] Section 23 of the Natural Gas Act, 15 U.S.C. 717t–2 (2000 & Supp. V 2005).

[3] Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

[4] Section 23(a)(1) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(1) (2000 & Supp. V 2005).

[5] Section 23(a)(2) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(2) (2000 & Supp. V 2005).

[6] In its supplemental comments, Platts provided information regarding its use of physical basis transactions in compiling monthly indices. Supplemental Comments of Platt's, *Transparency Provisions of the Energy Policy Act*, Docket No. AD06–11–000 (filed Feb. 23, 2007).

[7] Comments of Platts at 6, *Transparency Provisions of the Energy Policy Act*, Docket No. AD06–11–000 (filed Nov. 1, 2006).

price, day-ahead or month-ahead transactions that form price indices; and (b) transactions that use price indices. Without the most basic information about these volumetric relationships, the Commission has been hampered in its oversight and its ability to assess the adequacy of price-forming transactions. Market participants are likewise unable to evaluate their use of indexed transactions. Typically, market participants rely on index-priced transactions as a way to reference market prices without taking on the risks of active trading. These market participants rely on index prices, often whether or not those prices are derived from a robust market of fixed-price transactions.

6. Price formation in natural gas markets makes no distinction between transactions that are jurisdictional to the Commission under the Natural Gas Act, absent new section 23 of that statute, and those that are not. While the Commission's traditional jurisdiction under sections 4, 5, and 7 of the Natural Gas Act is limited to "natural gas compan[ies]," [8] this limitation is not applicable to the Commission's jurisdiction under the transparency provisions.[9] As a consequence, in order to assess the size and structure of U.S. natural gas markets, information about wholesale natural gas transactions is required from a market participant regardless of whether it is subject to the Commission's traditional jurisdiction.

7. By obtaining information about natural gas transactions, the final rule would further the Commission's efforts to monitor price formation in the wholesale natural gas markets, which support the Commission's market-oriented policies for the wholesale natural gas industries. Those policies in turn require that interested persons have broad confidence that reported market prices accurately reflect the interplay of legitimate market forces. Without confidence in the basic processes of price formation, market participants cannot have faith in the value of their transactions, the public cannot believe that the prices they see are fair, and it is more difficult for the Commission to ensure that jurisdictional prices are "just and reasonable." [10]

8. The performance of Western electric and natural gas markets early in the decade shook confidence in posted market prices for energy. In examining these markets, the Commission's Staff found, *inter alia*, that some companies submitted false information to the publishers of natural gas price indices, so that the resulting reported prices were inaccurate and untrustworthy.[11] As a result, questions arose about the legitimacy of published price indices, remaining even after the immediate crisis passed. Moreover, market participants feared that the indices might have become even more unreliable, since reporting (which has always been voluntary) declined to historically low levels in late 2002.

9. The Commission recognized concerns about price discovery in electric and natural gas markets as early as January 2003, when, prior to passage of EPAct 2005, the Commission made use of its existing authority under the Natural Gas Act and the Federal Power Act to help restore confidence in natural gas and electricity price indices. The Commission expected that, over time, improved price discovery processes would naturally increase confidence in market performance. On July 24, 2003, the Commission issued a *Policy Statement on Electric and Natural Gas Price Indices* (Policy Statement) that explained its expectations of natural gas and electricity price index developers and the companies that report transaction data to them.[12] On November 17, 2003, the Commission adopted behavior rules for certain electric market participants in its *Order Amending Market-Based Rate Tariffs and Authorizations* relying on section 206 of the Federal Power Act to condition market-based rate authorizations,[13] and for certain natural gas market participants in *Amendments to Blanket Sales Certificates*, relying on section 7 of the Natural Gas Act to condition blanket marketing certificates.[14] The behavior rules bar false statements and require certain market participants, if they report transaction data, to report such data in accordance with the Policy Statement. These participants must also notify the Commission whether or not they report prices to price index developers in accordance with the Policy Statement.[15] On November 19, 2004, the Commission issued an order that addressed issues concerning price indices in natural gas and electricity markets and adopted specific standards for the use of price indices in jurisdictional tariffs.[16]

10. In the Policy Statement, among other things, the Commission directed Staff to continue to monitor price formation in wholesale markets, including the level of reporting to index developers and the amount of adherence to the Policy Statement standards by price index developers and by those who provide data to them.[17] In adhering to this directive, Commission Staff documented improvements in the number of companies that reported prices from back offices, that adopted codes of conduct, and that audited their price reporting practices.[18] These efforts resulted in significant progress in the amount and quality of both price reporting and the information provided to market participants by price indices.[19] Further, in conformance with this directive, Commission Staff recently concluded audits of three natural gas market participants with blanket certificate authority that were data providers subject to § 284.403 of the Commission's regulations.[20]

[8] *See* 15 U.S.C. 717b–717i.

[9] Section 23 of the Natural Gas Act, 15 U.S.C. 717t–2 (2000 & Supp. V 2005).

[10] *See* sections 4 and 5 of the Natural Gas Act, 15 U.S.C. 717c, 717d; sections 205 and 206 of the Federal Power Act, 16 U.S.C. 824d, 824e.

[11] *See* "Initial Report on Company-Specific Separate Proceedings and Generic Reevaluations; Published Natural Gas Price Data; and Enron Trading Strategies—Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices," Docket No. PA02–2–000 (Aug. 2003).

[12] 104 FERC ¶ 61,121 (2003). Subsequently, in the same proceeding, the Commission issued an *Order on Clarification of Policy Statement on Natural Gas and Electric Price Indices*, 105 FERC ¶ 61,282 (2003) (Order on Clarification of Policy Statement) and an *Order on Further Clarification of Policy Statement on Natural Gas and Electric Price Indices*, 112 FERC ¶ 61,040 (2005) (Order on Further Clarification of Policy Statement).

[13] *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218, at P 1 (2003), *superseded in part by, Conditions for Public Utility Market-Based Rate Authorization Holders*, Order No. 674, 71 FR 9695 (Feb. 27, 2006), FERC Stats. and Regs. ¶ 31,208 (2006).

[14] *Amendments to Blanket Sales Certificates*, Order No. 644, 68 FR 66323 (Nov. 26, 2003), FERC Stats. and Regs. ¶ 31,153, at P 1 (2003) (citing 15 U.S.C. 717f), *reh'g denied*, 107 FERC ¶ 61,174 (2004).

[15] Certain portions of the behavior rules were rescinded in *Amendments to Codes of Conduct for Unbundled Sales Service and for Persons Holding Blanket Marketing Certificates*, Order No. 673, 71 FR 9709 (Feb. 27, 2006), FERC Stats. and Regs. ¶ 31,207 (2006). The requirements to report transaction data in accordance with the Policy Statement and to notify the Commission of reporting status were retained in renumbered sections. 18 CFR 284.288(a), 284.403(a).

[16] *Price Discovery in Natural Gas and Electric Markets*, 109 FERC ¶ 61,184, at P 73 (2004).

[17] Policy Statement at P 43.

[18] Federal Energy Regulatory Commission, "Report on Natural Gas and Electricity Price Indices," at 2, Docket No. PL03–3–004 (2004).

[19] *See, e.g.*, General Accountability Office, "Natural Gas and Electricity Markets: Federal Government Actions to Improve Private Price Indices and Stakeholder Reaction" (December 2005).

[20] The audits found general compliance with the price reporting standards. *See* April 5, 2007 letter issued to Anadarko Energy Services Co. in Docket No. PA06–11–000 by Director, Office of Enforcement and attached Audit of Price Index Reporting Compliance; April 5, 2007 letter issued to BG Energy Merchants, LLC in Docket No. PA06–12–000 by Director, Office of Enforcement and attached Audit of Price Index Reporting Compliance; April 5, 2007 letter issued to Marathon

Continued

11. Congress recognized that the Commission might need expanded authority to mandate additional reporting to improve market confidence through greater price transparency and included in EPAct 2005 authority for the Commission to obtain information on wholesale electric and natural gas prices and availability. Under the Federal Power Act [21] and the Natural Gas Act,[22] the Commission has long borne a responsibility to protect wholesale electric and natural gas consumers. EPAct 2005 emphasized the Commission's responsibility for protecting the integrity of the markets themselves as a way of protecting consumers in an active market environment. In particular, Congress directed the Commission to facilitate price transparency "having due regard for the public interest, the integrity of [interstate energy] markets, [and] fair competition." [23] In the new transparency provisions of section 23 of the Natural Gas Act, Congress provided that the Commission may, but is not obligated to, prescribe rules for the collection and dissemination of information regarding the wholesale, interstate markets for natural gas, and authorized the Commission to adopt rules to assure the timely dissemination of information about the availability and prices of natural gas and natural gas transportation in such markets.[24]

II. Overview of Final Rule

12. In this final rule, the Commission largely adopts the proposal in the NOPR, with a few changes and a few clarifications. The final rule requires that any buyer or seller of more than a *de minimis* volume of natural gas report aggregate volumes of relevant transactions in an annual filing using a new form, Commission Form No. 552. A market participant that buys or sells less than a *de minimis* volume and that operates under blanket sales certificate authority under § 284.402 or § 284.284 of the Commission's regulations must also submit a Form No. 552 for identification and certain reporting purposes, but is not required to report aggregate volumes of relevant transactions. A market participant that buys or sells less than a *de minimis* volume but that does not operate under blanket sales certificate authority need not submit a Form No. 552. Filings of the form will be due on May 1 of each year, starting on May 1, 2009 for the calendar year 2008.

13. The significant changes from the proposal in the NOPR fall generally into four categories. The first category of changes focuses the reporting requirement solely on wholesale buyers and sellers by excluding retail transactions. The second category of changes, intended to focus on price formation in the spot markets, narrows the questions on new Form No. 552 to obtain information about the amount of daily or monthly fixed-price trading that are eligible to be reported to price index publishers as compared to the amount of trading that uses or refers to price indices. The third category of changes expands the number of companies that must state publicly whether or not they report to index price publishers. The last category involves other clarifications of questions raised in comments and changes made to streamline completion of the form.

14. On Form No. 552, certain wholesale natural gas buyers and sellers must identify themselves to the Commission and report summary information about their physical natural gas transactions for the previous calendar year including:

a. the total volume of transactions for the previous calendar year;

b. the volume of transactions that were priced at fixed prices for next-day delivery and were reportable to price index publishers;

c. the volume of transactions priced by reference to next-day gas price indices;

d. the volume of transactions that were priced at fixed prices for next-month delivery and were reportable to price index publishers; and,

e. the volume of transactions priced by reference to next-month gas price indices.

15. As defined in Form No. 552, a transaction is "reportable to price index publishers" if it is made at a reportable location where a price index publisher collects information for fixed-price transactions with next-day or next-month delivery obligations in order to create a price index. As these locations may change over time, Commission Staff will post each year a list for the coming year of current "Reportable Locations" for each price index publisher on the Commission Web site at *http://www.ferc.gov/docs-filing/eforms.asp#552*. This information will allow a market participant to determine whether a transaction should be classified on Form No. 552 as a reportable transaction, i.e., one made at a reportable location.

16. In addition, on the form, a natural gas seller must state whether it operates under blanket certificate authority under § 284.402 of the Commission's regulations, whether it reports transactions to price index publishers, and whether any such reporting complies with the standards provided in § 284.403(a).[25] Similarly, an interstate pipeline must state whether it operates under blanket certificate authority under § 284.284 of the Commission's regulations, whether it reports transactions to price index publishers and whether any such reporting complies with the standards provided in § 284.288(a).[26]

17. The final rule requires these holders of blanket sales certificates and, also, wholesale buyers and sellers of more than a *de minimis* volume in the reporting year to report to the Commission on Form No. 552 whether they report transactions to natural gas price index publishers.[27] Sellers with blanket sales authority must indicate whether such reporting complies with the Commission's standards for such reporting. Prior to this final rule, such sellers were required to notify the Commission only when it changed their practice regarding such reporting. The final rule will make notifications of reporting status more reliable.

18. The final rule is designed to permit an annual estimate of (a) the size of the physical domestic natural gas market, (b) the use of index pricing in that market, (c) the size of the fixed-price trading market that produces price indices from the subset reported to index publishers, and (d) the relative size of major traders. Obtaining such estimates requires information from all significant buyers and sellers of wholesale natural gas in the United States. The final rule creates an annual requirement that buyers and sellers of more than a *de minimis* volume of

Oil Co. in Docket No. PA06–13–000 by Director, Office of Enforcement, and attached Audit of Price Index Reporting Compliance.

[21] 16 U.S.C. 824 *et seq.*

[22] 15 U.S.C. 717 *et seq.*

[23] Section 23(a)(1) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(1) (2000 & Supp. V 2005); *see also* section 220 of the Federal Power Act, 16 U.S.C. 824t (2000 & Supp. V 2005) (identical language).

[24] Section 23(a)(2) & (3) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(2) & (3) (2000 & Supp. V 2005).

[25] In its regulations, the Commission grants automatically blanket certificates of convenience and necessity under section 7 of the Natural Gas Act to interstate natural gas pipelines "to provide unbundled firm and interruptible sales," 18 CFR 284.284 (blanket certificates for unbundled sales services), and to any person who is not an interstate pipeline "to make sales for resale at negotiated rates," 18 CFR 284.402 (blanket market certificate).

[26] The Commission recognizes that few if any interstate natural gas pipelines still make wholesale sales. Nevertheless, if they were to sell gas at wholesale in interstate commerce, they would be subject to the final rule. More relevant, of course, is the fact that all of their affiliates making wholesale sales in interstate commerce would be subject to the final rule.

[27] New 18 CFR 260.401.

natural gas report volumes of relevant transactions to the Commission.

19. Although the natural gas transparency provisions authorize the Commission to require reporting of detailed transaction-by-transaction information from wholesale natural gas buyers and sellers, the Commission will collect a more limited set of aggregate information designed to assess the market.

III. Notice of Proposed Rulemaking

20. In the NOPR, the Commission proposed that buyers and sellers of more than a *de minimis* volume of natural gas be required to report aggregate numbers and volumes of relevant transactions in an annual filing. The Commission proposed a form for this reporting, which was attached to the NOPR as "Form [X]."

21. Under the proposed reporting requirement, certain natural gas buyers and sellers would have had to identify themselves to the Commission and report summary information about physical natural gas transactions for the previous calendar year including: (a) Their total amount of physical natural gas transactions by number and volume; (b) the breakdown of their transactions by purchases and sales; (c) the number and volume breakdown of their purchases and sales by whether they were conducted in monthly or daily spot markets; and (d) the number and volume breakdown of their purchases and sales by type of pricing, in particular whether that pricing was fixed or indexed.

22. In addition, under the proposal, a natural gas seller would have been required to state whether it operates under blanket certificate authority under § 284.402 of the Commission's regulations, whether it reports transactions to price index publishers and whether any such reporting complies with the standards provided in § 284.403(a). Similarly, an interstate pipeline would have been required to state whether it operates under blanket certificate authority under § 284.284 of the Commission's regulations, and whether it reports transactions to price index publishers and whether any such reporting complies with the standards provided in § 284.288(a).

23. In response to the NOPR, seventy-four entities filed comments. Commission Staff held an informal workshop to discuss implementation and other technical issues associated with the proposals set forth in the NOPR on July 24, 2007. Following the workshop, twenty-nine entities filed reply comments.

IV. Comments on the Notice of Proposed Rulemaking

A. Merits of Annual Reporting Requirement

24. As an initial matter, no commenter asserted that the Commission lacked jurisdiction to implement the annual reporting proposal or lacked jurisdiction over market participants required to report, i.e., "any buyer or seller that engaged in wholesale physical natural gas transactions the previous calendar year." [28]

25. The vast majority of commenters on this issue supported the annual reporting proposal, although many suggested refinements. For instance, MidAmerican Energy Company and PacifiCorp (MidAmerican) supported the reporting proposal and praised FERC's "sensible approach," which would "help market participants and state and federal regulators better understand the natural gas market and pricing process." [29] Similarly, Wisconsin Electric Power Company and Wisconsin Gas Company LLC (the Wisconsin Companies) supported the reporting proposal stating that the "benefits of such a reporting regime outweigh the expenditures of resources necessary to implement." [30] The Wisconsin Companies cautioned, however, that "[a]ny further frequency or granularity in the reporting requirements * * * would be unduly burdensome." [31] The Wisconsin Companies proposed changes to the information reported, suggesting a simple breakdown for transaction information between monthly or daily spot markets would be insufficient and suggesting obtaining information about transactions of longer than a month and intraday transactions.[32] The Wisconsin Companies reasoned that these categories of transactions "make up a substantial amount of the purchases and sales conducted by the Companies and therefore need to be included in the reporting." [33]

26. The Public Service Commission of New York (PSCNY) supported the annual reporting proposal as a way to "provide critical information to analyze the important volumetric relationships between the fixed-price day-ahead or month-ahead transactions that form price indices." [34] The Producer Coalition [35] also supported the annual reporting proposal as a way to create greater market confidence and transparency. The information obtained from the requirement, according to the Producers Coalition, would result in greater understanding of the prices and availability of physical natural gas in interstate commerce and allow for assessment of the ratio of fixed-price transactions to index-priced transactions.[36] AGA supported the annual reporting of transaction data "because it could provide valuable information regarding the size of the physical natural gas markets." [37]

27. In opposition to the annual reporting proposal, Morgan Stanley Capital Group Inc. (MSCG) contended that the Commission did not establish in the NOPR a clear connection between the required annual reporting and the statutory goal to achieve price transparency in the physical gas markets.[38] For its part, MSCG asserted its confidence in the markets and contended it did not need the information that would be provided through the annual reporting requirement proposal.[39] MSCG observed that the price indices are already good and are getting better which renders any annual reporting requirement an unnecessary burden.[40] MSCG described the proposal as an "additional regulatory intervention to benefit the publishers' commercial enterprise." [41] Also in opposition, DCP Midstream LLC (DCP) objected to the annual reporting proposal as unnecessary given that there are other sources available for the information sought in the proposal.[42]

28. Platts, a price index publisher, proposed revisions to the annual reporting proposal. Platts contended that as drafted the annual reporting proposal could provide misleading information regarding the universe of fixed-price transactions and create a misleading comparison of fixed-priced transactions and index-priced transactions.[43] This problem arises, according to Platts, because the proposed definition of fixed-price transactions lumped together two

[28] New 18 CFR 260.401(b).

[29] MidAmerican Comments at 1 & 5; *see also* Statoil Comments at 4–5 (supporting annual reporting requirement).

[30] Wisconsin Companies Comments at 4.

[31] *Id.*

[32] *Id.* at 6.

[33] *Id.*

[34] PSCNY Comments at 2.

[35] The Producer Coalition consists of three independent producers: Forest Oil Corporation; Hydro Gulf of Mexico LLC; and, Newfield Exploration Company.

[36] Producer Coalition at 3.

[37] AGA Comments at 3.

[38] MSCG Comments at 7.

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] DCP Comments at 4–6.

[43] Platts Comments at 4–7.

categories of fixed-price transactions: (a) Fixed-price transactions that are eligible for inclusion in a published price index ("indexable" as described by Platts); and (b) fixed-price transactions that are not eligible. Without distinguishing these two categories, the information reported could not be used to determine the percentage of fixed-price transactions that are reported to price index publishers.[44] Platts summarized the problem: "the proposed reporting form would sweep up far more physical fixed-price deals than are eligible for inclusion in Platts's indices. Rather than enabling a comparison of apples to apples, it would compare apples and fruit salad."[45]

29. To avoid this problem, Platts recommended that the Commission distinguish between "transactions that are eligible to be included in [published price] indices and those that are not."[46] In support of this recommendation, American Public Gas Association (APGA) advocated changing the survey form to obtain data to determine "what proportion of reportable fixed-price transactions are actually being reported" to index publishers.[47] APGA asserted that, when survey data are collected, FERC should "be able to determine once and for all whether the indices, on the basis of which hundreds of millions of dollars of natural gas are traded, are grounded in fixed-price transactions representing most of the fixed-price transactions being consummated in the market."[48]

30. Platts, in its comments, also suggested that all companies—not just blanket certificate holders—notify the Commission annually of their price reporting status.[49] Additionally, Platts suggested that all companies affirm that their price reporting practices comply with the Policy Statement procedures.[50]

31. Calpine Corporation (Calpine) contended that the Commission should avoid collection of information that is available elsewhere. As an example, Calpine suggested that a market participant that submits information on its fossil-fuel purchases to the U.S. Department of Energy's Energy Information Administration (EIA) not be required to file an annual report at the Commission.[51]

[44] *Id.* at 5.

[45] *Id.* at 7.

[46] *Id.* at 4.

[47] APGA Reply Comments at 1; *see also* AGA Reply Comments at 7 (supporting "capture" of transactions eligible to be reported to a price index publisher).

[48] APGA Reply Comments at 3.

[49] Platts Comments at 8.

[50] *Id.*

[51] Calpine Comments at 4.

B. De Minimis Threshold

32. In the NOPR, the Commission proposed to define a *de minimis* market participant as a market participant that engages in physical natural gas transactions that amount by volume to *less* than 2,200,000 MMBtus annually and to exclude such *de minimis* market participants from reporting transaction information.[52] Several commenters sought to increase the *de minimis* threshold.[53] MSCG supported a higher *de minimis* volume based on 200 standard futures contracts per day as a way to focus only on large sellers.[54] Northwest Industrial Gas Users (Northwest Industrials) argued for increasing the annual volume threshold significantly from the proposed 2,200,000 MMBtus per year to 136,000,000 MMBtu per year.[55] Independent Oil & Gas Association of West Virginia proposed a greater *de minimis* threshold of 10,000,000 MMBtu/year.[56] A greater *de minimis* threshold would reduce the burden, it contended, for some of its small producer-members.[57] The Wisconsin Companies called for a greater *de minimis* threshold because the threshold set forth in the NOPR uses "physical volumes consumed [and, thus], may ignore the reality of daisy chain sales; that is, many transactions can occur before natural gas ultimately reaches the consumer."[58]

33. Some commenters supported the Commission's proposed *de minimis* threshold.[59] The Texas Alliance of Energy Producers (Texas Alliance) contended that the *de minimis* threshold for annual transaction reporting is reasonable.[60] IPAA advocated setting the *de minimis* threshold as a function of the market size rather than setting it as a fixed number.[61]

34. The Interstate Natural Gas Association of America (INGAA) sought clarification that a *de minimis* market participant need only file basic identification and whether it reports transactions to index price publishers.[62]

[52] NOPR at P 52.

[53] MSCG Comments at 10; Northwest Industrial Gas Users Comments at 7–10; Independent Oil & Gas Association of West Virginia at 3–4.

[54] MSCG Comments at 10; *see also* INGAA Comments at 8 (supporting MSCG's *de minimis* proposal).

[55] Northwest Industrials at 7–10.

[56] West Virginia Independents Comments at 3–4.

[57] *Id.*

[58] Wisconsin Companies Comments at 5.

[59] *See, e.g.*, APGA Comments at 10.

[60] Texas Alliance Comments at 12.

[61] IPAA Comments at 3–4.

[62] INGAA Comments at 8.

C. Exclusion of Certain Transactions

35. Commenters sought to exclude certain transactions from the reporting requirement. INGAA sought to exclude interstate pipeline transactions associated with cash-out and operations because such information is already reported by some in Form No. 2 and on electronic bulletin board (EBB) postings and because such operational transactions would only distort assessment of the quantity of gas available for trading in the interstate market.[63] The Oklahoma Independent Petroleum Association (Oklahoma IPA) sought to exclude transactions priced pursuant to a "percentage of proceeds" contract under which a producer is required to sell any gas produced and receive the percentage of proceeds realized by the buyer.[64] Oklahoma IPA argued that sellers of such contracts have no influence on the price for the sale of gas.[65] Along those lines, Oklahoma IPA argued that the *de minimis* threshold is too low.[66]

36. Shell sought to exclude reporting transactions that are related to operational functions and transactions between affiliates.[67] As transactions related to operational functions, Shell included imbalance make-up, royalty-in-kind payments, gas provided for processing such as plant thermal reduction (shrinkage), and purchases and sales related to the production and gathering function.[68] Such transactions, Shell contended, are not part of the wholesale market and their reporting would not provide a meaningful benefit.[69] As to affiliate transactions, Shell noted that the Commission's Policy Statement excludes transactions between affiliate companies.[70]

37. MSCG supported the exclusion of financially settled transactions from the proposed reports, claiming that the Commission lacks jurisdiction over natural gas futures contracts that are not settled through physical delivery.[71] Further, MSCG asserted that the Commission's memorandum of understanding with the Commodity Futures Trading Commission could facilitate obtaining such information.[72]

[63] *Id.* at 9.

[64] Oklahoma IPA Comments at 3.

[65] *Id.* at 3; *see also* Hess Corporation Comments at 4–6.

[66] Oklahoma IPA Comments at 3.

[67] Shell Comments at 8.

[68] *Id.*

[69] *Id.* at 8–9.

[70] *Id.* at 9 (*citing Price Discovery in Natural Gas and Electric Markets, Policy Statement on Natural Gas and Electric Price Indices*, 104 FERC ¶ 61,121 (2003) (Policy Statement)).

[71] MSCG Comments at 8.

[72] *Id.*

38. The Natural Gas Supply Association (NGSA) sought clarification that a market participant did not need to report the following transactions: (1) liquefied natural gas (LNG) import transactions prior to regasification; (2) natural gas exports from LNG liquefaction facilities; (3) transactions related to export for re-import; (4) transactions among affiliates; (5) sales and purchases in Alaska; and (6) sales to or purchases by an end-user.[73]

39. Several commenters sought to exclude retail transactions involving end-use customers from reporting. In its reply comments, the American Forest & Paper Association contended that end-use customers should not be required to report end-use purchases because end-use purchases do not play a role in setting index prices.[74] NGSA sought clarification that the Commission did not intend to require the reporting of non-wholesale transactions in the annual report.[75] NGSA contended that the Commission must limit reporting to wholesale transactions made in interstate commerce because section 23 of the Natural Gas Act limits the information the Commission may obtain to wholesale transactions in interstate commerce.[76]

40. AGA called for the Commission to exclude reporting of retail sales or volumes transported for others under retail choice programs.[77] The National Energy Marketers Association (NEM) requested that retail transactions be exempt from any reporting requirement.[78]

41. EnCana Marketing seeks clarification that the reporting requirement only applies to transactions in the United States.[79]

D. Mandatory Reporting of Fixed-Price Transactions to Publishers

42. Some commenters advocated for the Commission to use its transparency authority to require mandatory reporting of fixed-price transactions directly to price index publishers or indirectly to them through the Commission. APGA sees the annual reporting proposal set forth in the NOPR "as an important first step in the journey towards full transparency in the physical market," but stated that the Commission should go further and seek mandatory reporting of fixed-price transactions.[80]

43. In contrast, other commenters objected to any mandatory reporting of fixed-price transactions.[81] For instance, concurring with the Commission's reasoning set forth in the NOPR, the NEM opposed mandatory reporting, saying that voluntary reporting with a safe harbor for a good-faith effort is sufficient.[82]

E. Purchases and Sales

44. Several commenters objected to reporting of information regarding purchases. Several parties asserted that double-counting would result from the inclusion of purchases and sales.[83] EnCana Marketing (USA) Inc. (EnCana Marketing) called for reporting on only sales of natural gas and not for purchases.[84] EnCana Marketing asserted there is no value in reporting purchases "other than to enlarge the universe of market participants obligated to undertake the new reporting requirement."[85]

45. MSCG stated that the Commission should require the reporting of only sales, not purchases, contending that requiring buyers to report purchases would be overreaching.[86] The Texas Alliance contended it would be more efficient to require only the purchaser and/or recipient of gas from producers to file a report.[87]

F. Frequency of Reporting

46. Several commenters support reporting no more frequently than annually. EnCana Marketing contended that reporting more frequently than annually would be burdensome while not providing a significant benefit.[88] MSCG contended that any reporting should be annual, unless a clear connection can be established that more frequent reporting results in greater transparency.[89] In contrast, the National Association of Royalty Owners (NARO) favored monthly transaction reporting rather than just annual reporting; it stated that monthly as well as regional reporting would be more useful to royalty owners, including for the monitoring of price index reliability.[90]

G. Codification of Price Index Policy

47. In the NOPR, the Commission sought comment on whether to codify the price index policy standards into the regulations. The regulations describe the price index policy standards by reference to the Policy Statement.[91] NARO supported codification of the price index policy standards because the enforcement power of the Commission is necessary to protect the integrity of the data.[92] MSCG opposed such codification.[93]

H. Aggregation of Data

48. The Wisconsin Companies call for the discretion to submit separate reports because "[a] requirement for [combination utilities] to submit a single annual report is problematic in that the separation of these business units currently prevents the sharing of market information that would be relevant to the reporting requirements."[94]

49. The Electric Power Supply Association (EPSA) called for companies to have the option to file either aggregated data for all its affiliate companies that buy and sell natural gas or individual reports for each entity that buys or sells gas.[95] Similarly, Calpine Corporation called for the Commission to allow companies to aggregate data from subsidiaries in order to reduce the burden on industry and to provide the benefit of eliminating double-counting of intracompany transactions.[96]

50. NGSA wanted clarification that the annual transaction report, with a few exceptions, applies to all nonaffiliated third parties, and one report can be filed on behalf of all entities in a corporate family.[97] NGSA advocated exclusion of sales between affiliates because such information

[73] NGSA Comments at 15.

[74] AF&PA Comments at 5–7; *see also* NGSA Comments at 12–14; Industrial Energy Consumers of America Comments at 3.

[75] NGSA Comments at 14.

[76] NGSA Comments at 12; *see also* Honeywell Reply Comments at 2.

[77] AGA Comments at 3.

[78] NEM Comments at 4–7.

[79] EnCana Marketing Comments at 5.

[80] APGA Comments at 5–8.

[81] Platts also supports FERC's "continued reliance on voluntary price reporting." Platts Comments at 2; *see also* Electric Energy Institute (EEI) and the Alliance of Energy Suppliers Reply Comments at 3; ONEOK Energy Services Co. L.P. Comments at 3.

[82] NEM Comments at 2–3.

[83] *See, e.g.*, Northwest Industrials Reply Comments at 4.

[84] EnCana Marketing at 8–9.

[85] *Id.* at 9.

[86] MSCG Comments at 9.

[87] Texas Alliance Comments at 12.

[88] EnCana Marketing Comments at 10.

[89] MSCG Comments at 9.

[90] NARO Comments at 4; *see also* Mewbourne Oil Company Comments at 5.

[91] Title 18 of the CFR, section 284.403(a) reads, in relevant part:

"To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas indices, Seller shall provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the *Policy Statement on Natural Gas and Electric Price Indices*, issued by the Commission in Docket No. PL03–3–000 and any clarifications thereto."

See also 18 CFR 284.288(a) (identical language).

[92] NARO Comments at 5; *see also* MidAmerican Comments at 10.

[93] MSCG Comments at 12.

[94] Wisconsin Companies Comments at 6.

[95] EPSA Comments at 7–8.

[96] Calpine Comments at 4–5.

[97] NGSA Comments at 15.

would not be meaningful.[98] NGSA contended that such exclusion is consistent with the price index reporting standards set forth in the Policy Statement, which "prohibit the reporting of sales between affiliates to price index developers."[99]

51. On a similar issue, AGA and Duke Energy Ohio, Inc. sought clarification on the reporting obligations of asset managers.[100]

I. Public Filing

52. Several commenters supported maintaining as non-public any aggregated transaction data to be filed.[101] NGSA contended that "the annual aggregated transactional information could cause competitive harm to the market by potentially revealing corporate proprietary trading strategies of a company particularly [if it has] geographically concentrated trading or supply portfolios."[102] Pacific Gas & Electric (PG&E) contended that data filed by market participants should be maintained as non-public for one year following the calendar year for which the data pertain to avoid revealing competitive buying strategies.[103] Enbridge contended that each entity should have the option to file information non-publicly.[104]

53. NGSA advocated that any reporting be non-public. NGSA argued that even "annual aggregated transactional information could cause competitive harm to the market by potentially revealing corporate proprietary trading strategies of a company, particularly for companies with geographically concentrated trading or supply portfolios."[105] NGSA explained that making public "the percentage of a company's portfolio that is index-based or fixed-price-based and the percentage of natural gas sold in the monthly and daily markets" would reveal the company's "procurement strategy and risk profile," thus reducing its competitiveness in future deals.[106] To address this concern, NGSA suggested not publicly disclosing the individual company filings or "redacting the identity of the market participant making the filing."[107]

[98] *Id.*

[99] NGSA Reply Comments at 4.

[100] AGA Comments at 3; Duke Energy Ohio, Inc. Comments at 8–9.

[101] Nicor Gas Company Comments at 6; Statoil Natural Gas LLC Comments at 5; PG&E Comments at 6; NGSA Reply Comments at 2.

[102] NGSA Reply Comments at 2.

[103] PG&E Comments at 6.

[104] Enbridge Comments at 26.

[105] NGSA Comments at 2.

[106] *Id.*

[107] *Id.*

J. Filing Date

54. In the NOPR, the Commission proposed an annual filing deadline of February 15 and asked for comment on whether this deadline would be unduly burdensome.[108] MSCG and Statoil called for a deadline of April 30.[109] AGA recommended a filing date of May 1.[110] NGSA recommended a filing date of either May 1 or April 18, which is the filing deadline of FERC Form No. 2.[111]

K. Safe Harbor

55. Several commenters requested that the Commission adopt a safe harbor for good faith compliance with the reporting obligation.[112] The Commission should state, according to AGA, that it will not "prosecute, penalize or otherwise impose remedies on parties for inadvertent errors in * * * reporting."[113]

L. Information Collection Burden

56. NEM and Sequent Energy Management, L.P. (Sequent) stated that the Commission significantly underestimated in the NOPR the cost burden imposed by the annual reporting proposal.[114] NEM stated an estimate that it would take approximately 200 hours annually to comply with the reporting requirement.[115] NEM explained that because market participants' data is not currently stored in a format that could be used to fill out the proposed form, market participants would need to develop ancillary information technology systems to store such data at significant cost.[116] NEM also stated that although the proposal would require annual reporting, data collection would be needed daily, which would be costly.[117] Sequent pointed out that the Commission estimate overlooks the costs of legal and regulatory compliance for each annual report.[118] Sequent also stated that the cost burden estimate ignores asset management arrangements because an annual reporting requirement would trigger renegotiation of those asset management contracts.[119]

[108] NOPR at P 68.

[109] MSCG Comments at 9; Statoil Comments at 6–7.

[110] AGA Comments at 4.

[111] NGSA Comments at 15–16.

[112] AGA Comments at 6–7; NGSA Comments at 16–17; PG&E Comments at 6; Suez Energy North America, Inc. Comments at 10–12.

[113] AGA Comments at 7.

[114] NEM Comments at 7; Sequent Comments at 6–7.

[115] NEM Comments at 8.

[116] NEM Comments at 7.

[117] NEM Comments at 8.

[118] Sequent Comments at 7.

[119] Sequent Comments at 7.

V. Commission Determination

57. On the basis of the comments, the Commission has determined to adopt in large part the proposed annual reporting of certain natural gas transaction information, but to modify its proposal in several ways. Specifically, the Commission adopts rules here to require certain market participants to report annually information about their wholesale, physical natural gas transactions delivered in the previous calendar year in the United States of America on a form, Form No. 552.[120] For purposes of the annual reporting requirement, a market participant is defined as "any buyer or seller that engaged in wholesale, physical natural gas transactions in the previous calendar year."[121] Specifically, on Form No. 552, a market participant must provide the Commission with contact information and answer questions about whether it sells pursuant to a blanket sales certificate and whether it reports to price index publishers. A market participant that sold or purchased more than a specified *de minimis* volume of natural gas during the previous calendar year, regardless of whether it holds a blanket sales certificate, must also provide the following information:

a. The total volume of transactions for the previous calendar year;

b. The volume of transactions that were priced at fixed prices for next-day delivery and were reportable to price index publishers;

c. The volume of transactions priced by reference to next-day gas price indices;

d. The volume of transactions that were priced at fixed prices for next-month delivery and were reportable to price index publishers; and,

e. The volume of transactions priced by reference to next-month gas price indices.

58. The final rule will also require a market participant to report whether it operated under a blanket sales certificate under the Commission's regulations, § 284.402 or § 284.284. This information will allow the Commission to measure overall market activity of the entities subject to its jurisdiction under the Natural Gas Act as well as allow the Commission to maintain records of such entities. The final rule will require a market participant to indicate whether it

[120] As we stated in the NOPR, although the standard contract for the most significant natural gas futures market traded on the New York Mercantile Exchange (NYMEX) requires physical delivery, the vast majority of those transactions do not go to delivery. For the purposes of the reporting requirement, the Commission excludes volumes of futures transactions from reporting.

[121] New 18 CFR 284.401(b).

reports transactions to any price index publishers, and, if so, whether their reporting conforms to the standards set forth in § 248.403 or § 248.288, as applicable. This information will allow the Commission to ensure the accuracy of price indices and to monitor adherence to the Commission's transaction reporting standards.

59. The final rule retains several of the specific proposals presented in the NOPR: the *de minimis* threshold is to remain the same; all filings are to be made public; both purchases and sales are to be reported; and the filing will be annual.

60. The final rule makes several changes to the proposal in the NOPR. They include the following:

a. Reporting will be limited to buyers and sellers only of wholesale natural gas delivered in the United States, i.e., it excludes sales to end-users.

b. All wholesale buyers and sellers of natural gas operating under a blanket sales certificate and all others buying or selling more than the *de minimis* volume must provide contact information, indicate whether they are operating under a blanket sales certificate, and whether they report prices to an index publisher. In the NOPR, the Commission did not propose asking wholesale buyers and sellers that are not operating under a blanket sales certificate whether they report prices to index publishers.

c. A company with multiple affiliates may choose to report separately or in aggregate, as best meets its needs. In the NOPR, we assumed that reporting would be by affiliate or subsidiary.

d. The questions on the form now request data relating to transactions with expected deliveries in the reporting year, rather than transaction dates.

e. The form no longer requests the number of transactions.

f. The definitions of fixed-price transactions in the form have been changed to tie more directly to those volumes that could be reported to index providers. To clarify those terms, the Commission will establish a web site defining reportable locations previous to each reporting year, and providing links to active index publishers and their reporting definitions.

61. The final rule includes further instructions regarding certain specific categories of reportable and non-reportable transactions. The final rule also discusses some general issues raised by commenters including safe harbor provisions, mandatory reporting of fixed-price transactions to price index publishers, and possible effects of the rule on price index publishers.

62. By obtaining the volume of transactions conducted for each significant market participant, the Commission, market participants and others will be able to determine the overall level of activity of market participants in the physical natural gas market. In particular, the information will provide regularly an estimate of (a) the size of the physical U.S. domestic natural gas market, (b) the use of index pricing in that market, (c) the size of the fixed-price trading market that produces price indices, and (d) the relative sizes of major traders.

63. This information will improve the understanding of index pricing by interested entities, including the market participants and state commissions who use them. The volume break-down of transactions by price type, fixed-price or index-price, should permit an overall assessment of the ratio of index-using transactions to price-forming transactions, i.e., fixed-price transactions. At present, we do not know how much fixed-price transactions are a part of the universe of natural gas transactions, although they may be the minority of natural gas transactions.[122] The Commission has taken several steps to restore confidence in natural gas index prices and their formation. By obtaining information regarding the extent that market participants make fixed-price transactions, market participants will be able to evaluate their confidence in the index prices that are formed by those fixed-price transactions.

64. By collecting sales and purchases information, results may also be cross-checked to ensure that information is accurate. In effect, total sales should roughly equal total purchases, with some allowance for *de minimis* buyers and sellers.

A. Definitions

65. Definitions used in this final rule for development of Form No. 552 include the following:

a. *Affiliate*—An affiliate means a person who controls, is controlled by or is under common control with, another person.[123]

b. *Fixed Price*—A "Physical Natural Gas" price determined by agreement between buyer and seller and not benchmarked to any other source of information. For example, Physical Basis transactions that refer directly to futures prices, for the purpose of this form, are not "Fixed Price" transactions.

c. *Next-Day Delivery*—Delivery of a transaction executed prior to NAESB nomination deadline (11:30 am Central Prevailing Time) on one day for uniform physical delivery over the next pipeline day. Transactions done for Friday are usually for flow on Saturday, Sunday, and Monday inclusive. Trading patterns may vary in the case of holidays or the end of a month that occurs on a weekend. Commission Staff will maintain links to price index publishers' descriptions of their processes for receiving price information and publishing indices on the ferc.gov Web site at *http://www.ferc.gov/docs-filing/eforms.asp#552.*

d. *Next-Month Delivery*—Delivery of a transaction executed during the last five (5) business days of one month for uniform physical delivery over the next month.

e. *Physical Natural Gas*—Natural gas transactions that contain an obligation to deliver natural gas at a specified location and at a specified time, with the exception of physically-delivered futures contracts. It is not necessary that natural gas actually be delivered under the transactions, only that the delivery obligation existed in the agreement when executed. Certain Physical Natural Gas transactions may not remain in existence through the time of delivery because they were traded away or "booked out." For purposes of this form, these transactions should be included whether they went to delivery or not. The only exception, notwithstanding its delivery obligation, is futures contracts traded on the New York Mercantile Exchange which should *not* be reported in this form.

f. *Price Index Publisher*—Companies that report price indices for U.S. wholesale natural gas markets. The list of companies can change over time. Commission Staff will maintain a list of relevant "Price Index Publishers" with links to their descriptions of their processes for receiving price information and publishing indices on the ferc.gov Web site at *http://www.ferc.gov/docs-filing/eforms.asp#552.*

[122] Tr. at 32 (Comments of Ms. Jane Lewis-Raymond, American Gas Association) (surmising that we currently cannot know the amount of fixed-price transactions and the amount of fixed-price trades that make up an index).

[123] A market participant has the option of including an affiliate's information in its reporting on Form No. 552. This is a matter of convenience for companies subject to the final rule. Their affiliations are irrelevant to whether they are required to report under the final rule. If they satisfy the criteria of a reporting market participant, they must report. Therefore, the Commission intends to allow market participants to determine whether their relationships permit one company to report on behalf of another company. Accordingly, the definitions of "affiliate" used elsewhere in the Commission's regulations, *e.g.*, in Part 358, are not germane.

g. *Prices that Refer to (Daily or Monthly) Price Indices*—Prices for "Wholesale Natural Gas Purchases" or "Sales" that reference directly a daily or monthly index price published by a "Price Index Publisher" rather than a "Fixed Price" or a price that refers directly to some other benchmark.

h. *Quantity*—Amount of purchases or sales expressed in units of energy "British Thermal Units" (Btu). One million BTUs (MMBtu) are, by definition, the same as one Dekatherm (Dth). A volume of one billion cubic feet (Bcf) of natural gas contains approximately one trillion Btus (TBtu or million MMBtu) of energy depending on the exact energy content of the natural gas. The quantities to be reported in the "Purchase and Sales Information" schedule should be measured in TBtus.

i. *Reportable Locations*—Those locations (hubs, pipelines, regions, etc.) where "Price Index Publishers" collect "Fixed Price" information for transactions with "Next-Day" or "Next-Month Delivery" obligations, and produce index prices. These locations may change over time. Commission Staff will maintain a list of current "Reportable Locations" with links to "Price Index Publishers" descriptions of their processes for receiving price information and publishing indices on the ferc.gov Web site at *http://www.ferc.gov/docs-filing/eforms.asp#552*.

j. *Reporting Company*—The person, corporation, licensee, agency, authority, or other legal entity or instrumentality on whose behalf the report is being submitted by the "Respondent."

k. *Respondent*—The person, corporation, licensee, agency, authority, or other legal entity or instrumentality that is submitting the report either on its own behalf, or on behalf of itself and/or its affiliates. A Respondent may choose to either report for all its affiliates collectively, or may choose to have each of its affiliates report separately as their own "Respondent." If reporting collectively, the reporting "Respondent" must report for each "Affiliate" in the "Schedule of Reporting Companies" and the "Price Index Reporting Schedule," and collectively for all its affiliates in the "Purchase and Sales Information" schedule.

l. *Wholesale Natural Gas Purchases*—The "Quantity" of "Physical Natural Gas" purchased by the "Reporting Company" during the "Year of Report," with the exception of certain futures contracts.

m. *Wholesale Natural Gas Sales*—The "Quantity" of "Physical Natural Gas" sold by the "Reporting Company" during the "Year of Report" to customers that do not use all the natural gas they buy themselves under contracts with physical delivery obligations, with the exception of physically-delivered futures contracts.

B. Facilitating Price Transparency

66. The annual reporting requirement will make the price formation process more transparent and aid the Commission's efforts to monitor price indices and the integrity of wholesale natural gas markets. These efforts follow the directive of Congress in the transparency provisions to facilitate price transparency "having due regard for the public interest, the integrity of [the physical natural gas] markets, [and] fair competition." [124] By monitoring and reporting on price indices and their influence over wholesale natural gas pricing in the United States, the Commission ensures that market participants can have confidence in the oversight of published price indices, a basic building block of price formation. We reiterate that, without confidence in the basic processes of price formation, market participants cannot have faith in the value of their transactions, the public cannot believe that the prices they see are fair, and it is more difficult for the Commission to ensure that jurisdictional prices are "just and reasonable." [125]

67. The information gained from the annual reporting requirement will make the price formation process more transparent by providing a better understanding of the size of the physical natural gas market, the use of fixed and indexed prices in that market, and the formation of price indices. The information collected under this requirement is focused specifically on daily and monthly physical spot or "cash" market activity and the contracting based on the prices developed in those markets. The requirement will not create additional information concerning other types of wholesale natural gas contracting practices in the United States, such as long-term, fixed-price transactions, swaps and other financially-settled transactions and futures. Better understanding of the role and functioning of wholesale natural gas spot markets can increase confidence that posted market prices of natural gas accurately reflect the interplay of legitimate market forces.

68. In promulgating these regulations to improve the transparency of the natural gas markets, the Commission exercises its authority under the transparency provisions. Under the Natural Gas Act,[126] the Commission has long borne a responsibility to protect wholesale electric and natural gas customers.[127] The transparency provisions of EPAct 2005 added new authority for protecting the integrity of the markets themselves as a way of protecting customers in an active market environment.[128] As discussed above, Congress's grant of transparency authority followed the Commission's earlier efforts at monitoring the price formation process.[129] Congress recognized that the Commission might need expanded authority to mandate additional reporting to improve market confidence through greater price transparency and included in EPAct 2005 authority for the Commission to obtain information on the availability and prices of sales of wholesale natural gas.

69. Pursuant to this grant of authority, the final rule continues the Commission's efforts to monitor price index formation and to increase transparency of the price formation process, and, thus, protect the integrity of the physical natural gas markets. The final rule increases transparency by allowing, for the first time, the Commission and other market observers to determine an annual estimate of (a) the size of the physical domestic natural gas market, (b) the use of index pricing in that market, (c) the size of the fixed-price trading market that produces price indices from the subset reported to index publishers, and (d) the relative size of major traders.

70. The information to be reported in the annual reporting requirement falls well within the Commission's transparency authority. In section 23 of the Natural Gas Act, Congress provided the Commission a broad grant of authority to obtain and disseminate "information about the availability and prices of natural gas sold at wholesale and in interstate commerce." [130] Information about the volume of wholesale, physical gas transactions and about the type of pricing used for those transactions is "information about the availability and prices of natural gas

[124] Section 23(a)(1) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(1) (2000 & Supp. V 2005).

[125] *See* sections 4 and 5 of the Natural Gas Act, 15 U.S.C. 717c & 717d.

[126] 15 U.S.C. 717 *et seq.*

[127] *See* sections 4 and 5 of the Natural Gas Act, 15 U.S.C. 717c, 717d; sections 205 and 206 of the Federal Power Act, 16 U.S.C. 824d, 824e.

[128] *See* section 23(a)(1) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(1) (2000 & Supp. V 2005).

[129] *See, supra*, at P 11.

[130] Section 23(a)(1) of the Natural Gas Act; 15 U.S.C. 717t–2(a)(1) (2000 & Supp. V 2005).

sold at wholesale and in interstate commerce." [131]

71. The information sought in the final rule is not obtainable elsewhere. Section 23(a)(4) of the Natural Gas Act requires the Commission to "consider the degree of price transparency provided by existing price publishers and providers of trade processing services * * *." [132] As we stated in the NOPR, because of the way transactions currently take place in the natural gas industry, there is no way to estimate in even the grossest terms the overall size of the natural gas market or its breakdown by types of contract provision, including pricing (fixed prices or prices using or referring to price indices) and term (*e.g.*, spot transactions for next-day or next-month delivery or forward transactions for longer-term delivery).[133] Further, currently there is no way to determine important volumetric relationships between the fixed-price, day-ahead or month-ahead transactions that form price indices or to determine the use of price indices themselves.

72. In comments on the NOPR, no commenter pointed to a source for similar information. DCP contended that "the information that is available through the price index publishers is the same information that is being requested [in the annual reporting proposal] and it is the actual data that makes up the index prices that represent the price of natural gas on any given day at any given location." [134] The information to be reported on Form No. 552 is not the same. The information to be reported will include information regarding transactions that could be (i.e., are qualified to be) but are not reported to price index publishers, therefore, such information is not available from price index publishers. The amount of market activity that *could* form price indices as opposed to the amount that actually does form price indices is an important fact that has been missing in the discussion of the Commission's market price policies, leading to confusion and undermining confidence in indices.

73. Further, the Commission's goal is not only to understand the transactions used to formulate price indices; it is to understand how influential price indices are in the overall transacting of natural gas in U.S. wholesale markets. The information to be reported on Form No. 552 will allow market participants to evaluate their use of indexed transactions. Typically, market participants rely on index-priced transactions as a way to reference market prices without taking on the risks of active trading. These market participants rely on index prices, often whether or not those prices are derived from a robust market of fixed-price transactions. Such information is not available elsewhere.

74. Also, the annual reporting requirements will allow the Commission, market participants and the public to estimate the amount of activity of significant wholesale traders relative to the overall market. Information on significant traders' activity allows the Commission and the public to understand the impact of the largest traders on the price formation process, improving natural gas market transparency.

75. The Commission directs Staff to monitor the information received in the filings of Form No. 552, to determine whether the information received meets the goals set forth in this preamble. Although in future years the Commission Staff may change the reportable locations and may change the format of Form No. 552 in order to make the form easier to complete and to make the information submitted easier to analyze, the substance of Form No. 552 will remain the same absent Commission action.

C. Reporting Requirements Retained From the Notice of Proposed Rulemaking

76. The final rule retains several of the features of the annual reporting proposal presented in the NOPR: (1) The *de minimis* threshold remains the same; (2) all filings are to be made publicly; (3) both purchases and sales are to be reported; and (4) the form is to be submitted annually.

1. *De Minimis* Threshold

77. In the final rule, the Commission retains the volumetric *de minimis* threshold proposed in the NOPR and clarifies its application.[135] A market participant is required to report its transactions annually if it engages either in wholesale sales that amount to 2,200,000 MMBtus or more *or* wholesale purchases that amount to 2,200,000 MMBtus or more. Each market participant operating under a blanket certificate under § 284.284 or § 284.402 must file a Form No. 552. However, if a market participant operating under a blanket certificate under § 284.284 or § 284.402 buys or sells less than the *de minimis* volumes in the reporting year, it is not required to provide information about the volumes of its transactions. A market participant that does not operate under a blanket certificate under § 284.284 or § 284.402, and that buys or sells less than the *de minimis* volumes in the reporting year, is not required to file a Form No. 552. The creation here of a *de minimis* threshold is consistent with the transparency provisions. Notwithstanding Congress's broadening of the scope of the Commission's jurisdiction in new section 23 of the Natural Gas Act with respect to transparency, Congress mandated that the Commission exempt "natural gas producers, processors or users who have a *de minimis* market presence [from compliance] with the reporting requirements of this section." [136]

78. In proposing in the NOPR a *de minimis* threshold for reporting which would apply to market participants, the Commission sought to require reporting from a sufficient number of significant market participants to ensure, in the aggregate, an accurate picture of the physical natural gas market as a whole. To this end, the Commission proposed in the NOPR to define such a *de minimis* market participant as a market participant that engages in physical natural gas transactions that amount by volume to less than 2,200,000 MMBtus annually.[137] This figure was based on the simple calculation of one-ten thousandth (1/10,000th) of the annual physical volumes consumed in the United States, which is approximately 22 trillion cubic feet (Tcf) (or roughly 22 billion MMBtus).[138] Looked at another way, a *de minimis* market participant would trade the equivalent of less than one standard NYMEX futures contract per day. Although a market participant that contracts for 1/10,000th of the nation's annual physical volume may appear to have little effect on natural gas prices, that participant may be transacting only at one location and, thus, have a much greater pricing effect there. In the NOPR, we indicated that we do not expect annual physical

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[131] *Id.*

[132] Section 23(a)(4) of the Natural Gas Act; 15 U.S.C. 717t–2(a)(4) (2000 & Supp. V 2005).

[133] NOPR at 50 ("As noted by the price index developer Platt's, the question of what is the total size of the traded market has 'hung over the gas market for years.'") (citing Comments of Platts at 6, *Transparency Provisions of the Energy Policy Act*, Docket No. AD06–11–000 (filed Nov. 1, 2006)).

[134] DCP Comments at 5.

[135] New 18 CFR 284.401(a) (defining *de minimis* market participant). The regulations define a market participant as "any buyer or seller that engaged in physical natural gas transactions for the previous calendar year." New 18 CFR 284.401(b).

[136] Section 23(d)(2) of the Natural Gas Act, 15 U.S.C. 717t–2 (2000 & Supp. V 2005).

[137] New 18 CFR 260.401.

[138] U.S. Department of Energy, Energy Information Administration, Natural Gas Summary, Data Series: Total Consumption, 2006, *http://tonto.eia.doe.gov/dnav/ng/ng_sum_lsum_dcu_nus_a.htm*.

volumes consumed in the United States to remain constant, however the figure of 22 Tcf was a useful snapshot of consumption and a useful starting-point for setting the *de minimis* exemption.

79. As requested by INGAA, the Commission clarifies that each market participant that (a) either holds a blanket certificate under § 284.284 or § 284.402, or (b) buys or sells more than the *de minimis* volumes in the reporting year must report: identification information; whether it holds a blanket certificate under § 284.284 or § 284.402; whether it reports transactions to price index publishers, and, if so, whether its reporting conforms to the applicable regulations. A market participant that holds a blanket certificate under § 284.284 or § 284.402 but that buys or sells less than the *de minimis* volumes in the reporting year must complete the form except it need not report its volumes.

80. Several commenters, including MSCG,[139] Northwest Industrial Gas Users,[140] and the Independent Oil & Gas Association of West Virginia,[141] proposed greater *de minimis* thresholds. Other commenters, including the Texas Alliance,[142] supported the proposed threshold. No commenter suggested a lesser threshold. The proposed threshold is small enough to allow the Commission to accurately determine the size of the physical natural gas market, while at the same time, large enough to exclude market participants, who in the aggregate, do not contribute significantly to that market.

81. The spot wholesale natural gas markets that create index prices—those markets that involve fixed-price trading for next-day or next-month delivery at reportable locations and that are actually reported to price index publishers—make up only a tiny part of the overall wholesale natural market in the United States. This is true whether one compares those particular trading volumes to total U.S. consumption or whether, as Wisconsin Companies points out in their comments[143] (in support of a higher *de minimis* threshold) an appropriate total trading volume would also include those transactions that take place between the production and consumption of natural gas. When the spot wholesale natural gas markets that create index prices are then broken down among many varied geographical locations, even very small market participants can be very important in narrow regional contexts. It is conceivable that these small, local wholesale market participants do not actually contribute to price formation in this type of trading, but the Commission and other market observers are in no position to know at this time. If these small, local wholesale market participants do contribute to this type of price formation—which would be a healthy thing for these markets—such contribution would not be detectable if the *de minimis* threshold were set too high.

2. Public Filing

82. A market participant must submit Form No. 552, in a public filing. Some commenters objected to filing the form publicly because, in their view, public filing of the annual report could reveal confidential trading strategies.[144] The Commission finds these commenters' concerns are misplaced and ignore Congress's directive in the transparency provisions. Public access to Form No. 552 data would comport with the transparency provisions which require that any such rules "provide for the dissemination, on a timely basis, of information * * * to the public."[145] The transparency provisions further direct the Commission to "rely on [existing price publishers and providers of trade processing services] to the maximum extent possible."[146] By requiring public filings by market participants, the Commission would provide an opportunity for trade publications and commercial vendors to aggregate the information filed and provide any analysis should a desire for such services arise in the energy information marketplace.

83. Under the transparency provisions, the Commission is required to balance confidentiality concerns with the transparency goal that the information collected be disseminated publicly. The annual filing requirement balances these two statutory requirements. By requiring a company to file its report publicly, the requirement adheres to Congress's directive that "[t]he rules shall provide for the dissemination, on a timely basis, of information about the availability and prices of natural gas at wholesale and in interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, and the public."[147] Because the filing requires aggregated information and does not require reporting of price information or of transaction-specific information, the annual reporting requirement adheres to Congress's other directive "to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information."[148] The annual reporting requirement avoids facilitating anti-competitive behavior in several ways: (i) Reported information would not include specific price information; (ii) reported information would be aggregated information over a period of one year and not transaction-specific information; (iii) reported information would be made on an aggregated, national level, and not by point or even region; and (iv) information would not be reported until four months after the end of the reporting year.

84. This approach is consistent with the opinion of the U.S. Department of Justice, which observed that the Commission "may be able to achieve the benefits of transparency while limiting its potential harm by aggregating, masking, and lagging the release of such information."[149] The Commission determines that "masking" or permitting filings on a confidential basis is unnecessary to avoid potential harm. The aggregation of the information and lagging of public filing is sufficient to avoid such harm.[150] Any potential harm from the public filing of Form No. 552 would be minimal given the aggregation of data, both aggregation across the nation and aggregation across the calendar year, and given the lagging of the public filing of information until May 1 of the year following the reporting year. In circumstances in which any potential harm is minimal, it

[139] MSCG Comments at 10.

[140] Northwest Industrial Gas Users Comments at 7–10.

[141] Independent Oil & Gas Association of West Virginia Comments at 3–4.

[142] Texas Alliance Comments at 12.

[143] Wisconsin Companies Comments at 5.

[144] *See, e.g.*, PG&E Comments at 6.

[145] Section 23(a)(2) of the Natural Gas Act, 15 U.S.C. 717t–2 (2000 & Supp. V 2005).

[146] Section 23(a)(4) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(4) (2000 & Supp. V 2005).

[147] Section 23(a)(2) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(2) (2000 & Supp. V 2005).

[148] Section 23(b)(2) of the Natural Gas Act, 15 U.S.C. 717t–2(b)(2) (2000 & Supp. V 2005).

[149] Comments of the U.S. Department of Justice, Antitrust Division, *Transparency Provisions of the Energy Policy Act*, Docket No. AD06–11–000 (filed Jan. 25, 2007). The Department of Justice's comments focused on the electricity markets, although it did note that the same general considerations that applied to electricity markets also applied to natural gas markets.

[150] This is consistent with our approach regarding the individual transaction data reported on Electric Quarterly Reports. For that much more detailed reporting of individual transactions, the Commission found that a delay of 30 days for reporting individual transaction data in EQR filings would greatly reduce the usefulness of the data as a tool for collusion. *Revised Public Utility Filing Requirements*, Order No. 2001, 67 FR 31043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002) at P 17.

is not the Commission's practice to permit confidential filings.[151] In addition, smaller market participants whose operations are limited to a smaller region of the country are likely to transact less than the *de minimis* amount required to report their transaction information. Further, without public filings by market participants, market observers would not be able to estimate the relative size of major traders.

3. Purchases and Sales

85. Several commenters, including EnCana Marketing,[152] MSCG,[153] and the Texas Alliance,[154] objected to the inclusion of purchases as well as sales in the reporting requirement. While the Commission appreciates these commenters' concerns, it believes that volume information on purchases as well as sales is necessary for developing a complete and accurate picture of the size of the natural gas spot market. For example, it will permit the Commission Staff to cross-check information. Also, as discussed above, spot prices are formed in only a very tiny fraction of all wholesale U.S. natural gas transactions, which are then broken down among many varied geographical locations. Verifying the amount of such trading becomes far more difficult. At the level of *de minimis* volume set forth herein, this type of cross-verification becomes more important than it would otherwise. In this regard, Staff's experience implementing the Electronic Quarterly Reports suggests that purchase transactions are quite important in developing a comprehensive picture of trading activity.

86. Although the language of the natural gas transparency provisions address sales of natural gas, it does not limit the Commission from seeking information about natural gas purchases as well as sales. They are simply different sides of the same transaction. Congress directed the Commission to "facilitate price transparency in markets for the sale * * * of physical natural gas in interstate commerce," but that language does not limit the Commission to seeking information regarding only sales.[155] Purchases of physical natural gas are also a part of such markets; there is no market for the sale of natural gas that does not include purchases. Nor does the natural gas transparency provision language that provides for the "dissemination * * * of information about the availability and prices of natural gas *sold* at wholesale and interstate commerce" restrict the Commission.[156] As a practical matter, information regarding purchases of natural gas is necessary to evaluate the reliability of information regarding sales of natural gas. Both types of information are necessary to obtain a useful gauge of price transparency in natural gas markets.

87. MSCG expressed a further concern about double-counting if purchases and sales are included.[157] Form No. 552 requires that purchases clearly be reported separately from sales. Given the clear identification of sales as opposed to purchases in the form, the Commission remains confident that its Staff and other users of this information will be capable of not mixing these separate sets of numbers in their analyses.

4. Annual Reporting

88. The Commission retains from the NOPR the requirement that Form No. 552 be submitted annually. Commenters provided a variety of perspectives on the frequency of filing, but none supported less frequently than annually. NARO favored monthly, regional reporting.[158] EnCana Marketing and MSCG commented that more frequent reporting would not provide a significant benefit.[159] Annual, national information alone will significantly improve both the Commission's and others' understanding of index pricing. Annual reporting should provide a useful amount of information to assess the volume break-down of transactions by price type, fixed-priced or index-priced, and the ratio of index-using transactions to price-forming transactions, i.e., fixed-priced transactions. A more granular breakdown, which would result from more frequent reporting or from regional reporting, would be more likely to reveal the strategies of particular market participants, raising the concerns Congress in the transparency provisions cautioned the Commission to avoid, that is, "the adverse effects of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information."[160]

D. Reporting Requirements Changed From the Notice of Proposed Rulemaking

89. In the final rule, the Commission changes several features of the reporting requirement proposal presented in the NOPR: (1) Retail (end-use) transactions are excluded; (2) basic contact information must be reported; (3) a market participant must indicate whether it reports transactions to price index publishers; (4) a market participant may report in the aggregate for its affiliates; (5) volumes are to be reported based on delivery date, not execution date; (6) a market participant must report volume information but not the number of transactions; (7) volumes of transactions must be broken down by whether they are reportable to price index publishers; and (8) the filing deadline is changed to May 1 of each year.

1. Exclusion of Retail Transactions

90. Several commenters objected to the inclusion of purchases in the form because end-use customers would be required to file annual reports.[161] Although some transactions reported to indices may include purchases by large end-users, the Commission is generally interested in wholesale prices. On balance, restricting reporting only to clearly wholesale transactions should provide a reasonable set of data for assessing wholesale price activity, without burdening retail or end-use customers. Consequently, the Commission does not require end-use customers or retail buyers to report transaction information unless they also make *wholesale* sales or purchases of natural gas greater than the *de minimis* threshold. Likewise, a transaction made to an end-user is not to be included in the volumes reported on the form. Of course, if the end-use customer holds a blanket marketing certificate under § 284.402, it must report on Form No. 552 that it holds such certificate and whether it reports to price index publishers.

[151] This is consistent with our approach regarding the individual transaction data reported on Electric Quarterly Reports. For that much more detailed reporting of individual transactions, the Commission found that a delay of 30 days for reporting individual transaction data in EQR filings would greatly reduce the usefulness of the data as a tool for collusion. *Revised Public Utility Filing Requirements*, Order No. 2001, 67 FR 31043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002) at P 17.

[152] EnCana Marketing Comments at 8–9.

[153] MSCG Comments at 9.

[154] Texas Alliance Comments at 12.

[155] Section 23(a)(1) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(1) (2000 & Supp. V 2005).

[156] Section 23(a)(2) of the Natural Gas Act, 15 U.S.C. 717t–2(a)(2) (2000 & Supp. V 2005) (emphasis added).

[157] MSCG Comments at 9.

[158] NARO Comments at 4; *see also* Mewbourne Oil Company Comments at 5.

[159] EnCana Marketing Comments at 10 and MSCG Comments at 9.

[160] Section 23(b)(2) of the Natural Gas Act, 15 U.S.C. 717t–2(b)(2) (2000 & Supp. V 2005).

[161] *See, e.g.*, AF&PA Comments at 5–7; NGSA Comments at 12–14; Industrial Energy Consumers of America Comments at 3.

2. Basic Contact Information and Use of Blanket Sales Certificates

91. Each market participant, including a *de minimis* market participant, must provide contact information and indicate on Form No. 552 whether or not it operates under blanket certificate authority under § 284.402 or § 284.284 of the Commission's regulations. This information from a market participant will provide the Commission with basic information regarding participants in wholesale natural gas markets necessary to monitor their behavior systematically as well as a measure of the number of holders of Natural Gas Act blanket sales certificates and contact information for those blanket sales certificate holders. This combination of information will permit some break down of market information between jurisdictional and non-jurisdictional components, which is in turn useful for effective oversight and monitoring for market manipulation.[162]

3. Status of Reporting to Price Index Publishers

92. Each market participant must state on Form No. 552 whether it reports transactions to price index publishers. If so, it must also state whether its reporting complies with the standards for reporting provided in § 284.403(a) or § 284.288(a), which in turn incorporate the reporting procedures of the *Policy Statement on Natural Gas and Electric Price Indices*.[163] Prior to this final rule, a blanket sales certificate holder did not need to report whether it reports transactions to a price index publisher; it needed only report whether it changes that reporting status.[164] To simplify the reporting, instead of a letter notification only upon a change in company policy, under this final rule, a market participant, including a blanket sales certificate holder, must notify the Commission annually of its price index reporting practices.[165] The Commission amends § 284.288(a) and § 284.403(a) in this final rule accordingly.

93. The Commission also requires a holder of blanket sales certificate to notify the Commission annually about its reporting of transaction information to price index publishers and whether any such reporting conforms to the Policy Statement. After the Policy Statement's notification requirement took effect, we observed that blanket marketing certificate holders may have overlooked this requirement and we provided the opportunity for blanket marketing certificate holders to notify the Commission by August 1, 2005 of their reporting status.[166] Based on Commission Staff's experience monitoring price indices and adherence to the Policy Statement, as discussed in the introduction, the Commission believes that notification on an annual basis would make the information more reliable. As a further benefit, a filing company would have the opportunity to review their practices in coordination with their response to the data collection proposal described above.

94. In the NOPR, the Commission sought comment on whether the procedures set forth in the Policy Statement for reporting to price index publishers should be codified.[167] Of those who commented on this provision, some supported codification; some opposed codification.[168] The Commission will not codify these procedures. The Commission believes that the regulations read in conjunction with the Policy Statement are sufficiently clear to price index publishers and those who report to price index publishers. In this regard, for example, this year, Commission Staff concluded audits of three natural gas market participants with blanket certificate authority that were data providers subject to § 284.403 of the Commission's regulations.[169] Commission Staff found that these three companies generally complied with the standards in the Policy Statement and found the regulations sufficiently clear to perform the audits and ensure compliance with the regulations.

95. In the final rule, in contrast to the proposal in the NOPR, a market participant with sales or purchases greater than or at the *de minimis* level must state whether it reports its transactions to a price index publisher regardless of whether it operates under a blanket sales certificate. Platts, in its comments, suggested that all companies—not just blanket certificate holders—notify the Commission annually of their price reporting status.[170] In fact, the processes used in the formation of wholesale natural gas prices by market participants have no regard for whether or not those participants operate under blanket certificates. In order to clearly assess the effectiveness of the index formation process, the Commission needs to collect the information about reporting to price index publishers from each market participant including market participants that section 1 of the Natural Gas Act[171] excludes from the Commission's certificate authority under section 7 of the Natural Gas Act.[172]

96. However, only a company operating pursuant to a blanket sales certificate must state on Form No. 552 whether its reporting to price index publishers conforms to the Commission's Policy Statement. Platts suggested that all companies affirm that their price reporting practices comply with the Policy Statement procedures.[173] But, the Policy Statement standards apply only to holders of blanket sales certificates. A market participant that does not hold blanket sales certificates is not required to comply with the Policy Statement processes, nor does it receive the safe harbor available in the Policy Statement. Consequently, there is no value to the Commission in collecting and publicizing the compliance of companies with policies that do not apply to them.

4. Aggregated Reporting

97. In reporting transactions on Form No. 552, a market participant may, but is not required to, aggregate information from its affiliates. One commenter,

[162] The Commission has the authority to police against manipulation of natural gas markets in connection with jurisdictional transactions. *Prohibition of Energy Market Manipulation*, Order No. 670, 71 FR 4244 (Jan. 26, 2006), FERC Stats. & Regs. ¶ 31,202 (2006), at P 4, 21–24.

[163] *Policy Statement on Natural Gas and Electric Price Indices*, 104 FERC ¶ 61,121 (2003).

[164] *See* former 18 CFR 284.403(a) (blanket marketing certificate holder); former 18 CFR 284.288(a) (unbundled sales certificate holder). In Order No. 644, the Commission required each holder of a blanket sales certificate to notify the Commission whether it engages in reporting of its transactions to publishers of electricity or natural gas price indices according to the standards set out in the Commission's Policy Statement on Price Indices. *Amendments to Blanket Sales Certificates*, Order No. 644, 68 FR 66323 (Nov. 26, 2003), FERC Stats & Regs. ¶ 31,153 (2003), at P 70–72 (amending 18 CFR 284.403(a) and 18 CFR 284.288(a)), *reh'g denied*, 107 FERC ¶ 61,174 (2004).

[165] However, a seller of electricity under market-based rates will continue to be obligated to notify the Commission of its reporting status upon a change in status. *See* 18 CFR 35.37(c).

[166] Order on Further Clarification of Policy Statement at P 21.

[167] NOPR at P 70.

[168] MidAmerican supported codification as a way to add clarity to the regulations. MidAmerican Comments at 10; see also NARO Comments at 5. MSCG opposed codification. MSCG Comments at 12; see also ONEOK Energy Service Co. Comments at 5.

[169] *See* April 5, 2007 letter issued to Anadarko Energy Services Co. in Docket No. PA06–11–000 by Director, Office of Enforcement and attached Audit of Price Index Reporting Compliance; April 5, 2007 letter issued to BG Energy Merchants, LLC. in Docket No. PA06–12–000 by Director, Office of Enforcement and attached Audit of Price Index Reporting Compliance; April 5, 2007 letter issued to Marathon Oil Co. in Docket No. PA06–13–000 by Director, Office of Enforcement, and attached Audit of Price Index Reporting Compliance.

[170] Platts Comments at 8.

[171] 15 U.S.C. 717.

[172] 15 U.S.C. 717f.

[173] *Id.*

Wisconsin Companies, underscored its difficulties in providing an aggregated report.[174] Others, including EPSA, Calpine and NGSA, sought the ability to file an aggregate report.[175] Given the comments both for and against aggregation and the ease with which Staff can process the information in either form, the Commission provides the option to reporting companies. A company must indicate on Form No. 552 the affiliates for which it is reporting. If an affiliate or subsidiary holds a blanket certificate pursuant to § 284.284 or § 284.402, each affiliate must report separately that it has such a certificate. Similarly, if an affiliate reports transactions to price index publishers, it must report so separately.

98. By contrast, asset managers may not report aggregated information for their customers in Form No. 552. Several commenters sought clarification on the reporting obligations of asset managers.[176] It is unlikely that transactions between asset managers and their clients would be used to create price indices, although such transactions may use price indices. Given the variety and diversity of services available from asset managers, and the interest of the Commission in tracking the amount of wholesale natural gas activity that both creates and relies on spot price indices, information about the use of price indices would be lost if such aggregation were permitted.

5. Reportable Volumes Based on Contracted Delivery

99. Unlike in the NOPR, Form No. 552 now requires reporting based on date of contracted delivery and not date of execution. Although there were no comments on this issue, in Staff's experience, for many market participants, this approach may also simplify collection of data by permitting use of more direct accounting information. The Commission's goal in obtaining data is to evaluate the creation and use of price information in the market, specifically the creation and use of spot price indices. Because wholesale natural gas price indices are based on fixed-priced trading for next-day or next-month delivery, delivery dates for the transactions of particular interest will not differ by more than a month from execution date. Consequently, reporting transactions by delivery date gives a sufficiently accurate picture of the use of price indices and how well price indices reflect fixed-priced transactions. Even though not pointed out in comments, the trade-off of some information lost for what is likely to be much simpler gathering of information by respondents is a reasonable one.

6. Eliminate Reporting Numbers of Transactions

100. In another change from the NOPR, Form No. 552 does not require market participants to report the number of their transactions. Although this part of the proposal did not prompt comments, this change streamlines the form and reduces the burden of reporting without significantly reducing the value of the information. Volume information is more relevant for monitoring the amount of market activity used in creating price indices and using those indices. On reflection, the number of transactions is not needed to obtain greater transparency of the price formation process, consequently Form No. 552 does not include it.

7. Conform Reporting Definitions to Those Used by Price Index Publishers

101. In several other respects, the reported information requested on the final Form No. 552 differs from the information on the form proposed in the NOPR. In response to the comments of Platts [177] as supported by APGA [178] and AGA,[179] Form No. 552 distinguishes more directly those fixed-priced transactions that are reportable to price index publishers from those that are not. Platts' expressed concern that information collected from the proposed form would not effectively show the ratio of market activity that forms index prices to the market activity eligible to form index prices.[180] As proposed in the NOPR, all next-month and next-day fixed price transactions would have been reported, instead of only those transactions that were actually eligible for inclusion in price indices. The changes in the final Form No. 552 should allow the Commission, market participants and the public to assess in a more focused way the amount of fixed price transactions that contribute to the formation of price indices. In effect, the change allows a more precise calculation of the proportion of those transactions that *could* be reported to price publishers to those that *are* reported to them.

102. To implement this change, a market participant must categorize certain volumes by whether the transaction was made at a "reportable location" regardless of whether the transaction was actually reported to a price index publisher. As stated on Form No. 552, a "reportable location" transaction is "a location (hubs, pipelines, regions, etc.) where 'Price Index Publishers' collect 'Fixed Price' information for transactions with 'Next-Day' or 'Next-Month Delivery' obligations, and produce index prices." As these locations may change over time, Commission Staff will maintain a list of current "Reportable Locations" for each price index publisher on the Commission Web site at *http://www.ferc.gov/docs-filing/eforms.asp#552*. This information will allow a market participant to determine whether a transaction should be classified on Form No. 552 as a reportable transaction, i.e., one made at a reportable location. Commission Staff will list the price index publishers and the index price points no later than December 20 of the year previous to the report year. The first annual report will be due in 2009 for transactions delivered in 2008.

103. Although generally supportive of making a distinction based on whether a transaction is reportable, APGA raised the concern that a market participant that does not report transactions to price index publishers will not easily understand which transactions are reportable.[181] To address this concern, Form No. 552 provides more information regarding these distinctions than the form proposed in the NOPR. In particular, Form No. 552 asks for transactions with particular price and term characteristics (i.e., fixed-priced transactions for next-day or next-month delivery) at reportable locations. To provide a common understanding of reportable locations, the Commission Staff will maintain a list of current "Reportable Locations" with links to "Price Index Publishers" descriptions of their processes for receiving price information and publishing indices on the ferc.gov Web site at *http://www.ferc.gov/docs-filing/eforms.asp#552*.

104. In addition, the Commission believes that appropriately reporting those transactions needed to establish wholesale natural gas market prices represents a significant public good. The Commission believes that a market participant, should consider reporting in a responsible way, and to do so must become aware of which of its transactions are reportable. The burden imposed on market participants to

[174] Wisconsin Companies at 6.

[175] EPSA Comments at 7–8; Calpine Comments at 4–5; NGSA Comments at 15.

[176] AGA Comments at 3; Duke Energy Ohio, Inc. at 8–9.

[177] Platts Comments at 4, 5 & 7.

[178] APGA Reply Comments at 1 & 3.

[179] AGA Reply Comments at 7.

[180] Platts Comments at 4–7.

[181] APGA Reply Comments at 2.

understand and distinguish its reportable from its non-reportable transactions is easily balanced by the benefits of improving public knowledge of how much market activity, though reportable, is not reported. The benefits accrue to the Commission and all market participants, who will be able to evaluate the usefulness of the price indices better.

8. Filing Date

105. Unlike in the NOPR, Form No. 552 will have a filing deadline of May 1 in the year after the reporting year. In this regard, the Commission agrees with the commenters who sought more time for filing than permitted by the February 15 deadline proposed in the NOPR.[182] Because the data used for the form would come from the accounting and other official records of the market participants reporting, the response to Form No. 552 must be coordinated with a variety of other regular annual financial and regulatory reports. May 1 was the latest filing date recommended in comments. Given the aggregate nature of the data, a time lag of four months from the reporting year should keep the information timely while providing market participants the time needed to coordinate a new regulatory filing with other obligations.

E. Clarification of Other Reporting Issues

106. Several commenters requested clarification as to reportable volumes. The Commission will address these in turn, first those that must be reported and then those that do not need to be reported.

1. Reportable Volumes

107. Interstate pipelines must report sale and purchase volumes related to cash-outs, imbalance makeups and operations. INGAA advocated that transactions associated with cash-out and operations be excluded from Form No. 552 because similar information is available from Form No. 2 and from pipeline electronic bulletin boards (EBBs), and the volumes used are not available for trading.[183] Similarly, Shell indicated that imbalance makeup volumes should be excluded.[184] The Commission finds these commenters' views unpersuasive. The partial availability of information on Form No. 2 submissions and through EBBs does not provide a complete view of that information in an assessment of wholesale natural gas market activity. In addition, while it is true that volumes of sales and purchases related to pipeline cash-out and operations are unlikely to be used to create price indices, such sales and purchases do use price indices as a way of transferring value among market participants. Consequently, the information is useful in assessing how spot prices are being used commercially in the nation.

108. Market participants must include on Form No. 552 sale and purchase volumes attributable to royalty-in-kind transactions, gas provided for processing such as plant thermal reduction, and purchases and sales related to the production and gathering function. Shell advocated excluding these transactions from reporting.[185] While these transactions may not affect the formation of price indices in wholesale markets, these transactions often make use of price indices. Again, to the extent that transfers of value take place based on price indices, it is important that the Commission and other market observers be able to understand the extent of that transfer and its dependency on price indices as well.

109. NGSA further sought clarification regarding transactions related to export for re-import.[186] The sale of these volumes, assuming they could be identified, has an effect on overall wholesale markets and could, potentially, either help create or make use of price indices, consequently they should be reported. If such transactions take place among affiliates, they should be excluded (as explained below).

2. Non-Reportable Volumes

110. The instructions to Form No. 552 now explicitly exclude volumes due to transactions among affiliates. Several commenters emphasized the importance of excluding volumes transacted among affiliates.[187] A transaction between affiliates is not part of the price formation process in wholesale natural gas markets.

111. Market participants may not include any type of financially-settled transaction on Form No. 552. However, transactions with physical delivery obligations must be reported—whether those transactions actually continued through delivery or not. When the physical transaction was executed, it may have either contributed to or used spot market price information regardless of its later disposition. In other words, sales or purchase obligations that were "booked out" must be included. The Commission intends "physical natural gas transaction" to mean a sale or purchase of natural gas with an obligation to deliver or receive physically, even if the natural gas is not physically transferred due to some offsetting or countervailing trade. Thus, even if the transaction does not go to physical delivery, it would still be included as a physical transaction.

112. In response to NGSA,[188] the Commission clarifies that a market participant should not include volumes of imported LNG traded prior to regasification. LNG traded prior to regasification is not wholesale natural gas, though it is a source of natural gas through regasification itself. NGSA further sought clarification regarding natural gas exports from LNG liquefaction facilities.[189] LNG traded after liquefaction is also not wholesale natural gas, consequently a market participant must exclude such volumes.

113. Unlike in the NOPR, Form No. 552 no longer requests information on NYMEX contracts that go to physical delivery because the purpose of the form is to focus on fixed-priced spot transactions and how they are used. Further, information attributable to such contracts is available from NYMEX. Consequently, to reduce the burden on market participants, this instruction has been removed and a market participant may not include volume information related to physically-settled future contracts.

F. Other Issues Raised by Commenters

1. Safe Harbor Policy

114. Many commenters requested a "safe harbor" for reporting.[190] The Commission set forth a "safe harbor policy" provision in the Policy Statement for voluntary reporting to price index publishers.[191] As requested by commenters, the Commission reiterates that it does not intend to prosecute or penalize parties for inadvertent errors in reporting. The Commission's goal in setting forth the reporting requirement is to obtain information for the evaluation of price indices; it is not to penalize good faith efforts at compliance. However, in contrast to the voluntary reporting to price index publishers, the annual reporting requirement for Form No. 552

[182] MSCG Comments at 9–10; Statoil Comments at 6–7; AGA Comments at 4; NGSA Comments at 15–16.

[183] INGAA Comments at 9.

[184] Shell Comments at 8.

[185] Shell Comments at 8.

[186] *Id.*

[187] *See, e.g.*, Shell Comments at 8; NGSA Comments at 15.

[188] NGSA Comments at 15.

[189] *Id.*

[190] AGA Comments at 6–7; NGSA Comments at 16–17; PG&E Comments at 6; Suez Energy North America, Inc. Comments at 10–12.

[191] Policy Statement at P 37.

is mandatory for certain market participants. The Commission will focus any enforcement efforts on entities that violate good faith standards, including instances of intentional submission of false, incomplete or misleading information to the Commission, of failure to report in the first instance, or of failure to exercise due diligence in compiling and reporting data.

2. Mandatory Reporting of Fixed-Priced Transactions

115. Several commenters called for mandatory reporting of individual, fixed-priced transactions.[192] However, the Commission will not require mandatory reporting of fixed-priced transactions to price index publishers at this time. Mandatory reporting would appear to provide additional benefits in that it could assist in determining whether the price indices are an accurate reflection of underlying fixed-priced trading. Market participants, state commissions, and the Commission could gain a clearer sense of the volume and number of natural gas transactions that form prices by location and duration. In the NOPR, the Commission acknowledged these benefits, but the Commission decided that mandatory reporting is not appropriate at this time, citing three reasons. We review those three reasons here.

116. First, mandatory reporting of certain transactions would create an incentive for wholesale buyers and sellers to consider structuring transactions based on avoiding reporting requirements rather than simply on the economics of the transaction. Even very subtle shifts in the form of transactions could easily make them non-reportable in any pre-defined system. For instance, if the Commission required reporting of fixed-price, day-ahead transactions, market participants could create two-day transactions, achieving substantially the same economic result and avoiding reporting.

117. Second, buyers and sellers might shift away from fixed-priced transactions to indexed-price transactions. Fixed-priced transactions could easily decrease to the point that indices that rely on them would no longer represent reliable indicators of the market. Such indices would likely become more volatile as they moved more in response to fewer transactions.[193]

118. Third, the Commission stated that broad availability of detailed transaction data might prove to be anticompetitive.[194]

119. In its comments, APGA disputed the three reasons asserted by the Commission in the NOPR. It discounts the first reason asserted that mandatory reporting creates an incentive to structure transactions to avoid reporting. APGA contended that the burden of mandatory reporting is not so great as to cause a significant number of market participants "to change the way they do business."[195] APGA did not deny the existence of such an incentive and the Commission does not wish to create such an incentive. This is particularly so given that it would be difficult to detect whether an entity was acting on such an incentive and, thereby, determine what effect this incentive had on reporting of transactions. In discounting the assertion, APGA also contended that the Commission is sufficiently creative to frame its reporting requirement to overcome those that might seek to avoid the reporting requirement. The Commission is not as confident. Commission Staff cannot monitor activity so closely as to be aware of every attempt to evade the Commission's annual reporting requirement. Additionally, because market practices change over time, trying to promulgate rules to account for constantly changing market dynamics would not only place a significant demand on Commission resources, but the level of interaction could easily interfere in the healthy, continuing development of the markets themselves.

120. APGA also disputed that mandatory price reporting would cause entities to switch from fixed-priced transactions to index-priced transactions because there is little burden to such reporting and those that would switch would not have been reporting to price indices anyway. The Commission does not share APGA's confidence that mandating price reporting would not cause such switching. The Commission remains concerned about the liquidity of the fixed-priced, next-day and next-month wholesale natural gas markets, and would prefer to see much more activity in these price-generating markets. Any reluctance to actively trade fixed-priced transactions could affect liquidity in these crucial markets.

121. APGA disputes the assertion in the NOPR that mandatory price reporting could lead to the potential collusion or anticompetitive behavior because mandatory price reporting would make public detailed transaction data. The Commission's concern would be dependent on the exact nature of the mandatory price reporting process, though the Commission acknowledges that simply mandating reporting to price index publishers would not, given historical practice, put competitive information at risk.

122. The annual reporting requirement set forth in this final rule can provide significant insight into the formation and use of price indices and how they reflect underlying fixed-priced trading. Given these benefits, at far lower costs in time and effort, the Commission continues to believe mandatory reporting of fixed-priced transactions is not appropriate at this time.

3. Effects on Trade Publishers

123. In opposing the annual reporting requirement, MSCG contended that the requirement imposes a burden on market participants simply to benefit commercial trade publishers. As discussed above, the transparency benefits justify the burdens imposed by the annual reporting requirement. The Commission acknowledges that the annual reporting requirement could benefit commercial trade publishers, but disagrees that this is a drawback. Indeed, the comment ignores the fact that commercial trade publishers are the most significant source of market price information in U.S. wholesale natural gas markets. The information they develop is used by Commission Staff to monitor market activity, and more significantly, buyers and sellers interested in access to market prices. Acknowledging this, Congress specifically directed the Commission in prescribing transparency rules to "rely on [existing price] publishers and [trade

[192] *See, e.g.*, APGA at 5–8.

[193] At the October 13, 2006 technical conference in this proceeding, several panelists raised similar concerns and advocated against mandatory price reporting. *See, e.g.*, Tr. at 12–13 (Mr. Christopher Conway on behalf of Conoco-Phillips Gas and Power, the Natural Gas Supply Association, and the Independent Producers Association of America) (asserting that mandatory price reporting could drive market participants away from reportable transactions, thereby, possibly reducing liquidity); Tr. at 35–36, 38–39 (Mr. Alex Strawn on behalf of the Process Gas Consumers Group) (asserting that mandatory reporting of fixed price transactions would drive market participants to use index-price transactions, thereby, reducing liquidity); Comments of Independent Petroleum Association of America, at p. 3, *Transparency Provisions of the Energy Policy Act*, Docket No. AD06–11–000 (filed Nov. 1, 2006) (mandatory reporting would push market participants away from reportable transactions and cause them to do more index-price transactions); Comments of Natural Gas Supply Association, *Transparency Provisions of the Energy Policy Act*, Docket No. AD06–11–000 (filed Nov. 1, 2006) (similar).

[194] NOPR at P 60.

[195] APGA Comments at 6.

processing] services to the maximum extent possible." [196]

4. Information Collection Burden

124. NEM argued that market participants' data is not currently stored in a format that could be used to fill out the proposed form, and, as a result, market participants would need to develop ancillary information technology systems to store such data at significant cost.[197] NEM also stated that although the reporting proposal requires annual reporting, data collection would be needed daily, which would be costly. In requiring annual aggregated reporting of a limited set of transactions, the Commission intends that each market participant would have the data necessary to complete Form No. 552 in the course of its business operations, for instance, in the course of preparing year-end aggregations for management, accounting and shareholder reporting purposes. The information needed to complete Form No. 552 is information that can be extracted from the market participant's book of accounts that it would already have developed as part of its normal business operations. If a market participant buys or sells natural gas under complex arrangements, then it is likely to have an accounting system to manage the complexity and sort out the categories of purchases and sales. The Commission bases its estimated cost burden on a market participant adapting existing information to the standard format for Form No. 552 and submitting the form annually. On that basis, the Commission will retain its estimate of the cost burden as set forth in the NOPR. This estimate does not include the regulatory and compliance costs attributable to reporting as those costs are part of the overhead that market participants bear as part of their participation in Commission-regulated markets. Although Sequent asserted that asset managers would have to renegotiate contracts to provide for the annual reporting requirement, the Commission considers it likely that such asset management agreements already require collection of the transactions executed which could be used to complete Form No. 552.

VI. Information Collection Statement

125. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, record keeping, and public disclosure (collections of information) imposed by an agency.[198] Pursuant to OMB regulations, the Commission will provide notice of its proposed information collections to OMB for review under section 3507(d) of the Paperwork Reduction Act of 1995.[199]

126. The Commission identifies the information provided under Part 260 as contained in FERC Form No. 552. The Commission solicited comments on the need for this information, whether the information would provide useful transparency information, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden. Where commenters raised concerns that information collection requirements would be burdensome to implement, the Commission has addressed those concerns elsewhere in the rule.

127. The Commission estimates the burden for complying with the final rule as follows:

Data collection	Number of respondents	Number of responses per respondent	Estimated annual burden hours per respondent	Total annual hours for all respondents	Estimated start-up burden per respondent
Part 260 FERC–552 Annual Reporting Requirement	1,500	1 per year	4	6,000	40 hours.

Information Collection Costs: The average annualized cost for each respondent is projected to be the following:

	Annualized capital/startup costs (10-year amortization)	Annual costs	Annualized costs total
FERC–552 Annual Reporting Requirement	$400	$400	$800

Title: FERC–552.

Action: Proposed Information Filing.

OMB Control No: 1902–0242.

Respondents: Business or other for profit.

Frequency of Responses: Annually.

Necessity of the Information: The annual filing of transaction information by market participants is necessary to provide information regarding the size of the physical natural gas market, the use of the natural gas spot markets and the use of fixed- and indexed-price transactions.

128. *Internal Review:* The Commission has reviewed the requirements pertaining to natural gas market participants and determined they are necessary to provide price and availability information regarding the sale of natural gas in interstate markets.

129. Interested persons may obtain information on the annual reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, [Attention: Michael Miller, Office of the Chief Information Officer], phone: (202) 502–8415, fax: (202) 208–2425, e-mail: *Michael.Miller@ferc.gov*. Comments on the requirements of the final rule also may be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

130. For submitting comments concerning the collections of information and the associated burden estimates, please send your comments to the contact listed above and to the

[196] Section 23(a)(4) of the Natural Gas Act; 15 U.S.C. 717t–2(a)(4) (2000 & Supp. V 2005).

[197] NEM Comments at 6–7.

[198] 5 CFR 1320.11.

[199] 44 U.S.C. 3507(d).

Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503 Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–3122, fax: (202) 395–7285. Due to security concerns, comments should be sent electronically to the following e-mail address: *oira_submission@omb.eop.gov*. Please reference the docket number of this rulemaking in your submission.

VII. Environmental Analysis

131. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[200] The actions taken here fall within categorical exclusions in the Commission's regulations for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[201] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VIII. Regulatory Flexibility Act

132. The Regulatory Flexibility Act of 1980 (RFA)[202] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA requires consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on such entities. The RFA does not, however, mandate any particular outcome in a rulemaking. At a minimum, agencies are to consider the following alternatives: Establishment of different compliance or reporting requirements for small entities or timetables that take into account the resources available to small entities; clarification, consolidation, or simplification of compliance and reporting requirements for small entities; use of performance rather than design standards; and exemption for certain or all small entities from coverage of the rule, in whole or in part.

133. The annual reporting requirement set forth in the final rule will not have a significant economic impact on a substantial number of small entities. The requirement for annual reporting of physical natural gas transactions will have minimal impact on small entities. By incorporating a *de minimis* exemption into the regulations, the Commission has reduced the number of small entities subject to the requirements: *de minimis* entities without blanket sales certificates will not be required to report. This reporting requirement will affect small entities but the burden on them will be minimal. For each entity, small or otherwise, that is required to comply with the annual reporting requirement, the Commission estimates that the compliance would require a one-time cost of approximately $4,000 and an annual cost thereafter of $400. Although some costs would increase for market participants with a greater number of transactions, we expect that the increase would be likely offset because such entities would have already compiled information regarding their transactions in the aggregate. This amount is not a significant burden on small entities. The *de minimis* exemption provides a regulatory alternative that will reduce the economic impact on certain small entities from coverage of the rule. Accordingly, the Commission certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

IX. Document Availability

134. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m., eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

135. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

136. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

X. Effective Date and Congressional Notification

137. These regulations are effective February 4, 2008. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission will submit the final rule to both houses of Congress and to the General Accountability Office.

List of Subjects

18 CFR Part 260

Natural gas; Reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf; Natural gas; Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure; Electric power; Penalties; Pipelines; Reporting and recordkeeping requirements.

By the Commission.

Kimberly D. Bose,

Secretary.

■ For the reasons stated in the preamble, the Federal Energy Regulatory Commission, amends 18 CFR Chapter I as follows.

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

■ 2. Section 260.401 is added to read as follows:

§ 260.401 FERC Form No. 552, Annual Report of Natural Gas Transactions.

(a) *Prescription.* The annual reporting report for natural gas market participants, designated as FERC Form No. 552, is prescribed for the calendar year ending December 31, 2008 and each calendar year thereafter.

(b) *Filing requirements*—(1) *Who must file.* Unless otherwise exempted or granted a waiver by Commission rule or order, each natural gas market participant, i.e., any buyer or seller that engaged in wholesale, physical natural gas transactions the previous calendar year, must prepare and file with the Commission a FERC Form No. 552 pursuant to the definitions and general instructions set forth in that form. As a

[200] Order No. 486, *Regulations Implementing the National Environmental Policy Act*, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs, ¶ 30,783 (1987).

[201] 18 CFR 380.4(a)(5) & (a)(27).

[202] 5 U.S.C. 601–612.

de minimis exemption, a natural gas market participant is exempt from this filing requirement if:

(i) It does not hold a blanket sales certificate pursuant to § 284.402 of this chapter or a blanket unbundled sales certificate pursuant to § 284.284 of this chapter; and

(ii) It engages either in wholesale, physical natural gas sales that amount to less than 2,200,000 MMBtus for the previous calendar year *or* wholesale physical natural gas purchases that amount to less than 2,200,000 MMBtus for the previous calendar year.

(2) Form No. 552 must be filed as prescribed in § 385.2011 of this chapter as indicated in the General Instructions set out in the annual reporting form, and must be properly completed and verified. Each market participant must file Form No. 552 by May 1, 2009 for calendar year 2008 and by May 1 of each year thereafter for the previous calendar year. Each report must be prepared in conformance with the Commission's software and guidance posted and available for downloading from the FERC Web site (*http://www.ferc.gov*). One copy of the report must be retained by the respondent in its files.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

■ 3. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

■ 4. In § 284.288, paragraph (a) is revised to read as follows:

§ 284.288 Code of conduct for unbundled sales service.

(a) To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas indices, Seller must provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the *Policy Statement on Natural Gas and Electric Price Indices*, issued by the Commission in Docket No. PL03–3–000 and any clarifications thereto. Seller must notify the Commission as part of its FERC Form No. 552 annual reporting requirement in § 260.401 of this chapter whether it reports its transactions to publishers of electricity and natural gas indices. In addition, Seller must adhere to any other standards and requirements for price reporting as the Commission may order.

* * * * *

■ 5. In § 284.403, paragraph (a) is revised to read as follows:

§ 284.403 Code of conduct for persons holding blanket marketing certificates.

(a) To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas indices, Seller must provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the *Policy Statement on Natural Gas and Electric Price Indices*, issued by the Commission in Docket No. PL03–3–000 and any clarifications thereto. Seller must notify the Commission as part of its FERC Form No. 552 annual reporting requirement in § 260.401 of this chapter whether it reports its transactions to publishers of electricity and natural gas indices. In addition, must shall adhere to any other standards and requirements for price reporting as the Commission may order.

* * * * *

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 6. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a-825v, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352, 16441, 16451–16463; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

■ 7. In § 385.2011, paragraph (a)(11) is added to read as follows:

§ 385.2011 Procedures for filing in electronic media (Rule 2011).

(a) * * *

(11) FERC Form No. 552, Annual Report of Natural Gas Transactions.

Note: The following appendix will not be published in the *Code of Federal Regulations*.

Appendix A to Final Rule

BILLING CODE 6717–01–P

THIS FILING IS
Item 1: ☐ An Initial (Original) Submission OR ☐ Resubmission No. ___

Form No. 552
OMB No. 1902-0242
Expires (mm/dd/yyyy)

FERC TRANSACTION REPORT
FERC FORM No. 552: Annual Report of Natural Gas Transactions

These reports are mandatory under the Natural Gas Act, Section 23(a)(2), and 18 CFR Parts 260.401. Failure to report may result in criminal fines, civil penalties, and other sanctions as provided by law. The Federal Energy Regulatory Commission does not consider these reports to be of a confidential nature.

Exact Legal Name of Respondent (Company)	Year of Report End of

FERC FORM No. 552 (New)

INSTRUCTIONS FOR FILING THE FERC FORM NO. 552

GENERAL INFORMATION

I Purpose

FERC Form No. 552 collects transactional information from natural gas market participants. The filing of this information is necessary to provide information regarding the size of the physical gas market, the use of the natural spot markets, and the use of fixed and index price transactions. This form is considered to be a non-confidential public use form.

II. Who Must Submit

Wholesale natural gas buyers and sellers must fill out the form annually if they make use of a blanket sales certificate under § 284.402 or § 284.284 or if their natural gas purchases or sales were greater than 2.2 million (2,200,000) MMBtus in the reporting year.

If a natural gas market participant is required to fill out Form No. 552 because it makes use of a blanket sales certificate under § 284.402 or § 284.284, but its natural gas purchases and sales were each lower than 2.2 million (2,200,000) MMBtus in the reporting year, then it is not required to report the schedule of Form No. 552 that collects volumetric information.

III. What and Where to Submit

(a) Submit FERC Form No. 552 electronically through the submission software at http://www.ferc.gov/docs-filing/eforms.asp#552.

(b) The Corporate Officer Certification must be submitted electronically as part of the FERC Form No. 552 filing.

(c) Users may obtain additional blank copies of FERC Form No. 552 for reference free of charge from: http://www.ferc.gov/docs-filing/eforms.asp# 552. Copies may also be obtained from the Public Reference and Files Maintenance Branch, Federal Energy Regulatory Commission, 888 First Street, NE, Room 2A, Washington, DC 20426 or by calling (202) 502-8371.

IV. When to Submit:

The FERC Form No. 552 must be filed by May 1st of the year following the reporting year (18 C.F.R. § 260.401).

V. Where to Send Comments on Public Reporting Burden.

The public reporting burden for the FERC Form No. 552 collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data-needed, and completing and reviewing the collection of information. This estimate was noted in the Notice of Purposed Rulemaking and in the Final Rule (RM07-10-000) and addressed by commenters.

Filers may send additional comments regarding these burden estimates or any aspect of these collections of information, including suggestions for reducing burden, to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 (Attention: Information Clearance Officer); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission). No person shall be subject to any penalty if any collection of information does not display a valid control number (44 U.S.C. § 3512 (a)).

GENERAL INSTRUCTIONS

I. All respondents (i.e., wholesale natural gas buyers and sellers that make use of a blanket sales certificate under § 284.402 or § 284.284 or that purchase or sell more than 2.2 million (2,200,000) MMBtus in the reporting year) must identify themselves annually by filling-out the first part of Form No. 552.

II. Aggregation across affiliates is permitted, though not required. If a respondent is aggregating volumes across affiliates, the respondent must fill in the "Schedule of Reporting Companies" which lists those affiliates and a separate "Price Index Reporting" schedule for each affiliate.

III. Asset managers may not report aggregated information for their customers in Form No. 552.

IV. Report all gas quantities in Trillion British Thermal Unit (TBtu) unless the schedule specifically requires the reporting in another unit of measurement.

V. For reported volumes, enter whole numbers only, except where otherwise noted.

VI. Report volumes of physical natural gas as explained in the definitions.

VII. Complete each question fully and accurately, even if it has been answered in a previous report. Enter the word "None" where it truly and completely states the fact.

VIII. Enter the month, day, and year for all dates. Use customary abbreviations. **The "Date of Report" included in the header of each page is to be completed only for resubmissions** (see IX. below).

IX. For any resubmissions, submit the electronic filing using the form submission only. Please explain the reason for the resubmission in a footnote to the data field.

X. Footnote and further explain as necessary.

XI. Do not make references to reports of previous periods/years or to other reports in lieu of required entries, except as specifically authorized.

XII. For further assistance in filling out Form No. 552, Commission staff will maintain a list of current Reportable Locations with links to Price Index Publishers' descriptions of their processes for receiving price information and publishing indices on the ferc.gov website at http://www.ferc.gov/docs-filing/eforms.asp#552.

DEFINITIONS

I. Affiliate– An affiliate means a person who controls, is controlled by or is under common control with another person.

II. Blanket Certificate – A blanket certificate means either (i) a blanket marketing certificate granted to a person that is not an interstate pipeline pursuant to 18 CFR § 284.402 or (ii) a blanket certificate for unbundled sales service granted to an interstate pipeline pursuant to 18 CFR § 284.284.

III. Date of Report – The date the report is submitted to the Commission.

IV. Fixed Price – A "Physical Natural Gas" price determined by agreement between buyer and seller and not benchmarked to any other source of information. For example, Physical Basis transactions that directly refer to futures prices, for the purpose of this form, are not "Fixed Price" transactions.

V. Next-Day Delivery – Delivery of a transaction executed prior to NAESB nomination deadline (11:30am Central Prevailing Time) on one day for uniform physical delivery over the next pipeline day. Transactions done for Friday are usually for flow on Saturday, Sunday, and Monday inclusive. Trading patterns may vary in the case of holidays or the end of a month that occurs on a weekend. Commission staff will maintain links to "Price Index Publishers'" descriptions of their processes for receiving price information and publishing indices on the ferc.gov website at http://www.ferc.gov/docs-filing/eforms.asp# 552.

VI. Next-Month Delivery – Delivery of a transaction executed during the last five (5) business days of one month for uniform physical delivery over the next month.

VII. Physical Natural Gas – Natural gas transactions that contain an obligation to deliver natural gas at a specified location and at a specified time, with the exception of physically-delivered futures contracts. It is not necessary that natural gas actually be delivered under the transactions, only that the delivery obligation existed in the agreement when executed. Certain Physical Natural Gas transactions may not remain in existence through the time of delivery because they were traded away or "booked out." For purposes of this form, these transactions should be included whether they went to delivery or not. The Final Rule discusses a variety of particular instances. Among these, the following physical natural gas volumes should be *included* in volumetric data submitted in the Form No. 552:

a. cash-out, imbalance makeup and operational volumes reported by pipelines; and

b. volumes attributable to royalty-in-kind transactions, gas provided for processing such as plant thermal reduction, and purchases and sales related to the production and gathering function.

The following physical natural gas volumes should be *excluded* in volumetric data submitted in the Form No. 552:

a. sales to and purchases by end-users,

b. sales or purchases outside the United States of America,

c. transactions take place among affiliates,

d. any type of financially-settled transaction,

e. volumes traded in futures contracts, even those that go to physical delivery, and

f. volumes of imported LNG traded prior to regasification and exported LNG traded after liquefaction.

VIII. Price Index Publisher – Companies that report price indices for U.S. wholesale natural gas markets. The list of companies can change over time. Commission staff will maintain a list of relevant "Price Index Publishers" with links to their descriptions of their processes for receiving price information and publishing indices on the ferc.gov website at http://www.ferc.gov/docs-filing/eforms.asp# 552.

IX. Prices that Refer to (Daily or Monthly) Price Indices – Prices for "Wholesale Natural Gas Purchases" or "Sales" that reference directly a daily or monthly index price published by a "Price Index Publisher" rather than a "Fixed Price" or a price that refers directly to some other benchmark.

X. Quantity – Amount of purchases or sales expressed in units of energy "British Thermal Units" (Btu). One million BTUs (MMBtu) are, by definition, the same as one Dekatherm (Dth). A volume of one billion cubic feet (Bcf) of natural gas contains approximately one trillion Btus (TBtu or million MMBtu) of energy depending on the exact energy content of the natural gas. The quantities to be reported in the "Purchase and Sales Information" schedule should be measured in TBtus.

XI. Reportable Locations – Those locations (hubs, pipelines, regions, etc.) where "Price Index Publishers" collect "Fixed Price" information for transactions with "Next-Day" or "Next-Month Delivery" obligations, and produce index prices. These locations may change over time. Commission staff will maintain a list of current "Reportable Locations" with links to "Price Index Publishers" descriptions of their processes for receiving price information and publishing indices on the ferc.gov website at http://www.ferc.gov/docs-filing/eforms.asp# 552.

XII. Reporting Company – The person, corporation, licensee, agency, authority, or other legal entity or instrumentality on whose behalf the report is being submitted by the "Respondent."

XIII. Respondent – The person, corporation, licensee, agency, authority, or other legal entity or instrumentality that is submitting the report either on its own behalf, or on behalf of itself and/or its affiliates. A Respondent may choose to either report for all its affiliates collectively, or may choose to have each of its affiliates report separately as their own "Respondent." If reporting collectively, the reporting "Respondent" and must report for each "Affiliate" in the "Schedule of Reporting Companies" and the "Price Index Reporting Schedule," and collectively for all its affiliates in the "Purchase and Sales Information" schedule.

XIV. Wholesale Natural Gas Purchases – The "Quantity" of "Physical Natural Gas" purchased by the "Reporting Company" during the "Year of Report," with the exception of certain futures contracts. Purchases by end users should be excluded.

XV. Wholesale Natural Gas Sales – The "Quantity" of "Physical Natural Gas" sold by the "Reporting Company" during the "Year of Report" to customers that do not use all the natural gas they buy themselves under contracts with physical delivery obligations, with the exception of physically-delivered futures contracts. Purchases by end users should be excluded.

XVI. Year of Report – The calendar year for which the report is being submitted.

ANNUAL REPORT OF NATURAL GAS TRANSACTIONS

IDENTIFICATION OF RESPONDENT		
01 Exact Legal Name of Respondent	02 Year of Report End of	
03 Previous Name and Date of Change (If name changed during year)		
04 Address of Principal Office at End of Year (Street, City, State, Zip Code)		
05 Name of Contact Person	06 Title of Contact Person	
07 Address of Contact Person (Street, City, State, Zip Code)		
08 Email Address of Contact Person		
09 Telephone of Contact Person, Including Area Code	10 This Report is: (1) ☐ An Original (2) ☐ A Resubmission	11 Date of Report (MM,DD,YYYY)

ANNUAL CORPORATE OFFICER CERTIFICATION	
The undersigned officer certifies that: I have examined this report and to the best of my knowledge, information, and belief all statements of fact contained in this report are accurate and complete statements of the business affairs of the respondent.	
12 Name	13 Title
14 Signature	15 Date Signed
Title 18, U.S.C. 1001, makes it a crime for any person knowingly and willingly to make to any Agency or Department of the United States any false, fictitious or fraudulent statements as to any matter within its jurisdiction.	

Name of Respondent*	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report* (Mo, Da, Yr) / /	Year/Period of Report* End of Year/Qtr

List of Schedules

Enter in column (d) the terms "none," "not applicable," or "NA" as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the responses are "none," "not applicable," or "NA."

Line No.	Title of Schedule (a)	Reference Page No. (b)	Date Revised (c)	Remarks (d)
1	Schedule of Reporting Companies	3		
2	Price Index Reporting	4		
3	Purchases and Sales Information	5		
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Name of Respondent*	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report* (Mo, Da, Yr) / /	Year/Period of Report* End of Year/Qtr

Schedule of Reporting Companies

If the Respondent is reporting collectively for multiple affiliates*, list the exact legal name of those affiliate in this form. Respondent should complete the next schedule, Price Index Reporting, for each of these companies separately. Respondent should complete the "Purchase and Sales Information" schedule only once for these companies collectively.

* An asterisk means that the previous term is explained in more detail in the definitions.

Line No.	List the Exact Legal Names of all Affiliates* Reported by Respondent* below (a)
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Name of Respondent*	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report* (Mo, Da, Yr) / /	Year/Period of Report* End of Year
Name of Reporting Company*	Reporting Company is: (1) ☐ Same as Respondent (2) ☐ An affiliate of Respondent (other affiliates reported separately)		

Price Index Reporting

Even if the Respondent is reporting collectively for multiple affiliate, the Respondent still must complete this schedule for **each** of its affiliates separately.

When answering yes/ no questions, to select yes enter 1 in the yes column and 0 in the no column of the appropriate row. To select no enter 1 in the no column and 0 in the yes column of the appropriate row.

* An asterisk means that the previous term is explained in more detail in the definitions.

Line No.	Question (a)	Yes (b)	No (c)
1	At any time during the report year, did the Reporting Company* operate under a Blanket Certificate*?		
2	Did the Reporting Company report any transaction information to price index publishers* during the report year*?		
3	If no on either lines 1 or 2, skip the question on line 4 and move to line 5.		
4	If yes on line 2, did the Reporting Company's reporting comply with the regulations governing reporting to price index publishers pursuant to 18 CFR § 284.403?		
5	Were the Reporting Company's* total wholesale natural gas purchases* greater than 2.2 TBtu for the Report Year*?		
6	Were the Reporting Company's* total wholesale natural gas sales* greater than 2.2 TBtu delivered in the Report Year?		
7	If no on both lines 5 and 6, Reporting Company is not required to go to the next schedule and has completed Form No. 552. If yes on either line 5 or 6, Reporting Company is required to complete the next schedule		

Name of Respondent*	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report* (Mo, Da, Yr) / /	Year/Period of Report* End of Year
Name of Reporting Company*	Reporting Company is: (1) ☐ Same as Respondent (2) ☐ An affiliate of Respondent (other affiliates reported separately)		

Purchase and Sales Information

If the Respondent is reporting collectively for multiple affiliates, the Respondent should complete this schedule for all of its affiliate companies collectively.

* An asterisk means that the previous term is explained in more detail in the definitions.

Line No.	Item (a)	Purchases (TBtu) (b)	Sales (TBtu) (c)
1	How much physical natural gas* did the Respondent buy and sell in the prior calendar year?		
2	Of the amounts reported on line 1, what quantities were contracted at fixed prices* for next-day delivery* at locations reportable* to publishers of next-day gas price indices*?		
3	Of the amounts reported on line 1, what quantities were contracted at prices that refer to* published next-day gas price indices?		
4	Of the amounts reported on line 1, what quantities were contracted at fixed prices for next-month delivery* at locations reportable (see definition) to publishers of next-month gas price indices?		
5	Of the amounts reported on line 1, what quantities were contracted at prices that refer to published next-month gas price indices?		
6	Of the amounts reported on line 1, what quantities were not contracted at fixed prices for next-day delivery nor fixed prices for next-month delivery at locations reportable to publishers of gas price indices, nor were they contracted at prices that refer to published next-day or next-month gas price indices?		
7	If there is a difference between Respondent's purchases reported on line 6 and its purchases reported on line 1 less purchases on lines 2, 3, 4 and 5, please explain the difference in the space below.		
8	If there is a difference between Respondent's sales reported on line 6 and its sales reported on line 1 less sales on lines 2, 3, 4 and 5, please explain the difference in the space below.		

[FR Doc. E7–25478 Filed 1–3–08; 8:45 am]
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Friday, January 4, 2008

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Service Contract Act; exemption of certain service contracts; comments due by 1-7-08; published 11-7-07 [FR 07-05481]

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H.R. 365/P.L. 110–143
Methamphetamine Remediation Research Act of 2007 (Dec. 21, 2007; 121 Stat. 1809)

H.R. 710/P.L. 110–144
Charlie W. Norwood Living Organ Donation Act (Dec. 21, 2007; 121 Stat. 1813)

H.R. 2408/P.L. 110–145
To designate the Department of Veterans Affairs outpatient clinic in Green Bay, Wisconsin, as the "Milo C. Huempfner Department of Veterans Affairs Outpatient Clinic". (Dec. 21, 2007; 121 Stat. 1815)

H.R. 2671/P.L. 110–146
To designate the United States courthouse located at 301 North Miami Avenue, Miami, Florida, as the "C. Clyde Atkins United States Courthouse". (Dec. 21, 2007; 121 Stat. 1816)

H.R. 3703/P.L. 110–147
To amend section 5112(p)(1)(A) of title 31, United States Code, to allow an exception from the $1 coin dispensing capability requirement for certain vending machines. (Dec. 21, 2007; 121 Stat. 1817)

H.R. 3739/P.L. 110–148
To amend the Arizona Water Settlements Act to modify the requirements for the statement of findings. (Dec. 21, 2007; 121 Stat. 1818)

H.J. Res. 72/P.L. 110–149
Making further continuing appropriations for the fiscal year 2008, and for other purposes. (Dec. 21, 2007; 121 Stat. 1819)

S. 597/P.L. 110–150
To amend title 39, United States Code, to extend the authority of the United States Postal Service to issue a semipostal to raise funds for breast cancer research. (Dec. 21, 2007; 121 Stat. 1820)

S. 888/P.L. 110–151
Genocide Accountability Act of 2007 (Dec. 21, 2007; 121 Stat. 1821)

S. 2174/P.L. 110–152
To designate the facility of the United States Postal Service located at 175 South Monroe Street in Tiffin, Ohio, as the "Paul E. Gillmor Post Office Building". (Dec. 21, 2007; 121 Stat. 1823)

S. 2371/P.L. 110–153
To amend the Higher Education Act of 1965 to make technical corrections. (Dec. 21, 2007; 121 Stat. 1824)

S. 2484/P.L. 110–154

To rename the National Institute of Child Health and Human Development as the Eunice Kennedy Shriver National Institute of Child Health and Human Development. (Dec. 21, 2007; 121 Stat. 1826)

S.J. Res. 8/P.L. 110–155

Providing for the reappointment of Patricia Q. Stonesifer as a citizen regent of the Board of Regents of the Smithsonian Institution. (Dec. 21, 2007; 121 Stat. 1829)

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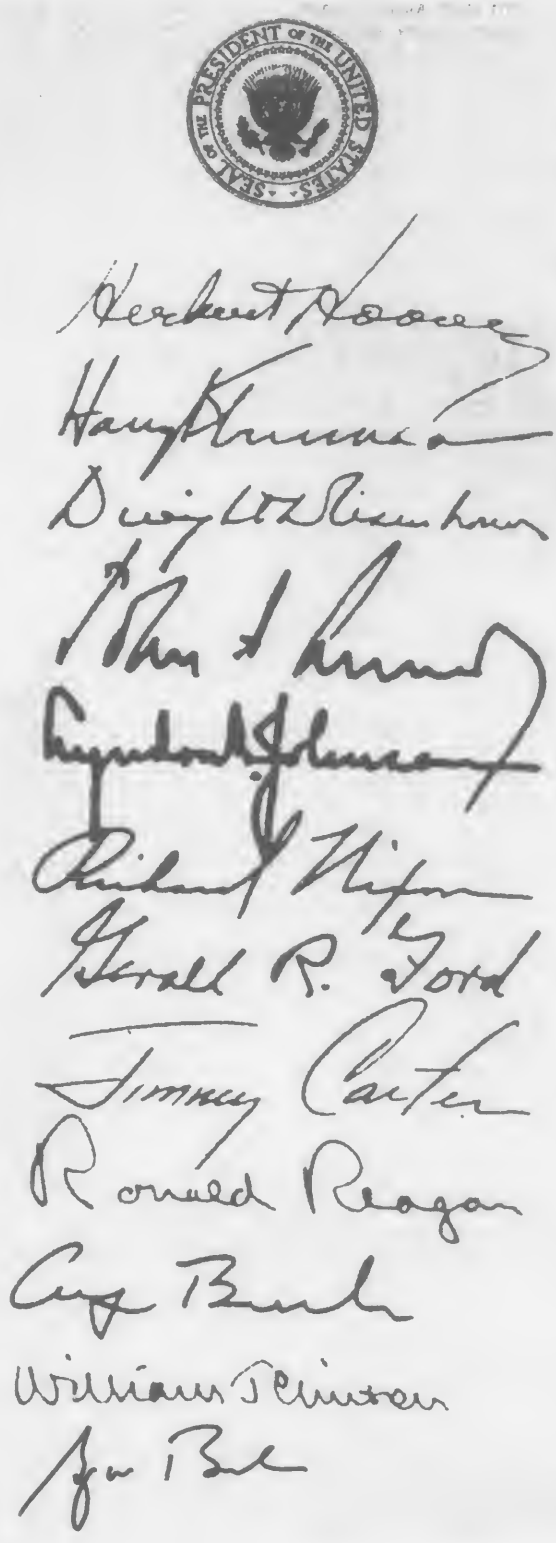

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110th Congress

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