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WASHINGTON, DC

WHEN: March 24, 1998 at 9:00 am.
WHERE: Office of the Federal Register
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800 North Capitol Street NW.
Washington, DC
(3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

SALT LAKE CITY, UT

WHEN: April 9, 1998 at 9:00 am.
WHERE: State Office Building Auditorium
State Office Building, Capitol Hill
(Just north of Capitol)
Salt Lake City, UT
RESERVATIONS: Call the Federal Information Center
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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 32, 40, 50, 52, 60, 61, 70, 71, 72, 110, and 150

RIN 3150–AF35

Deliberate Misconduct by Unlicensed Persons; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on January 13, 1998 (63 FR 1890). This action is necessary to correct an erroneous citation.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, D.C. 20555-0001, telephone 301–415–7162, e-mail dlm1@nrc.gov.

SUPPLEMENTARY INFORMATION:

On page 1890, in the third column, in the 16th line from the top, "71.az" is corrected to read "71.7(a)."

Dated at Rockville, Maryland, this 17th day of March 1998.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 98–7426 Filed 3–20–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM146; Special Conditions No. 25–136–SC]

Special Conditions: McDonnell Douglas DC–10–10,–30 Airplane; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for McDonnell Douglas DC–10–10,–30 airplanes modified by Innovative Solutions & Support, Inc. (IS&S). These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is March 9, 1998. Comments must be received on or before May 7, 1998.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM146, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM146. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM146." The postcard will be date stamped and returned to the commenter.

Background

On July 15, 1997, Innovative Solutions & Support, Inc. applied for a supplemental type certificate (STC) to modify McDonnell Douglas DC–10–10,–30 airplanes listed on Type Certificate A22WE. The modification incorporates the installation of a digital electronic altimeter for display of critical flight parameters (altitude) to the crew. These displays can be susceptible to disruption to both command/response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and annunciations or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR § 21.101, Innovative Solutions & Support, Inc. must show that the McDonnell Douglas DC–10–10,–30 airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type certificate No. A22WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly

referred to as the "original type certification basis." The certification basis for the modified McDonnell Douglas DC–10–10,–30 airplane includes 14 CFR part 25, dated February 1, 1965, with Amendments 1 through 22 "Airworthiness Standards: Transport Category Airplanes", § 25.471 of Amendment 25–23, part 36 "Noise Standards: Aircraft Type Certification," Special Conditions No. 25–18–WE–7 dated January 7, 1970, Special Condition No. 25–18–WE–7, Amendment No. 1, dated July 9, 1971, and Special Condition No. 25–46–WE–14 dated October 26, 1972.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the McDonnell Douglas DC–10–10,–30 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with 14 CFR § 11.49 after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Innovative Solutions & Support, Inc. apply at a later date for design change approval to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The modified McDonnell Douglas DC–10–10,–30 will incorporate a new electronic altimeter system that performs critical functions. This system may be vulnerable to HIRF external to the airplane.

Discussion

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

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the McDonnell Douglas DC–10–10,–30, which require that new electrical and electronic systems, such as the EFIS, that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

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

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

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

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

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

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

Frequency	Peak (V/M)	Average (V/M)
10 KHz—100 KHz	50	50
100 KHz—500 KHz	60	60
500 KHz—2 MHz	70	70
2 MHz—30 MHz	200	200
30 MHz—100 MHz	30	30
100 MHz—200 MHz	150	33
200 MHz—400 MHz	70	70
400 MHz—700 MHz	4,020	935
700 MHz—1 GHz	1,700	170
1 GHz—2 GHz	5,000	990
2 GHz—4 GHz	6,680	840
4 GHz—6 GHz	6,850	310
6 GHz—8 GHz	3,600	670
8 GHz—12 GHz	3,500	1,270
12 GHz—18 GHz	3,500	360
18 GHz—40 GHz	2,100	750

Applicability

As discussed above, these special conditions are applicable to McDonnell Douglas DC–10–10,–30 airplanes modified by Innovative Solutions & Support. Should Innovative Solutions & Support, Inc. apply at a later date for design change approval to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on McDonnell Douglas DC–10–10,–30 airplanes modified by Innovative Solutions & Support, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for McDonnell Douglas DC–10–10,–30 airplanes modified by Innovative Solutions & Support, Inc. (IS&S).

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

exposed to high intensity radiated fields.

For the purpose of these special conditions, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on March 9, 1998.

Darrell M. Pederson,

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

[FR Doc. 98–7381 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–176–AD; Amendment 39–10412; AD 98–06–33]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 1000 Through 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 1000 through 4000 series airplanes, that requires replacing certain flexible hydraulic hoses that connect to the UP-port of the actuator of each main landing gear (MLG) with certain new flexible hoses that have built-in restrictor check-valves. This amendment is prompted by results of tests, which indicate that, for airplanes on which restrictor check-valves are not installed, sudden movement of the actuator of the MLG, which could occur under extreme inward sideload conditions (such as touching down at a large crab angle), may pressurize the downlock-actuator and lift the MLG toggle-links. The actions specified by this AD are intended to prevent such pressurization of the downlock-actuator and consequent lifting of the toggle-links, which could result in collapse of the MLG and reduced controllability of the airplane during landing.

DATES: Effective April 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 27, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 1000 through 4000 series airplanes was published in the **Federal Register** on June 10, 1997 (62 FR 31536). That action proposed to require replacing certain flexible hydraulic hoses that connect to the UP-port of the actuator of each main landing gear (MLG) with certain new flexible hoses that have built-in restrictor check-valves.

Comments

Interested persons were afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Shorten Compliance Time

One commenter supports the proposed AD, but believes the compliance period should be less than 12 months. In addition, the commenter believes that, in the event the proposed compliance time cannot be changed, it would be beneficial to advise pilots operating the affected airplanes to be particularly cautious about landing with a crab angle. The commenter notes that since the proposed AD fails to define what is meant by "significant crab angle," pilots are uncertain as to whether the crab angle they choose to use is above or below the safe threshold.

The FAA does not concur with the commenter's request to shorten the compliance time. The primary concern in developing the proposed compliance time was the degree of urgency of the unsafe condition. Other practical considerations were also taken into account. Those include the availability of the required parts and the time needed for the majority of the affected operators to install the required modification within a time interval coinciding with normal scheduled maintenance. In addition, the proposed compliance time is consistent with the parallel document issued by the airworthiness authority of the state of design of the airplane, Dutch airworthiness directive 94–095(A), dated July 15, 1995, and with the manufacturer's recommendations. A compliance time of 12 months is, therefore, adopted as proposed.

The incident that precipitated this AD action, the collapse of a main landing gear on a similar Fokker Model F28 Mark 0100 airplane, occurred due to touchdown at a relatively large "crab" angle. Following subsequent investigation, it was concluded that a failure of this nature could only occur under extreme inward side-load conditions that are rarely encountered in service. Currently, no crab angle limitations have been established for the affected airplanes. Because of considerations other than structural integrity of the main landing gear, there are, however, existing limitations concerning landing in cross winds. The FAA concludes that, since normal cross wind landing technique involves adjusting the airplane heading at touchdown as necessary to reduce or eliminate the crab angle, no further limitation or cautionary information is needed in this regard.

Request to Withdraw the Proposal

The Air Transport Association (ATA) of America, on behalf of one of its members, states that its member does not object to the proposed AD, but believes that it is unnecessary. According to the commenter, the changes that would be required were accomplished during production of each of its affected airplanes.

The FAA infers from these remarks that the commenter requests the proposed AD be withdrawn. The FAA does not concur with this request. Since this AD states that compliance is "required as indicated, unless accomplished previously," no further action would be required for any airplane that already incorporates the required change. Nevertheless, the AD must be issued because there may be other airplanes of these models in service in this country or imported into this country that have not incorporated the required change.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air

safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 37 Fokker Model F28 Mark 1000 through 4000 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $3,554 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $140,378, or $3,794 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding the following new airworthiness directive:

98–06–33 Fokker: Amendment 39–10412. Docket 96–NM–176–AD.

Applicability: Fokker Model F28 Mark 1000 through 4000 series airplanes, equipped with flexible hydraulic hoses, part number (P/N) A71462–401; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent pressurization of the downlock-actuator during extreme inward sideload conditions (such as touching down at a large crab angle) and consequent lifting of the toggle-links of the main landing gear (MLG), which could result in the collapse of the MLG and reduced controllability of the airplane during landing, accomplish the following:

(a) Within 12 months after the effective date of this AD, replace the flexible hydraulic hoses, P/N A71462–401, that connect to the UP-port of the actuator of the MLG with new flexible hoses, P/N 97867–1, that have built-in restrictor check-valves, in accordance with Fokker Service Bulletin F28/32–123, Revision 1, dated June 30, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Fokker Service Bulletin F28/32–123, Revision 1, dated June 30, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA 94–095 (A), dated July 15, 1994.

(e) This amendment becomes effective on April 27, 1998.

Issued in Renton, Washington, on March 12, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7093 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–212–AD; Amendment 39–10419; AD 98–07–01]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace BAe Model ATP airplanes, that requires inspections and tests for damage of the engine power cables, and replacement of any damaged cable with a new cable. This amendment also provides for optional modification of the engine power control cable pulley assembly. This amendment is prompted by a report of failure of an engine power cable, which could cause loss of function of the power control levers on the console. The actions specified by this AD are intended to prevent loss of function of the power control levers on the console, and subsequent loss of normal control of engine power.

DATES: Effective April 27, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of April 27, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes was published in the **Federal Register** on September 13, 1995 (60 FR 47501). That action proposed to require inspections and tests for damage of the engine power cables, and replacement of any damaged cable with a new cable.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Actions Since Issuance of Proposal

Since the issuance of the proposal, the manufacturer has issued British Aerospace Service Bulletin ATP–76–18, dated June 21, 1995, which describes procedures for the modification of the engine power control cable pulley assembly. The modification involves increasing the diameter of the pulley of the engine power control quadrant's lower pulley group between stations 398FS to 408FS from 1.5 inches to 2.36 inches, and repositioning of the lower pulley group slightly forward and upward. The service bulletin specifies that, if accomplished, this modification would extend the fatigue life of the engine power control cables, and would allow the repetitive inspection interval to be increased from 1,000 landings to 5,000 landings. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified this service bulletin as optional.

The FAA has revised this final rule to add accomplishment of this modification as an option to permit extension of the repetitive inspection interval specified in this AD. Additionally, the cost impact information, below, has been revised to specify the number of work hours that would be required to accomplish the optional modification.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,200, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional modification provided by this AD, it would take approximately 80 work hours per airplane to accomplish it, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this optional modification is estimated to be $4,800 per airplane.

Regulatory Impact

The regulations adopted herein will not 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding the following new airworthiness directive:

98–07–01 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited, British Aerospace (Commercial Aircraft) Limited]: Amendment 39–10419. Docket 94–NM–212–AD.

Applicability: BAe Model ATP airplanes, constructor's numbers 2002 through 2063 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of function of the power control levers on the console, and subsequent loss of normal control of engine power due to failure of the engine power cables, accomplish the following:

(a) Perform a detailed visual inspection and tests for damage of the engine power cables, in accordance with Jetstream Service Bulletin ATP–76–16, dated October 14, 1994,

at the earlier of the times specified in paragraphs (a)(1) and (a)(2) of this AD. Thereafter repeat this inspection and tests at intervals not to exceed 1,000 landings.

(1) Prior to the accumulation of 1,000 total landings on the engine power cable, or within 200 landings after the effective date of this AD, whichever occurs later.

(2) Within 75 days after the effective date of this AD.

(b) If any damaged engine power cable is found, prior to further flight, replace the damaged engine power cable with a new cable in accordance with Jetstream Service Bulletin ATP–76–16, dated October 14, 1994. Except as provided by paragraph (c) of this AD, repeat the inspection and tests required by paragraph (a) of this AD thereafter at intervals not to exceed 1,000 landings.

(c) Modification of the engine power control cable pulley assembly in accordance with British Aerospace Service Bulletin ATP–76–18, dated June 21, 1995, allows the interval for accomplishment of the repetitive inspection and tests required by paragraph (a) of this AD to be increased to 5,000 landings.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection, tests, and replacement shall be done in accordance with Jetstream Service Bulletin ATP–76–16, dated October 14, 1994. The modification, if accomplished, shall be done in accordance with Jetstream Service Bulletin ATP–76–18, dated June 21, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on April 27, 1998.

Issued in Renton, Washington, on March 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7365 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–61]

Modification of Class D Airspace; Minot AFB, ND; and Class E Airspace; Minot, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Minot Air Force Base (AFB), ND, and Class E airspace at Minot, ND. A review of the Instrument Landing System (ILS) 1 or Tactical Air Navigation (TACAN) Runway 29 Standard Instrument Approach Procedure (SIAP), the Instrument Landing System/Distance Measuring Equipment (ILS/DME) 2 Runway 29 SIAP, the ILS/DME Runway 11 SIAP, and the TACAN Runway 11 SIAP for Minot AFB necessitates these modifications. Controlled airspace extending upward from the surface, controlled airspace extending upward from 700 feet above ground level (AGL), and controlled airspace extending upward from 1,200 feet AGL is needed to contain aircraft executing these approaches. This proposal would increase the radius and remove the extensions to the Class D airspace for Minot AFB, ND, and would increase the radius and add a northwest extension to that portion of the Minot, ND, Class E airspace associated with Minot AFB, ND.

EFFECTIVE DATE: 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, December 22, 1997, the FAA proposed to amend 14 CFR part 71 to modify Class D airspace at Minot AFB, ND, and Class E airspace at Minot, ND (62 FR 66838). A recent joint FAA/Air Force review of the controlled airspace for Minot AFB revealed a need to reinstate controlled airspace inadvertently dropped during the 1993 United States airspace reclassification. This action was completed by Final Rule on November 5, 1997 (97–AGL–59, 62 FR 59783). Further review of the current instrument approach procedures for Minot AFB, including the ILS 1 or TACAN Runway 29 SIAP, the ILS/DME 2 Runway 29 SIAP, the ILS/DME Runway 11 SIAP, and the TACAN Runway 11 SIAP, indicated the need to modify the existing controlled airspace. The proposal was to increase the radius and remove the extensions to the Class D airspace for Minot AFB, ND, and to increase the radius and add a northwest extension to that portion of the Minot, ND, Class E airspace associated with Minot AFB, ND to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000, and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class D airspace at Minot AFB, ND and Class E airspace at Minot, ND, to accommodate aircraft executing the ILS 1 or TACAN Runway 29 SIAP, the ILS/DME 2 Runway 29 SIAP, the ILS/DME Runway 11 SIAP, and the TACAN Runway 11 SIAP, and IFR operations at Cooperstown Municipal Airport by increasing the radius and removing the extensions to the Class D airspace for Minot AFB, ND, and by increasing the radius and adding a northwest extension to that portion of the Minot, ND, Class E airspace associated with Minot AFB, ND. The areas will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AGL ND D Minot AFB, ND [Revised]

Minot AFB, ND
(Lat. 48°24'56" N, long. 101°21'28" W)

That airspace extending upward from the surface to and including 4,200 feet MSL and within a 5.3-mile radius of Minot AFB. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL ND E5 Minot, ND [Revised]

Minot AFB, ND
(Lat. 48°24'56" N, long. 101°21'28" W)
Deering TACAN
(Lat. 48°24'55" N, long. 101°21'58" W)
Minot International Airport, ND
(Lat. 48°15'34" N, long. 101°16'52" W)
Minot VORTAC
(Lat. 48°15'37" N, long. 101°17'14" W)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Minot AFB and within 1.5 miles each side of the Deering TACAN 292 deg. radial extending from the 7.1-mile radius to 9.3 miles northwest of the airport and that airspace within a 7.0-mile radius of Minot International Airport and within 4.8 miles each side of the Minot VORTAC 138 deg. radial extending from the 7.0-mile radius to 12.1 miles southeast of the VORTAC and that airspace extending upward from 1,200 feet above the surface within a 47-mile radius of Minot AFB, excluding the area north of latitude 49 deg.00'00"N.

* * * * *

Issued in Des Plaines, Illinois on March 12, 1998.

Maureen Woods,

Manager, Air Traffic Division

[FR Doc. 98–7405 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–18]

Amendment of Class E Airspace; Sheridan, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The direct final rule published on January 29, 1998 (63 FR 4391) changes the Sheridan, WY, Class E airspace legal description from part-time to continuous. A review of the airspace for Sheridan Airport reveals a need for continuous use as indicated in the Airport/Facility Directory (A/F D).

EFFECTIVE DATE: The direct final rule published at 63 FR 4391 is effective 0901 UTC, April 29, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION: The FAA published the direct final rule with a request for comments in the **Federal Register** on January 29, 1998 (63 FR 4391). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. The comment period ended March 2, 1998. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 29, 1998. No adverse comments were received, and thus this document confirms that the final rule will become effective on that date.

Issued in Seattle, Washington, on March 12, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–7409 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–06]

Amendment of Class E Airspace; Colorado Springs, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action changes the name of the VORTAC navigational aid in the Colorado Springs, CO, Class E3 airspace legal description from Colorado Springs VORTAC to Black Forest VORTAC. The name change for the VORTAC is for safety reasons and does not affect the existing boundaries of the airspace.

DATES: Effective 0901 UTC, June 18, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 4, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ANM–520, Federal Aviation Administration, Docket Number 98–ANM–06, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined in the Office of the Regional Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No.

98–ANM–06, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION: This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) changes the name of the VORTAC navigational aid in the Colorado Springs, CO, Class E3 airspace legal description from Colorado Springs VORTAC to Black Forest VORTAC. The Colorado Springs VORTAC is located 9 miles north of the City of Colorado Springs Municipal Airport. The VORTAC name is inconsistent with current standards which require the off airport navigation aids not have the airport name for aeronautical safety reasons. The actual VORTAC name change to Black Forest will be effective April 23, 1998. This action updates the name in the legal description. The dimensions and operating requirements of the airspace remain the same.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket area based on North American Datum 83. Class E airspace designated as an extension to a Class C surface area are published in Paragraph 6003 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive within the comment period an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket Number and be submitted in triplicate to the address specified under the caption **ADDRESS.** All communications received on or before the closing date for comments will be considered. This rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions are extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date, for comments in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. 98–ANM–06." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6003 Class E Airspace designated as an extension to a Class C surface area.

* * * * *

ANM CO E3 Colorado Springs, CO [Revised]

City of Colorado Springs Municipal Airport, CO
(Lat. 38°48′21″ N, long. 104°42′01″ W)
Black Forest VORTAC
(Lat. 38°56′24″ N, long. 104°38′00″ W)

That airspace extending upward from the surface within 1.8 miles of each side of the Black Forest VORTAC 205° radial extending from the 5-mile radius of the City of Colorado Springs Municipal Airport to the VORTAC and within 1.4 miles each side of the Colorado Springs Runway 17 ILS localizer course extending from the 5-mile radius of the airport to 7.7 miles north of the airport.

* * * * *

Issued in Seattle, Washington, on March 12, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–7408 Filed 3–20–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–033–FOR]

Maryland Regulatory Program

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

ACTION: Final rule; approval of amendment; removal of required amendments.

SUMMARY: OSM is approving a proposed amendment to the Maryland regulatory program (hereinafter referred to as the "Maryland program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Maryland proposed revisions to the Maryland regulations pertaining to excess spoil disposal, conditions of surety and collateral bonds, and procedures for release of general bonds. The amendment is intended to authorize the use of excess spoil from a valid, permitted coal mining operation for the reclamation of an abandoned unreclaimed area outside of the permit area, and to revise the Maryland program regarding conditions and procedures for collateral bonds and release of bonds to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: March 23, 1998.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 18, 1982, **Federal Register** (47 FR 7217). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 920.12, 920.15 and 920.16.

II. Description of the Proposed Amendment

Maryland provided an informal amendment to OSM regarding placement of excess spoil on adjacent abandoned mine lands on March 11, 1994. OSM completed its reviews of the informal amendment and requested a formal proposal from Maryland in a letter dated August 6, 1996. By letter dated January 7, 1997 (Administrative Record No. MD–576–00), Maryland submitted a proposed amendment to its program pursuant to SMCRA at OSM's request, and to comply with the required amendment identified at 30 CFR 920.16(o).

Additionally, by letter dated January 14, 1997 (Administrative Record No. MD–552–13), Maryland submitted proposed amendments to its program pursuant to SMCRA. These amendments pertain to conditions of collateral bonds, and procedures for release of general bonds, and are intended to comply with required program amendments identified in 30 CFR 920.16 (k) and (m). By letter dated February 4, 1997 (Administrative Record No. MD–552–16), Maryland clarified certain provisions of the proposed amendment. Because the information in this letter only reverted part of the proposed amendment to its previous form, it did not constitute a major revision of the original submission. Therefore, OSM did not reopen the comment period at that time.

OSM announced receipt of the proposed amendments in the January 30, 1997, **Federal Register** (62 FR 4502), and in the same document opened the public comment period and provided an opportunity for public hearing on the adequacy of the proposed amendment. The public period closed on March 3, 1997. OSM's review of the proposed amendment determined that several items contained in the proposed amendments required clarification. As a result, a letter requesting clarification on four items was sent to Maryland dated June 13, 1997 (Administrative Record No. MD–576–05). Maryland responded in its letter dated June 27, 1997, (Administrative Record No. MD 576–06), by requesting a meeting with OSM and stating that additional information would not be available until after that meeting. A meeting was held on August 14, 1997, and a response was received from Maryland in its letter dated December 8, 1997 (Administrative Record No. MD–576–07). Because of the clarifications provided by Maryland, OSM announced a reopening of the public comment period until February 4, 1998, in the January 20, 1998, **Federal Register** (63 FR 2919).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment. Revisions not specifically discussed below concern nonsubstantive wording changes and paragraph notations to reflect organizational changes resulting from this amendment.

1. COMAR 26.20.26, Excess Spoil Disposal

Specifically, Maryland proposes to add new regulation .05 entitled "Placement of Excess Spoil on Abandoned Mine Land" to Chapter 26, Excess Spoil Disposal as follows:

a. New subparagraph A and items (1) through (5) state that excess spoil from a permitted coal mining operation may be placed on abandoned mine land outside of the permit area if Maryland Department of the Environment, the regulatory authority in Maryland (Department) determines that the abandoned mine land is eligible for funding under Environment Article, Title 15, Subtitle 11, Annotated Code of Maryland; the abandoned mine land is referenced in the permit application and identified on the permit map; the plan for the placement of such spoil meets the design requirements of Maryland's approved program; the legal right to enter upon the abandoned mine land and to place excess spoil on the area has been obtained from the surface owner; and the excess spoil will be placed in accordance with the provisions of a contract executed between the Department and the permittee for reclamation of the abandoned mine land. In its letter of clarification dated December 8, 1997 (Administrative Record No. MD–576–07), Maryland stated that as an additional safeguard any default by the operator on a contract or a failure to perform reclamation could be funded by specially earmarking a portion of Maryland's AML grant funds to complete the reclamation.

b. New subparagraph B, entitled "Reclamation Standards", and items (1) through (4), are added to require that excess spoil beyond the amount required to restore the abandoned mine land to its original contour may not be placed on the abandoned mine land; the final configuration of the excess spoil that is placed on the abandoned mine land area outside of the permit area shall be compatible with the natural surroundings and be suitable for the

intended land use; valley, head of hollow, or durable rock fills may not be constructed on the abandoned mine land; and that placement of excess spoil from a permit area on abandoned mine land shall be planned and implemented in accordance with the requirements of Maryland's approved program.

c. New subparagraph C and items (1) through (5) provide that placement of excess spoil from a permit area on abandoned mine land outside of a permit area may not be approved unless the Department finds in writing, on the basis of information set forth in the plan or otherwise available, that: placement of the excess spoil and reclamation of the abandoned mine land can be feasibly accomplished in accordance with the plan submitted by the operator; the excess spoil placement operation has been designed to prevent damage to the hydrologic balance outside of the abandoned mine land; the excess spoil placement operation will not adversely affect any publicly owned parks or places included in the National Register of Historic Places, unless approved by the appropriate jurisdictional agency; the applicant has submitted documentation establishing a legal right to enter and conduct the proposed reclamation of the abandoned mine land; and the proposed activities will not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act.

d. New subparagraph D and items (1) through (3) state that placement of excess spoil from a permitted coal mining operation on abandoned mine land outside of the permit area shall be accomplished in accordance with a contract between the Department and the permittee that contains conditions that document the method of placement of the excess spoil and reclamation on the area; require the operator to permit and bond the abandoned mine land area in the event the operator defaults on the contract; and authorize the Department to issue a cessation order to cease all mining operations on the adjacent permit area until the operator submits an application for a permit and the required amount of bond for the abandoned mine land area in the event the operator defaults on the contract. In its December 8, 1997, letter (Administrative Record No. MD–0576–07), Maryland further stated that a field review during the application review process would verify conditions at the AML site and will determine which requirements are necessary to ensure that the excess spoil is placed in an environmentally sound manner.

e. New subparagraph E is added to state that the Department will monitor the placement of the excess spoil and the reclamation of the abandoned mine land area to ensure that the work is performed in accordance with the contract. In the event the operator fails to meet the terms of the contract, the Department shall issue a cessation order to stop the work on the area until the failure has been corrected.

In telephone conversations with OSM representatives, a Maryland regulatory program official stated that the operator would be required to submit a reclamation plan for each abandoned site proposed to be used for excess spoil placement. Each site will have a reclamation plan. Additionally, for existing permits where an operator decides to use an abandoned site for excess spoil disposal, the operator must apply for and receive approval of a permit revision. This permit revision process includes public participation. In its December 8, 1997, letter (Administrative Record No. MD–576–07), Maryland stated that environmental reviews and public participation for these sites will be handled through the State's Title V surface mining regulatory program.

Placement of excess spoil on adjacent abandoned mine land has been addressed previously in other rulemaking. Specifically, in his July 9, 1991, letter to Ohio, (Administrative Record No. MD–576–09) the Director of OSM clarified OSM's position concerning the standards and requirements which apply to the usage of excess spoil for reclamation of abandoned mine land sites. SM focused on the parameters for excess spoil disposal outside the permit area as established, in part, in several final rules approving such a provision in the West Virginia program (45 FR 69254–69255, October 20, 1980; 46 FR 5919, January 21, 1981); and 55 FR 21328–21329, May 23, 1990).

In the January 21, 1981, **Federal Register** announcing approval of the West Virginia program (46 FR 5919), the Secretary found that, for purposes of excess spoil disposal, a reclamation contract governing work to be performed on a Federal AML reclamation grant project is the equivalent of permit and bond under Title V of SMCRA. In the May 23, 1990, **Federal Register** (55 FR 21329), OSM found that disposal of excess spoil on a Federally funded AML reclamation project is approvable provided the spoil is not necessary to restore approximate original contour (AOC) on or otherwise reclaim the active mine. In addition, as stated in the May 23, 1990, **Federal Register**, fills are not to be created on AML reclamation projects. Spoil deposited on such sites may be used only to complete reclamation and to return the site to its AOC. OSM restricted eligibility for such spoil deposition to AML reclamation projects funded through the Federal AML grant process. The May 23, 1990, finding, however, did not prohibit the possibility that "no-cost reclamation" contracts, which allow spoil disposal on AML sites not included in Federally funded grants, could be approved in the future. In order to gain OSM approval, however, "no-cost reclamation" amendments would have to contain meaningful performance incentives or safeguards to ensure that spoil is placed only where it is needed to restore AOC and where it will not destroy or degrade features of environmental value. In addition, the amendments must require that spoil be placed in an environmentally and technically sound fashion. See OSM Director's July 9, 1991, letter to Ohio (Administrative Record No. MD–576–09). In short, "no cost reclamation" amendments must provide a degree of security comparable to that afforded by a Federally funded AML reclamation project. The Director finds that Maryland's proposed regulations, at COMAR 26.20.26.05, meet these requirements, for the reasons set forth below.

First, Maryland's proposed regulations require that the amount of excess spoil placed on an abandoned site will not exceed that required to restore that site to AOC. Moreover, valley, head of hollow and durable rock fills may not be constructed on abandoned, unpermitted sites. (COMAR 26.20.26.05 B(1), (3)).

Second, the proposed regulations require that the plan for excess spoil placement meet the design requirements of Maryland's approved program, and that the actual placement of excess spoil be implemented in accordance with the approved program. (COMAR 26.20.26.05 A(3), B(4)). The approved Maryland regulatory program already contains backfilling requirements for permitted and bonded areas which ensure that spoil is placed in an environmentally sound fashion, and that such placement will not destroy or degrade features of environmental value. See, for example, COMAR 26.20.28 (backfilling).

Third, and finally, the Director finds that the proposal contains sufficient performance incentives to require compliance with all applicable requirements, since the permittee risks

issuance of a cessation order if it defaults on the contract for excess spoil placement. Because this cessation order would stop all mining on the active permit, and could, presumably, lead to permit revocation and bond forfeiture if the abandoned mine land area is not subsequently permitted, bonded and reclaimed adequately, the operator should have ample incentive to comply with the contract.

Essentially, Maryland will apply its Title V regulatory program performance standards, public participation and enforcement provisions to these abandoned, excess spoil disposal sites, even though the sites will not be permitted or bonded. In addition, Maryland has provided performance incentives to ensure compliance with these Title V requirements, and, finally, has indicated that Abandoned Mine Land grant funds will be available to reclaim these sites in the event that the operator defaults on the terms of its contract. Based upon all of the above considerations, the Director is approving COMAR 26.20.26.05 to the extent that Maryland requires that the placement of excess spoil on abandoned sites comply with the provisions of its approved regulatory program pertaining to spoil placement, including the requirements pertaining to backfilling. The Director also finds that the required amendment at 30 CFR 920.16(o) has been satisfied and it is, therefore, removed.

2. COMAR 26.20.14.06, Conditions of Bonds

a. Subparagraph (B)(3) is amended to state that certificates of deposit be made payable to the Bureau in writing and upon the books of the bank issuing these certificates. This paragraph formerly stated that such certificates of deposit shall be assigned to the Bureau in writing and upon the books of the bank issuing these certificates.

b. Subparagraph (B)(4) is amended by changing the maximum acceptable amount of an individual certificate of deposit from $40,000 to $100,000.

c. New subparagraph (8) is added to require that the bank give prompt notice to the Bureau and the permittee of any notice received or action filed alleging the insolvency or bankruptcy of the bank or the permittee, or alleging any violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business.

The Director finds that the proposed changes in 2.a, b., and c. are substantively identical to the Federal regulations at 30 CFR 800.21(a)(3) and (a)(4), and 30 CFR 800.16(e)(1), respectively. The Director also finds that the required amendment at 30 CFR 920.16(k) has been satisfied and it is, therefore, removed.

3. COMAR 26.20.14.09, Procedures for Release of General Bonds

a. Subparagraph (B)(2)(b) is revised by substituting the word "identify" for "show" and by adding the requirement to identify the approval date of the permit.

b. Subparagraphs (B)(2)(c) and (d) are revised by substituting the word "identify" for "show" and (d) is further revised by adding the requirement to identify the type and amount of bond filed on the permit.

c. Subparagraph (B)(2)(e) is revised by requiring that the type and appropriate dates of the work performed be summarized.

The Director finds that the proposed changes in 3.a, b., and c. are substantively identical to the Federal regulations at 30 CFR 800.40(a)(2). The Director also finds that the required amendment at 30 CFR 920.16(m) has been satisfied and it is, therefore, removed.

IV. Summary and Disposition of Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No comments were received and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), The Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Maryland program. The Mine Safety and Heath Administration responded that no action was anticipated on the amendment. No other comments were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary. Also, EPA did not respond to OSM's request for comments.

V. Director's Decision

Based on the above finding(s), the Director approves the proposed amendments as submitted by Maryland on January 7, 1997, January 14, 1997, revised on February 4, 1997 and clarified on December 8, 1997. In particular, the Director is approving COMAR 26.20.26.05 to the extent that Maryland requires that the placement of excess spoil on abandoned sites comply with the provisions of its approved regulatory program pertaining to spoil placement, including the requirements pertaining to backfilling. The Director is approving the proposed regulations with the understanding that they be promulgated in a form identical to that submitted to OSM including the clarifications. Any differences between these regulations and the State's final regulations will be processed as a separate amendment subject to public review at a later date. The Director is also removing the required amendments at 30 CFR 920.16 (k), (m), and (o) because the Maryland program will now include those requirements at paragraph B(8) of COMAR 26.20.14.06, paragraph B(2) of COMAR 26.20.14.90, and COMAR 26.20.26.05, respectively. The required amendments were initially included in the December 5, 1991, **Federal Register** (56 FR 63660), and in the December 30, 1992, **Federal Register** (57 FR 62220).

The Federal regulations at 30 CFR Part 920, codifying decisions concerning the Maryland program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendments process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such

program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 10, 1998.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

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

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

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

2. Section 920.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 920.15 Approval of Maryland regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
•	•	•
January 7, 1997	March 23, 1998	COMAR 26.20.26.05 A (1) through (5), B (1) through (4), C (1) through (5), D (1) through (3), E, 26.20.14.06 B(3), B(4), B(8), 26.20.14.09 B(2) (b), (c), (d), and (e).

§ 920.16 [Amended]

3. Section 920.16 is amended by removing and reserving paragraphs (k), (m) and (o).

[FR Doc. 98–7415 Filed 3–20–98; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL167–1a; FRL–5978–8]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On May 5, 1995, and May 26, 1995, the State of Illinois submitted a State Implementation Plan (SIP) revision request to the EPA regarding rules for controlling Volatile Organic Material (VOM) emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) reactor processes and distillation operations in the Chicago and Metro East (East St. Louis) areas. VOM, as defined by the State of Illinois, is identical to "Volatile Organic Compounds" (VOC), as defined by EPA. VOC is an air pollutant which combines with nitrogen oxides in the atmosphere to form ground-level ozone, commonly known as smog. Ozone pollution is of particular concern because of its harmful effects upon lung tissue and breathing passages. This plan was submitted to meet the Clean Air Act (Act) requirement for States to adopt Reasonably Available Control Technology (RACT) rules for sources that are covered by Control Techniques Guideline (CTG) documents. This rulemaking action approves, through direct final, the Illinois SIP revision request.

DATES: The "direct final" approval is effective on May 22, 1998, unless EPA receives adverse or critical written comments by April 22, 1998. If the effective date is delayed timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the revision request are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Mark J. Palermo at (312) 886–6082 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, at (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(2) of the Act requires all moderate and above ozone

nonattainment areas to adopt RACT rules for sources covered by CTG documents, such as SOCMI reactor processes and distillation operations. In Illinois, the Chicago area is classified as "severe" nonattainment for ozone, while the Metro East area is classified as "moderate" nonattainment. See 40 CFR 81.314.

The Illinois Environmental Protection Agency (IEPA) held public hearings on the SOCMI rules on November 4, 1994, December 2, 1994, and December 16, 1994. The rules, which require compliance by March 15, 1996, were published in the *Illinois Register* on May 19, 1995. The rules became effective at the State level on May 9, 1995. The IEPA formally submitted the SOCMI rules to EPA on May 5, 1995, and May 26, 1995, as a revision to the Illinois SIP for ozone. The submittal amends 35 Illinois Administrative Code (Ill.Adm.Code) Parts 211, 218 and 219, to include control measures for SOCMI reactor processes and distillation operations.

The submittal includes the following new or revised rules:

Part 211: Definitions and General Provisions

Subpart B: Definitions

211.980 Chemical Manufacturing Process Unit
211.1780 Distillation Unit
211.2365 Flexible Operation Unit
211.5065 Primary Product

Part 218: Organic Material Emission Standards and Limitations for the Chicago Area

Subpart Q: Synthetic Organic Chemical and Polymer Manufacturing Plant

218.431 Applicability
218.432 Control Requirements
218.433 Performance and Testing Requirements
218.434 Monitoring Requirements
218.435 Recordkeeping and Reporting Requirements
218.436 Compliance Date
Appendix G: TRE Index Measurement for SOCMI Reactors and Distillation Units

Part 219: Organic Material Emission Standards and Limitations for the Metro East Area

Subpart Q: Synthetic Organic Chemical and Polymer Manufacturing Plant

219.431 Applicability
219.432 Control Requirements
219.433 Performance and Testing Requirements
219.434 Monitoring Requirements
219.435 Recordkeeping and Reporting Requirements
219.436 Compliance Date
Appendix G: TRE Index Measurement for SOCMI Reactors and Distillation Units

The SOCMI rules contained in Part 218 are identical to those in Part 219 except for the areas of applicability. Part 218 applies to the Chicago Area, while Part 219 applies to the Metro East area.

Illinois' SOCMI rules are based largely on EPA's final CTG for control of VOCs from SOCMI reactor processes and distillation operations, which was issued on November 15, 1993 (58 FR 60197). This document contains the recommended presumptive norm for RACT for these sources.

The applicability measure for RACT is dependent upon the facilities' calculated Total Resource Effectiveness (TRE) index. The TRE index is a measure of the cost per unit of VOC emission reduction and is normalized so that the decision point has a defined value of 1.0. It considers variables such as the emission stream characteristics (i.e., heat value, flow rate, VOC emission rate) and a maximum cost effectiveness. A TRE index value of less than or equal to 1.0, as calculated by using the specific stream characteristics, ensures that the stream could be effectively controlled further by a combustion device without an unreasonable cost burden. The use of the TRE index applicability measure provides an incentive for pollution prevention by letting a facility consider alternatives to installing add-on control devices. Facilities can choose to improve product recovery so that the calculated TRE index falls above the cutoff value of 1.0.

The technology underlying RACT for SOCMI reactor processes and distillation operations is combustion via either thermal incineration or flaring. These control techniques generally achieve the highest emission reduction among demonstrated VOC technologies. The EPA believes that a thermal incinerator that is well operated and maintained according to manufacturer's specifications can achieve at least 98 percent control efficiency, by weight. Likewise, flares that conform with the design and operating specifications set forth in 40 CFR 60.18, can achieve at least 98 percent control, by weight, of VOC emissions.

II. Analysis of State Submittal

The Illinois SOCMI rules affect vent streams associated with reactor processes and distillation operations that manufacture a SOCMI chemical which is both listed in Appendix A of Illinois' Rules and Regulations for Air Pollution Control (35 Ill.Adm.Code 218 and 219) and qualifies as a "primary product" under the rules. The rules exclude any reactor or distillation unit that (1) is part of a polymer manufacturing operation, (2) is included in a batch operation, (3) has a total design capacity of less than 1,100 tons per year for the primary product, (4) has a primary product not listed in Appendix A, (5) has a vent stream VOC concentration of less than 500 parts per million by volume or a flow rate of less than 0.0085 standard cubic meter per minute, or (6) is included in the hazardous air pollutants early reduction program, as specified in 40 CFR Part 63 and published at 50 FR 60970 on October 22, 1993. Any other process vent stream from a reactor process or distillation operation in SOCMI that does not satisfy the above exclusion criteria must perform a TRE determination. If the TRE index value, calculated at a point immediately after the associated recovery device, is less than or equal to 1.0, then VOC emissions (less methane and ethane) must be reduced by 98 percent by weight or to 20 parts per million by volume, on a dry basis, corrected to 3 percent oxygen. The compliance date in the Illinois rules is March 15, 1996.

Illinois' SOCMI rules were reviewed against EPA's August 1993 CTG for SOCMI distillation and reactors. Based on the CTG, Illinois' SOCMI reactor and distillation rules require RACT level control efficiencies. However, the State rules' applicability criteria is different than the applicability criteria recommended by the CTG. Under the States' rules, a reactor or distillation unit has the requisite total design capacity to trigger applicability when it produces (1) at least 1,100 tons per year of primary product, and (2) the primary product falls under a list of SOCMI chemicals under Appendix A, the same list used for applicability purposes under the State's SOCMI leaks rule (see 35 Ill.Adm.Code 218/219, Subpart Q and Appendix A, approved by EPA September 9, 1994, 59 FR 46562). In contrast, the CTG recommends that applicability be based on whether a unit produces at least 1,100 tons per year of one or more final or intermediate products which fall under the CTG's list of SOCMI chemicals, a list that includes more chemicals than Appendix A.

RACT rule applicability provisions may vary from State to State dependent upon what sources are in the State's nonattainment area(s). In the case of Illinois, the differences in applicability criteria between the State rules and the CTG is insignificant because the State has only two affected sources in the States' nonattainment areas, both of which meet the applicability criteria of the CTG and the States' rules.

To demonstrate that the State rules are essentially equivalent to the CTG in

terms of applicability, the IEPA submitted documentation on November 8, 1996, regarding its search for potentially affected facilities applicable to the SOCMI CTG. First, the IEPA searched the State's Emission Inventory System (EIS) database to establish a list of SOCMI continuous distillation operations or reactor processes in the Chicago or Metro East nonattainment areas (SOCMI batch facilities were excluded from the search because they are exempt from the rules). The IEPA evaluated air permit information for these units and eliminated from the list those units which are not producing any chemical found on the SOCMI CTG list. IEPA further eliminated from the list those units which are specifically excluded from the SOCMI CTG, including facilities involved in polymer manufacturing operations or covered under the State's SOCMI air oxidation rules.

After this complete review, the SOCMI facilities that remained containing emission units applicable to the CTG were Stepan Company's Millsdale facility (Stepan), and Monsanto Chemical Group's Sauget facility (Monsanto). The Illinois SOCMI reactor and distillation rules as they apply to Stepan has already been approved on June 17, 1997, (62 FR 32694), and the approval of the rules as they apply to Monsanto has been signed by the Regional Administrator on February 24, 1998, and is awaiting publication in the **Federal Register**.

Based on IEPA's documentation, all SOCMI reactor and distillation units in the Chicago and Metro East areas which are required to meet RACT under the SOCMI CTG are covered by the Illinois rule. Therefore, there is no environmental benefit to be gained by requiring Illinois to revise its SOCMI rule to mirror the CTG's applicability provisions. Because the State rules are, for practical purposes, as stringent as the CTG in respect to SOCMI distillation and reactor units existing in the Chicago and Metro East areas, EPA is approving the State rules. However, if a new SOCMI distillation or reactor unit is constructed in the Chicago or Metro East nonattainment areas which is required to meet RACT under the CTG and is not subject to the New Source Performance Standards (NSPS) for SOCMI distillation operations (40 CFR part 60, subpart NNN), the NSPS for SOCMI reactor processes (40 CFR part 60, subpart RRR), or the State rules, then the State will be required to revise its rules so that the new unit is subject to RACT.

III. Final Rulemaking Action

The EPA approves the plan revision submitted to EPA by the State of Illinois on May 5, 1995, and May 26, 1995, for SOCMI reactor processes and distillation operations. While the limits contained in the rules are generally of RACT stringency, the rules' applicability provisions do not match the applicability criteria specified by the SOCMI CTG. Illinois has shown, however, that the State rules apply to all existing SOCMI facilities in the Chicago and Metro East ozone nonattainment areas which are required to meet RACT under the CTG. Thus, the rules are approvable. The EPA has already taken action on the Illinois rules as they apply to Stepan Company's Millsdale facility (June 17, 1997, 62 FR 32694), and the rules as they apply to Monsanto Chemical Group's Sauget facility have been approved by the Regional Administrator on February 24, 1998, and the approval is awaiting publication in the **Federal Register**.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should specified written adverse or critical written comments be filed. This action will become effective without further notice unless the Agency receives relevant adverse written comment on the parallel proposed rule (published in the proposed rules section of this **Federal Register**) by April 22, 1998. Should the Agency receive such comments, it will publish a final rule informing the public that this action did not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on May 22, 1998.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 5, 1998.

David A. Ullrich,

Acting Regional Administrator, Region V.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(142)to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(142) On May 5, 1995, and May 26, 1995, the State of Illinois submitted State Implementation Plan revision requests for reactor processes and distillation operations in the Synthetic Organic Chemical Manufacturing Industry as part of the State's control measures for Volatile Organic Material emissions for the Chicago and Metro-East (East St. Louis) areas. This plan was submitted to meet the Clean Air Act requirement for States to adopt Reasonably Available Control Technology rules for sources that are covered by Control Techniques Guideline documents.

(i) Incorporation by reference. Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources.

(A) Part 211: Definitions and General Provisions, Subpart B; Definitions, 211.980 Chemical Manufacturing Process Unit, 211.1780 Distillation Unit, 211.2365 Flexible Operation Unit, 211.5065 Primary Product, amended at 19 Ill. Reg. 6823, effective May 9, 1995.

(B) Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, Subpart Q: Synthetic Organic Chemical and Polymer Manufacturing Plant, Sections 218.431 Applicability, 218.432 Control Requirements, 218.433 Performance and Testing Requirements, 218.434 Monitoring Requirements, 218.435 Recordkeeping and Reporting Requirements, 218.436 Compliance Date, 218.Appendix G, TRE Index Measurement for SOCMI Reactors and Distillation Units, amended at 19 Ill. Reg. 6848, effective May 9, 1995.

(C) Part 219: Organic Material Emission Standards and Limitations for the Metro East Area, Subpart Q: Synthetic Organic Chemical and Polymer Manufacturing Plant, Sections 219.431 Applicability, 219.432 Control Requirements, 219.433 Performance and Testing Requirements, 219.434 Monitoring Requirements, 219.435 Recordkeeping and Reporting Requirements, 219.436 Compliance Date, 219.Appendix G, TRE Index Measurement for SOCMI Reactors and Distillation Units, amended at 19 Ill. Reg. 6958, effective May 9, 1995.

[FR Doc. 98–7128 Filed 3–20–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH112–1a; FRL–5976–9]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: USEPA is approving an August 1, 1997 requested revision to the Ohio State Implementation Plan (SIP) incorporating revised emission statement reporting requirements which were previously approved for the purpose of implementing an emissions statement program for stationary sources within the State's ozone nonattainment areas classified as marginal or above. In this action, USEPA is approving the State's finding that emission statement requirements are no longer applicable to areas redesignated as attaining the national ambient air quality standards (NAAQS) for ozone through a "direct final" rulemaking; the rationale for this approval is set forth below. Elsewhere in this **Federal Register**, USEPA is proposing approval and soliciting comment on this direct final action; should USEPA receive such comment, it will publish an action informing the public that this rule did not take effect; otherwise, no further rulemaking will occur on this requested SIP revision.

DATES: This final rule is effective May 22, 1998 unless written adverse comments not previously addressed by the State or USEPA are received by April 22, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the Ohio submittal are available for public review during normal business hours, between 8:00 a.m. and 4:30 p.m., at the above address.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Telephone: (312) 886–6036.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(a)(3)(B) of Title I of the Clean Air Act (CAA) requires states with areas designated nonattainment of the NAAQS for ozone to establish regulations for reporting of actual emissions by stationary sources that emit volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) in ozone nonattainment areas.

On March 22, 1994, the State of Ohio submitted a SIP revision outlining a program to require emission statements from those stationary sources that emit more than 25 tons of VOCs or NO_X per any calendar year and that are located in counties designated nonattainment for the NAAQS for ozone. The following twenty four counties were designated nonattainment for the NAAQS for ozone at the time of that submittal and stationary sources in those counties were required to submit emission

statements: Ashtabula, Butler, Clark, Clermont, Cuyahoga, Delaware, Franklin, Geauga, Greene, Hamilton, Lake, Licking, Lorain, Lucas, Mahoning, Medina, Miami, Montgomery, Portage, Stark, Summit, Turnbull, Warren and Wood counties. USEPA fully approved that requested SIP revision on October 13, 1994 (59 FR 51863). For a more detailed description of the Ohio emission statement program see Ohio Administrative Rule 3145–24–04, paragraphs (A) through (G), or the final rule listed above.

Only four of the original 24 counties remain designated nonattainment of the NAAQS for ozone: Warren, Butler, Clermont, and Hamilton Counties in the Cincinnati-Hamilton nonattainment area. Consequently, on August 1, 1997, the State of Ohio submitted a request to USEPA to revise its SIP by modifying Ohio Administrative Code rule 3745–24–02, entitled Applicability. The revision would delete the reporting requirements for the counties in areas redesignated from nonattainment to attainment of the NAAQS for ozone. The revision also deletes the requirement to submit an emissions statement for the calendar year in which an area is redesignated to attainment.

II. Summary of State Submittals and Previous USEPA Rulemakings

Discussions of the State of Ohio submittals concerning emission statement requirements and USEPA's rulemakings concerning redesignation of areas in Ohio can be found in the September 29, 1997 Technical Support Document which is available from the Region 5 address above.

III. Revised Emission Statement Requirements

Approval of this requested SIP submittal will delete the emissions statement reporting requirements for sources located in areas redesignated from nonattainment to attainment for the NAAQS for ozone. The exemptions from the emission statement reporting requirements would be effective upon redesignation. Approval of the State's request would also remove these newly redesignated areas from the applicability section of the Ohio Administrative Code, Section 3745–24–02.

Specifically, the old rule required sources in the Toledo and Dayton areas (all redesignated to attainment in 1995), Cleveland-Akron-Lorain, Columbus, Canton and Youngstown areas (all redesignated to attainment in calender year 1996) to submit emissions statements by November 15, 1997, providing their VOC and NO_X emissions for 1996. Under the new rule, these sources would not have to report their emissions for 1996 and later years.

The USEPA approval of the State's request would reduce the number of counties subject to the emission statement reporting requirements from 24 to 4. Sources in Butler, Clermont, Hamilton and Warren Counties all located in the Cincinnati-Hamilton ozone nonattainment area would still be required to submit emission statements.

IV. Rationale for Approval

The following counties in Ohio have been redesignated to attainment for the NAAQS for ozone: Ashtabula, Clark, Cuyahoga, Delaware, Franklin, Geauga, Greene, Lake, Licking, Lorain, Lucas, Mahoning, Medina, Miami, Montgomery, Portage, Stark, Summit, Trumbull, and Wood counties. Section 182 (a)(3)(B) of title I of the CAA only requires States to establish regulations for the reporting of actual emissions by stationary sources that emit VOCs and NO_X in ozone nonattainment areas. Therefore, USEPA is approving the SIP revision request from the State of Ohio to delete the reporting requirements for sources in those areas which have been redesignated to attainment of the NAAQS for ozone and to remove the provision in the rules that extends the emissions reporting requirements for the calender year in which they are redesignated.

V. USEPA Rulemaking Action

USEPA is approving, through final rulemaking action, a revision to the Ohio State Implementation Plan limiting emission statement reporting requirements to stationary sources located within the State's marginal and above ozone nonattainment areas.

USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the USEPA is proposing to approve the SIP revision should specified written adverse comments be filed.

This rule will become effective without further notice unless USEPA receives relevant adverse written comment on the parallel proposed rule (published in the proposed rules section of this **Federal Register**) by April 22, 1998. Should USEPA receive such comments, it will publish a final rule informing the public that this rule did not take effect. Any party interested in commenting on this action should do so at this time.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.* USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under State law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Ohio's audit privilege and immunity law (Sections 3745.70–3745.73 of the Ohio Revised Code). The USEPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs, including those under the CAA. The USEPA will take appropriate action(s), if any, after thorough analysis and opportunity for Ohio to state and explain its views and positions on the issues raised by the law. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any Ohio CAA program resulting from the effect of the audit privilege and immunity law. As a consequence of the review process, the regulations subject to the action taken herein may be disapproved, Federal approval for the CAA program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

E. Submission to Congress and the Comptroller General

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

F. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: February 20, 1998.

Michelle D. Jordan,

Acting Regional Administrator, Region V.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(117) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(117) On August 1, 1997 the Ohio Environmental Protection Agency submitted a requested revision to the Ohio State Implementation Plan. This revision constituted amendments to the emissions statement reporting regulations approved on October 13, 1994 and codified in paragraph (c)(100) of this section. The revision is intended to limit the applicability of these rules to stationary sources located within the State's marginal and above ozone nonattainment areas.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rule 3745–24–02 Applicability. Effective July 31, 1997.

[FR Doc. 98–7131 Filed 3–20–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 041–4069; FRL–5977–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania Conditional Limited Approval of the Pennsylvania VOC and NO_X RACT Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting conditional limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires the implementation of reasonably available control technology (RACT) on all major sources of volatile organic compounds (VOCs) and nitrogen oxides (NO_X). The intended effect of this action is to grant conditional limited approval to this Pennsylvania RACT regulation.

EFFECTIVE DATE: This final rule is effective on April 22, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 566–2180, at the above EPA Region III address.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 1997 (62 FR 43134), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed conditional limited approval of the Pennsylvania RACT regulation for NO_X and VOC sources. (Pennsylvania Chapters 129.91 through 129.95). The formal SIP revision was submitted by the Pennsylvania Department of Environmental Protection (PA DEP, then known as the Pennsylvania Department of Environmental Resources) on February 4, 1994. This submittal was amended with a revision on May 3, 1994 correcting and clarifying the presumptive NO_X RACT requirements under Chapter 129.93(b)(4). The submittal was again amended on September 18, 1995 by the withdrawal from EPA consideration of provisions 129.93(c)(6) and (7) pertaining to best available control technology (BACT) and lowest achievable emission rate (LAER). A description of Pennsylvania's SIP revision and EPA's rationale for granting it conditional limited approval were provided in the NPR and shall not be restated here.

Comments Received on EPA's Proposed Action

In response to the August 12, 1997 proposed action, EPA received comments from PADEP. The PADEP comments were the only ones received. The comments relevant to the rulemaking and EPA's responses follow below. A more detailed discussion can be found in the Technical Support Document (TSD) prepared on this rulemaking. A copy of the TSD may be obtained from the EPA Regional Office listed in the **ADDRESSES** section of this document.

Comment 1

Pennsylvania states that the Clean Air Act (the Act) RACT requirements do not specify that "upfront" emission limitations for each source or source category must be included in a RACT SIP. The Pennsylvania RACT regulation requires the submission of RACT plans, sets forth a requirement to perform a top-down RACT analysis and requires implementation of RACT by no later than May 31, 1995.

Response 1

The Act requires the State to submit RACT rules for major sources not covered by a control techniques guideline (CTG) by November, 15, 1992 and for sources to implement RACT by May 31, 1995. Implementation of RACT would require that specific requirements are set forth, including appropriate emission limitation requirements and monitoring and recordkeeping requirements. The Pennsylvania RACT regulation, while strengthening the SIP by establishing the requirement for sources to submit RACT plans, general procedures to determine RACT, and a schedule, does not provide the necessary specific requirements for each subject source so that RACT can be implemented by May 31, 1995. Nor does it provide the certainty in terms of emission reductions that will be achieved to enable the State to perform the analyses required for an attainment demonstration.

Without certainty as to the control requirements that would apply to sources, EPA cannot determine at this point in time whether all major non-CTG sources are subject to appropriate and enforceable RACT requirements. For that reason, EPA has long taken the position that RACT rules may not merely be procedural rules that require the source and the State to later agree to an appropriate level of control; rather the rules submitted to meet the RACT requirement of the Act must identify the appropriate level of control for source categories or for individual sources. EPA does not believe that it can fully approve the Commonwealth's plan as providing for RACT in accordance with section 182(b) unless and until the Agency can review the State-adopted control requirements to determine whether such controls are "reasonably available." EPA was upheld on this interpretation of RACT in *State of Michigan* v. *Thomas,* 805 F.2d 176 (6th Cir. 1986) (interpreting the RACT requirement in section 172 of the pre-amended CAA). However, although EPA does not believe that this procedural rule, standing alone, meets the RACT requirements of section 182(b), EPA does believe that it will help the State achieve healthier air by requiring sources to identify and implement control requirements. Therefore, while EPA cannot fully approve this rule as meeting the section 182(b) RACT requirement, the Agency does believe that it can and should be approved into the SIP. Consequently, EPA is granting limited approval to the Pennsylvania RACT regulation on the basis that it strengthens the SIP.

Comment 2

Pennsylvania states that by accepting the Pennsylvania RACT regulation as complete, EPA has determined that the case-by-case process contained within that regulation meets the requirements of the Act. Pennsylvania further states that the completeness criteria include a requirement for numeric emission limitations so that if EPA believes that emission limitations were appropriate for any of the RACT source categories, it should have found the Pennsylvania RACT submittal incomplete. By not finding the Pennsylvania submittal incomplete, EPA has accepted the Pennsylvania regulation as not needing numeric emission limitations.

Response 2

The completeness review and the approvability determination are two separate processes as explicitly recognized in the Clean Air Act. The completeness criteria in 40 CFR Part 51, Appendix V (adopted pursuant to section 110(k)(1)(A)) provide the means to ensure that the administrative requirements of SIP submittals are met and that all the information necessary to judge approvability of the SIP submittal is included in the submittal. The Act provides that after EPA determines a submission is complete or it is deemed complete, then it provides for EPA to approve or disapprove the submission (section 110(k)(2) and (3)). Consequently, a determination of completeness does not presume approvability. The criteria used to judge approvability of the Pennsylvania RACT regulation are not the same as the completeness criteria. EPA's determination of completeness regarding the Pennsylvania RACT regulation simply meant that EPA had the materials necessary to make a decision as to approvability of the regulation. In the August 12, 1997 proposed rulemaking notice EPA provided the rationale for its proposed decision regarding the approvability of the Pennsylvania RACT regulation.

Theoretically, EPA could have found the Pennsylvania RACT SIP submittal incomplete because the Part 51 Appendix V completeness criteria at 2.2(g) states that the submittal should contain evidence of emission limitations, among other elements. There are two compelling reasons why EPA did not make such a finding and why such a rigid interpretation of the completeness criteria is counterproductive. First, the completeness criteria in Appendix V must be applied to all SIP submittals where numeric emission limitations are not expected or required. Such SIP submittals include air quality plans (attainment demonstrations, rate of progress plans) and the maintenance plans that must accompany requests to redesignate areas. The rigid interpretation of the completeness criteria could warrant finding these types of SIP submittals incomplete. It is not the intent of the Appendix V completeness criteria to reject as incomplete all SIPs that do not contain numeric emission limitations. Second, it is possible that RACT for certain sources and source categories could consist of requirements that do not specifically include numeric emission limitations, but instead have other kinds of emission limitations. For instance, RACT can consist of operational requirements therefore, EPA did not apply the completeness criteria rigidly to exclude from consideration any RACT submittal that did not contain numeric emission limitations for every subject source. Furthermore, even if EPA was in error finding the Pennsylvania submission incomplete, EPA would not be precluded from finding a deficiency in the submittal package in the approval process.

Comment 3

Pennsylvania states that section 182 of the Act requires provisions to provide for RACT, but not specifically for numeric emission limitations. Furthermore, section 110 provides for numeric emission limitations where

necessary, indicating that there are times when emission limitations are not necessary.

Response 3

Numeric emission limitations are not a requirement for every SIP submittal. For SIPs such as emission inventory SIPs or maintenance plans, emission limitations do not make sense and are not required. This, however, does not preclude finding that emission limitations are appropriate and necessary for certain SIPs such as those establishing RACT requirements for certain source categories.

Comment 4

EPA's definition and interpretation of RACT expressly authorizes case-by-case RACT determinations. If EPA has changed its position, it has an obligation to revoke all prior inconsistent SIP approvals, issue SIP deficiency notices and subject all other states to the same rules as being applied in Pennsylvania.

Response 4

EPA's RACT definition recognizes that RACT may be determined on a case-by-case basis. However, under the Act, EPA is required to issue CTGs, which establish presumptive RACT requirements for various source categories. States generally use the CTGs to adopt RACT regulations that apply based on source categories but may choose to develop source-specific RACT rules if compelling reasons exist. For source categories not covered by a CTG, States may develop a general RACT requirement or they can develop RACT on a source-by-source basis. EPA's acknowledgment of the appropriateness of case-by-case RACT determinations does not mean that process-oriented RACT regulations, such as Pennsylvania's, meet the section 182(b)(2) requirements of the Act. Rather, for the reasons provided in response 1, above, EPA believes that the case-by-case RACT submissions must be submitted and approved in order to determine that the State has met the RACT requirement.

Comment 5

EPA states in its proposal that the Section 129.93 presumptive requirements for large coal-fired combustion units constitutes RACT for this source category. Therefore, EPA has accepted a control technology requirement alone as RACT and Pennsylvania should receive full approval for submission of RACT for this source category.

Response 5

EPA has stated, and Pennsylvania acknowledged in its September 23, 1996 letter, that even those sources subject to the presumptive requirement in Pennsylvania's Chapter 129.93 must submit RACT proposals to EPA for SIP approval. Pennsylvania Chapter 129.93 contains a presumptive requirement of low-NO_X burners with separate overfired air for coal-fired boilers with rated heat inputs of equal to or greater than 100 mmBTU/hr, but does not provide any numeric emission limitations. The condition that Pennsylvania must meet in submitting all sources subject to the Chapter 129.93 low-NO_X burner and separate overfired air control technology requirement reflects EPA's consistent position that control technology alone for these kinds of sources is not RACT. The submittal of these source RACTs as case-by-case RACT determinations using the procedures contained in Pennsylvania's RACT regulation (Chapter 129.91 and 129.92), in conjunction with EPA approval of these RACT proposals, will satisfy the section 182 RACT requirements of the Act for this group of sources. EPA and the Pennsylvania regulations define RACT as "the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility" (December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to EPA Regional Adminstrators and 25 Pa. Code, Subpart C Article III, Chapter 121). Installation of control technology alone does not ensure that the lowest emission limits are being achieved. Consequently, in the ideal case, RACT for all sources would include numeric emission limitations and a control technology requirement. The practical approach, however, warrants obtaining numeric emission limitations only where technically and economically feasible. Numeric emission limitations are necessary and appropriate for coal-fired boilers rated ≥ 100 mmBTU/hr. As a source category, these coal-fired boilers, almost exclusively utility boilers, are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States. Establishment of numeric emission limitations at emission sources where operating and maintenance conditions can significantly affect the amount of emissions is prudent. Large coal-fired combustion units ≥ 100 mmBTU/hr, even with emission controls, can emit NO_X at significantly different emission rates if operation and maintenance of the units is not closely monitored. Since methods to accurately measure NO_X emissions from these large combustion units exist, compliance with numeric emission limitations is feasible. The operating circumstances, size and impact of these large boilers, together with the ability to accurately measure emissions, warrants the use of numeric emission limitations. Smaller combustion sources generally do not impact NO_X emissions to as large an extent as the large coal-fired combustion units. Numeric emission limitations on smaller units would be ideal, although requiring such numeric emission limitations on small combustion units is generally difficult because of the lack of accurate monitoring methods. Consequently, numeric emission limitations are appropriate to include in the RACT requirements for some sources, but are potentially infeasible as RACT for other types of sources. Pennsylvania's Chapter 129.93 (b) does not contain additional requirements that EPA has determined are appropriate for this source category, including numeric emission limitations. In the proposed rulemaking notice EPA clearly identified this deficiency in Section 129.93 (62 FR 43134). As EPA stated in the proposal, a technology requirement alone for this source category does not constitute RACT. EPA's conditional limited approval is based on the determination that Pennsylvania's process-oriented SIP does not fully satisfy the section 182(b)(2) RACT requirement of the Act.

Comment 6

Pennsylvania's large combustion units using continuous emission monitoring systems will be evaluated by the Department and will have their emission limitations submitted to EPA and implemented through the state operating permit program or through the Title V permit program, making these emission limitations federally enforceable. EPA and the public will have an opportunity to comment on those emission limitations at that time.

Response 6

EPA is required to determine through the SIP approval process whether the state has established emission limitations and other applicable requirements that meet RACT. The EPA review procedures, under the permitting process for the state operating permit program or the Title V program, provide for the federal enforceability of emission limitations. They are not a substitute for the kind of EPA approval required by Title I for establishing initial requirements for SIPs. Opportunity for

EPA to comment on a permit with a limited time period for veto are not sufficient for EPA to fulfill its statutory obligation to determine whether applicable requirements meet the RACT requirements of the Act. The Title V program is a means to incorporate all of the applicable requirements and not a mechanism to establish initial requirements. Process-oriented SIPs such as Pennsylvania's do not contain the necessary underlying RACT control requirements.

Comment 7

Pennsylvania states that it has submitted RACT proposals to EPA for all sources subject to the Pennsylvania regulation section 129.93(b)(1) requirement as of September 23, 1996. Pennsylvania further states that EPA agreed that if the sources are located in Allegheny or Philadelphia Counties, the respective local air regulatory agencies are responsible for these RACT proposals and that EPA would limit the applicability of Clean Air Act sanctions to those jurisdictions. Pennsylvania states that if EPA grants conditional as opposed to full approval of the RACT SIP, then this rulemaking action should reflect the agreements regarding Philadelphia and Allegheny County.

Response 7

As an initial matter, Pennsylvania is mistaken in its assertion that it had submitted RACT proposals for all sources subject to section 129.93(b)(1) by September 23, 1996. Section 129.93 (b)(1) pertains to those coal-fired combustion units rated at greater than or equal to 100 million BTU/hr. Since September 23, 1996, PADEP has made SIP submittals to EPA for sources subject to section 129.93(b)(1). Further, EPA is aware that there remain sources in Pennsylvania subject to 129.93(b)(1) for which PADEP still has not submitted RACT proposals to EPA.

EPA's regulation for the automatic imposition of sanctions pursuant to section 179(a) of the Act provides that sanctions will be applied in the "affected area." 40 CFR 52.31; *see* 59 FR 39832, 39854 (Aug. 4, 1994). The affected area is defined as the geographic area subject to the relevant Act requirement. 40 CFR 52.31(b)(3). Under section 182(b), the relevant Act requirement at issue, Pennsylvania must submit RACT rules for each nonattainment area. Therefore, it is the nonattainment area as a whole that is the area subject to the relevant Act requirement. Consequently, if PA DEP fails to complete its SIP commitments for any portion of the Philadelphia or Pittsburgh nonattainment areas, EPA must apply section 179 sanctions to the entire affected nonattainment area.

Comment 8

Pennsylvania disagrees with EPA's proposed de minimis methodology for purposes of determining when the Pennsylvania RACT regulation can be converted to a full approval action. Pennsylvania states that many sources have been added to the 1990 emission inventory since 1990 and that EPA should allow the Department to use either 1990 or a more recent inventory for this de minimis calculation.

Response 8

EPA formulated its policy for de minimis (as the term relates to the conversion of a generic RACT rule to full SIP approval) based on the 1990 emission inventory because this inventory is public, required to go through public notice and comment before changes are made to it, and represents the baseline of emissions used for air quality planning purposes. The Act specifies the use of the 1990 emission inventory for air quality planning purposes in order to provide for an established baseline from which emission reductions can be determined. If Pennsylvania has discovered additional sources or other inaccuracies in the 1990 emission inventory, it should correct those omissions and inaccuracies through the processes required to change the 1990 emission inventory. Using a later calendar year for the de minimis calculation raises issues related to the accessibility, verifiability, and consistency of the data. For purposes of determining whether a de minimis amount of emissions remain to be covered by specific SIP approved RACT requirements in converting the rulemaking action from conditional to limited approval and from limited approval to full approval, and in order allow for consistent comparison, the baseline of emissions that is used must be public, verifiable, and consistent.

Comment 9

Pennsylvania states that EPA's failure to address comments submitted to the January 12, 1995 proposed rulemaking is inappropriate.

Response 9

The August 12, 1997 proposed rulemaking for the Pennsylvania generic VOC and NO_X RACT regulation withdraws the January 12, 1995 proposal and proposes conditional limited approval for the Pennsylvania RACT regulation. The August 1997 proposal completely replaces the January 1995 proposal. In the August 1997 notice, EPA stated that comments made to the January 1995 proposal would not be addressed and invited all interested parties to submit comments on the August 1997 proposal. Only Pennsylvania submitted comments on the August 1997 proposal. In addition, the January 1995 proposed rulemaking actions were different from the August 1997 rulemaking action. EPA could not presume that comments made for one type of rulemaking action would be appropriate for another rulemaking action. If interested parties that commented on the January 1995 proposal believed that the same comments applied to the August 1997 proposal, the comments should have been resubmitted in response to the August 1997 proposal. There is no statutory obligation for EPA to respond to comments on a proposed rule where EPA has withdrawn the proposed rule and is not, therefore, taking final action on that proposal.

Comment 10

Pennsylvania believes that EPA should fully and unconditionally approve the Pennsylvania RACT regulation. In the alternative, EPA should grant conditional approval based on Pennsylvania meeting the conditions of its September 23, 1996 commitment letter to EPA.

Response 10

For the reasons provided in response to the previous comments, EPA believes it cannot fully approve Pennsylvania submission nor can it grant a conditional approval. Sections 182(b)(2) and 184(b)(4) of the Act require that Pennsylvania implement RACT for all major stationary sources. EPA believes, however, as stated in a November 7, 1996 policy memo, that it is possible to eventually fully approve the state generic RACT regulations like Pennsylvania's provided certain criteria are met. These criteria are described in detail in the August 12, 1997 proposed rulemaking notice (62 FR 43134) and summarized below in the Terms of Conditional Approval and Conversion of Limited Approval to Full Approval sections. This policy provides that such approval does not exempt any major source from RACT requirements but instead provides for a de minimis deferral of RACT. EPA fully expects every major VOC and NO_X source to implement RACT as required under sections 182 and 184 of the Act and for the state to submit those rules for approval into the SIP. Specifically, the November 7, 1996 EPA policy memorandum from Sally Shaver,

Director, Air Quality Strategies and Standards Division, to all Regional Air Division Directors, sets forth the methods for determining whether all but a de minimis amount of emissions are covered by a RACT rule. For VOC sources subject to the generic RACT regulation under consideration (i.e., non-CTG VOC sources), the state would need to submit, and then EPA must approve, the RACT requirements for all but a de minimis amount of VOC source emissions. The method used to determine whether a state has met the VOC de minimis deferral level is to compare the baseline of 1990 non-CTG VOC emissions with those non-CTG VOC emissions that have yet to have RACT approved into the SIP. Generally, EPA does not expect to defer more than 5% of the emissions calculated in the above manner in order to fully approve a state generic VOC RACT regulation. For NO_X sources, the de minimis deferral level is determined by using the 1990 NO_X emissions, excluding the utility [1] NO_X emissions. The remaining 1990 non-utility emissions are then compared with the amount of non-utility NO_X emissions that have yet to have RACT approved into the SIP. Generally, EPA expects all utility RACTs to be approved prior to application of this de minimis deferral policy and possible conversion of the generic RACT conditional approval to full approval. As with VOC source RACT, EPA does not expect to defer more than 5% of the emissions calculated in this manner in order to fully approve a state generic NO_X RACT regulation. States that have used a de minimis argument to exempt certain NO_X sources or groups of NO_X sources from RACT requirements, or from making a demonstration that what is being required is RACT, cannot again apply the use of a de minimis rationale with respect to conversion of their generic RACT rules to full approval. For these states, conversion of the generic RACT rule to full approval requires submittal and approval of all the remaining RACT subject sources. EPA continues to believe that the November 1996 policy is appropriate for addressing rulemaking options for process-oriented SIPs. Consequently, through this rule EPA is requiring that to receive full approval of its generic NO_X RACT regulation Pennsylvania will need to have had all utility RACT determinations approved by EPA and all but a de minimis level of non-utility RACT determinations approved into the SIP. Full approval of Pennsylvania's generic RACT regulation in accordance with this policy does not change Pennsylvania's statutory obligation to implement RACT for all major sources. No major VOC or NO_X source is being exempted from RACT requirements through today's rulemaking.

[1] "Utility" is defined as in 40 C.F.R. Part 72.2 (Acid Rain Program General Provisions—Definitions).

Terms of the Conditional Approval

The Commonwealth's September 23, 1996 commitment letter includes the following conditions: Case-by-case RACT proposals for all major VOC and NO_X sources must be submitted as case-by-case SIP revisions including those sources covered by 25 Pa. Code § 129.93(b)(1) by no later than [INSERT date 12 months after the effective date of EPA final conditional approval]. Furthermore, by no later than [INSERT date 12 months after the effective date of EPA final conditional approval], Pennsylvania will: (1) certify that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements currently known to PADEP; or (2) demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions, as defined in this rulemaking document.

Once EPA has determined that the Commonwealth has satisfied this condition, EPA shall remove the conditional nature of this approval and the Pennsylvania VOC and NO_X regulations SIP revision will, at that time, retain limited approval status. Should the Commonwealth fail to meet the condition specified above, the final conditional limited approval of the Pennsylvania VOC and NO_X RACT regulation SIP revision shall convert to a disapproval.

Conversion From Limited Approval to Full Approval

Conversion of the Pennsylvania VOC and NO_X RACT regulation to full approval will occur when EPA has approved all of the case-by-case RACT proposals as SIP revisions.

As indicated previously, other specific requirements of and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. Further details are contained in the TSD which may be obtained from the EPA Region III office listed in the **ADDRESSES** section above.

Final Action

EPA is granting conditional limited approval to the Pennsylvania VOC and NO_X RACT regulation as a revision to the Pennsylvania SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals and conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k)(3), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that a conversion of this action to a disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor

does it substitute a new federal requirement.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action being promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to the conditional limited approval of the Pennsylvania VOC and NO_X RACT regulation, must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to the conditional limited approval of the Pennsylvania generic VOC and NO_X RACT regulation may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: March 4, 1998.

W. Michael McCabe,

Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(129) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(129) Limited approval of revisions to the Pennsylvania Regulations, Chapter 129.91 through 129.95, pertaining to VOC and NO_X RACT submitted on February 4, 1994 by the Pennsylvania Department of Environmental Resources (now known as the Pennsylvania Department of Environmental Protection):

(i) Incorporation by reference.

(A) Letter of February 4, 1994 from the Pennsylvania Department of Enviromental Resources transmitting Pennsylvania VOC and NO_X RACT regulations, Chapter 129.91 through 129.95.

(B) Pennsylvania Reasonably Available Control Technology Requirements for Major Stationary Sources of Volatile Organic Compounds and Oxides of Nitrogen regulation, Chapter 129.91 through 129.95, effective on January 15, 1994, except for Chapter 129.93(b)(4).

(C) Letter of May 3, 1994 from the Pennsylvania Department of Environmental Resources amending the Pennsylvania regulation, Chapter 129.93 (b)(4).

(D) Pennsylvania Reasonably Available Control Technology Requirements for Major Stationary Sources of Volatile Organic Compounds and Oxides of Nitrogen regulation, Chapter 129.93 (b)(4), effective April 23, 1994.

(E) Letter for September 18, 1995 from the Pennsylvania Department of Environmental Protection amending Pennsylvania's February 4, 1994 submittal to EPA by withdrawing Chapter 129.93(c)(6) and (7) from EPA consideration.

(ii) Additional material.

(A) Remainder of February 4, 1994 State submittal.

(B) Letter of September 23, 1996 from Pennsylvania Department of Environmental Protection agreeing to meet certain conditions by no later than 12 months after the publication of the final conditional rulemaking. These conditions are:

(1) Pennsylvania certify that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements (including those subject to 25 Pa. Code section 129.93(b)(1)) currently known to PADEP; or

(2) Demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions, as defined in the final rulemaking.

3. Section 52.2023 is amended by adding paragraph (k) to read as follows:

§ 52.2023 Approval status.

* * * * *

(k) Conditional limited approval of revisions to the Pennsylvania Regulations, Chapter 129.91 through 129.95, pertaining to VOC and NO_X RACT submitted on February 4, 1994 and amended on May 3, 1994 by the Pennsylvania Department of Environmental Resources (now known as the Pennsylvania Department of Environmental Protection).

4. Section 52.2026 is amended by adding paragraph (e) to read as follows:

§ 52.2026 Conditional approval.

* * * * *

(e) Revisions to the Pennsylvania Regulations, Chapter 129.91 through 129.95, pertaining to VOC and NO_X RACT submitted on February 4, 1994 and amended on May 3, 1994 by the Pennsylvania Department of Environmental Resources (now known as the Pennsylvania Department of Environmental Protection) is conditionally approved. Pennsylvania must meet the following conditions by no later than 12 months after the

publication of the final conditional rulemaking. These conditions are:

(1) Pennsylvania certify that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements (including those subject to 25 Pa. Code section 129.93(b)(1)) currently known to PADEP; or

(2) Demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions, as defined in the final rulemaking.

[FR Doc. 98–7306 Filed 3–20–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA025–5033; FRL–5977–9]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia—Prevention of Significant Deterioration Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the Commonwealth of Virginia's State Implementation Plan (SIP) under which the Commonwealth will be implementing the Prevention of Significant Deterioration of Air Quality program (PSD program) pursuant to its own SIP regulations. The Commonwealth had been implementing the PSD program under the terms of an EPA delegation to the Commonwealth of the authority to implement the Federal PSD regulations. Under the PSD program those constructing new major sources of a criteria air pollutant in areas that are attainment for the National Ambient Air Quality Standards (NAAQS) set for that pollutant, or constructing major modifications to such sources in such areas, must demonstrate that emissions from those sources will not cause violations of the NAAQS, or significantly deteriorate air quality beyond specified ambient increments, and that the emissions will be controlled by Best Available Control Technology (BACT). Additional provisions relevant to Class I areas may also apply.

EFFECTIVE DATE: This final rule is effective on April 22, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Ray Chalmers, U.S. EPA Region III, Air Protection Division, Permits & Technology Assessment Section (3AP11), 841 Chestnut Building, Philadelphia, PA. Phone: (215) 566–2061. Internet: "Chalmers.Ray@epamail.epa.gov".

SUPPLEMENTARY INFORMATION:

I. Background

In a series of submittals, the Virginia Department of Air Pollution Control (DAPC), now known as the Department of Environmental Quality (VDEQ), submitted the elements for a revision to its State Implementation Plan (SIP) that would establish a program for the prevention of significant deterioration of air quality (PSD) for the review and permitting of new major sources and major modifications (the PSD program). On January 24, 1996, EPA proposed to disapprove or, in the alternative, to conditionally approve Virginia's PSD SIP revision. (61 FR 1880). EPA proposed disapproval because, in the agency's view, the Commonwealth's limitation of access to state judicial appeal (also known as standing) of permitting actions was inconsistent with the agency's interpretation that existing law and regulations require an opportunity for state judicial review under approved PSD SIPs by permit applicants and affected members of the public. In EPA's proposed rule, comment was solicited on the agency's view that a limited judicial review did not meet the minimum requirements for standing required for PSD SIP programs under the Clean Air Act (CAA) and EPA's implementing regulations.

Alternatively, if the agency determined after reviewing public comment that provisions for judicial standing were unnecessary, EPA proposed to conditionally approve Virginia's PSD SIP. EPA determined that Virginia was still required to amend the Commonwealth's PSD regulations that existed at the time of the proposed rule to include revised increments for particulate matter (PM) as promulgated by EPA on June 3, 1993, and EPA's revised "Guidelines for Air Quality Models", promulgated on July 20, 1993. More detailed information on EPA's proposed rulemaking actions and an analysis of Virginia's PSD regulations can be found in the proposed rule published on January 24, 1996 (61 FR 1880) and the Technical Support Document for the proposed rule.

II. Analysis

Subsequent to the publication of EPA's proposed rule on Virginia's PSD program, the deficiencies noted above were corrected. Regarding judicial standing in Virginia, EPA published a December 5, 1994, final rule in which EPA disapproved Virginia's Title V operating permits program for, among other things, the failure to provide adequate judicial standing. (59 FR 62324). Virginia appealed this decision before the Fourth Circuit Court of Appeals, which affirmed EPA's disapproval, 80 F.3d 869 (1996), and Virginia subsequently appealed its case to the U.S. Supreme Court. On January 21, 1997, the Supreme Court decided not to hear Virginia's case. In preparation for this eventuality, Virginia had previously adopted revised and acceptable judicial standing provisions, at sections 10.1–1318, 10.1–1457, and 62.1–44.29 of the Code of Virginia, but specified that the revised provisions would become effective only if Virginia's suit against EPA was unsuccessful. The Supreme Court's refusal to take Virginia's appeal has caused Virginia's revised judicial standing provisions to become effective, and Virginia's standing provisions are now fully acceptable. Virginia's revised standing law now provides judicial standing to any person who "meets the standard for judicial review of a case or controversy pursuant to Article III of the United States Constitution." It further provides that "a person shall be deemed to meet such standard if: (i) Such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court." This new standard is consistent with the standard for Article III standing articulated by the Supreme Court in *Lujan* v. *Defenders of Wildlife*, 112 S. Ct. 2130 (1992). Consequently, EPA has determined that Virginia's standing provisions meet the requirements of the CAA and 40 CFR 51.166.

On February 6, 1997 Virginia submitted to EPA an Attorney General's Opinion affirming that the revised standing law would go into effect on

February 15, 1997. This action on the part of the Commonwealth corrects any deficiency in standing that might have been determined by EPA as a result of reviewing public comment on this issue. The Commonwealth also submitted revised regulations on March 20, 1997 that corrected the deficiencies identified with the proposed conditional approval. Since the deficiencies identified in EPA's proposed rule no longer exist, EPA is taking action to fully approve Virginia's PSD program as a SIP revision.

After making its original PSD submittal to EPA on December 17, 1992, in 1995 Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege law, Va. Code § 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The privilege does not extend to documents or information that are: (1) Generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On December 29, 1997, the Office of the Attorney General provided a legal opinion that states, with regard to the Privilege law, that the Commonwealth is "required by Federal law to have full authority to enforce" the PSD program, "both civilly and criminally," therefore, "all aspects of Virginia's environmental laws and regulations that are necessary to implement and enforce its PSD program in a manner that is no less stringent than its Federal counterpart are necessarily "required by law." Thus, "[r]egarding § 10.1–1198, documents or information needed for civil or criminal enforcement under the PSD program could not be privileged * * *"

Virginia's Immunity law, Va. Code § 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's December 29, 1997 opinion states that the quoted language renders this statute inapplicable to PSD enforcement.

Thus, EPA has determined that Virginia's Privilege and Immunity legislation will not preclude the Commonwealth from enforcing its PSD program consistent with the CAA's requirements.

III. Response to Comments

EPA received comments supporting EPA's proposed disapproval of the Commonwealth's PSD SIP from environmental, public interest, and legal action organizations, and from private citizens. Each of these groups and citizens stressed that EPA should not approve Virginia's PSD SIP because Virginia had not provided all interested and qualified parties with the legal standing to challenge PSD permitting actions in State courts or through administrative appeal. EPA also received adverse comment related to the proposed disapproval from the Commonwealth of Virginia and several groups representing business and industrial sources. The latter alternatively indicated their support of the proposed conditional approval.

Although EPA solicited comment on whether or not legal standing should be grounds for disapproving Virginia's PSD program, Virginia's adoption of revised standing provisions, as noted above, eliminates the need to consider this issue prior to taking a final rulemaking action on the PSD SIP. Therefore, EPA is not commenting or otherwise announcing a decision on this matter at this time.

One environmental group commented in favor of EPA's disapproval of the Commonwealth's PSD SIP because it believed that the Commonwealth's Air Board was "* * * unprepared to assume responsibility for implementation of the state's PSD program in the absence of a large EPA presence * * *" 40 CFR part 51 and section 110 of the Clean Air Act establish criteria by which EPA is to evaluate and approve a State Implementation Plan. EPA has determined that the Commonwealth has met the requirements of section 110 and 40 CFR part 51 and has the resources and necessary authority to carry out a PSD program. In fact, the Commonwealth has been implementing the Federal PSD program since 1981 under an EPA delegation of authority. Should EPA identify deficiencies in the Commonwealth's PSD program whereby the Commonwealth can no longer demonstrate that its program meets the criteria established under section 110 of the Clean Air Act and the regulations in part 51, EPA has the authority to withdraw its approval.

In addition, while EPA is approving the Commonwealth's PSD SIP, EPA recognizes that it has a responsibility to insure that all States properly implement their preconstruction permitting programs. EPA's approval of the Commonwealth's PSD program does not divest the Agency of the duty to continue appropriate oversight to insure that PSD determinations made by Virginia are consistent with the requirements of the CAA, EPA regulations, and the SIP. EPA's authority to oversee PSD program implementation is set forth in sections 113, 167, and 505(b) of the Act. For example, section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other enforcement action may be necessary to prevent construction of a major stationary source that does not "conform to the requirements of" the PSD program. Similarly, section 113(a)(5) provides for administrative orders and civil actions whenever EPA finds that a State "is not acting in compliance with" any requirement or prohibition of the Act regarding construction of new or modified sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan.

Enactment of Title V of the CAA and the EPA objection opportunity provided therein has added new tools for addressing deficient new source review decisions by states. Section 505(b) requires EPA to object to the issuance of a permit issued pursuant to Title V whenever the Administrator finds during the applicable review period, either on her own initiative or in response to a citizen petition, that the permit is "not in compliance with the requirements of an applicable requirement of this Act, including the requirements of an applicable implementation plan."

Regardless of whether EPA addresses deficient permits using objection authorities or enforcement authorities or

both, EPA cannot intervene unless the state decision fails to comply with applicable requirements. Thus, EPA may not intrude upon the significant discretion granted to states under new source review programs, and will not "second guess" state decisions. Rather, in determining whether a Title V permit incorporating PSD provisions calls for EPA objection under section 505(b) or use of enforcement authorities under sections 113 and 167, EPA will consider whether the applicable substantive and procedural requirements for public review and development of supporting documentation were followed. In particular, EPA will review the process followed by the permitting authority in determining best available control technology, assessing air quality impacts, meeting Class I area requirements, and other PSD requirements, to ensure that the required SIP procedures (including public participation and Federal Land Manager consultation opportunities) were met. EPA will also review whether any determination by the permitting authority was made on reasonable grounds properly supported on the record, described in enforceable terms, and consistent with all applicable requirements. Finally, EPA will review whether the terms of the PSD permit were properly incorporated into the operating permit.

IV. Today's Action

EPA is approving a SIP revision submitted by the Commonwealth of Virginia establishing a preconstruction permitting program for the prevention of significant deterioration as required by section 110 of the Clean Air Act. EPA is amending 40 CFR 52.2420 to incorporate this revision into Virginia's SIP. At the same time, EPA is withdrawing from Virginia's SIP the Federal PSD requirements which EPA incorporated into Virginia's SIP on August 7, 1980, and is withdrawing the Commonwealth's authority to implement these Federal PSD program requirements, an authority which EPA delegated to the Commonwealth on June 3, 1981. Accordingly, after the effective date of this final rule the Commonwealth will issue PSD permits under the authority of its SIP-approved program. The PSD permits which the Commonwealth issued prior to this rule under its delegated authority to implement the Federal PSD requirements continue in effect.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C.603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric* Co. v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action being promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action approving the Commonwealth of Virginia—s PSD SIP must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 1998. Filing a petition for reconsideration by the Administrator of this final rule approving the Commonwealth of Virginia's PSD SIP does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Commonwealth of Virginia's PSD SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: February 27, 1998.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraph (c)(123) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(123) Revisions to the Virginia Regulations for the Prevention of Significant Deterioration submitted on March 20, 1997 by the Department of Environmental Quality:

(i) Incorporation by reference.

(A) Letter of March 20, 1997 from the Department of Environmental Quality transmitting a SIP revision for regulations for the Prevention Significant Deterioration.

(B) Letter of February 18, 1993 from the Department of Air Pollution Control transmitting a SIP revision for regulations defining the prevention of significant deterioration areas.

(C) Letter of January 13, 1998 from the Depart of Environmental Quality transmitting a SIP revisions to the Virginia Administrative Code numbering system.

(D) The following provisions of the Virginia Regulations for the Control and Abatement of Air Pollution:

(*1*) Regulations for Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas, 9 VAC 5–80–1700 through 9 VAC 5–80–1970, published in the Virginia Register of Regulations on November 25, 1996, effective January 1, 1997.

(*2*) Appendix L to VR 120–01, renumbered as 9 VAC 5–20–205, Prevention of Significant Deterioration Areas, published in the Virginia Register of Regulations on December 2, 1991, effective January 1, 1992.

(ii) Additional material.

(A) Remainder of March 20, 1997 State submittal.

3. Section 52.2451 is revised to read as follows:

§ 52.2451 Significant deterioration of air quality.

(a) The requirements of sections 160 through 165 of the Clean Air Act are met since the plan includes approvable procedures for the Prevention of Significant Air Quality Deterioration.

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21(b) through (w) are hereby removed from the applicable state plan for the Commonwealth of Virginia.

[FR Doc. 98–7305 Filed 3–20–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94–129; FCC 97–248]

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers

AGENCY: Federal Communication Commission.

ACTION: Final Rule; establishment of effective date.

SUMMARY: The Commission's revised its rule on Subscriber Carrier Selection Changes. Section 64.1150(e)(4) and 64.1150(g) contained information collection requirements which shall become effective March 23, 1998.

EFFECTIVE DATE: The amendments to 47 CFR 64.1150(e)(4) and 64.1150(g) shall become effective March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Anita Cheng, Common Carrier Bureau, (202) 418–0960.

SUPPLEMENTARY INFORMATION: On July 14, 1997, the Commission adopted an order revising its subscriber carrier selection change rules, a summary of which was published in the **Federal Register**. *See* 62 FR 43477, August 14, 1997. Because the amendment to 47 CFR 64.1150(e)(4) and 64.1150(g) impose new or modified information collection requirements, they could not become effective until approved by the Office of Management and Budget ("OMB"). OMB approved these rule changes on January 27, 1998. The **Federal Register** summary stated that the Commission would publish a document establishing the effective date of the rule changes requiring OMB approval. This statement suggests that further action by the Commission is necessary to establish the effective date, notwithstanding the preceding statement in the summary that the rule changes imposing new or modified information collection requirements would become effective upon OMB approval. *See* 62 FR 43477, August 14, 1997. In order to resolve this matter in a manner that most appropriately provides interested parties with proper notice, the amendments to 47 CFR §§ 641150(e)(4) and 641150(g) shall become effective March 23, 1998. This publication satisfies the statement that the Commission would publish a document establishing the effective date of the rule changes requiring OMB approval.

List of subjects in 47 CFR Part 64

Communications common carriers, consumer protection, telecommunications, Federal Communications Commission.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–6982 Filed 3–20–98; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 031398B]

Fisheries of the Exclusive Economic Zone Off Alaska; At-Sea Scales Program

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

ACTION: Notice of program implementation.

SUMMARY: NMFS issues this notice of implementation of the At-Sea Scales Program for the groundfish fisheries off Alaska. The purpose of this action is to announce the dates on which NMFS will begin to accept requests from scale manufacturers that a model of scale be placed on the list of eligible at-sea scales and requests from vessel owners for a scale inspection.

DATES: Effective March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907–586–7228.

SUPPLEMENTARY INFORMATION:

On February 4, 1998, NMFS implemented the At-Sea Scales Program (63 FR 5835, February 4, 1998) establishing the requirements for scales approved by NMFS to weigh catch at sea. At the time the final rule was published, NMFS did not set a specific date to begin accepting requests that a scale be placed on the list of eligible at-sea scales under § 679.28(b)(1) and requests for a scale inspection under § 679.28(b)(2) because no vessels currently are required to weigh catch on scales approved under this program and because of uncertainty about the timing of staff and budget resources to

implement the program. However, in order to respond to requests for scale inspections on vessels currently installing scales voluntarily for commercial or research fisheries and in anticipation of possible scale requirements in the near future, NMFS announces full implementation of the At-Sea Scales Program. On April 1, 1998, and thereafter, scale manufacturers may submit the information described at § 679.28(b)(1), which is required in order for a model of scale to be placed on NMFS's list of eligible at-sea scales.

On June 1, 1998, and thereafter, vessel owners may request inspections of scales installed on vessels from inspectors authorized by NMFS under § 679.28(b)(2). Scale inspections will be conducted within 10 working days of receipt of a request for a scale inspection by the inspectors authorized by NMFS.

Dated: March 16, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–7463 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 55
Monday, March 23, 1998

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–330–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–301, –311, –314, and –315 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–301, –311, –314, and –315 series airplanes. This proposal would require installation of additional wiring and new electrical connectors for the lights in the forward end of the passenger overhead compartments. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent severe overheating of the electrical connectors for hte lights in the forward end of the passenger overhead compartments, which could result in smoke and fire in the passenger cabin.

DATES: Comments must be received by April 22, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–330–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7511; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–330–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person any obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–330–AD, 1601 Lnid Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8, –301, –311, –314, and –315 series airplanes. TCA advises, that, on two occasions, the electrical connectors for the lights in the forward end of the passenger cabin overheated on certain airplanes on which the Heath Techna Interior is installed. The overheated connectors produced an odor followed by visible smoke. Such overheating may have been caused by connectors having insufficient electrical load capacity. This condition, if not corrected, could result in smoke and fire in the passenger cabin.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin S.B. A8–33–39, Revision 'A,' dated October 24, 1997, which describe procedures for installation of additional wiring and new electrical connectors for the lights in the forward end of the passenger overhead compartments. The new connectors provide a higher electrical load capacity than those installed previously. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition. TCA classified this alert service bulletin as mandatory and issued Canadian airworthiness directive CF–97–17, dated September 26, 1997, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are

certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed installation, and that the average labor rate is $60 per work hour. Required parts would cost approximately $122 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $9,620, or $962 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that 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) if promulgated, 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. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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 [Amendment]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc.: Docket 97–NM–330–AD.

Applicability: Model DHC–8–301, –311, –314, and –315 series airplane; serial numbers 100, and 202 through 433 inclusive; excluding serial numbers 271 and 408; certificated in any category.

Note 1: This Ad applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent severe overheating of the electrical connectors for the lights in the forward end of the passenger overhead compartments, which could result in smoke and fire in the passenger cabin, accomplish the following:

(a) Within 400 hours time-in-service after the effective date of this AD, install additional wiring and new electrical connectors for the lights in the forward end of the passenger overhead compartments in accordance with Bombardier Alert Service Bulletin S.B. A8–33–39, Revision 'A,' date October 24, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–97–17, dated September 26, 1997.

Issued in Renton, Washington, on March 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7225 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–43–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain CASA Model CN–235 series airplanes. This proposal would require modification of certain fastener holes of the center wing. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fatigue cracking in this area, which could result in reduced structural integrity of the wing.

DATES: Comments must be received by April 22, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–43–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from

Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–43–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–43–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Dirección General de Aviación Civil (DGAC), which is the airworthiness authority for Spain, notified the FAA that an unsafe condition may exist on certain CASA Model CN–235 series airplanes. The DGAC advises that cracks have been found around several fastener holes in the structural joints of the center wing structure of the CASA Model CN–235 fatigue test article. Fatigue cracking in this area, if not detected and corrected in a timely manner, could result in reduced structural integrity of the wing.

Explanation of Relevant Service Information

CASA has issued Service Bulletins SB–235–57–14, Revision 1, dated June 21, 1996, and SB–235–57–05, Revision 2, dated June 21, 1996, which both describe procedures for modification of the fastener holes of the center wing. The modification entails a rototest inspection to detect cracking of certain fastener holes of the center wing; removal of cracking; and cold working the fastener holes of the center wing to increase the expected fatigue life to the design objective for the airplane. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

The DGAC classified these service bulletins as mandatory and issued Spanish airworthiness directive 04/94, dated August 1994, in order to assure the continued airworthiness of these airplanes in Spain.

FAA's Conclusions

This airplane model is manufactured in Spain and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Foreign AD

Operators should note that, although the parallel Spanish airworthiness directive does not mandate the accomplishment of required actions for CASA Model CN–235 series airplane, serial number C–011, the applicability of this proposed AD would include that airplane. Although that airplane was not certificated for civilian operation by the DGAC, the FAA has certificated it as such. The FAA has determined that the unsafe condition addressed in this AD may also exist or develop on that airplane.

Differences Between Proposed Rule and Related Service Bulletins

Operators should note that, although the service bulletins specify that the manufacturer may be contacted for disposition of certain repairs, this proposal would require that any repair, other than those specifically identified in the service bulletins, be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that the actions specified in CASA Service Bulletin SB–235–57–14 would be required to be accomplished on one airplane of U.S. registry. These proposed actions would take approximately 220 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $719 per airplane. Based on these figures, the cost impact of this proposed inspection on the single U.S. operator is estimated to be $13,919.

For CASA Model CN–235 series airplane, serial number C–011, on which the actions specified in CASA Service Bulletin SB–235–57–05 would be required to be accomplished, those proposed actions would take approximately 1,900 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $11,330 per airplane. Based on these figures, the cost impact of the proposed actions for that airplane is estimated to be $125,330.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not 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. Therefore, in accordance with Executive Order

12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that 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) if promulgated, 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. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding the following new airworthiness directive:

Construcciones Aeronauticas, S.A. (CASA): Docket 97–NM–43–AD.

Applicability: Model CN–235 series airplanes; as listed in CASA Service Bulletins SB–235–57–14, Revision 1, dated June 21, 1996; and SB–235–57–05, Revision 2, dated June 21, 1996; and Model CN–235 having serial number C–011; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the fastener holes of the center wing, which could result in reduced structural integrity of the wing, accomplish the following:

(a) For airplanes listed in CASA Service Bulletins SB–235–57–14, Revision 1, dated June 21, 1996; and SB–235–57–05, Revision 2, dated June 21, 1996: Perform a rototest inspection of the fastener holes of the center wing to detect cracking, in accordance with the applicable service bulletin, at the time specified in paragraph (c) of this AD.

(1) If no crack is found, prior to further flight, cold work the fastener holes in accordance with the applicable service bulletin.

(2) If any crack is found, prior to further flight, remove it in accordance with the service bulletin; repeat the rototest inspection to detect cracking; and cold work the fastener holes, in accordance with the applicable service bulletin. If any crack is found that cannot be removed using the procedures specified in the applicable service bulletin, prior to further flight, repair it in accordance with a method approved by the Manager, nternational Branch, ANM–116, FAA, Transport Airplane Directorate.

(b) For airplane serial number C–011: Perform a rototest inspection of the fastener holes of the center wing to detect cracking, in accordance with CASA Service Bulletin SB–235–57–05, Revision 2, dated June 21, 1996, at the time specified in paragraph (c) of this AD.

(1) If no crack is found, prior to further flight, cold work the fastener holes in accordance with the service bulletin.

(2) If any crack is found, prior to further flight, remove it in accordance with the service bulletin; repeat the rototest inspection to detect cracking; and cold work the fastener holes, in accordance with the service bulletin. If any crack is found that cannot be removed using the procedures specified in the service bulletin, prior to further flight, repair it in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(c) Accomplish the inspection required by paragraph (a) or (b) of this AD, as applicable, at the later of the times specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Prior to the accumulation of 17,000 total flight cycles or 37,400 total flight hours, whichever occurs first.

(2) Within 6 months after the effective date of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 04/94, dated August 1994.

Issued in Renton, Washington, on March 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–7366 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–18]

Proposed establishment of Class E Airspace; Rush City, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Rush City, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 34, and a Nondirectional Beacon SIAP to Rwy 34, have been developed for Rush City Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action would create controlled airspace with a southwest extension for Rush City Municipal Airport.

DATES: Comments must be received on or before May 11, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–18, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division,

Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–18." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Rush City, MN, to accommodate aircraft executing the proposed GPS Rwy 34 SIAP, and the NDB Rwy 34 SIAP, at Rush City Municipal Airport by creating controlled airspace with a southwest extension for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AGL MN E5 Rush City, MN [New]

Rush City Municipal Airport, MN
(Lat. 45°41'53" N, Long. 92°57'11" W)
Rush City NDB
Lat. 45°41'48" N, Long. 92°57'20" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Rush City Municipal Airport and within 2.5 miles each side of the 150° bearing from the Rush City NDB, extending from the 6.5-mile radius to 7.5 miles southeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on March 11, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–7380 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–19]

Proposed Modification of Class E Airspace; Wooster, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Wooster, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 28, Amendment 1, has been developed for Wayne County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action would increase the radius of the controlled airspace for Wayne County Airport.

DATES: Comments must be received on or before May 11, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the

Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–19, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT:

Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–19." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Wooster, OH, to accommodate aircraft executing the proposed GPS Rwy 28 SIAP, Amendment 1, at Wayne County Airpot by increasing the radius of the controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Polices and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AGL OH E5 Wooster, OH [Revised]

Wooster, Wayne County Airports, OH
(Lat. 40°52'30" N, Long. 81°53'18" W)
Smithville NDB
(Lat. 40°52'30" N, Long. 81°49'59" W)
That airspace extending upward from 700 fee above the surface within a 6.5-mile radius of Wayne County Airport and within 3.1 miles each side of the 090° bearing from the Smithville NDB, extending from the 6.5-mile radius to 10.0 miles east of the NDB, excluding that airspace within the Akron, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on March 11, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–7379 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–17]

Proposed Modification of Class E Airspace; Madison, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Madison, SD. A Global Positioning System (GPS) Standard Instrument Approach

Procedure (SIAP) to Runway (Rwy) 33, and a VHF Omnidirectional Range/ Distance Measuring Equipment-A (VOR/ DME–A) SIAP, have been developed for Madison Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action proposes to increase the radius of the existing controlled airspace for Madison Municipal Airport.

DATES: Comments must be received on or before May 11, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–17, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Planies, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–17." The postcard will be date/ time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Madison, SD, to accommodate aircraft executing the proposed GPS Rwy 33 SIAP, and the VOR/DME–A SIAP, at Madison Municipal Airport by increasing the radius of the existing controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AGL SD E5 Madison, SD [Revised]

Madison Municipal Airport, SD
(Lat. 44°00'58" N, long. 97°05'09" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Madison Municipal Airport and within 3.0 miles each side of the 341° bearing from the airport, extending from the 6.5-mile radius to 7.4 miles northwest of the airport.

* * * * *

Issued in Des Plaines, Illinois on March 11, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–7378 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–13]

Proposed Modification of Class E Airspace; Rugby, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Rugby, ND. A review of the controlled airspace within the State of North Dakota has indicated a small portion of Class G uncontrolled airspace in the vicinity of Rugby, ND. Controlled airspace extending upward from 1,200 feet above ground level (AGL) is needed to allow the FAA to provide safe and efficient air traffic control services for aircraft executing enroute and terminal instrument procedures. This small portion of uncontrolled airspace causes confusion for both pilots and controllers and does not allow for consistent application of instrument flight rules in a critical area near the Rugby Municipal Airport. This action would eliminate the small portion of uncontrolled airspace approximately 11 nautical miles to the southeast of Rugby, ND.

DATES: Comments must be received on or before May 11, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–13, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–13." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to identify Class E airspace at Rugby, ND, to accommodate aircraft executing instrument procedures at and nearby Rugby Municipal Airport. A small portion of uncontrolled airspace to the southeast of the airport would be eliminated. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AGL ND E5 Rugby, ND [Revised]

Rugby Municipal Airport, ND

(Lat. 48°23'25" N., long. 100°01'27" W.)
Rugby NDB
(Lat. 48°23'16" N., long. 100°01'37" W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Rugby Municipal Airport and that airspace extending upward from 1,200 feet above the surface within a 13.0-mile radius of the Rugby Municipal Airport and within 8.3 miles north and 4.0 miles south of the 115° bearing from the Rugby NDB extending from the NDB to 16.1 miles east of the NDB, and within 8.3 miles south and 4.0 miles north of the 314° bearing from the Rugby NDB extending from the NDB to 16.1 miles northwest of the NDB, excluding that airspace within the Minot, ND, and Rolla, ND, Class E airspace areas, and excluding all Federal Airways.

* * * * *

Issued in Des Plaines, Illinois on March 11, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–7377 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–16]

Proposed Modification of Class E Airspace; Traverse City, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Traverse City, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 36, has been developed for Cherry Capital Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to enlarge the extension to the south of the existing controlled airspace for Cherry Capital Airport.

DATES: Comments must be received on or before May 11, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–16, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 1300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted to triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–16." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Traverse City, MI, to accommodate aircraft executing the proposed GPS Rwy 36 SIAP, at Cherry Capital Airport by enlarging the extension to the south of the existing controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedure (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AGL MI E5 Traverse City, MI [Revised]

Traverse City, Cherry Capital Airport, MI
(Lat. 44°44'27"N, long. 85°34'57"W)
Traverse City VORTAC
(Lat. 44°40'05"N, long. 85°33'00"W)
Point in Space Coordinates
(Lat. 44°39'08"N, long. 85°35'17"W)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of Cherry Capital Airport and within 4.0 miles west and 8.0 miles east of the Traverse City VORTAC 158° radial, extending from the 7.7-mile radius to 14.4 miles south of the airport and within 3.2 miles west of the 169° bearing from a point in space extending from the 7.7-mile radius to 9.0 miles south of the airport.

* * * * *

Issued in Des Plaines, Illinois on March 11, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–7376 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–20]

Proposed Modification of Class E Airspace; Marion, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Marion, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 24, has been developed for Marion Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action would increase the radius of the controlled airspace for Marion Municipal Airport.

DATES: Comments must be received on or before May 11, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–20, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–20." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Marion, OH, to accommodate aircraft executing the proposed GPS Rwy 24 SIAP, at Marion Municipal Airport by increasing the radius of the controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it

is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AGL OH E5 Marion, OH [Revised]

Marion Municipal Airport, OH
(Lat. 40°36'59" N, long. 83°03'49" W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Marion Municipal Airport, excluding that airspace within the Buckyrus, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on March 11, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–7375 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL167–1b; FRL–5978–9]

Approval and Promulgation of State Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the May 5, 1995, and May 26, 1995, Illinois State Implementation Plan (SIP) revision requests regarding Synthetic Organic Chemical Manufacturing Industry reactor and distillation rules applicable to the Chicago and Metro-East ozone nonattainment areas. In the final rules section of this **Federal Register**, the EPA is approving the State's requests as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this proposed rule by April 22, 1998. Should the Agency receive such comment, it will publish a final rule informing the public that the direct final rule did not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed rule must be received on or before April 22, 1998.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: March 5, 1998.

David A. Ullrich,

Acting Regional Administrator, Region V.

[FR Doc. 98–7129 Filed 3–20–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH112–1b; FRL–5977–1]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to approve an August 1, 1997 requested revision to the Ohio State Implementation Plan (SIP) incorporating revised emission statement reporting requirements previously approved for the purpose of implementing an emissions statement program for stationary sources within the State's ozone nonattainment areas classified as marginal or above. In this action, USEPA is proposing to approve the State's finding that emission statement requirements are no longer applicable to areas redesignated as attaining the national ambient air quality standards for ozone. In the final rules section of this **Federal Register**, the USEPA is approving the State's requests as a direct final rule without prior proposal because USEPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. This direct final rule will become effective without further notice unless USEPA receives relevant adverse written comment on the this proposed rule by April 22, 1998. Should USEPA receive such comment, it will publish a final rule informing the public that the direct final rule did not take effect and such public comment received will be addressed in a subsequent final rule based on the proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that rule and no further action will be taken on this proposed rule. USEPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed rule must be received on or before April 22, 1998.

ADDRESSES: Written comments may be mailed to J. Elmer Bortzer, Chief,

Regulation Development Section, Air Programs Branch (AR–18J), Region 5 at the address listed below.

Copies of the materials submitted by the Ohio Environmental Protection Agency may be examined during normal business hours at the following locations:

Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Ohio Environmental Protection Agency, Division of Air Pollution Control, 1800 Watermark Drive, Columbus, OH 43215.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano at (312) 886–6036.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this Federal Register.

Dated: February 19, 1998.

Michelle D. Jordan,

Acting Regional Administrator, Region V.

[FR Doc. 98–7130 Filed 3–20–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA–022–5022; FRL–5984–9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; New Source Review in Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to grant limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia to revise its new source review (NSR) regulations for nonattainment areas to bring them into conformance with the Clean Air Act (CAA) amendments adopted in 1990, and to make other changes desired by the Commonwealth. Virginia's NSR regulations for nonattainment areas require persons to meet certain requirements before constructing a new major source to be located in a nonattainment area, or constructing a major modification in such an area, if that source or modification is or would be major for the pollutant for which the area is nonattainment. The requirements include the installation of air pollution control technology capable of achieving the Lowest Achievable Emission Rate (LAER), and offsetting the increase in emissions from the new source or modification with decreases in emissions from other sources.

DATES: Comments must be received on or before April 22, 1998.

ADDRESSES: Comments may be mailed to Kathleen Henry, Chief, Permit Programs Section, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. EPA, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Ray Chalmers, 3AT23, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, (215) 566–2061. E-mail address: chalmers.ray@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Description of CAA NSR Requirements

The CAA requires that certain NSR requirements be met by any person seeking to construct a new major source to be located in a nonattainment area, or to construct a major modification in such an area, if the source or modification is or would be major for the pollutant for which the area is designated as nonattainment. The requirements which such persons must meet include installing LAER technology and obtaining emission offsets. Sections 172(c)(5) and 173 of the CAA require States to adopt NSR permitting regulations and to establish NSR permitting programs to implement these requirements. When Congress revised the CAA in 1990, it modified certain NSR requirements, and directed States to revise their NSR regulations to incorporate these modifications.

II. General Description of Virginia's NSR Submittal

As the CAA requires, Virginia's SIP includes a NSR regulation, entitled "Permits—Major Stationary Sources and Major Modifications Locating in Nonattainment Areas," which specifies that new major sources or major modifications constructed in nonattainment areas must apply LAER and obtain emission offsets. This regulation is found in Virginia's Regulations for the Control and Abatement of Air Pollution at section 120–08–03. In response to the CAA revisions adopted in 1990, Virginia submitted, on November 9, 1992, a revision to this NSR regulation intended to update the requirements of the regulation.

The revised regulation contains, among other things, a provision allowing the crediting of emission reductions from preapplication shutdowns or curtailments which occurred on or after January 1, 1991, and which are permanent, quantifiable, and federally and state enforceable. This provision is the reason EPA is proposing only limited approval of Virginia's revised NSR regulation, because it allows credits for emission reductions resulting from shutting down an existing source or curtailing production or operating hours below baseline levels in all nonattainment areas, even those for which EPA has not approved an attainment demonstration. This issue is discussed in more detail later in this notice in the *EPA Analysis* section.

Virginia has one ozone nonattainment area. That area is Virginia's portion of the Metropolitan Washington DC serious ozone nonattainment area. At the time of its NSR SIP submittal, the Richmond area was classified as moderate ozone nonattainment area, and part of the Virginia portion of the Metropolitan Washington, D.C. area (Alexandria City and Arlington County) was designated as nonattainment for carbon monoxide. These two areas have since been redesignated to attainment. The remainder of Virginia is designated as attainment and/or unclassifiable with respect to all other criteria pollutant standards.

Under the CAA, and the Commonwealth's NSR regulation, sources of VOC or NO_X located in Virginia's serious ozone nonattainment area are considered major if they have the potential to emit 50 TPY or more of volatile organic compounds (VOC) or nitrogen oxides (NO_X).

III. CAA's Specific NSR Requirements

According to section 172(c)(5) of the CAA, SIPs must require that certain NSR requirements be met by any person seeking to construct a new major source to be located in a nonattainment area, or to make a major modification to a major source in such an area, if the source or modification is or would be major for the pollutant for which the area is designated as nonattainment. There are also special statutory permit requirements for ozone nonattainment areas, which are generally contained in revised section 173, and in subpart 2 of part D.

On July 23, 1996, EPA published in the **Federal Register** a comprehensive rulemaking which proposed significant changes to both the current nonattainment NSR and the current Prevention of Significant Deterioration (PSD) requirements. See 61 FR 38311. Upon EPA promulgation of the final rulemaking at a later date, all states, including Virginia, will be expected to evaluate their new source review regulations in accordance with the new requirements and to revise such regulations accordingly.

Important CAA requirements for new sources in nonattainment areas are found under sections 172, 173, 182, and 184 of the CAA, and are summarized below:

1. According to section 173(a)(1), the state regulation must assure that calculations of emissions offsets are based on the same emissions baseline used in the demonstration of reasonable further progress (RFP) towards attainment.

2. According to section 173(c)(1), the state regulation may include provisions which allow offsets to be obtained in another nonattainment area if that area has an equal or higher nonattainment classification and emissions from the other nonattainment area contribute to a National Ambient Air Quality Standard (NAAQS) violation in the area in which the source would construct.

3. According to section 173(c)(1), the state regulation must provide that any emissions offsets obtained in conjunction with the issuance of a permit to a new or modified source must be in effect and enforceable by the time the new or modified source commences operation. This statutory condition for offsets augments the existing requirement under section 173 that provides that offsets must be federally-enforceable before permit issuance, although the required emissions reductions need not occur until the date on which the new or modified source commences operations.

4. According to section 173(c)(1), provisions of the state NSR regulation must assure that emissions increases from new or modified sources will be offset by real reductions in actual emissions. EPA's initial guidance interpreting general sections of the CAA is contained in the Title I General Preamble published in the **Federal Register** on April 16, 1992 (57 FR 13498). In the General Preamble, EPA reiterated that emission increases and decreases for netting are to be determined consistent with EPA's current new source rules and the December 4, 1986 emissions trading policy statement (51 FR 43823). EPA's new source rules state that a decrease in emissions is only creditable if, among other requirements, the decrease has not been relied upon by the state for any permit, attainment demonstration, or reasonable further progress. Therefore, emission reductions made because of reasonably available control technology (RACT) or other requirements that have been taken into account in the state's demonstration of reasonable further progress or attainment demonstration are not creditable for netting purposes.

5. According to section 173(c)(2), the state regulation must prevent emission reductions otherwise required by the CAA from being credited for purposes of satisfying part D offset requirements.

6. According to section 173(a)(5), the state regulation must require that prior to any part D permit being issued there be an analysis of alternative sites, sizes, production processes, and environmental control techniques for proposed sources that demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

7. According to section 328, the state regulation must assure that sources located on the Outer Continental Shelf (OCS) are subject to the same requirements applicable if the source were located in the corresponding onshore area.

8. Section 173(a)(3) requires that the state regulation must assure that owners or operators of each proposed new or modified major stationary source demonstrate that all of their other major stationary sources in the state are in compliance.

9. The state regulation must define major new and major modified sources in accordance with the area's nonattainment classification under section 181 for ozone.

10. The state regulation must require emission offsets for major new and major modified sources in accordance with the area's nonattainment classification under section 181 for ozone.

11. As discussed in Section 184 of the CAA, the state regulation must require all applicable new source requirements to be met by sources locating in the ozone transport region (OTR). These provisions must also ensure that new or modified major stationary sources obtain VOC and, presumptively, NO_X offsets at a ratio of at least 1.15 to 1 in order to obtain a NSR permit. Higher offset ratios apply in areas classified as serious or above.

12. The state regulation must ensure that any new or modified major stationary source of NOx satisfies the requirements applicable to any new or modified major stationary source of VOC, unless a special NOx exemption is granted by the Administrator under CAA section 182(f).

13. State plans must, for serious and severe ozone nonattainment areas, implement sections 182(c)(6), (7) and (8) with regard to modifications.

IV. Summary of Regulatory Revisions

EPA discusses below the major changes by which Virginia has amended its NSR regulation. These changes include changes necessary to bring Virginia's NSR regulation into conformity with federal requirements and other changes not required by federal mandate. Because new subsections have been added, this SIP revision includes changes in the manner in which the regulation is codified. Listed below are the subsections in Virginia's regulation and the major proposed changes:

Section 120–08–03 A—Applicability (Amended)

Virginia has modified this subsection by including a provision to deter a company from constructing or modifying a facility in increments to avoid permit requirements. The provision states that where a source is constructed or modified in contemporaneous increments which individually are not subject to approval and which are not part of a program of construction or modification in planned incremental phases approved by the board, all such increments shall be added together for determining applicability. It further states that an incremental change is contemporaneous with the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

Section 120 08 03 B—Definitions (Amended)

Virginia has modified many of the definitions found in this subsection. Key changes in the definitions are discussed below:

1. *Allowable Emissions*—Virginia modified this definition to indicate that any limits on emissions used when calculating allowable emissions must always be federally enforceable.

2. *Building, structure, facility, or installation*—Virginia modified its former definition of "building, structure, or facility" by now making this a definition of "building, structure, facility, or *installation*. (Emphasis

added). In conjunction with this change, Virginia deleted its former separate definition of "installation."

3. *Federally enforceable*—Virginia modified this definition to include permits issued under an EPA approved program that is incorporated into the SIP and expressly requires adherence to any permit issued under such program.

4. *Major Modification*—Virginia made several modifications to this definition to indicate that certain provisions or changes must always be federally enforceable. In particular, the definition now states that any "physical change or change in the method of operation" shall not include "[u]se of an alternative or raw material which a source was capable of accommodating before December 21, 1976, unless the change would be prohibited under any federally *and* state enforceable permit condition * * *" (emphasis added). In addition the definition now says that such a change shall not include "[a]n increase in the hours of operation or the production rate, unless the change in the hours of operation or the production rate would be prohibited under any federally *and* state enforceable permit condition * * *" Virginia also deleted several items from its listing of items which do not qualify as physical changes or changes in method of operation.

5. *Major Stationary Source*—Virginia revised this definition to make its major source thresholds for sources located in ozone nonattainment areas consistent with EPA's requirements. Virginia specifies that a major stationary source includes not only sources which emit, or have the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the CAA, but also sources which emit "50 tons per year or more of volatile organic compounds or nitrogen oxides in nonattainment areas classified as serious in Appendix K," or "25 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as severe in Appendix K." Virginia also added to this definition a listing of the source categories from which fugitive emissions must be considered when determining if a source is major.

6. *Net emissions increase*—Virginia modified this definition to specify when increases or decreases in actual emissions are contemporaneous and when they are creditable.

7. *Nonattainment pollutant*—In this definition Virginia modified the statement "For ozone nonattainment areas, the nonattainment pollutant shall be volatile organic compounds (including hydrocarbons)" by adding "and nitrogen oxides."

8. *Potential to Emit*—In this definition Virginia now requires limits on potential to emit to be federally enforceable.

9. *Reconstruction*—In this definition Virginia removed a provision which stated that the assessment of whether or not a reconstructed stationary source is subject to a new source performance standard had to take into account any economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

10. *Significant*—Virginia includes a new provision indicating that in serious or severe ozone nonattainment areas a 25 ton per year increase in volatile organic compound or nitrogen oxide emissions would be considered a significant emissions increase.

Section 120–06–03 C—General (Amended)

Virginia modified the general subsection by adding a provision stating that it may combine in one permit the requirements for emissions units subject to more than one of Virginia's regulatory requirements applicable to permitting, and that Virginia may also require a combined application for such emissions units. The permitting requirements for which such combined permits and applications may be required include those of Virginia's NSR regulation for sources locating in nonattainment areas and those of two other Virginia regulations, entitled, "Permits—New and Modified Sources," and "Permits—Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas."

Section 120–08–03 D—Applications (Amended)

Virginia modified the applications subsection by revising its specification of the scope of permit applications. Virginia also added provisions defining who must sign permit applications and requiring the signer to certify that "the information submitted is, to the best of my knowledge and belief, true, accurate, and complete."

Section 120–08–03 F—Standards/ Conditions for Granting Permits (Amended)

Virginia made several changes in the standards and conditions subsection, which establishes the requirements which must be met before a permit can be issued. One major changed requirement pertains to offsets. Virginia now requires that a permit applicant demonstrate that "By the time the source is to commence operation, sufficient offsetting emissions reductions shall have been obtained * * * such that total allowable emissions of qualifying nonattainment pollutants from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources, as determined in accordance with the requirements of this section, prior to the application for such permit to construct or modify so as to represent (when considered together with any applicable control measures in the State Implementation Plan) reasonable further progress * * *" The only exception involves areas identified as zones where economic development should be targeted, in which emissions of a pollutant "resulting from the proposed new or modified stationary source shall not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources in the State Implementation Plan." Virginia also added a provision requiring that any emission reductions required as a precondition of the issuance of a NSR permit "shall be state and federally enforceable before such permit may be issued." Virginia also modified its provision requiring applicants to demonstrate, through an analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source, that the benefits of the proposed source would significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Section 120–08–03 G—Action on Permit Application (Amended)

Virginia amended this subsection to specify that Virginia must notify applicants in writing of deficiencies in their permit applications. Virginia also (1) deleted certain public participation provisions from this section which it now includes in a separate section of the regulation; and (2) revised its description of permit processing steps by including in the description a reference to public participation requirements found elsewhere in the regulation.

Section 120–08–03 H—Public Participation (Added)

Virginia added a new subsection detailing public participation requirements. This subsection requires the applicant to provide the public with notice of its application for a permit and then, within 30 to 60 days, to provide

a public briefing. In addition, the subsection provides that Virginia must provide a public comment period of at least 30 days, and hold a public hearing, before it makes a decision on a permit application. The Commonwealth's Board has the option of providing a public briefing prior to the public comment period. In all cases, the public must be provided with the opportunity to review relevant information.

Section 120–08–03 I—Compliance Determination and Verification by Performance Testing (Amended, Formerly Designated as Section 120–08–03 H, This Section Replaces the Original Section 120–08–03 I, Which Was Deleted)

Virginia modified this subsection by specifying that source owners are responsible for conducting tests if any such tests are required.

Section 120–08–03 J—Application Review and Analysis (Formerly Designated as Section 120–08–03 K, This Section Replaces the Original Section 120–08–03 J, Which Was Deleted)

Virginia made no changes to this subsection.

Section 120–08–03 K—Circumvention (Formerly Designated as Section 120–08–03 L)

Virginia made no changes to this subsection.

Section 120–08–03 L—Interstate Pollution Abatement (Formerly Designated as Section 120–08–03 M)

Virginia made no changes to this subsection.

Section 120–08–03 M—Offsets (Amended, Formerly Designated as Section 120–08–03 N)

Virginia allows the crediting of emission reductions resulting from shutting down an existing source or curtailing production or operating hours below baseline levels if the shutdown or curtailment is in effect, if it occurred on or after January 1, 1991, and if it is permanent, quantifiable, and federally and state enforceable. Virginia requires that the increased emissions of the air pollutant(s) from the new or modified source must be offset by an equal or greater reduction in the actual emissions of such air pollutant(s) from the same or other sources. In the case of sources emitting ozone precursors (VOC and NO_x), the emission reductions must be greater than the increases by certain specified ratios, which are highest in the areas with the worst designated air quality levels. In most cases the reductions must be obtained from the same source or from other sources in the same nonattainment area. However, Virginia may allow reductions in ozone precursor emissions to be obtained from sources outside the nonattainment area if the other area has an equal or greater nonattainment designation than the area where the source is located and the emissions from the other area contribute to a violation of the ambient air quality standard(s) in the area where the new or modified source is to be located. Virginia allows reductions to be credited only if they are not otherwise required by its regulations. Virginia does allow incidental emission reductions to be credited, provided they are not required by regulation and meet certain other requirements. In this section Virginia also includes a special provision allowing increases in emissions from rocket engine and motor firing to be offset by alternative or innovative means.

Section 120–08–03 N—De Minimis Increases and Stationary Source Modification Alternatives for Ozone Nonattainment Areas Classified as Serious or Severe (Added)

Virginia specifies in this new subsection that VOC emissions increases resulting from modifications at sources in serious or severe ozone nonattainment areas can not be considered de minimis unless the increase in net emissions does not exceed 25 TPY when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred.

Section 120–08–03 Q—Reactivation and Permanent Shutdown (Added)

Virginia specifies in this new subsection that a source which is reopened after having been determined to be shutdown must obtain a permit. Virginia also sets forth criteria by which sources are formally determined to be shutdown.

Section 120–08–03 R—Transfer of Permits (Added)

Virginia establishes in this new subsection provisions pertaining to transfer of permits.

Section 120–08–03 S—Permit Invalidation, Revocation, and Enforcement (Added)

Virginia sets forth in this new subsection the conditions under which owners of sources subject to permitting requirements may be subject to enforcement action and when permits may be invalidated or revoked.

Section 120–08–03 T—Existence of Permit No Defense (Added)

Virginia specifies in this new subsection that the existence of a permit under this section shall not constitute a defense to a violation of the Virginia Air Pollution Control Law or these regulations and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

V. EPA Analysis

EPA's has determined that the amendments to Virginia's NSR regulations are consistent with the CAA and currently promulgated federal NSR regulations with one exception. Virginia's NSR regulation allows persons who intend to build or modify a major source in a nonattainment area to take credit for emission reductions obtained from shutdowns or curtailments of production or operating hours which took place prior to the source's application for a new source review permit (prior shutdown or curtailment credits) even if EPA has not approved an attainment plan for the nonattainment area. Current EPA regulations, developed prior to the CAA Amendments of 1990, provide that States having nonattainment areas without EPA approved attainment demonstrations may allow persons intending to build or modify sources located in those areas to take credit for emission reductions resulting from shutdowns or curtailments of production or operating hours only if: (1) The reductions occurred on or after the date the new proposed source or modification files a permit application, or, (2) if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source. See 40 CFR 51.165 (a)(3)(ii)(C)(2). Thus, under current EPA regulations, states are prohibited from crediting emission reductions which occurred prior to the date the new proposed source or modification files a permit application (prior shutdown or curtailment credits) unless EPA has approved an attainment demonstration for the area. It is important to note that Virginia's current SIP regulations do not contain this so-called "shutdown prohibition."

Virginia's revised NSR regulation affirmatively allows persons seeking to build new major sources or major modifications to take credit for emission reductions resulting from shutdowns or

curtailments of production or operating hours if those shutdowns or curtailments occurred after January 1, 1991. Because Virginia's regulation allows persons seeking to construct new major sources or major modifications in a nonattainment area for which EPA has not approved an attainment plan to take credit for shutdowns or curtailments which occurred prior to the date they filed their permit application, Virginia's NSR regulation appears not to conform with the existing EPA prohibition on the use of prior shutdown or curtailment credits in nonattainment areas for which EPA has not approved an attainment demonstration. This prohibition is found at 40 CFR 51.165(a)(3)(ii)(C)(2).

However, on July 23, 1996, EPA published in the **Federal Register** a comprehensive rulemaking which proposed significant changes to the current PSD and nonattainment NSR rules. This proposed rulemaking is hereinafter referred to as the "NSR Reform Rulemaking." See 61 FR 38311. The NSR Reform Rulemaking proposes to revise regulations for the approval and promulgation of SIPs and the requirements for preparation, adoption, and submittal of implementation plans governing the NSR programs mandated by Parts C and D of Title I of the CAA. Specifically, Section VII.A of EPA's NSR Reform Rulemaking, entitled "Emissions Credits Resulting From Source Shutdowns and Curtailments," proposes to eliminate the current restrictions on crediting of emissions reductions from source shutdowns and curtailments that occurred after 1990. In the NSR Reform Rulemaking, EPA proposes two different alternatives for eliminating the prior shutdown prohibition. The second of these alternatives, entitled "Shutdown Alternative 2", generally lifts the current offset restriction applicable to emissions reductions from source shutdowns and source curtailments for all nonattainment areas and all pollutants where such reductions occur after the base year of the emissions inventory used (or to be used) to meet the applicable provisions of Part D of the CAA. See proposed § 51.165(a)(3)(ii)(C)(5) [Alternative 2], 61 FR 38314. Under this alternative, States could allow pre-application emission reductions from source shutdowns or curtailments to be used as offsets in all nonattainment areas and for all pollutants provided such reductions occurred after the base year of the emissions inventory used by the State to meet the applicable provisions of Part D of the CAA.

As explained above, Virginia's NSR rule allows sources to take credit for emissions reductions from shutdowns or curtailments of production or operating hours which occurred after January 1, 1991. This is consistent with Alternative 2 of EPA's NSR Reform Rulemaking, which credits only those emissions reductions from source shutdowns and curtailments occurring after 1990, i.e., the base year of the emissions inventory used to meet the applicable provisions of Part D of the CAA. Thus, EPA believes that Virginia's NSR regulation is generally consistent with "Shutdown Alternative 2" as described in EPA's proposed NSR Reform Rulemaking, because both Virginia's rule and Alternative 2 allow sources to take credit only from emission reductions or curtailments occurring after January 1, 1991.

Because Virginia's NSR regulation is generally consistent with Alternative 2 of EPA's proposed NSR Reform Rulemaking (as discussed above), and because approval of the revised version of Virginia's NSR regulation submitted on November 9, 1992 would strengthen the SIP to be consistent with the CAA's provisions for NSR, EPA believes that Virginia's revised NSR regulation warrants limited approval. If EPA promulgates Alternative 2, this limited approval of Virginia's NSR regulations would convert to a full approval.

The alternative shutdown related provision set forth in EPA's NSR Reform Rulemaking proposal is entitled "Shutdown Alternative 1." This alternative proposes, for ozone nonattainment areas, to lift the current offset restriction applicable to emissions reductions from source shutdowns and curtailments in such areas without EPA-approved attainment demonstrations, provided the emissions reductions occur after November 15, 1990 and the area has kept current with the CAA's scheduled Part D ozone nonattainment planning requirements. See proposed § 51.165(a)(3)(ii)(C)(5) and (6) [Alternative 1].

EPA acknowledges that either Alternative 1 or 2 may be eventually incorporated into the final NSR Reform Rulemaking upon its final promulgation. It is also noted that while EPA is with this rulemaking proposing to grant limited approval of Virginia's NSR regulation based on the rule's consistency with Shutdown Alternative 2 in EPA's NSR Reform rulemaking, the Commonwealth may need to amend its NSR regulation if Shutdown Alternative 1 rather than Shutdown Alternative 2 is promulgated. If Alternative 1 is promulgated, EPA would determine the status of Virginia's conformance with Part D ozone planning requirements for any nonattainment area. If Virginia's SIP were not current with the Part D ozone planning requirements for any nonattainment area, EPA would make a SIP call for Virginia to amend its NSR rule to conform with Alternative 1 as provided in EPA's final NSR Reform Rulemaking.

Virginia's regulation does not state that any emission reductions must also have occurred after the base year of the emissions inventory used (or to be used) to meet the applicable provisions of Part D of the CAA. If an area in Virginia is designated as a new nonattainment area in the future, the baseline year of the inventory used in the attainment demonstration for that area would likely be after the January 1, 1991 baseline year used for areas designated as nonattainment at the time of the 1990 CAA amendments. Because Virginia does not state in its NSR regulation that any emission reductions must also have occurred after the base year of the emissions inventory used (or to be used) to meet the applicable provisions of Part D of the CAA, Virginia would have to modify its NSR rule if, in the future, Virginia is required to do a new attainment demonstration because a new area in Virginia is designated as nonattainment or a current nonattainment area fails to meet its statutory attainment deadline.

After making its NSR submittal to EPA on November 9, 1992, in 1995 Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege law, Va. Code section 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The privilege does not extend to documents or information that are: (1) Generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that

demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On December 29, 1997, the Office of the Attorney General provided a legal opinion that states, with regard to the Privilege law: Virginia's Immunity law, Va. Code section 10.1–1199, provides that "*[t]o the extent consistent with requirements imposed by federal law,*" (emphasis added) any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. Thus, EPA has determined that Virginia's Privilege and Immunity legislation will not preclude the Commonwealth from enforcing its NSR program consistent with the CAA's requirements.

VI. Proposed Action

EPA is proposing limited approval of the revisions to the Virginia SIP NSR regulations submitted on November 9, 1992 because such approval would strengthen the SIP so that it meets the NSR requirements of the CAA as discussed herein. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

VII. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

The Administrator's decision to approve or disapprove Virginia's NSR SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 9, 1998.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 98–7489 Filed 3–20–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5984–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete Anaconda Aluminum/Milgo Electronics Site from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 announces its intent to delete the Anaconda Aluminum/Milgo Electronics Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Florida Department of Environmental Protection (FDEP) have determined that the Site poses no significant threat to public health or the environment and therefore, further response measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site may be submitted on or before: April 22, 1998.

ADDRESSES: Comments may be mailed to: Richard D. Green, Acting Director, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 100 Alabama Street S.W., Atlanta, Georgia 30303–3104.

Comprehensive information on this Site is available through the Region 4 public docket, which is available for viewing at the Anaconda Aluminum/Milgo Electronics Site information

repositories at two locations. Locations, contacts, phone numbers and viewing hours are:

U.S. EPA Record Center, attn: Phyllis Craig, Atlanta Federal Center, 100 Alabama Street, S.W., Atlanta, Georgia 30303–3104, Phone: (404) 562–8881, Hours: 8:00 a.m. to 4:00 p.m., Monday through Friday, By Appointment Only

North Central Library, 10750 SW 211th Street, Miami, Florida 33189, Phone: (305) 693–4541, Hours: 1:00 a.m. to 6:00 p.m., Monday, 9:30 a.m. to 6:00 p.m., Tuesday and Wednesday, 11:30 a.m. to 8:00 p.m., Thursday, 8:30 a.m. to 5 p.m., Saturday

FOR FURTHER INFORMATION CONTACT: John Zimmerman, U.S. EPA Region 4, Mail Code: WD–SSMB, Atlanta Federal Center, 100 Alabama Street, S.W., Atlanta, Georgia 30303–3104, (404) 562–8936.

SUPPLEMENTARY INFORMATION:

Table of Contents:

I. Introduction

The EPA Region 4 announces its intent to delete the Anaconda Aluminum/Milgo Electronics Site, Miami, Florida, from the NPL, which constitutes Appendix B of the NCP, 40 CFR Part 300, and requests comments on this deletion. EPA identifies sites on the NPL that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA proposes to delete the Anaconda Aluminum/Milgo Electronics Site located on the 3600 block of N.W. 76th Street, in Miami, Dade County, Florida from the NPL.

EPA will accept comments concerning this Site for thirty days after publication of this document in the **Federal Register.**

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how this Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from, or re-categorized on, the NPL where no further response is appropriate. In making this determination, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

CERCLA Section 121(c), 42 U.S.C. 9621(c), provides in pertinent part that:

> If the President selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the Site, the President shall review such remedial action no less often than each 5 years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented* * *.

EPA policy interprets this provision to apply only to those sites where any remaining hazardous substances are below the minimum levels that will allow for unlimited use and unrestricted exposure while continuing to be protective of public health and the environment. On that basis, for reasons set forth below, the statutory requirement has been satisfied at this Site, and five year reviews and operation and maintenance activities are not required. However, in the event new information is discovered which indicates a need for further action, EPA may initiate appropriate remedial actions. In addition, whenever there is a significant release from a site previously deleted from the NPL, that site may be restored to the NPL without application of the Hazardous Ranking System. Accordingly, the Site is qualified for deletion from the NPL.

III. Deletion Procedures

EPA will accept and evaluate public comments before making a final decision on deletion. The following procedures were used for the intended deletion of the Site:

1. FDEP has concurred with the deletion decision;

2. Concurrently with this Notice of Intent, a notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials and other interested parties announcing a 30-day public comment period on the proposed deletion from the NPL; and

3. The Region has made all relevant documents available at the information repositories.

The Region will respond to significant comments, if any, submitted during the comment period.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes to assist Agency management.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect any deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary, if any, will be made available to local residents by the Regional office.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the intention to delete this Site from the NPL.

The Anaconda Aluminum/Milgo Electronics Site in Dade County is approximately three acres of land along the north and south sides of N.W. 76th Street in the 3600 block. The portion on the north is the Milgo property and the portion on the south is the Anaconda Aluminum property.

Anaconda Aluminum Company operated an aluminum anodizing facility on the Anaconda property from approximately 1957 to 1977. The Atlantic Richfield Company acquired the Anaconda Aluminum Company in 1977 and operated the facility until February 1982, when all processes ended and the Anaconda property was sold to the current owner, Dade Metals Corporation in October 1983. The property was used for storing lumber and rebar by a tenant, JRD Forming Company. JRD is no longer a tenant and the property is currently not in use. The aluminum anodizing operations utilized an electrochemical processing acid and a caustic base to produce a film of protective oxide on aluminum. Wastewater from the process was discharged into an onsite percolation pit, permitted by the Metropolitan Dade County Department of Environmental Resources Management. The percolation pit was filled in when the facility ceased operations.

Milgo Electronics, producers of communications and data processing equipment, conducted electroplating, manufacturing, painting, and packaging operations at the Milgo property from 1961 until 1984. Wastewater from

chemical rinses, metal plating, and spray coating were treated onsite in a treatment system designed to precipitate dissolved metals from the wastewater. The precipitated sediment was removed by a tank truck and the remaining liquid was discharged to a drainfield on the property. Racal-Datacom, Inc. became the successor to Milgo Electronics Corporation. The Milgo facility was closed in 1984 and 1985 in accordance with a closure plan approved by the Florida Department of Environmental Regulation (renamed the Florida Department of Environmental Protection). As part of the closure, the drainfield, batch waste holding tank, and all process vessels were drained and their contents disposed of at approved sites.

Preliminary and expanded site investigations determined that there was potential impact to the environment by inorganic contaminants, in particular chromium, lead, and aluminum. The Site was placed on the NPL in August of 1990. An Administrative Order by Consent for the Remedial Investigation/ Feasibility Study (RI/FS) was signed on July 31, 1992 and later amended in November of 1992. Additional sampling was conducted prior to the RI/FS and based upon these results, a removal action was conducted in 1993 to remove a significant portion of the contamination at the Site. The removal activities addressed soil and treatment structures known to contain elevated levels of metals and organics and included; removal of liquids and sludge from the settling tank, drainfield, batch tank, and underground circular structure and sump with the liquid and sludge being pumped into 55 gallon drums for disposal at an approved offsite location, the testing of the sump (no leakage was observed other than the exit pipe), decontamination and removal/filling of structures with cement slurry, and finally excavation of the drainfield to a 6–7 foot depth below land surface in a 50 foot long by 7 foot wide trench. Post-removal sampling results indicated that the removal was successful.

In 1993, a Remedial Investigation was performed mainly on the remaining areas of potential contamination not addressed during the removal action. Over 100 samples of soil, groundwater, and sediment were collected. A Baseline Risk Assessment was conducted as part of this RI to evaluate the public health and environmental problems that could result if the Site were not remediated.

The results of the RI and the Risk Assessment indicated that the 1993 removal of contaminated soils at the Anaconda Aluminum/Milgo Electronics Site reduced the risk from exposure to Site-related contaminants in the soils to levels which are protective of human health and the environment. Groundwater contaminants which could be directly attributed to the Site were below concentrations which exceeded health-based levels. Two volatile organic compounds (VOCs) that were found during the RI in the deep wells have been cited as an area-wide groundwater condition.

On November 22, 1994, EPA signed a Record of Decision (ROD) for the Anaconda Aluminum/Milgo Electronics Site. The ROD called for No Further Action at the Site. However, to verify that the VOCs detected in the groundwater are not indicative of a Site-related release, EPA required that four post-RI supplemental sampling events would take place. This post-RI sampling, which was completed last year, confirmed that no significant risk to public health or the environment is posed by the Site. In three out of the four sampling events, the contaminants found during the RI were no longer present at levels above drinking water standards.

Due to the removal of contaminated soils, hazardous substances have been removed from the Site so as to allow for unlimited use and unrestricted exposures within the Site, the Site is protective of public health and the environment, and no further remedial action is needed at the Site. Accordingly, EPA will not conduct operation and maintenance activities or five-year reviews at this Site.

EPA, with concurrence of FDEP, has determined that all appropriate actions at the Anaconda Aluminum/Milgo Electronics Site have been completed, and that no further remedial action is necessary. Therefore, EPA is proposing deletion of the Site from the NPL.

Dated: March 16, 1998.

John H. Hankinson, Jr.,

Regional Administrator, USEPA Region 4.

[FR Doc. 98–7307 Filed 3–20–98; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–34; RM–9233]

Radio Broadcasting Services; Buckhannon, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by J&K Broadcasting, Inc., proposing the allotment of Channel 238A at Buckhannon, West Virginia, as the community's third local commercial FM transmission service. Channel 238A can be allotted to Buckhannon in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 238A at Buckhannon are North Latitude 38–59–30 and West Longitude 80–13–48.

DATES: Comments must be filed on or before May 4, 1998, and reply comments on or before May 19, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Timothy E. Welch, Esq., Hill & Welch, 1330 New Hampshire Ave., NW., Suite 113, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–34, adopted March 4, 1998, and released March 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments. see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–7360 Filed 3–20–98; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE75

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant Fritillaria Gentneri (Gentner's fritillary)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the plant, *Fritillaria gentneri* (Gentner's fritillary (=Mission-bells)). It is endemic to Oregon and only found in two counties, Jackson and Josephine. This taxa is threatened by residential development, agricultural activities, silvicultural activities, road and trail improvement, off-road vehicle use, collection for gardens, and increased risk of extinction due to small numbers. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for this plant. The Service seeks data and comment from the public on this proposal.

DATES: Comments from all interested parties received by May 22, 1998 will be considered by the Service. Public hearing requests must be received by May 7, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Oregon State Office, U.S. Fish and Wildlife Service, 2600 SE 98th Ave. Suite 100, Portland, OR 97266. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Andrew F. Robinson Jr., Botantist, (see ADDRESSES section) (telephone 503/231–6179; facsimile 503/231–6179).

SUPPLEMENTARY INFORMATION:

Background

Fritillaria gentneri was discovered by the Gentner family and was first named by Helen M. Gilkey (1951). The original location was in the vicinity of Jacksonville, Jackson County, Oregon. It was previously considered a form of *Fritillaria recurva* but Guerrant (1992) identified *Fritillaria gentneri* as a separate species.

Fritillaria gentneri is in the family Liliaceae. It has a fleshy bulb, robust stem, is 5 to 7 decimeters (dm) (19.7 to 27.6 inches (in)) high, glaucous (having a coating of bluish caste), and sometimes purple mottled. The leaves are lanceolate (arrow shaped), sometimes linear, 7 to 15 centimeters (cm) (2.8 to 5.9 in) long, 0.7 to 1.5 cm (0.3 to 0.6 in) wide at the base, and they are often whorled. The flowers are solitary or in bracted racemes (simply branched flower stem with a small simple leaf at the base of each branch), one to five on long pedicels (the stalk supporting a single flower). The campanulate (bell shaped) corolla is 3.5 to 4 cm (1.4 to 1.6 in) long and is reddish purple with pale yellow streaks (Gilkey 1951, Peck 1961, Meinke 1982).

Fritillaria gentneri (Gentner's fritillary) is endemic to Oregon and known only from scattered localities in southwestern Oregon, along the Rogue and Illinois River drainages in Josephine and Jackson counties. *Fritillaria gentneri* occurs in rather dry open woodlands of fir or oak at elevations below approximately 1,360 meters (m) (4,450 feet (ft)). The species is highly localized in a 48 kilometer (km) (30 mile (mi)) radius of Jacksonville Cemetery. Seventy-three percent of the population of *Fritillaria gentneri* is distributed as a central cluster of individuals located within an 11 km (7 mi) radius of the Jacksonville Cemetery. The remaining plants occur as outliers of single individuals or occasional clusters of individuals sparsely distributed across the landscape.

To analyze the species' trend and status given this sparse distribution, *Fritillaria gentneri* has been documented within 53 macro plots, which cover all known occurrences within the species range. The macro plot grid is based on dividing the landscape up into blocks starting initially with the 7.5′ quadrangle map grid developed by the U.S. Geological Survey (USGS). Each 7.5′ quadrangle map is further divided up into 225 blocks that are 0.5 by 0.5 minutes of latitude and longitude and approximately 64 hectares (ha) (157 acres (ac)) in size. Each of the 64 ha blocks are further subdivided into 25 cells (macro plots) that are 6 by 6 seconds of latitude and longitude (0.1 minute of latitude or longitude or approximately 0.1 mi (2.56 ha (6.3 ac) each). Each of the macro plots gets a unique code based on its latitude and longitude locations. Part of the code is based on USGS Ohio coding system for quadrangle maps. The rest of the code for identifying each of the 5,625 macro plots found within each USGS quadrangle map was developed by Dr. Andrew F. Robinson Jr. This system can be used any place in the United States to determine the macro plot code for a collection point based on the collection's point latitude and longitude. *Fritillaria gentneri* has been reported from all 53 of the identified macro plots but is extant in only 85 percent (45) of the macro plots. It has been extirpated from 2 of the 40 macro plots found within the central cluster, and nearly half (6) of the 13 occurrences outside of the central cluster of the species.

Thirteen of the macro plots are on lands managed by the Medford District of the Bureau of Land Management (BLM); 2 plots are on an Oregon State Highway right-of-way, District 8; 3 plots are on lands managed by Southern Oregon University; 7 plots are on lands managed by the City of Jacksonville; and the other 25 plots are on lands under private ownership. Approximately half of the species' current distribution (20 out of 45 macro plots) is on private lands.

Plant number estimates from the 45 extant sampling units varied from a low of 1 to a high of 100 (Pelton Road) individual plants within a macro plot. Estimated species population size from the 45 macro plots is 340 flowering plants, with 12 of the macro plots having only one plant each. The amount of habitat occupied within the macro plot varied from 1 square meter (10.75 square feet) to 1.2 hectares (3 ac).

Fritillaria gentneri ranges from approximately 180 to 1,360 m (600 to 4,450 ft) in elevation. *Fritillaria gentneri* is found in three habitat types: oak woodlands that are dominated by Oregon white oak (*Quercus garryana*); a mixed hardwood forest type dominated by California black oak (*Quercus kelloggii*), Oregon white oak, and madrone (*Arbutus menziesii*); and coniferous forested areas dominated by madrone and Douglas-fir (*Pseudotsuga menziesii*) (J. Kagan, Oregon Natural Heritage Program, Portland, Oregon, pers. comm. 1997).

Fritillaria gentneri typically grows in or on the edge of open woodlands with Oregon white oak and madrone as the most common overstory plants. Western yellow pine (*Pinus ponderosa*) and Douglas-fir are also frequently present. White-leaved manzanita (*Arctostaphylos viscida*), buckbrush

(*Ceanothus cuneatus*), snowbrush (*C. velutinus*), plume tree (*Cercocarpus betuloides*), Sadler oak (*Quercus sadleriana*), and poison oak (*Rhus diversiloba*) are commonly encountered understory shrub species. Herb and forb layers are typical of those found in the Rogue Valley foothills: ashy rock cress (*Arabis subpinnatifida*), Rouge River milkvetch (*Astragalus accidens hendersoni*), fringed brome (*Bromus ciliatus*), Henderson's shootingstar (*Dodecatheon hendersoni*), California fescue (*Festuca californica*), Idaho fescue (*F. idahoensis*), woods strawberry (*Fragaria vesca bracteata*), mission bells (*Fritillaria lanceolata*), scarlet fritillaria (*F. recurva*), lewisia (*Lewisia* spp.), fineleaf biscuit-root (*Lomatium utriculatum*), Sandberg's bluegrass (*Poa sandbergii*), western buttercup (*Ranunculus occidentalis*), Suksdorf's romanzoffia (*Romanzoffia suksdorfii*), groundsel (*Senecio spp.*), checker-mallow (*Sidalcea* spp.), Lemmon's needle grass (*Stipa lemmonii*), and American vetch (*Vicia americana*). *Fritillaria gentneri* can also grow in open chaparral/grassland habitat, which is often found within or adjacent to the mixed hardwood forest type, but always where some wind or sun protection is provided by other shrubs. It does not grow on extremely droughty sites. For unknown reasons, much apparently suitable habitat within the species range is unoccupied.

Rolle (1988e) stated that *Fritillaria gentneri* often grows in places that have experienced human disturbance and eventually became revegetated (e.g., old road cuts, alongside trails, bulldozer routes, old mounds left from past mining or other earth moving activities). At least 50 percent of the sites Rolle (1988e) has seen exhibited signs of previous disturbance. Earth-moving activity could spread bulblets and increase populations, but this has not been documented. The species seems to require some infrequent but regular level of disturbance such as would have occurred under the historic pattern of fire frequency in the Rogue and Illinois River valleys. *Fritillaria gentneri* is not an early colonizer of these sites but eventually takes advantage of the opening or edge effect created. It appears to be a mid-successional species in that it establishes in areas after other plants have colonized a disturbed area, but before taller more mature vegetation types become established and shade it out.

Fritillaria gentneri is a perennial species that reproduces asexually by bulblets. The bulblets break off and form other plants. *Fritillaria gentneri* can reproduce sexually as well (Guerrant, Berry Botanic Garden Portland, Oregon, pers. comm. 1997). Guerrant believes that the pollinators are hummingbirds or bumble bees. Guerrant (1992) sampled eight clusters and found a few plants that had seeds but there were not any obvious embryos. He stated that *Fritillaria gentneri* may possibly be sterile, that the plant is largely reproducing asexually, and that the sexual reproduction of the plant needs to be better documented.

Previous Federal Action

Federal government actions on *Fritillaria gentneri* began as a result of section 12 of the Endangered Species Act of 1973, (Act) as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Fritillaria gentneri* as a threatened species. The Service published a notice on July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein.

Fritillaria gentneri was initially included as a Category 2 candidate in a Notice of Review published by the Service on December 15, 1980 (45 FR 82510). Category 2 candidate species were taxa for which data in the Service's possession indicated listing may be appropriate, but for which additional data on biological vulnerability and threats were needed to support a proposed rule. On September 30, 1993 (58 FR 51166), the Service published a Notice of Review upgrading this species to a Category 1 status. Category 1 candidates were those for which the Service had sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened species. Upon publication of the February 28, 1996 notice of review (61 FR 7596), the Service ceased using category designations and included *Fritillaria gentneri* as a candidate species. Candidate species are those for which the Service has on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered. *Fritillaria gentneri* was retained as a candidate species in the September 19, 1997, Review of Plant and Animal Taxa (62 FR 49398).

The processing of this proposed rule conforms with the Service's final listing priority guidance published in the **Federal Register** on December 6, 1996 (61 FR 64475) and extended on October 23, 1997 (62 FR 55268). The guidance clarifies the order in which the Service will process rulemakings. The guidance calls for giving highest priority to handling emergency situations (Tier 1), second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings, and third priority (Tier 3) to new proposals to add species to the list of threatened and endangered plants and animals. This proposed rule constitutes a Tier 3 action.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Fritillaria gentneri are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The term "development" used here includes housing construction, such as driveway placement, lots for sale, cemetery expansion, trail maintenance, road widening, power line maintenance, water system construction, and agricultural conversions.

Fritillaria gentneri is found only in the rural foothills of the Rogue and Illinois River valleys in Jackson and Josephine counties, Oregon. Within this range, the plant occurs as lone individuals or small clusters of individuals sparsely distributed across the landscape which together are thought to form one single population of approximately 340 plants. This species was originally documented to occur in 53 locations (referenced as "macro plots" in the BACKGROUND section of this notice). Between 1941 and today, the plant has been lost from eight of these sites. Three locations, Grants Pass, Medford, and Murphy, were vague locations and have never been relocated since the original collections by Gentner (1941, 1948–50) and Gilkey (1951). Those locations were probably destroyed by development. However, since 1982, Kagan and Rolle documented losses due to construction for homes and schools, associated roads, driveways, and agricultural conversions

which destroyed all the plants occurring within the following five locations: Lyman Mountain (Kagan 1982g and pers. comm. 1997; Rolle 1988f), Merlin (Kagan 1982a and pers. comm. 1997), Ramsey Road (Kagan 1982f and pers. comm. 1997), State Highway 238 (Gentner 1948, Kagan 1982c and pers. comm. 1997), and Winona (Kagan 1982b and pers. comm. 1997).

Habitat loss due to ongoing or future development threatens the central core area of this species. Habitat loss may occur in 42 percent (19) of the occupied sites (macro plots) within the foreseeable future. Ongoing development accounts for 13 percent (6 sites) of the anticipated habitat loss, while future development may include loss of habitat for the other 29 percent (13) of the occupied sites; most development will occur within the central core area.

Ongoing development is threatening populations of *Fritillaria gentneri* that occur in six locations. Rolle (1988b) noted that at Pelton Road, outside the core area, destruction of the habitat was taking place as he was sampling the cluster. On that site visit, Rolle (1988b) reported 60 flowering plants and 200 non-flowering plants, noting that it was the best example of *Fritillaria gentneri* that he had seen. During his observation, he noted that brush was being piled upon the plants for a road widening project. Of the 48 plants flagged, 23 individuals were missing when Rolle (1988d) returned to collect seeds. In 1990, Guerrant (1990) reported only 50 to 100 plants at the Pelton Road site. According to Rolle (U.S. Forest Service, Ashland, Oregon, pers. comm. 1997) one-quarter of the cluster has been destroyed as a result of road widening. It is not known what happened to the other missing plants. Within the core area, at the Jackson County Landfill, at least half of the *Fritillaria gentneri* plants in one of the five sites that occur at the dump was bulldozed as a result of road construction and dump expansion in 1988 (Rolle 1988d). Near the entrance to Jackson County Landfill, Rolle (1988a) reported four plants present. In 1988, Rolle (1988d) flagged three of these plants and reported that two of the plants were bulldozed. Guerrant (pers. comm. 1997) reported that the dump is still expanding and heading toward other *Fritillaria gentneri* plants, but destruction has stopped just short of destroying the rest of the plants.

Future development may include loss of about 29 percent (13 locations) of the species from the central core area that include plants growing in the Bellinger Hill, Britt Grounds, Jacksonville Cemetery, Placer Hill Drive, and Sterling Creek Road. Rolle (pers. comm. 1997) stated that part of the Bellinger Hill plants occurred in a private individuals' backyard. At the time of the sighting, that section of the backyard was not maintained, therefore allowing *Fritillaria gentneri* to grow. The other plants were in an area where housing development was occurring (Rolle pers. comm. 1997). On Britt Grounds, 110 plants of *Fritillaria gentneri* were documented in 1993 (Tomlins 1993) on 39 hectares (97 ac) of land managed by BLM or Southern Oregon University. Trail construction and construction of the city water line threaten the Britt Grounds plants. Maxxon (1985) reported that there were approximately 50 plants in the Jacksonville Cemetery area with approximately half of the cluster (18–24 plants) on private land east of the northeast corner of the cemetery property. Kagan (pers. comm. 1997) reported that the city is currently developed up to the eastern side of the cemetery, and probably those 18 to 24 plants have been lost. Within the cemetery proper, Maxxon (1985) mapped the location of 12 plants that occur on the cemetery lots. As the cemetery fills up, additional plants may be destroyed during the excavation; at least eight plants mapped by Maxxon (1985) currently grow on unused burial lots. West and uphill from the cemetery, Rolle (1988g) documented that there were 15 or so plants at scattered stations along the trail system. Any additional trail construction may destroy some of these plants. In 1988, Rolle (1988g) found six flowering plants of *Fritillaria gentneri* along Placer Hill Drive and flagged five of the plants. On returning, he discovered that a new driveway was scheduled to be constructed which would go through the Placer Hill Drive location (Rolle 1988d). In 1992, some plants remained on the site (Guerrant 1992), but today the property is for sale (Rolle, pers. comm. 1997, & Guerrant, pers. comm. 1997). Similarly, Rolle (pers. comm. 1997) reported that the Sterling Creek plants occur on 40.4 square meters (less than .01 acre) and that this area is threatened by development. The most threatened areas are on private lands where development poses an immediate threat to the population. Of the 45 extant locations, 25 occur on private lands and are unlikely to remain over the long term.

The threat of habitat loss to *Fritillaria gentneri* is evident when both the size and the state of the scattered clusters throughout the species range are examined. Cluster sizes range from 1 plant to 100. Of the 45 macro plots currently occupied by *Fritillaria gentneri*, only 8 had occupied habitat that was equal to or greater than 0.4 ha (1 ac). Many are smaller than 0.04 ha (0.1 ac). With such limited area, a small amount of disturbance could extirpate all of the plants in a local area.

Activities that remove desirable habitat on public lands are still occurring. Joan Seevers (BLM, Medford, Oregon, pers. comm. 1997) confirmed that of the 13 sites containing plants on BLM lands, 7 were threatened with logging. Tomlins (1993) stated that salvage logging had disturbed some of the plants at Britt Grounds. Seevers (pers. comm. 1997) also reported that Britt Grounds and Sterling Mine ditch had trails near the cluster of plants. Hikers, bikers, and horseback riders use the trails and threaten the site by picking and trampling of *Fritillaria gentneri* . At Antioch Road 2, Henshel (1994c) noted that the plants were located on either side of a dirt bike trail.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

According to Gilkey (1951), *Fritillaria gentneri* was successfully grown in a garden and used in flower arrangements. Therefore, collection of the species is a concern. This native lily is an attractive plant which makes it noticeable and more likely to be collected. Its noted rarity also makes it susceptible to collection from horticulturists seeking to cultivate rare species. Furthermore, *Fritillaria gentneri* has a very poor viable seed set and much of the capsule is eaten by wildlife prior to seed maturation (Rolle 1988d). Thus, there is even greater pressure to dig the bulbs by collectors, since seed collection & germination may not be a feasible option. Twenty-two (43 percent) of the known sites had 3 or fewer individuals. Because the species occurs in small, isolated clusters, a collector could decimate an entire clump in one gathering, extirpating the plant from that area. Kagan (1982d), Rolle (1988c, pers. comm.1997), and Guerrant (pers. comm. 1997) documented that 40 percent of the total estimated number of plants (136) have a good potential for roadside collection. The plants are visible from the road at Logtown Cemetery, Paradise Ranch Road, Pelton Road, Placer Hill Drive, Poorman's Gulch, Sailor Gulch, Sterling Creek Road, and Wagon Trail Drive and when flowering, could attract some attention (Guerrant pers. comm. 1997). Collecting has been documented in Britt Grounds (Tomlins 1993, Joan Seever pers. comm. 1997) along the trails.

C. Disease or Predation

Disease and predation occur in *Fritillaria gentneri* plants, reducing their numbers and productivity. Secondary fungal infections were present at the Cady Road, Jacksonville Cemetery, Jackson County Dump, Pelton Road, Placer Hill Drive, and Wagon Trail Drive sites (Rolle 1988d). Many of the plants that were tagged for seed collection by Rolle had the capsules eaten by wildlife before the seed capsules matured (Rolle 1988d): of the 14 plants tagged at Wagon Trail Drive, 9 plants had no capsules; at Cady Road 4 of 4 flagged plants had the capsules bitten off; at the Jacksonville Cemetery 6 of 6 flagged plants had no mature capsules found on any part of the plant; at Pelton Road 19 of 48 flagged plants were knocked down, eaten or did not develop; and at Placer Hill Drive 1 of 5 flagged plants had the capsules bitten off.

D. The Inadequacy of Existing Regulatory Mechanisms

In 1963, the protection of Oregon's natural botanical resources was initiated with the passage of the Oregon Wildflower Law (ORS 564.010–564.040). This law was designed to protect showy botanical groups such as lilies, shooting stars, orchids, and rhododendrons from collection by horticulturists interested in these species' domestication. The Oregon Wildflower Law prohibits the collection of wildflowers within 60.9 m (200 ft) of a State highway. Although protective in spirit, the Oregon Wildflower Law carries minimal penalties and is rarely enforced. As a means of protecting *Fritillaria gentneri*, it has minimal effectiveness.

In 1987, Oregon Senate Bill 533 (ORS 564.100) was passed to augment the legislative actions available for the protection of the State's threatened and endangered species, both plant and animal. This bill, known as the Oregon Endangered Species Act, mandated responsibility for threatened and endangered plant species in Oregon to the Oregon Department of Agriculture (ODA).

The Oregon Endangered Species Act directs the ODA to maintain a strong program to conserve and protect native plant species threatened or endangered with extinction. *Fritillaria gentneri* is State-listed as endangered, receiving protection on State-managed lands under the Oregon Endangered Species Act. Although the ODA is able to regulate the import, export, or trafficking of State-listed plant species (under ORS 564.120), their ability to protect plant populations is limited to State-owned or State-leased lands. Private owners are not required to protect State-listed species. As a result, occurrences of *Fritillaria gentneri* on private lands receive no protection from their State status as endangered. Plants growing at the Log Town Cemetery are on an Oregon Department of Transportation right-of-way and this is the only site that falls under protection of the Oregon Endangered Species Act.

Fritillaria gentneri is classified by the Oregon Natural Heritage Program as a G1 category, which identifies taxa that are threatened with extinction throughout their entire range. This species category recognizes globally rare species, but provides no protection.

The primary inadequacy in the existing regulations pertains to plant sites located on private lands that currently receive no protection from threats to their existence. Privately-held sites constitute a significant portion of this species' range and play a substantial role in their continued existence.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Succession caused by fire suppression is allowing *Fritillaria gentneri*'s preferred open oak woodland habitat to close in and exclude the species, while the increase of homes in the area makes prescribed burning difficult. According to Rolle (pers. comm. 1997) and Kagan (pers. comm. 1997), *Fritillaria gentneri* grows best in forest openings and closure of the canopy due to successional occurrence can result in shading of the plants. The closure of the forest canopy by the encroachment of Douglas fir and madrone at the Wagon Trail site is currently occurring and threatens the continued occupancy of this macro plot by the 14 *Fritillaria gentneri* plants (Rolle, pers. comm. 1997).

The oak woodland habitat requires a frequent, low intensity fire management regime to maintain the open canopy. Southeastern Oregon averages 500 dry lightening strikes a month during drought conditions in the summer, creating a natural fire frequency of every 12 to 15 years. When the area became developed, 50 to 60 years of fire suppression began. This suppression essentially transformed the traditional oak woodlands with a grassy understory to oak woodlands with a shrub understory. With the current trend toward rural development, it has now become increasingly difficult to restore fire to the habitat. Therefore, although much of the species' habitat has not been developed, it has changed to densely closed woodland with a dry shrub understory. However, prescribed fire would be a good tool in managing for *Fritillaria gentneri* on BLM lands. Given that fire suppression will likely continue, the effects of succession pose a threat to *Fritillaria gentneri* on both private and BLM lands.

Another threat to *Fritillaria gentneri* is the possibility of decreased vigor and viability due to the sparsely distributed clusters ranging from 1 plant to 100 plants. Small numbers and disjunct individuals increase the risk of stochastic loss through genetic or demographic factors. Small clusters may be genetically depauperate as a result of changes in gene frequencies, owing to founder effects or inbreeding. If a population suffers from inbreeding depression, then its short-term viability may be compromised. The effects of inbreeding in populations have been used to recommend a general effective minimal viable population (MVP) of 50 individuals (Falk and Hoslinger 1991). For long-term evolutionary flexibility a MVP of 500 is suggested. That means that any population below 50 is subject to genetic depression over the short-term and any population under 500 will suffer over the long-term. Even though the size at which a population begins to face severe genetic depression is still contested, the negative genetic effects of this to a small population of 340 plants become difficult to ignore.

With 44 of the 45 sites containing so few individuals of *Fritillaria gentneri* plants, the threat of extinction due to demographic and naturally occurring events can play a significant role in the viability of the species as a whole. Four of the sites had 11 to 34 flowering plants and only 1 had 100 flowering plants. The rest had 10 flowering plants or fewer. Due to the small area occupied by the majority of *Fritillaria gentneri*, naturally occurring environmental events could play a role in extirpation. Small clusters can disappear with one environmental event. The sites are small and isolated from each other due to habitat fragmentation. This isolation could inhibit re-colonization to other suitable areas and could result in a permanent loss of localized occurrences once they fall below a critical level.

Herbicide spraying could play an important role in extirpation of small, localized occurrences that are found along roadsides. Approximately 29 percent (13) of the plant occurrences are reported along roadsides and could be affected or potentially extirpated by spraying or other roadside maintenance activities.

The Service has carefully assessed the best scientific and commercial information available regarding the past,

present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the Service proposes to list the *Fritillaria gentneri* as endangered.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring the species to the point at which the measures provided pursuant to the Act are no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be threatened or endangered. The Service proposes to find that designation of critical habitat is not prudent for *Fritillaria gentneri*. Service regulations (50 CFR 424.12 (a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species; or (ii) such designation of critical habitat would not be beneficial to the species.

There would be little if any additional conservation benefit to the species from a critical habitat designation covering the 25 sites that occur on private lands, even if sometime in the future there is additional Federal involvement through permitting or funding, such as through Federal Department of Housing and Urban Development or the Federal Highway Administration. Federal involvement, where it does occur, can be identified without the designation of critical habitat because interagency coordination requirements as required by section 7 of the Act are already in place. The Fish and Wildlife Coordination Act (FWCA) for example, requires that any federally funded or permitted water resource development proposal or project be consulted on with the Service and State conservation agencies. Designating critical habitat would not create a management plan for the plant, or establish numerical population goals for long-term survival of the species nor directly affect areas not designated as critical habitat.

There would be no benefit from critical habitat designation for those sites on BLM (i.e. Federal) land as BLM is currently aware of the plant's occurrence and would be subject to section 7 consultation as a result of the listing for any activity it authorized, funded, or carried out. The designation would not increase their commitment or management efforts. Protection of *Fritillaria gentneri* will most effectively be addressed through the recovery process and the section 7 consultation process.

Section 7 of the Act requires that Federal agencies refrain from contributing to the destruction or adverse modification of critical habitat in any action authorized, fundéd or carried out by such agency (agency action). This requirement is in addition to the section 7 prohibition against jeopardizing the continued existence of a listed species, and it is the only mandatory legal consequence of a critical habitat designation. Implementing regulations (50 CFR part 402.02) define "jeopardize the continuing existence of" and "destruction or adverse modification of" in very similar terms. To jeopardize the continuing existence of a species means to engage in an action "that reasonably would be expected to reduce appreciably the likelihood of both the survival and recovery of a listed species." Destruction or adverse modification of habitat means an "alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." Common to both definitions is an appreciable detrimental effect to both the survival and the recovery of a listed species. In the case of adverse modification of critical habitat, the survival and recovery of the species has been appreciably diminished by reducing the value to the species' designated critical habitat. An action resulting in adverse modification also would jeopardize the continued existence of the species concerned.

The Service acknowledges that critical habitat designation, in some situations, may provide some value to the species by identifying areas important for species conservation and calling attention to those areas in special need of protection. Critical habitat designation of unoccupied habitat may also benefit a species by alerting permitting agencies to potential sites for reintroduction and allow them the opportunity to evaluate proposals that may affect these areas. However, in this case, the existing sites of *Fritillaria gentneri* are either currently known by the BLM and private landowners, or the appropriate landowners will be notified prior to publication of the proposed rule. If future management actions include unoccupied habitat, any benefit provided by designation of such habitat as critical will be accomplished more effectively and efficiently with the current coordination process.

Designation of critical habitat for this species would substantially increase the threat of collection. *Fritillaria gentneri* is a lily, which is attractive and noticeable and likely to be collected. Gilkey has documented that *Fritillaria gentneri* was successfully collected and grown in a garden and used in flower arrangements. More recent collection of this species on Britt Grounds, which is BLM land, also has been documented (Tomlins 1993, Joan Seever pers. comm. 1997). Hitchcock (1971) noted that *Fritillaria* species are rather attractive in the native garden but that digging of the bulbs should be discouraged as the species are fast disappearing from much of their range. The North American Rock Garden Society (NARGS 1998) publishes a seed list on the Internet which lists a multitude of *Fritillaria* species seed available for sale (both wild and garden collected). Although *Fritillaria gentneri* is not specifically on the list, the list demonstrates the demand for this genus by collectors. In addition, whether showy or not, a species' rarity also makes it susceptible to collection from horticulturists seeking to cultivate rare species (Mariah Steenson pers. comm. 1997). Disseminating specific, sensitive location records can encourage illegal collection (M. Bosch, U.S. Forest Service, in litt. 1997). The accessibility of this plant on public and private lands makes it susceptible to indiscriminate collection by rare plant enthusiasts and researchers. Plants, unlike most animal species protected under the Act, are particularly vulnerable to trespass because of their inability to escape when collectors arrive.

With the increased publicity of listed species, small roadside occurrences could face a higher incidence of vandalism and/or removal. Publication of precise maps and descriptions of critical habitat in the **Federal Register** would expose these sites to over-collection and loss of individuals, and subsequently loss of isolated populations, resulting in the further decline of the species. Due to their low

numbers, specifically 22 of the 45 known sites having three or fewer individuals, isolated clusters of *Fritillaria gentneri* could be severely threatened by taking, negatively affecting the species as a whole. Since this species has a very poor viable seed set and is predominantly reproducing asexually by bulblets (Guerrant 1992 and Rolle 1988d), collection of the bulbs could effectively eliminate the population at the collection site. Publication of critical habitat descriptions and maps would make *Fritillaria gentneri* more vulnerable to illegal collection and would increase enforcement problems.

The minimal benefit of designating critical habitat would be far outweighed by the increased threats to the species that would result from identification of critical habitat. All parties and principal landowners involved in the recovery of *Fritillaria gentneri* will be notified of the location and importance of protecting these species and their habitats prior to publication of the proposed rule.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm of animals and certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into a formal consultation with the Service.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 for endangered plants also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the Oregon State Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 NE 11th Ave., Portland, Oregon 97232–4181 (503/231–6241). Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild.

The Service adopted a policy on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is proposed for listing those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. The Service has determined, based upon the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, land use activities that would significantly modify the species' habitat, wetland and riparian habitat modification, flood and erosion control, housing development, recreational trail development, road and dam construction and maintenance, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, pipelines or utility line crossing suitable habitat, and logging) when such activity is conducted in accordance with any reasonable and prudent measures given by the Service according to section 7 of the Act; or when such activity does not occur in habitats suitable for the survival and recovery of *Fritillaria gentneri* and does not alter the hydrology or habitat supporting the plant.

(2) Activities on private lands (without Federal funding or involvement), such as grazing management, agricultural conversions, wetland and riparian habitat modification (not including filling of wetlands), flood and erosion control, housing development, road and dam construction, cemetery maintenance or expansion, pesticide/herbicide application, pipelines or utility line crossing suitable habitat, and routine residential landscape maintenance including the clearing of vegetation as a fire break around one's personal residence.

The Service has determined that the actions listed below may potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal lands;

(2) Application of herbicides violating label restrictions;

(3) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities, such as changes in land use, will constitute a violation of section 9 should be directed to the Service's Oregon State Office (see **ADDRESSES** section).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other

concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) the location of any additional occurrences of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) additional information concerning the range, distribution, and population size of this species; and

(4) current or planned activities in the subject area and their possible impacts on *Fritillaria gentneri*.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to State Supervisor, U.S. Fish and Wildlife Service, Oregon State Office (see **ADDRESSES** section).

National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4 (a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References

A complete list of all references cited herein, as well as others, is available upon request from the Oregon State Office (see **ADDRESSES** section).

Author: The primary author of this proposed rule is Andrew F. Robinson Jr. (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
•	•	•	•	•	•	•	•
Fritillaria gentneri	Gentner's fritillary	USA (OR)	Liliaceae	E	.....	NA	NA
•	•	•	•	•	•	•	•

Dated: March 6, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–7481 Filed 3–20–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE84

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Northern Idaho Ground Squirrel

AGENCY: Fish and Wildlife Service, Interior

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the northern Idaho ground squirrel (*Spermophilus brunneus brunneus*) as a threatened species throughout its range in western Idaho pursuant to the Endangered Species Act of 1973, as amended (Act). This subspecies is known from 21 sites in Adams and Valley Counties, Idaho. It is primarily threatened by habitat loss due to seral forest encroachment into former suitable meadow habitats. Seral forest encroachment results in habitat fragmentation, isolating northern Idaho ground squirrel colonies. The subspecies is also threatened by competition from the larger Columbian ground squirrel (*Spermophilus columbianus*), land use changes, recreational shooting and naturally occurring events. This proposal, if made final, would extend Federal protection provisions provided by the Act for the northern Idaho ground squirrel.

DATES: Comments from all interested parties must be received by May 22, 1998. The Service will hold a public hearing on the proposal in Council, Idaho on May 5, 1998, from 6:00–8:00 p.m., at the Council Elementary School Multi Purpose Room, 202 Highway 95.

ADDRESSES: Comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, Snake River Basin Office, 1387 South Vinnell Way, Room 368, Boise, Idaho 83709. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Supervisor, at the above address or (208) 378–5243.

SUPPLEMENTARY INFORMATION:

Background

The northern Idaho ground squirrel (*Spermophilus brunneus brunneus*) has the most restricted geographical range of any *Spermophilus* taxa and one of the smallest ranges among North American mainland mammals (Gill and Yensen 1992). The first specimens, collected by L. E. Wyman in 1913, were described by A. H. Howell as *Citellus townsendii brunneus*, a subspecies of the Washington ground squirrel (*Spermophilus washingtoni*) (Howell 1938). In 1938, Howell subsequently classified the Idaho ground squirrel as a full species, *Citellus brunneus*. *Spermophilus* is the generic name that was used by Hershkovitz (1949) to correctly establish this genus. Yensen (1991) described the southern Idaho ground squirrel (*Spermophilus brunneus endemicus*) as taxonomically distinct, based on morphology, pelage, and apparent life history differences including biogeographical evidence of separation.

Both the northern and southern Idaho ground squirrels are found only in western Idaho. Of the two subspecies, the northern Idaho ground squirrel is the rarest (Yensen 1991). A relatively small member of the genus *Spermophilus*, the mean length of northern Idaho ground squirrel males and females is 233 millimeters (mm) (9.25 inches (in)) and 225 mm (8.9 in), respectively. In comparison, the mean length of southern Idaho ground squirrel males is 240 mm (9.5 in) and 233 mm (9.25 in) for females (Yensen 1991). Pelage in northern Idaho ground squirrel differs from the southern Idaho ground squirrel in its mid-dorsal area which consists of long, dark guard hairs and shorter, dark guard hairs with one paler-colored band on the shield (Yensen 1991). Most northern Idaho ground squirrels are found in areas with shallow reddish parent soils of basaltic origin, while the southern Idaho ground squirrel lives on lower elevation, paler colored soils formed by granitic sands and clays from the Boise Mountains (Yensen 1985, 1991). Marked differences in pelage coloration between the disjunct subspecies are related to soil color.

The baculum (penis bone) of northern Idaho ground squirrel is also generally smaller than that of the southern Idaho ground squirrel. A principal-component analysis indicated a striking difference among bacula of the two subspecies that forms a cluster well separated in character space (Yensen 1991). Genetic differentiation between the two subspecies has also been confirmed using enzyme restriction analysis, blood allozyme analyses and DNA protein sequencing (Gill and Yensen 1992; Sherman and Yensen 1994).

The northern Idaho ground squirrel emerges in late March or early April and remains active above ground until late July or early August (Yensen 1991). It occurs at 1,150 to 1,580 meters (m) (3,800 to 5,200 feet (ft)) elevation in Adams and Valley Counties of western Idaho. In contrast the southern Idaho ground squirrel occurs at elevations of 670 to 975 m (2,200 to 3,200 ft) in the low rolling hills and valleys along the Payette River in Gem, Payette, and Washington Counties of western Idaho (Yensen 1991). The southern subspecies emerges in late January or early February, where snow melt begins 1 to 2 months earlier in spring, and ceases above-ground activity in late June or early July. The emergence of the northern Idaho ground squirrel in late March or early April begins with adult males, followed by adult females, then yearlings.

The northern Idaho ground squirrel becomes reproductively active within the first 2 weeks of emergence (Yensen 1991). Females that survive the first winter live, on average, nearly twice as long as males (3.2 years for females and 1.7 years for males). Individual females have lived for 8 years. Males normally die at a younger age due to behavior associated with reproductive activity. During the mating period, males move considerable distances in search of receptive females and often fight with other males for copulations, thereby exposing themselves to predation by raptors including prairie falcon (*Falco mexicanus*), goshawk (*Accipiter gentilis*) and red-tailed hawk (*Buteo jamaicensis*). Significantly more males die or disappear during the 2 week mating period than during the rest of the 12 to 14 week period of above ground activity (Sherman and Yensen 1994). Seasonal torpor generally occurs in early to mid July for males and females, and late July to early August for juveniles.

In 1985, the total northern Idaho ground squirrel population in 18 known colonies was approximately 5,000 squirrels (Fish and Wildlife Service 1985). Subsequent surveys were conducted on an annual basis. While new active colonies were found during these surveys, previously active colonies became extirpated (P. Sherman, Cornell University, pers. comm., 1997). For example, one colony located on BLM lands was active through 1988, but since then has not been occupied by northern Idaho ground squirrels (J. La Rocco, BLM, pers. comm., 1997). In 1996, the total population had declined to fewer than 1,000 individuals distributed through 19 colonies (Sherman and Gavin 1997). Only one of these colonies contained greater than 60 animals. In 1997, three additional colonies were found for a total of 21 active colonies. Still the total population estimate remains at less than 1,000 individuals. Of the 21 known active colonies, 11 occur on public lands and 10 occur on private lands. The numbers of squirrels in many of the active colonies have been trending downward for over 10 years (Yensen 1980; Fish and Wildlife Service 1985; Yensen 1985; Sherman and Yensen 1994; Sherman and Gavin 1997).

Soil texture and depth can be a primary factor in determining species distribution for most *Spermophilus* (Brown and Harney 1993). The northern Idaho ground squirrel often digs burrows under logs, rocks, or other objects (Sherman and Yensen 1994). Dry vegetation sites with shallow soil horizons of less than 50 centimeters (19.5 in) depth above basalt bedrock to develop burrow systems are preferred (Yensen *et al.* 1991). Burrows associated with shallow soils are called auxiliary burrows. Nesting burrows are found in deeper soil pockets that are greater than 1 m (3 ft) deep, usually located near the tops of slopes. Although Columbian ground squirrels (*Spermophilus columbianus*) overlap in distribution with the northern Idaho ground squirrel (Dyni and Yensen 1996), Columbian ground squirrels prefer moister areas with deeper soils. Sherman and Yensen (1994) report that the lack of extensive use of the same areas by the two species is due to competitive exclusion, rather than to each species having different habitat requirements.

Nearly all of the meadow habitats utilized by northern Idaho ground squirrels are bordered by coniferous forests of *Pinus ponderosa* (ponderosa pine) and/or *Pseudotsuga menziesii* (Douglas fir). However, this ground squirrel is not abundant in meadows that contain high densities of small trees (Sherman and Yensen 1994).

The northern Idaho ground squirrel is primarily granivorous, similar to the Columbian ground squirrel (Dyni and Yensen 1996), and ingests large amounts of *Poa* sp. and other grass seeds to store energy for the winter. The northern Idaho ground squirrel consumes 45 to 50 different plant species but prefers *Poa* sp., *Stipa* sp., *Microseris* sp. and *Cryptantha* sp. seeds. Roots, bulbs, leaf stems and flower heads are minor components of the diet. The Columbian ground squirrel often inhabits areas with denser vegetation than the northern Idaho ground squirrel (Dyni

and Yensen 1996). Such areas contain more abundant food resources than habitats occupied by northern Idaho ground squirrel (Belovsky and Schmitz 1994).

The northern Idaho ground squirrel is found on lands administered by the U.S. Forest Service, Idaho State Department of Lands, Boise Cascade Corporation, and other private properties.

Previous Federal Action

In a notice of review published January 6, 1989, the Service determined that the northern Idaho ground squirrel was a category 1 candidate (54 FR 562). Category 1 candidates were those taxa for which the Service had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. In a notice of review published on November 21, 1991 (56 FR 58804), the taxon was again included in category 1. On November 15, 1994, the Service published a revised notice of review in which the northern Idaho ground squirrel was included in category 2 (59 FR 58982). Category 2 species were those for which the Service had information indicating that listing may be warranted but for which it lacked sufficient information on status and threats to support issuance of listing rules. Upon publication of the February 28, 1996, notice of review (61 FR 7596), the Service ceased using category designations and included the northern Idaho ground squirrel as a candidate species. Candidate species are those for which the Service has on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered. Candidate status for this animal was continued in the September 19, 1997, notice of review (62 FR 49398)

As a result of long-standing litigation with the Fund For Animals, a lawsuit settlement of January 21, 1997, directed the Service to make a decision (i.e. prepare a proposed rule to list or remove from Federal candidacy) concerning the northern Idaho ground squirrel on or before April 1, 1998. This proposed rule constitutes the finding that listing of the northern Idaho ground squirrel as a threatened species is warranted.

The processing of this proposed rule conforms with the Service's final listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475) and extended in October 23, 1997 (62 FR 55268). The guidance clarifies the order in which the Service will process rulemakings. The guidance calls for giving highest priority to handling emergency situations (Tier 1), second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings, third priority (Tier 3) to new proposals to add species to the list of threatened and endangered plants and animals, and fourth priority (Tier 4) to processing critical habitat determinations and delisting or reclassifications. This proposed rule constitutes a Tier 3 action.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4 (a)(1). These factors and their application to the northern Idaho ground squirrel are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Little is known about the historic range of the northern Idaho ground squirrel, however, it is thought that this subspecies was always uncommon within a limited habitat, but in the past was much more abundant than at present (Forest Service 1997). All remaining habitat sites for the northern Idaho ground squirrel are small in relation to those of other ground squirrels, ranging in size from 1.2 to 16 hectares (3 to 40 acres), and are imminently threatened by one or more of the following—land conversion to agriculture; residential construction; development of recreational facilities such as campgrounds; and road construction and maintenance.

Agricultural conversion and rural housing developments from the communities of Round Valley, north to New Meadows, and south to Council, Idaho, during the past 40 years have fragmented habitat that was formerly occupied by the northern Idaho ground squirrel. These types of developments continue to threaten remaining colonies in both Adams and Valley Counties. Occupied ground squirrel habitat near New Meadows was converted to a golf course and associated housing development (Yensen 1985), resulting in the eradication of northern Idaho ground squirrels at the site.

A 51.6 kilometer (km) (32 mile (mi)) gravel road from Council to Cuprum, Idaho is scheduled to be paved by the year 2000. Approximately 6.5 km (4 mi) of this project runs through historic and currently occupied habitat of the northern Idaho ground squirrel. The project will improve and seasonally extend vehicle access to four nearby northern Idaho ground squirrel colonies. Four existing colonies will be subject to increased mortality risk from vehicles, and possibly recreational shooting (U. S. Forest Service 1997a).

A mitigation plan (Plan) has been developed for the Council to Cuprum Road paving project in cooperation with the Federal Highway Administration (Forest Service 1997a). The Plan identifies mitigation actions to attract northern Idaho ground squirrels away from the paved highway to adjacent but suitable habitat to avoid passing vehicles. Funding for this Plan, if approved, would allow for monitoring the mitigation measures for a 3-year period after the road improvements have been made, which will occur between 1998–2000. At this time, it is uncertain whether proposed mitigation measures will be successful in protecting colonies in the vicinity of the project.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Some, in the general public, consider ground squirrels as varmints and, as such, recreational shooting contributes to the decline of northern Idaho ground squirrel colonies (Yensen 1991). Colonies adjacent to housing developments, towns, or farms, in particular, are subject to a high rate of recreational shooting. Scientific collection of ground squirrels could also adversely impact this species, however, to date, no known mortality has occurred through handling or marking over 1,100 squirrels (Sherman and Yensen 1994).

C. *Disease or predation.* The significance of disease as a threat to this subspecies is unknown. The parasitic nematode, *Pelodera strongyloides,* infects the eyes of the northern Idaho ground squirrel (Sherman and Yensen 1994; Yensen *et al.* 1996). This eye worm is not currently known to be a cause of mortality or to affect the population structure within existing colonies (Yensen *et al.* 1996). Although plague, (*Yersina pestis*), a contagious bacterial disease in rodents, has not been found in any northern Idaho ground squirrel colonies, the disease, once established, could decimate these colonies (Yensen *et al.* 1996).

The primary predators of the northern Idaho ground squirrel include badger (*Taxidea taxus*), goshawk (*Accipiter gentilis*), prairie falcon (*Falco mexicanus*) and occasionally red-tailed hawk (*Buteo jamaicensis*). In particular, predators threaten the smaller more isolated colonies of northern Idaho

ground squirrel. Males are particularly subject to increased predation risk during the mating period (Sherman and Yensen 1994).

D. *The inadequacy of existing regulatory mechanisms.* The State of Idaho recognizes the northern Idaho ground squirrel as a "Species of Special Concern" (Idaho Department of Fish and Game 1994). Because of this status, the northern Idaho ground squirrel is, by law, protected from taking (shooting, trapping, poisoning) or possession. To date, however, protection from recreational shooting has not been adequately enforced by the State and the northern Idaho ground squirrel remains vulnerable to this activity (Yensen 1985).

Local land use ordinances and other regulations are inadequate to protect this subspecies. For example, the Adams County land use regulations, where 99 percent of northern Idaho ground squirrel colonies are found, allow for single and multiple housing developments under a permit system. There is no consideration under the permit system for impacts that may result from building housing or recreation developments in or adjacent to habitat occupied by the northern Idaho ground squirrel. With no limitations on development of northern Idaho ground squirrel habitat, it is anticipated that human population growth and development in the foreseeable future will continue to impact ground squirrel colonies where the two overlap.

Under the present status as a candidate species, there is no requirement for Federal agencies to consult with the Service under section 7 of the Endangered Species Act. When this proposed rule to list the northern Idaho ground squirrel is published in the **Federal Register**, conferencing (which is equivalent to section 7 consultation) by other Federal agencies will be required when their actions may jeopardize the species. Until this step has been completed, only the voluntary conservation agreement between the Payette National Forest and the Service provides responsible management to reduce threats to the northern Idaho ground squirrel.

E. *Other natural or manmade factors affecting its continued existence.* The primary threat to the northern Idaho ground squirrel is meadow invasion by conifers (Sherman and Yensen 1994). Fire suppression and the dense regrowth of conifers resulting from past logging activities have significantly reduced meadow habitats suitable for northern Idaho ground squirrels. As the extent of meadow habitat on public and private lands was reduced over the past 40 years, northern Idaho ground squirrel dispersal corridors have been reduced or eliminated, further constricting the species into smaller isolated habitat areas (Truksa and Yensen 1990). The loss of dispersal corridors has caused at least some isolated colonies to become extirpated (Sherman and Yensen 1994: Fish and Wildlife Service 1996). Small populations at several remaining colony sites are likely to become extirpated as well (Sherman and Yensen 1994; Mangel and Tier 1994).

The fragmented distribution of the northern Idaho ground squirrel is the remnant of what may once have been a more continuous distribution from Round Valley, Idaho in Valley County north to New Meadows and then southwest to Council in Adams County, and the existing colonies on private and public lands northwest of Council. Because of logging and fire suppression, forest structure has changed markedly over the past century, resulting in much denser, more even-aged younger stands of trees with thinner and less heterogeneous under-story plant communities (Burns and Zborowski 1996). Fire suppression has allowed conifers to invade areas that were once meadows, thereby shrinking the size of forb/grass meadows or closing open grassy corridors entirely to each of these meadow sites. These changes have isolated the dry meadows with shallow soils where the northern Idaho ground squirrel finds refuge from the Columbian ground squirrel, which also eliminates phenotypic exchange between northern Idaho ground squirrel colonies. Those dry meadow habitats where colonies still are extant are now being invaded in most areas by small trees, further constricting the preferred forage and fossorial habitat of this species. Habitat dissection and reduced opportunities for dispersal among habitats prevents gene flow and results in considerable population differentiation (Sherman and Yensen 1994).

Habitat and resource competition with the Columbian ground squirrel is another factor affecting the survival of the northern Idaho ground squirrel. The northern Idaho ground squirrel may have been forced into areas containing shallower soils due to competition from Columbian ground squirrels (Sherman and Yensen 1994). The Columbian ground squirrel is larger and prefers deeper soil areas with soils that provide better over-winter protection and higher nutrients. Competition from Columbian ground squirrel could be an important factor in population decline of the northern Idaho ground squirrel (Dyni and Yensen 1996). Where both species occur, the northern Idaho ground squirrel tends to occupy the shallower soils but requires deeper soils less than 1 m (3.2 ft) for nests (Yensen et al. 1991). The Columbian ground squirrel is not restricted by soil depth. Typically their burrow systems are associated with degree of slope, well drained soils, and number of native forbs (Weddell 1989).

Winter mortality may be a contributing factor for northern Idaho ground squirrel decline, especially when juvenile squirrels enter torpor without sufficient fat reserves and snow levels are below average (Paul Sherman, pers. comm., 1997). Soils tend to freeze to greater depths where snow levels are shallow. When this occurs ground squirrels are unable to thermoregulate or maintain sufficient fat reserves. Although the relationship between ground squirrels and weather is complex (Yensen *et al.* 1992) colonies may have been adversely affected by drought and over winter mortality in the early 1990's.

As a result of the factors discussed above and due to the small population sizes of remaining colonies and the small total number of individuals, the northern Idaho ground squirrel may have little resilience to respond to naturally occurring events (Gavin *et al.* 1993). Small animal populations are often highly vulnerable to natural climatic fluctuations as well as catastrophic events (Mangel and Tier 1994). Gavin *et al.* (1993) ran a computer population viability simulation program (VORTEX), using natality and mortality values recorded over 8 years from an intensively studied northern Idaho ground squirrel colony (Sherman and Yensen 1994). Variables in the model included no natural immigration, and began the population viability analysis using 50 individuals, a figure that was 30 individuals lower than the actual population size of 80 individuals (Sherman and Yensen 1994). The model calculated that all but 1 of 100 populations would become extinct in less than 20 years.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the northern Idaho ground squirrel in determining to propose this rule. Based on this evaluation, the preferred action is to list the northern Idaho ground squirrel as threatened. The subspecies has declined from approximately 5,000 animals in 1985 to fewer than 1,000 animals in 1997. While the northern Idaho ground squirrel is not in immediate danger of extinction because

of ongoing conservation and recovery efforts, the subspecies could become endangered in the foreseeable future if remaining colony populations decline further.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Service believes critical habitat designation is not prudent for the northern Idaho ground squirrel because both of the above described situations exist. The northern Idaho ground squirrel has been studied for 17 years (Yensen 1980; Yensen 1985; Sherman and Yensen 1994; Sherman and Gavin 1997), and the locations of active and historic colonies are well documented and known within the scientific community. However, publication of detailed critical habitat maps and descriptions, as required, would make this information more readily available to the general public and serve as an advertisement for casual/recreational visits to the habitat areas, thereby increasing the risk of elimination of northern Idaho ground squirrels or their habitat. Eliminating a colony or destroying the squirrel's habitat serves to create the false sense that it is no longer a problem. Publishing maps of critical habitat may also serve as rally areas for the shooting public to use and destroy ground squirrels directly or indirectly (R. Howard, Fish and Wildlife Service, pers. comm., 1997). In light of the vulnerability of this species to vandalism or the intentional destruction of its habitat, critical habitat designation would reasonably be expected to increase the degree of threat to the species, increase the enforcement difficulties, and further contribute to the decline of the northern Idaho ground squirrel.

Additionally, designation of critical habitat would not be beneficial to the northern Idaho ground squirrel. Critical habitat designation provides protection only on Federal lands or on private or State lands when there is Federal involvement through authorization or funding of, or participation in, a project or activity. Eleven of the remaining sites are located on Federal lands administered by the U.S. Forest Service and the Bureau of Land Management. These agencies are aware of the species occurrence at these sites and the requirement to consult with the Service under section 7(a)(2) to ensure that any actions federally authorized, funded or carried out is not likely to jeopardize the continued existence of an endangered or threatened species. Section 7(a)(2) of the Act requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded or carried out by such agency, does not jeopardize the continued existence of a federally listed species. Consultation is most likely to occur with the Bureau of Land Management and the Forest Service concerning timber harvest activities, recreational use permits, and management of grazing allotments. The consequence of critical habitat designation is that Federal agencies must also ensure that their actions do not result in destruction or adverse modification of critical habitat. The adverse modification standard would not address seral forest encroachment which is considered a principal factor causing northern Idaho ground squirrel declines. Therefore, in this case, the prohibition on adverse modification would likely provide no additional benefit to conservation of the subspecies than that provided by the prohibition on jeopardy.

The Service acknowledges that critical habitat designation may provide some benefits to a species by identifying areas important to a species conservation and calling attention to those areas in special need of protection. A critical habitat designation contributes to species conservation primarily by highlighting important habitat areas and by describing the features within those areas that are essential to the species. However, in this case, this information can be disseminated more effectively through alternative means and the primary threat (plant succession) would not be addressed by critical habitat designation.

The northern Idaho ground squirrel is not well known to the general public because of its rarity and limited distribution. As a consequence, all involved parties and landowners have been notified of the importance of the northern Idaho ground squirrel habitat. The Service is directly working with Federal land management agencies to develop a coordinated management plan including vegetation control and translocation to reestablish or augment populations of the northern Idaho ground squirrel. Appropriate consultation and coordination with other Federal agencies, such as the Forest Service and Bureau of Land Management, will also occur once any specific federally supported activity that could affect the northern Idaho ground squirrel is proposed. These conservation actions for the Idaho ground squirrel would not be enhanced by designation of critical habitat.

Therefore, the Service finds that designation of critical habitat for this species is not prudent, for such designation would increase the degree of threat from vandalism, shooting, or intentional destruction of habitat and would provide no additional benefit to the species.

The Service will continue in its efforts to obtain more information on the northern Idaho ground squirrel's biology and ecology, including essential habitat characteristics, and existing and potential sites that can contribute to conservation of the species. The information resulting from this effort will be used to identify measures needed to achieve conservation of the species, as defined under the Act. Such measures could include, but are not limited to, development of additional conservation agreements with the State, other Federal agencies, local governments, and private landowners and organizations, and implementation of those agreements already in effect.

Available Conservation Measures

Ongoing conservation activities for this species include prelisting actions and conservation efforts on Federal and private lands. The remaining active northern Idaho ground squirrel colonies occur on private and Payette National Forest lands. A management agreement between The Nature Conservancy and

one private landowner protects northern Idaho ground squirrels on this property.

A conservation agreement (Agreement) was finalized in July of 1996 between the Service and the Payette National Forest (Fish and Wildlife Service 1996). Duration of the Agreement is 5 years. The Agreement identifies conservation and land management actions that will provide habitat favorable to the northern Idaho ground squirrel. These actions, some already in the implementation phase, include: controlled burning of selected meadows to reduce over-story and to improve forage preferred by the northern Idaho ground squirrel; timber harvest in select areas to open meadows where active colonies are found; and, timber harvest to provide dispersal corridors for improved connectivity between colonies. For example, 3.3 million board feet of timber is proposed for harvest in the Lick Creek drainage in 1998 (Forest Service 1997b). The sale is designed to reconnect an active colony with other nearby colonies. It will also open 12 meadow habitats on Federal lands that are favorable to recolonization by the northern Idaho ground squirrel.

A relocation plan developed by scientists from Cornell University, Ithaca, New York, and Albertson College, Caldwell, Idaho, was initiated in the spring of 1997. A total of 49 of squirrels were transplanted to two sites (15 and 34 respectively) that had been treated through burning and or timber harvest (P. Sherman, pers. comm., 1997). Both treated sites are on lands managed by the U.S. Forest Service and were selected because both have recently supported northern Idaho ground squirrels. One site still supports a small population of animals while squirrels were found until 1996 at the other site. Initial results indicate that some translocated females were lactating and juveniles were observed at both sites (P. Sherman, pers. comm., 1997). More definitive results of the translocation will not be known until monitoring efforts are completed in the spring of 1998. Whether long-term benefits to ground squirrel recovery result from these actions may be unknown for several years.

These ongoing conservation efforts for the northern Idaho ground squirrel address threats that have likely contributed to the species' past decline. The Service will continue to work with private and Federal land owners to restore and maintain suitable habitat and dispersal corridors for the species and to address other limiting factors.

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act requires the appropriate land management agencies to evaluate potential impacts to the species that may result from activities they authorize or permit. Consultation under section 7 of the Act is required for activities on Federal, State, County, or private lands, that may impact the survival and recovery of the northern Idaho ground squirrel, if such activities are funded, authorized, carried out, or permitted by Federal agencies. Federal agencies that may be involved in activities affecting this species include the Forest Service, Federal Highways Administration, Bureau of Land Management, Office of Surface Mining and Natural Resources Conservation Service. Section 7 requires these agencies to consider potential impacts to the northern Idaho ground squirrel prior to approval of any activity authorized or permitted by them.

Federal agency actions that may require consultation include removing, thinning or altering vegetation; construction of roads or camping sites in the vicinity of active and historical colonies, recreational home developments, permitting off-road vehicle use areas, and development of gravel or sand mining activities, campground construction, mining permits and expansion, highway construction, timber harvest, etc.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23 and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. (Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 10180–0094.)

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is proposed for listing, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. The Service believes that, based upon the best available information, the following action will not result in a violation of section 9:

Activities authorized, funded, or carried out by Federal agencies (e.g., logging, flood and erosion control, mineral and housing development, off road permitting or park development,

recreational trail and campground development, road construction, prescribed burns, pest control activities, utility lines or pipeline construction) when such activity is conducted in accordance with any incidental take statement prepared by the Service in accordance with section 7 of the Act.

Activities that the Service believes could potentially result in a violation of section 9 include but are not limited to:

(1) Unauthorized or unpermitted collecting, handling, harassing, or taking (such as recreational shooting) of the subspecies;

(2) Activities that directly or indirectly result in the actual death or injury of the northern Idaho ground squirrel, or that modify the known habitat of the subspecies by significantly modifying essential behavior patterns (e.g., plowing, conversion to cropland, residential or recreational uses; road and trail construction; water development and impoundment; mineral extraction or processing; off-road vehicle use; and unauthorized application of herbicides or pesticides).

(3) Activities within the northern Idaho ground squirrel hibernating period (mid July through early April), and near burrow areas that include controlled burns, mowing, road, pipeline or utility construction, herbicide application or other activities that would alter the burrow systems and food sources of the northern Idaho ground squirrel.

Questions regarding whether specific activities will constitute a violation of section 9 or to obtain guidance for activities within northern Idaho ground squirrel habitat should be directed to the U.S. Fish and Wildlife Service, Snake River Basin Office, Boise, Idaho (see **ADDRESSES** section). Requests for copies of the regulations concerning listed animals and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6241; FAX 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this subspecies;

(2) The location of any additional populations of this subspecies and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this subspecies;

(4) Biological or physical elements that best describe this subspecies' habitat, that could be considered critical for the conservation of the subspecies (e.g., colonies, hibernation, vegetation, food, topography);

(5) Current or planned activities in the subject area and their possible impacts on this subspecies;

(6) Possible alternative recreational and logging practices, or road right-of-way development and maintenance activities that will reduce or eliminate the take of northern Idaho ground squirrel or their habitats; and

(7) Other management strategies that will conserve the subspecies throughout its range.

Final promulgation of the regulations on this subspecies will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. The Service has scheduled a public hearing in Council, Idaho (see **DATES** section).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collection of information that requires approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Snake River Basin Office (see **ADDRESSES** above).

Author: The primary author of this proposed rule is Richard Howard, U.S. Fish and Wildlife Service, Snake River Basin Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend section 17.11(h) by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	*
Squirrel, northern Idaho ground.	*Spermophilus brunneus brunneus.*	U.S.A. (ID)	NA	T		NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
.	.	.	.	.	.	.	.

Dated: March 6, 1998.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–7480 Filed 3–20–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[I.D. 022498E]

Listing Endangered and Threatened Species and Designating Critical Habitat: Petition To List Sea-run Cutthroat Trout and Designate Critical Habitat Throughout Its Range In California, Oregon, and Washington

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

ACTION: Notice of finding and request for information.

SUMMARY: NMFS has received a petition to list coastal sea-run cutthroat trout (*Oncorhynchus clarki clarki*) and designate critical habitat throughout its range in California, Oregon, and Washington under the Endangered Species Act (ESA). NMFS determines the petition presents substantial scientific information indicating that the petitioned action may be warranted. NMFS previously commenced a status review for this species and will continue to evaluate the status of this species on the West Coast. NMFS solicits from the public information, comments, and seeks suggestions from the public for peer reviewers for NMFS' review of the petitioned action.

DATES: Information and comments on the action must be received by June 22, 1998.

ADDRESSES: Information and comments on this action should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street - Suite 500, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, NMFS, Northwest Region, (503) 231–2005 or Joe Blum, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

In a Notice dated September 12, 1994, NMFS announced its intent to conduct comprehensive status reviews for five species of Pacific salmonids, including sea-run cutthroat trout (59 FR 46808). These were in addition to two ongoing status reviews for west coast coho salmon (*Oncorhynchus kisutch*) and steelhead (*Oncorhynchus mykiss*). NMFS completed coastwide status reviews for coho salmon and steelhead on July 25, 1995, and August 9, 1996, respectively (60 FR 38011; 61 FR 41541). On October 4, 1995, NMFS completed its status review of west coast pink salmon (*Oncorhynchus gorbuscha*) (60 FR 51928). Furthermore, on February 26, 1998, NMFS completed its status reviews of west coast sockeye (*Oncorhynchus nerka*), chum (*Oncorhynchus keta*), and chinook salmon (*Oncorhynchus tshawytscha*). NMFS is currently reviewing the status of west coast sea-run cutthroat trout.

On December 18, 1997, the Secretary of Commerce (Secretary) received a petition from Oregon Natural Resources Council to list and designate critical habitat for sea-run cutthroat trout in the States of Washington, Oregon, and California. Copies of this petition are available. (See **ADDRESSES**).

Analysis of Petition

Section 4(b)(3) of the ESA contains provisions concerning petitions from interested persons requesting the Secretary to list species under the ESA. Section 4(b)(3)(A) requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary make a finding whether the petition presents substantial scientific information indicating that the petitioned action may be warranted. Section 424.14(b)(1) of NMFS' ESA implementing regulations define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted (See 50 CFR 424.14). Section 424.14(b)(2) of these regulations contains factors the Secretary considers in evaluating a petitioned action.

After reviewing the information contained in the petition, the Secretary determines that the petition presents substantial scientific information indicating the petitioned action may be warranted. In accordance with section 4(b)(3)(B) of the ESA, the Secretary will make his determination within 12 months from the date the petition was received (December 18, 1998), whether the petitioned action is warranted.

Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA, a species can be determined to be threatened or endangered based on any of the following factors: (1) The present or threatened destruction, modification, or curtailment of a species' habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting the species continuing existence. Listing determinations are based solely on the best available scientific and commercial data after taking into account any efforts being made by any state or foreign nation to protect the species.

Information Solicited

To ensure that the review is complete and is based on the best available scientific and commercial data, NMFS solicits information and comments concerning the status of sea-run cutthroat trout (see **DATES** and **ADDRESSES** above). NMFS specifically requests the following information: (1) Biological or other relevant data that may help identify "distinct populations" of cutthroat trout (e.g., age structure, genetics, migratory patterns, morphology) (see NMFS' policy on applying the definition of species under the ESA to Pacific salmon (56 FR 58612, November 20, 1991); (2) the range, distribution, and size of cutthroat populations in Washington, Oregon, and California; (3) current or planned activities and their possible impact on this species (e.g., hatchery, harvest, and habitat actions); (4) information concerning the relationship of resident,

anadromous, and potamodromous cutthroat trout; (5) information that may aid in distinguishing native, naturally spawned cutthroat trout from nonnative stocks or rainbow trout/cutthroat trout hybrids; and (6) efforts being made to protect naturally spawned populations of sea-run cutthroat trout in Washington, Oregon, and California.

NMFS also requests quantitative evaluations describing the quality and extent of freshwater and marine habitats for juvenile and adult cutthroat trout, as well as information on areas that may qualify as critical habitat in Washington, Oregon, and California. Areas that include the physical and biological features essential to the recovery of the species should be identified. Essential features include, but are not limited to the following: (1) habitat for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

For areas potentially qualifying as critical habitat, NMFS requests information describing (1) the activities that affect the area or could be affected by the designation, and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation.

The economic cost to be considered in the critical habitat designation under the ESA is the probable economic impact "of the [critical habitat] designation upon proposed or ongoing activities" (50 CFR 424.19). NMFS must consider the incremental costs specifically resulting from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. NMFS now solicits the names of recognized experts in the field that could take part in the peer review process for this status review. Independent peer reviewers will be selected from the academic and scientific community, Tribal and other native American groups, Federal and state agencies, the private sector, and public interest groups.

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

Dated: March 18, 1998.

Patricia Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–7464 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 031298A]

Fisheries Off West Coast States and in the Western Pacific; Northern Anchovy Fishery; Intent to Prepare an Environmental Impact Statement

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

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS); request for written comments.

SUMMARY: NMFS announces its intent to prepare an EIS to assess the impact on the natural and human environment of amending the Northern Anchovy Fishery Management Plan (FMP) to include the management of other coastal pelagic species. This NOI requests written comments on issues that NMFS should consider in preparing the EIS. The EIS will examine alternatives available to NMFS to manage coastal pelagic species, including northern anchovy, Pacific sardine, Pacific mackerel, jack mackerel, and market squid to allow a productive fishery while preventing overfishing and recognizing the value to the ecosystem of coastal pelagic species as forage for other fish, marine mammals, and birds.

DATES: Comments must be submitted by April 22, 1998.

ADDRESSES: Comments should be sent to William T. Hogarth, Ph.D., Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: James J. Morgan or Svein Fougner, (562) 980–4030.

SUPPLEMENTARY INFORMATION: At its June 23–25, 1997, meeting, the Pacific Fishery Management Council (Council) directed its Coastal Pelagics Development Team (Team) to begin work on an amendment to the northern anchovy FMP to (1) add Pacific sardine, Pacific mackerel, jack mackerel, and market squid; (2) develop management strategies for these species that meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act); and (3) present options for limited access to the fisheries. A previous amendment was disapproved by NMFS in 1996; however, the Council pointed out that recent events increased the need for Federal management. The biomass of Pacific sardine continues to grow by approximately 30 percent per year, with commercial fisheries operating off Mexico, United States, and Canada. In the 1930s, the fishery for Pacific sardine was the largest in the western hemisphere, but the resource declined precipitously in the 1950s. With changing environmental conditions off the coast of California, abundance is now increasing. A major issue of the FMP will be how to responsibly manage these resources in accordance with the provisions of the Magnuson-Stevens Act while recognizing their importance as forage for other species, given that coastal pelagic species fluctuate widely even in the absence of a fishery.

A series of public meetings of the Team and Coastal Pelagics Advisory Subpanel (Subpanel) were held in 1997 to determine how to approach limited entry and harvest strategy (62 FR 38068, July 16, 1997). The Council reviewed progress of the FMP amendment, at its September 9–12, 1997, meeting, and additional meetings of the Team and Subpanel were held in the latter part of 1997 and early 1998 (62 FR 58941, October 31, 1997). An advance notice of proposed rulemaking notifying the public that the Council was preparing an amendment to the FMP and was considering a control date for the development of options for limited entry was published in the **Federal Register** on December 17, 1997 (62 FR 66049). Additional public meetings will be announced in the **Federal Register**. The draft FMP amendment is expected to be completed by June 1998, with the Council making final decisions on the document in September 1998.

NMFS has determined that the preparation of an EIS is appropriate because of the potentially significant impact of regulations on the human environment. At this stage of development, the general effect of Federal regulations will be to limit the

vessels that can participate in the fishery, to prevent overfishing; and to set harvest limits for resources that greatly extend their range at high biomass levels and contract their range dramatically when biomass levels are low.

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

Dated: March 17, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–7460 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 55
Monday, March 23, 1998

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

DEPARTMENT OF AGRICULTURE

Special Provision for Frozen Concentrated Orange Juice Under the North American Free Trade Agreement Implementation Act

AGENCY: Foreign Agricultural Service.

ACTION: Notice of determination of termination of existence of price conditions necessary for imposition of temporary duty on frozen concentrated orange juice from Mexico.

SUMMARY: Pursuant to Section 309(a) of the North American Free Trade Agreement Implementation Act of 1993 ("NAFTA Implementation Act"), this is a notification that for 5 consecutive business days the daily price for frozen concentrated orange juice has exceeded the trigger price.

FOR FURTHER INFORMATION CONTACT: Joseph Somers, Horticultural and Tropical Products Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 720–3423.

SUPPLEMENTARY INFORMATION: The NAFTA Implementation Act authorizes the imposition of a temporary duty (snapback) for Mexican frozen concentrated orange juice when certain conditions exist. Mexican articles falling under subheading 2009.11.00 of the Harmonized Tariff Schedule of the United States (HTS) are subject to the snapback duty provision.

Under Section 309(a) of the NAFTA Implementation Act, certain price conditions must exist before the United States can apply a snapback duty on imports of Mexican frozen concentrated orange juice. In addition, such imports must exceed specified amounts before the snapback duty can be applied. The price conditions exist when for each period of 5 consecutive business days the daily price for frozen concentrated orange juice is less than the trigger price.

For the purpose of this provision, the term "daily price" means the daily closing price of the New York Cotton Exchange, or any successor as determined by the Secretary of Agriculture (the "Exchange"), for the closest month in which contracts for frozen concentrated orange juice are being traded on the Exchange. The term "business day" means a day in which contracts for frozen concentrated orange juice are being traded on the Exchange.

The term "trigger price" means the average daily closing price of the Exchange for the corresponding month during the previous 5-year period, excluding the year with the highest average price for the corresponding month and the year with the lowest average price for the corresponding month.

Price conditions no longer exist when the Secretary determines that for a period of 5 consecutive business days the daily price for frozen concentrated orange juice has exceeded the trigger price. Whenever the price conditions are determined to exist or to cease to exist the Secretary is required to immediately notify the Commissioner of Customs of such determination. Whenever the determination is that the price conditions exist and the quantity of Mexican articles of frozen concentrated orange juice entered exceeds (1) 264,978,000 liters (single strength equivalent) in any of calendar years 1994 through 2002, or (2) 340,560,000 liters (single strength equivalent) in any calendar years 2003 through 2007, the rate of duty on Mexican articles of frozen concentrated orange juice that are entered after the date on which the applicable quantity limitation is reached and before the date of publication in the **Federal Register** of the determination that the price conditions have ceased to exist shall be the lower of—(1) the column 1—General rate of duty in effect for such articles on July 1, 1991; or (2) the column 1—General rate of duty in effect on that day. For the purpose of this provision, the term "entered" means entered or withdrawn from warehouse for consumption in the customs territory of the United States.

In accordance with Section 309(a) of the NAFTA Implementation Act, it has been determined that for the period February 25–March 3, 1998, the daily price for frozen concentrated orange juice has exceeded the trigger price.

Issued at Washington, D.C. the 17th day of March 1998.

Christopher E. Goldthwait,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 98–7438 Filed 3–20–98; 8:45 am]
BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Annual Trade Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 22, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to: Ronald L. Piencykoski, Bureau of the Census, Room 2626-FOB 3, Washington, D.C. 20233–6500, (301) 457–2713.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Annual Trade Survey (ATS) provides a sound statistical basis for the formation of policy by other government agencies. It provides continuing and timely national statistics on wholesale trade augmenting the period between economic censuses, and is a continuation of similar wholesale trade surveys conducted each year since 1978. The data that the Bureau collects with the ATS, annual sales, end-of-year inventories, and purchases, are applicable to a variety of public and

business needs. The Census Bureau collects these annual data from firms reporting in the Monthly Wholesale Trade Survey (MWTS)as well as additional firms selected specifically for the annual survey. The annual collection is mandatory, whereas response to the monthly is voluntary. Estimates developed in the ATS are used to benchmark the monthly sales and inventories series and the firms canvassed in this survey are not required to maintain additional records since carefully prepared estimates are acceptable if book figures are not available.

II. Method of Collection

We will collect this information by mail, FAX and telephone follow-up.

III. Data

OMB Number: 0607–0195.

Form Number: B–450, and B–451.

Type of Review: Regular Submission.

Affected Public: Wholesale Businesses.

Estimated Number of Respondents: 5,750.

Estimated Time Per Response: .3863 hrs (23 minutes).

Estimated Total Annual Burden Hours: 2,221 hours.

Estimated Total Annual Cost: The cost to the respondent is estimated to be $30,317 based on an annual response burden of 2,221 hours and a rate of $13.65 per hour to complete the form.

Respondent's Obligation: mandatory.

Legal Authority: Title 13, United States Code, Section 182, 24, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–7367 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation 1996 Panel Wave 8.

Form Number(s): SIPP 16805(L) Director's Letter, CAPI Instrument.

Agency Approval Number: 0607–0813.

Type of Request: Revision of a currently approved collection.

Burden: 117,800 hours.

Number of Respondents: 77,700.

Avg Hours Per Response: half an hour.

Needs and Uses: The Bureau of the Census conducts the Survey of Income and Program Participation (SIPP) to collect information from a sample of households concerning the distribution of income received directly as money or indirectly as in-kind benefits. SIPP data are used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare and transfer payment programs such as the Department of Health and Human Services, the Department of Housing and Urban Development, and the Department of Agriculture. The SIPP is a longitudinal survey, in that households in the panel are interviewed 12 times at 4 month intervals or waves over the life of the panel, making the duration of the panel about 4 years. The next panel of households will be introduced in the year 2000.

The survey is molded around a central core of labor force and income questions, health insurance questions, and questions concerning government program participation that remain fixed throughout the life of a panel. The core questions are asked at Wave 1 and are updated during subsequent interviews. The core is supplemented with additional questions or topical modules designed to answer specific needs.

This request is for clearance of the topical modules to be asked during Wave 8 of the 1996 Panel. The core questions have already been cleared. Topical modules for waves 9 through 12 will be cleared later. The topical modules for Wave 8 are: (1) Adult Well-Being and (2) Welfare Reform. Wave 8 interviews will be conducted from August through November 1998.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–7465 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 956]

Grant of Authority; Establishment of a Foreign-Trade Zone Guilford, Forsyth, Davidson and Surry Counties, NC

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Piedmont Triad Partnership (the Grantee), a North Carolina non-profit corporation, has made application to the Board (FTZ Docket 21–97, 62 FR 15460, 4/1/97;

amended, 62 FR 44642, 8/22/97), requesting the establishment of a foreign-trade zone at sites in Guilford, Forsyth, Davidson and Surry Counties, North Carolina, adjacent to the Winston-Salem Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register**; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report and finds that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 230, at the sites described in the application, as amended, subject to the Act and the Board's regulations, including Section 400.28, and subject to the Board's standard 2,000-acre activation limit.

Signed at Washington, DC, this 11th day of March 1998.

Foreign-Trade Zones Board.

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–7484 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 965]

Designation of New Grantee for Foreign-Trade Zone 181, Akron-Canton, OH; Resolution and Order

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following Order:

After consideration of the request (Docket 77–97) with supporting documents from the Akron-Canton Regional Airport Authority, grantee of Foreign-Trade Zone 181, Akron-Canton, Ohio, for reissuance of the grant of authority for said zone to the Northeast Ohio Trade & Economic Consortium (NEOTEC), an Ohio public corporation, which has accepted such reissuance subject to approval of the FTZ Board, the Board, finding that the requirements of the Foreign-Trade Zones Act and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the request and recognizes NEOTEC as the new grantee of Foreign-Trade Zone 181.

The approval is subject to the FTZ Act and the FTZ Board's regulations, including Section 400.28.

Signed at Washington, DC, this 13th day of March 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–7482 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 964]

Expansion of Foreign-Trade Zone 183 Austin, Texas Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Foreign-Trade Zone of Central Texas, Inc., grantee of Foreign-Trade Zone No. 183, for authority to expand Site 3 of its general-purpose zone in the Austin, Texas, area, adjacent to the Austin Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on April 11, 1997 (Docket 30–97, 62 FR 19547, 4/11/97);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 16th day of March 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–7483 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. In accordance with the Department's regulation's we are initiating those administrative reviews.

EFFECTIVE DATE: March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(1997), for administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates.

Initiative of Reviews

In accordance with section 19 CFR 351.211(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than February 28, 1999.

	Period to be reviewed
Antidumping Duty Proceedings	
India: Stainless Steel Bar, A–533–810	2/1/97–1/31/98
Bhansali Bright Bars Pvt. Ltd.	
Venus Wire Industries Limited	
Indonesia: Melamine Institutional Dinnerware, A–560–801	8/22/96–1/31/98
P.T. Mayer Crocodile	
P.T. Multi Raya Indah Abah	
Japan: Stainless Steel Bar, A–588–833	2/1/97–1/31/98
Aichi Steel Works, Ltd.	
The People's Republic of China: Axes/adzes,* A–570–803	2/1/97–1/31/98
Shandong Machinery Import & Export Corp.	
Fuijian Machinery & Equipment Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	
Liaoning Machinery Import & Export Corp.	
Shandong Huarong General Group Corp.	
The People's Republic of China: Bars/wedges,* A–570–803	2/1/97–1/31/98
Shandong Machinery Import & Export Corp.	
Fuijian Machinery & Equipment Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	
Liaoning Machinery Import & Export Corp.	
Shandong Huarong General Group Corp.	
The People's Republic of China: Hammers/sledges,* A–570–803	2/1/97–1/31/98
Shandong Machinery Import & Export Corp.	
Fuijian Machinery & Equipment Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	
Liaoning Machinery Import & Export Corp.	
Shandong Huarong General Group Corp.	
The People's Republic of China: Picks/mattocks,* A–570–803	2/1/97–1/31/98
Shandong Machinery Import & Export Corp.	
Fuijian Machinery & Equipment Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	
Liaoning Machinery Import & Export Corp.	
Shandong Huarong General Group Corp.	
*If one of the above named companies does not qualify for a separate rate, all other exporters of certain heavy forged hand tools form the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of a single PRC entity of which the named exporters are a part.	
The People's Republic of China: Paint Brushes,* A–570–501	2/1/97–1/31/98
Hunan Provincial Native Produce and Animal By-Products Import and Export Corporation	
*If the above named company does not qualify for a separate rate, all other exporters of paint brushes from the People's Republic of China who have not qualified for separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.	
The People's Republic of China: Managanese Metal,* A–570–501	2/1/97–1/31/98
China National Electronics Import & Export Hunan Co.	
China Human International Economic Development (Group) Corporation	
China Metallurgical Import & Export Hunan Corporation and Hunan Nonferrous Metals Import & Export Assoc. Co.	
Minmetals Precious & Rare Minerals Import & Export Co.	
*If the above named company does not qualify for a separate rate, all other exporters of manganese metal from the People's Republic of China who have not qualified for separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.	

Countervailing Duty Proceedings

None.

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must subject applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: March 17, 1998.

Richard W. Moreland,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 98–7485 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031198B]

Incidental Take of Marine Mammals; Taking of Ringed Seals Incidental to On-Ice Seismic Activities

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

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) as amended and with implementing regulations, notification is hereby given that letters of authorization to take ringed and bearded seals incidental to on-ice seismic operations in the Beaufort Sea off Alaska were issued on March 16, 1998, to BP Exploration, Western Geophysical, and Northern Geophysical of America, all of Anchorage, AK.

DATES: These letters of authorization are effective from March 16, 1998, through May 31, 1998.

ADDRESSES: The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and Western Alaska Field Office, NMFS, 701 C Street, Anchorage, AK 99513.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055 or Brad Smith, Western Alaska Field Office, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of ringed and bearded seals incidental to on-ice seismic surveys were published on February 2, 1998 (63 FR 5277), and remain in effect until December 31, 2002.

Summary of Request

NMFS received requests for letters of authorization on February 24, 1998, from Northern Geophysical; February 26, 1998, from BP Exploration (Alaska); and May 20, 1997 (as amended on December 22, 1997, and March 3, 1998), from Western Geophysical. These letters requested a take by harassment of a small number of ringed and bearded seals incidental to the described activity.

Issuance of these letters of authorization are based on findings that the total takings by this activity will have a negligible impact on the ringed and bearded seal stocks of the Western Beaufort Sea and that the applicants have met the requirements contained in the implementing regulations.

Dated: March 16, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–7458 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031098B]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of cancellation of two public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) has cancelled the public meeting of the Special Crustacean Stock Assessment Panel (SAP) that was scheduled for Monday, March 30, 1998, through Wednesday, April 1, 1998. The Council has also cancelled the public meeting of the Finfish SAP that was scheduled for Monday, April 6, 1998, through Thursday, April 9, 1998. The meetings were announced in the **Federal Register** on March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The initial notice published on March 16, 1998 (63 FR 12784). The purpose of these meetings was for the SAPs to develop alternatives for the overfishing criteria as required by the Sustainable Fisheries Act. These alternative and recommendations would be provided to the Council. The meetings will be rescheduled at a future date after NMFS has published the guidelines for National Standard 1 which will define criteria for setting the overfishing thresholds.

Dated: March 17, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–7459 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031698A]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council, and its advisory entities will meet during the week of April 5–10, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Doubletree Hotel, Columbia River, 1401 N. Hayden Island Drive, Portland, OR 97217; telephone: (503) 283–2111.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The Council meeting will begin on Monday,

April 6, at 1 p.m. with a closed session to discuss litigation and personnel matters. The open session begins at 1:30 p.m. The Council will reconvene Tuesday, April 7 through Friday, April 10, at 8 a.m. in open session. The Council will meet as late as necessary each day to complete its scheduled business.

The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks, Introductions, Roll Call;

2. Approve Agenda; and

3. Approve November 1997 and March 1998 Meeting Minutes;

B. Salmon Management

1. Tentative Adoption of 1998 Ocean Salmon Measures for Analysis;

2. Clarify Council Direction, If Necessary;

3. Review of Draft Plan Amendments;

4. Methodology Reviews for 1998;

5. Identification of Stocks Not Meeting Escapement Goals for three Consecutive Years; and

6. Final Action on 1998 Measures;

C. Habitat Issues - Report of the Steering Group

D. Coastal Pelagic Species Management

1. Review of Draft Plan Amendments;

E. Groundfish Management

1. NMFS Report on Regulations, Research Projects, etc.;

2. Status of Fisheries and Inseason Adjustments;

3. Comprehensive Observer Program;

4. Review of Draft Plan Amendments;

5. Lingcod and Rockfish Allocation;

6. Capacity Reduction Program; and

7. Groundfish Management Team, Staff, and NMFS Workload;

F. Pacific Halibut Management

1. Area 2A Bycatch Calculation; and

G. Administrative and Other Matters

1. Scoping Session on Marine Protected Areas;

2. Research and Data Needs;

3. Update on Dungeness Crab and Other Legislation;

4. Report of the Budget Committee;

5. Appointments to Advisory Entities; and

6. Draft June 1998 Agenda.

Advisory Meetings

The Salmon Technical Team will meet as necessary Monday through Friday, April 6–10, 1998, to address salmon management items on the Council agenda.

The Habitat Steering Group meets at 10 a.m. on Monday, April 6, to address issues and actions affecting habitat of fish species managed by the Council.

The Salmon Advisory Subpanel will convene on Monday, April 6, at 9 a.m., and will continue to meet throughout the week as necessary to address salmon management items on the Council agenda.

The Scientific and Statistical Committee will convene on Monday, April 6, at 8 a.m., and on Tuesday, April 7, at 8 a.m.

The Groundfish Management Team will convene on Sunday, April 5, at 2 p.m., and on Monday, April 6, at 8 a.m., and will continue to meet throughout the week as necessary to address groundfish management items on the Council agenda.

The Groundfish Advisory Subpanel will convene on Monday, April 6, at 1 p.m., and on Tuesday, April 7, at 8 a.m., and will continue to meet throughout the week as necessary to address groundfish management items on the Council agenda.

The Buyback Committee will convene on Monday, April 6 at 8 a.m., to address capacity reduction items on the Council agenda.

The Enforcement Consultants meet at 7 p.m. on Tuesday, April 7, to address enforcement issues relating to Council agenda items.

The Budget Committee meets on Monday, April 6, at 11 a.m., to review the status of the 1998 Council budget.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Eric W. Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: March 17, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–7462 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031698B]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Council will hold its 95th meeting in Pago Pago, American Samoa.

DATES: The Council's Standing Committees will meet on April 14, 1998. The full Council will meet on April 15–16, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The 95th Council meeting will be held at the American Samoa Legislature, Fono Guest House, Pago Pago, American Samoa; telephone: (684) 633–4456.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The meetings are as follows:

Tuesday, April 14, 1998

7:30 a.m. to 9:00 a.m.—Enforcement;

8:00 a.m. to 10:00 a.m.—Crustaceans;

9:00 a.m. to 10:30 a.m.—Vessel Monitoring System (VMS);

10:30 a.m. to 12:30 p.m.—Pelagics and Bottomfish;

1:30 p.m. to 3:00 p.m.—Indigenous Fishing Rights and Ecosystem & Habitat;

3:00 p.m. to 5:00 p.m.—Precious Corals and Executive/Budget & Programming.

The full Council will meet on April 15–16, 1998, from 9:00 a.m. to 5:00 p.m., each day.

The full Council will address the agenda items below. The order in which agenda items will be addressed may change. The Council will meet as late as necessary to complete its scheduled business.

Wednesday, April 15, 1998

A. Call to order, opening remarks, introductions

1. Approval of Agenda and 94th Council Minutes; and

2. Guest Speaker: Ueta Fasili, Assistant Director Dept. of Agriculture, Forests & Fisheries, Samoa

B. Reports from the Islands, American Samoa, Guam, Hawaii, and Northern Mariana Islands (NMI)
C. Enforcement
1. Reports from the U.S. Coast Guard, NMFS Office of Enforcement, and NOAA General Counsel for Enforcement Southwest;
2. Report on Multilateral High Level Conference second intersessional meeting on monitoring, control, & surveillance;
3. Draft cooperative agreement for Guam and NMI;
4. Standing Committee recommendations; and
5. Public comment
D. VMS
1. Status of NMFS Industry Advisory Panel and National VMS Policy;
2. Report on the Hawaii VMS program; and
3. Standing Committee recommendations
E. Pelagics
1. Fourth quarter report for longline fisheries in Hawaii & American Samoa in 1997;
2. Draft amendment for new measure for an area closure for large pelagic vessels in the American Samoa exclusive economic zone (EEZ) (second meeting);
3. Reports on international workshops and meetings;
4. Protected species interactions: albatross, turtles, and sharks;
5. Western Pacific Shark Fishery project;
6. Fishing activity and data issues in the Council EEZ;
7. Status of fishing activities at Midway and Palmyra;
8. Recreational fishing initiatives;
9. Socio-cultural study of pelagic fishing in American Samoa;
10. Scientific and Statistical Committee and Standing Committee recommendations; and
11. Public comment/hearing
F. Crustaceans
1. Lobster annual report (1997 summary);
2. Status of the Northwestern Hawaiian Islands (NWHI) lobster stocks and research;
3. 1998 NWHI lobster harvest guideline determination, consideration of establishment of separate area or bank quotas under the framework procedure, Plan for data collection program;
4. Framework amendment for regulatory changes to the Fishery Management Plan (FMP);
5. Addition of new areas (Commonwealth of the Northern Mariana Islands (CNMI) and U.S. Possessions) to Permit Area 3; Marine Conservation Plans (by island area);
6. Consideration of regulatory measures for the lobster fishing around American Samoa under the FMPs framework procedure;
7. Plan Team/Advisory Panel, SSC, and Standing Committee recommendations; and
8. Public comment/hearing
G. Fishermen's Forum

Thursday, April 16, 1998

A. Guest Speaker: Paul Dalzell, Western Pacific Fishery Council: Unconventional data sources for fisheries management in the Pacific Islands; and
B. Reports from Fishery Agencies and Organizations, including: Department of Commerce NMFS Southwest Region, Southwest Fisheries Science Center, and NOAA Southwest Regional Counsel; Department of the Interior Fish and Wildlife Service;
C. Precious Corals
1. Status of the fishery;
2. Status of amendment to add a framework process to the FMP;
3. Consistency between state and federal regulations;
4. SSC and Standing Committee recommendations; and
5. Public hearing
D. Bottomfish
1. 1997 draft annual report modules from American Samoa, Guam, Hawaii and NMI, including improvement to the modules and region-wide recommendations;
2. "Overfished" Main Hawaiian Islands onaga and ehu (& "stressed" hauupuu), including, research activities, status of Department of Land and Natural Resources' draft management plan and Federal management plan including alternatives (draft amendment);
3. Draft amendment for Mau Zone limited access program and report from the Bottomfish Task Force;
4. Plan Team, SSC and Standing Committee recommendations; and
5. Public comment
E. Native Rights and Indigenous Fishing Issues
1. Review of Marine Conservation Plans from American Samoa, Guam, and NMI;
2. Western Pacific Sustainable Fisheries Fund;
3. Community Development Program Eligibility Criteria;
4. Report on NMFS Vessel Buy-Back Program;
5. Advisory Panel Appointments;
6. Standing Committee recommendations and;
7. Public hearing
F. Ecosystems and Habitat
1. Draft outline and concept for Coral Reef Ecosystem FMP;
2. EIS on Farallon de Mendinilla . bombing issue (if available);
3. Advisory Panel, SSC and Standing Committee recommendations; and
4. Public comment
G. Program Planning
1. Review of draft comprehensive Sustainable Fisheries Act Amendment (SFA) (Magnuson-Stevens Act requirement);
2. SFA definitions, provisions, and possible management actions, including, bycatch, fishing sectors, fishing communities, overfishing;
3. Draft Essential Fish Habitat (EFH) amendment, including, description of habitat by Management Unit Species life stage (by FMP), identification and distribution of EFH/Geographic Information System maps (by FMP), review of existing management measures, environmental impacts of fishing and non-fishing activities/ National Environmental Policy Act, identification of possible future habitat conservation and enhancement measures, social/economic impacts of management actions, data and research needs for habitat information;
4. National Vessel Registration and Fisheries Information System;
5. Report on Western Pacific Fisheries Information Network;
6. Revision of Council milestones;
7. Advisory Panel, Plan Teams, SSC and Standing Committee recommendations; and
8. Public comment/hearing
H. Administrative Matters
1. Statement of Organization, Practices, and Procedures revision;
2. Administrative reports;
3. Appointments to the Coral Reef Ecosystem Plan Team and Precious Corals Plan Team;
4. Reports on meetings, workshops, and proposed 96th Council meeting on July 27–29, 1998, in Kailua-Kona;
5. Standing Committees recommendations; and
6. Public comment; and
I. Other Business

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids

should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: March 17, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–7461 Filed 3–20–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Change to the DoD 6055.9–STD, "Department of Defense Ammunition and Explosives Safety Standards"

AGENCY: Department of Defense.

ACTION: Notice of change.

SUMMARY: The Department of Defense Explosives Safety Board (DDESB) is announcing Board-approved changes to DoD 6055.9–STD, dated August 1997.

The DDESB is taking this action pursuant to its statutory authority as set forth in Title 10, United States Code, Section 172 (10 U.S.C. 172) and DoD Directive 6055.9, "Explosives Safety Board (DDESB) and DoD Component Explosives Safety Responsibilities," July 1996. The Standard is applicable to the Office of the Secretary of the Defense, the Military Departments (including the Army and Air Force National Guards), the Defense Special Weapons Agency, the Defense Logistics Agency, the Coast Guard (when under DoD control) and other parties who produce or manage ammunition or explosives under contract to the DoD. Through DoD 6055.9–STD, the DDESB establishes minimum explosives safety requirements for storing and handling ammunition and explosives. Copies of the Standard may be obtained from the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 27161. The change will also be available at the NTIS when approved by the Washington Headquarters Services for publication. The Board-approved change, which includes requirements for storage of waste military munitions, will also be available at the NTIS when published. Since the change can not be published as part of this Notice and in order to relay the change to the States as soon as possible, the Department of Defense has made the Board-approved change available at the following Web address: http://www.acq.osd.mil/ens/esb/decision.html. For more detailed information on specific aspects of this change, contact Ray Sawyer by calling (703) 325–8625 or by writing to Department of Defense Explosives Safety Board, 2461 Eisenhower Avenue, Room 856–C, Alexandria, VA 22331–0600.

SUPPLEMENTARY INFORMATION: Dating back to 1928 when Congress directed the Secretaries of the military departments to establish a joint board officers to "keep informed on stored supplies of ammunition and components thereof * * *, with particular regard to keeping those supplies properly dispersed and stored and to preventing hazardous conditions from arising to endanger life and property inside or outside of storage reservations," The DDESB has periodically revised or updated the Standard based on new scientific or technical information and explosive safety experience. The implementation of a change in DoD 6055.9–STD does not depend on formal publication of the change. The change to the Standard is effective when adopted by the Board, or as the Board may otherwise direct. In order to ensure compliance, the Services and Defense Agencies modify their Service or Agency implementing procedures and standards accordingly. This change to the August 1997 version of DoD 6055.9–STD incorporates decisions the DDESB made at its 315th meeting held on January 21–22, 1998 and by DDESB memorandum dated January 13, 1998.

The changes included herein address the following:

Expands and clarifies the criteria for the location of barricades between exposed sites and potential explosion sites for protection from fragments and overpressure.

Clarifies requirements for waivers and exemptions.

Reduces the minimum fragment distance for Maritime Prepositioning Ships.

Includes the requirement that installation quantity-distance maps be reconciled with installation master planning documents.

Modifies the explosive equivalency of liquid oxygen (LO2)/liquid hydrogen (LH2) for siting launch vehicles.

Address storage of waste munitions, that are included in a new Chapter 14, additions to Chapter 8, "Hazard Identification for Fire Fighting' and Chapter 12, "Real Property Contaminated With Explosives or Chemical Agents," and new definitions added to Appendix A.

Dated: March 17, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–7363 Filed 3–20–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0126]

Submission for OMB Review; Comment Request Entitled Electric Service Territory Compliance Representation

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0126).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (CMB) a request to review and approve an extension of a currently approved information collection requirement concerning Electric Service Territory Compliance Representation. A request for public comments was published at 63 FR 2218, January 14, 1998. No comments were received.

DATES: Comments may be submitted on or before April 22, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Federal Acquisition Policy Division, GSA (202) 501–1757.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0126, Electric Service Territory Compliance Representation, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The representation at 52.241–1, Electric Service Territory Compliance Representation, is required when proposed alternatives of electric utility

suppliers are being solicited. The representation and legal and factual rationale, if requested by the contracting officer, is necessary to ensure Government compliance with Pub. L. 100–202.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.45* hour 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. In many cases, the offeror's representation will be the only information required.

The annual reporting burden is estimated as follows: Respondents, *200*; responses per respondent, *2.5*; total annual responses, *500*; preparation hours per response, *.45*; and total response burden hours, *225*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0126, Electric Service Territory Compliance Representation, in all correspondence.

Dated: March 18, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–7400 Filed 3–20–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Departmnet of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 14 and 15 April 1998 (800am to 1600pm)

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100

FOR FURTHER INFORMATION CONTACT: Maj Michael W. Lamb, USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: March 17, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–7361 Filed 3–20–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 15 and 16 April 1998 (800 a.m to 1600 p.m.)

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj. Michael W. Lamb, USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: March 17, 1998.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 98–7362 Filed 3–20–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 22, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the

need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: March 17, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: Revision.

Title: America Reads Pilot Sites Letter, and Request for Information from America Reads Federal Work Study and President's Coalition Members.

Frequency: One time.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,142.

Burden Hours: 2,284.

Abstract: Improving the teaching and learning of reading is one of the Department of Education's seven priorities. This summer, the Department will sponsor America Reads pilot sites to offer extended learning time opportunities for children to practice and further develop their reading skills. The letter to literacy leaders will assist the Department in developing and planning quality summer pilot sites. It will be sent to at least one literacy coalition in every state with priority given to those sites in Enterprise Zones and Empowerment Communities, as well as those communities that have signed on to the proposed Voluntary National Test. The voluntary request for information from the America Reads Federal Work Study programs and the President's Coalition for the America Reads Challenge members will be posted on the web to allow pilot sites to be able to utilize their resources.

[FR Doc. 98–7391 Filed 3–20–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 98–04–NG, et al.]

PG&E Energy Trading Company, et al.; Orders Granting and Amending Blanket Authorizations To Import and/or Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued Orders granting and amending various natural gas import and export authorizations. These Orders are summarized in the appendix that follows.

These Orders are available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on March 17, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

APPENDIX—IMPORT/EXPORT BLANKET AUTHORIZATIONS GRANTED AND AMENDED

[DOE/FE authority]

Order No.	Date issued	Importer/exporter FE Docket No.	Two-year maximum		Comments
			Import volume	Export volume	
1356	02/02/98	PG&E Energy Trading Company 98–04–NG.	100 Bcf	100 Bcf	Import and export from and to Mexico beginning on date of first delivery.
1357	02/03/98	ProLiance Energy, LLC 98–06–NG	500 Bcf		Import and export up to a combined total from and to Canada and Mexico beginning on the date of first import or export delivery.
1358	02/03/98	Questar Energy Trading Company 98–03–NG.	50 Bcf	50 Bcf	Import and export from and to Canada beginning on February 28, 1998, through February 27, 2000.
863–C	02/06/98	PG&E Energy Trading Corporation (Formerly Energy Source, Inc.) 93–82–NG.			Name change.
1359	02/09/98	Salmon Resources LTD. 98–09–NG	100 Bcf		Import from Canada beginning on February 15, 1998, through February 14, 2000.
1360	02/09/98	AEP Energy Services, Inc. 98–11–NG	146 Bcf 146 Bcf	146 Bcf 146 Bcf	Import and export from and to Canada AND import and export from and to Mexico beginning on the date of first import or export delivery.
595–A	02/10/98	HPL Resources Company (Formerly Natural Gas Marketing & Storage Company) 91–107–NG.			Name change.
1362	02/20/98	Canadian Natural Resources 98–15–NG.	50 Bcf		Import from Canada beginning on the date first of delivery.
1363	02/24/98	Anadarko Energy Services Company (Formerly Anadarko Trading Company) 98–13–NG.	108 Bcf	108 Bcf	Import and export from and to Mexico beginning on the date of first import or export delivery.
1364	02/27/98	CoEnergy Trading Company 98–16–NG.		100 Bcf	Export to Mexico beginning on March 1, 1998, and expiring February 29, 2000.

[FR Doc. 98–7467 Filed 3–20–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–272–000]

ANR Pipeline Company; Notice of Application

March 17, 1998.

Take notice that on March 10, 1998, ANR Pipeline Company (ANR) 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP98–272–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon, in place, by sale to Chevron U.S.A., Inc. (Chevron) for $100,000. Approximately 1.3 miles of 8-inch pipeline known as West Cameron 48 Lateral (WC 48), all as more fully set forth in the application of file with the Commission and open to public inspection.

The WC 48 is located in the West Cameron offshore area of Louisiana, extending from West Cameron Block 48, to West Cameron Block 18. ANR states the WC 48 is a portion of the facilities that it constructed to attach natural gas reserves in West Cameron Block 17 (WC 17). It is averred that Chevron ceased delivering gas through the lateral because its WC 48 dehydration facility needed extensive repairs, and its gas could not meet ANR's gas quality specifications. It is indicated that Chevron is drilling a new well in the WC 18 field and wants to acquire the WC 48 Lateral to flow reserves from this field to its production platform on WC 48. ANR states the last gas purchase contract for deliveries from this field expired on August 1, 1992, and states that such contract was with Chevron.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 7, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7384 Filed 3–20–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1911–000]

California Independent System Corporation; Notice of Filing

March 17, 1998.

Take notice that on March 12, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a fully-executed Meter service Agreement for ISO Metered Entities, dated February 26, 1998, between Long Beach Generation LLC and the ISO for acceptance by the Commission.

The ISO states that the enclosed Meter Service Agreement replaces the contract that the ISO filed unilaterally in this proceeding on February 18, 1998. This filing has been served on all parties listed on the official service list in the above referenced docket, including the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before March 27, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7388 Filed 3–20–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1910–000]

California Independent System Operator Corporation; Notice of Filing

March 17, 1998.

Take notice that on March 12, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a fully-executed Participating Generator Agreement, dated February 12, 1998, between Mountain Vista Power Generation, L.L.C., and the ISO for acceptance by the Commission.

The ISO states that the enclosed Participating Generator Agreement replaces the contract that the ISO filed unilaterally in this proceeding on February 18, 1998. This filing has been served on all parties listed on the official service list in the above referenced docket, including the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before March 27, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7389 Filed 3–20–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–1913–000]

California Independent System Operator Corporation; Notice of Filing

March 17, 1998.

Take notice that on March 12, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a fully-executed Meter Service Agreement for ISO Metered Entities, dated February 26, 1998, between El Segundo Power, LLC and the ISO for acceptance by the Commission.

The ISO states that the enclosed Meter Service Agreement replaces the contract that the ISO filed unilaterally in this proceeding on February 18, 1998. This filing has been served on all parties listed on the official service list in the above referenced docket, including the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.14). All such motions and protests should be filed on or before March 27, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7390 Filed 3–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1930–000]

California Independent System Operator Corporation; Notice of Filing

March 17, 1998.

Take notice that on March 12, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a fully-executed Participating Generator Agreement, dated February 12, 1998, between Alta Power Generation, L.L.C., and the ISO for acceptance by the Commission.

The ISO states that the enclosed Participating Generator Agreement replaces the contract that the ISO filed unilaterally in this proceeding on February 18, 1998. This filing has been served on all parties listed on the official service list in the above referenced docket, including the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before March 27, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7392 Filed 3–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1931–000]

California Independent System Operator Corporation; Notice of Filing

March 17, 1998.

Take notice that on March 12, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a fully-executed Participating Generator Agreement, dated February 12, 1998, between Ocean Vista Power Generation, L.L.C., and the ISO for acceptance by the Commission.

The ISO states that the enclosed Participating Generator Agreement replaces the contract that the ISO filed unilaterally in this proceeding on February 18, 1998. This filing has been served on all parties listed on the official service list in the above referenced docket, including the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before March 27, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7393 Filed 3–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1935–000]

California Independent System Corporation; Notice of Filing

March 17, 1998.

On March 12, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a fully-executed Participating Generator Agreement, dated February 12, 1998, between Oeste Power Generation, L.L.C., and the ISO for acceptance by the Commission.

The ISO states that the enclosed Participating Generator Agreement replaces the contract that the ISO filed unilaterally in this proceeding on February 18, 1998. This filing has been served on all parties listed on the official service list in the above referenced docket, including the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before March 27, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7394 Filed 3–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1722–000]

Great Western Power Cooperatives Company; Notice of Issuance of Order

March 17, 1998.

Great Western Power Cooperatives Company (Great Western) submitted a rate schedule under which Great Western will engage in wholesale power and energy transactions as a marketer. Great Western also requested waiver of various Commission regulations. In particular, Great Western requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Great Western.

On March 9, 1998, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Great Western should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Great Western is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Great Western's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 8, 1998. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7387 Filed 3–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–12–000]

Estate of J.A. Mull, Jr.; Notice of Petition for Adjustment

March 17, 1998.

Take notice that on March 5, 1998, the Estate of J.A. Mull, Jr. (Mull Estate) filed a petition for adjustment, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 [15 U.S.C. § 3142(c) (1982)], requesting that the Commission issue an order determining that the Kansas ad valorem tax refunds required by the Commission's September 10, 1997 order (in Docket No. RP97–369–000 *et al.*[1]) on remand from the D.C. Circuit Court of Appeals,[2] are barred by operation of law. The subject refunds have been sought by Williams Gas Pipelines Central, Inc., formerly: Williams Natural Gas Company (Williams), in response to the Commission's September 10 order. Mull Estate's petition is on file with the Commission and open to public inspection.

Mull Estate explains that J.A. Mull is deceased, and that his estate is now closed. Mull Estate adds that Williams was notified that, although the estate was open and in probate, the estate was in the process of closing. Mull Estate further explains that, despite such notification, Williams did not protect its rights by establishing a claim with respect to the Kansas ad valorem tax reimbursements that Williams previously paid under Williams Contract Nos. 1518 and 1573. Since Mr. Mull's estate is now closed, the assets of the estate have passed to Mr. Mull's heirs.

In view of the above, Mull Estate contends that the Commission should find that Williams' refund claim against the estate is barred by operation of law, specifically, by Kansas' K.S.A. 55–2239, nonclaim statute. Mull Estate contends that this Kansas statute establishes a statute of limitations and an absolute bar against claims against a deceased individual which are not properly asserted during the pendency of the probate proceedings.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214, 385.211, 385.1105 and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7398 Filed 3–20–98; 8:45 am]

BILLING CODE 6717–01–M

[1] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2307–043]

Alaska Electric Light and Power Company; Notice of Availability of Environmental Assessment

March 17, 1998.

An environmental assessment (EA) is available for public review. The EA is for an application to amend the Salmon Creek Hydroelectric Project. The application is to decommission the Upper Salmon Creek powerplant because the newer lower powerplant renders the upper powerhouse uneconomical. In addition, the licensee will remove the two miles of primary transmission and communication lines. The EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Salmon Creek Project is located on Lower Salmon Creek, near the town of Juneau, Alaska.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street NE., Washington, DC.

For further information, please contact the project manager, Ms. Rebecca Martin, at (202) 219–2650.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7396 Filed 3–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Lease of Project Lands

March 17, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Lease of Project Lands.

b. *Project No:* 2221–022.

c. *Date Filed:* June 25, 1997.

d. *Applicant:* The Empire District Electric Company.

e. *Name of Project:* Ozark Beach Hydroelectric Project.

f. *Project location:* Teney County, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Ms. Christine Grant, The Empire District Electric Co., 602 Joplin Street, P.O. Box 127, Joplin, MO 64802, (417) 625–5100.

i. *FERC Contact:* Patti Pakkala, (202) 219–0025.

j. *Comment Date:* May 11, 1998.

k. *Description of Project:* The Empire District Electric Company, licensee for the Ozark Beach Hydroelectric Project, has filed a request to issue a 99-year lease to the City of Rockaway Beach. The lease will be for a public park to be located on approximately 23 acres of land within the boundary of the Ozark Beach Project. The park will provide such facilities as picnic tables, trails, a softball field, and pavilion space.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7395 Filed 3–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of surrender of Exemption (Conduit)

March 17, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of Exemption (Conduit).

b. *Project No:* 5890–003.

c. *Date Filed:* January 22, 1998.

d. *Applicant:* Whale Rock Commission.

e. *Name of Project:* Whale Rock.

f. *Location:* On Old Creek, in San Luis Obispo County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:*

Bob Hamilton,
Water Supply Supervisor, Whale Rock Division,
City of San Luis Obispo,
955 Morro Street,
San Luis Obispo, CA 93401,
(805) 995–3701.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Comment Date:* April 27, 1998.

k. *Description of Proposed Action:* The exemptee is requesting surrender because the design of the facility has been changed to allow power generation only infrequently and the project has not operated for the past six years. The exemptee proposes to remove the six-inch supply conduit and regulating valve, and install a blind flange on the supply tap.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application my be obtained by agencies directly from the Applicant. If an agency does

not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–7397 Filed 3–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

March 18, 1998.

The following Notice of Meeting is published pursuant to Section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: March 25, 1998, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: AGENDA: * Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Acting Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

CONSENT AGENDA—HYDRO, 695TH MEETING—MARCH 25, 1998, REGULAR MEETING, (10:00 a.m.)

CAH–1.
DOCKET# DI97–1, 001, ALASKA POWER COMPANY

CAH–2.
DOCKET# P–2187, 005, PUBLIC SERVICE COMPANY OF COLORADO

CAH–3.
DOCKET# P–2833, 049, PUBLIC UTILITY DISTRICT NO. 1 OF LEWIS COUNTY, WASHINGTON

CONSENT AGENDA—ELECTRIC

CAE–1.
DOCKET# ER98–1613, 000, CENTRAL VERMONT PUBLIC SERVICE CORPORATION

CAE–2. OMITTED

CAE–3.
DOCKET# ER98–1682, 000, SAN DIEGO GAS & ELECTRIC COMPANY
OTHER#S ER97–2355, 000, SOUTHERN CALIFORNIA EDISON COMPANY
ER97–2355, 001, SOUTHERN CALIFORNIA EDISON COMPANY
ER97–2358, 000, PACIFIC GAS AND ELECTRIC COMPANY
ER97–2358, 001, PACIFIC GAS AND ELECTRIC COMPANY
ER97–2364, 000, SAN DIEGO GAS & ELECTRIC COMPANY
ER97–2364, 001, SAN DIEGO GAS & ELECTRIC COMPANY
ER97–4235, 000, SAN DIEGO GAS & ELECTRIC COMPANY
ER97–4235, 001, SAN DIEGO GAS & ELECTRIC COMPANY
ER98–210, 000, CALIFORNIA POWER EXCHANGE CORPORATION
ER98–497, 000, SAN DIEGO GAS & ELECTRIC COMPANY
ER98–497, 001, SAN DIEGO GAS & ELECTRIC COMPANY
ER98–1685, 000, SOUTHERN CALIFORNIA EDISON COMPANY
ER98–1729, 000, CALIFORNIA POWER EXCHANGE CORPORATION

CAE–4.
DOCKET# ER98–1796, 000, LONG BEACH GENERATION LLC

CAE–5.
DOCKET# EC96–19, 014, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
OTHER#S EC96–19, 015, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
EC96–19, 016, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER96–1663, 015, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER96–1663, 016, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER96–1663, 017, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

CAE–6. OMITTED

CAE–7.
DOCKET# ER98–1734, 000, COMMONWEALTH EDISON COMPANY

CAE–8.
DOCKET# ER98–1717, 000, OCEAN STATE POWER
OTHER#S ER98–1718, 000, OCEAN STATE POWER II

CAE–9.
DOCKET# ER98–443, 000, INDIANA MICHIGAN POWER COMPANY
OTHER#S ER98–444, 000, INDIANA MICHIGAN POWER COMPANY

CAE–10.
DOCKET# ER98–1522, 000, CAMBRIDGE ELECTRIC LIGHT COMPANY

CAE–11.
DOCKET# ER98–1649, 000, PJM INTERCONNECTION, L.L.C.

CAE–12.
DOCKET# ER98–1767, 000, TENASKA FRONTIER PARTNERS, LTD.

CAE–13.
DOCKET# ER98–1605, 000, ROCHESTER GAS AND ELECTRIC CORPORATION

CAE–14.
DOCKET# ER98–1632, 000, NORTHERN INDIANA PUBLIC SERVICE COMPANY
OTHER#S ER98–1646, 000, NORTHERN INDIANA PUBLIC SERVICE COMPANY
ER98–1647, 000, NORTHERN INDIANA PUBLIC SERVICE COMPANY
ER98–1652, 000, NORTHERN INDIANA PUBLIC SERVICE COMPANY
ER98–1653, 000, NORTHERN INDIANA PUBLIC SERVICE COMPANY
ER98–1654, 000, NORTHERN INDIANA PUBLIC SERVICE COMPANY
ER98–1655, 000, NORTHERN INDIANA PUBLIC SERVICE COMPANY

CAE–15.
DOCKET# EC98–2, 000, LOUISVILLE GAS AND ELECTRIC COMPANY, LG&E ENERGY MARKETING INC. AND KENTUCKY UTILITIES COMPANY
OTHER#S ER92–533, 004, LOUISVILLE GAS AND ELECTRIC COMPANY
ER94–1188, 018, LG&E ENERGY MARKETING INC.
ER98–111, 000, LOUISVILLE GAS AND ELECTRIC COMPANY, LG&E ENERGY MARKETING INC. AND KENTUCKY UTILITIES COMPANY
ER98–114, 000, LOUISVILLE GAS AND ELECTRIC COMPANY AND KENTUCKY UTILITIES COMPANY

CAE–16.
DOCKET# ER98–1033, 000, AUTOMATED POWER EXCHANGE, INC.

CAE–17. OMITTED

CAE–18.
DOCKET# ER97–1907, 000, ENTERGY ARKANSAS, INC.

CAE–19.
DOCKET# OA96–189, 000, MAINE ELECTRIC POWER COMPANY

CAE–20.
DOCKET# EC98–16, 000, BOSTON EDISON COMPANY
CAE–21.
DOCKET# ER96–705, 000, SOUTHERN INDIANA GAS & ELECTRIC COMPANY
CAE–22.
DOCKET# ER97–2353, 002, NEW YORK STATE ELECTRIC & GAS CORPORATION
CAE–23.
DOCKET# ER98–504, 001, NEW WEST ENERGY CORPORATION
CAE–24.
DOCKET# ER98–901, 001, SIERRA PACIFIC POWER COMPANY
CAE–25. OMITTED
CAE–26.
DOCKET# ER98–559, 001, PACIFICORP
CAE–27.
DOCKET# EL97–2, 000, NEW ENERGY VENTURES, INC. V. SOUTHERN CALIFORNIA EDISON COMPANY AND EDISON SOURCE
CAE–28.
DOCKET# EL98–10, 000, SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT V. PACIFIC GAS AND ELECTRIC COMPANY AND CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
CAE–29.
DOCKET# NJ97–9, 001, COLORADO SPRINGS UTILITIES
OTHER# S NJ97–2, 002, OMAHA PUBLIC POWER DISTRICT
NJ97–8, 000, SOUTH CAROLINA PUBLIC SERVICE AUTHORITY
NJ97–8, 001, SOUTH CAROLINA PUBLIC SERVICE AUTHORITY
NJ97–10, 000, NEW YORK POWER AUTHORITY
NJ97–13, 000, ORLANDO UTILITIES COMMISSION
NJ97–14, 000, EAST KENTUCKY POWER COOPERATIVE, INC.

CONSENT AGENDA—GAS AND OIL

CAG–1.
DOCKET# RP98–137, 000, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–2.
DOCKET# RP98–140, 000, TENNESSEE GAS PIPELINE COMPANY
CAG–3., OMITTED
CAG–4., OMITTED
CAG–5.
DOCKET# RP98–151, 000, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–6.
DOCKET# RP98–155, 000, GRANITE STATE GAS TRANSMISSION, INC.
OTHER# S TM98–3–4, 000, GRANITE STATE GAS TRANSMISSION, INC.
CAG–7., OMITTED
CAG–8.
DOCKET# TM98–9–29, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–9.
DOCKET# RP97–287, 015, EL PASO NATURAL GAS COMPANY
CAG–10.
DOCKET# RP98–131, 000, SUMAS INTERNATIONAL PIPELINE, INC.
CAG–11.
DOCKET# RP98–145, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–12.
DOCKET# RP98–146, 000, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–13.
DOCKET# RP98–147, 000, NORAM GAS TRANSMISSION COMPANY
OTHER# S RP98–147, 001, NORAM GAS TRANSMISSION COMPANY
CAG–14.
DOCKET# RP98–148, 000, NORTHERN NATURAL GAS COMPANY
CAG–15.
DOCKET# RP98–153, 000, MISSISSIPPI RIVER TRANSMISSION CORPORATION
OTHER# S RP98–153, 001, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–16.
DOCKET# TM98–2–37, 000, NORTHWEST PIPELINE CORPORATION
CAG–17.
DOCKET# TM98–2–82, 000, VIKING GAS TRANSMISSION COMPANY
CAG–18., OMITTED
CAG–19., OMITTED
CAG–20.
DOCKET# PR97–11, 000, PANENERGY TEXAS INTRASTATE PIPELINE COMPANY
OTHER# S PR97–11, 001, PANENERGY TEXAS INTRASTATE PIPELINE COMPANY
CAG–21.
DOCKET# RP91–229 ET AL. 000, PANHANDLE EASTERN PIPE LINE COMPANY
OTHER# S RP92–166 ET AL. 000, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–22.
DOCKET# RP98–129, 000, NORTHWEST PIPELINE CORPORATION
CAG–23.
DOCKET# TM97–3–25, 004, MISSISSIPPI RIVER TRANSMISSION CORPORATION
OTHER# S TM97–3–25, 005, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–24.
DOCKET# RP98–105, 001, WILLIAMS GAS PIPELINES CENTRAL, INC.
OTHER# S RP89–183, 076, WILLIAMS GAS PIPELINES CENTRAL, INC.
RP89–183, 077, WILLIAMS GAS PIPELINES CENTRAL, INC.
RP98–105, 003, WILLIAMS GAS PIPELINES CENTRAL, INC.
CAG–25.
DOCKET# RP97–301, 000, OVERTHRUST PIPELINE COMPANY
OTHER# S RP97–301, 001, OVERTHRUST PIPELINE COMPANY
CAG–26.
DOCKET# RP97–232, 001, AMOCO PRODUCTION COMPANY AND AMOCO ENERGY TRADING CORPORATION V. NATURAL GAS PIPELINE COMPANY OF AMERICA
OTHER# S IN98–1, 001, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP97–232, 002, AMOCO PRODUCTION COMPANY AND AMOCO ENERGY TRADING CORPORATION V. NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–27.
DOCKET# RP97–431, 003, NATURAL GAS PIPELINE COMPANY OF AMERICA
OTHER# S RP97–431, 002, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–28.
DOCKET# RP97–82, 002, GPM GAS CORPORATION V. EL PASO NATURAL GAS COMPANY
CAG–29.
DOCKET# RP96–367, 007, NORTHWEST PIPELINE CORPORATION
CAG–30.
DOCKET# RP98–42, 002, ANR PIPELINE COMPANY
CAG–31.
DOCKET# RP94–149, 007, PG&E TRANSMISSION, NORTHWEST CORPORATION
OTHER# S RP94–145, 006, PG&E TRANSMISSION, NORTHWEST CORPORATION
RP95–141, 004, PG&E TRANSMISSION, NORTHWEST CORPORATION
CAG–32.
DOCKET# RP96–184, 003, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–33.

DOCKET# RP98–56, 002, TENNESSEE GAS PIPELINE COMPANY
CAG–34.
DOCKET# OR89–2, 012, TRANS ALASKA PIPELINE SYSTEM
OTHER# S OR96–14, 000, EXXON COMPANY, U.S.A. V. AMERADA HESS PIPELINE CORPORATION, ET AL.
CAG–35.
DOCKET# CP94–183, 005, EL PASO NATURAL GAS COMPANY
CAG–36.
DOCKET# CP97–517, 000, NORAM GAS TRANSMISSION COMPANY
CAG–37.
DOCKET# CP97–755, 000, NORTHERN NATURAL GAS COMPANY
CAG–38.
DOCKET# CP97–761, 000, VENICE GATHERING SYSTEM, L.L.C.
CAG–39.
DOCKET# CP98–66, 000, QUESTAR PIPELINE COMPANY
CAG–40.
DOCKET# CP98–40, 000, EAST TENNESSEE NATURAL GAS COMPANY
CAG–41.
DOCKET# CP97–256, 001, K N WATTENBERG TRANSMISSION LIMITED LIABILITY COMPANY
OTHER# S CP97–256, 002, K N WATTENBERG TRANSMISSION LIMITED LIABILITY COMPANY
CAG–42.
DOCKET# RP98–25, 003, WEST TEXAS GAS, INC.
CAG–43.
DOCKET# RP98–141, 000, SOUTHERN NATURAL GAS COMPANY
CAG–44.
DOCKET# RP98–152, 000, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–45.
DOCKET# TM98–2–21, 000, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–46.
DOCKET# IS98–12, 001, AMOCO PIPELINE COMPANY

HYDRO AGENDA

H–1. OMITTED

ELECTRIC AGENDA

E–1.
DOCKET# RM98–4, 000, REVISED FILING REQUIREMENTS UNDER PART 33 OF THE COMMISSION'S REGULATIONS
NOTICE OF PROPOSED RULEMAKING.

OIL AND GAS AGENDA

I. PIPELINE RATE MATTERS PR–1. RESERVED
II. PIPELINE CERTIFICATE MATTERS PC–1. RESERVED

David P. Boergers,
Acting Secretary.
[FR Doc. 98–7585 Filed 3–19–98; 11:12 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5985–2]

Proposed Settlement Agreement; Ozone Nonattainment Areas; 15% VOC FIP for Washington, D.C.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed modification to settlement agreement.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), as amended, 42 U.S.C. 7413(g), notification is hereby given of a proposed modification to a settlement agreement concerning litigation instituted against the Environmental Protection Agency ("EPA") by the Sierra Club Legal Defense fund, *et. al.* The lawsuit concerns EPA's alleged failure to perform a nondiscretionary duty with respect to promulgating a federal implementation plan ("FIP") to reduce volatile organic compound ("VOC") emissions by fifteen percent [15%] from 1990 levels, under Act section 182(b)(1), in the Washington, D.C. ozone nonattainment area. The parties have agreed to modify the settlement agreement to allow a short period of time for EPA to take action on a recent submission by the District of Columbia of a revised State Implementation Plan providing for 15% VOC reductions in the Washington, D.C. nonattainment area.

For a period of thirty [30] days following the date of publication of this notice, the Agency will receive written comments relating to the modified settlement agreement. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement agreement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the settlement agreement are available from Phyllis Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (202) 260–7606.Written comments should be sent to Sara Schneeberg at the above address and must be submitted on or before April 22, 1998.

Dated: March 16, 1998.

Scott C. Fulton,
Acting General Counsel.
[FR Doc. 98–7487 Filed 3–20–98; 8:45 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00473D; FRL–5776–8]

Antimicrobial Stakeholder Meeting; Change of Location

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Meeting.

SUMMARY: The Antimicrobials Division (AD) of the Office of Pesticide Programs of EPA is continuing its series of stakeholder meetings to discuss general administrative and policy issues, including those related to the antimicrobial rule that is being developed. The rule is being revised in accordance with principles set forth in the Food Quality Protection Act of 1996 (Public Law 104–170). To ensure that all interested parties can obtain information about antimicrobials activities, EPA, in its discretion, has opened a docket. This docket includes, but is not limited to, a summary of major discussions at stakeholder meetings, as well as copies of any documents distributed at these meetings. This notice is announcing a change of location for the meeting which was previously published in the **Federal Register** of January 26, 1998 (63 FR 3686).

DATES: The next stakeholder meeting will take place on Thursday, March 26, 1998, from 2 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency Crystal City Hotel, 2799 Jefferson Davis Highway, in Regency C and D. The room is located two levels down from the main entrance, behind the escalator.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Mandula, Antimicrobials Division (7510W), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Crystal Drive, Arlington, VA, (703) 308–7378, fax: (703) 308–8481; e-mail: mandula.barbara@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice announces a change in location of a public meeting, held to ensure that all parties interested in administrative and policy issues related to

antimicrobials, including development of the antimicrobial rule, can obtain information about relevant activities. The meeting which was previously published in the **Federal Register** of January 26, 1998, (63 FR 3686) (FRL 5767–3), will now take place at the location under "ADDRESSES". Additionally, a public record has been established under docket number "OPP–00473." The docket is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Copies of EPA documents may be obtained by contacting: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

List of Subjects

Environmental protection, Antimicrobial pesticides.

Dated: March 16, 1998

Frank T. Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 98–7491 Filed 3–18–98; 3:15 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5985–1]

Notice of Second Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; announcement of meeting.

SUMMARY: Second Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force.

Time and Date: 1:00–5:00 p.m., April 8; and 8:00 a.m.–2:00 p.m., April 9, 1998.

Place: The Pontchartrain Hotel, 2031 St. Charles Ave., New Orleans, LA; (504) 524–0581.

Status: Open to the public, limited only by the space available. The room accommodates approximately 100 people.

Purpose: A Task Force consisting of Federal, State, and Tribal members, will lead an effort to coordinate and support nutrient management and hypoxia related activities in the Mississippi River and Gulf of Mexico watersheds. The purpose of this second meeting, done in coordination with the U.S. Army Corps of Engineers, is to have interactive discussions with stakeholders in the Gulf of Mexico area and with State officials actively involved in nutrient management activities.

Matters To Be Discussed: Agenda items include: Panel discussions with stakeholders considering the environmental, agriculture, and academic/social perspectives concerning hypoxia in the Gulf of Mexico and nutrient management; panel discussions with State officials concerning nutrient management efforts state and basin-wide; discussion on nutrient enrichment modeling; and the development of nutrient management goals from a Chesapeake Bay State perspective. The public will be afforded an opportunity to provide comments on these issues during open discussion periods.

Contact Person for More Information: Dr. Mary Belefski, U.S. EPA, Assessment and Watershed Protection Division (AWPD), 401 M Street, S.W. (4503F), Washington, D.C. 20460, telephone 202/260–7061; Internet: belefski.mary@epamail.epa.gov.

Dated: March 16, 1998.

Robert Wayland,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 98–7490 Filed 3–20–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency invites the general public and other Federal agencies to comment on a proposed continuing information collection which has been submitted to the Office of Management and Budget for review and clearance. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning collection of State Administrative Plans. These plans provide the basis for awards of Federal financial contributions to the States for necessary and essential State and local emergency preparedness personnel and administrative expenses.

SUPPLEMENTARY INFORMATION: This information collection is required by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5121 *et seq.*, Section 613. FEMA manages the requirement in accordance with 44 CFR 13.11, FEMA's implementation of the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Additional background information may be found in 44 CFR 302.2(u) and 44 CFR 302.3(a). The Federal contributions for State and local emergency preparedness personnel and administrative expenses to which this requirement is related are now delivered through FEMA's Emergency Management—State and Local Assistance program, Catalog of Federal Domestic Assistance Number 83.534.

Collection of Information

Title: State Administrative Plan.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0138.

Abstract: The State Administrative Plan is a formal description of the participating State's emergency preparedness program and related State and local laws, executive directives, rules, plans, and procedures. It documents and certifies the State's compliance with requirements of the authorizing statute. The plan is a one-time submission with annual updates to keep it current. Plans and updates are submitted to the FEMA Regional Offices along with the annual applications for assistance under emergency management programs. FEMA uses the information to determine whether a State legally qualifies for Federal contributions for State and local emergency preparedness personnel and administrative expenses.

Affected Public: State and Local or Tribal Governments.

Estimated Total Annual Burden Hours: 1,120.

	Number of Respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A x B x C)
	56		20	1,120
Total	56		20	1,120

Estimated Cost: $2,240.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson. FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: C. Dwight Poe, Program Analyst. Preparedness, Training and Exercises Directorate at (202) 646–3492 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: March 16, 1998.

Muriel B. Anderson,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–7446 Filed 3–20–98; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning The United States Fire Administration's National Fire Academy Long Term Course Evaluation Forms.

SUPPLEMENTARY INFORMATION: The National Fire Academy is congressionally mandated to provide training and education to the Nation's fire service and emergency response personnel. The state-of-the-art programs offered by the NFA serve as models of excellence for state and local fire service agencies. Such agencies often develop or revise their courses based on the NEA offerings. To maintain the high standards of these programs, it is critical that course be evaluated after students have had the opportunity to apply the knowledge and skills gained. The long term course evaluation forms will serve as the instruments through which students and their supervisors can provide feedback on whether courses have met the needs of the fire and emergency services professional community.

Collection of Information.

Title: National Fire Academy Long Term Evaluation Forms.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0260.

Form Numbers: F–8872–NETC, Long-Term Evaluation Form for Supervisors, and F–8873–NETC, Long Term Evaluation Form for Students.

Abstract. The National Fire Academy's long-term evaluation forms will obtain course specific feedback from students and their supervisors regarding impact of course content on job performance. This information is needed to improve instruction and content. Demographic data are needed to identify differential in course impact.

Affected Public: Individuals or households.

Estimated Total Annual Burden Hours: 375 hours.

FEMA forms	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A x B x C)
Student	750	1	.33	247.50
Supervisors	750	1	.17	127.50
Total	1500	1	[1] 15	375

[1] In minutes.

Estimated Cost: $100,000.00.

COMMENTS: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: Contact Polly Barnett-Birdsall, Instructional Systems Specialist, U.S. Fire Administration, National Fire Academy, (301) 447–1275 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: March 16, 1998

Muriel B. Anderson,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–7447 Filed 3–20–98; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1208–DR]

Alabama; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama, (FEMA–1208-DR), dated March 9, 1998, and related determinations.

EFFECTIVE DATE: March 10, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alabama, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 9, 1998:

Covington County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7441 Filed 3–20–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1203–DR]

State of California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–1203–DR), dated February 9, 1998, and related determinations.

EFFECTIVE DATE: March 6, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of California, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1998:

Los Angeles, Orange, Stanislaus, and Trinity Counties for Categories C through G under the Public Assistance program (already designated for Categories A and B under the Public Assistance program and Individual Assistance).

Kern, Riverside, San Bernardino, San Diego, and Tulare Counties for Individual Assistance and Public Assistance.

Del Norte County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7443 Filed 3–20–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: March 13, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Calhoun, Collier, Escambia, Franklin, Gadsden Glades, Gulf, Jackson, Okeechobee, Santa Rosa, Walton, and Washington Counties for Individual Assistance.

Okaloosa County for Individual Assistance and Public Assistance.

Holmes and Sarasota Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 98–7440 Filed 3–20–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: March 12, 1998

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Coffee, Crisp, Lee, and Mitchell Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 98–7445 Filed 3–20–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1206–DR]

New Jersey; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Jersey, (FEMA–1206–DR), dated March 3, 1998, and related determinations.

EFFECTIVE DATE: March 10, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New Jersey, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 3, 1998:

Ocean County for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7442 Filed 3–20–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1192–DR]

Commonwealth of the Northern Mariana Islands; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for Commonwealth of the Northern Mariana Islands (FEMA–1192–DR), dated December 8, 1997, and related determinations.

EFFECTIVE DATE: March 3, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3630.

SUPPLEMENTARY INFORMATION: Notice is hereby given that in a letter dated March 3, 1998, the President amended the cost sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (42 U.S.C. 5121 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that damage in certain areas of the Commonwealth of the Northern Mariana Islands (CNMI), resulting from Super Typhoon Keith on November 2–3, 1997, is of sufficient severity and magnitude to warrant special cost sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended ("the Stafford Act").

Therefore, I amend my previous declaration to authorize Federal funds for the Individual and Family Grant Program and the Public Assistance and Hazard Mitigation Grant Programs at 90 percent of total eligible costs.

Please notify the Governor of the Commonwealth of the Northern Mariana Islands and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–7439 Filed 3–20–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1197–DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1197–DR), dated January 13, 1998, and related determinations.

EFFECTIVE DATE: March 6, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 13, 1998:

Jefferson County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–7444 Filed 3–20–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Submission for OMB Review and Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the information collection requests abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and approval. The submissions to OMB request continued approval (extensions with no changes) for OMB No. 3072–0055 (Tariffs and Service Contracts), OMB No. 3072–0045 (Agreements), and OMB No. 3072–0001 (Admission to Practice). Previously, comments were solicited by notice published on December 24, 1997 (62 FR 67367–67368). The FMC did not receive any comments in response to that notice.

DATES: Comments must be submitted on or before April 22, 1998.

ADDRESSES: Send comments to:.

Edward P. Walsh, Managing Director, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (Telephone: (202) 523–5800)

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Ed Clarke, Desk Officer for FMC, 725 17th Street, N.W., Washington, D.C. 20503.

FOR FURTHER INFORMATION:

Send requests for copies of the current OMB clearances to: George D. Bowers, Director, Office of Information Resources Management, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (Telephone: (202) 523–5834).

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3072–0055 Expires May 31, 1998.

Abstract: Section 8 of the Shipping Act of 1984, 46 U.S.C. app. § 1707, requires common carriers and conferences of such common carriers to file with the Commission and keep open for public inspection, tariffs showing all rates, charges, classifications, rules and practices for transportation of cargo between the U.S. and foreign ports. Section 8(c) of the Act also provides for the filing of service contracts and statements of the contracts' essential terms with the Commission. 46 CFR 514 establishes the requirements, format and user charges for the electronic publication, filing and retrieval of tariffs of carriers and terminal operators, as well as service contracts and their essential terms, covering the transportation of property performed by common carriers in the foreign commerce of the United States and by combinations of such common carriers, including through transportation offered in conjunction with one or more carriers not otherwise subject to the Shipping Act of 1984.

Needs and Uses: In order to effectively discharge its statutorily-assigned duties, the Commission uses filed tariff and service contract data for surveillance and investigatory purposes, and, in its proceedings, adjudicates related issues raised by private parties.

Type of Respondents: Common carriers are persons who hold themselves out to the general public to provide transportation by water of cargo between the United States and a foreign country for compensation, who assume the responsibility for the transportation from origin to destination and use a vessel operating on the high seas or the Great Lakes between a U.S. port and a foreign country. Terminal operators are persons who carry on the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with common carries operating in the U.S. foreign commerce.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 3,267. This number varies as persons file tariffs.

Estimated time per response: The average time for preparing and filing tariffs and service contracts is estimated at 122 person hours. Estimated time per respondent for recordkeeping requirements is estimated at 6 person hours.

Total Annual Burden: The Commission estimates the manhour burden to file foreign tariffs, service contracts and essential terms at 399,829; recordkeeping requirements are estimated at 12,080 person hours.

OMB Approval Number: 3072–0045 (Expires May 31, 1998).

Abstract: The Shipping Act of 1984, 46 U.S.C. app. § 1701 et seq., requires certain classes of agreements between and among ocean common carriers and marine terminal operators to be filed with the Commission, specifies the content of those agreements, and defines the Commission's authorities and responsibilities in overseeing these agreements. 46 CFR 572 establishes the form and manner for filing agreements and for the underlying commercial data necessary to evaluate agreements.

Needs and Uses: Under its pre-effective review process, the Commission reviews agreements filings to determine statutory and regulatory compliance, as well as to assess their anticompetitive impact. After agreements become effective, the Commission monitors agreement activities to ensure continued statutory and regulatory compliance. To accomplish this, the Commission continually gathers, reviews, and interprets commercial data regarding the impact of agreements on competition, prices, and service in the U.S. foreign commerce.

Frequency: The Commission has no control over how frequently agreements are entered into; this is solely a matter between the negotiating parties. When parties do reach an agreement that falls under the jurisdiction of the 1984 Shipping Act, that agreement must be filed with the Commission. Ongoing surveillance of agreement activities is conducted through the review of minutes and quarterly monitoring reports filed by the more anticompetitive agreements.

Type of Respondents: Parties that enter into agreements subject to the Commission's oversight are ocean common carriers and marine terminal operators operating in the foreign oceanborne commerce of the United States.

Number of Annual Respondents: Potentially, there are 1,655 respondents. Over the last five years the Commission has averaged 358 agreement filings a year from an estimated potential universe of 764 regulated entities. Starting in mid-1996, certain agreements are required to file quarterly monitoring reports under these regulations. The number of annual respondents under this program will vary according to the number of agreements subject to the reporting obligation. Last year, 235 agreements were subject; they filed 940 monitoring reports.

Estimated Time Per Response: The time for preparing and filing an agreement can range anywhere from as little as three staff-hours to as much 150 staff-hours. The estimated average burden per respondent is 90 staff-hours. Time required for preparing monitoring reports varies according to the complexity of the filing obligation. Class C agreements have the least burden, and it is estimated to be about 20 staff-hours. Class A/B agreements require more specific data and hence a greater

burden. It is estimated that Class B monitoring reports require about 120 staff-hours, and Class A reports about 160 staff-hours. Estimated time per respondent under the record-keeping obligations of the regulation is five staff-hours.

Total Annual Burden: The total annual burden on respondents is estimated at 115,000 staff-hours, 110,000 staff-hours as the filing burden, and 5,000 staff-hours as the record-keeping burden. These estimates are based on anticipated filings over the next year.

OMB Approval Number: 3072–0001 (Expires May 31, 1998).

Abstract: Qualified persons who desire to practice before the Commission must complete and file Form FMC–12 (Application for Admission to Practice before the Federal Maritime Commission) with the Commission.

Needs and Uses: The Commission uses data contained in the application to determine whether applicants have the necessary qualifications to enable them to represent others in matters before the Commission.

Frequency: The collection of the information is on a one-time only basis.

Type of Respondents: Persons desiring to practice before the Commission in quasi-judicial hearings.

Number of annual respondents: The Commission estimates there are approximately 10 respondents annually for this one-time response.

Estimated Time per response: Approximately one hour.

Total Annual Burden: Ten manhours per year.

Send comments regarding the burden estimate, or any other aspect of the information collections, including suggestions for reducing the burden, to the addresses shown above.

Joseph C. Polking,

Secretary.

[FR Doc. 98–7466 Filed 3–20–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 7, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. First National Corporation Employee Stock Ownership Plan, Grand Forks, North Dakota; to acquire additional voting shares of First National Corporation North Dakota, Grand Forks, North Dakota, and thereby indirectly acquire voting shares of First National Bank North Dakota, Grand Forks, North Dakota.

Board of Governors of the Federal Reserve System, March 18, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7469 Filed 3–20–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 16, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Anson Bancorp, Inc., Wadesboro, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Anson Savings Bank, SSB, Wadesboro, North Carolina.

2. BB&T Corporation, Winston-Salem, North Carolina; and BB&T Financial Corporation of Virginia, Virginia Beach, Virginia; to acquire 100 percent of the voting shares of Franklin Bancorporation, Inc., Washington, D.C., and thereby indirectly acquire Franklin National Bank of Washington, D.C., Washington, D.C.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1413:

1. Capitol Bancorp, Ltd., Lansing, Michigan; and Sun Community Bancorp Limited, Phoenix, Arizona; to acquire 51 percent of the voting shares of Southern Arizona Community Bank, Tuscon, Arizona, a *de novo* bank, and Biltmore Community Bank, Phoenix, Arizona, a *de novo* bank.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. CountryBanc Holding Company, Edmond, Oklahoma; to acquire 99.4 percent of the voting shares of Home State Bank, Hobart, Oklahoma.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Greater Bay Bancorp, Palo Alto, California; to merge with Pacific Rim Bancorporation, San Francisco, California, and thereby indirectly acquire Golden Gate Bank, San Francisco, California.

Board of Governors of the Federal Reserve System, March 17, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7364 Filed 3–20–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 17, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. FLAG Financial Corporation, LaGrange, Georgia; to merge with Three Rivers Bancshares, Inc., Milan, Georgia, and thereby indirectly acquire Bank of Milan, Milan, Georgia.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Wilber Co., Wilber, Nebraska; to acquire 23.34 percent of the voting shares of NebraskaLand National Bank, North Platte, Nebraska, a *de novo*, institution.

Board of Governors of the Federal Reserve System, March 18, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7470 Filed 3–20–98; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Public Building Service; Notice of Availability of Finding of No Significant Impact (FONSI) for a New U.S. Courthouse in Riverside, CA

The United States General Services Administration (GSA) announces its decision to acquire a build-to-suite Courthouse of 42,000 square feet for use by the U.S. District Court in downtown Riverside, California.

In accordance with the National Environmental Policy Act (NEPA) and the Regulations issued by the Council on Environmental Quality, November 29, 1978, the General Services Administration has prepared a FONSI for the proposed project and has determined that no Environmental Impact Statement (EIS) will be required.

Copies of the FONSI are available and can be obtained from Mr. Javad Soltani, GSA, Portfolio Management (9PT), Public Buildings Services, 450 Golden Gate Avenue, San Francisco, CA 94102, at (415) 522–3493.

Ken Schreiber,

Portfolio Management (9PT), PBS, GSA, Pacific Rim Region.

[FR Doc. 98–7420 Filed 3–20–98; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and health Statistics (NCVHS), Subcommittee on Population-Specific Issues.

Times And Dates: 9:00 a.m. - 5:00 p.m., April 14, 1998; 9:00 a.m. - 4:00 p.m., April 15, 1998.

Place: Conference Room E–275C, Low Rise, John F. Kennedy Federal Building, 100 Cambridge Street, Boston, Massachusetts 02203.

Status: Open.

Purpose: The Subcommittee is in the process of examining a number of data needs and issues associated with Medicaid managed care. The purpose of this site visit is to examine the experience of Massachusetts in implementing, evaluating and monitoring the State's Medicaid Managed Care program with special attention to data needs, data systems, data uses and data issues. Presentations are planned involving representatives of State agencies, providers, plans, and patient advocacy groups who will describe their data needs and issues relating to Medicaid managed care.

Contact Person for More Information: Substantive program information as well as a roster of committee members may be obtained from Carolyn Rimes, lead Subcommittee staff, health Care Financing Administration, DHHS, 7500 Security Boulevard, C–3–21–06, Baltimore, Maryland 21244–1850, telephone (410)786–6620, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301–436–7050. Additional information about the full Committee is available on the NCVHS website, where the tentative agenda for the Subcommittee meeting will also be posted when available: http://aspe.os.dhhs.gov/ncvhs.

Dated: March 13, 1998.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 98–7359 Filed 3–20–98; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Delegation of Authority

Notice is hereby given that I have delegated to the Administrator, Health Resources and Services Administration, authorities vested in the Secretary of Health and Human Services under Section 211 of the HHS Appropriation Act for FY 1998. This authority may be redelegated.

This delegation shall be exercised under the Department's existing delegation of authority and policy on regulations. In addition, I hereby ratify and affirm all actions taken by you or your subordinates which involved the exercise of the authorities delegated herein prior to the effective date of this delegation.

This delegation is effective upon date of signature.

Dated: March 17, 1998.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 98–7430 Filed 3–20–98; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–14]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. 1999 and 2001 National School-Based Youth Risk Behavior Surveys—The purpose of this request is to renew OMB clearance for a biennial, national, youth risk behavior survey. This ongoing biennial survey is administered to students attending regular public, private, and Catholic schools in grades 9–12. The survey addresses priority health risk behaviors related to the major preventable causes of mortality, morbidity, and social problems among both youth and adults in the U.S. Previous OMB clearance for these surveys expired in October of 1997 (OMB No. 1920–0258, expiration 10/97). OMB clearance for a similar survey conducted among alternative school students will expire in December of 1998 (OMB No. 0920–0416, expiration 12/31/98). Data on the health risk behaviors of adolescents is the focus of at least 26 national health objectives in *Healthy People 2000: Midcourse Review and 1995 Revisions*. This survey will provide end-of-decade data to help measure these objectives as well as baseline data to measure many new national health objectives proposed for 2010. No other national source of data exists for most of the proposed 2010 objectives that address behaviors of adolescents. The data also will have significant implications for policy and program development for school health programs nationwide. The total estimated cost to respondents is $47,250 assuming a minimum wage of $5.25 for the 1997–1998 school year.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Alternative school students	12,000	1	0.75	9,000

2. Multistate Case-Control Study of Childhood Brain Cancers—New—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and its 1986 Amendments, the Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from exposure to hazardous substances in the environment. Scientific knowledge is lacking concerning the reasons for the apparent rise in childhood brain cancer incidence during the last two decades in the U.S. and for explanations of childhood brain cancer in general. To date, most epidemiologic studies exploring the causes of childhood brain cancer have suffered from lack of statistical power due to the small numbers of cases available for the study. By combining recent childhood brain cancer data from multiple states, this study will help to better understand what environmental factors may be associated with childhood brain cancer, and therefore to possibly develop well-focused prevention measures.

This study will examine the association between environmental exposures and risk of childhood brain cancers, by employing a population based case-control study of childhood brain cancer. Information to be collected includes proximity of parental residence to hazardous waste sites and other known or suspected risk factors. Other known or purported risk factors identified from the literature will include both environmental and host factors during the prenatal as well as postnatal periods: parental occupation, parents' and child's dietary habits, parental history of smoking and drinking, mother's and child's exposure to radiation through medical care, residential use of pesticides or herbicides, mother's and child's history of viral infection, and family history of cancer and neurological disorders. This request is for a 3-year OMB approval.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Parent/Child questionnaire	1200	1	0.75	900
Blood sample collection	200	1	0.5	100
Total				1000

Charles Gollmar,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–7413 Filed 3–20–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Idaho National Engineering and Environmental Laboratory (INEEL) Health Effects Subcommittee.

Times and Dates: 8:30 a.m.–5:30 p.m., April 7, 1998; 7 p.m.–8 p.m., April 7, 1998; 7:30 a.m.–4 p.m., April 8, 1998.

Place: DoubleTree Hotel, 2900 Chinden Boulevard, Boise, Idaho 83714, telephone 208/343–1871, fax 208/344–1079.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background

Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose

This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters To Be Discussed

Agenda items include presentations from the CDC and the U.S. Department of Energy on national priorities and research agendas; the National Institute for Occupational Safety and Health will provide updates on the progress of current studies; the National Cancer Institute (NCI) will update the NCI study, and Fallout and Thyroid Cancer; the Radiological Assessments Corporation will provide updates on the Status of Chemical Screening and Radionuclide Screening; and committee deliberations and working group discussions. On April 7, at 7 p.m., the meeting will continue in order to allow more time for public input and comment.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Arthur J. Robinson, Jr., or Sharona Woodley, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: March 17, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–7404 Filed 3–20–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Application and program reporting requirements for the Children's Justice Act authorized by the Child Abuse Prevention and Treatment Act (as amended).

OMB No.: 0980–0196.

Description: Application information is required when a State wishes to be considered for a Children's justice Act grant award. Program reports are used by Children's Bureau and the States as a mechanism for monitoring, evaluating and measuring State achievements in addressing the problems of child abuse and neglect. State reports also provide information for the Congress.

Respondents: Individuals and Households; Not-for-Profit Institutions; and State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	52	1	40	2,080
Performance Report	52	1	20	1,040

Estimated Total Annual Burden Hours: 3,120

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management

Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: March 17, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–7358 Filed 3–20–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0157]

Agency Information Collection Activities: Proposed Collection; Comment Request

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 and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection provisions in FDA's food labeling regulations.

DATES: Submit written comments on the collection of information by May 22, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1223.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (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 before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (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.

Food Labeling Regulations (21 CFR Parts 101, 102, 104, and 105)

FDA regulations require food producers to disclose to consumers and others specific information about themselves or their products on the label or labeling of their products. Related regulations require that food producers retain records establishing the basis for the information contained in the label or labeling of their products and provide those records to regulatory officials. Finally, certain regulations provide for the submission of food labeling petitions to FDA. FDA's food labeling regulations in parts 101, 102, 104, and 105 (21 CFR parts 101, 102, 104, and 105) were issued under the authority of sections 4, 5, and 6 of the Fair Packaging and Labeling Act (the FPLA) (15 U.S.C. 1453, 1454, and 1455) and of sections 201, 301, 402, 403, 409, 411, 701, and 721 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, 331, 342, 343, 348, 350, 371, and 379e). Most of these regulations derive from section 403 of the act, which provides that a food product shall be deemed to be misbranded if, among other things, its label or labeling fails to bear certain required information concerning the food product, is false or misleading in any particular, or bears certain types of unauthorized claims. The disclosure requirements and other collections of information in the regulations in parts 101, 102, 104, and 105 are necessary to ensure that food products produced or sold in the United States are in compliance with the labeling provisions of the act and the FPLA. The purpose of this notice is to consolidate all of the information collection provisions in these regulations into one notice for public comment under the PRA.

Section 101.3 of FDA's food labeling regulations requires that the label of a food product in packaged form bear a statement of identity (i.e., the name of the product), including, as appropriate, the form of the food or the name of the food imitated. Section 101.4 prescribes requirements for the declaration of ingredients on the label or labeling of food products in packaged form. Section 101.5 requires that the label of a food product in packaged form specify the name and place of business of the manufacturer, packer, or distributor and, if the food producer is not the manufacturer of the food product, its connection with the food product. Section 101.9 requires that nutrition information be provided for all food products intended for human consumption and offered for sale, unless an exemption in § 101.9(j) applies to the product. Section 101.9(g)(9) also provides for the submission to FDA of requests for alternative approaches to nutrition labeling. Finally, § 101.9(j)(18) provides for the submission to FDA of notices from firms claiming the small business exemption from nutrition labeling.

Section 101.10 requires that restaurants provide nutrition information, upon request, for any food or meal for which a nutrient content claim or health claim is made. Section 101.12(e) provides that a manufacturer that adjusts the reference amount customarily consumed (RACC) of an aerated food for the difference in density of the aerated food relative to the density of the appropriate nonaerated reference food must be prepared to show FDA detailed protocols and records of all data that were used to determine the density-adjusted RACC. Section 101.12(g)

requires that the label or labeling of a food product disclose the serving size that is the basis for a claim made for the product if the serving size on which the claim is based differs from the RACC. Section 101.12(h) provides for the submission of petitions to FDA to request changes in the reference amounts defined by regulation.

Section 101.13 requires that nutrition information be provided in accordance with § 101.9 for any food product for which a nutrient content claim is made. Under some circumstances, § 101.13 also requires the disclosure of other types of information as a condition for the use of a nutrient content claim. For example, under § 101.13(j), if the claim compares the level of a nutrient in the food with the level of the same nutrient in another "reference" food, the claim must also disclose the identity of the reference food, the amount of the nutrient in each food, and the percentage or fractional amount by which the amount of the nutrient in the labeled food differs from the amount of the nutrient in the reference food. Section 101.13(q)(5) requires that restaurants document and provide to appropriate regulatory officials, upon request, the basis for any nutrient content claims they have made for the foods they sell.

Section 101.14 provides for the disclosure of nutrition information in accordance with § 101.9 and, under some circumstances, certain other information as a condition for making a health claim for a food product. Section 101.15 provides that, if the label of a food product contains any representation in a foreign language, all words, statements, and other information required by or under authority of the act to appear on the label shall appear thereon in both the foreign language and in English. Section 101.22 contains labeling requirements for the disclosure of spices, flavorings, colorings, and chemical preservatives in food products. Section 101.22(i)(4) sets forth reporting and recordkeeping requirements pertaining to certifications for flavors designated as containing no artificial flavor. Section 101.30 specifies the conditions under which a beverage that purports to contain any fruit or vegetable juice must declare the percentage of juice present in the beverage and the manner in which the declaration is to be made.

Section 101.36 requires that nutrition information be provided for dietary supplements offered for sale, unless an exemption in § 101.36(h) applies. Section 101.36(f)(2) cross references the provisions in § 101.9(g)(9) for the submission to FDA of requests for alternative approaches to nutrition labeling. Also, § 101.36(h)(2) cross references the provisions in § 101.9(j)(18) for the submission of small business exemption notices.

Section 101.42 requests that food retailers voluntarily provide nutrition information for raw fruits, vegetables, and fish at the point of purchase, and § 101.45 contains guidelines for providing such information. Also, § 101.45(c) provides for the submission of nutrient data bases and proposed nutrition labeling values for raw fruit, vegetables, and fish to FDA for review and approval.

Sections 101.54, 101.56, 101.60, 101.61, and 101.62 specify information that must be disclosed as a condition for making particular nutrient content claims. Section 101.67 cross references requirements in other regulations for ingredient declaration (§ 101.4) and disclosure of information concerning performance characteristics (§ 101.13(d)). Section 101.69 provides for the submission of a petition requesting that FDA authorize a particular nutrient content claim by regulation. Section 101.70 provides for the submission of a petition requesting that FDA authorize a particular health claim by regulation. Section 101.77(c)(2)(ii)(D) requires the disclosure of the amount of soluble fiber per serving in the nutrition labeling of a food bearing a health claim about the relationship between soluble fiber and a reduced risk of coronary heart disease. Section 101.79(c)(2)(iv) requires the disclosure of the amount of folate per serving in the nutrition labeling of a food bearing a health claim about the relationship between folate and a reduced risk of neural tube defects.

Section 101.100(d) provides that any agreement that forms the basis for an exemption from the labeling requirements of section 403(c), (e), (g), (h), (i), (k), and (q) of the act be in writing and that a copy of the agreement be made available to FDA upon request. Section 101.100 also contains reporting and disclosure requirements as conditions for claiming certain labeling exemptions.

Section 101.105 specifies requirements for the declaration of the net quantity of contents on the label of a food in packaged form and prescribes conditions under which a food whose label does not accurately reflect the actual quantity of contents may be sold, with appropriate disclosures, to an institution operated by Federal, State or local government. Section 101.108 provides for the submission to FDA of a written proposal requesting a temporary exemption from certain requirements of §§ 101.9 and 105.66 for the purpose of conducting food labeling experiments with FDA's authorization.

Regulations in part 102 define the information that must be included as part of the statement of identity for particular foods and prescribe related labeling requirements for some of these foods. For example, § 102.22 requires that the name of a protein hydrolysate shall include the identity of the food source from which the protein was derived.

Part 104, which pertains to nutritional quality guidelines for foods, cross references several labeling provisions in part 101 but contains no separate information collection requirements.

Part 105 contains special labeling requirements for hypoallergenic foods, infant foods, and certain foods represented as useful in reducing or maintaining body weight.

The disclosure and other information collection requirements in the above regulations are placed primarily upon manufacturers, packers, and distributors of food products. Because of the existence of exemptions and exceptions, not all of the requirements apply to all food producers or to all of their products. Some of the regulations affect food retailers, such as supermarkets and restaurants.

The purpose of the food labeling requirements is to allow consumers to be knowledgeable about the foods they purchase. Nutrition labeling provides information for use by consumers in selecting a nutritious diet. Other information enables a consumer to comparison shop. Ingredient information also enables consumers to avoid substances to which they may be sensitive. Petitions or other requests submitted to FDA provide the basis for the agency to permit new labeling statements or to grant exemptions from certain labeling requirements. Recordkeeping requirements enable FDA to monitor the basis upon which certain label statements are made for food products and whether those statements are in compliance with the requirements of the act or the FPLA.

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

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section/Part	No. of Respondents	Total Annual Responses	Hours per Response	Total Hours	Total Operating, Capital, or Maintenance Costs
§§ 101.3, 101.22, parts 102 and 104	17,000	17,500	0.5	8,750	0
§§ 101.4, 101.22, 101.100, parts 102, 104, and 105	17,000	17,500	1	17,500	0
§ 101.5	17,000	17,500	0.25	4,375	0
§§ 101.9, 101.13(n), 101.14(d)(3), 101.62, and part 104	17,000	17,500	4	70,000	$1,000,000
§§ 101.9(g)(9) and 101.36(f)(2)	12	12	4	48	0
§§ 101.9(j)(18) and 101.36(h)(2)	8,600	8,600	8	68,800	0
§ 101.10	265,000	397,500	0.25	99,375	0
§ 101.12(e)	25	25	1	25	0
§ 101.12(g)	5,000	5,000	1	5,000	0
§ 101.12(h)	5	5	80	400	$400,000
§§ 101.13(d)(1) and 101.67	200	200	1	200	0
§§ 101.13(j)(2), 101.13(k), 101.54, 101.56, 101.60, 101.61, and 101.62	2,500	2,500	1	2,500	0
§ 101.13(q)(5)	265,000	397,500	0.75	298,125	0
§ 101.14(d)(2)	265,000	397,500	0.75	298,125	0
§ 101.15	160	1,600	8	12,800	0
§ 101.22(i)(4)	25	25	1	25	0
§§ 101.30 and 102.33	1,500	5,000	1	5,000	0
§ 101.36	300	12,000	4	48,000	$15,000,000
§§ 101.42 and 101.45	72,270	72,270	0.50	36,135	0
§ 101.45(c)	5	20	4	80	0
§ 101.69	3	3	25	75	0
§ 101.70	3	3	80	240	$400,000
§ 101.77(c)(2)(ii)(D)	1,000	1,000	0.25	250	0
§ 101.79(c)(2)(iv)	100	100	0.25	25	0
§ 101.100(d)	1,000	1,000	1	1,000	0
§§ 101.105 and 101.100(h)	17,000	17,500	0.5	8,750	0
§ 101.108	0	0	40	0	0
Total Burden Hours				985,603	16,800,000

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Total Annual Records	Hours per Recordkeeper	Total Hours	Total Operating, Capital, or Maintenance Costs
101.12(e)	25	25	1	25	0
101.13(q)(5)	265,000	397,500	0.75	298,125	0
101.14(d)(2)	265,000	397,500	0.75	298,125	0
101.22(i)(4)	25	25	1	25	0
101.100(d)(2)	1,000	1,000	1	1,000	0
101.105(t)	100	100	1	100	0
Total Burden Hours				597,400	0

These estimates are based on FDA's "Regulatory Impact Analysis of the Final Rules to Amend the Food Labeling Regulations," the agency's most recent comprehensive review of food labeling costs that published in the **Federal Register** of January 6, 1993 (58 FR 2927); agency communications with industry; and FDA's knowledge of and experience with food labeling and the submission of petitions and requests to the agency. Where an agency regulation implements an information collection requirement in the act or the FPLA, only any additional burden attributable to the regulation has been included in FDA's burden estimate.

No burden has been estimated for those requirements where the information to be disclosed is information that has been supplied by FDA. Also, no burden has been estimated for information that is disclosed to third parties as a usual and customary part of a food producer's normal business activities. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities.

Dated: March 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7472 Filed 3–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0487]

Agency Information Collection Activities; Patent and Exclusivity Provisions; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by April 22, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Abbreviated New Drug Application Regulations; Patent and Exclusivity Provisions; 21 CFR 314.50(i), 314.50(j), 314.52, 314.53, 314.54(a)(1)(vii), 314.70(f), 314.94(a)(12), 314.95, and 314.107(c)(4), (e)(2)(iv), (f)(2), and (f)(3)—(OMB Control Number 0910–0305)—Extension

Section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) requires patent owners to submit to FDA information about patents that cover approved drugs. Generic copies of these drugs may be approved when the patents expire or if a generic company certifies that the patent is invalid or will not be infringed. In such cases, the generic company must notify the patent owner about the certification, and approval of the drug may not be made effective until after the court decides the patent infringement suit or a period of 36 months, whichever occurs first. In addition, section 505 of the act, provides several periods of marketing exclusivity ranging from 3 to 10 years (depending primarily on the nature of the innovation). If a drug product receives marketing exclusivity, FDA will not approve (or, in limited cases not receive) an abbreviated new drug application (ANDA) for the drug product.

Under the authority found in sections 505 and 701 of the act (21 U.S.C. 371), FDA issued regulations governing patent and exclusivity provisions in part 314 (21 CFR part 314). The regulations provide instructions for new drug application (NDA) applicants (including section 505(b)(2) of the act applicants) and ANDA applicants on how to file patent information and request marketing exclusivity; require patent certification information for section 505(b)(2) applications and ANDA's; require information for requests for marketing exclusivity for NDA's (including section 505(b)(2) applications and certain NDA supplements); and require patent information for NDA's.

The specific reporting requirements that are the subject of this information collection are as follows: (1) Section 314.50(i) requires patent certification as part of a section 505(b)(2) of the act application; (2) § 314.50(j) requires an NDA applicant to submit information if seeking marketing exclusivity; (3) § 314.52 requires section 505(b)(2) applicants to provide notice of certification of noninfringement of patent or invalidity to patent holders and NDA holders; (4) § 314.53 requires submission of patent information as part of an NDA or supplement; (5) § 314.54(a)(1)(vii) requires applicants to submit a statement if a section 505(b)(2) applicant is seeking marketing exclusivity for changes to a listed drug; (6) § 314.70(f) requires a statement if an applicant is seeking marketing exclusivity for a supplement; (7) § 314.94(a)(12) requires an applicant to submit patent information as part of an ANDA; (8) § 314.95 requires ANDA applicants to provide notice of certification of noninfringement of patent or invalidity to patent holders and NDA holders; (9) § 314.107(c)(4), (e)(2)(iv), (f)(2), and (f)(3) require notice to FDA by ANDA or section 505(b)(2) application holders of any legal action concerning patent infringement.

Applicants must provide information on patents to FDA to enable the agency to determine whether a product is covered by a patent or whether approval of a proposed drug product would result in patent infringement. The agency lists the patent information as a reference of potential applicants. If an applicant believes a patent is invalid or would not be infringed, Federal law also requires it to notify the patent holder. FDA approval, in such cases, is affected should there be any patent litigation. Failure to provide this information would result in an incomplete application and constitute grounds for refusing to approve the application.

Applicants submitting NDA's are required under the act to provide information on certain patents that cover their drug products. The agency lists this patent information in its publication entitled "List of Approved Drug Products With Therapeutic Equivalence Evaluations." To promote product innovation, the act also gives NDA applicants several periods of "market exclusivity" ranging from 3 to 10 years (depending primarily on the nature of the innovation). If a drug product receives marketing exclusivity, FDA will not approve (or, in limited cases, even receive) an ANDA for the drug product during that time period.

In the **Federal Register** of December 12, 1997 (62 FR 65431), the agency requested comments on the proposed collection of information. No comments were received.

Respondents to this collection of information are new drug and abbreviated new drug applicants.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
314.50(i)	8	1	8	2	16
314.50(j)	50	1	50	2	100
314.52	8	1	8	8	64
314.53	200	1	200	1	200
314.54(a)(1)(vii)	8	1	8	1	8

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
314.70(f)	43	1	43	1	43
314.94(a)(12)	395	1	395	2	790
314.95	30	1	30	16	480
314.107(c)(4), (e)(2)(iv), (f)(2), and (f)(3)	30	1	30	1	30
Total					1,731

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

This estimate is based on FDA's experience over the last 3 years in receiving this information, and the familiarity by FDA reviewers with the amount of time it takes to prepare and submit the information to FDA.

Dated: March 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7474 Filed 3–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0488]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by April 22, 1998.

ADDRESSES: Submit written comments on the collection of information to Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC, 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Year 1998 and 2000 Continuation of National Surveys of Prescription Drug Information Provided to Patients—(OMB Control Number 0910–0279—Reinstatement)

FDA implements the provisions of the Federal Food, Drug, and Cosmetic Act (the act), designed to assure the adequate labeling of prescription (Rx) drugs. Under section 502(a) of the act (21 U.S.C. 352(a)), a drug product is misbranded if its labeling is false or misleading in any particular, and under section 201(n) of the act (21 U.S.C. 321(n)), a drug's labeling is misleading if its labeling or advertising fails to reveal material facts. FDA also has the authority to collect this information under Title VI of Pub. L. 104–180 (Related Agencies and Food and Drug Administration) section 601 (Effective Medication Guides), which directs the development of "a mechanism to assess periodically * * * the frequency with which the [oral and written prescription] information is provided to consumers."

To assure that Rx drugs are not misbranded, FDA has historically asserted that adequate labeling requires certain information be provided to patients. In 1982, when FDA revoked a planned initiative to require mandatory patient package inserts for all Rx drugs in favor of private sector initiatives in this area, the agency indicated that it will periodically conduct surveys to evaluate the availability of adequate patient information on a nationwide basis. Surveys of consumers about their receipt of Rx drug information were carried out in 1982, 1984, 1992, 1994, and 1996. This notice is in regard to continuing the survey in years 1998 and 2000.

The survey is conducted by telephone on a national random sample of adults age 18 and over who received a new prescription for themselves or a household member within the past 4 weeks. The interview assesses the extent to which oral and written information was received from the doctor, the pharmacist, and other sources. Survey respondents are also asked attitudinal questions, and demographic and other background characteristics are also obtained. The survey enables FDA to determine the frequency with which such information is provided to consumers. Without this information, the agency would be unable to assure that adequate Rx labeling and information is provided.

Respondents to this collection of information are adults (18 years or older), in the continental United States who have obtained one or more new (nonrefill) prescriptions at a pharmacy for themselves or a member of their household in the last 4 weeks.

In the **Federal Register** of December 11, 1997 (62 FR 65273), the agency invited comments on the collections of information. No significant comments were received.

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

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN: SCREENER[1]

Year	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1998	11,044	1	11,044	.03	331
1999	0	0	0	0	0
2000	11,044	1	11,044	.03	331
Annual average	7,363		7,363		221

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

TABLE 2.—ANNUAL REPORTING BURDEN: SURVEY[1]

Year	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1998	1,000	1	1,000	.32	320
1999	0	0	0	0	0
2000	1,000	1	1,000	.32	320
Annual average	667		667		213

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

This estimate of 434 total annual burden hours is based on the 1996 survey administration, in which 11,044 potential respondents were contacted to obtain 1,000 interviews.

Dated: March 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7475 Filed 3–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0486]

Agency Information Collection Activities; Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by April 22, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution (21 CFR Part 207)—(OMB Control Number 0910–0045)

Under section 510 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360), FDA is authorized to establish a system for registration of producers of drugs and for listing of drugs in commercial distribution. To implement section 510 of the act, FDA issued part 207 (21 CFR part 207). The regulations require an initial listing of products and a twice-yearly update. In addition, all registered drug firms are required to re-register annually between January and July. The penalties for failure to register or drug list are potential seizure and injunctions, as well as criminal enforcement actions.

The following are the specific reporting requirements under part 207: (1) Section 207.20 requires that owners and operators of all drug establishments that engage in the manufacture, preparation, propagation, or processing of drugs must register and use Form FDA 2656 (Registration of Drug Establishment) and Form FDA 2658 (Registered Establishments' Report of Private Label Distributors) to submit drug listing information or to request a Labeler Code, or both. (2) Section 207.21 requires that owners and operators must register an establishment within 5 days of beginning operations and shall complete Form FDA 2656e (Annual Registration of Drug Establishment) each year between January and July. Annual registration forms are mailed by FDA in each calendar year according to a schedule based on the establishment parent company's name and must be completed within 30 days of the receipt. (3) Section 207.22(a) requires that Form FDA 2656 must be submitted when an establishment registers the first time. An establishment whose drug registration is validated under § 207.35(a) is required to make subsequent annual registrations as described in § 207.21(a). (4) Section 207.22(b) requires that Form FDA 2657 must be submitted for the first listing of drugs and subsequent June and December updates. (5) Section 207.25 specifies the information required in the establishment registration and drug listing. (6) Section 207.25(c) specifies the information about the drug that is required to be submitted (name, active ingredients, dosage strength, NDC number, manufacturer or distributor, size, shape, color, code imprint). (7) Section 207.26 specifies the information required in the amendments to the establishment registration. (8) Section 207.30 specifies the information required for updating the drug listing. (9) Section 207.31 specifies additional drug listing information that may be needed beyond that required in §§ 207.25 and 207.30.

The information obtained from the establishment registration forms FDA 2656 and FDA 2656(e) is used by FDA and other government agencies to keep an accurate and current list of all human and animal drug manufacturers, repackers, relabelers, and other drug processors located in this country. This list is used by FDA for inspectional

purposes as required by the act. In addition, the data is used by the public and private sector as a listing of the names and locations of drug firms. The information obtained from the listing forms FDA–2657 and FDA–2658 is used, through assignment of the National Drug Code numbers, for third party reimbursement payment in Medicare and Medicaid as well as other health care insurance firms.

Respondents to this collection of information are all owners and operators that engage in the manufacture, preparation, propagation, compounding, or processing of drugs and that are not exempt under section 510(g) of the act or subpart D of 21 CFR part 207.

In the **Federal Register** of December 11, 1997 (62 FR 65274), the agency requested comments on the proposed collections of information. No significant comments were received.

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

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form	21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Form FDA–2656 Registration of Drug Establishment	207.20 207.22 207.25 207.26	2,500	1	2,500	.5	1,250
Form FDA–2656(e) Annual Registration of Drug Establishments	207.21 207.25 207.26	9,000	1	9,000	.5	4,500
Form FDA–2657 Drug Product Listing Form	207.22 207.30 207.31	45,000	1	45,000	.5	22,500
Form FDA–2658 Registered Establishment's Report of Private Label Distribution	207.20 207.21 207.25 207.26	6,200	1	6,200	.5	3,100
Total	207.25(c)	1,500	12.04	18,066	.5	9,033 40,383

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

These estimates are based on FDA's Center for Drug Evaluation and Research, Product Information Management Branch, and its data and information on drug listing and establishment registration of manufacturers, repackers, relabelers, and other drug processors.

Dated: March 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7476 Filed 3–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0433]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Food Additives: Threshold of Regulation for Substances Used in Food-Contact Articles" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 1998 (63 FR 233), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). 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. OMB has now approved the information collection and has assigned OMB control number 0910–0298. The approval expires on March 31, 2001.

Dated: March 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7471 Filed 3–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0512]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Use of Impact-Resistant Lenses in

Eyeglasses and Sunglasses" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 1998 (63 FR 231), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). 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. OMB has now approved the information collection and has assigned OMB control number 0910–0182. The approval expires on March 31, 2001.

Dated: March 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7473 Filed 3–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4351–N–01]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: May 22, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Harold R. Holzman, Office of Policy Development and Research; telephone (202) 708–3700 extension 5709. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Case Studies of the Conversion of Development-Based Assistance to Household-Based Assistance.

Description of the need from the information and proposed use: The Department of Housing and Urban Development has contracted with Abt Associates Inc. to conduct an exploratory study of housing developments that have converted from development-based Section 8 rental assistance to household-based assistance (1) when property owners "opt-out" of the development-based program at contract expiration and (2) when property owners prepay mortgages in the case of Section 236 and 221 (d)(3) BMIR developments. This exploratory research on these privately-owned developments will enable HUD to understand (1) the factors that influence households' decisions to move or stay when offered vouchers; (2) the outcomes of moving or remaining in place; and (3) the financial and physical characteristics of developments that convert.

The study will address the conversion process through case studies of approximately twelve assisted properties in four cities. The case studies will draw on information from numerous sources, including a survey of households that have received vouchers as part of the conversion process. The survey will provide information on tenant experiences and outcomes including the decision to move or stay, the housing search process, relocation counseling, and housing and neighborhood characteristics and satisfaction.

Findings from the study will inform ongoing programmatic and policy decisions by HUD and the Congress regarding treatment of the FHA multifamily portfolio. This work has important implications for HUD as it proceeds with the conversion process, because the ability of such tenants to find suitable housing will be an important concern.

Members of affected public: The survey will involve approximately 420 households in twelve housing developments that have converted from project-based Section 8 rental assistance to tenant-based assistance in the form of Section 8 vouchers. These developments will be located in four cities throughout the country. The respondent in each household will be the person in whose name the voucher has been issued.

Estimate Burden: The survey will involve 420 respondents, all of whom resided in the twelve assisted developments at notification. Information will be collected through a one-time telephone interview that will take an average of 15 minutes to complete. The survey process will require a total of 105 hours of respondents' time (15 minutes times 420 respondents divided by 60).

Status of the proposed information collection: New Collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 13, 1998.

Paul A. Leonard,

Deputy Assistant Secretary for Policy Development.

[FR Doc. 98–7450 Filed 3–20–98; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–08]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork

Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: April 22, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Date: March 17, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Performance Funding System Data Collection Forms.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0029.

Description of the Need for the Information and its Proposed Use: Housing Agencies (HAs) use this information in budget submissions which are reviewed and approved by HUD Field Offices as the basis for obligating operating subsidies. This information is necessary to calculate the eligibility for operating subsidies under the PFS regulation.

Form Number: HUD–52720A, 52720B, 52720C, 52721, 52722A, 52722B, and 52723.

Respondents: State, Local or Tribal Governments.

Frequency of Submission: Annually and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	3,200		7		.85		19,028

Total Estimated Burden Hours: 19,028.

Status: Reinstatement with change, of a previously approved collection, for which approval has expired.

Contact: Joan DeWitt, HUD, (202) 708–1872 Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 17, 1998.

[FR Doc. 98–7448 Filed 3–20–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–07]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: April 22, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 17, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: National Survey of Dust Lead Hazards in Housing.

Office: Office of Lead Hazard Control.

OMB Approval Number: 2539–XXXX.

Description of the Need for the Information and its Proposed Use: The survey will be a scientific descriptive study of lead levels in dust, soil, and paint in the Nation's housing, collecting information about lead and related data regarding occupants and their residential environment.

Form Number: N/A.

Respondents: Individuals or Households.

Frequency of Submission: One-Time Submission.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
1,000		1		2.05		2,500

Total Estimated Burden Hours: 2500.

Status: New Collection.

Contact: Warren Friedman, Ph.D., HUD (202) 755–1785 x159 Joseph F. Lackey, Jr., OMB (202) 395–7316

Dated: March 17, 1998.

[FR Doc. 98–7449 Filed 3–20–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council; Availability of Grant Application Instructions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the document, U.S. North American Wetlands Conservation Act Grant Application Instructions, is available.

DATES: Proposals may be submitted at any time. Due dates continue to be the first Friday in April and August. FY 1999 proposals will be accepted through August 7, 1998.

ADDRESSES: Copies of the document can be obtained by contacting the Fish and Wildlife Service, Publications Unit, c/o National Conservation Training Center, Route 1, Box 166, Shepherd Grade Road, Shepherdstown, WV 25443 during normal business hours in writing or by phone (304) 876–7203.

FOR FURTHER INFORMATION CONTACT: North American Wetlands Conservation Council Coordinator at (703) 358–1784 or R9ARW_NAWWO@MAIL.FWS.GOV.

SUPPLEMENTARY INFORMATION: The North American Wetlands Conservation Council has two similar U.S. grants programs, one for Small Grants up to $50,000 and one for larger grants up to $1,000,000. The focus of this notice is the larger grants program (a separate notice is issued for Small Grants). The subject document provides the schedules, review criteria, definitions, description of information required in the proposal, and a format for proposals for Fiscal Year 1999 funding.

Major changes since last year are: (1) Proposals must show a real connection between money spent and long-term wetland benefits. Proposals that minimize administrative and overhead expenses tend to be more competitive; (2) The grant program encourages proposals that attract new monies and partners; (3) Applicants are urged to contact a Joint Venture Coordinator prior to proposal submission and to send a copy of the proposal to them; (4) Plans should be referenced that justify the need for the proposal and the link between the proposal and migratory bird and wetlands conservation plans; (5) For contributions of lands, conservation easements or donated land values, provide by tract types of land, migratory bird values, how monetary value was determined, conditions of easements, and location on a map; (6) Justification is required for large differences between per acre value of land (including easements) used as match and land (including easements) to be acquired with grant funds; (7) Milestones Schedule should include work that has already been completed and is being used as match, as well as work yet to be done (total of 4 years); (8) Colored maps are preferred. All maps must be no larger than 8.5 x 11 inches; (9) Technical Assessment Question 7 is no longer optional and must be answered by each applicant; (10) Changes to Eligible and Ineligible Activities list *are only pro-rates cost of equipment is eligible as match, "contingencies" is not an eligible cost category for grant or match funds, "evaluation" is not an eligible cost for grant funds, and the use of grant funds for overhead and vegetation control is discouraged.*

This document was prepared to comply with the "North American Wetlands Conservation Act." The Act established a North American Wetlands Conservation Council. This Federal-State-Private body annually recommends wetland acquisition, restoration, and enhancement conservation projects to the Migratory Bird Conservation Commission. Project recommendations are selected from proposals made in accordance with this document. The Council requires that proposals contain a minimum of 50 percent non-Federal matching funds.

Dated: March 14, 1998.

John G. Rogers,

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

[FR Doc. 98–7478 Filed 3–20–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–640–1820–00 24 1A]

Call for Nominations for Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of resource advisory council call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for each of the Bureau of Land Management (BLM) Resource Advisory Councils (RACs) that have member terms expiring this year. The RACs provide advice and recommendations to BLM on land use planning and management of the public lands within their geographic areas. Public nominations will be considered for 45 days after the publication date of this notice.

The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, RAC members appointed to the RAC must be balanced and representative of the various interests concerned with the management of the public lands. These include three categories:

Category One—Holders of federal grazing permits and representatives of

energy and mining development, timber industry, off-road vehicle use, and developed recreation;

Category Two—Representatives of environmental and resource conservation organizations, archaeological and historic interests, and wild horse and burro groups;

Category Three—Representatives of State, county and local government, Native American tribes, academicians involved in natural sciences, and the public at large.

Individuals may nominate themselves or others. Nominees must be residents of the State or States in which the RAC has jurisdiction. Nominees will be evaluated based on their education, training, and experience of the issues and knowledge of the geographical area of the RAC. Nominees should have demonstrated a commitment to collaborative resource decisionmaking. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

Simultaneous with this notice, BLM State Offices will issue press releases providing additional information for submitting nominations, with specifics about the number and categories of member positions available for each RAC in the State. Nominations for RACs should be sent to the appropriate BLM offices listed below.

California

Central California RAC
Larry Mercer, Bakersfield Field Officer, BLM, 3801 Pegasus Avenue, Bakersfield, California 93308, (805) 391–6000

Northeastern California RAC
Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, California 96130, (530) 257–0456

Northwestern California RAC
Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, California 96130, (530) 257–0456

Colorado

Front Range RAC; Southwest RAC; Northwest RAC
Sheri Bell, Colorado State Office, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, (303) 239–3671

Idaho

Upper Columbia RAC; Upper Snake RAC; Lower Snake RAC
Glenda Hawkins, Idaho State Office, BLM, 1387 Vinnell Way, Boise, Idaho 83709–2500, (208) 373–4013

Montana and Dakotas

Butte RAC; Dakotas RAC; Lewistown RAC; Miles City RAC
Jody Weil, Montana State Office, BLM, Granite Tower, 222 N. 32nd Street, Billings, Montana 59107–6800, (406) 255–2913

Nevada

Mojave-Southern RAC; Northeastern Great Basin RAC; Sierra Front Northwestern RAC
Daniel Rathbun, Nevada State Office, BLM, 850 Harvard Way, Reno, Nevada 89520–0006, (702) 785–6767

New Mexico

New Mexico RAC
Kitty Mulkey, New Mexico State Office, BLM, P.O. Box 27115 Sante Fe, New Mexico 87502–0115, (505) 438–7511

Oregon/Washington

Eastern Washington RAC; John Day/Snake RAC; Southeast Oregon RAC
Brenda Lincoln, Oregon State Office, BLM, 1515 S.W. 5th Avenue Portland, Oregon 97208–2965, (503) 952–6437

Utah

Utah RAC
Sherry Foot, Utah State Office, BLM, 324 South State Street, Suite 301, P.O. Box 45155, Salt Lake City, Utah 84145–0155, (801) 539–4195

DATES: All nominations should be received by the appropriate BLM State Office by May 7, 1998.

FOR FURTHER INFORMATION CONTACT: Melanie Wilson, U.S. Department of the Interior, Bureau of Land Management, Intergovernmental Affairs, MS–LS–406, Washington, D.C., 20240; 202–452–0377.

Dated: March 16, 1998.

Pat Shea,

Director, Bureau of Land Management.

[FR Doc. 98–7401 Filed 3–20–98; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 14, 1998. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by April 7, 1998.

Carol D. Shull,

Keeper of the National Register.

ARIZONA

Maricopa County

Manistee Ranch, 5127 W. Northern Ave., Glendale, 98000322

GEORGIA

Lamar County

Redbone Community House, Community House Rd., Jct. with Sappington Rd., Barnesville vicinity, 98000323

KANSAS

Doniphan County

St. Benedict's Church, 5 mi. SW of Bendena, Bendena vicinity, 98000324

KENTUCKY

Boyle County

Aliceton Camp Meeting Ground (Boyle MPS), 657 Ward's Branch Rd., Gravel Switch vicinity, 98000329

Cincinnati Southern Railroad Culvert—CSRR (Boyle MPS), Crossing of Norfolk Southern RR and Mocks Branch, Danville vicinity, 98000327

Durham House (Boyle MPS), 2481 Webster Rd., Danville vicinity, 98000330

First Christian Church (Boyle MPS), Jct. of Shelby and Cemetery Sts., Junction City, 98000331

Guthrie—May—Raley House (Boyle MPS), N of Jct. of KY 37 and KY 243, Gravel Switch vicinity, 98000336

Junction City Municipal Building (Boyle MPS), Jct. of Shelby and Lucas Sts., Junction City vicinity, 98000328

Mitchellsburg Louisville and Nashville Railroad Culvert (Boyle MPS), L and N RR grade over Buck Cr., Mitchellsburg vicinity, 98000332

Robinson, James, House (Boyle MPS), KY 1856, 1.5 mi. N of KY 34, Mitchellsburg vicinity, 98000333

Stone Bridge at Chaplin Creek (Boyle MPS), Jct. of Cash Rd. and Old Mitchellsburg Rd., Parksville vicinity, 98000335

Tank Pond Railroad Underpass (Boyle MPS), Jct. of Tank Pond Rd. and KY 34, Mitchellsburg vicinity, 98000334

Owen County

Brown, Mason, House, 1200.5 mi. E of end of Brown's Bottom Rd., Gratz vicinity, 98000325

Rowan County

Brushy Voting House No. 6 (Kentucky WPA Stone Voting Houses in Rowan County MPS), Jct. of KY 32 and Spruce St., Morehead, 98000340

Cranston Voting House No. 12 (Kentucky WPA Stone Voting Houses in Rowan

County MPS), Jct. of Clear Fork Rd. and KY 377, Morehead, 98000344
Farmers Voting House No. 2 (Kentucky WPA Stone Voting Houses in Rowan County MPS), KY 801, 0.1 S of Farmers, Morehead, 98000337
Haldeman Voting House No. 8 (Kentucky WPA Stone Voting Houses in Rowan County MPS), KY 174, Morehead, 98000342
Hayes Voting House No. 16 (Kentucky WPA Stone Voting Houses in Rowan County MPS), Little Perry Rd., near Jct. with KY 60, Morehead, 98000346
Hogtown Voting House No. 4 (Kentucky WPA Stone Voting Houses in Rowan County MPS), Williamstown Rd., Morehead, 98000338
Lewis Voting House No.17 (Kentucky WPA Stone Voting Houses in Rowan County MPS), Seas Branch Rd., near Jct. with KY 32, Morehead, 98000347
Morehead Voting House No. 7 (Kentucky WPA Stone Voting Houses in Rowan County MPS), Clearfield St., Morehead, 98000341
Morehead Voting House No. 10 (Kentucky WPA Stone Voting Houses in Rowan County MPS), Jct. of Knapp and W. 2nd St., Morehead, 98000343
Pine Grove Meeting House No. 5 (Kentucky WPA Stone Voting Houses in Rowan County MPS), Rock Fork Rd., 0.5 mi. N of KY 377, Morehead, 98000339
Plank Voting House No. 15 (Kentucky WPA Stone Voting Houses in Rowan County MPS), 815 Plank Chapel Rd., Morehead, 98000345

Woodford County

Clifton—McCracken Pikes Rural Historic District, Roughly along Clifton and McCraken Pikes, and Steele Rd., Versailles vicinity, 98000326

MASSACHUSETTS

Berkshire County

Mount Greylock Summit Historic District, Jct. of Notch, Rockwell, and Summit Rds., Adams, 98000349

MICHIGAN

Delta County

Delta Hotel, 624 Ludington St., Escanaba, 98000350

NEW JERSEY

Essex County

Riverbank Park, Roughly bounded by Van Buren, Market, and Somme Sts., and Passaic R., Newark vicinity, 98000351

NEW YORK

Nassau County

Haviland—Davison Grist Mill, Jct. of Wood and Denton Aves., East Rockaway, 98000352

Tioga County

Owego Central Historic District (Boundary Increase), Roughly bounded by William St., Central Ave., Chestnut St., Fifth Ave., and Susquehanna R.,
Owego, 98000353

TEXAS

Bosque County

Lumpkin Building, 101 Main St., Meridian, 98000355

Goliad County

Chilton, Dr. L.W. and Martha E.S., House, 242 N. Chilton St., Goliad, 98000354

Correction

A Correction is hereby made: This nomination was inadvertently listed as Pending.

FLORIDA

Clay County

St. Margaret's Episcopal Church and Cemetery, 6874 Old Church Rd., Green Cove Springs, 98000296

Request for Name Change

A request for a name change has been received for:

From:

FLORIDA

Clay County

St. Margaret's Episcopal Church, 6874 Old Church Rd., Green Cove Springs, 73000570

To:

FLORIDA

Clay County

St. Margaret's Episcopal Church and Cemetery, 6874 Old Church Rd., Green Cove Springs, 73000570

[FR Doc. 98–7399 Filed 3–20–98; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–373 (Final) and 731–TA–769–775 (Final)]

Stainless Steel Wire Rod From Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–373 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigations Nos. 731–TA–769–775 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized and less-than-fair-value imports from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan of stainless steel wire rod, provided for in subheading 7221.00.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: March 5, 1998.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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 (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Italy of stainless steel wire rod, and that such products from Germany, Italy, Japan,

[1] For purposes of these investigations, Commerce has defined the subject merchandise as articles of stainless steel that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons, or other shapes, in coils, that may also be coated with a lubricant containing copper, lime, or oxalate. Stainless steel wire rod is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. It is manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, is normally sold in coiled form, and is of solid cross-section. Most stainless steel wire rod sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar. The most common size for stainless steel wire rod is 5.5 millimeters or 0.217 inch in diameter. The range of stainless steel wire rod sizes normally sold in the United States is between 0.20 inch (5.08 millimeters) and 1.312 inches (33.32 millimeters) in diameter. Two stainless steel grades, SF20T and K–M35FL, are excluded from the scope of the investigations.

Korea, Spain, Sweden, and Taiwan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on July 30, 1997, by Al Tech Specialty Steel Corp., Dunkirk, NY; Carpenter Technology Corp., Reading, PA; Republic Engineered Steels, Massillon, OH; Talley Metals Technology, Inc., Hartsville, SC; and the United Steelworkers of America, AFL–CIO/CLC.

Participation in the Investigations and Public Service list

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on July 9, 1998, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on July 22, 1998, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 15, 1998. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 17, 1998, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is July 16, 1998. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is July 29, 1998; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before July 29, 1998. On August 18, 1998, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before August 20, 1998, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: March 17, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–7423 Filed 3–20–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 751–TA–17 through 20]

Titanium Sponge From Japan, Kazakstan, Russia, and Ukraine

AGENCY: United States International Trade Commission (Commission).

ACTION: Institution and scheduling of review investigations concerning the U.S. Tariff Commission's affirmative determination in investigation No. AA1921–51, Titanium Sponge from the U.S.S.R., and the Commission's affirmative determination in investigation No. 731–TA–161 (Final), Titanium Sponge from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted investigations pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) (the Act) to review the determination of the U.S. Tariff Commission (predecessor agency to the Commission) in investigation No. AA1921–51, Titanium Sponge from the U.S.S.R., to the extent that determination applies to imports from Kazakstan, Russia, and Ukraine, and its own determination in investigation No. 731–TA–161 (Final), Titanium Sponge from Japan. The purpose of the investigations is to determine whether revocation of the orders covering imports from Japan, Kazakstan, Russia, and Ukraine is likely to lead to continuation or recurrence of material injury to an industry in the United States. Titanium sponge is provided for in subheading 8108.10.50 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, C, D, and E (19 CFR part 207).

EFFECTIVE DATE: March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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 (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On April 19, 1968, the Department of the Treasury (Treasury) determined that imports of titanium sponge from the U.S.S.R. were being sold in the United States at less than fair value (LTFV) within the meaning of section 201(a) of the Antidumping Act of 1921, as amended (19 U.S.C. 160(a)) (33 FR 6377, Apr. 26, 1968); and on July 23, 1968 the U.S. Tariff Commission determined that an industry in the United States was materially injured by reason of imports of such LTFV merchandise (33 FR 10769, July 27, 1968). Accordingly, Treasury ordered that dumping duties be imposed on such imports (33 FR 12138, Aug. 28, 1968).[1]

Further, on September 24, 1984, Commerce determined that imports of titanium sponge from Japan were being sold in the United States at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673) (49 FR 38684, Oct. 1, 1984); and on November 7, 1984 the Commission determined, pursuant to section 735(b)(1) of the Act (19 U.S.C. 1673d(b)(1)), that an industry in the United States was threatened with material injury by reason of imports of such LTFV merchandise. Accordingly, Commerce ordered that dumping duties be imposed on such imports (49 FR 47053, Nov. 30, 1984).

On December 9, 1997, the Commission received a request to review its affirmative determination in investigation No. AA1921–51, as it applied to imports from Russia, pursuant to section 751(b) of the Act (19 U.S.C. 1675(b)). The request was filed by counsel on behalf of TMC Trading International, Ltd., an Irish trading company involved in the distribution of titanium sponge from Russia, and TMC USA, Inc., its U.S. affiliate. On December 31, 1997, the Commission requested written comments in the **Federal Register** (62 FR 68300) as to whether the changed circumstances alleged by the petitioner were sufficient to warrant institution of review investigations.[2] After reviewing comments received in response to that request, the Commission determines that certain of the alleged changed circumstances are sufficient to warrant review investigations.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in these investigations will be placed in the nonpublic record on May 22, 1998, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on June 8, 1998, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 29, 1998. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 1, 1998, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is June 1, 1998. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 15, 1998; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before June 15, 1998. On July 2, 1998, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 7, 1998, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6,

[1] In 1992, the Department of Commerce (Commerce), in response to the division of the former Soviet Union into 15 independent states, changed the original antidumping finding against the U.S.S.R. to 15 separate antidumping orders covering the Baltic states and the republics of the former Soviet Union (57 FR 36070 (1992)). Commerce has since revoked all of the orders except those on imports from Kazakstan, Russia, and Ukraine.

[2] The Commission also invited comment on whether it should institute, on its own initiative, review investigations covering imports of titanium sponge from Japan, Kazakstan, and Ukraine.

207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.45 of the Commission's rules.

Issued: March 11, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–7421 Filed 3–20–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated October 22, 1997, and published in the **Federal Register** on November 4, 1997, (62 FR 59735), Guilford Pharmaceuticals, Inc., 6611 Tributary Street, Baltimore, Maryland 21224, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of cocaine (9041), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture cocaine as a final intermediate for the production of dopascan injection. Cocaine derivative are Schedule II controlled substances in the cocaine basic class.

DEA has considered the factors in Title 21, United States Code, Section 823(a), as well as information provided by other bulk manufacturers, and determined that the registration of Guilford Pharmaceuticals, Inc. to manufacturer cocaine is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: March 10, 1998.

John H. King,

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

[FR Doc. 98–7383 Filed 3–20–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1916–98]

Notice of Modification of Fingerprint Process for Asylum Applicants Facing One-Year Deadline

AGENCY: Immigration and Naturalization Service (INS), Justice.

ACTION: Notice.

SUMMARY: The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) added a provision to the Immigration and Nationality Act (Act) which requires that an asylum applicant must file an application for asylum within 1 year after the date of his or her arrival in the United States. Persons who arrived in the United States on or before April 1, 1997, must file asylum applications on or before April 1, 1998. The deadline to file an asylum application by an individual arriving in the United States after April 1, 1997 is 1 year after the date of arrival. Asylum applications filed after the deadline will not be adjudicated unless an asylum officer or an Immigration Judge determines the applicant qualifies for an exception due to changed conditions or extraordinary circumstances. The public is also reminded that this filing deadline applies only to applications for asylum. Form I–589, Application for Asylum and for Withholding of Removal, is an application for both asylum and withholding of removal, and the Immigration and Naturalization Service (Service) and the Executive Office for Immigration Review (EOIR) adjudicators will process withholding of removal claims whether or not the asylum claim is timely. This notice also discusses modifications to the process of submitting fingerprints for asylum applicants who have not yet had fingerprints taken. Applicants are encouraged to submit fingerprints with their application if they can, but an applicant can submit his or her application without fingerprints. The applicant will then be instructed where and when to report to be fingerprinted. Finally, this notice informs the public that the April 1, 1997 or the new 1998 version of Form I–589 must be used until July 1, 1998. Beginning July 1, 1998, the new 1998 version of the I–589 must be used.

FOR FURTHER INFORMATION CONTACT: Marta Rothwarf, Office of International Affairs, Asylum Division, Immigration and Naturalization Service, 425 I Street, NW., Third Floor ULLICO Bldg., Washington, DC 20536, (202) 305–2900.

SUPPLEMENTARY INFORMATION: IIRIRA added a provision to the Act requiring that an alien must file an asylum application within 1 year after the alien's date of arrival in the United States in order to be eligible for asylum. This provision of IIRIRA came into effect on April 1, 1997. An alien who arrived in the United States on or before April 1, 1997, must file an asylum application no later than April 1, 1998, in order for the application to be timely. An alien who arrived in the United States after April 1, 1997, must file an application within 1 year of the date of arrival in order for the application to be timely.

An alien who has not filed an asylum application within the 1-year filing deadline is not eligible to apply for asylum unless the alien can demonstrate to the asylum officer or Immigration Judge changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing the application within the time limit. In accordance with 8 CFR 208.4(a)(4), changed circumstances can include changes in conditions in the applicant's country. In accordance with 8 CFR 208.4(a)(5), extraordinary circumstances can include events or factors beyond the applicant's control that caused the late filing.

Some asylum applicants may be having difficulty obtaining the necessary fingerprints. Asylum applicants are encouraged to submit fingerprints with their applications, but, beginning immediately, an applicant can submit his or her asylum application without fingerprints. All other requirements for filing an asylum application remain in effect. The Service will notify each asylum applicant who files without submitting fingerprints where and when to report to have fingerprints taken. Fingerprints must be taken before an asylum application can be adjudicated, and failure to report for a fingerprinting appointment may lead to dismissal of asylum application or referral to an Immigration Judge.

Asylum applications are filed on Form I–589, Application for Asylum and for Withholding of Removal. Beginning April 1, 1998, applicants

must file either the April 1, 1997, or the new 1998 version of the Form I–589. Beginning July 1, 1998, asylum applicants must use the new 1998 version of the Form I–589. Form I–589 is an application for both asylum and withholding of removal. There is no 1-year time limit for filing for withholding of removal, so an application that is untimely as to asylum may nevertheless be adjudicated for withholding of removal.

Dated: March 13, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

BILLING CODE 4410–10–M

Appendix—Clarifying Instructions for Form I–589

U.S. Department of Justice
Immigration and Naturalization Service

Clarifying Instructions for Form I-589

Clarifying Instructions for I-589 Application for Asylum and for Withholding of Removal

STOP!! READ THESE INSTRUCTIONS FIRST !!

FORM TO BE FILED WITH IMMIGRATION AND NATURALIZATION SERVICE (INS) OR EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR):

- If you file for asylum between April 2, 1998 and June 30, 1998, you MUST submit your asylum application using either the **April 1, 1997** or **the new 1998 version** of Form I-589, Application for Asylum and for Withholding of Removal .

- If you file for asylum on or after July 1, 1998, you MUST submit your asylum application using the **1998 version** of Form I-589, Application for Asylum and for Withholding of Removal.

FILING DEADLINE:

- The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 3009 (1996), added a provision that requires that applicants for asylum must file an application for asylum within one year after their date of arrival in the United States.

- **April 1, 1998** is the deadline to file an asylum application by an individual who arrived in the United States **on** or **before April 1, 1997**. The deadline to file an asylum application by an individual arriving in the United States **after** April 1, 1997, is **1 year** after the date of arrival. Asylum claims filed after the deadline **will not be adjudicated** unless an asylum officer or an Immigration Judge determines the applicant qualifies for an exception due to changed conditions or extraordinary circumstances. Note: The filing deadline does not apply to applications for withholding of removal. The Form I-589 is an application for both asylum and withholding of removal.

FINGERPRINTS:

- The requirement to submit fingerprints with an asylum application has been waived.

- Applicants for asylum (and their dependents over the age of fourteen (14) who are listed in the application) who file without the required fingerprints will be notified of the time and location where they must go to have their fingerprints taken. Failure to appear for scheduled fingerprinting may delay eligibility for work authorization and/or result in an asylum officer dismissing the asylum application or referring it to an Immigration Judge. For applicants before an Immigration Judge, such failure will make the applicant ineligible for asylum and may delay eligibility for work authorization.

EFFECT OF WITHDRAWAL OF APPLICATION:

- Any information provided with an asylum application may be used as evidence in removal proceedings, even if the asylum application is withdrawn.

FC-015 (3-98)

[FR Doc. 98–7269 Filed 3–20–98; 8:45 am]
BILLING CODE 4410–10–C

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1886–97]

Expansion of the Direct Mail Program for the Honolulu, Phoenix and San Diego District Offices and the Agana, Calexico, Las Vegas, Reno and Tucson Suboffices; Form N–400

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Immigration and Naturalization Service (INS or Service) is expanding its Direct Mail Program to include the Honolulu, Phoenix, and San Diego District Offices and the Agana, Calexico, Las Vegas, Reno, and Tucson Suboffices on the current list of direct mail sites for filing Form N–400, Application for Naturalization. Applicants residing within these districts and suboffices will mail their Form N–400 directly to the designated INS service center for processing. This expansion is intended to improve INS service to the public by reducing processing times for Form N–400, limiting in-person visits to local offices, and improving the quality of case status information provided to the public.

DATES: This notice is effective March 23, 1998.

FOR FURTHER INFORMATION CONTACT: Susan Arroyo, Adjudications Officer, Immigration and Naturalization Service, Office of Naturalization Operations, 801 I Street, NW., Room 935E, Washington, DC 20536, telephone, (202) 514–8247.

SUPPLEMENTARY INFORMATION: Under the Direct Mail Program, certain applicants and petitioners for immigration benefits mail their applications and petitions directly to an INS service center for processing instead of submitting them to a local INS office. The purposes and strategy of the Direct Mail Program have been discussed in detail in previous rulemaking and notices (see, e.g., 59 FR 33903 and 59 FR 33985).

The Service is continuing expansion of the Direct Mail Program, as applied to Form N–400, by adding the Honolulu, Phoenix, and San Diego District Offices and the Agana, Calexico, Las Vegas, Reno, and Tucson Suboffices as Direct Mail sites.

Where To File

Effective March 23, 1998 applicants for naturalization residing within the jurisdiction of the Honolulu, Phoenix, and San Diego District Offices and the Agana, Calexico, Las Vegas, Reno, and Tucson Suboffices must mail the Form N–400, Application for Naturalization, directly to the California Service Center at the following address: USINS California Service Center, Attention: N–400 Unit, P.O. Box 10400, Laguna Niguel, California 92607–0400.

Transition

During the first 60 days following the effective date of this notice, the Honolulu, Phoenix, and San Diego District Offices and the Agana, Calexico, Las Vegas, Reno, and Tucson Suboffices will forward in a timely fashion to the California Service Center any Form N–400, Application for Naturalization, which has been inadvertently filed with the respective District or Suboffice. Applicants will be provided a notice at the time of filing at the District or Suboffice advising them that their application is being forwarded to the service center for initial processing. The applicant will receive written notification from their respective District or Suboffice of the date, place, and time of their interview for naturalization. When applications are forwarded from the District or Suboffices, they will be receipted and filed when they arrive at the service center. After the 60-day transition period, applicants attempting to file Form N–400, Application for Naturalization, at the offices listed above will be directed to mail their application directly to the California Service Center for processing.

Dated: March 16, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–7368 Filed 3–20–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of March, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of he Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat hereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–34,139; Trelleborg YSH, Inc., South Haven, MI

TA–W–34,141; Mascotech, Industrial Components Division, Duffield, VA

TA–W–34,174; United Technologies Automotive, Columbus, MS

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–34,091; Globelle, Inc., Berlin, NJ

TA–W–34,211; Alta Genetics USA, Inc., Hughson, CA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–34,257; Weyerhaeuser Co., Coos Bay Timberlands, North Bend, OR

TA–W–34,188; Badger Paper Mills, Inc., Peshtigo, WI

TA–W–34,167; The Stanley Works, Stanley Tools Div., York, PA

TA–W–34,254; American National Can Co., Mt. Vernon, OH

TA–W–34,269; Erickson Air-Crane Co. L.L. C., Central Point, OR

TA–W–33,979; Cytec Industries, Inc., Warners Plant, Linden, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–34,152; Lorraine Wardy Enterprises, El Paso, TX

The investigation revealed criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company

name and location of each determination references the impact date for all workers of such determination.

TA–W–34,054; Identify Headwear, Maysville, MO: November 20, 1996.
TA–W–34,232; Verona Fashions, Inc., Hoboken, NJ: January 20, 1997.
TA–W–34,191; Calgon Carbon Corp., Advanced Oxidation Technologies, Tucson, AZ: January 19, 1997.
TA–W–34,132; Burgess Machine & Tool, Inc, St. Clair, MI: December 18, 1996.
TA–W–34,250; New Ponce Shirt Co., Inc., Ponce DeLeon, FL: February 17, 1997.
TA–W–34,258; New America Wood Products, Wincock, WA: February 10, 1997.
TA–W–34,108; Breed Technologies, Inc., Air Bag & Seat Belt Div., St. Clair Shores, MI: December 9, 1996.
TA–W–34,244; Glenbrook Nickel Co., Riddle, OR: January 30, 1997.
TA–W–34,170; Scientific Atlanta, Tempe, AZ and Devau Resources Working at Scientific Atlanta, Tempe, AZ: January 16, 1997.
TA–W–34,097; Criterion Plastics, Inc., Kingsville, TX Including Leased Workers of Manpower Temporary Services, Corpus Christie, Texas and Kingsville, Texas: December 5, 1996.
WA–W–33,391; Asher Company, Fitchburg, MA: March 12, 1996.
TA–W–34,016; Paradox Fabrics, Inc., New York, NY: November 4, 1996.
TA–W–34,123; General Electric Co., Medium Transformer Operation, Rome, GA: June 26, 1997.
TA–W–34,197: Pro-Am Corp., Long Island City, NY: January 12, 1997.
TA–W–34,070 & A, B & C; The American Fabrics Co., Tylertown, MS, Picayune, MS, Bogulusa, LA and Cliffside Park, NJ: November 18, 1996.
TA–W–34,243 & A, B; Cooper Sportswear, Newark, NJ, Cleve Tenn Industries, Newark, NJ, and Niemor Contractors, Newark, NJ: January 12, 1997.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of March, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–02198; Warner Manufacturing Co., Akeley, MN
NAFTA–TAA–02117; Shelby Die Casting Co., Fayette, AL
NAFTA–TAA–012148; Sangamon, Inc., Taylorville, IL
NAFTA–TAA–02191; Cooper Industries, Hand Tools Div., Micholson File Plant, Cullman, AL
NAFTA–TAA–02204; Interwest Mining Glenrock Coal, Glenrock, WY
NAFTA–TAA–02199; KAO Information Systems, Plymouth, MA
NAFTA–TAA–02112; Mascotech, Industrial Components Div., Duffield, VA
NAFTA–TAA–02061; Frankfort Plastics, a/k/a/ Jones Plastic & Engineering Corp., Frankfort, KY
NAFTA–TAA–02192; Erickson Air-Crane Co., L.L. C., Central Point, OR
NAFTA–TAA–02175; Glenbrook Nickel Co., Riddle, OR
NAFTA–TAA–02110 & A, B; Pacific Lumber & Shipping Co., Packwood Lumber Co., Packwood, WA, Cowlitz Stud Co., Morton, WA and Cowlitz Stud Co., Randle, WA
NAFTA–TAA–02140; Badger Paper Mills, Inc., Preshtigo, WI
NAFTA–TAA–02190; Weyerhaeuser Co., Coos Bay Timberlands, North Bend, OR

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–02100; Globelle, Inc., Berlin, NJ
NAFTA–TAA–02146; Alta Genetics USA, Inc., Hughson, CA
NAFTA–TAA–02211; Swiss Re Life and Health America, Inc., Life Administration Div., New York, NY

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–02101; Westwood Lighting, Inc., El Paso, TX: December 31, 1996.
NAFTA–TAA–02169; BTR Automotive Sealing Systems, West Unity, OH: January 27, 1997.
NAFTA–TAA–02203; Master Lick Co., Door Hardware Div., Auburn, AL: February 17, 1997.
NAFTA–TAA–02077; Corning Inc., Science Products Div., Big Flats, New York: December 10, 1996.
NAFTA–TAA–02105; Dixie Mfg. Co., York, SC: January 5, 1997.
NAFTA–TAA–02168; Pro-Am Corp., Long Island City, NY: January 13, 1997.
NAFTA–TAA–02181; Breed Technologies, Inc., Air Bag & Seat Belt Div., St. Clair Shores, MI: December 9, 1996.
NAFTA–TAA–02124; Specialty Manufacturers, Inc., Bristol, TN: January 14, 1997.
NAFTA–TAA–02108; Burgess Machine & Tool, Inc., St. Clair, MI: December 18, 1996.
NAFTA–TAA–02025; Louisiana-Pacific Corp., Northern Regional Office, Hayden Lake, ID (Headquarters): November 11, 1996.
NAFTA–TAA–02044; American Metal Products, LaFollette, TN: December 1, 1996.

I hereby certify that the aforementioned determinations were issued during the month of March 1998. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 13, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–7434 Filed 3–20–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,035]

Garfield Sportswear Garfield, New Jersey; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 1, 1997, in response to a worker petition which was filed on behalf of workers at Garfield Sportswear, Garfield, New Jersey.

This case is being terminated because no information is available from the petitioners nor company officials to complete the necessary investigation. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 5th day of March, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–7436 Filed 3–20–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitioners have been filed with the Secretary of Labor under Section 211(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 2, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 2, 1998.

The petitioners filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 9th day of March, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 03/09/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,286	Hasbro Manufacturing Serv (Comp)	Amsterdam, NY	02/19/98	Toys.
34,287	Foster Electric (USA) (Wrks)	Schumburg, IL	02/16/98	Automobile Speakers.
34,288	Valerie Sportswear (UNITE)	New York, NY	02/13/98	Ladies' Sportswear.
34,289	Leon Levin Sons, Inc (UNITE)	Long Island Cty, NY	02/18/98	Ladies' Blouses.
34,290	Western Mobile (Wrks)	Boulder, CO	02/24/98	Asphalt, Aggregate and Concrete.
34,291	Hafer Logging, Inc (Wrks)	LaGrande, OR	02/20/98	Logs.
34,292	Fashion Development (Comp)	El Paso, TX	02/04/98	Apparel Consulting.
34,293	Ideal Reel Co., Inc (Comp)	Paducah, KY	02/24/98	Electrical Wire.
34,294	EEX Corporation (Comp)	Dallas, TX	02/17/98	Crude Oil, Natural Gas.
34,295	Spirax Sarco, Inc (Wrks)	Allentown, PA	02/19/98	Engineered Steam Systems.
34,296	Harvard Industries (UAW)	Toledo, OH	02/26/98	Castings.
34,297	Dresser-Rand Co (Wrks)	Corning, NY	02/23/98	Certrifugal and Reciprocating Compressor.
34,298	Warner Manufacturing (Wrks)	Akeley, MN	02/17/98	Wall Paper Tools, Brushes, etc.
34,299	Capstar Corp (Wrks)	Stateville, NC	02/19/98	Men's, Ladies', Boys' Sportswear.
34,300	Frank Ix and Sons, Inc (Comp)	Lexington, NC	02/23/98	Weave Fabrics for Apparel Industry.
34,301	Tultex Corp (Comp)	Chilhowie, VA	02/18/98	Fleece Activewear.
34,302	Sharp Manufacturing, Inc (Wrks)	R. Cucamunga, CA	02/19/98	Sports Vehicle Covers.
34,303	Young Morgan Lumber (Comp)	Mill City, OR	02/19/98	Lumber.
34,304	General Motors-Electro. (USA)	Commerce, CA	02/23/98	Re-manufacture Locomotive Engines.
34,305	Sara Lee Underwear (Wrks)	Winston Salem, NC	02/19/98	Underwear.
34,306	DAA Draexlmaier Auto. (Comp)	Duncan, SC	02/23/98	Wire Harnesses-Automobile.
34,307	Wulfrath Refractories (USWA)	Tarentum, PA	02/25/98	Refractory Bricks.
34,308	MIJA Industries, Inc (Comp)	Plymouth, PA	02/26/98	Pressure Gauges—Fire Extinguishers.
34,309	Litton Poly-Scientific (Comp)	Murphy, NC	02/25/98	Transmitters, Resolvers.
34,310	Molycorp, Inc (Comp)	Mountain Pass, CA	02/02/98	Rate Earth Lanthanides.
34,311	Cover Corp (Wrks)	Rancho Domingue, CA	02/20/98	Baseball Hats.
34,312	Ertl Company (The) (UAW)	Dyersville, IA	02/27/98	Plastic Toy Products.
34,313	Lady Ester Lingerie Corp (Wrks)	Berwick, PA	02/24/98	Lingerie.
34,314	Hewlett Packard Co (Wrks)	Vancouver, WA	02/24/98	Printers.

[FR Doc. 98–7433 Filed 3–20–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Indian and Native American Welfare-to-Work Grant Program

Proposed Collection; Comment Request

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation process to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This process helps to ensure that requested data can be provided in the desired format, reporting burdens are minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the continuation of the currently-approved reporting system for the Indian and Native American Welfare-to-Work (INA WtW) Grant Program for three more years (August 1, 1998 to June 30, 2001), or until the expiration of the program if sooner. A copy of the currently-approved information collection request (ICR), especially the reporting forms and completion instructions, can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 22, 1998.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Thomas M. Dowd, Chief, Division of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 219–8502 ext 119(VOICE) or (202) 219–6338(FAX) (these are not toll-free numbers) or INTERNET: DOWDT@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Employment and Training Administration of the Department of Labor is requesting continuation of its currently-approved reporting system for the Indian and Native American Welfare-to-Work Grant Program for three more years (August 1, 1998 to June 30, 2001), or until the program expires. Current authorization for the INA WtW program expires on September 30, 1999, but grantees can continue to expend funds for up to three years "after the date the funds are so provided". As this package was just approved by OMB on February 10, 1998, the Department has decided that the system does not require any changes at this time. This position is reached in part because there have as yet not been any reports submitted under the current clearance authority, so no grantee experience is available for review and consideration.

II. Current Actions

The proposed ICR will be a continuation of the currently-approved system that will be used by approximately 80 INA WtW grantees as the primary reporting vehicle for enrolled individuals, their characteristics, training and services provided, outcomes, including job placement and wage data, as well as detailed financial data on program expenditures. Current paperwork burdens are covered under OMB Clearance No. 1205–0386 (expiration date 7/31/98), and have been included in the following burden estimates. For ease of analysis, the following burden estimate is broken down into the two main components of INA WtW program operation: (1) Recordkeeping; and (2) reporting.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Reporting system for Indian and Native American Welfare-to-Work Grant Program.

OMB Number: 1205–0386.

Catalog of Federal Domestic Assistance Number: 17.254.

Recordkeeping Requirements: Grantees shall retain supporting and other documents necessary for the compilation and submission of the subject reports for three years after submission of the final financial report for the grant in question (29 CFR 97.42 and/or 29 CFR 95.53).

Affected Public: Federally-recognized tribes, Alaska Native regional non-profit corporations, and/or consortia of any of the above.

Total Estimated Burden: 5,760 hours (reporting); 36,000 hours (recordkeeping).

Detailed breakdown of the above-estimated burden hour requirements for the INA WtW program are as follows:

Required activity	INA WtW Form No.	Number of Respondents	Responses per year	Total responses	Hours per response	Total burden hours
Participant Recordkeeping	.....	80	.....	12,000	3.00	36,000
(Reporting) Financial Status Report	ETA 9069–1	80	4	320	9	2,880
Participation and Characteristics Rpt.	ETA 9069	80	4	320	9	2,880
Totals	.....	80	8	12,640	21	41,760

Note: Recordkeeping estimates are based on the estimated PY 1998 INA WtW caseload times an estimated average of 3.00 hours per participant record. There is currently no experience with actual INA WtW performance. Also, this burden estimate does

not include those INA WtW grantees participating in the demonstration under Public Law 102–477. Any INA WtW burden estimate(s) for "477 grantees" would be included under OMB Clearance Number 1076–0135.

The individual time per response (whether plan, record, or report) varies widely depending on the degree of automation attained by individual grantees. Grantees also vary according to the numbers of individuals served in each fiscal year. If the grantee has a fully-developed and automated MIS, the response time is limited to one-time programming plus processing time for each response. It is the Department's desire to see as many INA WtW grantees as possible become computerized, so that response time for planning and reporting will eventually sift down to an irreducible minimum with an absolute minimum of human intervention.

Estimated Grantee Burden Costs: (There are no capital/start-up costs involved in any INA WtW activities)

Recordkeeping: 36,000 hours times an estimated cost per grantee hour of $20.00 (including fringes) = $720,000.

Reporting: 5,760 hours times $20.00 = $115,200 per year.

Total estimated burden costs: $835,200 (nationwide).

As noted, these costs will vary widely among grantees, from nearly no additional cost to some higher figure, depending on the state of automation attained by each grantee and the wages paid to the staff actually completing the various forms.

All costs associated with the required submissions outlined above, whether for recordkeeping or reporting purposes, are allowable grant expenses.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget continuation of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 17th day of March 1998.

Anna W. Goddard,

Director, Office of Special Targeted Programs.

[FR Doc. 98–7437 Filed 3–20–98; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–2200]

Charles Navasky & Co., Inc., Philipsburg, Pennsylvania; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on February 19, 1998 in response to a petition filed on behalf of workers at Charles Navasky & Co., Inc., Philipsburg, Pennsylvania.

This case is being terminated because the petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 12th day of March, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–7431 Filed 3–20–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–001914]

Forsyth Sales Company Greensboro, NC; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on September 5, 1997 in response to a petition filed on behalf of workers at the Forsyth Sales Company, Greensboro, North Carolina.

The petitioner, who was also an official of Forsyth Sales Company, was not responsive to requests by the Department for information necessary for the completion of the investigation. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 9th day of March 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–7435 Filed 3–20–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02131]

Hamilton Sportswear, Inc., Hamilton, AL; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on January 15, 1998, in response to a petition signed on January 12, 1998, and filed on behalf of workers at Hamilton Sportswear, Inc., Hamilton, Alabama.

In accordance with Section 223(b) of the Act, no certification may apply to any worker whose last total or partial separation from the subject firm occurred before one year prior to the date of the petition.

Since the closure of the company in May of 1996 was more than one year prior to the date of the petition, further investigation in this case would serve no purpose, and the investigation may be terminated.

Signed at Washington, D.C., this 12th day of March 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–7432 Filed 3–20–98; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–20644–civP, ASLBP No. 98–737–02–CivP]

Power Inspection Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972. published in the Federal Register, 37 FR 28710 (1972), and Sections 2.105, 2.205,

2.700, 2.702, 2.714, 2.714a, 2.717, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

Power Inspection, Inc.

Order Imposing Civil Monetary Penalty

This Board is being established pursuant to the request of Power Inspection, Inc. for an enforcement hearing. The hearing request was made in response to an Order issued by the Director, Office of Enforcement, dated February 3, 1998, entitled "Order Imposing Civil Monetary Penalty" (63 FR 6967, February 11, 1998).

The Board is comprised of the following administrative judges:

Peter B. Bloch, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Frederick J. Shon, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 17th day of March 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 98–7418 Filed 3–20–98; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Company; Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–53 and DPR–69, issued to Baltimore Gas and Electric Company (BGE or the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 located in Calvert County, Maryland.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application dated December 4, 1996, as supplemented by letters dated March 27, June 9, June 18, July 21, August 14, August 19, September 10, October 6, October 20, October 23, November 5, 1997, and January 12 and January 28, 1998. The proposed amendment will replace the Current Technical Specifications (CTS) in their entirety with Improved Technical Specifications (ITS) based on Revision 1 to NUREG–1432, "Standard Technical Specifications for Combustion Engineering Plants" dated October 9, 1996, and the CTS for Calvert Cliffs.

The Need for the Proposed Action

It has been recognized that nuclear safety in all plants would benefit from improvement and standardization of technical specifications (TSs). The Commission's "NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors," 52 FR 3788 (February 6, 1987), and later the Commission's "Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors," 58 FR 39132 (July 22, 1993), recognized this benefit. This formed the basis for a recent revision to 10 CFR 50.36 (60 FR 36953), which codified the criteria for determining the content of TSs. To facilitate the development of individual improved TS, each reactor vendor owners group (OG) and the NRC staff developed standard TS (STS). The NRC Committee to Review Generic Requirements (CRGR) reviewed the STS and made note of the safety merits of the STS and indicated its support of conversion to the STS by operating plants. For plants designed by Combustion Engineering, Inc., the STS are published as NUREG–1432, and this document was the basis for the new Calvert Cliffs ITS.

Description of the Proposed Change

The proposed revision to the TS is based on NUREG–1432 and on guidance provided in the Final Policy Statement. Its objective is to completely rewrite, reformat, and streamline the existing TS. Emphasis is placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1432, portions of the existing TS were also used as the basis for the ITS. Plant-specific issues (unique design features, requirements, and operating practices) were discussed at length with the licensee, and generic matters were discussed with the OG.

The proposed changes from the existing TS can be grouped into four general categories, as follows:

1. Non-technical (administrative) changes, which were intended to make the ITS easier to use for plant operations personnel. They are purely editorial in nature or involve the movement or reformatting of requirements without affecting technical content. Every section of the Calvert Cliffs TS has undergone these types of changes. In order to ensure consistency, the NRC staff and the licensee have used NUREG–1432 as guidance to reformat and make other administrative changes.

2. Relocation of requirements, which includes items that were in the existing Calvert Cliffs TS. The TS that are being relocated to licensee-controlled documents are not required to be in the TS under 10 CFR 50.36 and do not meet any of the four criteria in the Commission's Final Policy Statement for inclusion in the TS. They are not needed to obviate the possibility that an abnormal situation or event will give rise to an immediate threat to the public health and safety. The NRC staff has concluded that appropriate controls have been established for all of the current specifications, information, and requirements that are being moved to licensee-controlled documents. In general, the proposed relocation of items in the current Calvert Cliffs TS to the Final Safety Analysis Report (FSAR), appropriate plant-specific programs, procedures and ITS Bases follows the guidance of the Combustion STS (NUREG–1432). Once the items have been relocated by removing them from the CTS to licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC staff-approved control mechanisms, which provide appropriate procedural means to control changes.

3. More restrictive requirements, which consist of proposed Calvert Cliffs ITS items that are either more conservative than corresponding requirements in the existing Calvert Cliffs TS, or are additional restrictions that are not in the existing Calvert Cliffs TS but are contained in NUREG–1432. Examples of more restrictive requirements include: placing a Limiting Condition for Operation (LCO) on plant equipment that is not required by the present TS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

4. Less restrictive requirements, which are relaxations of corresponding requirements in the existing Calvert Cliffs TS that provide little or no safety benefit and place unnecessary burdens on the licensee. These relaxations were the result of generic NRC actions or other analyses. They have been justified on a case-by-case basis for Calvert Cliffs as will be described in the staff's Safety Evaluation to be issued with the license amendment which will be noticed in the **Federal Register**.

In addition to the changes described above, the licensee proposed certain changes to the existing TS that deviated from the STS in NUREG–1432. These additional proposed changes are described in the licensee's application and in the staff's Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing (62 FR 4816). Where these changes represent a change to the current licensing basis for Calvert Cliffs, they have been justified on a case-by-case basis and will be described in the staff's Safety Evaluation to be issued with the license amendment.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed TS conversion would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents.

Changes that are administrative in nature have been found to have no effect on the technical content of the TS, and are acceptable. The increased clarity and understanding these changes bring to the TS are expected to improve the operator's control of the plant in normal and accident conditions.

Relocation of requirements to licensee-controlled documents does not change the requirements themselves. Future changes to these requirements may be made by the licensee under 10 CFR 50.59 or other NRC-approved control mechanisms, which ensures continued maintenance of adequate requirements. All such relocations have been found to be in conformance with the guidelines of NUREG–1432 and the Final Policy Statement, and, therefore, are acceptable.

Changes involving more restrictive requirements have been found to be acceptable and are likely to enhance the safety of plant operations.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit or place unnecessary burdens on the licensee, their removal from the TS was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic NRC action, or of agreements reached during discussions with the OG and found to be acceptable for Calvert Cliffs. Generic relaxations contained in NUREG–1432 as well as proposed deviations from NUREG–1432 have also been reviewed by the NRC staff and have been found to be acceptable.

In summary, the proposed revision to the TS was found to provide control of plant operations such that reasonable assurance will be provided so that the health and safety of the public will be adequately protected.

These TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendments, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the proposed action would be to deny the request for the amendment. Denial of the application would result in no change in current environmental impacts. Such action would not reduce the environmental impacts of plant operations. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement dated April 1973, for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on March 16, 1998, the staff consulted with the Maryland State official, Richard J. McLean, of the Maryland Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated December 4, 1996, as supplemented by letters dated March 27, June 9, June 18, July 21, August 14, August 19, September 10, October 6, October 20, October 23, November 5, 1997, and January 12 and 28, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 17th day of March 1998.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–7425 Filed 3–20–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

North Atlantic Energy Service Corporation Seabrook Station, Unit No. 1; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation (NRR), has taken action with regard to a Petition dated December 18, 1997, submitted by Ms. Jane Doughty on behalf of The Seacoast Anti-Pollution League. The Petition requests that the operating license for Seabrook Station be suspended until such time as a thorough root cause analysis of the reasons underlying the development of leaks in piping of the "B" train of the

residual heat removal (RHR) system is conducted. The leakage was reported by North Atlantic Energy Services Corporation, the Licensee for Seabrook Station, on December 5, 1997. The Petition asserts that there have been past allegations of improper welding practices and documentation, and installation of substandard piping at Seabrook Station and requests that the investigations of the RHR system pipe leakage include findings related to these past allegations.

The Director of NRR has denied the Petitioner's request to suspend the operating license of the Seabrook Station. In the Director's Decision Pursuant to 10 CFR 2.206 (DD–98–03), the staff of the U.S. Nuclear Regulatory Commission has discussed each of the concerns raised by the Petitioner and found that the cause of the leaks in the piping in the "B" train of the RHR system was the result of service-induced degradation. There were no deficiencies identified in the fabrication of the original piping or welds that would have generic implications for other plant systems and that would require the operating license of the facility to be suspended. The complete text of the Decision follows this notice and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Exeter Public Library, Founders Park, Exeter, New Hampshire 03833.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided for by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance, unless the Commission, on its own motion, institutes a review of the decision in that time.

Dated at Rockville, Maryland, this 17th day of March 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Director's Decision Pursuant to 10 CFR 2.206

I. Introduction

On December 18, 1997, Ms. Jane Doughty submitted a Petition to the Executive Director for Operations of the U.S. Nuclear Regulatory Commission (NRC) on behalf of The Seacoast Anti-Pollution League requesting that the operating license for Seabrook Station be suspended until such time as a thorough root cause analysis of the reasons underlying the development of leaks in piping of the "B" train of the residual heat removal (RHR) system is conducted. The leakage was reported by North Atlantic Energy Service Corporation, the Licensee for Seabrook Station, on December 5, 1997.

The Petition requested that the restart of the Seabrook Station following repairs to the RHR system piping be delayed until all such actions requested by the Petition are taken. On January 15, 1998, the NRC informed the Petitioner in an acknowledgment letter that on the basis of the Licensee's preliminary analysis of the cause of the pipe leakage, the NRC staff found no reason to prevent the plant from restarting. The acknowledgment letter further informed the Petitioner that her Petition had been referred to the Office of Nuclear Reactor Regulation pursuant to 10 CFR 2.206 for preparation of a Director's Decision and that action would be taken within a reasonable time regarding the specific concerns raised in the Petition.

II. Discussion

The Petition requests, in part, "that the operating license for the Seabrook Station Nuclear Power Plant [Seabrook Station] be suspended until such time as a thorough root cause analysis of the reasons underlying the development of leaks. . .in piping in the "B" train of the Residual Heat Removal (RHR) system is conducted, including but not limited to a review of documentation associated with welds in the area of the leakage and their associated inspection documentation, a review of the qualification of the piping involved, and a review of the procedures for ongoing assurance of weld and piping quality at the plant." The Petition asserts that there have been past allegations of improper welding practices and documentation, and installation of substandard piping at Seabrook Station and requests that the investigations of the RHR system pipe leakage include findings related to these past allegations and the implications of this incident for other plant systems. Each of these concerns is addressed below.

A. Root Cause Analysis

The Licensee has concluded that the cause of the RHR piping leak was chloride-induced transgranular stress-corrosion cracking initiated from the outside diameter of the pipe. The stress-corrosion cracking was the result of repeated wettings and dryings of a protective covering attached to the pipe with red duct tape during construction of the facility. The covering was installed to prevent other welding activities from damaging the pipe after it was installed and should have been removed prior to placing the RHR system in service. After being wetted the protective covering and tape leached chlorides, allowing the chlorides to concentrate on the outer surface of the pipe over time. The chlorides provided an agent to initiate stress-corrosion cracking of the stainless steel pipe material. The Licensee has conducted an inspection of accessible areas both inside and outside containment for similar instances of unapproved materials being attached to stainless steel piping and none were found.

The NRC staff has reviewed the Licensee's conclusions, including observations of the failed pipe section and a review of the relevant metallurgical and chemistry reports. The NRC staff found that the metallurgical and chemistry reports provide an adequate basis for the Licensee's conclusion that the leaks were the result of stress-corrosion cracking initiated from the outside diameter of the pipe that progressed through the pipe wall to the inside surface. The NRC staff's findings are documented in Inspection Report 50/443/97–08.

B. Review of Weld Documentation

The Licensee conducted a review of the original radiographs of the affected welds and found no anomalies in the weld or the base metal. This finding indicates that the cause of the leakage was the result of service-induced conditions and not a weld or piping defect originating from the original construction.

The NRC staff's review of the radiographs confirmed that there were no adverse construction weld quality problems, such as cracks, porosity, or weld slag shown on the pipe weld radiographs in the vicinity of the leaks or on the similar welds on the "A" train of the RHR system. No defective welds were found. The NRC staff's findings are documented in Inspection Report 50–443/97–08.

C. Review of Pipe Qualification

The Licensee reviewed the original material test reports and purchase specification documentation for the affected piping sections. Chemical analysis of the removed piping sections confirmed that the material met the specification for SA312 Type 304 stainless steel pipe.

The NRC staff's review of the chemistry analysis and photomicrographs showed the pipe material to be Type 304 stainless steel. The NRC staff's findings are

documented in Inspection Report 50–443/97–08.

D. Review of the Procedures for Ongoing Assurance of Weld and Pipe Quality

In conjunction with the most recent refueling outage at Seabrook Station, the NRC staff conducted a review of the Licensee's American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) Section XI inservice inspection program plan for ensuring structural and leaktight integrity of systems important to safety. The NRC inspector found the implementation of all elements of the program to be on schedule and in accordance with the rules of Section XI of the ASME Code.

The NRC inspector observed and/or reviewed the results of inservice inspections conducted by the Licensee on plant equipment, including several piping welds. The NRC inspector found that the inspections were performed in accordance with the rules of Section XI of the ASME Code and NRC regulations. The NRC staff's findings are documented in Inspection Report 50–443/97–03.

E. Review of Past Allegations of Improper Welding Practices

On March 27, 1990, the NRC's Executive Director for Operations established an independent review team to conduct an assessment of the adequacy of the construction welding and nondestructive examination (NDE) practices at Seabrook Station. The team's findings are documented in NUREG–1425, "Welding and Nondestructive Examination Issues at Seabrook Nuclear Station." The independent review team concluded that the pipe welding and NDE programs were generally consistent with applicable codes and NRC requirements and resulted in technically acceptable pipe welds.

In investigating the leaks in the "B" train of the RHR system reported on December 5, 1997, the NRC staff did not identify any factors that would provide a basis for disagreeing with the Licensee's conclusion that the cause of the leakage was the result of service-induced conditions and not a weld or piping defect originating from the original construction. Likewise, the investigation of this issue did not provide any information that would question the validity of NUREG–1425. Therefore, no further action by the NRC staff is warranted with respect to the past allegations of improper welding practices and substandard quality piping in response to the Petitioner's request.

F. Implications for Other Plant Systems

The Licensee has concluded that the cause of the leakage in the "B" train of the RHR system reported on December 5, 1997, was the result of a service-induced condition and not a defect originating from the original construction. The NRC staff has reviewed the Licensee's activities related to the root cause analysis and subsequent repair in response to the RHR system pipe leakage. The NRC staff found no evidence of improper welding practices or substandard piping that contributed to the RHR system pipe leakage and that would result in generic implications to other plant systems.

III. Conclusion

The NRC staff has reviewed the information submitted by the Petitioner, and the Petitioner's request to suspend the operating license of the Seabrook Station is denied. As described above, the NRC staff has found that the cause of the leaks in the piping in the "B" train of the RHR system was the result of service-induced degradation. There were no deficiencies identified in the fabrication of the original piping or welds that would have generic implications for other plant systems and that would require the operating license of the facility to be suspended.

As provided in 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. This Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes review of the Decision in that time.

Dated at Rockville, Maryland, this 17th day of March 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–7427 Filed 3–20–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 15Ba2–1, SEC File No. 270–88, OMB Control No. 3235–0083

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is publishing the following summary of collection for public comment. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15Ba2–1 under the Securities Exchange Act of 1934 provides that an application for registration with the Commission by a bank municipal securities dealer must be filed on Form MSD.

The staff estimates that approximately 40 respondents will utilize this application procedure annually, with a total burden of 60 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 15Ba2–1 is 1.5 hours. The average cost per hour is approximately $40. Therefore, the total cost of compliance for the respondents is $2,400.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: March 13, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7371 Filed 3–20–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549.

Extension: Rule 15g–9, SEC File No. 270–325, OMB Control No. 3235–0385.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

- Rule 15g–9, Sales Practice Requirements for Certain Low-Priced Securities.

Section 15(c)(2) of the Securities Exchange Act of 1934 (the "Exchange Act") authorizes the Commission to promulgate rules that prescribe means reasonably designed to prevent fraudulent, deceptive, or manipulative practices in connection with over-the-counter ("OTC") securities transactions. Pursuant to this authority, the Commission in 1989 adopted Rule 15a–6 (the "Rule"), which was subsequently redesignated as Rule 15g–9, 17 CFR 240.15g–9. The Rule requires broker-dealers to produce a written suitability determination for, and to obtain a written customer agreement to, certain recommended transactions in low-priced stocks that are not registered on a national securities exchange or authorized for trading on NASDAQ, and whose issuers do not meet certain minimum financial standards. The Rule is intended to prevent the indiscriminate use by broker-dealers of fraudulent, high pressure telephone sales campaigns to sell low-priced securities to unsophisticated customers. The staff estimates that approximately 270 broker-dealers incur an average burden of 78 hours per year to comply with this rule. Thus, the total burden hours to comply with the Rule is estimated at 21,060 hours (270 × 78).

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 control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 16, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7428 Filed 3–20–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23067; 813–172]

Morgan Stanley Capital Investors, L.P. and Morgan Stanley, Dean Witter, Discover & Co.; Notice of Application

March 17, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the "Act") granting an exemption from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g) and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicants request an order to exempt certain limited partnerships and limited liability companies ("Partnerships") formed for the benefit of key employees of Morgan Stanley, Dean Witter, Discover & Co. ("MSDWD") and certain of its affiliates from certain provisions of the Act. Each Partnership will be an "employees' securities company" as defined in section 2(a)(13) of the Act.[1]

APPLICANTS: Morgan Stanley Capital Investors, L.P. (the "Initial Partnership") and MSDWD, on behalf of other Partnerships which have been or may in the future be formed.

[1] The requested order would supersede two prior orders. *Morgan Stanley Capital Investors, L.P.*, Investment Company Act Release Nos. 20838 (January 13, 1995) (notice) and 20892 (February 9, 1995) (order); *Morgan Stanley Venture Investors, L.P.*, Investment Company Act Release Nos. 20206 (April 8, 1994) (notice) and 20276 (May 4, 1994) (ordered).

FILING DATES: The application was filed on July 28, 1997 and amended on March 13, 1998.

HEARING OF NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 13, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 1221 Avenue of the Americas, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Attorney Advisor, at (202) 942–0574, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee by writing the SEC's Public Reference Branch at 450 Fifth Street, N.W., Washington, D.C. 20549, tel. (202) 942–8090.

Applicants' Representations

1. MSDWD is a diversified financial services company engaged in three primary businesses—securities, asset management, and credit cards. Morgan Stanley & Co. Incorporated ("MS&Co."), a wholly-owned subsidiary of MSDWD, is a broker-dealer registered under the Securities Exchange Act of 1934 (the "Exchange Act") and an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act"). MSDWD and its affiliates, as defined in rule 12b–2 under the Exchange Act, ("Affiliates") are referred to in this notice collectively as "MS" and individually as an "MS entity."

2. MS offers various investment programs for the benefit of certain key employees. These programs may be structured as different Partnerships, or as separate plans within a Partnership. Each Partnership will be a limited partnership or limited liability company formed as an "employees' securities company" within the meaning of section 2(a)(13) of the Act, and will

operate as a closed-end, non-diversified, management investment company. The Partnerships will be established primarily for the benefit of highly compensated employees of MS as part of a program designed to create capital building opportunities that are competitive with those at other investment banking firms and to facilitate the recruitment of high caliber professionals. Participation in a Partnership will be voluntary.

3. MSCP III, L.P., a Delaware limited partnership, will act as the general partner of the Initial Partnership (together with any Affiliate that is controlling, controlled by, or under common control with MSDWD and that acts as a Partnership's general partner, the "General Partner"). An MS entity will act as the investment adviser to a Partnership and will be registered as an investment adviser under the Advisers Act. The General Partner will manage, operate, and control each of the Partnerships. However, the General Partner will be authorized to delegate management responsibility to MS or to a committee of MS employees.

4. Limited partner interests in the Partnerships ("Interests") will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the "Securities Act") or similar exemption and will be sold only to "Eligible Employees" and "Qualified Participants" (collectively, "Participants"). Prior to offering Interests to an Eligible Employee, the General Partner must reasonably believe that an Eligible Employee will be a sophisticated investor capable of understanding and evaluating the risks of participating in the Partnership without the benefit of regulatory safeguards. An Eligible Employee is (i) an individual who is a current or former employee, officer, director, or "Consultant" of MS and, except for certain individuals who manage the day-to-day affairs of the Partnership in question ("Managing Employees"), meets the standards of an accredited investor under rule 501(a)(6) of Regulation D under the Securities Act, or (ii) an entity that is a current or former "Consultant" of MS and meets the standards of an accredited investor under rule 501(a) of Regulation D.[2] Eligible Employees will be experienced professionals in the investment banking and securities, investment management or credit card businesses, or in the related administrative, financial, accounting, legal, or operational activities.

5. Managing Employees will have primary responsibility for operating the Partnership. These responsibilities will include, among other things, identifying, investigating, structuring, negotiating, and monitoring investments for the Partnership, communicating with the limited partners of the Partnership, maintaining the books and records of the Partnership, and making recommendations with respect to investment decisions by the General Partner. Each Managing Employee will (a) be closely involved with, and knowledgeable with respect to, the Partnership's affairs and the status of the Partnership's investments, (b) be an officer or employee of MS and (c) have reportable income from all sources (including any profit shares and bonuses) in the calendar year immediately preceding the Employee's participation in the Partnership in excess of $120,000 and have a reasonable expectation of reportable income of at least $150,000 in the years in which the Employee invests in a Partnership.

6. A Qualified Participant (i) is an Eligible Family Member or Qualified Entity (in each case as defined below) of an Eligible Employee, and, (ii) if the individual or entity is purchasing an Interest from a Partner or directly from the Partnership, comes within one of the categories of an "accredited investor" under rule 501(a) of Regulation D. An "Eligible Family Member" is a spouse, parent, child, spouse of child, brother, sister, or grandchild of an Eligible Employee. A "Qualified Entity" is (i) a trust of which the trustee, grantor, and/or beneficiary is an Eligible Employee; (ii) a partnership, corporation, or other entity controlled by an Eligible Employee;[3] or (iii) a trust or other entity established for the benefit of Eligible Family Members of an Eligible Employee.

7. The terms of a Partnership will be fully disclosed to each Eligible Employee and, if applicable, to a Qualified Participant of the Eligible Employee, at the time the Eligible Employee is invited to participate in the Partnership. Each Partnership will send audited financial statements to each Participant within 120 days or as soon as practicable after the end of its fiscal year. In addition, each Participant will receive a copy of Schedule K–1 showing the Participant's share of income, credits, reductions, and other tax items.

8. Interests in a Partnership will be non-transferable except with the prior written consent of the General Partner. No person will be admitted into a Partnership unless the person is an Eligible Employee, a Qualified Participant of an Eligible Employee, or an MS entity. No sales load will be charged in connection with the sale of a limited partnership interest.

9. An Eligible Employee's interest in a Partnership may be subject to repurchase or cancellation if: (i) The Eligible Employee's relationship with MS is terminated for cause; (ii) the Eligible Employee becomes a consultant to or joins any firm that the General Partner determines, in its reasonable discretion, is competitive with any business of MS; or (iii) the Eligible Employee voluntarily resigns from employment with MS. Upon repurchase or cancellation, the General Partner will pay to the Eligible Employee at least the lesser of (i) the amount actually paid by the Eligible Employee to acquire the Interest (plus interest, as determined by the General Partner), and (ii) the fair market value of the Interest as determined at the time of repurchase by the General Partner. The terms of any repurchase or cancellation will apply equally to any Qualified Participant of an Eligible Employee.

10. Subject to the terms of the applicable Limited Partnership Agreement, a Partnership will be permitted to enter into transactions involving (i) an MS entity, (ii) a portfolio company, (iii) any Partner or any person or entity affiliated with a Partner, (iv) an investment fund or separate account that is organized for the benefit of investors who are not affiliated with MS and over which an MS entity will exercise investment discretion (a "Third Party Fund"), or (v) any partner or other investor of a Third Party Fund that is not affiliated with MS (a "Third Party Investor"). These transactions may include a Partnership's purchase or sale of an investment or an interest from or to any MS entity or Third Party Fund, acting as principal. Prior to entering into these transactions,

[2] A "Consultant" is a person or entity whom MS has engaged on retainer to provide services and professional expertise on an ongoing basis as a regular consultant or a business or legal adviser and who shares a community of interest with MS and MS employees.

[3] The inclusion of partnerships, corporations, or other entities controlled by an Eligible Employee in the definition of "Qualified Entities" is intended to enable Eligible Employees to make investments in the Partnerships through personal investment vehicles for the purpose of personal and family investment and estate planning objectives. Eligible Employees will exercise investment discretion or control over these investment vehicles, thereby creating a close nexus between MS and these investment vehicles. In the case of a partnership, corporation, or other entity controlled by a Consultant entity, individual participants will be limited to senior level employees, members, or partners of the Consultant who will be required to qualify as an "accredited investor" under rule 501(a)(6) of Regulation D and who will have access to the General Partner or MS.

the General Partner must determine that the terms are fair to the Partners.

11. A Partnership will not invest more than 15% of its assets in securities issued by registered investment companies (with the exception of temporary investments in money market funds). A Partnership will acquire any security issued by a registered investment company if immediately after the acquisition, the Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

12. An MS entity (including the General Partner) acting as agent or broker may receive placement fees, advisory fees, or other compensation from a Partnership or a portfolio company in connection with a Partnership's purchase or sale of securities, provided the placement fees, advisory fees, or other compensation are "usual and customary." Fees or other compensation will be deemed "usual and customary" only if (i) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds, (ii) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds, and (iii) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the Unaffiliated third parties, including Third Party Funds. MS entities (including the General Partner) also may be compensated for services to entities in which the Partnerships invest and to entities that are competitors of these entities, and may otherwise engage in normal business activities that conflict with the interests of the Partnerships.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the SEC will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' security company, in relevant part, as any investment company all of whose securities are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits an investment company that is not registered under section 8 of the Act from selling or redeeming its securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the SEC, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act for an exemption from all provisions of the Act except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations thereunder.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to (i) permit an MS entity or a Third Party Fund, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership; (ii) permit any Partnership to invest in or engage in any transaction with any MS entity, acting as principal, (a) in which the Partnership, any company controlled by the Partnership, or any MS entity or Third Party Fund has invested or will invest or (b) with which the Partnership, any company controlled by the Partnership, or any MS entity or Third Party Fund will become affiliated; and (iii) permit a Third Party Investor, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and is necessary to promote the purpose of the Partnerships. Applicants state that the Participants in each Partnership will be fully informed of the extent of the Partnership's dealings with MS. Applicants also state that, as professionals employed in the investment banking and financial services businesses, Participants will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the Participants and MS will provide the best protection against any risk of abuse.

5. Section 17(d) and rule 17d–1 prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the SEC. Applicants request exemptive relief to permit affiliated persons of each Partnership, or affiliated persons of any of these persons, to participate in any joint arrangement in which the Partnership or a company controlled by the Partnership is a participant.

6. Applicants submit that it is likely that suitable investments will be brought to the attention of a Partnership because of its affiliation with MS, MS's large capital resources, and its experience in structuring complex transactions. Applicants also submit that the types of investment opportunities considered by a Partnership often require each investor to make funds available in an amount that may be substantially greater than what a Partnership may make available on its own. Applicants contend that, as a result, the only way in which a Partnership may be able to participate in these opportunities may be to co-invest with other persons, including its affiliates. Applicants note that each Partnership will be primarily organized for the benefit of Eligible Employees as an incentive for them to remain with MS and for the generation and maintenance of goodwill. Applicants believe that, if co-investments with MS are prohibited, the appeal of the Partnerships would be significantly diminished. Applicants assert that Eligible Employees wish to participate in co-investment opportunities because they believe that (a) the resources of MS enable it to analyze investment opportunities to an extent that individual employees would not be able to duplicate, (b) investments made by MS will not be generally available to investors even of the financial status of the Eligible Employees, and (c) Eligible Employees will be able to pool their investment resources, thus achieving greater diversification of their individual investment portfolios.

7. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. Applicants

state that the concern that permitting co-investments by MS and a Partnership might lead to less advantageous treatment of the Partnership will be mitigated by the community of interest among MS and the Participants, and the fact that senior officers and directors of MS entities will be investing in the Partnership. In addition, applicants assert that strict compliance with section 17(d) would cause the Partnership to forego investment opportunities simply because a Participant or other affiliated person of the Partnership (or any affiliate of such person) made a similar investment. Finally, applicants contend that the possibility that a Partnership may be disadvantaged by the participation of an affiliate in a transaction will be minimized by compliance with the lockstep procedures described in condition 3 below. Applicants believe that this condition will ensure that a Partnership will co-invest side-by-side and pro rata with, and on at least as favorable terms as, an MS entity.

8. Co-investments with Third Party Funds, or by an MS entity pursuant to a contractual obligation to a Third Party Fund, will not be subject to condition 3. Applicants note that it is common for a Third Party Fund to require that MS invest its own capital in Third party Fund investments, and that the MS investments be subject to substantially the same terms as those applicable to the Third Party Fund. Applicants believe it is important that the interests of the Third Party Fund take priority over the interests of the Partnerships, and that the Third Party Fund not be burdened or otherwise affected by activities of the Partnerships. In addition, applicants assert that the relationship of a Partnership to a Third Party Fund is fundamentally different from a Partnership's relationship to MS. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Partnerships from any overreaching by MS in the employer/employee context, whereas the same concerns are not present with respect to the Partnerships via-a-vis a Third Party Fund.

9. Section 17(e) and rule 17e–1 limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit an MS entity (including the General Partner), that acts as an agent or broker, to receive placement fees, advisory fees, or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities, provided that the fees or other compensation are deemed "usual and customary." Applicants state that for the purposes of the application, fees or other compensation that are charged or received by an MS entity will be deemed "usual and customary" only if (i) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds, (ii) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds, and (iii) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds. Applicants assert that, because MS does not wish it to appear as if it is favoring the Partnerships, compliance with section 17(e) would prevent a Partnership from participating in transactions where the Partnership is being charged lower fees than unaffiliated third parties. Applicants assert that the fees or other compensation paid by a Partnership to an MS entity will be the same as those negotiated at arm's length with unaffiliated third parties.

10. Rule 17e–1(b) requires that a majority of directors who are not "interested persons" (as defined in section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Applicants request an exemption from rule 17e–1(b) to the extent necessary to permit each Partnership to comply with the rule without having a majority of the directors of the General Partner who are not interested persons take actions and make determinations as set forth in the rule. Applicants state that because all the directors of the General Partner will be affiliated persons, without the relief requested, a Partnership could not comply with rule 17e–1(b). Applicants state that each Partnership will comply with rule 17e–1(b) by having a majority of the directors of the Partnership take actions and make approvals as are set forth in rule 17e–1. Applicants state that each Partnership will comply with all other requirements of rule 17e–1 for the transactions described above in the discussion of section 17(e).

11. Section 17(f) designates the entities that may act as investment company custodians, and rule 17f–1 imposes certain requirements when the custodian is a member of a national securities exchange. Applicants request an exemption from section 17(f) and rule 17f–1 to permit MS to act as custodian of Partnership asserts without a written contract, as would be required by rule 17f–1(a). Applicants also request an exemption from the rule 17f–1(b)(4) requirement that an independent accountant periodically verify the asserts held by the custodian. Applicants believe that, because of the community of interest between MS and the Partnerships and the existing requirement for an independent audit, compliance with these requirements would be unnecessarily burdensome and expensive. Applicants will comply with all other requirements of rule 17f–1.

12. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and given certain approvals relating to fidelity bonding. Applicants request exemptive relief to permit the General Partner's officers and directors, who may be deemed interested persons, to take actions and make determinations set forth in the rule. Applicants state that, because all the directors of the General Partner will be affiliated persons, a Partnership could not comply with rule 17g–1 without the requested relief. Specifically, each Partnership will comply with rule 17g–1 by having a majority of the Partnership's directors take actions and make determinations as are set forth in rule 17g–1. Applicants also state that each Partnership will comply with all other requirements of rule 17g–1.

13. Section 17(j) and paragraph (a) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (a), because they are unnecessarily burdensome as applied to the Partnerships.

14. Applicants request an exemption from the requirements in sections 30(a), 30(b), and 30(e), and the rules under those sections, that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. Applicants content that the forms prescribed by the

SEC for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Participants. Applicants request exemptive relief to the extent necessary to permit each Partnership to report annually to its Participants. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the General Partner of each Partnership and any other persons who may be deemed to be members of an advisory board of a Partnership from filing Forms 3, 4 and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in the Partnership. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 to which a Partnership is a party (the "Section 17 Transaction") will be effected only if the General Partner determines that: (i) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners of the Partnership and do not involve overreaching of the Partnership or its Participants on the part of any person concerned; and (ii) the transaction is consistent with the interests of the Participants in the Partnership, and the Partnership's organizational documents and reports to its Participants. In addition, the General Partner of each Partnership will record and preserve a description of the Section 17 Transactions, the General Partner's findings, the information or materials upon which the General Partner's findings are based, and the basis for the findings. All records relating to an investment program will be maintained until the termination of the investment program and at least two years thereafter, and will be subject to examination by the SEC and its staff.[4]

2. In conneciton with the Section 17 Transactions, the General Partner of each Partnership will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the Transaction of any affiliated person or promoter of or principal underwriter for the Partnership, or any affiliated person of the affiliated person, promoter, or principal underwriter.

3. The General Partner of each Partnership will not invest the funds of the Partnership in any investment in which a "Co-Investor" (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, if the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and the Co-Investor are Participants, unless the Co-Investor, prior to disposing of all or part of its investment, (i) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment; and (ii) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with the Co-Investor. The term "Co-Investor" with respect to any Partnership means any person who is: (i) An "affiliated person" (as defined in section 2(a)(3) of the Act) of the Partnership (other than a Third Party Fund); (ii) MS; (iii) an officer or director of MS; or (iv) an entity (other than a Third Party Fund) in which the General Partner acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, will not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (i) To its direct or direct wholly-owned subsidiary, to any company (a "Parent") of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its Parent; (ii) to immediate family members of the Co-Investor or a trust or other investment vehicle established for any immediate family member; (iii) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (iv) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 under the Exchange Act; or (v) when the investment is comprised of securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which the foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and the General Partner will maintained and preserve, for the life of the Partnership and at least two years thereafter, the accounts, books, and other documents that constitute the record forming the basis of the audited financial statements that are to be provided to the Participants in the Partnership, and each annual report of the Partnership required to be sent to Participants, and agree that these records will be subject to examination by the SEC and its staff.[5]

5. The General Partner of each Partnership will send to each Participant in the Partnership who had an interest in any capital account of the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 120 days after the end of each fiscal year of each Partnership or as soon as practicable thereafter, the General Partner of the Partnership will send a report to each person who was a Participant in the Partnership at any time during the fiscal year then ended, setting forth the tax information necessary for the preparation by the Participant of federal and state income tax returns.

6. If purchases or sales are made by a Partnership from or to an entity affiliated with the Partnership by reason of a 5% or more investment in the entity by an MS director, officer, or employee, the individual will not participate in the Partnership's determination of whether or not to effect the purchase or sale.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[4] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

[5] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26843]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 16, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 9, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central Power and Light Co., et al. (70–9073)

Central Power and Light Company, 539 North Carancahua Street, Corpus Christi, Texas, 78401–2802; Public Service Company of Oklahoma, 212 East Sixth Street, Tulsa, Oklahoma, 74119–1212; Southwestern Electric Power Company, 428 Travis Street, Shreveport, Louisiana, 71156–0001; and West Texas Utilities Company, 301 Cypress Street, Abilene, Texas, 79601–5820 ("Utilities"), all public utility subsidiary companies of Central and South West Corporation ("CSW"), a registered holding company, and Central and South West Services, Inc. ("Services"), Williams Tower 2, 2 West 2nd Street, Tulsa, Oklahoma, 74103, a CSW subsidiary service company, have filed an application, as amended, under sections 9(a) and 10 of the Act and rule 54 under the Act.

The Utilities and Services seek authorization to market the mortgage services of PHH Mortgage Services Corporation ("PHH Mortgage"), the relocation services of PHH Real Estate Services Corporation ("PHH Real Estate"), and the mortgage and relocation services of other companies with comparable services and benefits ("Other Companies").

The Utilities, directly or through Services, propose to market to their customers a mortgage incentive program called the Better Choices Home Mortgage Program ("Better Choices Program").

The Better Choices Program is designed to promote efficient energy use and environmental conservation by customers of the Utilities. Under the Better Choices Program, customers will be able to obtain mortgages with enhanced benefits on homes qualified for a Good Cents Home Certification or a Good Cents Environmental Home Certification.

The Good Cents Environmental Home Certification Standards have been submitted to the Edison Electric Institute for certification that those standards are consistent with its program to promote efficient energy use and environmental conservation. The utilities will attest to PHH Mortgage, or to the Other Companies, that the homes meet the standards for a Good Cents Home Certification or a Good Cents Environmental Home Certification and will list the features under which those homes are qualified for such certification.

Based on such certification, customers will be offered various benefits that may permit them to acquire mortgages that are 15% to 20% over conventional mortgages available to them. The increased mortgages are made possible through, for example, mortgages for 100% of the cost of home features for efficient energy use and environmental conservation features and through income calculated to be available to service mortgages on the basis of reduced utility bills. In addition, customers will be offered other inducements like reduced points and interest rates.

The services offered by PHH Mortgage are integrated with the relocation services offered by PHH Real Estate, which maintains a network of residential real estate agents who can help customers sell homes, buy new homes and, with PHH Mortgage, acquire new mortgages under the Better Choices Program if they move within the service territories of the Utilities. In addition to the benefits of the relocation services, customers would, where lawful, be paid portions of the referral fees received by PHH Real Estate from real estate agents.

The Utilities would not provide relocation services to customers. In addition, the Utilities would not attest to PHH Mortgage that homes meet the standards for a Good Cents Home Certification or a Good Cents Environmental Home Certification for customers that move out of the service territories of the Utilities.

The Utilities, directly or through Services, would market the Better Choices Program through direct mail programs, articles, promotional literature, advertisements and mail inserts. Mail inserts would utilize excess bill space in the bills sent by the Utilities to their customers. Mail inserts would not result in additional postage.

The Utilities would be compensated for their services by payment to them, where lawful, of a portion of the referral fee received by PHH Real Estate (or Other Companies) from real estate agents. The Utilities would also be compensated for their services by the payment to them, where lawful, of fees based on mortgages closed by PHH Mortgage.

Conectiv, Inc. (70–9155)

Conectiv, Inc. ("Conectiv"), 800 King Street, Wilmington, Delaware 19899, a Delaware corporation that will register as a holding company under the Act, has filed an application declaration under sections 6(a), 7, 9(a), 10 and 12 (c) of the Act and rules 42 and 46 under the Act.

By order dated February 20, 1998 (HCAR No. 26828), the Commission authorized the acquisition ("Merger") by Conectiv of all of the outstanding voting securities of Delmarva Power & Light Company and Atlantic City Electric Company, each a public utility company.

Conectiv intends to present a stockholder rights plan ("Plan") to its Board of Directors ("Board") for consideration, and requests authority to implement the Plan upon Board approval. The Plan is designed, among other things, to give Conectiv shareholders adequate time to assess a takeover bid without undue pressure. Under the Plan, the Board would declare a dividend distribution of one right ("Right") for each outstanding share of Conectiv common stock ("Common Stock"), and for each outstanding share of Conectiv Class A common stock ("Class A Common Stock'). These distributions would be made a stockholders of record at the close of business on a record date ("Record Date") yet to be established.

Terms of the Rights

Each Right issued to a registered holder of Common Stock would, after the Right becomes exercisable, entitle the holder to purchase from Conectiv one one-hundredth of one share ("Unit") of a serious of junior participating preferred stock, ("Series 1 Preferred Stock"). Each Right issued to a registered holder of Class A Common Stock would, after the Rights becomes exercisable, entitle the holder to purchase from Conectiv one Unit of another series of junior participating preferred stock ("Series 2 Preferred Stock" and together, "Preferred Stock").[1] The purchase price for a share of either series of Preferred Stock ("Purchase Price") will be determined by the Board as representing the long-term value of Conectiv, reflecting a premium consistent with those used by other companies in setting the purchase price for similar rights.[2]

The Rights will be exercisable upon the earlier to occur ("Distribution Date") of two dates. One date occurs ten days following the date of the public announcement that a person or group ("Acquiring Person") has acquired, or obtained the right to acquire, beneficial ownership of 15% or more of the outstanding shares of voting securities of Conectiv. The other date occurs ten business days (unless delayed by the Board) after a person or group commences a tender offer or exchange offer that would result in the offeror becoming a Acquiring Person.

Until the Distribution Date, the Rights will be transferred only with the Common Stock or Class Common Stock, and the Rights will be evidenced by the Common Stock or Class A Common Stock certificate. As soon as practicable following the Distribution Date, separate certificates evidencing the Rights will be mailed to holders of record of Common Stock or Class A Common Stock, as the case may be, as of the close of business on the Distribution Date. Following the distribution of these certificates, the Rights will trade independently of the Common Stock and the Class A Common Stock.

[1] Under certain circumstances, the Class A Common Stock may be convertible to Common Stock. If a conversion occurs before the Rights become exercisable, those Rights attached to the shares of Class A Common Stock will be converted to Rights to purchase Series 1 Preferred Stock. The number of these Rights will be based on the conversion ratio used for converting the Class A Common Stock to Common Stock.

[2] The Purchase Prices, and the number of Units of Preferred Stock (or other securities, as the case may be) issuable upon exercise of the Rights, are subject to adjustment from time to time to prevent dilution.

Exercise of and Exchange of Rights

The value of one Unit of the Preferred Stock received upon exercise of a Right will be twice the Purchase Price paid for that Preferred Stock. The Rights of any Acquiring Person and certain of its transferees will be null and void. If Conectiv is acquired in a business combination transaction or 50% or more of its consolidated assets or earning power is sold or transferred, exercise of a Right will entitle its holder to receive common stock or other equity of the acquiring company also having a value equal to twice the Purchase Price then in effect.

In addition, the Plan will also provide that under certain circumstances the Board may exchange a Right, in whole or in part, for one Unit of Preferred Stock (subject to adjustment), or for other securities or assets. These circumstances include any time before an Acquiring Person (other than Conectiv and certain related entities) acquires 50% or more of the total voting power of all shares of voting stock in Conectiv then outstanding.

Redemption and Termination of Rights

The Plan will provide that Conectiv may redeem all of the Rights at a price of $.01 per Right at any time before any person or group becomes an Acquiring Person, subject to adjustment ("Redemption Price"). Immediately upon the action of the Board electing to redeem the Rights, the only right of the holders of Rights will be to receive the Redemption Price. Under the Plan, the Rights will expire at the close of business on the 10 year anniversary of the Record Date, unless earlier redeemed, exchanged or exercised.

Amendments to the Provisions of the Rights Agreement

If the Board adopts the Plan the terms of the Rights will be described in an agreement ("Agreement") between Conectiv and Conectiv Resource Partners, Inc. ("Resources"), as Rights agent ("Rights Agent"). Any of the provisions of the Agreement may be amended by the Board without the consent of the holders of the Rights. However, the Agreement may not be amended on or after the Distribution Date in any manner that would adversely affect the interests of holders of Rights (other than the interests of an Acquiring Person and certain of its transferees).

Terms of the Preferred Stock

The Preferred Stock will rank junior to all other series of Conectiv's preferred stock with respect to payment of dividends and as to distribution of assets in liquidation. The value of each Unit of Series 1 Preferred Stock is intended to approximate the value of one share of the Common Stock and the value of each Unit of a share of Series 2 Preferred Stock is intended to approximate the value of one share of Class A Common Stock. Accordingly, each share of Preferred Stock will generally have a quarterly dividend rate equal to the greater of $1.00 or 100 times the per share amount of cash dividends declared on the related voting securities.

The Series 1 Preferred Stock will not be redeemable. Units of Series 2 Preferred Stock will be redeemable in certain instances upon substantially the same terms and conditions that shares of Class A Common Stock may be redeemed, in accordance with Conectiv's restated certificate of incorporation. In the event of liquidation, each share of the Preferred Stock generally will entitle its holder to receive an amount equal to the greater of $1.00 plus accrued and unpaid dividends or 100 times the payment to be made for a share of the related voting security. Generally, each share of Preferred Stock will vote together with the Common Stock, the Class A Common Stock, and any other series of preferred stock entitled to vote in a manner and will be entitled to 100 votes. In the event of any merger or other transaction in which shares of the Common Stock and/or Class A Common Stock are exchanged for or changed into other property, each share of Preferred Stock will be entitled to receive 100 times the amount of the property received on the related voting security.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7369 Filed 3–20–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39761; File No. SR–DTC–97–09]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Regarding the Custody Service for Securities That Are Not Depository Eligible

March 16, 1998.

On June 4, 1997, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change

(File No. SR–DTC–97–09) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on September 19, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

DTC currently operates a custody service which offers custodian, transaction, and related processing services to participants in connection with certain securities that are not depository eligible (*e.g.*, securities with certain transfer restrictions).[3] The rule change permits DTC to enter into contracts with individual participants to provide customized processing services under the custody service. Under the rule change, DTC will not be obligated to enter into any such contracts with participants or to offer the same terms under any such contracts to all participants. DTC has advised the Commission that it will charge fees for customization of custody service based on a consistently applied methodology.

II. Discussion

Section 17A(b)(3)(F) of the Act[4] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that DTC's proposed rule change is consistent with DTC's obligations under Section 17A of the Act because the rule change will allow DTC participants to remove certain certificates that are not depository eligible from their vaults and to deposit them into DTC's custody service. Depositing certificates into the custody service along with use of the custody service's securities processing services should help to reduce the costs, inefficiencies, and risks associated with the physical safekeeping of securities outside of DTC and thereby should promote the prompt and accurate clearance and settlement of transactions in securities. Moreover, the Commission believes that the proposal is consistent with DTC's obligations to safeguard securities and funds under its control because securities deposited into the custody services will be under DTC's usual procedures for the safekeeping of securities.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–97–09) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7429 Filed 3–20–98; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39071 (September 12, 1997), 62 FR 49279.

[3] For a more detailed description of DTC's custody service, refer to Securities Exchange Act Release Nos. 38561 (April 30, 1997), 62 FR 25008 [File No. SR–DTC–97–01] (order approving proposed rule change implementing the dividend processing phase of DTC's custody service) and 37314 (June 14, 1996) 61 FR 31989 [File No. SR–DTC–96–08] (order approving proposed rule change establishing DTC's custody service).

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39760; File No. SR–NASD–98–21]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the National Association of Securities Dealer, Inc., Relating to an Expansion of the NASD's Rule Permitting Market Makers To Display Their Actual Quotation Size

March 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 5, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend NASD Rule 4613(a)(1)(C) to allow permanently market makers to quote their actual size by reducing the minimum quotation size requirement for market makers in all securities listed on Nasdaq to one normal unit of trading ("Actual Size Rule"). As discussed below, the Actual Size Rule presently applies to a group of 150 Nasdaq securities on a pilot basis. The text of the proposed rule change is as follows (additions are italicized; deletions are bracketed).

* * * * *

NASD Rule 4613 Character of Quotations

(a) Two-Sided Quotations.

(1) No change.

(A)–(B) No change.

(C) [As part of a pilot program implemented by The Nasdaq Stock Market, during the period January 20, 1997 through at least March 27, 1998, a] *A* registered market maker in a security listed on The Nasdaq Stock Market [that became subject to mandatory compliance with SEC Rule 11Ac1–4 on January 20, 1997 or identified by Nasdaq as being otherwise subject to the pilot program as expanded and approved by the Commission,] must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a registered market maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Summary of Proposal

Currently, quotations in most Nasdaq securities are required to be displayed in a minimum size of 1,000 shares (200 or 500 shares for less active stocks). The

requirement is different from that of any of the stock exchanges, which require only the display of actual size of at least 100 shares. This difference results from the requirements of the Small Order Execution System ("SOES"), which was originally conceived and developed to provide individual investors with a fast, efficient, and cost-effective means of executing small orders in Nasdaq securities in a quote-based dealer market.

On August 29, 1996, the SEC promulgated a new rule and adopted amendments to other SEC rules that are designed to enhance the quality of published quotations for securities and promote competition and pricing efficiency in U.S. securities markets (these rules are collectively referred to hereafter as the "Order Handling Rules").[3] The Order Handling Rules have changed Nasdaq's market structure to a more order-driven hybrid market, which include quotes from investors (in the form of displayed limit orders), market makers, and Electronic Communications Networks ("ECNs"). The implementation of these rules has enhanced market quality and benefited investors significantly by substantially reducing Nasdaq quoted spreads, without evidence of a material reduction of liquidity or increased volatility. In connection with these changes, Nasdaq implemented the Actual Size Rule pilot program (originally including 50 Nasdaq stocks, but subsequently expanded to 150 stocks) to allow market makers to display their actual, freely-determined quotation size when not displaying a customer order.

Given the changes brought about by the Order Handling Rules, the economic theory suggesting several long-term benefits of the Actual Size Rule, and the empirical research indicating no adverse impact on investors or the Nasdaq market, the NASD has concluded that artificial minimum quotation sizes are no longer necessary and should be removed for all Nasdaq stock. Specifically, the Actual Size Rule affords market makers more flexibility to manage risk and quote prices that are more favorable for small retail orders. In addition, requiring a minimum commitment of market maker capital while allowing the display of customer and ECN orders without a similar commitment could severely impair the ability of market makers to set competive quotations. The adoption of sixteenths could heighten the debilitating effect of the quote size minimum, as could future reduction in Nasdaq's minimum quote price invement if the minimum size increment is not equivalent reduced. Moreover, rigorous empirical analysis of the original pilot program and the pilot as expanded, including a study of the extreme market conditions of October 27 and 28, 1997, demonstrate that the Actual Size Rule has not materially affected Nasdaq market quality, as measured by spread, volatility, quoted depth, and liquidity, and that investors continue to have substantial access to a reasonable amount of market maker capital in pilot stocks.

2. Background

a. SEC Order Handling Rules. With respect to securities listed on Nasdaq, the Order Handling Rules were implemented according to a phased-in implementation schedule: 50 Nasdaq securities became subject to the rules on January 20, 1997 ("First Fifty"); fifty more became subject to the rules on February 10, 1997 ("Second Fifty"), and an additional fifty became subject to the rules on February 24, 1997. The remaining Nasdaq securities were phased in pursuant to a specified time table established by the Commission, with the last remaining securities phased in on October 13, 1997.[4]

In particular, the SEC adopted Rule 11Ac1–4, ("Limit Order Display Rule"), which requires the display of customer limit orders: (1) That are priced better than a market maker's quote;[5] or (2) that add to the size associated with a market maker's quote when the market maker is at the best price in the market.[6] By virtue of the Limit Order Display Rule, investors now have the ability to directly advertise their trading interest to the marketplace, thereby allowing them to compete with market maker quotations and affect the size of bid-ask spreads.[7] The other rule changes adopted by the SEC involve amendments to SEC's firm quote rule, Rule 11Ac1–1. The most significant change requires market makers to display in their quote any better priced orders that the market maker places into an electronic communications network such as SelectNet or Instinet ("ECN Rule"). Alternatively, instead of updating its quote to reflect better priced orders entered into an ECN, a market maker may comply with the display requirements of the ECN Rule through the ECN itself, provided the ECN: (1) ensures that the best priced orders entered by market makers into the ECN are communicated to Nasdaq for public dissemination; and (2) provides brokers and dealers access to orders entered by market makers into the ECN, so that brokers and dealers who do not subscribe to the ECN can trade with those orders.

b. Actual Size Rule Pilot for First Fifty Stocks. In order to facilitate implementation of the SEC's Order Handling Rules and reflect the more order-driven nature of the Nasdaq market that was brought about by implementation of these rules, on January 10, 1997, the Commission approved a variety of amendments to NASD rules and Nasdaq's SOES and SelectNet Service.[8] In particular, one of the NASD rule changes approved by the Commission provides that Nasdaq market makers in the First Fifty stocks subject to the Commission's Limit Order Display Rule are required to display a minimum quotation size of one normal unit of trading when quoting solely for their own proprietary account (*i.e.*, the Actual Size Rule).[9] For Nasdaq stocks outside of the First Fifty, the minimum quotation size requirements remained the same.[10]

The NASD submitted the proposal for the Actual Size Rule because it believed,

[3] See Exchange Act Release No. 37619A (September 6, 1996) 61 FR 48290 (September 12, 1996) ("Order Handling Rules Adopting Release").

[4] See Exchange Act Release No. 38870 (July 24, 1997) 62 FR 40732 (July 30, 1997), corrected in 62 FR 45289.

[5] For example, if a market maker's quote in stock ABCD is 10–10¼ (1,000 × 1,000) and the market maker receives a customer limit order to buy 200 shares at 10⅛, the market maker must update its quote to 10⅛–10¼ (200 × 1,000).

[6] For example, if a market maker receives a limit order to buy 200 shares of ABCD at 10 when its quote in ABCD is 10–10¼ (1,000 × 1,000) and the NBBO for ABCD is 10–10⅛, the market maker must update its quote to 10–10¼ (1,200 × 1,000).

[7] There are seven exceptions to the Limit Order Display Rule: customer limit orders that are (1) executed upon receipt; (2) placed by customers who expressly request that they not be displayed; (3) odd-lots; (4) block size orders (10,000 shares or $200,000), unless the customer requests that the order be displayed; (5) delivered immediately upon receipt to an exchange or association-sponsored system, or an ECN that complies with Rule 11Ac1–1(c)(5)(ii) with respect to that order; (6) delivered immediately upon receipt to another exchange member or OTC market maker that complies with Rule 11Ac1–4 with respect to that order; or (7) all-or-none orders. *See* 17 CFR 240.11Ac–1–4(c).

[8] See Exchange Act Release No. 38156 (January 10, 1997) 62 FR 2415 (January 16, 1997) (order partially approving SR–NASD–96–43) ("Actual Size Rule Approval Order").

[9] Thus, the Actual Size Rule does not affect a market maker's obligation to display the full size of a customer limit order. If a market maker is required to display a customer limit order for 200 shares or more, it must display a quote size of at least 200 shares absent an exemption from the Limit Order Display Rule.

[10] In particular, NASD Rule 4613(a)(2) requires each market maker in a Nasdaq issue other than those in the First Fifty to enter and maintain two-sided quotations with a minimum size equal to or greater than the applicable SOES tier size for the security (*e.g.*, 1,000 500, or 200 shares for Nasdaq National Market issues and 500 or 100 shares for Nasdaq SmallCap Market issues).

and continues to believe, that the new and more order-driven nature of Nasdaq brought about by the Limit Order Display Rule obviates the regulatory justification for minimum quote size requirements. In particular, while the NASD believed it was once desirable and appropriate to impose the mandatory quote size requirements to ensure an acceptable level of market liquidity and depth in an environment where Nasdaq market makers were the only market participants who could impact quotation prices, the Limit Order Display Rule now permits investors to directly impact quoted prices. As a result, the NASD believes that it is no longer necessary to subject market makers to minimum quote size requirements when they are not representing customer orders. In addition, economic theory indicates that permitting dealers to quote in size commensurate with their true trading interest could further narrow quoted spreads and enhance the pricing efficiency of the Nasdaq marketplace.

Furthermore, Nasdaq believes that a disincentive for some market makers would be removed, thus attracting additional liquidity and pricing efficiency in the Nasdaq market. Indeed, the Commission noted in its approval of the Actual Size Rule pilot that "the 1,000 share minimum quote size represents a barrier to entry for market making. Lowering this barrier to entry could attract more market makers, thereby increasing liquidity and competition across the market." [11] This is especially important for smaller market making firms, which may otherwise have difficulty competing on a price basis in an environment with minimum quote size requirements.

In sum, with the successful implementation of the SEC's Order Handling Rules, the NASD believes that mandatory quote size requirements impose unnecessary regulatory burdens on market makers that are not consistent with the Exchange Act.

At the same time, the NASD does not believe that implementation of the Actual Size Rule in an environment where limit orders are displayed has or will compromise the quality of the Nasdaq market. First, the display of customer limit orders enhances the depth, liquidity, and stability of the market and contributes to narrower quoted spreads, thereby mitigating the effects of the loss of displayed trading interest, if any, by market makers. Second, removing artificial quote size requirements may lead to narrower market maker spreads, thereby reducing investors' transaction costs. Third, permitting market makers to quote in size commensurate with their own freely-determined trading interest will enhance the pricing efficiency of the Nasdaq market and the independence and competitiveness of dealers' quotations. Fourth, removing quotation size requirements will facilitate greater quote size changes, thereby increasing the information content of market maker quotes by facilitating different quote sizes from dealers who have a substantial interest in the stock at a particular time and those who do not.

Indeed, in its order approving the Actual Size Rule, the Commission noted that it "preliminarily believes that the proposal will not adversely affect market quality and liquidity" [12] and that it "believes there are substantial reasons * * * to expect that reducing market makers' proprietary quotation size requirements in light of the shift to a more order-driven market would be beneficial to investors." [13] In addition, the Commission stated that, "based on its experience with the markets and discussions with market participants, [it] believes that decreasing the required quote size will not result in a reduction in liquidity that will hurt investors." [14]

Nevertheless, in light of concerns raised by commentators opposed to the Actual Size Rule regarding the potential adverse impacts of the rule on market liquidity and volatility, the Commission determined to approve the rule on a three-month pilot basis to afford the Commission, the NASD and Nasdaq an opportunity to gain practical experience with the rule and evaluate its effects.[15] The factors identified by the Commission to be considered in this evaluation include, among others, the impact of reduced quotation sizes on liquidity, volatility and quotation spreads.[16]

c. Findings of NASD Economic Research and Proposal to Expand Actual Size Rule Pilot to 150 Stocks. On April 11, 1997, the NASD filed with the Commission Filing No. SR–NASD–97–26 to extend and expand the Actual Size Rule.[17] Specifically, the NASD proposed to extend the pilot until at least December 19, 1997, and to expand the number of stocks to include the next 100 stocks subject to the Order Handling Rules. The filing was subsequently amended to change the extension date from December 19, 1997, to March 27, 1998, and to change the selection methodology for the next group of 100 stocks to be subject to the pilot, discussed further below.

This finding cited findings of research concerning the implementation of the Order Handling Rules and the Actual Size Rule pilot. Specifically, the NASD found that implementation of the Order Handling Rules had significantly improved the quality of the Nasdaq market by creating a market structure where customer limit orders provide liquidity and compete effectively with market maker quotations. In this type of environment, the NASD stated its belief that the regulatory necessity for the mandatory quote size requirements no longer exists. Accordingly, the NASD proposed to both extend and expand the rule.

In particular, the research conducted by the NASD's Economic Research Department in early 1997 indicated three general findings concerning implementation of the Order Handling Rules and the Actual Size Rule: (1) The Order Handling Rules have dramatically improved the quality of the Nasdaq market, particularly with respect to the narrowing of quoted spreads; (2) among those securities subject to the Order Handling Rules, there is no appreciable difference in market quality between those stocks subject to the Actual Size Rule and those stocks subject to mandatory quote size requirements; [18]

[11] See Actual Size Rule Approval Order, *supra*, note 8, at 2425.

[12] *Id.*

[13] *Id.* at 2423.

[14] *Id.* at 2424.

[15] See Actual Size Rule Approval Order, *supra* note 8.

[16] Specifically, the Commission stated that the NASD's study should include an analysis of (1) The number of market makers in each of the 50 securities, and any change in the number over time; (2) the average aggregate dealer and inside spread by stock over time; (3) the average spread for each market maker by stock; (4) the average depth by market maker (including limit orders), and any change in the depth over time; (5) the fraction of volume executed by a market maker who is at the inside quote by stock; and (6) a measure of volume required to move the price of each security one increment (to determine the overall liquidity and volatility in the market for each stock). The Commission also stated its expectation that these factors should be contrasted over the time period immediately preceding the pilot and after the beginning of the pilot. In addition, the Commission stated that the NASD should compare the First Fifty stocks (to which the Rule applied) with the Second Fifty stocks (stocks subject to the SEC's Order Handling Rules but not the Actual Size Rule).

[17] See Exchange Act Release No. 38513 (April 15, 1997) 62 FR 19369 (April 21, 1997) ("Notice of Proposal to Expand Actual Size Rule to 150 Stocks").

[18] The First Fifty stocks include Nasdaq's top ten issues by dollar volume plus 40 issues chosen from Nasdaq's top 500 issues; 8 ranked between 11 and 100; 8 ranked between 101 and 200; 8 ranked between 201 and 300; 8 ranked between 401 and 500. The "second fifty" stocks include the ten Nasdaq stocks ranked between 11 and 20 by dollar volume plus 40 stocks chosen from Nasdaq's top 500 stocks in the same manner explained above. Because the ten largest Nasdaq stocks have no comparable peer group among Nasdaq stocks and the next ten largest Nasdaq stocks included in the

and (3) implementation of the Actual Size Rule has not resulted in any significant diminution of the ability of investors to receive automated executions through SOES, SelectNet, or proprietary systems operated by broker-dealers. The specific findings of this analysis were published in the original notice of filing SR–NASD–97–26.[19]

On June 3, 1997, the NASD supplemented its proposal to extend and expand the Actual Size Rule by submitting to the SEC a study entitled "Effects of the Removal of Minimum Sizes for Proprietary Quotes in The Nasdaq Stock Market, Inc." ("June 1997 Study"). The June 1997 Study, which provides greater detail of the NASD's analysis, became a part of the NASD filing with the Commission and was made available to the public through Nasdaq's web site. The June 1997 Study presented a thorough empirical analysis that produced no evidence that the implementation of the Actual Size Rule had affected the market quality of pilot stocks. This study analyzed standard measures of market quality, including spread, volatility, and depth. In addition, the study reflected an examination of the ability of investors to access market maker capital through SOES and proprietary autoexecution systems and calculated the normalized effective depth, a measure of market liquidity. The study revealed that for stocks subject to the Actual Size Rule, investors continued to have reasonable and substantial access to market maker capital through automatic execution systems.

To provide the public with an opportunity to review and comment on the June 1997 Study, the Commission extended the comment period on Filing No. SR–NASD–97–26 until July 3, 1997.[20] On July 17, 1997, the NASD amended the filing at the Commission's request to extend the pilot until March 27, 1998, to provide the Commission with additional time to evaluate economic studies on the proposal and to review comments on the June 1997 Study.[21]

Notwithstanding the results of the June 1997 Study, commenters expressed concerns on the proposal to expand the Actual Size Rule. In particular, it was noted that the pilot had been limited to only 50 Nasdaq securities. Further, these securities generally represent the most liquid Nasdaq stocks. In addition, the proposed expansion of the Actual Size Rule would apply to the 100 stocks that were next to be phased in under the Order Handling Rules. These stocks were also drawn from the most liquid Nasdaq stocks. Thus, it was argued, even an expanded pilot would still be skewed toward larger, more active issues.

In response to these concerns expressed by SEC staff and commenters,[22] the NASD amended the proposed rule change on September 15, 1997, to change the selection methodology for the next group of securities to be subject to the pilot to provide an enhanced sample more representative of the entire Nasdaq market.[23] Specifically, the remaining Nasdaq National Market issues were divided into deciles based on average daily dollar volume, and 110 stocks were chosen by randomly selecting approximately the same number from each decile.[24] Thus, as expanded, the pilot would provide the Commission, NASD, and market participants with additional data across a range of securities, thereby allowing a more enhanced evaluation of the effects of the rule.

d. SEC Approval to Expand Actual Size Rule Pilot to 150 Stocks. On October 29, 1997, the Commission approved the NASD proposal to expand the Actual Size Rule pilot to include 150 stocks, as amended to provide for a sample more representative of the entire Nasdaq market.[25] The pilot also was extended until at least March 27, 1998. In approving the proposal, the Commission stated its belief that the data preliminarily indicates that the pilot has not resulted in any degradation to Nasdaq market quality, and that the Actual Size Rule appears to be a reasonable means to provide market making obligations that reflect the new market dynamics produced by the Order Handling Rules.[26] Nonetheless, the Commission decided that it would be appropriate to gather further data using the more representative sample of Nasdaq stocks before reaching a final decision as to whether or not to extend the Actual Size Rule to the entire Nasdaq market.

The Commission requested that the NASD continue to evaluate the effects of the Actual Size Rule and identified several areas of analysis to be covered.[27] The Commission also requested that the NASD compare data among deciles, focusing attention on active versus inactive stocks. In response, the NASD conducted an additional study of the effects of the Actual Size Rule, as expanded ("January 1998 Study")

3. January 1998 Study

Summary results of the January 1998 Study are described below. The complete study is attached as Exhibit 2 to this filing and will be available through Nasdaq's web site.

a. Methodology of January 1998 Study. To assess the effect of the expansion of the pilot, this study compared measures of market quality for a group of stocks that joined the pilot (the "Next 103") to a control group of peer stocks (the "Non-ASR 3,207") that remained subject to mandatory minimum quote sizes.[28] Similar to the June 1997 Study, a thorough analysis reveals the Actual Size Rule has had no material effect on Nasdaq market quality.

Importantly, it should be noted that the January 1998 Study may be viewed as a more straightforward analysis of the Actual Size Rule. This is because in the June 1997 Study, the analysis was complicated by the fact that, with respect to the First 40 stocks presented therein, the Order Handling Rules were implemented at the same time as the Actual Size Rule. Thus, the pre-Actual Size Rule implementation period of review for those stocks did not reflect the impact of the Order Handling Rules. In contrast, in the January 1998 Study,

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Second Fifty (*i.e.*, Nasdaq stocks ranked 11–20 in size) are not comparable to the "bottom 40" of either the First Fifty or Second Fifty, those stocks have been excluded from the analysis comparing the First Fifty and the Second Fifty. Accordingly, the "first forty" stocks are the "bottom 40" stocks within the First Fifty stocks and the "second forty" stocks are the "bottom 40" stocks within the "second forty" stocks.

[19] See Notice of Proposal to Expand Actual Size Rule to 150 Stocks, at note 15.

[20] See Exchange Act Release No. 38720 (June 5, 1997) 62 FR 31856 (June 11, 1997).

[21] See Exchange Act Release No. 38872 (July 24, 1997) 62 FR 40879 (July 30, 1997).

[22] See *e.g.*, letter from David K. Whitcomb, Professor of Finance, Rutgers University, to Jonathan Katz, Secretary, SEC, dated July 3, 1997.

[23] See letter from Robert E. Aber, Vice President and General Counsel, to Katherine A. England, Assistant Director, Market Regulation, dated September 15, 1997.

[24] 110 stocks were chosen to make up for four of the original stocks that were delisted, and as reserves in case any others delist in the interim. This ensured that a total of 150 stocks were available under an expanded Actual Size Rule.

[25] See Exchange Act Release No. 39285 (October 29, 1997) 62 FR 59932 (November 5, 1997) ("Actual Size Rule Expansion Approval Order").

[26] Actual Size Rule Expansion Approval Order, at 59936.

[27] In particular: (1) The number and composition of the market makers in each stock; (2) the average aggregate dealer and inside spread; (3) the average spread of each market maker by stock; (5) the fraction of volume executed by a market maker who is at the inside quote per stock; and (6) a measure of volume required to move the price of each security one increment.

[28] The study reviews data for 18 trading days between October 13 and November 7 (October 27 and 28 are excluded and analyzed separately) and compares it to 20 trading days between November 10 and December 9.

the pre-Actual Size Rule implementation period of review did reflect the Order Handling Rules, which were fully phased in by October 13, 1997. In other words, the January 1998 Study assessed only one significant policy change for the subject securities, that being the implementation of the Actual Size Rule. Furthermore, as indicated above in Section A.3., the NASD amended Filing No. SR–97–26 to change the sample design to a more representative cross section of Nasdaq securities.

b. Actual Size Rule Has No Material Effect on Nasdaq Market Quality. Several measures of market quality were analyzed in the January 1998 Study: spread, volatility, depth, and liquidity. Each of these measures are discussed below.

i. Spread Measures. The quoted dollar spread [29] of the Next 103 fell 3.8% post implementation, while the quoted spread for the control group Non-ASR 3,207 similarly fell 4.8%. Multivariate regression analysis, which is used to control for stock-specific changes in volume, price, and interday volatility, shows that this differential is immaterial. Thus, there is no statistically significant evidence of a differential change in quoted spreads associated with implementation of the Actual Size Rule.

The effective spread [30] (for trades of all sizes) of the Next 103 fell 2.6% post implementation, while the effective spread for the control group Non-ASR 3,207 fell 5.7%. Multivariate regression analysis shows that, consistent with the effect on quoted dollar spreads, effective spreads have not changed materially for either group. Thus, there is no statistically significant evidence of a differential change in effective spreads associated with implementation of the Actual Size Rule.

ii. Volatility. Volatility [31] decreased slightly between the pre- and post-implementation periods for both the Next 103 and the Non-ASR 3,207. For the Next 103, mean volatility fell 5.8%, while volatility for the Non-ASR 3,207 fell 3.4%. Again, based on multivariate regression analysis, the differential cannot be attributed to implementation of the Actual Size Rule.

iii. Depth. Mean aggregate depth [32] provided by market makers at the inside market dropped by 5.2% for the Next 103, and 5.8% for the Non-ASR 3,207. When ECNs are included, aggregate depth fell by 2.0% for the Next 103 and 2.7% for the Non-ASR 3.207. Again, based on Multivariate regression analysis, these differentials are not statistically significant. Thus, implementation of the Actual Size Rule is not associated with a change in aggregate quote depth.

Furthermore, neither (1) the mean number of market makers, nor (2) the mean number of market makers at the inside changed significantly for either stock group after implementation.

iv. Liquidity. While liquidity is an important market quality concept, it is difficult to measure empirically. One such measure of liquidity is "effective depth," and a refinement called "normalized effective depth" that makes the measure more robust across varying stock prices. These measures integrate the spread, or price, and depth components of the liquidity concept using trading activity in place of quoted depth. These measures are described fully in the study, which indicate that there was no statistically significant association between effective depth and the Actual Size Rule.

c. Actual Size Rule Does Not Impair Ability of SOES to Provide Access to Market Maker Capital. An analysis of measures of market maker accessibility via Nasdaq's SOES system or proprietary systems shows that the implementation of the Actual Size Rule has not impacted the operation of these systems. Specifically, 98.5% of SOES orders in Next 103 stocks were fully executed after these stocks became subject to the Actual Size Rule. Indeed, the average size of a SOES trade in Next 103 stocks fell only 18 shares after the expansion of the pilot program. Clearly, the effect of the Actual Size Rule on the ability of investors to achieve executions via SOES has been minimal.

The extreme market conditions of October 27 and 28, 1997 provided another test of the effect of the Actual Size Rule on the Nasdaq marketplace. This study includes a comparison of both the market quality and SOES accessibility of a group of the original pilot stocks (the First 36) to a group of peer stocks subject to minimum quote size requirements (the Second 36). There is no significant evidence that the Actual Size Rule impacted either market quality or SOES accessibility during these periods of market stress.

4. Conclusion and Proposal To Expand the Actual Size Rule to All Nasdaq Stocks on a Permanent Basis

The implementation of the Order Handling Rules, which have moved Nasdaq toward a more order-driven market by integrating customer and ECN limit orders into the marketplace, called into question the propriety of requiring market makers to post a minimum depth for proprietary quotes. No other equity market requires such a minimum.

The NASD believes that the Actual Size Rule will have a positive impact on market quality. First, removing artificial quote size requirements may lead to narrower market maker spreads, thereby reducing investors' transaction costs. This could result because market makers would be afforded more flexibility to manage risk and quote prices that are more favorable for small retail orders. Second, permitting market makers to quote in size commensurate with their own freely-determined trading interest should enhance the pricing efficiency of the Nasdaq marketplace and the independence and competitiveness of dealer quotations. Third, removing quotation size requirements will facilitate greater quote size variability, which would increase the information content of market maker quotes by facilitating different quote sizes from dealers who have a substantial interest in the stock at a particular time and those who do not. In addition, removal of minimum quote size requirements may also eliminate a barrier to entry into the market for smaller market making firms, thus attracting more firms into the market, increasing both price competition and liquidity, thereby benefiting investors.

Furthermore, requiring a minimum commitment of market maker capital while allowing customer and ECN orders entry without a similar commitment could severely impair the ability of market makers to set competitive quotations. The adoption of quotation increments of sixteenths could have heightened the debilitating effect of the quote size minimum, as could future reductions in Nasdaq's minimum quote price increment if the minimum size increment is not equivalently reduced.

Finally, while economic theory suggests there may be several long term benefits derived from the removal of minimum quotation size, empirical research indicates that removal of the

[29] Quoted dollar spread is the difference between the inside ask and inside bid. Individual dollar spreads are weighted by the amount of time each spread was in effect for the day, *i.e.*, the spread's duration.

[30] Effective spread is a trade-based measures defined as twice the absolute difference between the trade price and the bid-ask midpoint ("BAM"). Thus, effective spread accounts for trades executed at prices inside the spread.

[31] Intraday volatility is measured using the standard deviation of the logarithm of the BAM.

[32] Quoted depth is the size of a market maker quote, or the number of shares at the quote that a market maker is required to transact under the Firm Quote Rule. Aggregated quoted depth is the sum of the quoted depths of all market makers quoting at the prevailing inside market.

regulatory minimum has not had any adverse impact on investors or the Nasdaq market. In the absence of a compelling reason to the contrary, economic theory clearly indicates that the imposition of a potentially damaging regulatory constraints, such as the minimum quote size, on the market is inadvisable. This position is consistent with Section 15A of the Exchange Act, which prohibits the NASD from imposing "any burden on competition not necessary or appropriate" in furtherance of the purposes of the Exchange Act. This Section, among others within the Exchange Act, codifies a Congressional intent that the U.S. securities markets be free from competitive restraints to the furthest extent possible consistent with the other goals of the Exchange Act.[33] Accordingly, the NASD believes that these minimums should be removed via the implementation of the Actual Size Rule for all Nasdaq securities on a permanent basis.

5. Statutory Basis

For the reasons noted above, the NASD believes the proposed rule change is consistent with Sections 11A(a)(1)(C), 15A(b)(6), 15A(b)(9), and 15A(b)(11) of the Exchange Act. Section 11A(a)(1)(C) provides that it is in the public interest to, among other things, assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Section 15A(b)(9) requires that rules of an Association not impose any burden on competition not necessary or appropriate to furtherance of the purposes of the Exchange Act. Section 15A(b)(11) requires the NASD, as a registered securities association, among other things, to formulate rules designed to produce fair and informative quotations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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 designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–21 and should be submitted by April 13, 1998.

[33] See Senate Comm. on Banking, Housing & Urban Affairs, Report to Accompany S.249, S.Rep. No. 94–75, 94th Cong., 1st Sess. 7, 13, reprinted in 1975 U.S. Code Cong. & Admin. News 179.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7372 Filed 3–20–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39762; File No. SR–NASD–98–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Small Order Execution System Tier Size Classifications

March 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 9, 1998, the National Association of Securities Dealers ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is submitting this filing to effectuate The Nasdaq Stock Market, Inc.'s ("Nasdaq") periodic reclassification of Nasdaq National Market ("NNM") securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through Nasdaq's Small Order Execution System ("SOES"). Specifically, under the proposal, 547 NNM securities will be reclassified into a different SOES tier size effective April 1, 1998. Since the NASD's proposal is an interpretation of existing NASD rules, there are no language changes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the

[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the rule change is to effectuate Nasdaq's periodic reclassification of NNM securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through SOES. Nasdaq periodically reviews the SOES tier size applicable to each NNM security to determine if the trading characteristics of the issue have changed so as to warrant a tier size adjustment. Such a review was conducted using data as of December 31, 1997, pursuant to the following established criteria:[2]

NNM securities with an average daily non-block volume of 3,000 shares or more a day, a bid price less than or equal to $100, and three or more market markers are subject to a minimum quotation size requirement of 1,000 shares and a maximum SOES order size of 1,000 shares;

NNM securities with an average daily non-block volume of 1,000 shares or more a day, a bid price less than or equal to $150, and two or more market makers are subject to a minimum quotation size requirement of 500 shares and a maximum SOES order size of 500 shares; and

NNM securities with an average daily non-block volume of less than 1,000 shares a day, a bid price less than or equal to $250, and two or more market makers are subject to a minimum quotation size requirement of 200 shares and a maximum SOES order size of 200 shares.

Pursuant to the application of this classification criteria, 547 NNM securities will be reclassified effective April 1, 1998. These 547 NNM securities are set out in the NASD's Notice to Members 98–29 (March, 1998).

In ranking NNM securities pursuant to the established classification criteria, Nasdaq followed the changes dictated by the criteria with three exceptions. First, an issue was not moved more than one tier size level. For example, if an issue was previously categorized in the 1,000-share tier size, it would not be permitted to move to the 200-share tier even if the reclassification criteria showed that such a move was warranted. In adopting this policy, Nasdaq was attempting to maintain adequate public investor access to the market for issues in which the tier size level decreased and help ensure the ongoing participation of market makers in SOES for issues in which the tier size level increased. Second, for securities priced below $1 where the reranking called for a reduction in tier size, the tier size was not reduced. Third, for the top 50 Nasdaq securities based on market capitalization, the SOES tier sizes were not reduced regardless of whether the reranking called for a tier-size reduction.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires, among other things, that the rules of the NASD governing the operation of The Nasdaq Stock Market be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Specifically, the NASD believes that the reassignment of NNM securities within SOES tier size levels will further these ends by providing an efficient mechanism for small, retail investors to execute their orders on Nasdaq and by providing investors with the assurance that they can effect trades up to a certain size at the best prices quoted on Nasdaq.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Association has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule and, therefore, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[3] and subparagraph (e)(1) of Rule 19b–4 thereunder.[4]

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[5]

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. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, located at the above address. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–22 and should be submitted by April 13, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7373 Filed 3–20–98; 8:45 am]

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[2] The classification criteria are set forth in NASD Rule 4613(a)(2) and the footnote to NASD Rule 4710(g).

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(e)(1).

[5] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39754; File No. SR–Phlx–97–53]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amending Its Floor Procedure Advice A–1 Regarding Displaying Best Bids and Offers

March 13, 1998.

I. Introduction

On November 3, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its floor procedure Advice A–1 regarding displaying best bids and offers. On December 23, 1997, and January 20, 1998, respectively, the Exchange filed Amendments 1 and 2 to the proposal with the Commission.[3]

The proposed rule change and Amendments 1 and 2 thereto were published for comment in the **Federal Register** on January 29, 1998.[4] No comments were received on the proposal. This order approves the proposal as amended.

II. Description of the Proposal

The Phlx is proposing to amend its Advice A–1, regarding Displaying Best Bids and Offers to require Floor Brokers and Registered Options Traders ("ROTs") to immediately remove stale bids/offers. Currently, Advice A–1 requires that Specialists use due diligence to ensure that the best available bid and offer is displayed for those option series in which s/he is assigned. Under Advice A–1, bids and offers for the Specialist's own account, bids and offers on the book, and bids and offers established in the crowd are deemed to be available for display purposes. The Phlx proposes: (1) To designate the foregoing provisions from the current advice as a paragraph (a) of Advice A–1 and (2) to create new paragraph (b), to govern situations where a member of the trading crowd is no longer bidding and offering. In the latter situations, under the proposal, the Floor Broker or ROT would be required to use due diligence to inform the Specialist when s/he is no longer bidding/offering at that price. Under the proposal, the Floor Broker or ROT must immediately inform the Specialist when s/he is "out" of that bid/offer, including due to an execution or departure from the crowd.

New paragraph (b) is being proposed to address situations where members have been "out" of a bid/offer, yet failed to inform the Specialist. Often, that member is no longer present in the trading crowd. In that instance, if a trade occurs because someone accepted the stale bid/offer, either the member who initiated the bid/offer, the Specialist or the other members of the trading crowd will be required to honor the trade. Regardless of who honors the trade, the intent of this proposal is to deter these occurrences by imposing fines for such conduct. The proposed language refers to being "out" of a market for reasons including (but not limited to) an execution or a departure from the crowd. Other reasons may also apply, but the Exchange determined that an exhaustive list is neither possible, nor necessary, and, therefore, the violation involves the general failure to inform the Specialist, regardless of the particular reason for being "out."

A member that fails to meet the obligations imposed upon it by new paragraph (b) will be subject to a fine.[5] Under the proposal, fines would be imposed by Option Floor Officials who would determine whether a member should be fined based upon whether a stale quote was caused by a Specialist not using due diligence to ensure that the best available bid and offer is displayed pursuant to paragraph (a) or whether it was caused by a Floor Broker or ROT not using due diligence to inform the Specialist that it was no longer bidding/offering at that price, pursuant to paragraph (b) of the Advice. The Exchange believes that violations of proposed new paragraph (b) of the Advice involving a failure to notify the Specialist when a Floor Broker or ROT is "out" of a market are within the purview of Phlx Rule 970, concerning minor rule violations, and are otherwise designed to be easily verifiable and objective. The Exchange notes that the proposed fines are comparable to those in other advices, such as Advices A–2 (Types of Orders to be Accepted onto the Specialist's Book), B–4 (PHLX ROTs Entering Orders from On-Floor and Off-Floor for Execution on the Exchange) and B–5 (Agency-Principal Restrictions).

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[6] Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5)[7] 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. The proposal is also consistent with the Section 6(b)(6)[8] requirement that the rules of an exchange provide that its members and persons associated with those members be appropriately disciplined for violations of an exchange's rules and the Act.[9]

The proposal is consistent with Exchange Act Section 6(b)(5) because it should help to discourage Floor Brokers and ROTs from walking away from quotes that they have posted. The proposal also is consistent with Exchange Act Section 6(b)(6) in that it provides for an appropriate penalty to be assessed against those who violate the advice.

Maintaining accurate option quotes is integral to the Specialist's role in the marketplace. Although a member posting a bid/offer is generally not held to that market after leaving the trading crowd, the purpose of the proposed rule change is to discourage stale markets by giving the Exchange the ability to impose fines for failure to remove such a bid/offer. Failure to remove a bid/offer may cause the member making the bid/offer or other crowd participants to have to honor an incorrectly disseminated

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to David Sieradzki, Attorney, Division of Market Regulation ("Division"), Commission dated December 18, 1997 and letter from J. Keith Kessel, Phlx, to David Sieradzki, Attorney, Division, Commission dated January 16, 1998. Amendments 1 and 2 made several changes to clarify the purpose section of the filing.

[4] Securities Exchange Act Release No. 39571 (January 22, 1998), 63 FR 4515 (January 29, 1998).

[5] The fine schedule applicable to proposed new paragraph (b) of the Advice will be as follows:

1st Occurrence: $250.00.

2nd Occurrence: $500.00

3rd and Thereafter: Sanction is discretionary with Business Conduct Committee.

The fine schedule applicable to specialists, which will remain unchanged, is as follows:

1st Occurrence: $50.00.

2nd Occurrence: $100.00.

3rd Occurrence: $250.00.

4th and Thereafter: Sanction is discretionary with Business Conduct Committee.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(6).

[9] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

quote that may have attracted order flow, including Phlx Automatic Execution System orders. To avoid this result, the Commission believes that it is appropriate for the Phlx to require Floor Brokers and ROTs to use due diligence to inform the Specialist when they are "out" of a bid/offer.

The Commission notes that the proposed rule is similar to a Chicago Board Options Exchange rule, requiring Floor Brokers, Designated Primary Market-Makers and Order Book Officials causing a bid/offer to be disseminated to be responsible for having the bid/offer removed once the order is filled or canceled.[10]

The Exchange has represented that this rule will be enforced under Exchange Rule 970, which is the Exchange's minor rule violation enforcement and reporting plan ("MRP").[11] The Commission believes that enforcing Floor Procedure Advice A–1, paragraph (b) under the Exchange's MRP is consistent with Section 6(b)(6) of the Act. The purpose of the Exchange's MRP is to provide a response to a violation of the Exchange's rules when a meaningful sanction is needed but when initiation of a disciplinary proceeding pursuant to Exchange Rule 960.2[12] is not suitable because such a proceeding would be more costly and time-consuming than would be warranted given the nature of the violation. Violations of Floor Procedure Advice A–1, paragraph (b) can be appropriately handled through expedited proceedings because they are objective in nature and easily verifiable. Noncompliance with the provisions may be determined objectively and adjudicated quickly without the complicated factual and interpretive inquiries associated with more sophisticated Exchange disciplinary proceedings.

Finally, the Commission finds that the imposition of the recommended fines for violations of Floor Procedure Advice A–1, paragraph (b) should result in appropriate discipline of members in a manner that is proportionate to the nature of such violations.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Phlx–97–53) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7370 Filed 3–20–98; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

1. Statement of Agricultural Employer (Years prior to 1988); Statement of Agricultural Employer (1988 and Later)—0960–0036. The information on Forms SSA–1002 and SSA–1003 is used by the Social Security Administration (SSA) to resolve discrepancies when farm workers have alleged that their employers did not report their wages or reported them incorrectly. The respondents are agricultural employers.

	SSA–1002	SSA–1003
Number of Respondents	75,000	50,000.
Frequency of Response	1	1.
Average Burden Per Response (in minutes)	10	30.
Estimated Annual Burden (in hours)	12,500	25,000.

2. Beneficiary Recontact Report—0960–0502. The information on Form SSA–1588–OCR–SM is used by SSA to recontact mothers, fathers or children ages 15–17, who receive their benefits directly, to determine if they are still entitled to benefits. The respondents are beneficiaries who are in the "high risk" area and, therefore, are most prone to overpayments.

Number of Respondents: 163,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 13,583 hours.

3. Information About Joint Checking/Savings Account—0960–0461. The information collected on Form SSA–2574 is used by SSA to determine whether a joint bank account should be counted as a resource of a Supplemental Security Income (SSI) claimant or applicant in determining eligibility for SSI. The respondents are applicants for and recipients of SSI payments and individuals who are joint owners of financial accounts with SSI applicants/recipients.

Number of Respondents: 200,000.

Frequency of Response: 1.

Average Burden Per Response: 7 minutes.

Estimated Annual Burden: 23,333 hours.

4. Agency/Employer GPO Questionnaire—0960–0470. The information on Form SSA–4163 is used by SSA to determine the need for and the amount of any offset of benefits for certain individuals receiving Government pensions and receiving or applying for Social Security benefits. The respondents are State governments or their political subdivisions.

Number of Respondents: 1,000.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 50 hours.

5. Authorization for the Social Security Administration to Obtain Records from a Financial Institution and Request for Records—0960–0293. The information on Form SSA–4641 is used by SSA to determine whether an applicant meets the resource eligibility requirements for SSI and Aid to Families with Dependent Children (AFDC). This information is only used as part of the quality review of the AFDC program. The respondents are financial institutions.

[10] See CBOE Rule 8.51, Commentary .02

[11] The Phlx's minor rule plan, codified in Phlx Rule 970, contains floor procedure advices, such as Advice A–1, along with the accompanying fine schedules. Rule 19d–1(c)(2) under the Act authorizes national securities exchanges and other self-regulatory organizations ("SRO"s) to adopt minor rule violation plans for summary discipline and abbreviated reporting. Rule 19d–1(c)(1) under the Act requires that SROs promptly file notice with the Commission of any final disciplinary actions. However, minor rule violations not exceeding $2,500 where the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies at the SRO with respect to the matter are deemed not final for purposes of Rule 19d–1(c)(1), thereby permitting periodic, as opposed to immediate, reporting. See Phlx Rule 970 and 17 CFR 240.19d–1(c).

[12] Phlx Rule 960.2 governs the initiation of disciplinary proceedings by the Exchange for violations within the disciplinary jurisdiction of the Exchange.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

Number of Respondents: 500,000.
Frequency of Response: 1.
Average Burden Per Response: 6 minutes.
Estimated Annual Burden: 50,000 hours.

6. Statement of Household Expenses and Contributions—0960–0456. The information on Form SSA–8011–F3 is used by SSA to obtain or corroborate contributions made by the claimant/recipient toward household expenses. SSA uses the information to correctly determine the amount of unearned income received by the claimant/recipient in order to determine the individual's eligibility and payment amount under the SSI program. The respondents are household members of SSI claimants/recipients.

Number of Respondents: 400,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 100,000 hours.

7. Wage Reports and Pension Information—0960–0547. The information obtained through Regulation OR–418P, found in 20 CFR, section 422.122(b), is used by SSA to identify the requester of pension plan information and to confirm that the individual is entitled to the data we provide. The respondents are requesters of pension plan information.

Number of Respondents: 1,211.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated Annual Burden: 606 hours.

8. RSI/DI Quality Review Case Analysis-Sampled Number Holder; RSI/DI Quality Review Case Analysis-Auxiliaries/Survivors; RSI/DI Quality Review Case Analysis-Parent; RSI/DI Quality Review Case Analysis-Annual Earnings Test (AET)—0960–0555. The information on Forms SSA–2930, SSA–2931 and SSA–2932 is used by SSA to establish a national payment accuracy rate for all cases in payment status and to serve as a source of information regarding problem areas in the Retirement and Survivors Insurance (RSI) and Disability Insurance (DI) programs. The information is also used to measure the accuracy rate for newly adjudicated RSI/DI cases. SSA uses the information on Form SSA–4659 to evaluate the annual earnings test in order to determine its effectiveness. The results will be used to develop ongoing improvements in the process. The respondents are RSI and DI beneficiaries.

	SSA–2930	SSA–2931	SSA–2932	SSA–4659
Number of Respondents	6,500	3,300	1,580	740
Frequency of Response	1	1	1	1
Average Burden Per Response (minutes)	20	30	30	10
Estimated Annual Burden (hours)	2,167	1,650	790	123

Written comments and recommendations regarding the information collection(s) should be sent on or before May 22, 1998, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Dated: March 17, 1998.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 98–7402 Filed 3–20–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 1998–3600]

Agency Information Collection Activities Under OMB Review

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to request the approval of the Office of Management and Budget (OMB) of the renewal of three Information Collection Requests (ICR). These ICR's include the: 1. Vessel Documentation; 2. Alternate Compliance-International/Inland Navigation Rules; and 3. Inflatable Personal Flotation Devices for Recreational Vessels. Before submitting the ICR's to OMB, the Coast Guard is asking for comments on the collections described below.

DATES: Comments must reach the Coast Guard on or before May 22, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility, (USCG–1998–3600), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this document. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete Information Collection Request are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G–SII–2), U.S. Coast Guard Headquarters, room 6106, (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: For questions on this document, contact Barbara Davis, Office of Information Management, 202–267–2326. For questions on this docket, contact Carol Kelly, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting

comments should include their names and addresses, identify this document (CGD 1998–3600) and the specific Information Collection Request (ICR) to which each comment applies, and give the reasons for each comment. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Vessel Documentation.
OMB Control Number: 2115–0110.
Summary: The information collected will be used to establish the eligibility of a vessel to: (a) be documented as a "vessel of the United States," (b) engage in a particular trade, and/or (c) become the object of a preferred ship's mortgage. The information collected concerns citizenship of owner/applicant and build, tonnage and markings of a vessel.
Need: 46 U.S.C. Chapters 121, 123, 125 and 313 requires the documentation of vessels. A Certificate of Documentation is required for the operation of a vessel in certain trades, serves as evidence of vessel nationality and permits a vessel to be subject to preferred mortgages.
Respondents: Owners/builders of yachts and commercial vessels at least 5 net tons.
Frequency: Annually.
Burden Estimates: The estimated burden is 50,092 hours.

2. *Title :* Alternate Compliance—International/Inland Navigation Rules.
OMB Control Number: 2115–0073.
Summary: The information collected provides an opportunity for those with unique vessels to present their reasons why the vessel cannot comply with existing regulations and how alternate compliance can be achieved.
Need: Certain vessels cannot comply with the International Regulations (33 U.S.C. 1601) and Inland Navigation Rules (33 U.S.C. 2001). the Coast Guard thus provides an opportunity for alternate compliance. However, it is not possible to determine whether alternate compliance is appropriate or what kind of alternative procedures might be necessary without this collection.
Respondents: Vessel owners, operators, builders and agents.
Frequency: One-time application.
Burden Estimate: The estimated burden is 135 hours annually.

3. *Title:* Inflatable Personal Flotation Devices (PFDs) for Recreational Vessels.
OMB Control Number: 2115–0619.
Summary: The information collected concerns the labeling and preparation of manuals for inflatable PFDs. In keeping with this requirement the Coast Guard has established a system for approval of PFDs for use on such vessels? To facilitate the approval and inspection process, the Coast Guard requires that manufacturers label their devices and publish users manuals to help the end user.
Need: Title 46 U.S.C. 4302(a) prescribes regulations to: (a) establish minimum safety standards for recreational vessels, (b) require the installation and carrying or use of associated equipment and require or permit the display of seals, labels, plates, insignia or other devices for certifying or evidencing compliance with safety regulations. The labels are important for a number of reasons. First, they are essential to the user; they indicate the chest size of the PFD and also display printed and pictographic instructions for proper use and care of the PFD. Secondly, because they include a specific product number and the manufacturer's name they are central to the Coast Guard's mission of identifying faulty equipment and then notifying the responsible producer. The manuals also serve a dual purpose. On the one hand they give the user information they will need to properly use and maintain the device, and on the other they keep the Coast Guard informed as to the specifications and design of new PFDs.
Respondents: PFD manufacturers.
Frequency: On occasion.
Burden Estimate: The estimated burden is 503.33 hours annually.

Dated: March 13, 1998.

S.A. Richardson,

Acting Director, Information and Technology, U.S. Coast Guard.

[FR Doc. 98–7451 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3634]

Chemical Transportation Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the Chemical Transportation Advisory Committee (CTAC). CTAC provides advice and makes recommendations to the Coast Guard on matters relating to the safe transportation and handling of hazardous materials in bulk on U.S. flag vessels and barges in U.S. ports and waterways.

DATES: Applications and any supporting information must be received on or before May 29, 1998.

ADDRESSES: Application forms may be obtained from the Internet through this docket (USCG–1998–) at http://dms.dot.gov, or by writing Commandant (G–MSO–3), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling (202) 267–1217/0081; or by faxing (202) 267–4570. Completed application forms must be submitted to the same address by mail. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Commander Kevin S. Cook, Executive Director of CTAC, or Ms. Sara S. Ju, Assistant to the Executive Director, telephone (202) 267–1217/0081, fax (202) 267–4570. For questions on the docket, contact Carol Kelly, Coast Guard Dockets team leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9329.

SUPPLEMENTARY INFORMATION: The Chemical Transportation Advisory Committee (CTAC) is a Federal advisory committee constituted under 5 U.S.C. App. 2. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety and Environmental Protection on matters relating to the safe transportation and handling of hazardous materials in bulk on U.S. flag vessels and barges in U.S. ports and waterways. The advice and recommendations of CTAC also assist the U.S. Coast Guard in formulating the United States' position on hazardous material transportation issues prior to meetings of the International Maritime Organization.

CTAC meets at least once a year at Coast Guard Headquarters in Washington, DC. It may also meet more often than once a year for extraordinary purposes. CTAC's subcommittees and working groups may meet during the year to consider specific problems as required.

The Coast Guard will consider applications for eight positions that expire or become vacant in July 1998. To be eligible, applicants should have experience in chemical manufacturing, marine transportation of chemicals, occupational safety and health, or environmental protection issues associated with chemical transportation. Each member serves for a term of 3 years and is eligible to be re-appointed to a second term of office. However, not more than 50 percent of the members

with expiring terms may be re-appointed. All members serve at their own expense, and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the Department of Transportation's policy on ethnic and gender diversity, the Coast Guard is especially seeking applications from qualified women and minority group members.

Applicants may be required to complete an Executive Branch Confidential Financial Disclosure Report (SF 450).

Dated: March 12, 1998.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–7452 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3635]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) and its subcommittees on boat occupant protection, navigation lights, and personal flotation device-life saving index will meet to discuss various issues relating to recreational boating safety. All meetings will be open to the public.

DATES: NBSAC will meet on Monday and Tuesday, April 27 and 28, 1998, from 8:30 a.m. to 5 p.m. The Personal Flotation Device-Life Saving Index and Navigation Light Subcommittees will meet on Saturday, April 25, 1998, from 1:30 p.m. to 5 p.m. The Boat Occupant Protection Subcommittee will meet on Sunday, April 26, 1998, from 9:00 a.m. to noon. Written material and requests to make oral presentations should reach the Coast Guard on or before April 15, 1998. Requests to have a copy of your material distributed to each member of the committee or subcommittees should reach the Coast Guard on or before April 10, 1998.

ADDRESSES: NBSAC will meet at the Adam's Mark Hotel-Tulsa, 100 East 2nd Street, Tulsa, Oklahoma. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Albert J. Marmo, Commandant (G–OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Albert J. Marmo, Executive Director of NBSAC, telephone 202–267–0950, fax 202–267–4285. For questions on this docket, contact Carol Kelly, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9329. You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647, or read it on the Internet, at the Web Site for the Office of Boating Safety at URL address www.uscgboating.org/or at the Web Site for the Documentary Services Division at http://dms.dot.gov.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of Meetings

National Boating Safety Advisory Council (NBSAC)

The agenda includes the following:

(1) Executive Director's report.

(2) Chairman's session.

(3) Personal Flotation Device-Life Saving Index Subcommittee report.

(4) Navigation Light subcommittee report.

(5) Boat Occupant Protection Subcommittee report.

(6) Recreational Boating Safety Program report.

(7) NBSAC recreational boating safety Federal regulations review status report.

(8) Status report regarding Federal Register requests for comments on Federal requirements for wearing personal flotation devices and education in recreational boating safety.

(9) Industry presentation on inflatable personal flotation device approval.

(10) Waterborne risk management assessment and overview.

(11) Recreational boating safety outreach update and discussion.

(12) Hull Identification Number rulemaking update.

(13) Presentation on Department of Transportation waterway transportation management initiative.

Boat Occupant Protection Subcommittee

The agenda includes the following:

(1) Review and discuss boat occupant protection research study results and issues.

(2) Discuss risk avoidance alternatives.

(3) Discuss horsepower, weight and persons capacity standards.

(4) Discuss proposals regarding requirements to wear a helmet on personal watercraft (PWC), and for installation of a shroud on PWC extending from the engine cowling.

Navigation Light Subcommittee

The agenda includes the following:

(1) Review and discuss status of rulemaking to place navigation lights under regulatory control.

(2) Discuss a study to improve the visibility and display of navigation lights focusing on hardware issues.

(3) Review any new standards which address design, construction, and installation of navigation lights applicable to recreational boats.

Personal Flotation Device-Life Saving Index Subcommittee

The agenda includes the following:

(1) Discuss issues associated with the development of a consensus standard for application of the life saving index to various types of personal flotation devices.

(2) Discuss personal flotation device (PFD) conspicuity issues.

(3) Discuss the status of inflatable PFD inflation systems, and approval of automatic inflating PFDs.

Procedural

All meetings are open to the public. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than April 15, 1998. Written material for distribution at a meeting should reach the Coast Guard no later than April 15, 1998. If you would like a copy of your material distributed to each member of the committee or subcommittees in advance of a meeting, please submit 25 copies to the Executive Director no later than April 10, 1998.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: March 16, 1998.

Ernest R. Riutta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 98–7453 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 187–2, Aircraft Certification Service Fees for Providing Production Certification-Related Services Outside the United States

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Advisory Circular (AC) 187–2, Aircraft Certification Service Fees for Providing Production Certification-Related Services Outside the United States. This AC provides information concerning applications and fees for production certification-related services provided outside the United States by Federal Aviation Administration Aircraft Certification Service personnel. This AC provides a means, but not the only means, of compliance with Title 14 Code of Federal Regulation part 187, Fees, Appendix C, Fees for Production Certification-Related Services Performed Outside the United States.

ADDRESSES: Copies of AC 187–2 can be obtained from the following: U.S. Department of Transportation, Subsequent Distribution Office, Ardmore East Business Center, 3341Q 75th Avenue, Landover, MD 20785.

FOR FURTHER INFORMATION CONTACT: A member of the Production and Airworthiness Certificaton Division, Air–200, 800 Independence Avenue, Sw., Washington, DC 20591, (202) 267–8361.

Issued in Washington, DC on March 16, 1998.

Frank P. Paskiewicz,

Manager, Production and Airworthiness Certification Division.

[FR Doc. 98–7406 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for Scottsdale Airport, Scottsdale, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on a new Noise Compatibility Program for Scottsdale Airport, submitted by the City of Scottsdale, Arizona, under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non federal responsibilities in Senate Report No. 96–52 (1980). On June 5, 1996, the FAA determined that the Noise Exposure Maps, submitted by the City of Scottsdale under 14 CFR Part 150, were in compliance with applicable requirements. On February 13, 1998, the Associate Administrator for Airports approved the new Noise Compatibility Program for Scottsdale Airport. This new study revised and updated the existing Noise Compatibility Program that was approved by the FAA on December 19, 1986.

EFFECTIVE DATE: The effective date of the FAA's approval of the new Noise Compatibility Program for Scottsdale Airport is February 13, 1998.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, AICP, Environmental Protection Specialist, Airports Division, AWP–611.2, Western-Pacific Region, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, Telephone: 310/725–3615. Street Address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting the FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to a new Noise compatibility Program for Scottsdale Airport, effective February 13, 1998. This new study revises and updates an existing Noise Compatibility Program approved by the FAA on December 19, 1986. Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (herein after referred to as the "Act"), an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non compatible land uses and prevention of additional non compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport Noise Compatibility Program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations.

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional non compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government and;

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of navigable airspace and air traffic control responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport Noise Compatibility Program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State or local law. Approval does not, by itself, constitute an FAA implementation action. A request for Federal action or approval to implement specific Noise Compatibility Measures may be required and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982, as amended. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Hawthorne, California.

The city of Scottsdale, Arizona submitted to the FAA on December 18, 1995, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from January

1995 through November 1996. The Scottsdale Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 5, 1996. Notice of this determination was published in the Federal Register on June 19, 1996.

The Scottsdale Airport study contained a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2000. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in section 104(b) of the Act. The FAA began its review of the program on August 20, 1997 and was required by a provision of the Act to approve or disapprove the program within 180-days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed an approval of such program.

The submitted program contained 12 proposed actions for noise mitigation, 11 land Use management and five program management measures for both on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program was approved, by the Associate Administrator for Airports, effective February 13, 1998.

Outright approval was granted for all 28 specific program measures. The approved measures included such items as: Encouraging non-Stage 3 aircraft to use Runway 21 for landing and Runway 3 for takeoff; Continuance of right turns as soon as practical when departing Runway 21; Request use of (National Business Aircraft Association (NBAA) standard noise abatement departure procedures for jets; Continue requiring maintenance run-ups to be performed at the north end of Kilo Ramp and continue prohibition of maintenance run-ups between 10:00 p.m. and 7:00 a.m.; Continue prohibition of stop-and-go operations, intersection, formation and simulated single engine takeoffs by multi-engine aircraft from Runway 21; Discourage straight out and left turns after departure on Runway 21; On Runway 3, discourage right downwind and right base pattern entry; Continue prohibition on touch-and-go and stop-and-go operations between 9:30 a.m. and 6:00 p.m.; Continue preferential use of Runway 3; Discourage descents below 2,500 feet MSL for practice instrument approaches; Encourage use of (Aircraft Owners and Pilots Association (AOPA) Noise Awareness Steps by light single engine aircraft; Request aircraft on approach to Runway 21 to avoid overflying residential land uses. Land use management measures: Establish an Airport Influence Area; Preserve general plan designation for compatible land uses; Retain existing compatible land uses within the Airport Influence Area; Amend the city of Scottsdale General Plan; Rezone certain parcels consistent with the City's General Plan; Adopt airport noise overlay zoning within the Airport Influence Area; Prohibit introduction of new noise sensitive land uses within the 65 DNL contour; and require fair disclosure agreements within the Airport Influence Area; Program management measures: Maintain a complaint response system; Monitor, review and update Noise Exposure Maps and the Noise Compatibility Program, as necessary; Broadcast noise abatement information on the Automatic Terminal Information System (ATIS), and purchase three portable noise monitors.

These determinations are set forth in detail in the Record of Approval endorsed by the Associate Administrator for Airports on February 13, 1998. The Record of Approval, as well as other evaluation materials, and the documents comprising the submittal are available for review at the FAA office listed above and at the administrative offices of the Scottsdale Airport, Scottsdale, Arizona.

Issued in Hawthorne, California on March 10, 1998.

Herman C. Bliss,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 98–7407 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–4]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory regulations. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 8, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Tawana Matthews (202) 267–9783 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11)

Issued in Washington, D.C., on March 16, 1998.

Gary Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29117
Petitioner: Professional Aviation Maintenance Association
Sections of the FAR Affected: 14 CFR 65.92(a)
Description of Relief Sought: To permit PAMA members who attend an 8-hour training course at the April 1 through 3, 1998, PAMA Technical Symposium and Trade Show to renew their inspection authorization by April 15, 1998.

Docket No.: 29138
Petitioner: Washington State Department of Transportation

Sections of the FAR Affected: 14 CFR 61.197(a)(2)(iii)
Description of Relief Sought: To permit graduates of WDOT's Federal Aviation Administration (FAA)-approved flight instructor refresher courses to renew their flight instructor certificates more than 90 days before the certificates expire.

Dispositions of Petitions

Docket No.: 28561
Petitioner: Scenic Airlines, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Scenic Airlines to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed.
Grant, February 24, 1998, Exemption No. 6471A

Docket No.: 27136
Petitioner: Kenai Air Alaska, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit KAI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed.
Grant, February 24, 1998, Exemption No. 5699B

Docket No.: 23290
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 121.391(d)
Description of Relief Sought/ Disposition: To permit ATA member airlines' and other similarly situated part 121 certificate holders' required flight attendants to be located at the mid-cabin flight attendant station during takeoff and landing on Boeing 767 airplanes.
Grant, February 24, 1998, Exemption No. 4298G

Docket No: 27153
Petitioner: Kachina Aviation
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Kachina to operate without a TSO–C112 (Mode S) transponder installed in its aircraft operating under the provisions of part 135.
Grant, February 24, 1998, Exemption No. 5701B

Docket No.: 27490
Petitioner: C.A.E., Inc.
Section of the FAR Affected: 14 CFR 121.411(a)(2), and (3), and (b)(2); 121.413(b), (c), and (d); and appendix H to part 121
Description of Relief Sought/ Disposition: To permit certain pilot and flight engineer (FE) instructors and check airmen employed by CAE and listed in an air carrier certificate holder's approved training program to act as simulator instructors and check airmen for an air carrier certificate holder under part 121 without those instructors or check airmen having received ground and flight training in accordance with a training program approved under subpart N of part 121. That exemption has permitted simulator instructors and check airmen employed by CAE and listed in an air carrier certificate holder's approved training program to serve in advanced simulators without being employed by the air carrier certificate holder for 1 year.
Grant, February 24, 1998, Exemption No. 5870B

Docket No.: 28520
Petitioner: P&N Flight and Charter
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit P&N to operate its aircraft (Registration No. N4921J, Serial No. 28R–30642) without a TSO–C112 (Mode S) transponder installed.
Grant, February 24, 1998, Exemption No. 6448A

Docket No.: 29118
Petitioner: Homestead Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit HHI to operate its Robinson R44 helicopter (Registration No. N8372H, Serial No. 0387) without a TSO–C112 (Mode S) transponder installed.
Grant, February 24, 1998, Exemption No. 6733

Docket No.: 28118
Petitioner: King Airelines
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit King to operate without a TSO–C112 (Mode S) transponder installed in its aircraft operating under the provisions of part 135.
Grant, March 3, 1998, Exemption No. 6093A

Docket No.: 26160
Petitioner: Massachusetts Institute of Technology
Sections of the FAR Affected: 14 CFR 91.319(c)
Description of Relief Sought/ Disposition: To permit MIT to operate certain aircraft having experimental airworthiness certificates in a congested airway or over densely populated areas. In your letter, you include a revised list of aircraft to be covered by the extension.
Grant, March 3, 1998, Exemption No. 5210D

Docket No.: 29116
Petitioner: Taconite Aviation, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit TAI to operate four aircraft without a TSO–C112 (Mode S) transponder installed.
Grant, March 3, 1998, Exemption No. 6735

Docket No.: 29125
Petitioner: Moore's Flying Service
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Moore's to operate its Bell 206–L4 helicopter (Registration No. N595CC, Serial No. 52129) without a TSO–C112 (Mode S) transponder installed.
Grant, March 3, 1998, Exemption No. 673

Docket No.: 22822
Petitioner: T.B.M., Inc., and Butler Aircraft Co.
Sections of the FAR Affected: 14 CFR 91.611
Description of Relief Sought/ Disposition: To permit TBM and BAC to conduct ferry flights with one engine inoperative on their McDonnell Douglas DC–6 and DC–7 airplanes without obtaining a special flight permit for each flight.
Grant, March 3, 1998, Exemption No. 5204D

Docket No.: 28414
Petitioner: Zebra Air, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Zebra Air to operate its aircraft under the provisions of part 135 without a TSO–C112 transponder installed. In your letter you include a revised list of Zebra Air aircraft to be covered by the extension.
Grant, March 3, 1998, Exemption No. 6407A

Docket No.: 27118
Petitioner: Air Logistics, L.L.C.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit ALG to operate under the provisions of part 135 without having a TSO–C112 (Mode S) transponder installed in its aircraft.
Grant, March 3, 1998, Exemption No. 6736

Docket No.: 27388
Petitioner: Boeing North American, Inc.

Sections of the FAR Affected: 14 CFR 21.195(a)
Description of Relief Sought/ Disposition: To permit Boeing North American, Inc., to obtain an experimental certificate for its two prototype Model DASA FR–06 Ranger 2000 airplanes, S/N –001 and –002, for the purpose of conducting market surveys, sales demonstrations, or customer crew training.
Grant, March 3, 1998, Exemption No. 5849C

Docket No.: 29100
Petitioner: Bombardier Inc. Canadair
Sections of the FAR Affected: 14 CFR 25.571(e)(1)
Description of Relief Sought/ Disposition: To permit certification of the Bombardier Inc. Canadair BD–700–1A10 airplane using V_c at sea level or 0.85 V_c at 8,000 ft., which ever is greater.
Grant, March 3, 1998, Exemption No. 6731

Docket No.: 29098
Petitioner: Simmons Airlines
Sections of the FAR Affected: 14 CFR 25.562(c)(5) and 25.785(a)
Description of Relief Sought/ Disposition: To permit Simmons Airlines exemption from the head impact criterion requirements of 25.562(c)(5) and 25.785(a) for front row and exit row seats on Embracer EMB–145 airplanes.
Denial, February 3, 1998, Exemption No. 6732

[FR Doc. 98–7326 Filed 3–20–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3630]

Notice of Receipt of Petition for Decision That Nonconforming 1993–1998 Kawasaki ZZR1100 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993–1998 Kawasaki ZZR1100 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1993–1998 Kawasaki ZZR1100 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is April 22, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 10 am to 5 pm)

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1993–1998 Kawasaki ZZR1100 motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1993–1998 Kawasaki ZX1100 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared 1993–1998 Kawasaki ZZR1100 motorcycles to 1993–1998 Kawasaki ZX1100 motorcycles, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1993–1998 Kawasaki ZZR1100 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as 1993–1998 Kawasaki ZX1100 motorcycles, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that 1993–1998 Kawasaki ZZR1100 motorcycles are identical to 1993–1998 Kawasaki ZX1100 motorcycles with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles Other Than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model headlamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles Other Than Passenger Cars:* installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour.

The petitioner also states that vehicle identification number plates meeting the requirements of 49 CFR part 565 will be affixed to 1993–1998 Kawasaki ZZR1100 motorcycles.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition

will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 18, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–7454 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3628]

Notice of Receipt of Petition for Decision That Nonconforming 1994 Mercedes-Benz C220 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994 Mercedes-Benz C220 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1994 Mercedes-Benz C220 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is April 22, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Bayway Auto of Newark, New Jersey ("Bayway") (Registered Importer 98–166) has petitioned NHTSA to decide whether 1994 Mercedes-Benz C220 passenger cars are eligible for importation into the United States. The vehicle which Bayway believes is substantially similar is the 1994 Mercedes-Benz C220 that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1994 Mercedes-Benz C220 to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Bayway submitted information with its petition intended to demonstrate that the non-U.S. certified 1994 Mercedes-Benz C220, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1994 Mercedes-Benz C220 is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 Hood Latch Systems, 116 Brake Fluid, 124 Accelerator Control Systems, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1994 Mercedes-Benz C220 complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model sealed beam headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the convex passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* replacement of the rear door locks and rear door lock buttons with U.S.-model components.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not so equipped. The petitioner states that the vehicle is equipped with combination lap and

shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Additionally, the petitioner states that an alarm system identical to that found on U.S.-certified models will be installed on each 1994 Mercedes-Benz C220 prior to importation so that the vehicle meets the Theft Prevention Standard found at 49 CFR part 541.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 18, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–7455 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3627]

Notice of Receipt of Petition for Decision That Nonconforming 1990–1993 Mercedes-Benz 250E and 1994–1995 E250 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for a decision that nonconforming 1990–1993 Mercedes-Benz 250E and 1994–1995 E250 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1990–1993 Mercedes-Benz 250E and 1994–1995 E250 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is April 22, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Bayway Auto of Newark, New Jersey (Bayway) (Registered Importer No. R–98–166) has petitioned NHTSA to decide whether 1990–1993 Mercedes-Benz 250E and 1994–1995 E250 passenger cars are eligible for importation into the United States. The vehicles which Bayway believes are substantially similar are 1990–1993 Mercedes-Benz 300E and 1994–1995 E300 passenger cars. Bayway has submitted information indicating that Daimler Benz, A.G., the company that manufactured the 1990–1993 Mercedes-Benz 300E and 1994–1995 E300, certified those vehicles as conforming to all applicable Federal motor vehicle safety standards and offered them for sale in the United States.

The petitioner contends that it carefully compared the 1990–1993 Mercedes-Benz 250E and 1994–1995 E250 to the 1990–1993 Mercedes-Benz 300E and 1994–1995 E300, and found those models to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the 1990–1993 Mercedes-Benz 250E and 1994–1995 E250, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as the 1990–1993 Mercedes-Benz 300E and 1994–1995 E300 that were offered for sale in the United States, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1990–1993 Mercedes-Benz 250E and 1994–1995 E250 are identical to the certified 1990–1993 Mercedes-Benz 300E and 1994–1995 E300 with respect to compliance with Standards Nos. 102 *Transmission Shift Lever*

*Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the 1990–1993 Mercedes-Benz 250E and 1994–1995 E250 comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies which incorporate headlamps with a DOT marking; (b) installation of U.S.-model front and rear sidemarker/reflector taillamp assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirrors*: replacement of the passenger side rear view mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* replacement of the rear door locks and locking buttons with U.S.-model parts.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not so equipped. The petitioner states that 1990–1993 models are equipped with driver's side air bags and knee bolsters and that 1994–1995 models are equipped with both driver's and passenger's side air bags and knee bolsters. The petitioner further states that all models are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicles to meet the requirements of 49 CFR part 565.

Additionally, the petitioner states that an alarm system identical to that found on U.S.-certified models will be installed on each 1990–1993 Mercedes-Benz 250E and 1994–1995 E250 prior to importation so that the vehicle meets the Theft Prevention Standard found at 49 CFR part 541.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 18, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98- 7456 Filed 3–20–98; 8:45 am]

BILLING CODE: 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3629]

Decision That Nonconforming 1974–1975 Volkswagen Type 181 ("The Thing") Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1974–1975 Volkswagen Type 181 ("The Thing") multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1974–1975 Volkswagen Type 181 ("The Thing") MPVs not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S.-certified version of 1974–1975 Volkswagen Type 181 ("The Thing") MPVs), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective March 23, 1998.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas ("Wallace") (Registered Importer 90–005) petitioned NHTSA to decide whether 1973–1975 Volkswagen Type 181 ("The Thing") MPVs are eligible for importation into the United States. NHTSA published notice of the petition under Docket No. NHTSA 97–3156 on December 1, 1997 (62 FR 63599) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from Volkswagen of America, Inc. ("Volkswagen"), the United States representative of Volkswagen AG, the vehicle's manufacturer. In this comment, Volkswagen stated that the petitioner had identified, at a minimum, the standards to which non-U.S. certified 1973–1975 Volkswagen Type 181 ("The Thing") MPVs would have to be conformed to be eligible for importation. In addition, Volkswagen contended that some of those vehicles would have to be equipped with laminated windshields to meet Standard No. 205, *Glazing Materials*. Noting that its analysis of the vehicle identification number (VIN) for the vehicle that is the subject of the petition revealed that vehicle to have been manufactured for the German Army and not for consumer use, Volkswagen observed that the vehicle may not comply with Standard Nos. 124, *Accelerator Control Systems*, and 302 *Flammability of Interior Materials*. In addition, Volkswagen noted that the vehicle may have to be altered to comply with Standard No. 104, *Windshield Wiping and Washing Systems*.

NHTSA accorded Wallace an opportunity to respond to Volkswagen's comments. In its response, Wallace asserted that all of the issues raised by Volkswagen concern minor alterations that would not render the vehicle ineligible for importation. Additionally, Wallace stated that if NHTSA decides to grant import eligibility to non-U.S. certified 1973–1975 Volkswagen Type 181 ("The Thing") MPVs, it will inspect every vehicle it imports under that decision to assure compliance with each of the standards addressed in Volkswagen's comments.

NHTSA believes that Wallace's response adequately addresses the issues that Volkswagen has raised regarding the petition. NHTSA further notes that the modifications described by Wallace, which have been performed with relative ease on thousands of motor vehicles imported over the years, would not preclude non-U.S. certified 1973–1975 Volkswagen Type 181 ("The Thing") MPVs from being found "capable of being readily altered to comply with applicable motor vehicle safety standards."

NHTSA has accordingly decided to grant the petition. Although the petition requested NHTSA to decide that 1973–1975 Volkswagen Type 181 ("The Thing") MPVs are eligible for importation, the agency is limiting this decision to 1974 and 1975 models alone. NHTSA regards all 1973 models as motor vehicles that are "at least 25 years old," within the meaning of 49 U.S.C. 30112(b)(9), which permits them to be imported and sold regardless of whether they complied with all applicable Federal motor vehicle safety standards in effect on their date of manufacture.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–239 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1974–1975 Volkswagen Type 181 ("The Thing") MPVs not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1974–1975 Volkswagen Type 181 ("The Thing") MPVs originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 18, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–7457 Filed 3–20–98; 8:45 am]

BILLING CODE 4910–59–P

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

AGENCY: United States Enrichment Corporation.

SUBJECT: Board of Directors Meeting.

TIME AND DATE: 8:00 a.m., Wednesday, March 25, 1998.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The Board meeting will be closed to the public.

MATTER TO BE CONSIDERED:

- Review of commercial, operational and financial issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Joseph Tomkowicz, 301–564–3345.

Dated: March 18, 1998.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 98–7574 Filed 3–19–98; 10:23 am]

BILLING CODE 8720–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0262]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 22, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW,

Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0262."

SUPPLEMENTARY INFORMATION:

Title and Form Numbers: Designation of Certifying Official, VA Form 22–8794.

OMB Control Number: 2900–0262.

Type of Review: Extension of a currently approved collection.

Abstract: The law requires specific certifications from an educational institution or job training establishment that provides approved training for veterans and other eligible persons. VA Form 22–8794 serves as the report from the school or job training establishment as to those persons authorized to submit these certifications. VBA uses the information to ensure that VA educational benefits are not made improperly based on a report from someone other than a designated certifying official. Without the information, VA could improperly pay benefits.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 27, 1997 at page 55672.

Affected Public: Business or other for-profit, Not for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden: 417 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,500.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0262" in any correspondence.

Dated: January 26, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–7385 Filed 3–20–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0406]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 22, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0406."

SUPPLEMENTARY INFORMATION:

Title: Verification of VA Benefit-Related Indebtedness, VA Form 26–8937.

OMB Control Number: 2900–0406.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: Since March of 1992, and a result of OMB's approval of VA's Debt Collection Plan, lenders authorized to make VA-guaranteed home or manufactured home loans on the automatic basis have been required to determine through VA Finance Officers whether any benefits-related debts exist in the veteran-borrower's name prior to the closing of any automatic loan. VA Form 26–8937 is designed to assist lenders and VA in the completion of debt checks in a uniform manner.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 27, 1997 at page 55672.

Affected Public: Individual or households.

Estimated Annual Burden: 25,000 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 300,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0406" in any correspondence.

Dated: January 26, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–7386 Filed 3–20–98; 8:45 am]

BILLING CODE 8320–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 63 FR 11677, March 10, 1998.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Thursday, March 19, 1998.

CHANGE IN THE MEETING: The closed session of the Meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070

Dated: March 19, 1998.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 98–7606 Filed 3–19–98; 11:32 am]

BILLING CODE 6750–06–M

federal register

Monday
March 23, 1998

Part II

Securities and Exchange Commission

17 CFR Parts 230, et al.

Registration Form Used by Open-End Management Investment Companies; New Disclosure Option for Open-End Management Investment Companies; Final Rules

Registration Form for Insurance Company Separate Accounts Registered as Unit Investment Trusts That Offer Variable Life Insurance Policies; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, 240, 270, and 274

[Release Nos. 33–7512; 34–39748; IC–23064; File No. S7–10–97]

RIN 3235–AE46

Registration Form Used by Open-End Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission is adopting amendments to Form N–1A, the form used by mutual funds to register under the Investment Company Act of 1940 and to offer their shares under the Securities Act of 1933. The amendments are intended to improve fund prospectus disclosure and to promote more effective communication of information about funds to investors. The amendments focus the disclosure in a fund's prospectus on essential information about the fund that will assist investors in deciding whether to invest in the fund. The amendments also minimize prospectus disclosure about technical, legal, and operational matters that generally are common to all funds.

DATES:

Effective Date: June 1, 1998.

Compliance Dates:

1. *Initial Compliance Date:* All new registration statements filed on or after December 1, 1998 must comply with the amendments to Form N–1A.

2. *Final Compliance Date:* All funds with effective registration statements must comply with the amendments to Form N–1A for post-effective amendments filed to update their registration statements on or after December 1, 1998, and no later than December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen K. Clarke, Assistant Director, Markian M.W. Melnyk, Deputy Chief, George J. Zornada, Team Leader, Jonathan F. Cayne, Senior Counsel, John M. Ganley, Senior Counsel, Doretha M. VanSlyke, Attorney, (202) 942–0721, Office of Disclosure Regulation, or Anthony A. Vertuno, Senior Special Counsel, (202) 942–0591, Office of the Associate Director (Legal and Disclosure), Division of Investment Management, Securities and Exchange Commission, 450 5th Street, N.W., Mail Stop 5–6, Washington, D.C. 20549–6009. Contact the Office of Chief Counsel, Division of Investment Management, Securities and Exchange Commission, at (202) 942–0659, 450 5th Street, N.W., Mail Stop 5–6, Washington, D.C. 20549–6009 for additional information, including interpretive guidance, about this release or Form N–1A, as amended, and related rules.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting amendments to Form N–1A [17 CFR 274.11A], the registration form used by open-end management investment companies ("funds") to register under the Investment Company Act of 1940 [15 U.S.C. 80a–1, *et seq.*] ("Investment Company Act") and to offer their shares under the Securities Act of 1933 [15 U.S.C. 77a, *et seq.*] ("Securities Act"). The Commission also is adopting technical amendments to rules 483, 485, 495, and 497 under the Securities Act [17 CFR 230.483, 230.485, 230.495, and 230.497]. In a companion release, the Commission is adopting new rule 498 [17 CFR 230.498] under the Securities Act and the Investment Company Act that permits a fund to provide investors with a new short-form document, called a "profile," which summarizes key information about the fund. If a fund makes a profile available, an investor would have the option of purchasing the fund's shares after reviewing the information in the profile or after requesting and reviewing the fund's prospectus (and other information about the fund) before making a decision about investing in the fund. An investor deciding to purchase a fund's shares based on a profile will receive a copy of the fund's prospectus with the purchase confirmation.[1]

Table of Contents

I. Introduction and Background

Over the last decade, the mutual fund industry has grown enormously both in total assets and in the number of funds.[2] Today, fund assets exceed the deposits of commercial banks.[3] Coincident with the explosive growth of fund investments, the business operations of many funds have become increasingly complex as funds offer new investment options and a wider variety of shareholder services. These factors, combined with new and more sophisticated fund investments, have resulted in fund prospectuses that often include long and complicated disclosure, as funds explain their operations, investments, and services to investors.

Many have criticized fund prospectuses, finding them unintelligible, tedious, and legalistic.[4]

[1] Investment Company Act Release No. 23065 (Mar. 13, 1998) ("Profile Adopting Release").

[2] See Investment Company Institute ("ICI"), Mutual Fund Fact Book 16–23 (37th ed. 1997) ("ICI Fact Book") and ICI, Trends in Mutual Fund Investing: September 1997, at 3 (Oct. 30, 1997) (ICI News No. 97–93) ("ICI Trends") (between 1990 and 1997, fund assets increased from $1.1 trillion to $4.4 trillion and the number of funds increased from 3,105 to 6,666).

[3] Compare ICI Trends at 1 (fund net assets exceeded $4.4 trillion as of Sept. 1997) with Federal Reserve Bank Statistical Release H.8: Assets and Liabilities of Commercial Banks in the United States (Nov. 7, 1997) (commercial bank deposits were approximately $3.0 trillion as of Oct. 1997).

[4] See, *e.g.*, The Investment Company Act Amendments of 1995: Hearings Before the Subcomm. on Telecommunications and Finance of

Although the prospectus remains the most complete source of information about a fund, technical and unnecessarily long prospectus disclosure often obscures important information about a fund investment and does not serve the informational needs of the majority of fund investors.[5] The millions of investors who turn to funds as their investment vehicle of choice[6] need clear and comprehensible information to help them evaluate and compare fund investments.

New Disclosure Initiatives

In seeking to improve the quality and usefulness of fund disclosure, the Commission proposed two major disclosure initiatives on February 27, 1997.[7] First, the Commission issued for public comment a release (the "Form N–1A Proposing Release") that proposed significant amendments to the prospectus disclosure requirements for funds (the "Proposed Amendments").[8] Second, the Commission proposed, in a companion release, new rule 498 under the Securities Act and the Investment Company Act that would allow a fund to offer investors the option to purchase its shares after reviewing the information in the fund's profile or after requesting and reviewing the fund's prospectus (and other information about the fund) before making a decision about investing in the fund.[9] As proposed, the profile (the "Proposed Profile") would summarize key information about a fund, including the fund's investment objectives, strategies, risks, performance, and fees. Under proposed rule 498, a fund would be required to send investors the fund's prospectus and certain other information within 3 business days of a request, and any investor purchasing the fund's shares on the basis of a profile would receive the prospectus with the purchase confirmation.

The Commission's disclosure initiatives were intended to: improve fund disclosure by requiring prospectuses to focus on information central to investment decisions; provide new disclosure options for investors; and enhance the comparability of information about funds. Taken together, these initiatives are designed to promote more effective communication of information about funds to investors without reducing the amount of information provided to investors. The Proposed Amendments reflected the Commission's strong belief that the primary purpose of the disclosure in a fund's prospectus is to help an investor make a decision about investing in the fund.[10] Consistent with this belief, the objective of the Proposed Amendments was to provide investors with prospectus disclosure that presents clear, concise, and understandable information about an investment in a fund.

Commenters expressed overwhelming support for the Commission's disclosure initiatives.[11] Commenters believed that the Commission's disclosure initiatives would enhance the quality of disclosure that funds provide to investors. Some commenters emphasized that improved disclosure about funds was long overdue and would substantially benefit investors. In particular, commenters strongly supported the Proposed Amendments as effective steps toward improving fund prospectuses. Commenters also provided numerous additional suggestions to improve prospectus disclosure. The Commission is adopting the initiatives substantially as proposed.

Prior Commission Disclosure Initiatives

The amendments to the prospectus disclosure requirements adopted today are another important step in the Commission's ongoing efforts to improve disclosure about funds. In 1983, the Commission introduced an innovative approach to prospectus disclosure by adopting a two-part disclosure format that permitted a fund to provide investors with a simplified prospectus containing essential information about the fund and to place more detailed information in a companion document called the "Statement of Additional Information" ("SAI"), which investors could obtain upon request.[12] The Commission intended that, under this format, a fund's prospectus would include essential information about the fund that would be most useful to typical or average investors in making an investment decision about the fund. The Commission contemplated that more detailed discussions of matters geared to the needs of more sophisticated investors would be available in the SAI, which all fund investors could obtain upon request. In adopting this new format, the Commission's goal was to provide investors with more useful information in "a prospectus that is substantially shorter and simpler, so that the prospectus clearly discloses the

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the House Comm. on Commerce, 104th Cong., 1st Sess. 56, 58 (1995) (statement of Don Powell, President and CEO of Van Kampen American Capital, Inc.) (noting the frequent complaint that prospectuses are too long, cumbersome, and legalistic); J. Bogle, Bogle on Mutual Funds 147 (1994); Rothchild, The War on Gobbledygook, Time, Oct. 31, 1994, at 51; Savage, SEC Doesn't Want 1987's Painful Lessons Forgotten, Chicago Sun-Times, Oct. 26, 1997, at 53; Sloan, Selling Attitude, Newsweek, June 17, 1996, at 52; Skrzycki, Prospectuses to be in English, Donkeys to Fly Tomorrow, Wash. Post, Oct. 21, 1994, at B1; "Taking the Mystery Out of Mutual Funds," Remarks by Arthur Levitt, Chairman, SEC, before the Boston Citizens Seminar, Boston, MA (Feb. 25, 1997); "Fulfilling the Promise of Disclosure," Remarks by Arthur Levitt, Chairman, SEC, before the American Savings Education Council, New York, NY (July 23, 1997).

[5] Levitt, Plain English in Prospectuses, N.Y. St. B. J., Nov. 1997, at 37 ("Levitt Article") ("[D]isclosure is not disclosure if it doesn't communicate."). See also Report on the OCC/SEC Survey of Mutual Fund Investors 12–13 (June 26, 1996) (although fund investors surveyed consulted the prospectus more than any other source of information about the fund they bought, they considered the prospectus only the fifth-best source of information, behind employer-provided written materials, financial publications, family or friends, and brokers); ICI, The Profile Prospectus: An Assessment by Mutual Fund Shareholders 4 (1996) ("ICI Profile Survey") (about half of fund shareholders surveyed had not consulted a prospectus before making a fund investment).

[6] U.S. households own 74.2% of the mutual fund industry's assets. ICI Fact Book, *supra* note 2, at 35.

[7] As part of these disclosure initiatives, the Securities and Exchange Commission (the "Commission") also proposed a new rule that would address investment company names that are likely to mislead investors about the investments and risks of an investment company. Investment Company Act Release No. 22530 (Feb. 27, 1997) [62 FR 10955], correction [62 FR 24161]. This proposed rule would require, among other things, funds and other registered investment companies with names suggesting a specific investment emphasis to invest at least 80% of their assets in the type of investment suggested by their name. The Commission received a number of substantive comments on the proposed rule, many of which asserted that the proposal had flaws that the Commission should address. The Commission's Division of Investment Management (the "Division") is analyzing the comments and expects to recommend a final rule for Commission consideration in the near future.

[8] Investment Company Act Release No. 22528 (Feb. 27, 1997) [62 FR 10898], correction [62 FR 24160] ("Form N–1A Proposing Release").

[9] See Investment Company Act Release No. 22529 (Feb. 27, 1997) [62 FR 10943], correction [62 FR 24160] ("Profile Proposing Release").

[10] The Commission is adopting the amendments to Form N–1A under its authority in section 10(a) of the Securities Act [15 U.S.C. 77j(a)] based on its determination that certain disclosure requirements result in information that, while useful to some investors, is not necessary in the public interest or for the protection of investors to be included in the prospectus.

[11] Eighty-seven percent of the commenters supported the Proposed Amendments. The Commission received 78 comment letters on the Proposed Amendments, over half of which were from individual investors (44 letters or 57%). The Commission also received comment letters from 8 professional and trade associations, 13 fund groups, 4 law firms, 2 broker-dealers/investment advisers, and 7 other interested organizations. The comment letters, as well as a comment summary prepared by the Commission's staff, are available for public inspection and copying at the Commission's Public Reference Room in File No. S7–10–97. The Commission received 256 comment letters on the fund profile, a large number of which were from individual investors (226 letters or 88%). *See* Profile Adopting Release, *supra* note 1.

[12] Investment Company Act Release No. 13436 (Aug. 12, 1983) [48 FR 37928] ("1983 Form N–1A Adopting Release").

fundamental characteristics of the particular investment company * * *."[13]

Since 1983, the Commission has implemented a number of other initiatives to improve fund prospectus disclosure, including a uniform fee table[14] and a requirement that a fund's management discuss the fund's performance over the past year in its prospectus or annual report to shareholders (the management's discussion of fund performance ("MDFP")).[15] While these changes have provided investors with clear and helpful information about fund expenses and performance, they were not intended to address the overall effectiveness of Form N–1A's prospectus disclosure requirements. The Proposed Amendments and Form N–1A, as amended, reflect the Commission's view that current prospectus disclosure must be considered on a comprehensive basis to ensure that the prospectus, as a whole, meets the information needs of investors.

Reassessment of Fund Disclosure

The Commission's recent efforts to improve disclosure began with an evaluation of the use of a standardized, summary disclosure document that highlights key information about a fund. The Commission, with the cooperation of the Investment Company Institute ("ICI") and several large fund groups, conducted a pilot program permitting funds to use profile-like summaries ("Pilot Profiles") together with their prospectuses.[16] The program's purpose was to determine whether investors found the Pilot Profiles, which summarize important information about a fund, helpful in making investment decisions. Focus groups conducted on the Commission's behalf, and fund investors participating in a survey sponsored by the ICI, responded very positively to the profile concept.[17]

In considering fund disclosure issues, the Commission also has evaluated over 3,700 letters submitted in response to a release requesting comment on ways to improve risk disclosure in fund prospectuses, as well as the comparability of fund risk levels ("Risk Concept Release").[18] The commenters, mostly individual investors, confirmed the importance of risk disclosure in evaluating and comparing funds and emphasized the need to improve prospectus disclosure of fund risks. In particular, commenters indicated that current risk disclosure is difficult to understand and does not fully convey to investors the risks associated with an investment in a fund.

Plain English Initiatives

The fund disclosure initiatives being adopted today are part of the Commission's broad undertaking to bring sweeping revisions to prospectus disclosure for all public companies.[19] As part of its commitment to make all prospectuses simpler, clearer, and more useful, and to eliminate jargon and boilerplate, the Commission recently adopted rule amendments to require the use of plain English principles in drafting prospectuses and to provide other guidance on improving the readability of prospectuses.[20] The Commission's plain English principles reflect fundamentals of clear communication and contemplate disclosure documents that:

—Present information in an easily readable format;
—Use everyday language that investors can easily understand; and
—Eliminate repetition of disclosure that lengthens a document and overwhelms the investor.

Improved Fund Disclosure

As one commenter on the disclosure initiatives pointed out, the Commission's proposals reflect an unprecedented number and variety of public comments and expert views, the results of Commission and other research, and broad investor input. The Commission agrees with the commenter's further observation that the Commission has never had a more detailed, comprehensive, and compelling basis for a rulemaking than that developed for the fund disclosure initiatives. Through focus groups and written comments on the initiatives, investors have confirmed that they concur strongly with the Commission's view that fund disclosure documents will be useful only if they communicate information effectively. The Commission has designed both the fund prospectus and profile initiatives to meet this goal. The amendments to Form N–1A seek to make the prospectus, which will remain a fund's primary disclosure document, a more effective tool by focusing its contents on information that is essential to an investment in the fund. The profile responds to investors' strongly expressed desire for a new, concise disclosure document that summarizes key fund information and helps investors evaluate and compare funds more easily.

To encourage the use of disclosure that communicates effectively, the Commission's fund disclosure initiatives include a number of important innovations:

—The initiatives provide for a standardized risk/return summary at the beginning of every fund prospectus and in the profile that:[21]
—Concisely summarizes information in a specific sequence about a fund's investment objectives, strategies, risks and performance, and fees;
—Discusses the risks of a fund's portfolio taken as a whole and minimizes detailed and technical descriptions of the risks associated with specific portfolio securities potentially held by the fund; and
—Provides a graphic presentation of a fund's annual returns over a 10-year period in a bar chart that illustrates the variability of the fund's returns and gives investors some idea of the risks of an investment in the fund. To help investors evaluate a fund's risks and returns relative to "the market," a table accompanying the bar chart compares the fund's average annual returns for 1, 5, and 10 years with that of a broad-based securities market index.
—The initiatives require a fund to prepare disclosure documents using plain English disclosure, which is designed to give investors

[13] Investment Company Act Release No. 12927 (Dec. 27, 1982) [48 FR 813, 814] ("1982 Form N–1A Proposing Release").

[14] See Item 3 of current Form N–1A; Investment Company Act Release No. 16244 (Feb. 1, 1988) [53 FR 3192] ("Fee Table Adopting Release").

[15] Item 5A of current Form N–1A; Investment Company Act Release No. 19382 (Apr. 6, 1993) [58 FR 19050] ("MDFP Adopting Release").

[16] See Investment Company Institute (pub. avail. July 31, 1995) ("1995 Profile Letter"); Investment Company Institute (pub. avail. July 29, 1996) ("1996 Profile Letter"). The Division permitted the pilot program to continue pending the adoption of proposed rule 498. Investment Company Institute (pub. avail. July 16, 1997) ("1997 Profile Letter"). After the effective date of new rule 498, a fund could continue to use a Pilot Profile as supplemental sales literature. See Profile Adopting Release, *supra* note 1.

[17] See ICI Profile Survey, *supra* note 5, at 31–32.

[18] See Investment Company Act Release No. 20974 (Mar. 29, 1995) [60 FR 17172] ("Risk Concept Release").

[19] See Levitt Article, *supra* note 5, at 36.

[20] Rule 421 under the Securities Act [17 CFR 230.421]. See Securities Act Release No. 7497 (Jan. 28, 1998) [63 FR 6370] ("Plain English Release") and discussion *infra* Section II.D.2. As part of the plain English initiatives, the Commission plans to issue A Handbook on Plain English: How to Create Clear SEC Disclosure Documents, prepared by the Commission's Office of Investor Education and Assistance.

[21] These improvements are based in large part on comments received in response to the Risk Concept Release. See Risk Concept Release, *supra* note 18. The Commission also considered other information about fund risk disclosure, including the results of an investor survey sponsored by the ICI. See ICI, Shareholder Assessment of Risk Disclosure Methods (1996) ("ICI Risk Survey").

understandable disclosure documents.
—The initiatives eliminate prospectus clutter that obscures other information helpful to investors when making a decision about an investment in a fund. Specifically, the amendments to prospectus disclosure requirements:
—Move certain disclosure about fund organization and legal requirements from the prospectus to the SAI;
—Permit a fund that is offered as an investment alternative in a participant-directed defined contribution plan (or certain other tax- advantaged arrangements) to tailor its prospectus for the plan (or other arrangement);
—Update and incorporate certain staff interpretive positions into Form N–1A;[22] and
—Simplify current disclosure instructions to provide clearer guidance for preparing and filing fund registration statements.

Disclosure Principles

The Commission believes that, in revising Form N–1A and in providing for the use of profiles, it has laid the foundation for the development of fund disclosure documents of a significantly higher quality than those often used today, which have drawn the consistent criticism of fund investors and others. If the initiatives are to have their intended effect, however, all those who participate in the preparation and review of those documents—funds, their legal counsels and other advisors, the Commission and its staff, and other regulators and their staffs—should act consistently with the basic disclosure principles that serve as the cornerstones of the initiatives. These principles, which are referred to throughout this release, include the following:

—Funds should design disclosure documents, particularly their prospectuses, first and foremost, to communicate information to investors effectively. Funds should present information in prospectuses following the principles of plain English, using language that is concise, straightforward, and easy to understand.
—A fund's prospectus principally should include essential information about the fundamental characteristics of, and risks of investing in, the fund. Whenever possible, a fund should present this information in a manner that:
—Assists investors in comparing and contrasting the fund with other funds;
—Avoids simply restating legal or regulatory requirements to which funds generally are subject; and
—Avoids a disproportionate emphasis on possible investments or activities of the fund that are not a significant part of the fund's investment operations.
—Funds should limit disclosure in prospectuses generally to information that is necessary for an average or typical investor to make an investment decision. Detailed or highly technical discussions, as well as information that may be helpful to more sophisticated investors, dilute the effect of necessary prospectus disclosure and should be placed in the SAI.
—Prospectus disclosure requirements should not lead to lengthy disclosure that discourages investors from reading the prospectus or obscures essential information about an investment in a fund.

The Commission has instructed its staff to use these principles consistently in administering the requirements of both amended Form N–1A and new rule 498 and strongly encourages all other participants in the development of fund disclosure documents to apply these principles in preparing their prospectuses and profiles.[23]

II. Discussion

A. Part A—Information in the Prospectus

Form N–1A, as amended, retains the overall structure of current Form N–1A. The most significant changes to Form N–1A adopted today are the new risk/return summary at the beginning of the prospectus and improved disclosure about the risks of investing in a fund. This release first addresses these changes and then discusses other changes to substantive prospectus disclosure requirements in Part A of Form N–1A.[24] Following this discussion, the release describes revisions to requirements for information on the front and back cover pages of the prospectus, the General Instructions to Form N–1A, which have been updated and revised to make them easier to use, and other technical revisions to Form N–1A's requirements.[25]

1. Risk/Return Summary: Investments, Risks, and Performance (Item 2)

The Commission proposed to require a risk/return summary at the beginning of every prospectus that would provide key information about a fund's investment objectives, principal strategies, risks, performance, and fees. The risk/return summary, also included in the Proposed Profile, was intended to respond to investors' strong preference for summary information about the fund in a standardized format.[26] The proposed risk/return summary in a fund's prospectus would provide investors with a type of "executive summary" of key information about the fund in a standardized, easily accessible place that investors could use to evaluate and compare the fund to others, regardless of whether the fund uses a profile.

While most commenters supported the proposed risk/return summary, several questioned whether it was necessary in a prospectus. These commenters argued that the summary could repeat other information in the prospectus and that it would undermine the Commission's goal of making prospectus disclosure clear and concise.

The Commission is of the view that the prospectus risk/return summary will not undermine, but further, the goal of making prospectuses more useful for investors. The Commission believes that

[22] The amendments contemplate further that the Division will consolidate its interpretive positions under the Investment Company Act relating to, among other things, fund operations in a new "Investment Company Registration Guide" ("Registration Guide"). The Registration Guide is discussed *infra* Section II.D.6. Form N–1A, as amended, incorporates certain staff disclosure requirements to identify those requirements that would apply to all funds regardless of their particular circumstances. Among other things, this approach addresses disclosure requirements that have been developed in connection with an issue presented by a specific fund, but applied to all funds regardless of their particular circumstances.

[23] The Commission expects that these disclosure principles also will provide useful guidance in resolving disclosure issues relating to funds under the federal securities laws as these issues arise from time to time. See discussion of administration of Form N–1A, *infra* Section II.F.

[24] A chart in Appendix A to this release compares the revised Items in Form N–1A, as amended, to the current Items in Form N–1A.

[25] Form N–1A, as amended, incorporates certain disclosure requirements from the Guidelines to current Form N–1A (the "Guides") and the Generic Comment Letters ("GCLs") that have been issued over time by the Division. See Letters to Registrants (Jan. 11, 1990) ("1990 GCL"); (Jan 3, 1991) ("1991 GCL"); (Jan. 17, 1992) ("1992 GCL"); (Feb. 22, 1993) ("1993 GCL"); (Feb. 25, 1994) ("1994 GCL"); (Feb. 3, 1995) ("1995 GCL"); (Feb. 16, 1996) ("1996 GCL"). For a discussion of the Guides and the GCLs, see *infra* notes 209–215 and accompanying text.

[26] Participants in focus groups conducted on the Commission's behalf ("Focus Groups"), for example, expressed strong support for summary information in a standardized format. Many individuals in commenting on the profile initiative have confirmed the need for concise, summary information relating to a fund. See also Joe Six-Pack: Public Favors Profile Plan, Fund Action, Oct. 1997, at 9; Profile Prospectuses: An Idea Whose Time Has Come, Mutual Funds Magazine, Aug. 1996, at 11.

the disclosure in the risk/return summary need not generally repeat other information in the prospectus; much of the summary consists of information that Form N–1A would not require to be disclosed elsewhere in the prospectus, such as the bar chart, performance table, and fee table. The Commission has concluded that the possibility that the risk/return summary could repeat some information appearing elsewhere in the prospectus is outweighed by the benefits of providing investors with standardized and comparable fund information at the beginning of every prospectus and in the profile. Thus, the Commission is adopting the requirement that every prospectus and profile contain a risk/return summary.[27]

The Commission proposed to require that the risk/return information in the prospectus, like that in the Proposed Profile, appear in a specific sequence and in a question-and-answer format. Many commenters objected to the question-and-answer format, stating, among other things, that rigid adherence to the format would not necessarily result in effective communication of information to investors.[28] To allow funds to design effective disclosure documents, the Commission has determined not to require this format in the prospectus or the profile. Any fund that chose to do so could use a question-and-answer format in its prospectus, profile, or in both documents.

a. Investment Objectives and Principal Strategies. The Proposed Amendments would require a fund to disclose its investment objectives in the risk/return summary and to summarize, based on the information provided in its prospectus, how the fund intends to achieve those objectives. The purpose of the proposed disclosure was to provide a summary of the fund's principal investment strategies, including the specific types of securities in which the fund principally invests or will invest, and any policy of the fund to concentrate its investments in an industry or group of industries.[29] The Commission is adopting this requirement as proposed.[30]

The information contained in the risk/return summary about a fund's investment objectives and principal strategies is intended to meet the needs of an average or typical fund investor. Recognizing that disclosure about a fund's specific portfolio holdings may be important to some investors, the Proposed Amendments would require a fund to inform investors in its prospectus risk/return summary that additional information about the fund's investments is available in the fund's shareholder reports.[31] While supporting the proposed disclosure, most commenters suggested placing statements about how investors can obtain a fund's SAI, shareholder reports, and other information about the fund on the back cover page of the prospectus. According to these commenters, this disclosure would be easier for investors to find if it were located in one place rather than in different places in the prospectus. The Commission agrees with the commenters that typical fund investors may find a single reference to the availability of additional information helpful. Therefore, Form N–1A, as amended, requires all disclosure about the availability of additional information to appear on the back cover page of the prospectus.[32] The Commission is adopting the disclosure as proposed, with minor adjustments to the language to ensure that the disclosure clearly explains the availability of additional information about a fund to a typical investor.[33]

b. Risks. Summary Risk Disclosure. The Proposed Amendments would require the risk/return summary to include a discussion of the principal risks of investing in a fund that summarizes information about those risks set out in the fund's prospectus. Reflecting the Commission's proposed new approach to risk disclosure, this discussion was intended to summarize the risks of a fund's anticipated portfolio holdings as a whole, and the circumstances reasonably likely to affect adversely the fund's net asset value, yield, and total return. Commenters generally supported the summary risk disclosure contemplated by the Proposed Amendments, agreeing that it would be specific and brief and would assist investors in identifying the principal risks of investing in a particular fund. The Commission is adopting this disclosure requirement with modifications to reflect certain commenters' suggestions.[34]

Several commenters asked the Commission to clarify the scope of the proposed summary risk disclosure, arguing that the requirement would not serve its purpose if the risk disclosure simply repeated information from other sections of the prospectus. In the Commission's view, the purpose of the summary risk disclosure in a fund's prospectus is to identify briefly the principal risks of investing in the particular fund and to emphasize those risks reasonably likely to affect the fund's performance. In light of this purpose, the Commission expects a fund, in meeting this requirement, to present only a succinct summary of the principal risks of investing in the fund and not to repeat the fuller discussion of these risks required elsewhere in the prospectus.[35] On the other hand, the Commission believes that it generally would be inconsistent with the summary risk requirement for a fund to include a "laundry list" of generic risk factors that may apply to any fund and

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[27] Items 2 and 3. Consistent with the goal of providing key information in a standardized summary, General Instruction C.3(b) to Form N–1A, as amended, precludes a fund from including information in the prospectus risk/return summary that is not required or otherwise permitted by Items 2 and 3. Form N–1A, as amended, does not require a fund to include any risk disclosure elsewhere in the prospectus if the requirements of Item 4 of Form N–1A are met by the disclosure in the fund's risk/return summary (*i.e.*, if a fund is able to describe its risks, as required by Item 4, in its risk/return summary, the fund would not need to describe those risks elsewhere in its prospectus).

[28] See Profile Adopting Release, *supra* note 1 (discussing commenters' critiques of the question-and-answer format).

[29] See *infra* notes 91–101 and accompanying text (discussing the criteria for determining whether a particular strategy is a principal strategy and disclosure about concentration policies).

[30] Items 2 (a) and (b).

[31] The Commission proposed that the prospectus risk summary refer to fund shareholder reports. A fund's reports to its shareholders typically contain a discussion by the fund's management of the fund's performance ("MDFP"). The Commission believes that the information in a fund's MDFP, including the discussion of the fund's performance during its most recent fiscal year, could be useful to some investors considering an investment in the fund.

The Proposed Amendments would require the risk/return summary to provide disclosure to the following effect:

Additional information about the fund's investments is available in the fund's annual and semi-annual reports to shareholders. In particular, the fund's annual report discusses the relevant market conditions and investment strategies used by the fund's investment adviser that materially affected the fund's performance during the last fiscal year. You may obtain these reports at no cost by calling _____.

[32] Item 1(b). Rule 498, as adopted, requires this disclosure to appear in the profile risk/return summary. See Profile Adopting Release, *supra* note 1.

[33] The Commission has made a few revisions to the disclosure about the availability of additional information to make it clearer and more understandable for investors. Item 1(b)(1) of Form N–1A, as amended, requires a fund (other than a new fund) to include disclosure to the following effect on the back cover page of its prospectus:

Additional information about the fund's investments is available in the fund's annual and semi-annual reports to shareholders. In the fund's annual report, you will find a discussion of the market conditions and investment strategies that significantly affected the fund's performance during its last fiscal year.

[34] Item 2(c).

[35] See discussion of risk disclosure, *infra* Section II.A.3.b.

that does not identify the risks of investing in the fund.

The Commission proposed to require that the prospectus risk summary identify the types of investors for whom the fund may be an appropriate or inappropriate investment.[36] Commenters either opposed or raised significant concerns about this provision, arguing that it could be viewed as requiring a fund to determine whether its shares, among other things, are a suitable investment for a particular investor.[37] Commenters also stated that the disclosure would tend to be generic and not meaningful or useful for investors.

The Commission is persuaded by commenters that disclosure about the appropriateness of funds for particular investors should not be required in all fund prospectuses and has deleted this requirement from the prospectus risk summary. The Commission believes, however, that disclosure indicating whether a fund is appropriate for specific types of investors or is consistent with certain investment goals, even if generic in nature, may be useful for some investors and may provide a means for the fund to distinguish itself from other investment alternatives.[38] Therefore, Form N–1A, as amended, permits, but does not require, a fund to include disclosure in the narrative risk summary about the types of investors for whom the fund is intended or the types of investment goals that may be consistent with an investment in the fund.[39]

Under the Proposed Amendments, a fund could choose to discuss the potential rewards of investing in the fund in the risk summary as long as the discussion provided a balanced presentation of the fund's risks and rewards. One commenter strongly questioned this provision of the proposal, asserting that it would detract from a clear presentation of risks in the risk summary. The Commission has reconsidered this disclosure in light of the intended standardized and summary nature of the risk summary and has concluded that the disclosure should focus solely on the risks of investing in a fund. Thus, the Commission has determined to eliminate the option to describe the rewards of investing in a fund in the risk summary. A fund desiring to add this disclosure elsewhere in its prospectus can do so subject to Form N–1A's general rule with respect to information that is not required to be in a prospectus. Under this general rule, a fund can disclose this information, so long as it is not incomplete or misleading and would not obscure or impede understanding of the information that is required to be in the prospectus.[40]

Special Risk Disclosure Requirements. The Proposed Amendments were intended to simplify the prospectus cover page and to avoid repeating information on the cover page and in the risk summary discussion. In seeking to meet this goal, the Commission proposed to move certain cover page disclosure requirements relating to the risks associated with specific types of funds to the risk summary where, the Commission believed, it would be more meaningful to investors.

Form N–1A currently requires that each money market fund[41] disclose on the cover page of its prospectus that an investment in the fund is neither insured nor guaranteed by the U.S. Government and that there can be no assurance that the fund will be able to maintain a stable net asset value of $1.00 per share. This required disclosure is intended to alert investors that investing in a money market fund is not without risk.[42] In addition to moving this disclosure to the risk summary, the Proposed Amendments would simplify the technical disclosure that a money market fund may not be able to maintain a stable net asset value.[43] Commenters supported the proposed disclosure for money market funds, and the Commission is adopting it as proposed.[44]

Form N–1A currently requires specific prospectus cover page disclosure for a tax-exempt money market fund that concentrates its investments in a particular state (a "single state money market fund"). Each such fund is required to disclose that it may invest a significant percentage of its assets in a single issuer and that investing in the fund may be riskier than investing in other types of money market funds. This disclosure was intended to make investors aware of special risks that could be associated with an investment in a single state money market fund.[45] In the Form N–1A Proposing Release, the Commission asked whether it should continue to require this disclosure in prospectuses. The Commission noted that this disclosure may exaggerate the risk of investing in a single state money market fund. As the Form N–1A Proposing Release pointed out, although these funds are subject to less stringent issuer diversification provisions under Commission rules than other money market funds, they are subject to credit quality and maturity investment restrictions that are comparable to other money market funds.[46]

In response to the Commission's question regarding single state money market funds, commenters indicated that the special disclosure now required

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[36] As discussed in the Form N–1A Proposing Release, *supra* note 8, at 10902, the purpose of this disclosure was to help investors evaluate and compare funds based on their investment goals and individual circumstances.

[37] As several commenters pointed out, applicable regulatory rules for brokers and other investment professionals require that these determinations be made on the basis of a review of information about the unique circumstances of an individual investor. See, *e.g.*, rule 2310(a) of the National Association of Securities Dealers, Inc. ("NASD") Conduct Rules, NASD Manual (CCH) 4261 (suitability of recommendations to customers) and rule 405 of the New York Stock Exchange, 2 N.Y.S.E. Guide (CCH) ¶2403 (the "know your customer" rule).

[38] In a recent review of fund prospectuses, the Division found many examples of this type of disclosure, which was usually included in a fund's discussion of the risks associated with an investment in the fund. For example, one fund disclosed that it was not an appropriate investment for investors seeking either preservation of capital or high current income or for those investors unable to assume the increased risks of higher price volatility and currency fluctuations associated with investments in international equities traded in non-U.S. currencies. Another fund urged investors to remember that the fund was an aggressive capital appreciation fund designed for long-term investors for a portion of their investments and was not designed for investors seeking income or conservation of capital. Tax-exempt funds frequently stated that an investment in the fund is not appropriate for Individual Retirement Accounts or other tax-advantaged accounts.

[39] Instruction to Item 2(c)(1)(i).

[40] See General Instruction C.3(b).

[41] For these purposes, a money market fund is defined as a fund that holds itself out to investors as a money market fund and meets the conditions of paragraphs (c)(2), (c)(3), and (c)(4) of rule 2a–7 under the Investment Company Act [17 CFR 270.2a–7]. General Instruction A.

[42] See Investment Company Act Release Nos. 17589 (July 17, 1990) [55 FR 30239, 30247] and 18005 (Feb. 20, 1991) [56 FR 8113, 8123] (proposing and adopting revisions to rule 2a–7 for money market funds).

[43] The Proposed Amendments would require the following disclosure:

An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in the Fund.

[44] Item 2(c)(1)(ii).

[45] Form N–1A currently does not require this disclosure if, with respect to 100% of its assets, a fund limits its investments in a single issuer to no more than 5% of its assets.

[46] See Form N–1A Proposing Release, *supra* note 8, at 10904. Under rule 2a–7, a "national" tax-exempt money market fund generally is limited to investing no more than 5% of its assets in the securities of a single issuer. For a single state money market fund, the 5% single issuer limitation applies with respect to 75% of the fund's assets. This limitation recognizes that single state money market funds concentrate their investments in debt securities issued by a single state (or issuers located within that state), making diversification more difficult to achieve. See Investment Company Act Release Nos. 21837 (Mar. 21, 1996) [61 FR 13956] and 22921 (Dec. 2, 1997) [62 FR 64968].

on the cover page of fund prospectuses overstates the risks of investing in single state money market funds, particularly in view of the minimal risk that commenters asserted is associated with these funds. The Commission is persuaded by these comments and has determined not to require the disclosure in Form N–1A.

Form N–1A currently requires a fund that is advised by or sold through a bank to disclose on the cover page of its prospectus that the fund's shares are not deposits or obligations of, nor guaranteed or endorsed by, the bank, and that the shares are not insured by the Federal Deposit Insurance Corporation ("FDIC") or any other government agency.[47] This disclosure is intended to alert investors that funds advised by or sold through banks are not federally insured.[48] The Commission proposed to move this disclosure to the prospectus risk summary and to simplify the wording of the current disclosure required for funds advised by or sold through banks.[49] Commenters supported the revised disclosure requirements for bank-sold funds, and the Commission is adopting them substantially as proposed.[50]

Risk/Return Bar Chart and Table. The Proposed Amendments would require a fund's risk/return summary to include a bar chart showing the fund's annual returns for each of the last 10 calendar years and a table comparing the fund's average annual returns for the last 1-, 5-, and 10-fiscal years to those of a broad-based securities market index. Commenters generally supported the proposed bar chart and performance table, but had a number of suggestions about the content and presentation of the information in both. The Commission is adopting the proposed bar chart and table requirements with modifications to reflect suggestions of commenters.[51]

The bar chart reflects the Commission's determination that investors need improved disclosure about the risks of investing in a fund. The bar chart is intended to illustrate graphically the variability of a fund's returns (*e.g.*, whether a fund's returns for a 10-year period have changed significantly from year to year or were relatively even over the period) and thus provide investors with some idea of the risk of an investment in the fund.[52] The average annual return information in the table should enable investors to evaluate a fund's performance and risks relative to "the market."

In the Form N–1A Proposing Release, the Commission requested comment about alternative presentations that could improve fund risk disclosure.[53] In particular, the Commission expressed interest in disclosure that would show a fund's highest and lowest returns (or "range" of returns) for annual or other periods as an alternative, or in addition, to the bar chart. The Commission suggested that a fund could present the information in a separate table or could include it in the performance table.

In response to the Commission's request, some commenters suggested including in a fund's bar chart one or more indexes or other benchmarks (such as 3-month Treasury returns or the rate of inflation) to help investors evaluate the fund's returns by comparisons to other measures of market performance or economic factors.[54] Most commenters, however, opposed requiring additional information in the bar chart, asserting that it could complicate and reduce the effectiveness of the bar chart.

Several commenters supported the inclusion of return information in the bar chart on a quarterly or semi-annual rather than an annual basis. They argued that this change to the bar chart would respond to concerns that investors may not sufficiently appreciate that an investment in a fund may be subject to the risk of a short-term decline in value. This risk, commenters asserted, may not be apparent from the annual returns proposed to be shown in the bar chart. One commenter recommended that the Commission require quarterly returns in the bar chart so that investors would have more information about returns over shorter periods to use in assessing the variability reflected in a fund's past returns. The commenter argued that including returns on an annual basis in the bar chart may not show a significant amount of shorter-term price fluctuation.

The Commission acknowledges that a fund's returns may vary significantly and could decrease in value over short periods and that the annual returns in the bar chart will not necessarily reflect this pattern. On the other hand, the Commission is concerned that requiring quarterly returns over a 10-year period would make the bar chart more complex and less useful in communicating information to investors. In balancing the desire to make typical fund investors aware that fund shares may

[47] 1994 GCL, *supra* note 25; Letter to Registrants from Barbara J. Green, Deputy Director, Division of Investment Management, SEC (May 13, 1993) ("Division Bank Letter").

[48] See Division Bank Letter, *supra* note 47. See also Testimony of Ricki Helfer, Chairman, Federal Deposit Insurance Corporation ("FDIC"), on FDIC Survey of Nondeposit Investment Sales at FDIC-Insured Institutions Before the Subcomm. on Capital Markets, Securities, and Government Sponsored Enterprises of the House Comm. on Banking and Financial Services, 104th Cong., 2d Sess. (June 26, 1996) (citing surveys in October 1995 and April 1996 indicating that approximately one-third of bank customers either thought that, or did not know whether, funds sold through banks were insured).

[49] The Proposed Amendments would require a fund that is not a money market fund but is advised by or sold through a bank to disclose that its shares are not federally insured as follows:

An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.

[50] Item 2(c)(1)(iii). Some commenters asserted that the proposed disclosure was inconsistent with that required by bank regulators in the Interagency Statement on Retail Sales of Nondeposit Investment Products. See Board of Governors of the Federal Reserve System, FDIC, Office of the Comptroller of the Currency, and Office of Thrift Supervision, Interagency Statement on Retail Sales of Nondeposit Products, 6 Fed. Banking L. Rep. (CCH) ¶70–113, at 82,598 (Feb. 15, 1994) ("Interagency Statement") (requiring disclosure that the fund is not a deposit or other obligation of the bank). The Commission has confirmed with these bank regulators that no such inconsistency exists, because the disclosure required by the Interagency Statement applies to sales material and not to fund prospectuses. In response to suggestions from the bank regulators, the Commission has revised the legend required for funds that are advised by or sold through banks, to read as follows:

An investment in the Fund is not a deposit of the bank and is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.

The requirement, as amended in this way, is consistent with the requirement now in effect.

[51] Item 2(c)(2). An example of the bar chart and performance table is attached as Appendix B to this release.

[52] In adopting the bar chart requirement, the Commission does not mean to suggest that all, or even a significant portion of all, fund investors equate variability in a fund's returns with the risks of investing in the fund. As discussed below, the Commission acknowledges that investors have a wide range of ideas of what "risk" means. See infra Section II.A.3. Nonetheless, the Commission's bar chart proposal was supported by many investors who expressed strong interest in seeing prospectuses include a version of the bar chart. Focus group participants, for instance, found the bar chart helpful in evaluating and comparing fund investments. Over 75% of individual investors responding to the Risk Concept Release favored a bar chart presentation of fund volatility. Risk Concept Release, *supra* note 18. See also ICI, Understanding Shareholders' Use of Information and Advisers (1997) ("ICI Shareholder Use Study") at 20 and 30 (discussing investors' interest in receiving and understanding fund risk information) and ICI Risk Survey, *supra* note 21. In addition, all commenters responding to the Commission's initiative to simplify money market fund prospectuses supported the proposal to replace the financial highlights information in money market fund prospectuses with a 10-year bar chart reflecting a money market fund's yield. *See* Summary of Comment Letters on Proposed Amendments to the Rules Regulating Money Market Fund Prospectuses Made in Response to Investment Company Act Release No. 21216, at 2 (File No. S7–21–95).

[53] See Form N–1A Proposing Release, *supra* note 8, at 10907.

[54] Form N–1A, as amended, permits a fund to use other indexes in the presentation of the average annual return information in the table accompanying the bar chart. Instruction 2(b) to Item 2(c)(2).

experience fluctuations over shorter periods with its underlying goal that fund documents communicate information in as straightforward and uncomplicated a manner as possible, the Commission has determined to require a fund to disclose, in addition to the bar chart, its best and worst returns for a quarter during the 10-year (or other) period reflected in the bar chart.[55] The Commission believes that this information will assist investors in understanding the variability of a fund's returns and the risks of investing in the fund by illustrating, without adding unwarranted complexity to the bar chart, that the fund's shares may be subject to short-term price fluctuations.

Presentation of Return Information. The Proposed Amendments would require a fund to include the bar chart and table in the risk section of the prospectus risk/return summary under a separate sub-heading that referred to both risk and performance. Several commenters argued that the separate sub-heading requirement was unnecessary and suggested that a fund should be able to choose whether to include any sub-heading. Consistent with the objective of encouraging funds to develop disclosure formats that are most helpful to investors, Form N–1A, as amended, does not require the sub-heading included in the Proposed Amendments.[56] To help investors use the information in the bar chart and table, Form N–1A, as amended, however, does require a fund to provide a brief narrative explanation of how the information illustrates the variability of the fund's returns.[57]

Bar Chart Return Information. The Proposed Amendments would require that a fund's prospectus bar chart show the fund's annual returns for the last 10 calendar years of the fund's existence. The purpose of the calendar year requirement was to facilitate the comparison of annual returns among funds, which typically have fiscal periods that do not correspond to the calendar year.[58] Unlike the proposed bar chart, the proposed performance table required disclosure of a fund's returns for fiscal year periods. In requiring this disclosure to be made for fiscal year periods, the proposal was consistent with existing disclosure requirements for the presentation of other financial information included in a fund's prospectus.

Several commenters argued that using different time periods for the proposed bar chart and performance table would confuse investors and urged the Commission to minimize potential investor confusion by adopting consistent time periods for this information. The Commission is persuaded by these comments and believes that requiring both the bar chart and the performance table to be based on calendar year periods will promote understandable information in fund prospectuses. Therefore, Form N–1A, as amended, requires calendar year periods for both the bar chart and table.[59] Rule 498, as adopted, also requires the bar chart and table in the profile to show calendar year data so that both the profile and the prospectus of a fund will have virtually the same risk/return information.[60]

The Commission is adopting, as proposed, the requirement that a fund calculate the annual returns in the bar chart using the same method required for calculating annual returns in the financial highlights information included in fund prospectuses.[61] The bar chart does not reflect sales loads assessed upon the sale of a fund's shares, although the average annual return information for the fund in the table would reflect the payment of any sales loads.[62] Commenters generally supported this presentation of annual return information. The Commission believes that, in light of the different types of sales loads that may be charged on funds shares, it would be difficult for funds to compute annual returns for the purposes of the bar chart and to communicate the information effectively to investors.[63] In addition, the Commission has concluded that more precise return information is not necessary for the bar chart to serve the purpose of graphically showing fund annual returns and illustrating the variability of an investment in a fund over a 10-year period.

Bar Chart Presentation. The Proposed Amendments would allow a single bar chart to include return information for more than one fund. Most commenters supported the proposal, agreeing that it would give funds the appropriate amount of flexibility to present the information in the bar chart in a manner designed to assist investors in making investment decisions. Under Form N–1A, as amended, the bar chart may include returns for more than one fund, subject to the general requirement that the information presented in the bar chart appear in a clear and understandable manner.[64]

Multiple Class Funds. Although the Commission proposed to permit return information for more than one fund to be included in a single bar chart, the Proposed Amendments would require a fund offering more than one class of its shares in a prospectus to limit the information in the fund's bar chart to one class. Commenters uniformly supported this approach, and the Commission is adopting it as proposed.[65] Unlike individual funds, classes of a fund represent interests in the same portfolio of securities, and the returns of each class differ only to the extent the classes do not have the same expenses. The Commission believes that including return information for all classes offered through a fund's prospectus is not necessary to provide some indication of the risks of investing in the fund. In addition, the table accompanying such a fund's bar chart would provide return information for each class offered in the prospectus so that investors would be able to identify and compare the performance of each class.[66]

The Proposed Amendments would require the bar chart of a fund offering more than one class of shares through a prospectus to reflect annual return

[55] Item 2(c)(2)(ii).

[56] General Instruction C.1(a) to Form N–1A, as amended, encourages funds to use document design techniques that promote effective communication.

[57] Item 2(c)(2)(i).

[58] The Commission understands that funds increasingly organize themselves as series companies and tend to stagger the financial periods of their series so that audits and financial reporting periods are spread over an entire calendar year.

[59] Item 2(c)(2). Form N–1A, as amended, requires a fund to have at least one calendar year of returns before including the bar chart and requires a fund to modify the narrative explanation accompanying the bar chart and table if the fund does not include the bar chart (*e.g.*, by stating that the information gives some indication of the risks of an investment in the fund by comparing the fund's performance with a broad measure of market performance). Form N–1A, as amended, also requires the bar chart of a fund in operation for fewer than 10 years to include calendar year returns for the life of the fund.

[60] Rule 498(c)(2)(iii). Unlike Form N–1A, as amended, rule 498, as adopted, requires average annual return information in the performance table in the profile to be as of the most recent calendar quarter and updated as soon as practicable after each quarter of a calendar year. See Profile Adopting Release, *supra* note 1. A fund would update the average annual return information included in its prospectus when filing the annual update of its registration statement required by section 10(a)(3) of the Securities Act.

[61] Instruction 1(a) to Item 2(c)(2). Form N–1A, as amended, requires a fund to present the corresponding numerical return adjacent to each bar. Item 2(c)(2)(ii).

[62] Instruction 2(a) to Item 2(c)(2). Form N–1A, as amended, requires a fund whose shares are sold subject to a sales load to disclose that the load is not reflected in the bar chart and that, if it were included, returns would be less than those shown. Instruction 1(a) to Item 2(c)(2).

[63] In contrast, sales loads can be accurately and fairly reflected in annual return information of the type contained in the table by deducting sales loads at the beginning (or end) of particular periods from a hypothetical initial fund investment.

[64] See General Instruction C.3(c).

[65] Instruction 3(a) to Item 2(c)(2).

[66] Instruction 3(c) to Item 2(c)(2).

information for the class offered in the prospectus that had the longest performance history over the last 10 years. When two or more classes have returns for at least 10 years, or returns for the same period but fewer than 10 years, the Proposed Amendments would require annual returns for the class with the greatest net assets as of the end of the most recent calendar year. Most commenters addressing the issue opposed this approach. They argued that, if all classes had existed for the same amount of time, the largest class could change from year to year, thus requiring a fund to change the class reflected in the bar chart. According to the commenters, changes in the information each year could be confusing for investors and result in unwarranted administrative burdens for funds. Commenters suggested that the Commission permit a fund having classes with performance histories extending over the same period of time to include the performance of any existing class in the bar chart, maintaining that the effect of expenses on the returns for different classes of shares is not significant.[67] The Commission is persuaded that allowing a multiple class fund in such a case to choose the class reflected in the fund's bar chart will simplify compliance with Form N–1A's requirements and provide investors with sufficient information to evaluate the variability of returns for any class of the fund. Therefore, Form N–1A, as amended, permits a fund to choose the class to be reflected in the bar chart, subject to certain limitations.[68] Under Form N–1A, as amended, the bar chart must reflect the performance of any class that has returns for at least 10 years (*e.g.*, a fund could not present a class in the bar chart with 2 years of returns when another class has returns for at least 10 years). In addition, if two or more classes offered in the prospectus have returns for different periods shorter than 10 years, the bar chart must reflect returns for the class that has returns for the longest period.

Tabular Presentation of Fund and Index Returns. The Proposed Amendments would require a table accompanying a fund's bar chart to present the fund's average annual returns for the last 1-, 5-, and 10-fiscal years (or for the life of the fund, if shorter) and to compare that information to the returns of a broad-based securities market index for the same periods. The purpose of including return information for a broad-based securities market index was to provide investors with a basis for evaluating a fund's performance and risks relative to the market. The proposed approach also was consistent with the line graph presentation of fund performance required in MDFP disclosure.[69]

Commenters generally supported the proposed performance table, but had several technical suggestions. The Commission is adopting the performance table with revisions to clarify the disclosure requirements for the table.[70]

One commenter suggested that the Commission allow funds that have existed for more than 10 years to include average annual returns for the life of the fund in the performance table. The Commission agrees that this information could be helpful for typical investors in such a fund. Form N–1A, as amended, permits, but does not require, a fund to include performance information in the table for the life of the fund if it exceeds 10 years.[71]

The Proposed Amendments would require a money market fund, in meeting the proposed performance table requirement, to provide its 7-day yield as of the end of its most recent fiscal year. One commenter questioned this requirement, arguing that it would result in money market funds giving outdated information to investors and suggested that disclosure describing how an investor can obtain the fund's current 7-day yield would be preferable. As amended, Form N–1A gives a money market fund the option of providing in its performance table its 7-day yield ending on the date of its most recent calendar year or disclosing a toll-free (or collect) telephone number that an investor can use to contact the fund to obtain its current 7-day yield.[72]

2. Risk/Return Summary: Fee Table (Item 3)

The Proposed Amendments would continue to require a fee table in the prospectus that summarizes the sales charges and fund operating expenses associated with an investment in a fund. Proposed rule 498 also incorporates the fee table requirement in the risk/return summary included in the profile. Including the fee table in both the prospectus and the profile reflects the Commission's strongly held belief in the importance of fees and expenses in a typical investor's decision to invest in a fund. The fee table is designed to help investors understand the costs of investing in a fund and to compare those costs with the costs of other funds. Commenters generally supported the fee table disclosure, and the Commission is adopting it substantially as proposed.

The Commission proposed certain amendments designed to improve communication of the information in the fee table. The Commission proposed to require a narrative explanation of the purpose of the "Example" that accompanies the fee table.[73] Recognizing the trend that the typical fund investment is increasing in size,[74] the Proposed Amendments would increase the initial hypothetical investment included in the Example from $1,000 to $10,000.

Several commenters criticized the Example, arguing that, because it is an arbitrary approximation of a fund's actual expenses, the Example is not helpful to investors. These commenters recommended that the Commission eliminate the Example from the fee table disclosure.

The Commission recognizes that any example necessarily has limitations. On balance, however, the Commission believes that the Example provides

[67] In making this argument, commenters cited rule 18f–3 under the Investment Company Act [17 CFR 270.18f–3], which provides that a class of shares may have different expenses for shareholder service fees, distribution fees, or other expenses actually incurred in a different amount by the class. The rule does not permit expenses for advisory or custodial fees, or other management fees, to vary among classes.

[68] Instruction 3(a) to Item 2(c)(2).

[69] See MDFP Adopting Release, *supra* note 15, at 19054.

[70] Item 2(c)(2)(ii). Consistent with the Proposed Amendments, Form N–1A, as amended, requires a fund to calculate average annual returns using the same method required to calculate fund performance included in advertisements, which reflects the payment of sales loads and recurring shareholder account fees. Instruction 2(a) to Item 2(c)(2) (incorporating the requirements of Item 21).

[71] Item 2(c)(2)(iii). Form N–1A, as amended, permits a fund that has not had the same adviser for the last 10 years to begin the bar chart and performance information in the table on the date the new adviser began to provide advisory services to the fund, so long as certain conditions are met. Instruction 4 to Item 2(c)(2). Form N–1A, as amended, also requires a fund that changes the index shown in the table to explain the reasons for the change and provide information for both the newly selected and the former index. Instruction 2(c) to Item 2(c)(2). Each of these provisions is consistent with the requirement applicable to the MDFP line graph. Instructions 7 and 11 to Item 5(b).

[72] Item 2(c)(2)(iii).

[73] The Example currently discloses the cumulative amount of fund expenses over 1, 3, 5, and 10 years based on a hypothetical investment of $1,000 and an annual 5% return. The Commission proposed to require funds to include a narrative explanation to the following effect:

This Example is intended to help you compare the cost of investing in the fund to the cost of investing in other mutual funds.

[74] See Letter from John C. Bogle, Chairman of the Board, The Vanguard Group, to Barry P. Barbash, Director, Division of Investment Management, SEC (Sept. 16, 1996) (suggesting that few investors have as little as $1,000 invested in a given fund, and that the average fund investment typically amounts to $10,000 to 25,000, with the median investment probably in the range of $6,000 to 7,000).

useful information that helps a typical investor understand and compare the expenses of different funds.[75] The Example is a relatively straightforward means of illustrating the effect of costs in investing in a fund over time. Expressing expense amounts solely as a percentage amount, as is done in the fee table, may not give the average investor enough information to assess the likely effect of a fund's expenses on a dollar amount of an investment in the fund. The addition of a clear narrative explanation of the purpose of the Example should increase its effectiveness in assisting investors' understanding of the Example, and the Commission is adopting this disclosure requirement as proposed.[76]

To ensure that all account fees (*e.g.*, administrative fees charged to maintain an account) paid directly by shareholders are disclosed, the Proposed Amendments would require a new line item in the shareholder transaction section of the fee table describing account fees charged by a fund. The Commission is adopting this requirement as proposed.[77] In response to comments on the Proposed Amendments, Form N–1A, as amended, clarifies that the table should include account fees that affect a typical investor in a fund and not miscellaneous fees that apply to only a limited number of shareholders based on their particular circumstances.[78]

The Commission proposed to modify some of the captions in the fee table relating to fees and expenses. The revisions were intended to result in fee tables referring consistently to different types of expenses as "fees." In particular, the Proposed Amendments would change the captions for "sales loads" to "sales fees (loads)." The Proposed Amendments also would revise the caption "12b–1 Fees" to read "Marketing (12b–1) Fees." Commenters generally criticized these changes. They maintained that the caption sales fees (loads) was not typically used by the industry or industry commentators and could be confusing to investors. The commenters recommended that the caption in the fee table refer to "sales charges." Commenters also recommended that the caption "Distribution [and/or Service] (12b–1) Fees" would better describe these fees than the term "Marketing (12b–1) Fees." Commenters said that the types of fees that can be paid in accordance with rule 12b–1 under the Investment Company Act extend beyond marketing fees so that referring to rule 12b–1 fees as marketing fees would be inaccurate.

The Commission believes that the terms suggested by commenters are commonly used by the industry and by the press in covering the industry and may be more easily understood by investors than those proposed. Form N–1A, as amended, modifies the caption for sales fees (loads) to refer to sales charges (loads).[79] The Commission is retaining the reference to loads because many investors are familiar with this term. Form N–1A, as amended, also requires funds to use the captions suggested by the commenters in referring to distribution fees in the fee table.

The Commission proposed to continue to require a fund to reflect in the fee table its operating expenses for the most recent fiscal year, taking into account expense reimbursements and fee waiver arrangements.[80] As required by current Form N–1A, a footnote to the fee table would disclose the amount of expenses that would have been incurred had there been no waiver or reimbursement. One commenter expressed strong opposition to showing expenses in the fee table that are reduced by reimbursements or fee waivers. The commenter asserted that investors would interpret the disclosure to mean that the net fee disclosed in the table is what they can expect for the life of their investment in the fund, which may not be the case.

The Commission believes that typical investors need clear disclosure of information about fees charged by funds.[81] Reflecting its continuing concern about the quality of disclosure about fees, the Commission has reconsidered the disclosure of expense reimbursement and fee waiver arrangements. The Commission believes that typical investors may tend to overlook or disregard information about a fund's fee structure if it is included in a footnote. Moreover, requiring the fee table to show fees that a fund will charge under its contractual arrangement with its investment adviser, without regard to temporary arrangements that may decrease these fees, is consistent with other Form N–1A requirements.[82]

In view of its desire to improve the quality of fee disclosure, the Commission has revised Form N–1A to require a fund to disclose in the fee table its operating expenses, not taking into account expense reimbursements and fee waiver arrangements.[83] To ensure that investors have current information about a fund's expenses, however, Form N–1A, as amended, permits a fund to disclose its operating expenses net of reimbursements and waivers in a footnote to the fee table.[84] The Commission believes that the fee table disclosure of fund expenses, as amended, will give an investor clearer information about the long-term costs of an investment in a fund, while at the same time allowing the fund to provide current information about its operating expenses.

3. Investment Strategies and Risk Disclosure (Item 4)

In the Form N–1A Proposing Release, the Commission discussed its concerns about disclosure of fund investments

[75] See Fee Table Adopting Release, *supra* note 14, at 3194.

[76] Item 3.

[77] Form N–1A, as amended, clarifies that a fund should disclose only fees charged by or on behalf of the fund, not fees charged by unrelated third parties. Instruction 1(c) to Item 3.

[78] Instruction 2(d) to Item 3. For example, Form N–1A would not require a fund to include in the fee table a fee charged to accounts with small balances (*e.g.*, $10 annual fee on accounts less than $2,500).

[79] Item 3.

[80] In an expense reimbursement arrangement, the adviser reimburses the fund for any expenses that exceed a predetermined amount. Under a fee waiver arrangement, the adviser agrees to waive a portion of its fees in order to limit fund expenses to a predetermined amount.

[81] See, e.g., Testimony of Arthur Levitt, Chairman, SEC, before the Subcomm. on Finance and Hazardous Materials of the House Comm. on Commerce (Mar. 6, 1997) (explaining the Commission's concern about investor confusion with fund fees); Remarks by Steven M.H. Wallman, Commissioner, SEC, before the ICI's 1995 Investment Company Directors Conference and New Directors Workshop, Washington, D.C. (Sept. 22, 1995) (noting investors' confusion about the assessment of advisory fees).

[82] See, e.g., Instruction 2(a)(i) to Item 3 (requiring funds to disclose deferred sales charges even though they apply only to investors leaving the fund). See also "From Security to Self-Reliance: American Investors in the 1990s," Remarks by Arthur Levitt, Chairman, SEC, before the ICI's General Membership Meeting at the Washington Hilton Hotel, Washington, D.C. (May 22, 1996) (citing a survey by the Investor Protection Trust that found that 2 out of 3 investors believed that no-load mutual funds involve no sales charges or fees, as an example of why the Commission should be concerned about the quality of disclosure of fees charged by funds); Testimony of Barry P. Barbash, Director, Division of Investment Management, SEC, Before the Subcomm. on Capital Markets, Securities, and Government Sponsored Enterprises of the House Comm. on Banking and Financial Services, 104th Cong., 2d Sess. (June 26, 1996) (citing a 1994 survey by the American Association of Retired Persons, the Consumer Federation of America, and the North American Securities Administrators, Inc. that found that the vast majority of American bank customers who hold shares of mutual funds are unaware of the risks and fees involved in the sale of mutual funds).

[83] Instructions 3(d)(i) and 5(a) to Item 3.

[84] Instructions 3(e) and 5(b) to Item 3. A fund also must disclose the period for which the expense reimbursement or fee waiver is expected to continue, or whether it can be terminated at any time at the option of the fund. The Commission expects that, in the latter case, a fund would provide adequate notice to investors and fund shareholders in advance of the termination of the arrangement.

and risks typically found in many fund prospectuses.[85] This disclosure generally consists of descriptions of the types of securities in which a fund may invest and the risks associated with each of those securities.[86] In the Commission's view, disclosing information about all of the securities in which a fund might invest does not help a typical fund investor evaluate how the fund's portfolio will be managed or the overall risks of investing in the fund. The disclosure also adds substantial length and complexity to fund prospectuses, which discourages investors from reading them.

The Commission has concluded that prospectus disclosure would be more useful to a typical fund investor if it emphasized the principal investment strategies of a fund and the principal risks of investing in the fund, rather than the characteristics and risks of each type of instrument in which the fund may invest.[87] The Commission believes that funds are appropriately viewed as a means through which a professional money manager provides its services to investors[88] and that, for that reason, the focus of disclosure about a fund's prospective investments should center on the fund's investment objectives and the principal means used by the fund's adviser to achieve those objectives. Consistent with this view, the Proposed Amendments would require prospectus disclosure that is designed to help investors understand how a particular fund's portfolio will be managed. The purpose of the Proposed Amendments was to implement more effectively the Commission's original goal in adopting Form N–1A that the prospectus should describe a fund's "fundamental characteristics."[89] Commenters generally supported the proposed approach to disclosure of the fund's investment operations and attendant risks, and the Commission is adopting it substantially as proposed.

a. Principal Investment Strategies, Investment Objectives, and Implementation of Investment Objectives. To assist investors in determining whether a fund meets their investment needs, Form N–1A, as amended, continues to require prospectus disclosure of a fund's investment objectives.[90] The Commission proposed to shift the focus of disclosure about how a fund intends to achieve its investment objectives away from the current practice of listing all types of securities in which a fund may invest to a discussion of the fund's overall portfolio management.[91] The Commission proposed to require a fund to disclose in its prospectus the principal strategies that it used to achieve its investment objectives, which would include the particular type or types of securities in which the fund will invest principally. This approach was designed to focus disclosure on a fund's anticipated investment operations rather than on investments that the fund might make.

The Commission continues to believe that a clear, concise, and straightforward discussion of investment objectives and strategies is central to effective prospectus disclosure. Therefore, the Commission is adopting the requirement for a fund to disclose how it intends to achieve its investment goals as proposed.[92]

Under Form N–1A, as amended, whether a particular investment strategy (including a strategy to invest in a particular type of security) is a principal investment strategy depends upon the strategy's anticipated importance in achieving the fund's investment objectives and how the strategy affects the fund's potential risks and returns.[93] The Commission believes that a fund should disclose those strategies that are expected to be the most important means of achieving the fund's objectives and that the fund anticipates will have a significant effect on its performance. Form N–1A, as amended, requires a fund, when determining whether a strategy is a principal investment strategy, to consider, among other things, the portion of assets that it expects to commit to the strategy, the portion of assets that it expects to place at risk by the strategy, and the likelihood that it will lose some or all of those assets in implementing the strategy.[94]

The Commission intends that focusing disclosure on a fund's principal investment strategies[95] will improve the fund's prospectus by eliminating discussions of securities and strategies that do not have a significant role in achieving the fund's investment objectives. Under Form N–1A, as amended, for example, it generally will be unnecessary for a fund (other than, for example, a money market fund) to disclose in its prospectus its cash management practices (*e.g.*, entering into overnight repurchase agreements), because these

[85] See Form N–1A Proposing Release, *supra* note 8, at 10909.

[86] The investments described often include instruments, such as illiquid securities, repurchase agreements, and options and futures contracts, that do not have a significant role in achieving a fund's investment objectives.

[87] The ICI has supported prospectus disclosure that focuses primarily on a fund's broad investment objectives, practices, and associated risks, and not on particular types of securities in which the fund may invest. See, e.g., Letter from Paul Schott Stevens, General Counsel, ICI, to Jonathan G. Katz, Secretary, SEC, at 5 (Apr. 8, 1996); Letter from Paul Schott Stevens, General Counsel, ICI, to Jonathan G. Katz, Secretary, SEC, at 4–6 (July 28, 1995) ("1995 ICI Risk Comment Letter"); Letter from Amy B.R. Lancellotta, Associate Counsel, ICI, to C. Gladwyn Goins, Associate Director, Division of Investment Management, SEC, at 7 (Mar. 7, 1995).

[88] See "Can We Make Donkeys Fly?," Remarks by Barry P. Barbash, Director, Division of Investment Management, SEC, before the Business Law Section of the ABA, Washington, D.C., at 13 (Nov. 11, 1994); see also 1 T. Lemke, G. Lins & A.T. Smith III, Regulation of Investment Companies § 1.01, at 1–1 (1997).

[89] See 1982 Form N–1A Proposing Release, *supra* note 13, at 815; 1983 Form N–1A Adopting Release, *supra* note 12, at 39729.

[90] Item 4(a). A fund may refer to its investment objectives as investment goals or any other term that clearly communicates the principal investment design of the fund. Form N–1A, as amended, continues to require a fund to disclose in its prospectus when it may change its investment objectives without a shareholder vote. *Id.* Under current practice, some funds disclose in their prospectuses when a shareholder vote *is* required to change its investment objectives. The Commission believes that disclosure of this sort is of limited significance to the typical fund investor. In the Commission's view, most investors typically would not expect the investment objectives of their funds to change without their approval. Consistent with this view, Form N–1A, as amended, requires a fund to disclose in its SAI, and not in its prospectus, when a shareholder vote is required to change its investment objectives. Item 12(c)(1)(vii).

[91] Form N–1A currently requires a fund to disclose the types of securities in which it invests or will invest principally, as well as any "special investment practices and techniques" that the fund will use in connection with investing in those securities. Form N–1A also requires disclosure, subject to certain limitations, about "significant investment policies or techniques" that a fund intends to use. One of those limitations directs a fund to limit prospectus disclosure about practices that place no more than 5% of the fund's assets at risk. Many funds disclose in their prospectuses information about securities and investment practices that do not, and may not ever, place more than 5% of the fund's assets at risk, often to retain the flexibility to exceed the 5% threshold in the future. The Commission proposed to eliminate the 5% standard. Form N–1A Proposing Release, *supra* note 8, at 10909. The standard has been deleted in Form N–1A, as amended.

[92] Item 4(b). Instruction 1 to Item 4(b)(1) defines a strategy to include any policy, practice, or technique used to achieve a fund's investment objectives.

[93] Instruction 2 to Item 4(b)(1). Form N–1A currently directs a fund not to disclose so-called "negative" practices (*i.e.*, practices in which a fund may not or does not intend to engage). Instruction 3 to Item 4(b)(1) retains this limitation by providing that a negative strategy is not a principal investment strategy. Avoiding disclosure about negative strategies is intended to ensure that prospectus disclosure states what the fund will do to achieve its investment objectives, rather than what the fund will not do.

[94] Instruction 2 to Item 4(b)(1). As amended, Form N–1A requires a fund to disclose strategies that are not principal strategies in the SAI. Item 12(b).

[95] A bond fund, for example, typically would discuss generally the maturities, durations, ratings, and types of issuers of the bonds in which the fund invests principally.

practices are not typically among the principal investment strategies that a fund uses to achieve its investment objectives.[96]

The Proposed Amendments would require a fund, in discussing its principal investment strategies in its prospectus, to explain in general terms how the fund's adviser decides what securities to buy and sell. This requirement sought to provide investors with essential information about the fund's investment approach and how the fund's portfolio would be managed. One commenter questioned this requirement, arguing that it could place undue emphasis on a fund's decisions to invest in or sell particular securities and result in boilerplate disclosure. The Commission continues to believe that a general discussion of the methods of analysis and investment strategies that a fund's adviser will use in managing the fund will provide typical investors with information that will help them in deciding whether to invest in a fund. Therefore, the Commission is adopting the proposed disclosure requirement regarding the manner in which the investment adviser determines to buy and sell securities.[97]

Concentration. The Commission proposed to continue to require a fund to disclose in its prospectus any policy to concentrate its investments in any industry or group of industries. This requirement reflects the view that such a policy is likely to be central to a fund's ability to achieve its investment objectives,[98] and that a fund that concentrates its investments will be subject to greater risks than funds that do not follow the policy. The Commission's staff has taken the position for purposes of the concentration disclosure requirement that a fund investing more than 25% of its assets in an industry is concentrating in that industry.[99] The Proposed Amendments incorporated this percentage test into Form N–1A.

Commenters supported requiring a fund to disclose in its prospectus its policies on industry concentration,[100] and the Commission continues to believe that 25% is an appropriate benchmark to gauge the level of investment concentration that could expose investors to additional risk. Therefore, the Commission is adopting this disclosure requirement as proposed.[101]

Temporary Defensive Positions. The Proposed Amendments would require disclosure about a fund's policy that permits the fund to take "temporary defensive positions" to respond to adverse market, economic, political, or other conditions. The purpose of the requirement was to make investors aware of potential changes in a fund's investments that are not generally contemplated by, or are otherwise inconsistent with, a fund's principal investment objectives and policies. In particular, the Proposed Amendments would require a fund to disclose the percentage of its assets that may be committed to temporary defensive positions (*e.g.*, up to 100% of the fund's assets), the risks, if any, associated with the positions, and the likely effect of these positions on the fund's performance. Although commenters generally supported disclosure that a fund may take temporary defensive positions, they found problematic disclosure of the percentage of assets that may be committed to temporary defensive positions and the likely effect of these positions on the fund's performance. Commenters argued that, to maintain flexibility, a fund typically would disclose that all of its assets could be committed to temporary positions. The commenters maintained that such disclosure was boilerplate and would not be meaningful to investors. In addition, commenters asserted that funds would find it difficult to predict the likely effect of temporary defensive positions on their performance.

The Commission believes that a typical fund investor would want to know about investment positions that a fund can take from time to time that are inconsistent with the fund's central investment focus. On the other hand, the Commission is aware that, in practice, the disclosure about temporary investment positions currently appearing in some fund prospectuses is so lengthy and detailed as to suggest incorrectly that a fund's temporary investment policies are more important than the fund's investment objectives and the principal investment strategies used to achieve them. The Commission believes that disclosure of this sort, which discusses possible but not probable investments of funds, is inconsistent with the fundamental disclosure principles underlying Form N–1A. In the Commission's view, however, disclosure that a fund may take temporary defensive positions to respond to market conditions will alert investors to the possibility that a fund may vary its investments on a temporary basis. Therefore, Form N–1A, as amended, requires a fund to disclose, if applicable, that in response to unfavorable market conditions it may make temporary investments that are not consistent with its principal investment objectives and policies.[102]

Portfolio Turnover. Form N–1A currently requires all funds to state their portfolio turnover rates in their financial highlights tables included in their

[96] Under the disclosure principles incorporated into Item 4 of Form N–1A, as amended, a fund that has a principal investment strategy of allocating its assets among stocks, bonds, and money market instruments also would need to disclose its use of cash equivalents. Whether a fund needs to include disclosure in its prospectus about matters such as holding or trading stock futures and option contracts, engaging in securities lending, purchasing securities on a "when-issued" basis, or investing in illiquid or restricted securities will depend on the extent to which these instruments or practices have a significant role in achieving the fund's investment objectives. A fund generally would not need to include disclosure about restricted securities in its prospectus because investments in this type of security usually would not be so significant as to constitute a principal investment strategy of the fund. Whether a fund's use of stock futures, option contracts, or other derivatives would need to be disclosed in the fund's prospectus would depend in large part on whether the strategy poses the risk of substantial gains or losses for the fund.

[97] Item 4(b)(2). In meeting this requirement, an equity fund could describe, for example, whether it emphasizes value or growth, or blends the two approaches. A value-oriented fund might state that the fund's adviser selects stocks that it considers to be undervalued by recognized measures of economic value such as earnings, cash flow, and book value. Other types of disclosure about a fund's investment philosophy might include whether the fund invests in stocks based on a "top-down" analysis of economic trends or a "bottom-up" analysis based on the financial condition and competitiveness of individual companies.

[98] That such a policy can be central to a fund's meeting its investment objective is suggested by section 8(b)(1) of the Investment Company Act [15 U.S.C. 80a–8(b)(1)], which requires a fund to disclose in its registration statement any policy to concentrate its investments in a particular industry or group of industries. Under section 13(a)(3) [15 U.S.C. 80a–13(a)(3)], a fund must obtain shareholder approval to change a policy to concentrate its investments.

[99] Guide 19 to Form N–1A.

[100] Some commenters questioned an existing position of the Commission's staff regarding the ability of a fund to adopt a policy of shifting between concentrated and non-concentrated status. One commenter requested reconsideration of the staff's long-standing position that a fund cannot, consistent with the provisions of sections 8(b)(1) and 13(a)(3), have an investment policy permitting the fund to concentrate or not concentrate its investments as determined by the fund's board in its discretion. The commenter argued that this position was too rigid and that a fund's board of directors should have the flexibility to shift the fund's concentration policy, subject to making appropriate disclosure to fund shareholders. The Commission recognizes that fund investment practices have changed as a result of the growth of securities markets and assets invested in funds. The Commission believes that it may be appropriate to reconsider the issue raised by the commenter, but has concluded that the issue should not be reconsidered in the context of the revisions of Form N–1A being adopted today. The Commission has requested that the Division review its positions on concentration, consulting with industry representatives as appropriate, with a view toward allowing funds a greater degree of flexibility in establishing concentration policies.

[101] Instruction 4 to Item 4(b)(1).

[102] Instruction 6 to Item 4(b)(1).

prospectuses.[103] Under the Proposed Amendments, a fund would be required to supplement the information in its financial highlights table by disclosing certain information about its portfolio turnover rate if it anticipated having a turnover rate of 100% or more in the coming year.[104] The disclosure would be required to include an explanation of the tax consequences and effect of increased trading costs on the fund's performance.[105] Most commenters questioned or opposed the proposed disclosure about portfolio turnover rate. Some commenters suggested that the Commission move this disclosure to the SAI or require it in the MDFP in fund shareholder reports. Other commenters argued that a fund's portfolio turnover rate may reflect the fund's response to particular market events, or special circumstances affecting the fund's investments, that are difficult to predict. These commenters argued further that the unpredictable nature of fund portfolio turnover rates would lead to generic or boilerplate disclosure that would not be meaningful to investors in assessing various funds. The commenters suggested that Form N–1A should instead require disclosure about portfolio turnover rates as part of a discussion of a fund's principal investment strategies when a fund's investment approach is expected to include active and frequent trading (as opposed to, *e.g.*, a "buy and hold" strategy).

The Commission continues to believe that a discussion about a fund's portfolio turnover in some cases is relevant to typical fund investors. The Commission notes, for instance, that increased portfolio turnover can on some occasions result in tax consequences that can be significant to investors and that can be viewed as a cost to an investor of holding fund shares. Moreover, investors may find information about portfolio turnover particularly relevant in light of recent changes to the tax laws that reduce the tax rate on capital gains.[106] The Commission agrees with commenters, however, that disclosure about portfolio turnover and its consequences should be made only if an increased portfolio turnover rate is likely to result from the fund's investment objectives and principal investment strategies and would have a significant effect on a fund's returns. Therefore, Form N–1A, as amended, requires a fund to discuss the consequences of its portfolio turnover rate if the fund anticipates that active and frequent trading of portfolio securities will be a likely result of implementing its principal investment strategies.[107]

Classification and Policies. The Commission proposed to move to the SAI disclosure about a fund's legal status as an open-end management company,[108] as well as disclosure relating to certain policies identified under the Investment Company Act, such as borrowing money, issuing senior securities, underwriting securities issued by other persons, investing in real estate or commodities, and making loans.[109] Commenters supported moving this disclosure, agreeing that it is not likely to be significant to a typical fund investor. Form N–1A, as amended, requires the disclosure to appear in the SAI.[110]

b. Risk Disclosure. Risk disclosure in fund prospectuses typically consists of detailed, and often technical, descriptions of the risks associated with particular securities in which a fund may invest. Just as disclosure about each type of security in which a fund may invest does not appear to communicate effectively to investors how the fund's portfolio will be managed, disclosure about the risks associated with each type of security in which the fund may invest does not effectively communicate to them the overall risks of investing in the fund. In the Commission's view, disclosing the risks of each possible portfolio investment, rather than the overall risks of investing in a fund, does not help investors evaluate a particular fund or compare the risks of the fund with those of other funds.

The Commission proposed, consistent with its conclusion that mere inventories of potential portfolio securities do not assist typical investors in selecting among funds, to modify prospectus disclosure requirements in Form N–1A about the risks associated with specific securities. The Proposed Amendments would require a fund to disclose the risks to which the fund's particular portfolio as a whole is expected to be subject and to discuss the circumstances that are reasonably likely to affect adversely the fund's net asset value, yield, or total return. Commenters generally supported the proposed approach to the disclosure of risk, and the Commission is adopting it as proposed.[111]

The Commission notes that a fund could meet the risk disclosure requirements of Form N–1A, as amended, by including in its prospectus a discussion of the risks of the asset class or classes that the fund expects to hold principally, together with a discussion of the risks to the fund of holding specific types of securities within the asset class or classes. Under such an approach, a fund investing in the equity securities of companies with small market capitalizations, for example, would discuss market risk as a general risk of holding equity securities, as well as the specific risks associated with investing in small capitalization companies (*e.g.*, that these stocks may be more volatile and have returns that vary, sometimes

[103] Item 3 of Form N–1A. Form N–1A, as amended, retains this requirement. Item 9.

[104] See Form N–1A Proposing Release, *supra* note 8, at 10910.

[105] The Proposed Amendments would require a fund to disclose its anticipated portfolio turnover rate and what that rate means (*e.g.*, that a portfolio turnover rate of 200% is equivalent to the fund buying and selling all of the securities in its portfolio twice in the course of a year). The Proposed Amendments also would require a fund to explain the tax consequences to shareholders of the fund's high portfolio turnover rate. In addition, the Proposed Amendments would require a fund to explain how trading costs associated with the fund's high portfolio turnover may affect the fund's performance.

[106] See *infra* note 164.

[107] Instruction 7 to Item 4(b)(1).

[108] As explained in the Form N–1A Proposing Release, this information is technical in nature and repetitive of other information required to be disclosed elsewhere in a fund's prospectus. All funds that register on Form N–1A must be classified as management companies under section 4 of the Investment Company Act and subclassified as open-end companies under section 5. 15 U.S.C. 80a–4, –5. Funds may be further subclassified as diversified or non-diversified under section 5.

[109] Section 8 of the Investment Company Act requires a fund to disclose these policies in its registration statement. Section 8 also requires a fund to disclose in its registration statement its policies on concentration and portfolio turnover, see *supra* notes 100 and 105 and accompanying text, and any other policies that the fund deems fundamental or that may not be changed without shareholder approval. Although they are not required to do so, some funds disclose in their prospectuses their policies with respect to the practices identified in section 8. As noted in the Form N–1A Proposing Release, *supra* note 8, at 10911, the Proposed Amendments sought to provide a clearer directive to disclose these policies in the SAI. To the extent it is a principal investment strategy of a fund within the meaning of Item 4(b)(1) of Form N–1A, as amended, however, a practice identified in section 8 would be required to be disclosed in the fund's prospectus.

[110] Items 12(a) and (c). Form N–1A, as amended, continues to require a non-diversified fund to disclose its non-diversified status in the prospectus. See Item 2(c)(iv). In particular, the Form requires a non-diversified fund to describe the effects of non-diversification (*e.g.*, by indicating that, compared to diversified funds, the fund may invest a greater percentage of its assets in a particular issuer) and to disclose the risks of investing in the fund.

[111] Item 4(c). The requirement that a fund disclose the risks to which its particular portfolio as a whole is subject is intended to elicit risk disclosure specific to that fund. In meeting this requirement, a growth fund, for example, would be required to disclose the risks of the types of growth stocks in which the fund invests or expects to invest, as opposed to describing the general risks of equity securities.

significantly, from the overall stock market).[112]

The Commission did not propose to require a fund to disclose information designed to quantify its expected risk levels, citing, among other things, the lack of a broad consensus as to what measure of risk would best serve fund investors.[113] Comments submitted in response to the Commission's Risk Concept Release asserted that investors have too wide a range of investment goals and ideas of what "risk" means to be well served by a single quantitative risk measure. In addition, commenters argued that, if the Commission mandated a risk measure, investors might rely on it as a definitive standard despite the lack of general agreement on how to measure risk.

As adopted, the prospectus risk/return summary and amendments to the general risk disclosure requirements of Form N–1A are designed to improve fund risk disclosure without raising the concerns associated with Commission-mandated quantitative information. While it is not adopting specific quantitative risk disclosure requirements, the Commission believes that new approaches to measuring risk are emerging and that quantitative risk information may be useful to some investors.[114] The Commission notes that a fund may include quantitative risk disclosure in its prospectus if the information is presented in a manner consistent with the guidelines on the inclusion of information not required by Form N–1A.[115]

4. Management's Discussion of Fund Performance (Item 5)

The Proposed Amendments would continue to require a fund to provide its MDFP and the related line graph comparing the fund's returns to a broad-based securities market index in either its prospectus or its annual report. The Commission is adopting the MDFP as proposed with minor changes.[116] The Commission notes in support of this decision that a review of MDFP disclosure by the Commission's Division of Investment Management ("Division") indicates that the discussion of fund performance and the line graph have generally provided fund shareholders with useful, comparative information about a fund's performance.

As discussed in the Proposed Amendments, funds typically choose to include the MDFP in their annual reports, rather than in their prospectuses. This choice may be explained, in part, by the relevance of the MDFP to other current financial information appearing in annual reports.[117] As a result of recent amendments to the Investment Company Act, the Commission has the authority to require additional disclosure in annual and semi-annual reports as necessary or appropriate in the public interest or for the protection of investors.[118] Several commenters recommended that the Commission exercise this authority and require the MDFP to appear in fund annual reports, asserting, among other things, that shareholders read these reports more frequently than prospectuses. Commenters also suggested that, like other information contained in an annual report, the MDFP analyzes a fund's past performance rather than the fund's anticipated future course of action, which is the central focus of a fund's prospectus.

Although it acknowledges that a fund's annual report may be the preferred location for the MDFP disclosure, the Commission is deferring consideration of its requirements as to the placement of the MDFP discussion. The Commission has concluded that MDFP disclosure should be considered as part of a comprehensive reassessment of the Commission's existing rules specifying the disclosure to be included in fund reports to shareholders. The Commission believes that such an initiative would be an important future step in improving the quality of fund disclosure documents and has directed the Division to begin work on proposed amendments to fund periodic reporting requirements. The Commission has asked that, in connection with such a proposal, the Division consider whether certain disclosure required by Form N–1A would be more useful to investors in shareholder reports. In this regard, the Commission notes its preliminary view that an "integrated" approach to registration and reporting requirements could improve the overall information about a fund available to investors.[119]

5. Management, Organization, and Capital Structure (Item 6)

a. Management and Organization. The Commission proposed to abbreviate disclosure in the prospectus about a fund's management and organization and move certain of this information to the SAI. Commenters generally supported the Proposed Amendments, and the Commission is adopting them as proposed with modifications to reflect suggestions of commenters.

Management Disclosure. Under existing Form N–1A, all funds must disclose the rate of fees that they pay their investment advisers in their fee tables. As stated above, the Commission has retained this requirement, which the Commission believes is among the core requirements of the Form. The Proposed Amendments would continue to require, in addition to the disclosure contained in the fee table, prospectus disclosure about investment advisory services provided to, and investment advisory fees paid by, a fund. Some commenters recommended eliminating disclosure about the investment advisory fees, which they argued is merely duplicative of the information in the fee table. The Commission disagrees with this argument. The Commission believes that a concise and straightforward description of the services that an investment adviser provides to a fund along with disclosure

[112] The Commission emphasizes that this approach is one way, but not the only way, that a fund can seek to use in meeting the risk disclosure requirements of Form N–1A, as amended.

[113] See Form N–1A Proposing Release, *supra* note 8, at 10911. The Risk Concept Release requested comment whether quantitative risk measures, such as standard deviation, beta, and duration, would help investors evaluate and compare fund risks. Risk Concept Release, *supra* note 18, at 17176. While more than half of the individual commenters and some industry members expressed a desire for some form of quantitative risk information, commenters did not broadly support any one risk measure. In addition, a number of commenters strongly criticized requiring disclosure of quantitative risk information. *See, e.g.*, 1995 ICI Risk Comment Letter, *supra* note 87, at 10–16 (questioning, among other things, the feasibility of developing a single, all-encompassing measure of fund risk and whether quantitative information would be understood and accurately used by fund investors).

[114] See, *e.g.*, Walbert, What's the Risk?, Institutional Investor, June 1997, at 188; Whitford, Why Risk Matters, Fortune, Dec. 29, 1997, at 147.

[115] See General Instruction C.3(b).

[116] Item 5.

[117] See Form N–1A Proposing Release, *supra* note 8, at 10912.

[118] National Securities Markets Improvement Act of 1996, Pub. L. 104–290 (1996) ("Improvements Act"), section 206(f) (amending section 30 of the Investment Company Act [15 U.S.C. 80a–29] to add new paragraph (f)).

[119] In the past, the concept of "integrated" disclosure for funds has addressed eliminating duplicative registration requirements under the Investment Company Act and the Securities Act. See Investment Company Act Release No. 10378 (Aug. 28, 1978) [43 FR 39548] (adopting integrated registration statements for funds and closed-end investment companies by replacing separate registration statement forms under the Investment Company Act and Securities Act). New disclosure initiatives for funds could expand the concept of integrated disclosure to include an approach similar to that adopted for corporate issuers, which integrates registration statement disclosure requirements with periodic reports. See Securities Act Release Nos. 6235 (Sept. 2, 1980) [45 FR 63693] and 6383 (Mar. 3, 1982) [47 FR 11386] (proposing and adopting new forms for the offering of securities under the Securities Act). At least one commenter has cited potential benefits to fund shareholders of an integrated approach to fund disclosure. T. Lemke, Mutual Fund Disclosure Revisited, Investment Companies 1989 (Practising Law Institute's Corporate Law and Practice Course Handbook Series No. 605).

of the investment advisory fee rate for a recent fiscal year, as well as providing this information in a single place in a prospectus, can help a typical investor understand the management of the fund. Therefore, the Commission is adopting the disclosure requirements as proposed.[120]

In the Form N–1A Proposing Release, the Commission requested comment whether information about the amount of fees paid to a sub-adviser or sub-advisers of a fund helps investors evaluate and compare the fund to other funds. The Commission also asked whether this type of disclosure obscures the aggregate investment advisory fee paid by a particular fund.[121] Most commenters supported disclosure of the aggregate fee only, maintaining that information about individual sub-advisory fees is not relevant to investors because it does not help them compare the fees charged by different funds. The Commission is persuaded that information about sub-advisory fees is not necessary for a typical fund investor, but may be of interest to some investors. Therefore, Form N–1A, as amended, requires prospectus disclosure of the aggregate advisory fees paid by a fund and disclosure in the SAI of the amount of sub-advisory fees paid by the fund.[122]

Portfolio Manager. The Proposed Amendments would continue to require prospectus disclosure indicating the person or persons responsible for the day-to-day management of a fund's portfolio. Under the Proposed Amendments, and as currently permitted by instructions to Form N–1A, a fund could, in meeting this requirement, indicate that a committee was responsible for a fund's portfolio management if, under the organizational arrangements of the fund (or its investment adviser), no one person was responsible for making recommendations to the committee.

One commenter criticized the proposed portfolio manager disclosure requirement, arguing that it may have the effect of creating the false impression that the identity of the individual portfolio manager of a fund is paramount to the fund's performance. According to the commenter, the collective experience, resources, personnel, and reputation of a fund's investment adviser often are of greater importance to the fund's performance than the fund's portfolio manager. The commenter recommended that, to enable funds to describe their management structures more accurately than they can under Form N–1A's existing provisions, the Commission require disclosure of the identity of a fund's portfolio manager only when a change in the identity of the manager would be material to investors (e.g., when a fund group promotes the identity of individual portfolio managers). The commenter suggested that the Commission, in the alternative, clarify the disclosure obligations of a fund for which the day-to-day responsibilities for the fund's portfolio investments are shared by a committee and certain individuals.

The Commission is not persuaded that it should adopt the commenter's recommendation that the Commission tie portfolio manager disclosure to a fund group's marketing efforts. Such a recommendation is substantially similar to proposals considered and rejected by the Commission when it adopted Form N–1A's existing portfolio manager disclosure requirement.[123] The Commission believes that typical investors in a fund should have clear and succinct information about the individuals who significantly affect the fund's investment operations. In the Commission's experience, Form N–1A's existing requirement appropriately serves this purpose and should not be changed significantly. To the Commission's knowledge, the requirement has not generally resulted in funds inaccurately describing the individuals responsible for their management.

Although the Commission believes that Form N–1A's portfolio manager disclosure requirements should not be changed significantly, the Commission has concluded that it is appropriate to provide additional guidance in Form N–1A as to the disclosure obligations of a fund for which day-to-day management responsibilities are shared. New instructions to Form N–1A's portfolio manager disclosure requirements have been added for this purpose.[124]

Legal Proceedings. The Proposed Amendments would continue to require prospectus disclosure of any material pending legal proceedings involving a fund, its investment adviser, or principal underwriter. The Commission also proposed to expand Form N–1A's legal proceedings disclosure requirement to cover those proceedings contemplated by a governmental authority. In proposing this change, the Commission sought to conform Form N–1A's requirements to those included in other Commission forms applying to other types of issuers.[125]

Some commenters questioned the requirement that a fund disclose contemplated proceedings, arguing that a fund would find it difficult to assess whether proceedings of a governmental entity are in fact contemplated. The Commission is not persuaded by this argument and has adopted the legal proceedings requirement as proposed.[126] In support of its decision, the Commission notes that issuers that have been subject to the requirement appear not to have experienced significant difficulty in complying with it.

Board of Directors. Form N–1A currently requires a fund to include in its prospectus a brief description of the responsibilities of the fund's board of directors under the applicable laws of the jurisdiction in which the fund is organized. Recognizing that the disclosure provided by a fund in response to this item typically recites the substance of specific legal requirements, the Commission proposed to move this disclosure to the SAI. Commenters supported disclosing the director information in the SAI, arguing that the information does not help a typical investor make a decision to invest in a fund. Form N–1A, as amended, requires a fund to disclose this information in the SAI.[127]

The Commission requested comment in the Form N–1A Proposing Release whether a fund's prospectus should include the names, experience, and compensation of a fund's directors, as well as information, such as addresses and telephone numbers, indicating how a shareholder could contact the directors.[128] The Commission also requested comment whether this information, if required, should be given only for a fund's independent directors, accompanied by disclosure of the number of independent directors in comparison to the number of directors on the fund's board.[129]

Most commenters strongly opposed additional disclosure about directors in

[120] Item 6(a).

[121] See Form N–1A Proposing Release, *supra* note 8, at 10912.

[122] Instruction 3 to Item 6(a)(1) and Item 15(a)(3).

[123] See MDFP Adopting Release, *supra* note 15, at 19051–52.

[124] Instructions to Item 6(a)(2).

[125] See Item 12 of Form N–2 [17 CFR 274.11a–1] for closed-end investment companies; Item 103 of Regulation S–K [17 CFR 229.103] for non-investment company issuers. See also Investment Company Act Release No. 19155 (Nov. 30, 1992) [57 FR 56862] (modifying Form N–2 to conform to Item 103).

[126] Item 6(a)(3).

[127] Item 13(a).

[128] Form N–1A Proposing Release, *supra* note 8, at 10912.

[129] The Investment Company Act contains a number of requirements relating to the composition of a fund's board. See, *e.g.*, sections 10(a) and 15(f) of the Investment Company Act [15 U.S.C. 80a–10(a), –15(f)].

the prospectus. While a few commenters supported identifying the directors in the prospectus, most argued that this information is not essential to a typical investor in making a decision about investing in a fund and would only serve to lengthen the prospectus. The commenters recommended that the SAI or annual report to shareholders would be a better place for disclosing the identity of directors.

Commenters addressing the issue uniformly opposed requiring a fund to disclose directors' compensation in the prospectus, arguing that these fees are only a small part of total fund expenses and are not relevant to a typical investor in a making a decision to invest in a fund. The commenters also noted that director compensation is disclosed in a fund's SAI, where it can be used by those investors interested in the information, and in a fund's proxy statement, where it can be assessed by all shareholders of the fund in the context of an election of directors.[130]

All commenters addressing the issue emphatically opposed the disclosure of information in either the prospectus or the SAI indicating how shareholders can contact directors. Commenters, particularly independent directors of funds, argued that this information would result in an unwarranted loss of privacy for board members and numerous calls to directors to which they would be ill-equipped to respond. Commenters also argued that disclosure of this information would serve as a disincentive for qualified individuals to serve as directors and that all investor comments regarding a fund should be directed to representatives of the fund's management, and not to its directors.

The Commission believes that mandating more information about fund directors than is available under its existing disclosure rules may be appropriate in light of independent directors' role as "watchdogs" of fund shareholders as contemplated by the Investment Company Act.[131] The Commission, however, is not convinced, particularly in light of the overwhelmingly negative comment on this issue, that the prospectus is the appropriate document for this disclosure. Therefore, Form N–1A, as amended, does not require additional information of the sort described in the Proposed Amendments to be provided about a fund's directors. The Commission, however, has directed the Division to consider director disclosure issues as part of an initiative to improve shareholder reports.[132]

Management and Organization. The Commission proposed to move to the SAI two items of disclosure about a fund's management and organization that the Commission believes are only of minimal importance to typical fund investors. The Proposed Amendments would no longer require a fund to disclose in its prospectus the name of any person that controls the fund's investment adviser and the name of any person that controls the fund.[133] The Proposed Amendments also would no longer require a fund to state in its prospectus, if applicable, that the fund engages in brokerage transactions with affiliated persons and allocates brokerage transactions based on the sale of fund shares.[134] The information called for in response to these two items typically results in generic disclosure that restates applicable legal requirements and does not appear to assist investors in deciding whether to invest in a particular fund. Commenters generally supported placing this information in the SAI. Form N–1A, as amended, requires a fund to disclose information in the SAI regarding controlling persons of the investment adviser and brokerage transactions with affiliated persons.[135]

The Commission proposed to move to the SAI disclosure about a fund's form of organization along with the date and state of the fund's incorporation. Because most funds are organized in one of a few states as corporations or business trusts, disclosure about a fund's organization does not appear to help investors evaluate a particular fund or compare the fund to other funds. For that reason, the Commission is adopting its proposal to move information about a fund's organization to the SAI.[136]

The Proposed Amendments would not include the disclosure about a fund's expenses currently required by Form N–1A in the discussion of the fund's management. This information is included in the fee table and the financial highlights table. Additional information about fund expenses also is available in a fund's SAI. Eliminating repetitive information is one of the basic objectives of the Commission's efforts to improve fund disclosure documents. Consistent with this goal, Form N–1A, as amended, does not require this additional information about fund expenses in disclosure about a fund's management.

b. Capital Structure. The Proposed Amendments would continue to require prospectus disclosure about any limits on the transferability of, and material obligations or potential liabilities associated with, a fund's shares. One commenter suggested that disclosure should appear in the SAI rather than in the prospectus, asserting that the information is technical and generally does not vary among funds. The commenter recommended that the Commission instead limit disclosure in a fund's prospectus to unusual provisions that may pose special risks to the fund's shareholders. The Commission agrees that descriptions of all potential restrictions and possible consequences of holding fund shares are of only marginal significance to typical investors in selecting among funds. Form N–1A, as amended, thus requires prospectus disclosure of only unique or unusual restrictions or potential liabilities associated with holding a fund's shares (other than investment risks) that may expose an investor in the

[130] Item 13(d); Item 22(b)(6) of Schedule 14A [17 CFR 240.14a–101].

[131] These responsibilities of directors include, among other things: (i) Evaluating and approving the fund's investment advisory and principal underwriting contracts (sections 15(a), (c) [15 U.S.C. 80a–15(a), (c)]) and the use of fund assets to pay for the distribution of fund shares (rule 12b–1); (ii) selecting the fund's independent public accountants (section 32(a)(1) [15 U.S.C. 80a–31(a)(1)]); and (iii) reviewing and approving transactions with affiliates under various rules (*e.g.*, rule 10f–3 [17 CFR 270.10f–3]; rule 17a–7 [17 CFR 270.17a–7]; rule 17e–1 [17 CFR 270.17e–1]). Directors have fiduciary duties to the fund and its shareholders under section 36(a) of the Investment Company Act [15 U.S.C. 80a–35(a)] and under state law. See 3 W. Fletcher, Cyclopedia of the Law of Private Corporations section 838 (rev. perm. ed. 1994); *Hanson Trust PLC* v. *ML SCM Acquisition, Inc.*, 781 F.2d 264, 275 (2d Cir. 1986). See also *Burks* v. *Lasker*, 441 U.S. 471 (1979) (upholding the authority of independent directors to take actions under state law to the extent not inconsistent with the policies of the Investment Company Act and the Investment Advisers Act of 1940 [15 U.S.C. 80b–1, *et seq.*] (the "Advisers Act")).

[132] See *supra* note 119 and accompanying text.

[133] Transactions between controlling persons and a fund are subject to restrictions under the Investment Company Act. *See, e.g.*, section 17 [15 U.S.C. 80a–17] and rules 17a–6 and 17d–1 [17 CFR 270.17a–6, .17d–1].

[134] Payment of commissions to affiliated brokers is governed by section 17(e) of the Investment Company Act [15 U.S.C. 80a–17(e)] and rule 17e–1 [17 CFR 270.17e–1].

[135] Items 15(a) and 16(b)(1).

[136] Item 11(a). The Commission proposed to continue to require a fund to disclose its form of organization and place of incorporation in the prospectus if a fund is organized outside the United States and registered under section 7(d) of the Investment Company Act [15 U.S.C. 80a–7(d)]. Although this type of organization is permitted by the Investment Company Act, only a limited number of funds that are organized and incorporated outside of the United States have registered under the Act. A fund organized in this manner would be subject to certain legal requirements under the Investment Company Act, regardless of whether those requirements were described in the fund's prospectus. Following one of Form N–1A's underlying principles to avoid prospectus disclosure that simply restates applicable legal provisions, the Commission has determined to incorporate this disclosure requirement in Item 11(a) of the SAI.

fund to significant risks.[137] Under Form N–1A, as amended, a fund would be required to discuss in its SAI generally applicable legal provisions relating to holding fund shares.[138]

The Proposed Amendments would move disclosure about shareholder voting rights to the SAI. In explaining this decision, the Commission stated that the Investment Company Act sets out specific rights of fund shareholders,[139] which typically results in this disclosure being generic in nature and of little consequence to investors in evaluating and comparing funds. Commenters generally supported including this information in the SAI, agreeing that it is not essential to an investment decision. Form N–1A, as amended, requires this disclosure in the SAI.[140]

Form N–1A currently requires a fund to describe in its prospectus any class of senior securities issued by the fund, and any "other class" of its shares that is outstanding. In the Commission's experience, disclosure in fund prospectuses made in response to this requirement merely restates legal requirements in the Investment Company Act and its rules, which limit a fund's ability to issue certain classes of shares or senior securities.[141] The Commission concluded that disclosure of this sort is only of minimal significance to a typical investor in deciding whether to invest in a fund, and proposed to delete it from fund prospectuses.[142] Commenters agreed with the Commission's conclusion, and Form N–1A, as amended, does not require prospectus disclosure of information about other classes of fund shares (including senior securities).[143] The SAI would continue to require a fund to disclose the rights of any authorized securities of the fund other than capital stock.[144]

6. Shareholder Information (Item 7)

a. General Purchase and Sale Information. The Proposed Amendments would retain most of the disclosure requirements concerning a fund's purchase and redemption procedures, dividends, and distributions currently required by Form N–1A. The Commission believes that the required information is relevant to a typical investor contemplating an investment in a fund. In the Form N–1A Proposing Release, the Commission acknowledged that disclosure about purchase and redemption procedures is often quite lengthy and may contribute to the perception that prospectuses are too long and complicated and not worth reading.[145] The Commission also observed, however, that much of the purchase and redemption disclosure typically contained in fund prospectuses is not required by Form N–1A, but is included by funds for marketing or other business purposes. The Commission believes that it is appropriate for a fund to have the option to add disclosure to its prospectus for these purposes, and thus the Commission did not propose to limit prospectus disclosure of funds' purchase and sale procedures to that expressly required by Form N–1A. The Commission is adopting the requirements to disclose purchase, redemption, and other shareholder information substantially as proposed with modifications to reflect commenters' suggestions.[146]

Several commenters on the Form N–1A Proposing Release suggested that the Commission specifically acknowledge as consistent with its rules the ability of a fund at its option to place certain information about purchase and redemption procedures in a separate document that would be delivered to an investor no later than with the confirmation of the investor's purchase of the fund's shares. According to the commenters, this separate document, or "owner's manual," can help streamline prospectus disclosure and provide an efficient means for a fund group to provide disclosure about purchase and redemption procedures that is common to all funds in the group. The Commission believes that this sort of disclosure document is consistent with the disclosure principles underlying the revisions to Form N–1A and that investors may find it easier and less confusing to consult and retain a separate document describing certain procedures relating to purchasing and redeeming fund shares, which are typically mechanical in nature. In the Commission's view, as long as the purchase and sale information in a fund's prospectus is not reduced below the minimum required by Form N–1A, the fund would be able to create and use

[137] Item 6(b). The prospectuses of funds organized as business trusts under Massachusetts law sometimes include disclosure that, under Massachusetts law, fund shareholders may be held personally liable as partners for the fund's obligations under certain limited circumstances. In adopting Form N–1A in 1983, the Commission stated that disclosure of possible contingent shareholder liability under this form of organization should not be required if a fund believes that, because of arrangements to protect shareholders, the likelihood of loss or expense to shareholders is remote. 1983 Form N–1A Adopting Release, *supra* note 12, at 37933–34. See 3 T. Frankel, The Regulation of Money Managers 79 (1980) (for funds organized as Massachusetts business trusts, personal liability generally is considered remote). In connection with the Proposed Amendments, the staff undertook a review of fund prospectus disclosure. The review indicated, among other things, that certain funds continue to include disclosure about Massachusetts business trusts and state that shareholder liability is remote. In the Commission's view, this disclosure appears to be unwarranted, and the Commission encourages funds to re-evaluate whether this disclosure is necessary in light of the Commission's goal to minimize the disclosure of events that have only a remote possibility of affecting an investor's investment in a fund. See Form N–1A Proposing Release, *supra* note 8, at 10913.

[138] Item 17(a).

[139] The Investment Company Act requires all fund shares to have equal voting rights and prescribes the vote required for certain significant matters. See, e.g., section 18(i) [15 U.S.C. 80a–18(i)] (equal voting rights); section 15(a) [15 U.S.C. 80a–15(a)] (approval of investment advisory contract); section 16(a) [15 U.S.C. 80a–16(a)] (election of directors); section 13(a) [15 U.S.C. 80a–13(a)] (changes in fundamental investment policies). See also section 2(a)(42) [15 U.S.C. 80a–2(a)(42)] (defining "voting security" and a "vote of a majority of the outstanding voting securities" for purposes of the Investment Company Act); rules 18f–2, 18f–3 [17 CFR 270.18f–2, –3] (specifying certain voting rights with respect to series funds and multiple class funds, respectively).

[140] Item 17(a).

[141] Under section 18(f) of the Investment Company Act, a fund generally is prohibited from issuing senior securities. By its terms, however, this prohibition does not preclude a fund from borrowing from any bank, so long as the borrowing is undertaken in accordance with the requirements of the Investment Company Act. See section 18(f)(1) (a fund must have asset coverage of at least 300 percent of all borrowings). In addition, the Commission has taken the position that certain types of portfolio transactions that involve leverage engaged in by a fund would not be deemed senior securities if the fund establishes a segregated account with liquid assets that collateralize 100% of the market value of the obligations under these transactions. See Investment Company Act Release No. 10666 (Apr. 18, 1979) [44 FR 25128]; see also Merrill Lynch Asset Management, L.P. (pub. avail. July 2, 1996) (staff no-action letter). Series funds and multiple class funds, each of which may raise issues under section 18(f), are expressly contemplated by section 18(f)(2) of the Investment Company Act and related rules 18f–2 and 18f–3.

[142] Under the proposal, a fund, however, would be required to disclose information in its prospectus about any series or class of the fund offered in the prospectus. Form N–1A, as amended, adopts this requirement. See, *e.g.*, Item 8(c).

[143] Form N–1A, as amended, does not require disclosure in the prospectus of any measures taken by a fund (*e.g.*, formation and maintenance of segregated accounts) to ensure that certain instruments that it holds are not deemed senior securities for purposes of the Investment Company Act's limitations. Form N–1A, as amended, would continue to require a fund that has a fundamental policy to borrow monies or that employs leverage to include disclosure about these practices in its prospectus. See *supra* Section II.A.3.a (discussing required disclosure of principal investment strategies).

[144] Item 17(b).

[145] See Form N–1A Proposing Release, *supra* note 8, at 10914.

[146] Item 7, The Commission also is adopting, as proposed, the requirement that a fund disclose in its SAI, and not in its prospectus, information about the fund's principal underwriter and service providers. Item 15. Requiring the information in the SAI does not preclude a fund from including it in the prospectus (*e.g.*, for marketing and other business purposes).

a separate purchase and sale disclosure document as supplemental sales literature.

A second way in which a fund could create a separate purchase and sale disclosure document would be for the fund to include in its SAI the information to be contained in the document. A fund could set out this information in a separate section of the SAI and make it available, as a separate document, to investors upon request. To accommodate this option, the Commission is revising Form N–1A to include an instruction in the SAI that permits a fund to provide a separate document with additional purchase and sale information that can be made available to fund investors, along with the SAI or as a stand-alone document, in response to investor requests.[147]

Form N–1A, as amended, provides a third means for developing a purchase and sale manual. As amended, the Form permits a fund to remove all information regarding its purchase and sale procedures from its prospectus and place the information in a separate document. The use of the separate document in this manner, however, would mean that required prospectus disclosure would appear only in the owner's manual. Therefore, the use of this kind of separate document is conditioned on incorporating it by reference into the fund's prospectus and providing it to investors with the prospectus.[148]

b. Valuation of Fund Shares and Net Asset Value. Valuation. The Commission proposed to eliminate an existing requirement of Form N–1A that a fund disclose in its prospectus that the price at which investors' purchase and redemption requests are effected is calculated on the basis of the fund's current net asset value and that the fund identify the methods used to value its portfolio securities (*e.g.*, market price or fair value).[149] The Commission proposed to take this action principally because, in meeting the requirement, funds typically go beyond the required identification of the methods used and repeat the substance of rules under the Investment Company Act specifying the way in which the net asset value of a fund must be calculated. In addition, the information presented by a fund usually repeats information required to be included in the SAI. This disclosure has tended to be lengthy and technical and, as discussed below, appears not to have been very informative for investors.

The Commission has re-evaluated the disclosure of information in fund prospectuses about the calculation of net asset value in light of numerous complaints from investors that the Commission received recently regarding the manner in which some funds determined their net asset value. In response to volatility in various markets, some funds recently valued certain of their securities on the basis of fair value rather than on the basis of the last market quotations for the securities.[150] In taking this action, the funds appear to have relied on a long-standing position of the Commission's staff that a fund may (but is not required to) value portfolio securities traded on a foreign exchange using fair value, rather than the closing price of the securities on the exchange, when an event occurs after the close of the exchange that is likely to have changed the value of the securities.[151] Many investors complained that they were unaware that their funds could use fair value pricing in such a situation. In response to these complaints, the Division undertook a review of the disclosure documents of funds using such fair value pricing and found that, although the funds disclosed the practice in their prospectuses, the funds' discussions of their pricing procedures would have been enhanced if they had followed the principles of plain English.[152] Investors' recent questions about fund pricing procedures confirm the general importance of this information to at least some investors. Thus, the Commission has determined to continue to require that funds identify the methods used to value their assets in their prospectuses.[153] The Commission is, however, adding an instruction in Form N–1A that will encourage funds to discontinue the use of boilerplate disclosure of the technical aspects of valuation and require them to include a statement about the effect of the fund's use of fair value net asset calculation.

Time and Frequency of Calculation of Net Asset Value. As proposed, Form N–1A would continue to require a fund to state in its prospectus when calculations of its net asset value are made and to indicate that the fund uses a forward pricing procedure contemplating that the price at which a purchase or redemption order is effected is based on the next calculation of net asset value after the order is placed.[154] In addition, the Proposed Amendments would continue to require a fund to disclose those days on which the fund prices its shares and the holidays on which shares would not be priced. Commenters supported these disclosure requirements, and the Commission is adopting them as proposed.[155]

Meaning of Net Asset Value. In the Form N–1A Proposing Release, the Commission noted that many funds now define the term "net asset value" in their prospectuses (*e.g.*, net asset value means fund assets minus liabilities divided by the number of outstanding shares).[156] The Commission requested comment whether this disclosure should be required in all fund prospectuses. Commenters on this issue were evenly divided between those who

[147] Instruction to Item 18(a).

[148] Item 7(f).

[149] Under the Investment Company Act and its rules, funds generally are required to use market quotations to value portfolio securities. If market quotations are not readily available, the fund must value the securities at "fair value as determined in good faith by the board of directors." Section 2(a)(41) [15 U.S.C. 80a–2(a)(41)]; rule 2a–4 [17 CFR 270.2a–4].

[150] These funds took this action under circumstances in which stock markets in Asia had closed 13 to 14 hours before the pricing of fund shares in the United States. In that time, several funds identified events that indicated a significant change in the price of securities traded on these markets since the last market quotations. On the basis of this assessment, the funds valued their securities using fair value rather than the market price of the securities. See Barnhart, Asia Aficionados Found Profit in Times of Turmoil, Chicago Tribune, Nov. 23, 1997 at C3; Smith, Funds: A Hidden Trick Investors Should Know About, Business Week, Nov. 17, 1997 at 41; Authers, Now The Funds Are Coming Under Fire, Financial Times, Nov. 8, 1997 at 2; Wyatt, The Market Turmoil: Funds; Fidelity Invokes Fine Print and Angers Some Customers, The New York Times, Oct. 31, 1997 at D6; Gasparino, Pricing System Trips Fidelity, Angers Clients, Wall Street Journal, Oct. 30, 1997 at C1.

[151] See Putnam Growth Fund (pub. avail. Feb. 23, 1981). Fair value pricing in this context is designed to protect the long-term value of fund shares from the actions of short-term investors who might buy or redeem fund shares in an attempt to profit from short-term market movements.

[152] See "Remembering the Past: Mutual Funds and the Lessons of the Wonder Years," Barry P. Barbash, Director, Division of Investment Management, SEC, at the 1997 ICI Securities Law Procedures Conference, Washington, D.C. (Dec. 4, 1997).

[153] Item 7(a). An instruction to this Item, as adopted, requires a fund to provide a brief explanation of specific policies of the fund concerning use of the fair value method of pricing fund shares. Form N–1A, as amended, requires a fuller explanation of fair value pricing policies in the SAI. Item 18(c).

[154] Rule 22c-1 under the Investment Company Act [17 CFR 270.22c-1] requires a fund to adopt "forward pricing" procedures. Under such procedures, a fund must fill an order to buy or redeem its shares based on the net asset value of the shares next calculated after receipt of the order.

[155] Item 7(a) (2) and (3). Form N–1A, as amended, allows a fund to identify the days on which the fund will not price its shares through the use of a list of specific days or any other means that effectively communicates the information (*e.g.*, explaining that shares will not be priced on the days on which the New York Stock Exchange is closed for trading).

[156] See Form N–1A Proposing Release, *supra* note 8, at 10914.

believed that the information would be helpful to investors and those who believed the definition of net asset value would not assist investors in making a decision about investing in a fund. While some investors may find information about the meaning of the term net asset value helpful, the Commission is not persuaded that the information is necessary for most investors. Therefore, the Commission is not adopting a requirement that a fund explain the meaning of net asset value in its prospectus. A fund would continue to have the option of including this information in its prospectus or SAI if the fund concluded that such information would be useful to potential investors in the fund.

c. Restrictions on Portability. At the time that the Commission issued the Form N–1A Proposing Release, the Commission's staff was considering a number of complaints received from fund investors about restrictions on the "portability" of their fund shares. To better understand the issues raised by these investors, the staff consulted with, among others, a number of industry trade groups and other industry participants.[157] On the basis of the information compiled by the staff, the Commission understands that, in certain cases, an investor who purchases shares of a fund through a broker-dealer or other financial intermediary may be unable to transfer fund shares held in a brokerage account to an account established at another broker-dealer.[158] In their responses to the staff, industry representatives indicated that the lack of portability of an investor's shares in a fund may be attributed to several factors, including limitations on the transfer of shares sold by broker-dealers affiliated with the investment adviser of the fund, the lack of participation by the fund in a computerized transfer system, and the absence of reciprocal agreements between the fund and broker-dealers. The industry participants, however, supported efforts to increase the portability of fund shares.

The Commission understands that some progress has occurred in eliminating portability restrictions. To the extent that restrictions continue to exist, however, the Commission believes that disclosure of the limits on portability of a fund's shares may be of importance to a typical investor. The Commission notes that this type of disclosure would seem to address the relationship between a broker-dealer or other intermediary and a fund shareholder, rather than the relationship between the fund and the shareholder. For that reason, the Commission is not convinced that the disclosure should be required in fund prospectuses.[159] The Commission has asked its staff to continue discussions with the staff of the National Association of Securities Dealers, Inc. ("NASD") to consider means other than the prospectus to alert investors who purchase shares of funds through broker-dealers of restrictions on portability.[160]

d. Tax Consequences. The Proposed Amendments would revise the tax disclosure required in a fund's prospectus to focus that disclosure on the likely tax consequences to the fund and its shareholders if the fund operates as described in the prospectus. In general, the Proposed Amendments were designed to elicit tax disclosure that is far less complicated than that typically included in fund prospectuses today.[161] Commenters strongly agreed with the goal of the proposed provisions relating to prospectus tax disclosure, which the Commission has determined to adopt substantially as proposed. The Commission notes its strong desire that, in revising their documents to comply with Form N–1A, as amended, all funds pay particular attention to simplifying their existing tax disclosures, which the Commission believes are too complicated and discourage the use of fund prospectuses.

The Commission proposed to move disclosure about a fund's qualification under Subchapter M of the Internal Revenue Code[162] to the SAI, unless the fund does not expect to qualify for Subchapter M treatment. Commenters supported moving this disclosure to the SAI, agreeing that it does not help investors decide whether to invest in a fund. The Commission is adopting this disclosure requirement as proposed.[163]

The Commission proposed to require a description of the tax consequences to shareholders of buying, holding, exchanging, and selling a fund's shares designed to highlight the tax consequences of investing in the fund. The Proposed Amendments would require a fund to state, as applicable, that the fund intends to make distributions to shareholders that may be taxed as ordinary income or capital gains. Under the Proposed Amendments, a fund that expects that its investment objectives or strategies will result in its distributions primarily consisting of ordinary income (or certain short-term capital gains) or long-term capital gains would be required to provide disclosure to that effect.

Commenters generally supported the proposed tax disclosure, and the Commission is adopting it as proposed with one modification to reflect recent changes to the tax laws.[164] In light of these changes, Form N–1A, as amended, requires a fund to disclose that capital gains may be taxable at different rates depending upon the length of time that the fund holds its assets.[165]

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[157] See Letter from Jack W. Murphy, Associate Director, Division of Investment Management, SEC, to Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Industry Association, Thomas M. Selman, Director, Advertising/Investment Companies Regulation, NASD Regulation, Inc., and Paul Schott Stevens, Senior Vice President and General Counsel, ICI (Dec. 18, 1996).

[158] An investor may seek to transfer such an account, for example, when the registered representative or account executive through which the investor purchased the shares becomes affiliated with a new firm.

[159] Such disclosure would appear to be inconsistent with the fundamental principle underlying Form N–1A that a fund's prospectus should focus on information about the fund.

[160] See discussion *infra* Section II.G about other disclosure issues that the Commission is addressing with the NASD.

[161] Existing tax-related prospectus disclosure typically includes lengthy and overly technical information about the tax treatment of a fund, and, in some cases, the treatment of specific securities held by a fund. Many prospectuses, for example, include information about the conditions that a fund must meet to qualify for pass-through tax treatment under Subchapter M of the Internal Revenue Code, as well as information about the tax treatment of private activity bonds, foreign currency contracts, and other fund investments. In addition, tax disclosure frequently includes technical jargon in referring, for example, to a fund's status as a "regulated investment company" and the fund's payment of "spillback distributions" and "net investment income." Use of these terms in fund prospectuses would continue to be discouraged. See General Instruction C.1(c), which would continue to instruct a fund not to use technical or legal terminology in its prospectus.

[162] I.R.C. 851, *et seq.*

[163] Item 19(a). Item 7(e)(3) of Form N–1A, as amended, requires a fund that does not expect to qualify for pass-through tax treatment under Subchapter M to explain in its prospectus the tax consequences of not qualifying (*e.g.*, by disclosing that income and gains realized by the fund would be subject to double taxation—that is, both the fund and shareholders could be subject to tax liability). This disclosure would distinguish the fund from other funds and help investors appreciate the tax consequences of investing in the fund. Similarly, a fund that expects to pay an excise tax under the Internal Revenue Code with respect to its distributions is required to disclose in its prospectus the consequences of paying the tax. See I.R.C. 4982.

[164] Item 7(e). Funds subject to this requirement would include, for example, those often described as "tax-managed," "tax-sensitive," or "tax-advantaged," which have investment strategies to maximize long-term capital gains and minimize ordinary income. A fund that has a principal investment objective or strategy to achieve tax-managed results (*e.g.*, to maximize long-term capital gains and minimize ordinary income) would need to provide disclosure to that effect in its prospectus risk/return summary. Item 4.

[165] Recent changes to the tax laws reduce the maximum rate on the long-term net capital gains on the sale of securities from 28% to 20%, but increase

The Proposed Amendments would require a fund to state that it will provide each shareholder by a specified date (typically, January 31 of each year) with information about the amount of ordinary income and capital gains, if any, distributed to the shareholder during the prior calendar year. One commenter questioned the need for this requirement, citing that a fund must send this information to investors by a particular date under Internal Revenue Service regulations.[166] The Commission agrees that, in light of these regulations, indicating in a prospectus the date by which a fund will deliver certain tax information is unnecessary. Therefore, Form N–1A, as amended, does not adopt this provision of the Proposed Amendments.

The Proposed Amendments would require a tax-exempt fund to inform investors of the special tax consequences associated with the fund. Commenters supported the proposed disclosure, and the Commission is adopting it substantially as proposed.[167]

7. Distribution Arrangements (Item 8)

The Commission proposed changes to Form N–1A to require that all information about a fund's distribution arrangements appear in one section of the fund's prospectus. The Proposed Amendments would require that section to discuss, among other things, sales loads, fees paid under rule 12b–1 plans, and the details of multiple class and master-feeder fund arrangements. The Commission also proposed changes designed to make fund discussions of distribution arrangements less legalistic and more helpful to investors in evaluating and comparing funds.[168] Commenters generally supported the Commission's conclusion that information about distribution arrangements is particularly important to fund investors, and the Commission is adopting the disclosure requirements relating to those arrangements substantially as proposed.

Rule 12b–1 Plans. The Commission proposed to modify Form N–1A's requirements pertaining to plans designed to meet the requirements of rule 12b–1 under the Investment Company Act to focus prospectus disclosure on the amount of fees paid under the plans and to move detailed, technical disclosure about these plans to the SAI. The Commission proposed to require a fund with a rule 12b–1 plan to state the amount of the fee and to disclose that the plan allows the fund to pay fees for the sale and distribution of its shares. The Commission also proposed an additional requirement designed to result in prospectuses that explain more effectively to shareholders that distribution fees are continuous in nature and that these fees, over time, cumulatively may exceed other types of sales loads.[169] The Proposed Amendments would require a fund to add to its prospectus disclosure to the effect that, because distribution fees are paid out of the fund's assets on an ongoing basis, the fees may, over time, increase the cost of an investment in a fund and cost investors more than other types of sales loads.

Most commenters supported the proposed disclosure concerning rule 12b–1 plans, although some commenters maintained that disclosure of the amount of rule 12b–1 fees merely duplicated information appearing in the prospectus fee table. The Commission believes that disclosing the amount of the rule 12b–1 fee in connection with other disclosure about the nature of the fees will provide a typical investor with a complete and useful picture of the amounts paid by the fund for distribution. Therefore, the Commission is adopting the disclosure concerning rule 12b–1 fees as proposed.[170]

Sales Loads. The Proposed Amendments would continue to require disclosure of the amount of any sales load charged on an investment in a fund and disclosure indicating when a sales load may be reduced or eliminated (*e.g.*, for larger investments). The Commission proposed to move other technical disclosure about sales loads to the SAI, including disclosure about dealer reallowances, sales load waivers, and breakpoints applicable to the sale of a fund's shares. The Commission believes that this detailed and technical information tends to obscure information about the amount of sales loads charged by a fund and does not help investors evaluate and compare funds. The Commission also proposed to eliminate disclosure about fees charged by third parties (i.e., banks, broker-dealers, or other persons) in connection with the purchase of a fund's shares.[171] Commenters generally supported the proposed approach to disclosure about sales loads, and the Commission is adopting the amendments as proposed.[172]

Multiple Class and Master-Feeder Fund Arrangements. The Commission proposed to combine, in one place in the prospectus, disclosure about the distribution and service arrangements of multiple class and master-feeder funds. Commenters generally supported this treatment of these arrangements, which the Commission is adopting substantially as proposed, with modifications to reflect commenters' suggestions.

The Commission proposed to eliminate the requirement that a feeder fund discuss the possibility and

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the asset holding period from 12 months to 18 months (except for sales made after May 6, 1997 and before July 29, 1997, which retain long-term gain status). Taxpayer Relief Act of 1997, Pub. L. 105–34 (1997). The new laws also classify capital assets held for a period of one year, but less than 18 months, as "mid-term" gains, which are subject to a maximum rate of 28%.

[166] The requirement is set forth in I.R.C. 852(b)(3)(c).

[167] Item 7(e)(2). Form N–1A, as amended, requires a fund to disclose, if applicable, that: (i) The fund may invest a portion of its assets in securities that generate income that is not exempt from federal or state income tax; (ii) income exempt from federal income tax may be subject to state and local income tax; and (iii) any capital gains distributed by the fund may be taxable. The Commission also proposed that a fund disclose that a portion of the tax-exempt income that it distributes may be treated as tax preference items for purposes of determining whether the shareholder is subject to the federal alternative minimum tax. Form N–1A, as amended, does not require disclosure about the preference items in the prospectus. This disclosure is technical in nature and applies only in limited circumstances, and would not appear to help a typical investor make a decision about investing in a fund.

[168] Typical fund shareholders appear to regard information about fees paid by funds under various distribution arrangements as important information in making investment decisions. See ICI Shareholder Use Study, *supra* note 52, at 21 (1997) (over 70% of survey respondents considered sales charge and fee information before making their most recent purchase).

[169] The Commission's proposed disclosure would replace similar disclosure required by the rules of the NASD. Rule 2830(d)(4) of the NASD Conduct Rules, *supra* note 37, at 4624 (requiring a fund with a rule 12b–1 plan to disclose adjacent to the fee table that long-term shareholders may pay more than the maximum front-end sales charge allowed by the NASD). In light of the revisions to Form N–1A contemplated by the Proposed Amendments, the NASD has proposed to eliminate its similar disclosure. NASD Notice to Members 97–48, at 393 (Aug. 1997).

[170] Item 8(b); Item 15(g). The Proposed Amendments also would require a fund that pays a service fee outside of a rule 12b–1 plan to disclose the amount and purpose of the fee in the section of its prospectus describing sales loads and rule 12b–1 fees charged by the fund. One commenter questioned the need for this disclosure, asserting that this type of service fee is not appropriately characterized as a distribution fee and would be disclosed in the fee table. The Commission is persuaded that additional disclosure of these fees is unnecessary, and Form N–1A, as amended, does not require prospectus disclosure of them. A fund would disclose service fees paid outside a rule 12b–1 plan in the fee table and in the SAI. Instruction 3(b) to Item 3; Item 20(c).

[171] See also Interagency Statement, *supra* note 50; rule 2230 of the NASD Conduct Rules, *supra* note 37, at 4213–14; rule 204–3(a) under the Advisers Act [17 CFR 275.204–3(a)]; Item 1 of Form ADV, Part II [17 CFR 279.1] for fee disclosure requirements applicable to banks, broker-dealers and investment advisers, respectively.

[172] Item 8(a); Item 13(e) (sales load arrangements for affiliated persons); and Item 15(f) (dealer reallowances).

consequences of its no longer investing in the master fund. It is the Commission's understanding that distribution arrangements currently used by many funds contemplate feeder funds having the authority to change the master funds in which they are invested. In recognition of this development, the Commission is modifying Form N–1A to require such a feeder fund to describe briefly the circumstances under which it may change its investment in a master fund.[173]

One commenter suggested additional changes to streamline prospectus disclosure about multiple class funds and master-feeder funds. The commenter recommended that the Commission eliminate existing requirements for a fund to disclose information in its prospectus about additional classes or feeders that are not offered in the same prospectus. The commenter also recommended that the Commission modify the proposed disclosure about conversions or exchanges from one class to another to require disclosure only if the conversion or exchange is mandatory or automatic. The Commission agrees that the disclosure about multiple class funds or master-feeder funds in a prospectus should focus on the class or fund offered in that prospectus. Form N–1A, as amended, reflects this position.[174]

8. Financial Highlights Information (Item 9)

Condensed Financial Information. The Proposed Amendments would continue to require a fund to include in its prospectus a summary of certain financial information. To provide funds with greater ability to present prospectus disclosure in a format that conveys information effectively to investors, the Proposed Amendments would permit this information to be disclosed anywhere in the prospectus, rather than on a particular page of the prospectus, as currently required. The Commission also proposed changes to the financial highlights table to assist investors in understanding the information contained in it. Commenters supported the Proposed Amendments and endorsed in particular the proposal to permit a fund to choose the location in its prospectus for the financial highlights table. The Commission is adopting revisions to the financial highlights table requirement substantially as proposed.

In the Form N–1A Proposing Release, the Commission acknowledged that additional changes could improve the financial highlights information and stated that it intended to revisit fund financial disclosure in a separate future rulemaking initiative addressing financial statement requirements generally.[175] For the purposes of its evaluation of the financial highlights information, the Commission requested comment on simplifying and updating this information. This request elicited a number of suggestions ranging from support for the table to recommendations that it be moved to the SAI or eliminated. The Commission will consider these comments as part of its financial statement initiative.

The Commission is, however, adopting some of the commenters' recommendations that would simplify the financial highlights table. One commenter recommended that the Commission change the period covered by the financial highlights table from 10 to 5 years to parallel the period covered by financial information currently required to be in fund annual reports. The Commission has adopted this recommendation[176] because it believes that financial information for a 5-year period will help investors evaluate a fund and, at the same time, respond to concerns that the current table complicates the prospectus and is confusing to investors. Investors interested in historical return information about a fund beyond that contained in the amended financial highlights table can look to the bar chart that the Commission is requiring to be included in prospectuses, which shows the fund's returns over a 10-year period.[177]

One commenter urged the Commission to eliminate the requirement that a fund disclose its average commission rates in the financial highlights table, arguing that these rates are technical information that typical investors are unable to understand. Industry analysts support this view and have informed the Commission staff of their conclusion that the average commission rate information in the table is only of marginal benefit to them and typical fund investors.

At this time, the Commission believes that there continues to be some merit in ensuring that information about the average commission rates paid by funds is publicly available. The Commission believes, however, that a fund prospectus appears not to be the most appropriate document through which to make this information public. Therefore, Form N–1A, as amended, does not require disclosure of average commission rates in the financial highlights table. The Commission will consider adding such a requirement to Form N–SAR, which funds file with the Commission semi-annually to report information on their current operations.[178]

Calculation of Performance Data. The Commission proposed to eliminate the Form N–1A requirement that a fund that includes performance information in certain of its advertisements include a brief explanation in its prospectus of how it calculates its performance. This disclosure requirement is intended to facilitate funds using advertisements in accordance with rule 482 under the Securities Act; such an advertisement is an omitting prospectus under section 10(b) of the Securities Act and, as an omitting prospectus, is required to contain information "the substance of which" is contained in the prospectus. Recent legislation added section 24(g) to the Investment Company Act, which authorizes the Commission to adopt rules permitting a fund to use a summary or omitting prospectus that includes information the substance of which is not required to be included in the prospectus.[179] With this new authority, the Commission intends to re-evaluate fund advertising rules with the goal of, among other things, proposing to amend rule 482 to eliminate the "substance of which" requirement.

Consistent with the Proposed Amendments, Form N–1A, as amended, does not require a fund to duplicate in its prospectus the explanation of how it calculates its performance required to appear in the fund's SAI.[180] So long as the SAI is incorporated by reference in

[173] Item 8(c)(4). A feeder fund that does not have the authority to change its master fund would not need to discuss in its prospectus the possibility and consequences of its no longer investing in the master fund. Instruction to Item 8(c)(4).

[174] Item 8(c).

[175] See Form N–1A Proposing Release, *supra* note 8, at 10918.

[176] Instruction 1(a) to Item 9(a).

[177] Item 2(c)(2). Form N–1A permits a fund to incorporate by reference the financial highlights information into its annual report if it is delivered with the prospectus. Item 9(b). One commenter recommended that the Commission eliminate total return information from the financial highlights table because the bar chart shows a fund's returns. The Commission has not followed this recommendation because returns in the financial highlights table will be reflected for a fund's fiscal year periods, which may not be the same as the calendar year periods reflected in the bar chart. The Commission also notes that including returns in the financial highlights table will enable a fund to satisfy the updating requirements of section 10(a)(3) under the Securities Act.

[178] 17 CFR 274.101. The Division expects to submit recommendations to the Commission on revising Form N–SAR in the near future.

[179] See Improvements Act, supra note 118, at section 204.

[180] Item 21.

the prospectus, the rule 482 "substance of which" requirement will be satisfied for this information or any other information that a fund may wish to include in a rule 482 advertisement.

9. Front and Back Cover Pages (Item 1)

The Commission proposed to simplify the disclosure currently required on the front cover page of the prospectus. The Proposed Amendments would require only three items of cover-page disclosure: a fund's name; the date of the prospectus; and the standard Commission disclaimer about the securities offered in the prospectus.[181] To unclutter the front cover page and avoid repeating information contained in the proposed risk/return summary at the beginning of the prospectus, the Proposed Amendments would no longer continue to require a fund to include on the front cover a brief statement of the fund's investment objectives, a statement that the prospectus sets forth concise information that the investor should know before investing, and a statement that the prospectus should be retained for future reference.[182] Commenters generally supported the proposed front cover page disclosure requirements, and the Commission is adopting them with revisions reflecting the suggestions of commenters.

Several commenters maintained that the Commission should allow a fund to include certain information on the front cover page of its prospectus, such as its investment objectives or a brief (*e.g.*, one sentence) description of its operations. The Commission agrees, and Form N–1A, as amended, permits, but does not require, a fund to include additional information on the front cover page, subject to the Form's general rule covering the presentation of information not otherwise required to be included in the prospectus.[183]

Several commenters criticized the Commission's standard disclaimer regarding the securities offered by a prospectus and questioned other disclosure that is required on the front cover page of a fund prospectus.[184] The commenters recommended that the Commission eliminate the legend, maintaining that it is not meaningful to a typical investor and is not essential to such an investor's decision to invest in a fund.

The Commission has not adopted this recommendation because it believes that every prospectus should clearly alert investors that a registration statement filed with and made effective by the Commission does not represent approval by the Commission of the securities described in the prospectus. This view is reflected in the requirement that all issuers filing registration statements under the Securities Act include the disclaimer legend on their prospectuses.[185] The Commission recognizes that the disclaimer used to date is technical in nature and may be difficult to understand. In its recent plain English initiatives, the Commission adopted amendments to simplify the legend, which apply to fund prospectuses.[186]

The Commission proposed to consolidate disclosure regarding the availability of additional information about a fund on the back cover page of its prospectus.[187] The Proposed Amendments would require the back cover page to state that the SAI includes additional information about the fund that is available without charge upon request, and to explain how shareholder inquiries regarding the fund can be made. Under the proposal, the back cover page would also include a statement whether and from where information is incorporated by reference into the prospectus. Commenters generally supported these amendments, and the Commission is adopting the back cover page requirements as proposed, with modifications to reflect commenters' suggestions.[188]

To ensure prompt delivery of a requested SAI, the Proposed Amendments would require a fund to send its SAI to requesting investors within 3 business days of a request. Those commenters addressing this requirement generally supported it, although one commenter argued that, to provide funds some leeway in responding to unforeseen circumstances, funds should be subject to a "reasonably prompt" mailing standard, which would be deemed normally to be within 3 days of request. The Commission believes that prompt mailing of the SAI is essential to the disclosure format contemplated by Form N–1A and is adopting the 3-business day mailing requirement as proposed.[189]

Several commenters raised concerns about requests for additional information about a fund when the fund's shares are sold through financial intermediaries, such as broker-dealers or banks. Commenters recommended that Form N–1A permit funds to indicate in their prospectuses that investors may contact an intermediary to obtain the SAI and other additional information. The Commission acknowledges that many funds use intermediaries in distributing or servicing their shares and that investors may look to these intermediaries for information about the funds. Thus, the Commission has revised Form N–1A to permit a fund to state on the back cover of its prospectus that additional information about the fund is available from a financial intermediary.[190] The Commission notes, however, that such a fund retains the obligation to ensure that information is sent to investors within 3 business days of an investor request. The Commission expects that funds will fulfill this obligation through contractual

[181] This disclaimer is required by rule 481(b)(1) under the Securities Act [17 CFR 230.481(b)(1)].

[182] See Form N–1A Proposing Release, *supra* note 8. See also SEC, Report of the Task Force on Disclosure Simplification (1996) (recommending that many legal warnings be eliminated to make the cover page more inviting and that any necessary legal warnings be set out in a more readable style and format); Plain English Release, *supra* note 20, at 6372.

[183] Instruction to Item 1(a); see also General Instruction C.3(b). Form N–1A currently requires special disclosure on the front cover page of a feeder fund prospectus describing the master-feeder fund structure and explaining how it differs from a traditional mutual fund. 1993 GCL, *supra* note 25, at II.H(a). Consistent with simplifying cover page disclosure, Form N–1A, as amended, does not require this disclosure on the front cover page, but does require disclosure about a fund's master-feeder structure in the body of the fund's prospectus in response to Item 8(c).

[184] Rule 481(b)(1) (requiring disclosure that indicates that neither the Commission nor any state securities commission has approved the securities or passed on the adequacy of disclosure in the prospectus).

[185] Item 501 of Regulation S–K [17 CFR 229.501].

[186] See Plain English Release, *supra* note 20, at 6372 (revising Item 501(b) of Regulation S–K and making conforming changes to rule 481(b)(1)).

[187] The Proposed Amendments also would require a fund to include on the back cover page of its prospectus a statement that information about the fund is available at the Commission's Public Reference Room and on the Commission's Internet site. Some commenters questioned this proposal, asserting that the information is not essential to making a decision to invest in a fund and would clutter the back page of prospectuses. The Commission is not persuaded by these arguments and has adopted this requirement as proposed. Item 1(b)(3). The Commission notes that the requirement is consistent with those imposed on all registrants filing registration statements under the Securities Act and reflects recent changes adopted in the Plain English Release, *supra* note 20, at 6381 (amending Item 101(e)(2) of Regulation S–K under the Securities Act [17 CFR 229.101(e)(2)]).

[188] Item 1(b). The Commission proposed to require disclosure in a fund's discussion of risk in the prospectus risk/return summary that additional information about a fund's investments is available in the fund's shareholder reports. In response to commenters' suggestions, the Commission is requiring that this disclosure be made on the back cover page of a fund's prospectus together with other references to the availability of additional information about the fund. Item 1(b)(1). See *supra* Section II.A.1.

[189] Instruction 3 to Item 1(b)(1). The Commission's Office of Compliance Inspections and Examinations will, as a part of its routine periodic inspections of a fund's operations, examine the fund's compliance with the 3-business day mailing requirement. Failure to comply with the requirement could result in action by the Commission to ensure compliance, including an enforcement action in an appropriate case.

[190] Instruction 2 to Item 1(b)(1).

arrangements with broker-dealers, banks, or other financial intermediaries.

Some commenters had suggestions about certain technical disclosure information that the Commission proposed to include on the back cover page of the prospectus. The Proposed Amendments, for example, would move the requirement to disclose the date of the SAI to the back cover page of the prospectus. Several commenters criticized this requirement, asserting that the date of the SAI is not essential to an investor's decision to invest in a fund and that requiring the SAI date on the back cover of a prospectus would necessitate the reprinting of prospectuses of funds that share a common SAI whenever a new fund is added to the group covered by the SAI. In light of these comments and the obligation imposed on funds to send investors who request an SAI the most current version of the document, the Commission has deleted from Form N–1A, as amended, the requirement to show the date of a fund's SAI on the back cover of the fund's prospectus.[191]

B. Part B—Statement of Additional Information

The Commission proposed a number of technical and conforming revisions to the SAI disclosure requirements to reflect the proposed changes in the prospectus disclosure requirements. The Commission is adopting these revisions as proposed. As discussed in the Form N–1A Proposing Release, the Commission intends to consider the SAI requirements as part of a future initiative and propose amendments to simplify and update SAI disclosure following the same disclosure principles underlying the revisions to Form N–1A being adopted today.

C. Part C—Other Information

The Commission proposed amendments to Part C of Form N–1A to eliminate certain filing requirements no longer deemed necessary. Commenters supported the proposed amendments, and the Commission is adopting them as proposed with certain modifications to reflect the suggestions of commenters.[192]

The Proposed Amendments would continue to require newly organized funds to file updated financial statements within 4 to 6 months of the effective date of the registration statement. The Commission asked for comment whether the requirement should be retained. All commenters responding to the request said that the Commission should eliminate this requirement. Commenters argued that the information is of little value to investors in a new fund because it covers a fund's operations for a short start-up period that does not usually reflect the fund's expected operations. Commenters also argued that the cost of providing this information places a heavy burden on new funds, which typically have smaller amounts of assets under management than larger funds. According to the commenters, these costs can have a significant and disproportionate effect on a small fund's expense ratio.

The Commission believes that financial statements for the initial operations of a fund may not provide information that is significant to a typical fund investor. In addition, an investor interested in financial information about a fund's initial operations can obtain the information by requesting the fund's most recent shareholder report, which is generally available 6 to 8 months after the fund commences operations and begins selling shares to investors. For these reasons, the Commission has concluded that the costs associated with the 4 to 6 month update are not outweighed by the benefits that the information may provide to some investors. Therefore, Form N–1A, as amended, does not require the filing of updated financial statements for a newly organized fund.

D. General Instructions

1. Reorganizing and Simplifying the Instructions

The General Instructions to Form N–1A currently provide guidance on the use and content of the Form. The Proposed Amendments were intended to update and reorganize the General Instructions to make the Instructions easier to use. Commenters generally supported these revisions, which the Commission is adopting substantially as proposed. As adopted, the General Instructions consist of the following topics: (A) Definitions; (B) Filing and Use of Form N–1A; (C) Preparation of the Registration Statement; and (D) Incorporation by Reference.

The Proposed Amendments added several definitions to standardize certain terms as used in Form N–1A. Under the proposal, the term "Fund" would be defined as a registrant or a series of the registrant. The Proposed Amendments also included definitions of the terms "Registrant" and "Series" as used in Form N–1A. The Commission is adopting all three definitions as proposed.[193]

Proposed General Instruction B incorporated a more user-friendly, question-and-answer format regarding the filing and use of Form N–1A and replaced current Instructions A through D and F. The Commission is adopting General Instruction B as proposed.

General Instruction C to Form N–1A, as proposed, would set out the requirements for preparing the registration statement in an understandable format and would replace existing Instruction G to the Form. As proposed, the new Instruction emphasized the need to provide clear and concise prospectus disclosure and permitted a fund to include in its prospectus or SAI information not otherwise required by Form N–1A, so long as the information is not misleading and does not, because of its nature, quantity, or manner of presentation, obscure the information required to be included.[194] The Commission is adopting Instruction C substantially as proposed.[195]

[191] To enable the Commission's staff to respond efficiently to investor inquiries, the Proposed Amendments would require a fund to disclose the fund's name, Commission file number and, if the fund is a series of a registrant, the registrant's name on the back cover page. Some commenters maintained that the information presented in meeting this requirement could be confusing to investors and is not relevant to a typical investor in considering whether to invest in a fund. The Commission is modifying the requirement so that a fund will only need to disclose its Commission file number in small print (*e.g.*, 8-point modern type) at the bottom of the back cover page of its prospectus. Item 1(b)(4).

[192] Form N–1A, as amended, does not require the filing of (i) model retirement plans that are used to offer fund shares; (ii) schedules showing the calculation of performance information; and (iii) voting trust agreements. One commenter suggested additional changes to the Part C requirements, asserting that much of the information in this part of the registration statement does not serve any important purpose and imposes administrative burdens on funds. The commenter recommended, among other things, that the Commission no longer require a fund to include a table showing the number of holders of each class of a fund's shares in its registration statement. In support of its recommendation, the commenter pointed out that this information is required to be filed by funds on their Forms N–SAR. The Commission is persuaded by this argument and has amended Form N–1A to delete the requirement that a fund's registration statement include a table of holders of fund shares.

[193] See General Instruction A.

[194] See Form N–1A Proposing Release, *supra* note 8, at 10918.

[195] The Commission is deleting other instructions to the current Form N–1A, which permit information to be added to the prospectus and SAI. See, *e.g.*, Item 1(b) of the current Form N–1A (permitting other information to be included on the cover page of the prospectus). Instruction C of Form N–1A, as amended, provides this guidance for purposes of all fund disclosure. The Commission also is deleting specific Instructions in current Part A that call for brief and concise prospectus disclosure, because Instruction C includes this

2. Plain English Disclosure

The Commission is adopting amendments to General Instruction C clarifying that funds must comply with rule 421 under the Securities Act, which sets out the Commission's recently adopted plain English requirements.[196] Rule 421(b) sets out general requirements that the entire prospectus be clear, concise, and understandable and provides guidance on how to draft prospectuses that meet this standard.

Under Form N–1A, as amended, a fund would need to draft the front and back cover pages and the risk/return summary of a fund prospectus in accordance with the provisions of rule 421(d).[197] In meeting these requirements, a fund will need to use plain English principles in the organization, language, and design of these sections of their prospectuses. Funds also will comply substantially with the following six principles of clear writing:

—Short sentences;
—Definite, concrete, everyday language;
—Active voice;
—Tabular presentation or bullet lists for complex material, wherever possible;
—No legal jargon or highly technical business terms; and
—No multiple negatives.

The compliance dates for rule 421(d) and Form N–1A, as amended, will be the same. Therefore, when a fund files a new or amended registration statement in order to comply with Form N–1A, as amended, it must also comply with the plain English rule.[198]

3. Disclosure Guidelines

The Commission has revised General Instruction C to reflect clearly the basic disclosure principles underlying the Commission's initiatives being adopted today. The Commission believes that applying these principles consistently in developing fund disclosure documents will result in high quality documents that effectively communicate information to investors.

General Instruction C, as amended, includes a set of drafting guidelines that are designed to improve prospectus disclosure. The Instruction encourages funds to avoid cross-references in their prospectuses to their SAIs or shareholder reports. Repeated cross-references to the SAI and shareholder reports can add unnecessary length and complexity to fund prospectuses and often preclude prospectuses from disclosing information effectively to investors.

General Instruction C provides guidance on the use of Form N–1A by more than one fund and by a multiple class fund. Fund prospectuses frequently contain information for multiple series and classes that offer investors different investment alternatives and distribution arrangements. When information in them is presented clearly, prospectuses offering more than one fund may make it easier for investors to compare funds and may be more efficient for funds and investors by eliminating the need to provide investors with multiple prospectuses containing repetitive information. Instruction C generally enables a fund to organize information about multiple funds and classes in a format of its choice that is consistent with the goal of communicating information to investors effectively.[199]

4. Modified Prospectuses for Certain Funds

Proposed Instruction C would permit a fund that is offered as an investment alternative in a participant-directed defined contribution plan to modify its prospectus for use by participants in the plan. Under the Proposed Amendments, a prospectus used to offer fund shares to plan participants could omit certain information required by proposed Items 7 (shareholder information) and 8 (distribution arrangements). This prospectus disclosure would largely be irrelevant to plan participants; investments that can be made by participants, and the distributions participants receive (including the tax consequences of distributions), are governed by statutory requirements and by the terms of individual plans.[200] Commenters generally supported permitting prospectuses to be modified for plan participants, asserting that it would allow funds to provide meaningful disclosure specifically designed for plan participants who invest in funds. The Commission is adopting the provisions in Instruction C relating to prospectuses for plan participants with modifications to reflect suggestions of commenters.

Instruction C, as proposed, would permit funds to tailor disclosure for prospectuses to be used for investments in defined contribution plans qualified under the Internal Revenue Code. One commenter suggested that the Commission permit funds that serve as investment options for variable insurance contracts to use modified prospectuses that set out purchase and sale procedures, distributions, and tax consequences applicable to these funds. In response to the commenter's suggestions, the Commission is permitting prospectuses to be tailored for funds offered through variable insurance contracts in furthering its goal of providing investors with more useful disclosure documents.[201]

5. Incorporation By Reference

Proposed General Instruction D would replace an existing instruction to Form N–1A that addresses incorporation by reference in a fund's prospectus of information in the fund's SAI. When the Commission adopted the two-part disclosure format for Form N–1A, the Commission intended that Part A of the registration statement provide investors with a simplified prospectus that, standing alone, would meet the requirements of section 10(a) of the Securities Act.[202] Part B, the SAI (which is available to investors upon request), includes additional information that the Commission has determined may be useful to some investors and should be available to all investors, but is not necessary in the public interest or for the protection of investors to be in the

requirement for purposes of all prospectus disclosure.

[196] General Instruction C.1(e).

[197] Items 1(a) (Front Cover Page), 1(b) (Back Cover Page), 2 (Risk/Return Summary: Investments, Risks, and Performance), and 3 (Risk/Return Summary: Fee Table).

[198] See infra Section II.H for a discussion of the effective and compliance dates for Form N–1A, as amended. The compliance date for investment companies other than funds is October 1, 1998. See Plain English Release, *supra* note 20, at 6370. Unit investment trusts and closed-end investment companies must comply with the plain English rule only for new registration statements. Variable annuity issuers filing on Forms N–3 and N–4, and variable life insurance issuers filing on Forms N–8B–2 and S–6 must comply with rule 421(d) for new and updated registration statements. The Commission also has proposed new Form N–6 for variable life insurance issuers that incorporates the Commission's plain English requirements. Investment Company Act Release No. 23066 (Mar. 13, 1998).

[199] General Instruction C.3(c). A fund, for example, may decide that using a horizontal rather than vertical presentation for the fee table would present the required fee information most effectively. A fund may find that using different formats in its prospectus risk/return summary would communicate the required information effectively. Depending on the number and type of funds offered in the prospectus, for example, a fund may find it useful to group the required information for all funds together under each caption or to present the information sequentially for each fund. See John Hancock Funds, Inc. (pub. avail. June 28, 1996) (using a two-page disclosure format for each of 7 funds offered in a single prospectus).

[200] In addition to plans under rule 401(k) of the Internal Revenue Code [26 U.S.C. 401(k)], these plans include those under section 403(b) [26 U.S.C. 403(b)] (available to employees of certain tax-exempt organizations and public educational systems) and section 457 [26 U.S.C. 457] (available to employees of state and local governments and other tax-exempt employers).

[201] General Instruction C.3(d).

[202] 1983 Form N–1A Adopting Release, *supra* note 12, at 37930.

prospectus.[203] Form N–1A currently permits, but does not require, a fund to incorporate the SAI by reference into the prospectus. The two-part disclosure format has been widely used by funds, and the Commission has found that the current approach to incorporation by reference is consistent with the intended purpose of Form N–1A and should be retained.[204]

Proposed Instruction D would continue to permit, but not require, a fund to incorporate the SAI by reference into the prospectus. Commenters supported this approach to incorporation by reference, and the Commission is adopting Instruction D substantially as proposed.[205] The revised Instruction clarifies that incorporating information by reference from the SAI is not permitted as a response to an item of Form N–1A requiring information to be included in the prospectus. Permitting the SAI to be incorporated by reference into the prospectus was meant to allow funds to add material that the Commission determined not to require in the prospectus, not to permit funds to delete required information from the prospectus and place it in the SAI. Form N–1A, as amended, provides funds with clearer directions for allocating disclosure between the prospectus and the SAI. Funds can discuss items of information required to appear in the prospectus in greater detail in the SAI, which may be incorporated by reference into the prospectus.

The Commission notes that section 19(a) of the Securities Act[206] and section 38(c) of the Investment Company Act[207] protect a fund from liability under these Acts for actions taken in good faith in conformity with any rule of the Commission. The amendments to Form N–1A are designed to provide better guidance to funds as to what information should be in the prospectus and the SAI to assist funds seeking to act in good faith in conformity with Form N–1A.[208]

6. Form N–1A Guidelines and Related Staff Positions

The Guidelines to current Form N–1A (the "Guides") were prepared by the Division and published by the Commission when it adopted the Form in 1983.[209] The Guides, which generally restate Division positions that may affect fund disclosure, were intended to assist funds in preparing and filing their registration statements. Additional Division positions on disclosure matters have been included from time to time in Generic Comment Letters prepared by the Division ("GCLs").[210]

Although certain Guides have been revised and new ones added in connection with the adoption of various rules, the Guides collectively have not been reviewed since 1983. Certain Division positions in the Guides and GCLs have become outdated.[211] Other Guides and GCLs explain or restate legal requirements and may encourage generic disclosure about fund operations that does not appear to help investors evaluate and compare funds.[212] In addition, the presentation of information in 35 Guides and 7 GCLs is not organized in the most useful or effective manner.

To address these issues, Form N–1A, as amended, incorporates certain disclosure requirements from the Guides and GCLs. Other disclosure requirements in the Guides and the GCLs have not been incorporated in Form N–1A because, among other things, they are outdated or result in disclosure about technical, legal, and operational matters generally common to all funds. In addition, Form N–1A does not incorporate certain requirements calling for specific disclosure about certain types of fund investments because these requirements have tended to standardize disclosure about certain securities without regard to how a particular fund intends to use the securities in achieving its investment objectives. Generalized disclosure of this sort is inconsistent with the goal of the amendments to prospectus disclosure being adopted today to provide investors with information about how a particular fund's portfolio will be managed and elicit disclosure tailored to a fund's particular investment objectives and strategies.[213]

Information in the Guides and GCLs about legal requirements (including information about fund organization and operations), interpretive positions, and descriptions of filing procedures will be updated and reorganized in a new Investment Company Registration Guide ("Registration Guide").[214] The Commission has instructed the Division to make the Registration Guide available as soon as practicable. While the Commission believes that the Registration Guide will be a useful tool for funds in preparing their filings, Form N–1A, as amended, includes all of the requirements necessary for funds to prepare new or amend existing registration statements.[215]

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[203] *Id.* See *White* v. *Melton*, 757 F. Supp. 267 (S.D.N.Y. 1991) (citing the 1983 Form N–1A Adopting Release, *supra* note 12, as authority for the principle that certain matters are required to appear in the prospectus and that others may be appropriately disclosed in the SAI, which may be incorporated by reference into the prospectus).

[204] See Form N–1A Proposing Release, *supra* note 8, at 10920 (citing the 1982 Form N–1A Proposing Release as suggesting that prohibiting incorporation by reference of the SAI into the prospectus or, alternatively, requiring delivery of the SAI with the prospectus, would "vitiate the Commission's attempt to provide shorter, simpler prospectuses").

[205] General Instruction D, as adopted, includes technical revisions to simplify its requirements. The specific instruction regarding incorporation by reference of condensed financial information from reports to shareholders in existing General Instruction E has been incorporated in Item 9 of Form N–1A, as amended (financial highlights table). The existing instruction allowing incorporation of financial information in response to Item 23 of Form N–1A from reports to shareholders has been deleted as unnecessary because the Form does not limit incorporation of information into the SAI. The requirement that a shareholder report incorporated by reference into the SAI be delivered with the SAI has been added in Item 10(a)(iv).

[206] 15 U.S.C. 77q(a).

[207] 15 U.S.C. 80a–38(c).

[208] See 1983 Form N–1A Adopting Release, *supra* note 12, at 37930.

[209] 1983 Form N–1A Adopting Release, *supra* note 12, at 37938 (stating that publication of the Guides was not intended to elevate their status beyond that of staff guidance). The Commission initially adopted guidelines in 1972 to assist funds in preparing and filing registration statements. Investment Company Act Release Nos. 7220, 7221 (June 9, 1972) [37 FR 12790] ("Guides Releases").

[210] See 1993 GCL and 1994 GCL, *supra* note 25.

[211] See, *e.g.*, Guide 9 (Short Sales) (a new interpretive position of the Commission's staff as to limits under the Investment Company Act on short sales entered into by funds was set out in Robertson Stephens Investment Trust (pub. avail. Aug. 24, 1995)); Guide 30 (Tax Consequences) (each series is now treated as a separate entity for tax purposes and may not, as suggested by the Guide, offset gains of one series against losses of another); 1990 GCL, *supra* note 25, at I.B (undertakings); 1991 GCL, *supra* note 25, at II.A.2 (country, international, and global funds); and 1992 GCL, *supra* note 25, at II.F (segregated accounts).

[212] See, *e.g.*, Guides 8 (Senior Securities, Reverse Repurchase Agreements, Firm Commitment Agreements and Standby Commitment Agreements), 9 (Short Sales), 15 (Qualification for Treatment Under Subchapter M of the Internal Revenue Code), and 28 (Valuation of Securities Being Offered); 1994 GCL, *supra* note 25, at III.C (redemption fees); and 1995 GCL, *supra* note 25, at II.A (MDFP disclosure).

[213] See *supra* Section II.A.3.

[214] The Guides have not been republished with Form N–1A, as amended. Neither the Guides nor the GCLs will apply to registration statements prepared on the amended Form. The Commission also is rescinding the Guides Releases, *supra* note 209.

[215] The Registration Guide will address topics discussed in the GCLs relating to closed-end investment companies and unit investment trusts, and other matters not relevant to Form N–1A (*e.g.*, proxy disclosure). Information traditionally addressed in the GCLs will be considered when the Registration Guide is updated, unless the nature of the information warrants immediate dissemination. The Registration Guide will serve as a "small entity compliance guide," which the Commission is required to publish under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C.S. 601 note (Supp. July 1996)).

E. Technical Rule Amendments

When it proposed to amend Form N–1A, the Commission proposed several technical rule amendments. These rule amendments generally were intended to implement the recommendations of the Commission's Task Force on Disclosure Simplification that apply to funds.[216] The Commission is adopting these amendments substantially as proposed.[217] The Commission also is adopting conforming amendments to several rules and a form to correct references to items in Form N–1A that have been redesignated or reorganized in Form N–1A, as amended.[218]

F. Administration of Form N–1A

While generally praising the Proposed Amendments and their goals, some commenters voiced concern that, unless administered appropriately, Form N–1A, as amended, would not lead to more useful and understandable disclosure documents for fund investors. Some commenters argued that, over time, the Commission's staff has interpreted Form N–1A's existing requirements so narrowly as to prevent funds from adopting formats in which information could be effectively communicated to investors. Other commenters asserted that the Commission's staff, in interpreting the provisions of existing Form N–1A, has consistently required lengthy and complex disclosure that may discourage investors from reading fund prospectuses.[219]

The Commission acknowledges that some interpretations relating to Form N–1A disclosure taken by the staff in the past have contributed to fund prospectuses becoming dense and less inviting to read by shareholders.[220] The Commission believes, however, that funds, their counsels and other advisors also have contributed to this result. In seeking to minimize potential liabilities under the federal securities laws, many funds appear to have made the use of clear formats and concise and understandable language in fund prospectuses only a secondary concern, at best. Funds also appear to have added material to their prospectuses not otherwise required by Form N–1A to facilitate marketing or other business objectives.

The Commission firmly believes that achieving the goals underlying the amendments to Form N–1A being adopted today necessitates discipline on the part of the Commission and its staff, as well as on the part of funds and their advisors. In exercising discipline, all parties involved in the disclosure process should look not only to the Form N–1A disclosure requirements, as amended, but also to the disclosure principles reflected in the Form. The Commission has instructed its staff to adhere to those principles closely when providing comments on registration statements filed on Form N–1A and in interpreting provisions of the Form.[221] The Commission strongly encourages funds and their advisors to follow closely the principles in drafting language and designing formats for use in fund prospectuses.

Throughout the period during which the Form N–1A and profile initiatives were developed, the Commission staff worked with numerous fund groups to create innovative disclosure materials and new and improved prospectuses.[222] The results of these efforts have been commended by many as achieving a significant improvement over existing disclosure documents.[223] Many of the efforts were furthered by the willingness of the staff to interpret Commission disclosure requirements in a manner consistent with the goal of enabling funds to communicate more effectively to investors information essential in considering an investment in a fund.[224] The Commission's staff will continue to exercise this approach in interpreting the provisions of Form N–1A, as amended, and in reviewing fund filings under the revised disclosure requirements.[225]

G. Coordination With the NASD

As discussed in the Form N–1A Proposing Release, some rules of the NASD restrict the ability of NASD members to engage in various activities relating to funds unless certain disclosures are made in fund prospectuses.[226] NASD Conduct Rule 2830, for example, generally does not allow underwriters to pay compensation to broker-dealers for selling shares of a fund, unless the compensation arrangements are disclosed in the fund's prospectus.[227] Certain commenters

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[216] SEC, Report of the Task Force on Disclosure Simplification (1996).

[217] The Commission is amending rules 495 and 497 [17 CFR 230.495 and .497] to eliminate their cross-reference sheet requirements. The Commission also is amending rule 8b–11 [17 CFR 270. 8b–11] to modify signature requirements to provide more flexibility for issuers filing on paper. The Commission adopted amendments to rule 481, which is applicable to funds, in the Plain English Release, *supra* note 20.

[218] See amendments to rules 483, 485, 304, 14a–101 [17 CFR 230.483, :485, 232.304, 240.14a–101] and Form N–14 [referenced in 17 CFR 239.23].

[219] Several commenters referred to this aspect of staff disclosure interpretations as resulting in "disclosure creep." According to these commenters, the disclosure that proved problematic typically related to complex instruments in which some funds invested such as options, futures, and junk bonds. The commenters said that, in response to difficulties experienced by funds investing in these instruments, the staff often required all funds holding these instruments to amend their prospectuses to add lengthy and overly technical discussions of the instruments.

[220] See Levitt Article, *supra* note 5, at 37 ("We recognize that we share responsibility for the state of the modern prospectus. Our passion for full disclosure has resulted in fact-bloated reports, and prospectuses that are more redundant than revealing.").

[221] The Commission has also generally instructed the staff to avoid as much as possible using disclosure requirements as a means of regulating the conduct of funds, which are subject to extensive substantive regulation under the Investment Company Act.

[222] See, *e.g.*, Levitt Article, *supra* note 5 (discussing various Commission initiatives to work with mutual funds and other corporate issuers to improve prospectus disclosure); Connors, Mutual Fund Prospectus Simplification: The Time Has Come, The Investment Lawyer, Vol. 3, No. 8, Aug. 1997, at 14 (describing the Commission's role in the development of the simplified John Hancock prospectus).

[223] See, *e.g.*, Dow Jones Newswires, State Street Rewrites Prospectuses to Help Ease Investors' Task, The Wall Street Journal, Nov. 14, 1997, at 1B (commenting on State Street's new plain English prospectus); Kelley, John Hancock Builds a Better Mousetrap, Morningstar Mutual Funds, Sept. 13, 1996, at 52 (commenting on the improvements in John Hancock's new prospectus); McTague, Simply Beautiful: Shorn of Legalese, Even Prospectuses Make Sense, Barron's, Oct. 7, 1996, at F10 (concerning the recent efforts of the John Hancock funds and other fund groups to simplify their prospectuses); Morcau, Prospectuses are Getting Easier to Read, Investor's Business Daily, Dec. 15, 1997, at B1 (noting improvements in the prospectuses from Vanguard, State Street, Dreyfus, and other fund groups); Williamson, State Street Launches Redesigned Prospectus, Pensions & Investments, Dec. 8, 1997, at 36 (commenting on State Street's simplified and redesigned prospectus); Zweig, Our 1997 Mutual Fund Awards: Picks, Pans and Some Tips Too, Money, Vol. 26, No. 13, 1997, at 35 (commending USAA and State Street for producing prospectuses in clear, simple English).

[224] See John Hancock Funds, Inc., *supra* note 199; see also 1997 Profile Letter, 1996 Profile Letter, and 1995 Profile Letter, *supra* note 16; National Association for Variable Annuities (pub. avail. June 4, 1996); Fidelity Institutional Retirement Services Company, Inc. (pub. avail. Apr. 5, 1995).

[225] The Commission recognizes that, in interpreting these provisions, the staff will have to balance the goal of furthering the effective communication of information to investors with the goal of presenting prospectuses in formats designed to permit investors to compare the operations of one fund to those of other funds.

[226] See Form N–1A Proposing Release, *supra* note 8, at 10916–17.

[227] See, *e.g.*, rule 2830(*l*)(1)(C) of the NASD Conduct Rules, *supra* note 37, at 4627 (prohibiting the offer, payment, or arrangement of "concessions" in connection with retail sales of investment company securities unless the arrangement is disclosed in the investment company's prospectus). The NASD has proposed to eliminate the provision in Conduct Rule 2830 that necessitates prospectus disclosure concerning these non-cash arrangements. See Securities Exchange Act Release No. 38993 (Sept. 5, 1997) [62 FR 47080]. Moreover, the NASD staff has assured the Commission's staff that the NASD staff will reconsider the appropriateness of requiring prospectus disclosure concerning cash compensation, in light of the Commission's Form

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expressed concern that these and other NASD prospectus disclosure requirements appear to be inconsistent with the Commission's broad initiatives to improve fund disclosure, and encouraged the Commission to coordinate its regulatory efforts with the NASD.

The Commission believes that it is of the utmost importance that all disclosure contained in fund prospectuses conforms to the principles of effective communication reflected in Form N–1A, as amended. The Commission has discussed these principles with the NASD staff, which has agreed to evaluate all of the NASD's existing requirements for consistency with these principles and to propose to the Commission that those rules be changed as necessary to achieve greater consistency. In addition, to the extent that it imposes prospectus disclosure requirements in the future, the NASD will seek to do so in accordance with the Commission's disclosure principles.[228]

H. Effective Dates and Transition Period

As discussed in the Form N–1A Proposing Release,[229] the Commission is providing for a transition period after the effective date of the amendments to Form N–1A that gives funds sufficient time to update their prospectuses or to prepare new registration statements under the revised Form N–1A requirements. All new registration statements or post-effective amendments that are annual updates to effective registration statements filed on or after December 1, 1998 must comply with the amendments to Form N–1A.[230] The final compliance date for filing amendments to effective registration statements to conform with the new Form N–1A requirements is December 1, 1999. The same compliance dates apply to the new plain English disclosure requirements for fund prospectuses. A fund may, at its option, prepare documents in accordance with the requirements of Form N–1A, as amended, at any time after the effective date of the amendments.

III. Cost/Benefit Analysis and Effects on Competition, Efficiency, and Capital Formation

Section 2(c) of the Investment Company Act provides that whenever the Commission engages in rulemaking requiring the Commission to consider whether its action is in the public interest, the Commission also must consider whether the action will promote efficiency, competition, and capital formation.[231] For the reasons stated in the cost/benefit analysis below, as well as the reasons discussed elsewhere in this release, the Commission has concluded that the amendments to Form N–1A protect investors and promote efficiency, competition, and capital formation.

The central goal of the amendments to Form N–1A is to promote fund disclosure documents that effectively communicate essential information to investors. The amendments seek to meet this goal by focusing prospectus disclosure on information that will help investors decide whether to invest in a fund. The amendments seek to organize the prospectus in a more efficient manner, which increases the effectiveness of the information in the prospectus. For example, the amendments minimize required disclosure in a fund's prospectus about matters that generally are common to all funds and focus the disclosure on matters about the fund. Changes such as the addition to Form N–1A of a standardized risk/return summary also allow investors to use prospectus information efficiently to compare one fund to others before investing. Well-informed investors may invest more of their resources and allocate their investments carefully, which in turn would tend to promote competition among funds.

The Commission did not receive any comments addressing the costs associated with the amendments to Form N–1A. While it is difficult to quantify costs and benefits related to Form N–1A, the Commission notes that commenters strongly favored the amendments. As discussed in the Commission's Paperwork Reduction Act submission in conjunction with the Form N–1A Proposing Release, the Commission estimated that there are approximately 7,500 registrants on Form N–1A. The total annual cost to the industry of preparing, filing, and updating current Form N–1A is approximately $175 million.[232] The Commission does not believe that these amendments will result in a significant cost increase over time because the amendments do not require that funds disclose a significant amount of new information. Rather than increase the reporting burden, the amendments primarily clarify instructions, reorganize the prospectus, and require new formats for certain information.

The Commission's estimate of the total annual cost to the industry identified above reflects the burden of initial Form N–1A filings, which the Commission has sought to minimize. It is likely that an initial expense from the revisions would be offset by future savings such as lower printing and distribution costs from a shorter prospectus. For example, the amendments eliminate the requirement that newly organized funds file updated financial statements within 4 to 6 months after the effective date of the registration statement. The costs of filing these updated financial statements may have a disproportionate effect on small funds and the Commission estimates that the elimination of the requirement will produce an approximate savings of $1.8 million annually based on an estimate of 180 filings of Form N–1A per year by newly organized funds. The elimination of this requirement also promotes competition and capital formation by decreasing cost-related barriers to entry. On balance, the Commission believes that the amendments to Form N–1A benefit investors, foster efficiency, and tend to promote competition and capital formation.

IV. Paperwork Reduction Act

As explained in the Form N–1A Proposing Release, the amendments to Form N–1A contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[233] The collection of information requirements in this release were submitted to the Office of Management and Budget ("OMB") for review under section 3507(d) of the PRA. OMB approved the collection of information under the title "Form N–1A Under the Investment Company Act of 1940 and the Securities Act of 1933, Registration Statement of Open-End Management Investment Companies" and assigned it a control number of 3235–0307. The collection of information contained in the release is in accordance with the clearance requirements of 44 U.S.C. 3507. An

N–1A initiatives. *Id.* at 47086. In addition, the NASD has proposed to eliminate certain prospectus disclosure concerning the effects of asset-based sales charges. See *supra* note 169.

[228] The Commission also encourages the NASD to follow as much as possible the disclosure principles underlying the Form N–1A in considering and proposing disclosure requirements under NASD rules that apply to fund advertisements.

[229] See Form N–1A Proposing Release, *supra* note 8, at 10921.

[230] To simplify compliance with the revised prospectus disclosure requirements, the Commission is specifying the effective date as June 1, 1998.

[231] 15 U.S.C. 80a–2(c). See also section 2(b) of the Investment Company Act. 15 U.S.C. 77b(b).

[232] Form N–1A Proposing Release, *supra* note 8.

[233] 44 U.S.C. 3501, *et seq.*

agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the agency displays a valid OMB control number.

Funds use Form N–1A to register under the Investment Company Act and to register the offer for sale of their shares under the Securities Act. The amendments to Form N–1A seek to minimize prospectus disclosure about technical, legal, and operational matters that generally are common to all funds and focus disclosure on essential information about a particular fund that would assist an investor in deciding whether to invest in that fund. The filing of Form N–1A is mandatory. Responses to the disclosure requirements of Form N–1A will not be kept confidential.

The Commission solicited public comment on the collection of information requirements contained in the Form N–1A Proposing Release and received no comments on the PRA portion of the release. The estimated total burden, purpose, use and necessity of the collection of information will be the same as detailed in the Form N–1A Proposing Release.

V. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 604 regarding the amendments to Form N–1A. The FRFA explains that the amendments will revise disclosure requirements for fund prospectuses to minimize prospectus disclosure about technical, legal, and operational matters that generally are common to all funds and focus prospectus disclosure on essential information about a particular fund that will assist investors in deciding whether to invest in that fund. The FRFA also explains that the amendments are intended to improve fund prospectuses and to promote more effective communication of information about funds.

The Commission requested comment with respect to the Initial Regulatory Flexibility Analysis ("IRFA") contained in Form N–1A Proposing Release. The Commission did not receive any comments with respect to the IRFA.

The Commission estimates that approximately 2,700 registered open-end management investment companies are subject to the requirements of Form N–1A. Of these, approximately 620 (23%) are funds that meet the Commission's definition of small entity for the purposes of the Securities Act and the Investment Company Act—an investment company with net assets of $50 million or less as of the end of its most recent fiscal year [17 CFR 230.157(b) and 270.0–10].

The FRFA explains that Form N–1A, as amended, will not impose any substantial additional burdens for small entities because most of the changes do not require the development of new information. Initially, however, the changes will require funds to amend the format in which they present information in their prospectuses. The amendments primarily will clarify and simplify the instructions for completing Form N–1A, shift information from the prospectus to the SAI, and require new formats for certain information. A fund's initial update under Form N–1A, as amended, may take longer than preparing a current prospectus due to a lack of familiarity with the new format. On balance, however, the Commission believes that preparing and updating the revised Form should take the same amount of time (or possibly less time) as preparing and updating the current Form.

As stated in the FRFA, the Commission considered several alternatives to the amendments, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the rule. Because the amendments to Form N–1A are intended to improve prospectus disclosure for all investors, whether they invest in funds that are small entities or others, the Commission believes that separate treatment for small entities is inconsistent with the protection of investors. A copy of the FRFA may be obtained by contacting Markian M.W. Melnyk, Deputy Chief, Office of Disclosure Regulation, Securities and Exchange Commission, 450 5th Street, N.W., Mail Stop 5–6, Washington, D.C. 20549–6009.

VI. Statutory Authority

The Commission is amending rules and forms pursuant to sections 5, 7, 8, 10 and 19(a) of the Securities Act [15 U.S.C. 77e, 77g, 77h, 77j, and 77s(a)], and sections 8, 22, 24(g), 30 and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–22, 80a–24(g), 80a–29, and 80a–37]. The authority citations for the amendments to the rules and forms precede the text of the amendments.

Text of Rule and Form Amendments

List of Subjects in 17 CFR Parts 230, 232, 239, 240, 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission amends Chapter II, Title 17 of the Code of Federal Regulations as follows:

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

1. The general authority citation for Part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Revise the note immediately preceding § 230.480 to read as follows:

Note: The rules in this section of Regulation C (§§ 230.480 to 230.488 and §§ 230.495 to 230.498) apply only to investment companies and business development companies. Section 230.489 applies to certain entities excepted from the definition of investment company by rules under the Investment Company Act of 1940. The rules in the rest of Regulation C (§§ 230.400 to 230.479 and §§ 230.490 to 230.494), unless the context specifically indicates otherwise, also apply to investment companies and business development companies. *See* § 230.400.

§ 230.483 [Amended]

3. Amend § 230.483 to remove all references to "3(a)" under the heading "Form N–1A" in the table following paragraph (e)(4) and add, in their place, "9", and to remove the references to "3(b)" and the corresponding item descriptions under the heading "Form N–1A" in the table following paragraph (e)(4).

§ 230.485 [Amended]

4. Amend § 230.485 to correct the reference "paragraph (b)(1)(v)" in the introductory text of paragraph (b) to read "paragraph (b)(1)(iii)", and to revise the reference "Items 5(c) or 5A" in paragraph (b)(1)(iv) to read "Items 5 or 6(a)(2)".

§ 230.495 [Amended]

5. Amend § 230.495 to remove the words "cross-reference sheet;" from paragraph (a).

§ 230.497 [Amended]

6. Amend § 230.497 to remove the words ", together with 5 copies of a cross reference sheet similar to that previously filed, if changed" from paragraph (d) and ", together with five copies of a cross-reference sheet similar to that previously filed, if changed" from paragraph (e).

PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

7. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

8. Amend § 232.304 to revise the reference to "Item 5A" in paragraph (d) to read "Item 5".

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

9. The general authority citation for Part 239 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

10. Amend Form N–14 (referenced in § 239.23) to revise the reference "Item 2 of Form N–1A" in Item 3(a) to read "Item 3 of Form N–1A", to revise the reference "Items 10 through 23 of Form N–1A" in Item 12(a) to read "Items 10 through 22 of Form N–1A", and to revise the reference "Items 10 through 14 and 16 through 23 of Form N–1A" in Item 13(a) to read "Items 10 through 13 and 15 through 22 of Form N–1A," and revise paragraph (a) of Item 5 to read as follows:

Note: Form N–14 does not and these amendments will not appear in the *Code of Federal Regulations*.

Form N–14

* * * * *

Item 5.

* * * * *

(a) If the registrant is an open-end management investment company, furnish the information required by Items 2, 3, 4(a) and (b), and 5–9 of Form N–1A under the 1940 Act; *provided, however*, that the information required by Item 5 may be omitted if the prospectus is accompanied by an annual report to shareholders containing the information otherwise required by Item 5;

* * * * *

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

11. The general authority citation for Part 240 is revised to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

§ 240.14a–101 [Amended]

12. Amend § 240.14a–101 to revise the reference "Item 5" in paragraph (a)(1)(i) of Item 22 to read "Item 15(h)", the reference "Item 2" in paragraph (a)(3)(iv) of Item 22 to read "Item 3", and the reference "Item 2(a)(ii)" in Instruction 4 to paragraph (a)(3)(iv) of Item 22 to read "Item 3".

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

13. The authority citation for part 270 continues to read as follows:

Authority: 15 U.S.C. 80a–1, *et seq.*, 80a–34(b)(1), 80a–37, 80a–39 unless otherwise noted;

* * * * *

14. Amend § 270.8b–11 to remove the word "manually" from paragraph (c) and to revise paragraph (e) to read as follows:

§ 270.8b–11 Number of copies; signatures; binding.

* * * * *

(e) *Signatures.* Where the Act or the rules thereunder, including paragraph (c) of this section, require a document filed with or furnished to the Commission to be signed, the document should be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. When typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in the filing. Execute each such document before or at the time the filing is made and retain for a period of five years. Upon request, the registrant shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

15. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

16. Revise Form N–1A (referenced in §§ 239.15A and 274.11A) (including the Guidelines to the Form) to read as follows:

Note: The text of Form N–1A does not and this amendment will not appear in the Code of Federal Regulations.

OMB Approval
OMB Number:
Expires:
Estimated average burden hours per response

Securities and Exchange Commission

Washington, D.C. 20549

Form N–1A

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933 [ ]
Pre-Effective Amendment No. _____ [ ]
Post-Effective Amendment No. _____ [ ]
and/or
REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940 [ ]
Amendment No. _____ [ ]
(Check appropriate box or boxes.)

_____
(Exact Name of Registrant as Specified in Charter)

_____
(Address of Principal Executive Offices)

_____
(Zip Code)
Registrant's Telephone Number, including Area Code _____

_____
(Name and Address of Agent for Service)

Approximate Date of Proposed Public Offering _____

It is proposed that this filing will become effective (check appropriate box)

[ ] Immediately upon filing pursuant to paragraph (b)
[ ] on (date) pursuant to paragraph (b)
[ ] 60 days after filing pursuant to paragraph (a)(1)
[ ] On (date) pursuant to paragraph (a)(1)
[ ] 75 days after filing pursuant to paragraph (a)(2)
[ ] On (date) pursuant to paragraph (a)(2) of rule 485.

If appropriate, check the following box:

[ ] This post-effective amendment designates a new effective date for a previously filed post-effective amendment.

Omit from the facing sheet reference to the other Act if the Registration Statement or amendment is filed under only one of the Acts. Include the "Approximate Date of Proposed Public Offering" only when shares are being registered under the Securities Act of 1933.

Form N–1A is to be used by open-end management investment companies, except insurance company separate accounts and small business investment companies licensed under the United States Small Business Administration, to register under the Investment Company Act of 1940 and to offer their shares under the Securities Act of 1933. The Commission has designed Form N–1A to provide investors with information that will assist them in making a decision about investing in an investment company eligible to use the Form. The Commission also may use the information provided on Form N–1A in its regulatory, disclosure review, inspection, and policy making roles.

A Registrant is required to disclose the information specified by Form N–1A, and the Commission will make this information public. A Registrant is not required to respond to the collection of information contained in Form N–1A unless the Form displays a currently valid Office of Management and Budget ("OMB") control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–6009. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. § 3507.

Contents of Form N–1A

General Instructions

GENERAL INSTRUCTIONS

A. Definitions

References to sections and rules in this Form N–1A are to the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (the "Investment Company Act"), unless otherwise indicated. Terms used in this Form N–1A have the same meaning as in the Investment Company Act or the related rules, unless otherwise indicated. As used in this Form N–1A, the terms set out below have the following meanings:

"Class" means a class of shares issued by a Multiple Class Fund that represents interests in the same portfolio of securities under rule 18f–3 [17 CFR 270.18f–3] or under an order exempting the Multiple Class Fund from sections 18(f), 18(g), and 18(i) [15 U.S.C. 80a–18(f), 18(g), and 18(i)].

"Fund" means the Registrant or a separate Series of the Registrant. When an item of Form N–1A specifically applies to a Registrant or a Series, those terms will be used.

"Master-Feeder Fund" means a two-tiered arrangement in which one or more Funds (each a "Feeder Fund") holds shares of a single Fund (the "Master Fund") in accordance with section 12(d)(1)(E) [15 U.S.C. 80a–12(d)(1)(E)].

"Money Market Fund" means a Fund that holds itself out as money market fund and meets the maturity, quality, and diversification requirements of rule 2a–7 [17 CFR 270.2a–7].

"Multiple Class Fund" means a Fund that has more than one Class.

"Registrant" means an open-end management investment company registered under the Investment Company Act.

"SAI" means the Statement of Additional Information required by Part B of this Form.

"Securities Act" means the Securities Act of 1933 [15 U.S.C. 77a *et seq.*].

"Securities Exchange Act" means the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*].

"Series" means shares offered by a Registrant that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with rule 18f–2(a) [17 CFR 270.18f–2(a)].

B. Filing and Use of Form N–1A

1. What is Form N–1A Used for?

Form N–1A is used by Funds, except insurance company separate accounts and small business investment companies licensed under the United States Small Business Administration, to file:

(a) An initial registration statement under the Investment Company Act and amendments to the registration statement, including amendments required by rule 8b–16 [17 CFR 270.8b–16];

(b) An initial registration statement under the Securities Act and amendments to the registration statement, including amendments required by section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)]; or

(c) Any combination of the filings in paragraph (a) or (b).

2. What Is Included in the Registration Statement?

(a) For registration statements or amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act, include the facing sheet of the Form, Parts A, B, and C, and the required signatures.

(b) For registration statements or amendments filed only under the Investment Company Act, include the facing sheet of the Form, responses to all Items of Parts A (except Items 1, 2, 3, 5, and 9), B, and C (except Items 23(e) and (i)–(k)), and the required signatures.

3. What Are the Fees for Form N–1A?

No registration fees are required with the filing of Form N–1A to register as an investment company under the Investment Company Act or to register securities under the Securities Act. See section 24(f) [15 U.S.C. 80a–24f–2] and related rule 24f–2 [17 CFR 270.24f–2].

4. What Rules Apply to the Filing of a Registration Statement on Form N–1A?

(a) For registration statements and amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act, the general rules regarding the filing of registration statements in Regulation C under the Securities Act [17 CFR 230.400–230.497] apply to the filing of Form N–1A. Specific requirements concerning Funds appear in rules 480–485 and 495–497 of Regulation C.

(b) For registration statements and amendments filed only under the Investment Company Act, the general provisions in rules 8b–1—8b–32 [17 CFR 270.8b–1—270.8b–32] apply to the filing of Form N–1A.

(c) The plain English requirements of rule 421 under the Securities Act [17 CFR 230.421] apply to prospectus disclosure in Part A of Form N–1A.

(d) Regulation S–T [17 CFR 232.10—232.903] applies to all filings on the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR").

C. Preparation of the Registration Statement

1. Administration of the Form N–1A Requirements

(a) The requirements of Form N–1A are intended to promote effective communication between the Fund and prospective investors. A Fund's prospectus should clearly disclose the fundamental characteristics and investment risks of the Fund, using concise, straightforward, and easy to understand language. A Fund should use document design techniques that promote effective communication. The prospectus should emphasize the Fund's overall investment approach and strategy.

(b) The prospectus disclosure requirements in Form N–1A are intended to elicit information for an average or typical investor who may not be sophisticated in legal or financial matters. The prospectus should help investors to evaluate the risks of an investment and to decide whether to invest in a Fund by providing a balanced disclosure of positive and negative factors. Disclosure in the prospectus should be designed to assist an investor in comparing and contrasting the Fund with other funds.

(c) Responses to the Items in Form N–1A should be as simple and direct as reasonably possible and should include only as much information as is necessary to enable an average or typical investor to understand the particular characteristics of the Fund. The prospectus should avoid: including lengthy legal and technical discussions; simply restating legal or regulatory requirements to which Funds generally are subject; and disproportionately emphasizing possible investments or activities of the Fund that are not a significant part of the Fund's investment operations. Brevity is especially important in describing the practices or aspects of the Fund's operations that do not differ materially from those of other investment companies. Avoid excessive detail, technical or legal terminology, and complex language. Also avoid lengthy sentences and paragraphs that may make the prospectus difficult for many investors to understand and detract from its usefulness.

(d) The requirements for prospectuses included in Form N–1A will be administered by the Commission in a way that will allow variances in disclosure or presentation if appropriate for the circumstances involved while remaining consistent with the objectives of Form N–1A.

2. Form N–1A is Divided Into Three Parts

(a) *Part A.* Part A includes the information required in a Fund's prospectus under section 10(a) of the Securities Act. The purpose of the prospectus is to provide essential information about the Fund in a way that will help investors to make informed decisions about whether to purchase the Fund's shares described in the prospectus. In responding to the Items in Part A, avoid cross-references to the SAI or shareholder reports. Cross-references within the prospectus are most useful when their use assists investors in understanding the information presented and does not add complexity to the prospectus.

(b) *Part B.* Part B includes the information required in a Fund's SAI. The purpose of the SAI is to provide additional information about the Fund that the Commission has concluded is not necessary or appropriate in the public interest or for the protection of

investors to be in the prospectus, but that some investors may find useful. Part B affords the Fund an opportunity to expand discussions of the matters described in the prospectus by including additional information that the Fund believes may be of interest to some investors. The Fund should not duplicate in the SAI information that is provided in the prospectus, unless necessary to make the SAI comprehensible as a document independent of the prospectus.

(c) *Part C.* Part C includes other information required in a Fund's registration statement.

3. Additional Matters

(a) *Organization of Information.* Organize the information in the prospectus and SAI to make it easy for investors to understand. Disclose the information required by Items 2 and 3 (the Risk/Return Summary) in numerical order at the front of the prospectus. Do not precede these Items with any other Item except the Cover Page (Item 1) or a table of contents meeting the requirements of rule 481(c) under the Securities Act. If the discussion in the Risk/Return Summary also responds to the disclosure requirements in Item 4, a Fund need not include additional disclosure in the prospectus responding to Item 4. Disclose the information required by Item 8 (Distribution Arrangements) in one place in the prospectus.

(b) *Other Information.* A Fund may include, except in the Risk/Return Summary, information in the prospectus or the SAI that is not otherwise required. For example, a Fund may include charts, graphs or tables so long as the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of the information that is required to be included. The Risk/Return Summary may not include disclosure other than that required or permitted by Items 2 and 3.

(c) *Use of Form N–1A by More Than One Registrant, Series or Class.* Form N–1A may be used by one or more Registrants, Series, or Classes.

(i) When disclosure is provided for more than one Fund or Class, the disclosure should be presented in a format designed to communicate the information effectively. Funds may order or group the response to any Item in any manner that organizes the information into readable and comprehensible segments and is consistent with the intent of the prospectus to provide clear and concise information about the Funds or Classes. Funds are encouraged to use, as appropriate, tables, side-by-side comparisons, captions, bullet points, or other organizational techniques when presenting disclosure for multiple Funds or Classes.

(ii) Paragraph (a) requires Funds to disclose the information required by Items 2 and 3 in numerical order at the front of the prospectus and not to precede the Items with other information. As a general matter, multiple Funds or Multiple Class Funds may depart from the requirement of paragraph (a) as necessary to present the required information clearly and effectively (although the order of information required by each Item must remain the same). For example, the prospectus may present all of the Item 2 information for several Funds followed by all of the Item 3 information for the Funds, or may present Items 2 and 3 for each of several Funds sequentially. Other presentations also would be acceptable if they are consistent with the Form's intent to disclose the information required by Items 2 and 3 in a standard order at the beginning of the prospectus.

(d) *Modified Prospectuses for Certain Funds.*

(i) A Fund may modify or omit, if inapplicable, the information required by Items 7(b)–(d) and 8(a)(2) for funds used as investment options for:

(A) A defined contribution plan that meets the requirements for qualification under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k));

(B) A tax-deferred arrangement under sections 403(b) or 457 of the Internal Revenue Code (26 U.S.C. 403(b) and 457); and

(C) A variable contract as defined in section 817(d) of the Internal Revenue Code (26 U.S.C. 817(d)), if covered in a separate account prospectus.

(ii) A Fund that uses a modified prospectus under Instruction (d)(i) may:

(A) Alter the legend required on the back cover page by Item 1(b)(1) to state, as applicable, that the prospectus is intended for use in connection with a defined contribution plan, tax-deferred arrangement, or variable contract; and

(B) Modify other disclosure in the prospectus consistent with offering the Fund as a specific investment option for a defined contribution plan, tax-deferred arrangement, or variable contract.

(e) *Dates.* Rule 423 under the Securities Act [17 CFR 230.423] applies to the dates of the prospectus and the SAI. The SAI should be made available at the same time that the prospectus becomes available for purposes of rules 430 and 460 under the Securities Act [17 CFR 230.430 and 230.460].

(f) *Sales Literature.* A Fund may include sales literature in the prospectus so long as the amount of this information does not add substantial length to the prospectus and its placement does not obscure essential disclosure.

D. Incorporation by Reference

1. Specific Rules for Incorporation by Reference in Form N–1A

(a) A Fund may not incorporate by reference into a prospectus information that Part A of this Form requires to be included in a prospectus, except as specifically permitted by Part A of the Form.

(b) A Fund may incorporate by reference any or all of the SAI into the prospectus (but not to provide any information required by Part A to be included in the prospectus) without delivering the SAI with the prospectus.

(c) A Fund may incorporate by reference into the SAI or its response to Part C, information that Parts B and C require to be included in the Fund's registration statement.

2. General Requirements

All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: rule 10(d) of Regulation S–K under the Securities Act [17 CFR 229.10(d)] (general rules on incorporation by reference, which, among other things, prohibit, unless specifically required by this Form, incorporating by reference a document that includes incorporation by reference to another document, and limits incorporation to documents filed within the last 5 years, with certain exceptions); rule 411 under the Securities Act [17 CFR 230.411] (general rules on incorporation by reference in a prospectus); rule 303 of Regulation S–T [17 CFR 232.303] (specific requirements for electronically filed documents); and rules 0–4, 8b–23 and 8b–32 [17 CFR 270.0–4, 270.8b–23 and 270.8b–32] (additional rules on incorporation by reference for Funds).

Part A: Information Required in a Prospectus

Item 1. Front and Back Cover Pages

(a) *Front Cover Page.* Include the following information, in plain English under rule 421(d) under the Securities Act, on the outside front cover page of the prospectus:

(1) The Fund's name.

(2) The date of the prospectus.

(3) The statement required by rule 481(b)(1) under the Securities Act.

Instruction. A Fund may include on the front cover page a statement of its investment objectives, a brief (e.g., one sentence) description of its operations, or any additional information, subject to the requirement set out in General Instruction C.3(b).

(b) *Back Cover Page.* Include the following information, in plain English under rule 421(d) under the Securities Act, on the outside back cover page of the prospectus:

(1) A statement that the SAI includes additional information about the Fund, and a statement to the following effect:

Additional information about the Fund's investments is available in the Fund's annual and semi-annual reports to shareholders. In the Fund's annual report, you will find a discussion of the market conditions and investment strategies that significantly affected the Fund's performance during its last fiscal year.

Explain that the SAI and the Fund's annual and semi-annual reports are available, without charge, upon request, and explain how shareholders in the Fund may make inquiries to the Fund. Provide a toll-free (or collect) telephone number for investors to call: to request the SAI; to request the Fund's annual report, if required by Item 5; to request the Fund's semi-annual report; to request other information about the Fund; and to make shareholder inquiries.

Instructions.

1. A Fund may indicate, if applicable, that the SAI and other information are available on its Internet site and/or by E-mail request.

2. A Fund may indicate, if applicable, that the SAI and other information are available from a financial intermediary (such as a broker-dealer or bank) through which shares of the Fund may be purchased or sold.

3. When a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the SAI, the annual report, or the semi-annual report, the Fund (or financial intermediary) must send the requested document within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

4. A Fund that has not yet been required to deliver an annual or semi-annual report to shareholders under rule 30d-1 [17 CFR 270.30d-1] may omit the statements required by this paragraph regarding the reports.

5. A Fund that provides the information required by Item 5 (Management's Discussion of Fund Performance) in its prospectus (and not in its annual report), or a Money Market Fund, may omit the sentence indicating that a reader will find in the Fund's annual report a discussion of the market conditions and investment strategies that significantly affected the Fund's performance during its last fiscal year.

6. A Fund that provides a separate disclosure document to investors under Item 7(f) must include the statement required by Item 7(f)(3).

(2) A statement whether and from where information is incorporated by reference into the prospectus as permitted by General Instruction D. Unless the information is delivered with the prospectus, explain that the Fund will provide the information without charge, upon request (referring to the telephone number provided in response to paragraph (b)(1)).

Instruction. The Fund may combine the information about incorporation by reference with the statements required under paragraph (b)(1).

(3) A statement that information about the Fund (including the SAI) can be reviewed and copied at the Commission's Public Reference Room in Washington, D.C. Also state that information on the operation of the public reference room may be obtained by calling the Commission at 1–800-SEC-0330. State that reports and other information about the Fund are available on the Commission's Internet site at http://www.sec.gov and that copies of this information may be obtained, upon payment of a duplicating fee, by writing the Public Reference Section of the Commission, Washington, D.C. 20549–6009.

(4) The Fund's Investment Company Act file number on the bottom of the back cover page in type size smaller than that generally used in the prospectus (e.g., 8-point modern type).

Item 2. Risk/Return Summary: Investments, Risks, and Performance

Include the following information, in plain English under rule 421(d) under the Securities Act, in the order and subject matter indicated:

(a) *Fund investment objectives/goals.*

Disclose the Fund's investment objectives or goals. A Fund also may identify its type or category (*e.g.*, that it is a Money Market Fund or a balanced fund).

(b) *Principal investment strategies of the Fund.*

Based on the information given in response to Item 4(b), summarize how the Fund intends to achieve its investment objectives by identifying the Fund's principal investment strategies (including the type or types of securities in which the Fund invests or will invest principally) and any policy to concentrate in securities of issuers in a particular industry or group of industries.

(c) *Principal risks of investing in the Fund.*

(1) *Narrative Risk Disclosure.*

(i) Based on the information given in response to Item 4(c), summarize the principal risks of investing in the Fund, including the risks to which the Fund's portfolio as a whole is subject and the circumstances reasonably likely to affect adversely the Fund's net asset value, yield, and total return. Unless the Fund is a Money Market Fund, disclose that loss of money is a risk of investing in the Fund.

Instruction. A Fund may, in responding to this Item, describe the types of investors for whom the Fund is intended or the types of investment goals that may be consistent with an investment in the Fund.

(ii) If the Fund is a Money Market Fund, state that:

An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in the Fund.

(iii) If the Fund is advised by or sold through an insured depository institution, state that:

An investment in the Fund is not a deposit of the bank and is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.

Instruction. A Money Market Fund that is advised by or sold through an insured depository institution should combine the disclosure required by Items 2(c)(1)(ii) and (iii) in a single statement.

(iv) If applicable, state that the Fund is non-diversified, describe the effect of non-diversification (*e.g.*, disclose that, compared with other funds, the Fund may invest a greater percentage of its assets in a particular issuer), and summarize the risks of investing in a non-diversified fund.

(2) *Risk/Return Bar Chart and Table.*

(i) Include the bar chart and table required by paragraphs (c)(2)(ii) and (iii) of this section. Provide a brief explanation of how the information illustrates the variability of the Fund's returns (*e.g.*, by stating that the information provides some indication of the risks of investing in the Fund by showing changes in the Fund's performance from year to year and by showing how the Fund's average annual returns for 1, 5, and 10 years compare with those of a broad measure of market performance). Provide a statement to the effect that how the Fund has performed in the past is not necessarily an indication of how the Fund will perform in the future.

(ii) If the Fund has annual returns for at least one calendar year, provide a bar chart showing the Fund's annual total returns for each of the last 10 calendar years (or for the life of the Fund if less than 10 years), but only for periods subsequent to the effective date of the Fund's registration statement. Present the corresponding numerical return adjacent to each bar. If the Fund's fiscal year is other than a calendar year, include the year-to-date return information as of the end of the most recent quarter in

a footnote to the bar chart. Following the bar chart, disclose the Fund's highest and lowest return for a quarter during the 10 years or other period of the bar chart.

(iii) If the Fund has annual returns for at least one calendar year, provide a table showing the Fund's average annual total returns for 1, 5, and 10 calendar year periods ending on the date of the most recently completed calendar year (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement, and the returns of an appropriate broad-based securities market index as defined in Instruction 5 to Item 5(b) for the same periods. A Fund that has been in existence for more than 10 years also may include average annual returns for the life of the fund. A Money Market Fund may provide the Fund's 7-day yield ending on the date of the most recent calendar year or disclose a toll-free (or collect) telephone number that investors can use to obtain the Fund's current 7-day yield.

Instructions.

1. *Bar Chart.*

(a) Provide annual total returns beginning with the earliest calendar year. Calculate annual returns using the Instructions to Item 9(a), except that the calculations should be based on calendar years. If a Fund's shares are sold subject to a sales load or account fees, state that sales loads or account fees are not reflected in the bar chart and that, if these amounts were reflected, returns would be less than those shown.

(b) For a Fund that provides annual total returns for only one calendar year or for a Fund that does not include the bar chart because it does not have annual returns for a full calendar year, modify, as appropriate, the narrative explanation required by paragraph (c)(2)(i) (*e.g.*, by stating that the information gives some indication of the risks of an investment in the Fund by comparing the Fund's performance with a broad measure of market performance).

2. *Table.*

(a) Calculate the Fund's average annual total returns under Item 21(b)(1) and a Money Market Fund's 7-day yield under Item 21(a).

(b) A Fund may include, in addition to the required broad-based securities market index, information for one or more other indexes as permitted by Instruction 6 to Item 5(b). If an additional index is included, disclose information about the additional index in the narrative explanation accompanying the bar chart and table (*e.g.*, by stating that the information shows how the Fund's performance compares with the returns of an index of funds with similar investment objectives).

(c) If the Fund selects an index that is different from the index used in a table for the immediately preceding period, explain the reason(s) for the selection of a different index and provide information for both the newly selected and the former index.

(d) A Fund (other than a Money Market Fund) may include the Fund's yield calculated under Item 21(b)(2). Any Fund may include its tax-equivalent yield calculated under Item 21. If a Fund's yield is included, provide a toll-free (or collect) telephone number that investors can use to obtain current yield information.

3. *Multiple Class Funds.*

(a) When a Multiple Class Fund offers more than one Class in the prospectus, provide annual total returns in the bar chart for only one of those Classes. The Fund can select which Class to include (*e.g.*, the oldest Class, the Class with the greatest net assets) if the Fund:

(i) Selects the Class offered in the prospectus with 10 or more years of annual returns if other Classes have fewer than 10 years of annual returns;

(ii) Selects the Class with the longest period of annual returns when the Classes offered in the prospectus all have fewer than 10 years of returns; and

(iii) If the Fund provides annual total returns in the bar chart for a Class that is different from the Class selected for the most immediately preceding period, explain in a footnote to the bar chart the reasons for the selection of a different Class.

(b) When a Multiple Class Fund offering one or more Classes offers a new Class in a prospectus that does not offer the shares of any other Class, include the bar chart with annual total returns for any other existing Class for the first year that the Class is offered. Explain in a footnote that the returns are for a Class that is not offered in the prospectus that would have substantially similar annual returns because the shares are invested in the same portfolio of securities and the annual returns would differ only to the extent that the Classes do not have the same expenses. Include return information for the other Class reflected in the bar chart in the performance table.

(c) Provide average annual total returns in the table for each Class offered in the prospectus.

(d) If a Multiple Class Fund offers a Class in the prospectus that converts into another Class after a stated period, compute average annual total returns in the table by using the returns of the other Class for the period after conversion.

4. *Change in Investment Adviser.* If the Fund has not had the same investment adviser during the last 10 calendar years, the Fund may begin the bar chart and the performance information in the table on the date that the current adviser began to provide advisory services to the Fund subject to the conditions in Instruction 11 of Item 5(b).

Item 3. Risk/Return Summary: Fee Table

Include the following information, in plain English under rule 421(d) under the Securities Act, after Item 2 (unless the Fund offers its shares exclusively to one or more separate accounts):

FEES AND EXPENSES OF THE FUND

[This table describes the fees and expenses that you may pay if you buy and hold shares of the Fund.]

Shareholder Fees (fees paid directly from your investment):		
Maximum Sales Charge (Load) Imposed on Purchases (as a percentage of offering price)		%
Maximum Deferred Sales Charge (Load) (as a percentage of)		%
Maximum Sales Charge (Load) Imposed on Reinvested Dividends [and other Distributions] (as a percentage of)		%
Redemption Fee (as a percentage of amount redeemed, if applicable)		%
Exchange Fee		%
Maximum Account Fee		%
Annual Fund Operating Expenses (expenses that are deducted from Fund assets):		
Management Fees		%
Distribution [and/or Service] (12b–1) Fees		%
Other Expenses		%
_____	%	
_____	%	
_____	%	
Total Annual Fund Operating Expenses		%

Example

This Example is intended to help you compare the cost of investing in the Fund with the cost of investing in other mutual funds.

The Example assumes that you invest $10,000 in the Fund for the time periods indicated and then redeem all of your shares at the end of those periods. The Example also assumes that your investment has a 5% return each year and that the Fund's operating expenses remain the same. Although your actual costs may be higher or lower, based on these assumptions your costs would be:

1 year	3 years	5 years	10 years
$	$	$	$

You would pay the following expenses if you did not redeem your shares:

1 year	3 years	5 years	10 years
$	$	$	$

The Example does not reflect sales charges (loads) on reinvested dividends [and other distributions]. If these sales charges (loads) were included, your costs would be higher.

Instructions.

1. *General.*

(a) Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

(b) Include the narrative explanations in the order indicated. A Fund may modify the narrative explanations if the explanation contains comparable information to that shown.

(c) Include the caption "Maximum Account Fees" only if the Fund charges these fees. A Fund may omit other captions if the Fund does not charge the fees or expenses covered by the captions.

(d)(i) If the Fund is a Feeder Fund, reflect the aggregate expenses of the Feeder Fund and the Master Fund in a single fee table using the captions provided. In a footnote to the fee table, state that the table and Example reflect the expenses of both the Feeder and Master Funds.

(ii) If the prospectus offers more than one Class of a Multiple Class Fund or more than one Feeder Fund that invests in the same Master Fund, provide a separate response for each Class or Feeder Fund.

2. *Shareholder Fees.*

(a)(i) "Maximum Deferred Sales Charge (Load)" includes the maximum total deferred sales charge (load) payable upon redemption, in installments, or both, expressed as a percentage of the amount or amounts stated in response to Item 8(a), except that, for a sales charge (load) based on net asset value at the time of purchase, show the sales charge (load) as a percentage of the *offering price* at the time of purchase. A Fund may include in a footnote to the table, if applicable, a tabular presentation showing the amount of deferred sales charges (loads) over time or a narrative explanation of the sales charges (loads) (*e.g.*, ——% in the first year after purchase, declining to ——% in the —— year and eliminated thereafter).

(ii) If more than one type of sales charge (load) is imposed (*e.g.*, a deferred sales charge (load) and a front-end sales charge (load)), the first caption in the table should read "Maximum Sales Charge (Load)" and show the maximum cumulative percentage. Show the percentage amounts and the terms of each sales charge (load) comprising that figure on separate lines below.

(iii) If a sales charge (load) is imposed on shares purchased with reinvested capital gains distributions or returns of capital, include the bracketed words in the third caption.

(b) "Redemption Fee" includes a fee charged for any redemption of the Fund's shares, but does not include a deferred sales charge (load) imposed upon redemption.

(c) "Exchange Fee" includes the maximum fee charged for any exchange or transfer of interest from the Fund to another fund. The Fund may include in a footnote to the table, if applicable, a tabular presentation of the range of exchange fees or a narrative explanation of the fees.

(d) "Maximum Account Fees." Disclose account fees that may be charged to a typical investor in the Fund; fees that apply to only a limited number of shareholders based on their particular circumstances need not be disclosed. Include a caption describing the maximum account fee (*e.g.*, "Maximum Account Maintenance Fee" or "Maximum Cash Management Fee"). State the maximum annual account fee as either a fixed dollar amount or a percentage of assets. Include in a parenthetical to the caption the basis on which any percentage is calculated. If an account fee is charged only to accounts that do not meet a certain threshold (e.g., accounts under $5,000), the Fund may include the threshold in a parenthetical to the caption or footnote to the table. The Fund may include an explanation of any non-recurring account fee in a parenthetical to the caption or in a footnote to the table.

3. *Annual Fund Operating Expenses.*

(a) "Management Fees" include investment advisory fees (including any fees based on the Fund's performance), any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates that are not included as "Other Expenses."

(b) "Distribution [and/or Service] (12b–1) Fees" include all distribution or other expenses incurred during the most recent fiscal year under a plan adopted pursuant to rule 12b–1 [17 CFR 270.12b–1]. Under an appropriate caption or a subcaption of "Other Expenses," disclose the amount of any distribution or similar expenses deducted from the Fund's assets other than pursuant to a rule 12b–1 plan.

(c)(i) "Other Expenses" include all expenses not otherwise disclosed in the table that are deducted from the Fund's assets or charged to all shareholder accounts. The amount of expenses deducted from the Fund's assets are the amounts shown as expenses in the Fund's statement of operations (including increases resulting from complying with paragraph 2(g) of rule 6–07 of Regulation S–X [17 CFR 210.6–07]).

(ii) "Other Expenses" do not include extraordinary expenses as determined under generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred that materially affected the Fund's "Other Expenses," disclose in a footnote to the table what "Other Expenses" would have been had the extraordinary expenses been included.

(iii) The Fund may subdivide this caption into no more than three subcaptions that identify the largest expense or expenses comprising "Other Expenses," but must include a total of all "Other Expenses." Alternatively, the Fund may include the components of "Other Expenses" in a parenthetical to the caption.

(d)(i) Base the percentages of "Annual Fund Operating Expenses" on amounts incurred during the Fund's most recent fiscal year, but include in expenses amounts that would have been incurred absent expense reimbursement or fee waiver arrangements. If the Fund has changed its fiscal year and, as a result, the most recent fiscal year is less than three months, use the fiscal year prior to the most recent fiscal year as the basis for determining "Annual Fund Operating Expenses."

(ii) If there have been any changes in "Annual Fund Operating Expenses" that would materially affect the information disclosed in the table:

(A) Restate the expense information using the current fees as if they had been in effect during the previous fiscal year; and

(B) In a footnote to the table, disclose that the expense information in the table has been restated to reflect current fees.

(iii) A change in "Annual Fund Operating Expenses" means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. A change in "Annual Fund Operating Expenses" does not include a decrease in operating expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in the Fund's assets.

(e) The Fund may reflect actual operating expenses that include expense reimbursement or fee waiver arrangements in a footnote to the table. If the Fund provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of the Fund.

4. *Example.*

(a) Assume that the percentage amounts listed under "Annual Fund Operating Expenses" remain the same in each year of the 1-, 3-, 5-, and 10-year periods, except that an adjustment may be made to reflect reduced annual expenses resulting from completion of the amortization of initial organization expenses.

(b) For any breakpoint in any fee, assume that the amount of the Fund's assets remains constant as of the level at the end of the most recently completed fiscal year.

(c) Assume reinvestment of all dividends and distributions.

(d) Reflect recurring and non-recurring fees charged to all investors other than any exchange fees or any sales charges (loads) on shares purchased with reinvested dividends or other distributions. If sales charges (loads) are imposed on reinvested dividends or other distributions, include the narrative explanation following the Example and include the bracketed words when sales charges (loads) are charged on reinvested capital gains distributions or returns of capital. Reflect any shareholder account fees collected by more than one Fund by dividing the total amount of the fees collected during the most recent fiscal year for all Funds whose shareholders are subject to the fees by the total average net assets of the Funds. Add the resulting percentage to "Annual Fund Operating Expenses" and assume that it remains the same in each of the 1-, 3-, 5-, and 10-year periods. A Fund that charges account fees based on a minimum account requirement exceeding $10,000 may adjust its account fees based on the amount of the fee in relation to the Fund's minimum account requirement.

(e) Reflect any deferred sales charge (load) by assuming redemption of the entire account at the end of the year in which the sales charge (load) is due. In the case of a deferred sales charge (load) that is based on the Fund's net asset value at the time of payment, assume that the net asset value at the end of each year includes the 5% annual return for that and each preceding year.

(f) Include the second 1-, 3-, 5-, and 10-year periods and related narrative explanation only if a sales charge (load) or other fee is charged upon redemption.

5. *New Funds.* For purposes of this Item, a "New Fund" is a Fund that does not include in Form N–1A financial statements reporting operating results or that includes financial statements for the Fund's initial fiscal year reporting operating results for a period of 6 months or less. The following Instructions apply to New Funds.

(a) Base the percentages expressed in "Annual Fund Operating Expenses" on payments that will be made, but include in expenses, amounts that will be incurred without reduction for expense reimbursement or fee waiver arrangements, estimating amounts of "Other Expenses." Disclose in a footnote to the table that "Other Expenses" are based on estimated amounts for the current fiscal year.

(b) The New Fund may reflect expense reimbursement or fee waiver arrangements that are expected to reduce any Fund operating expense or the estimate of "Other Expenses" (regardless of whether the arrangement has been guaranteed) in a footnote to the table. If the New Fund provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of the Fund.

(c) Complete only the 1-and 3-year period portions of the Example and estimate any shareholder account fees collected.

Item 4. Investment Objectives, Principal Investment Strategies, and Related Risks

(a) *Investment Objectives.* State the Fund's investment objectives and, if applicable, state that those objectives may be changed without shareholder approval.

(b) *Implementation of Investment Objectives.* Describe how the Fund intends to achieve its investment objectives. In the discussion:

(1) Describe the Fund's principal investment strategies, including the particular type or types of securities in which the Fund principally invests or will invest.

Instructions.

1. A strategy includes any policy, practice, or technique used by the Fund to achieve its investment objectives.

2. Whether a particular strategy, including a strategy to invest in a particular type of security, is a principal investment strategy depends on the strategy's anticipated importance in achieving the Fund's investment objectives, and how the strategy affects the Fund's potential risks and returns. In determining what is a principal investment strategy, consider, among other things, the amount of the Fund's assets expected to be committed to the strategy, the amount of the Fund's assets expected to be placed at risk by the strategy, and the likelihood of the Fund's losing some or all of those assets from implementing the strategy.

3. A negative strategy (*e.g.*, a strategy not to invest in a particular type of security or not to borrow money) is not a principal investment strategy.

4. Disclose any policy to concentrate in securities of issuers in a particular industry or group of industries (*i.e.*, investing more than 25% of a Fund's net assets in a particular industry or group of industries).

5. Disclose any other policy specified in Item 12(c)(1) that is a principal investment strategy of the Fund.

6. Disclose, if applicable, that the Fund may, from time to time, take temporary defensive positions that are inconsistent with the Fund's principal investment strategies in attempting to respond to adverse market, economic, political, or other conditions. Also disclose the effect of taking such a temporary defensive position (*e.g.*, that the Fund may not achieve its investment objective).

7. Disclose whether the Fund (if not a Money Market Fund) may engage in active and frequent trading of portfolio securities to achieve its principal investment strategies. If so, explain the tax consequences to shareholders of increased portfolio turnover, and how the tax consequences of, or trading costs associated with, a Fund's portfolio turnover may affect the Fund's performance.

(2) Explain in general terms how the Fund's adviser decides which securities to buy and sell (*e.g.*, for an equity fund, discuss, if applicable, whether the Fund emphasizes value or growth or blends the two approaches).

(c) *Risks.* Disclose the principal risks of investing in the Fund, including the risks to which the Fund's particular portfolio as a whole is expected to be subject and the circumstances reasonably likely to affect adversely the Fund's net asset value, yield, or total return.

Item 5. Management's Discussion of Fund Performance

Disclose the following information unless the Fund is a Money Market Fund or the information is included in the Fund's latest annual report to shareholders under rule 30d–1 [17 CFR 270.30d–1] and the Fund provides a copy of the annual report, upon request and without charge, to each person to whom a prospectus is delivered:

(a) Discuss the factors that materially affected the Fund's performance during the most recently completed fiscal year, including the relevant market conditions and the investment strategies and techniques used by the Fund's investment adviser.

(b)(1) Provide a line graph comparing the initial and subsequent account values at the end of each of the most recently completed 10 fiscal years of the Fund (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. Assume a $10,000 initial investment at the beginning of the first fiscal year in an appropriate broad-based securities market index for the same period.

(2) In a table placed within or next to the graph, provide the Fund's average annual total returns for the 1-, 5-, and 10-year periods as of the end of the last day of the most recent fiscal year computed in accordance with Item 21(b)(1). Include a statement accompanying the graph to the effect that past performance does not predict future performance.

Instructions.

1. *Line Graph Computation.*

(a) Assume that the initial investment was made at the offering price last calculated on the business day before the first day of the first fiscal year.

(b) Base subsequent account values on the net asset value of the Fund last calculated on the last business day of the first and each subsequent fiscal year.

(c) Calculate the final account value by assuming the account was closed and redemption was at the price last calculated on the last business day of the most recent fiscal year.

(d) Base the line graph on the Fund's required minimum initial investment if that amount exceeds $10,000.

2. *Sales Load.* Reflect any sales load (or any other fees charged at the time of purchasing shares or opening an account) by beginning the line graph at the amount that actually would be invested (*i.e.*, assume that the maximum sales load, and other charges deducted from payments, is deducted from the initial $10,000 investment). For a Fund whose shares are subject to a contingent deferred sales load, assume that the deduction of the maximum deferred sales load (or other charges) that would apply for a complete redemption that received the price last calculated on the last business day of the most recent fiscal year. For any other deferred sales load, assume that the deduction in the amount(s) and at the time(s) that the sales load actually would have been deducted.

3. *Dividends and Distributions.* Assume reinvestment of all of the Fund's dividends and distributions on the reinvestment dates during the period, and reflect any sales load imposed upon reinvestment of dividends or distributions or both.

4. *Account Fees.* Reflect recurring fees that are charged to all accounts.

(a) For any account fees that vary with the size of the account, assume a $10,000 account size.

(b) Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

(c) Reflect an annual account fee that applies to more than one Fund by allocating the fee in the following manner: divide the total amount of account fees collected during the year by the Funds' total average net assets, multiply the resulting percentage by the average account value for each Fund and reduce the value of each hypothetical account at the end of each fiscal year during which the fee was charged.

5. *Appropriate Index.* For purposes of this Item, an "appropriate broad-based securities market index" is one that is administered by an organization that is not an affiliated person of the Fund, its investment adviser or principal underwriter, unless the index is widely recognized and used. Adjust the index to reflect the reinvestment of dividends on securities in the index, but do not reflect the expenses of the Fund.

6. *Additional Indexes.* A Fund is encouraged to compare its performance not only to the required broad-based index, but also to other more narrowly based indexes that reflect the market sectors in which the Fund invests. A Fund also may compare its performance to an additional broad-based index, or to a non-securities index (*e.g.*, the Consumer Price Index), so long as the comparison is not misleading.

7. *Change in Index.* If the Fund uses an index that is different from the one used for the immediately preceding fiscal year, explain the reason(s) for the change and compare the Fund's annual change in the value of an investment in the hypothetical account with the new and former indexes.

8. *Other Periods.* The line graph may cover earlier fiscal years and may compare the ending values of interim periods (*e.g.*, monthly or quarterly ending values), so long as those periods are after the effective date of the Fund's registration statement.

9. *Scale.* The axis of the graph measuring dollar amounts may use either a linear or a logarithmic scale.

10. *New Funds.* A New Fund (as defined in Instruction 5 to Item 3) is not required to include the information specified by this Item in its prospectus (or annual report), unless Form N–1A (or the annual report) contains audited financial statements covering a period of at least 6 months.

11. *Change in Investment Adviser.* If the Fund has not had the same investment adviser for the previous 10 fiscal years, the Fund may begin the line graph on the date that the current adviser began to provide advisory services to the Fund so long as:

(a) Neither the current adviser nor any affiliate is or has been in "control" of the previous adviser under section 2(a)(9) [15 U.S.C. 80a-2(a)(9)];

(b) The current adviser employs no officer(s) of the previous adviser or employees of the previous adviser who were responsible for providing investment advisory or portfolio management services to the Fund; and

(c) The graph is accompanied by a statement explaining that previous periods during which the Fund was advised by another investment adviser are not shown.

(d) Discuss the effect of any policy or practice of maintaining a specified level of distributions to shareholders on the Fund's investment strategies and per share net asset value during the last fiscal year. Also discuss the extent to which the Fund's distribution policy resulted in distributions of capital.

Item 6. Management, Organization, and Capital Structure

(a) *Management.*

(1) *Investment Adviser.*

(i) Provide the name and address of each investment adviser of the Fund. Describe the investment adviser's experience as an investment adviser and the advisory services that it provides to the Fund.

(ii) Describe the compensation of each investment adviser of the Fund as follows:

(A) If the Fund has operated for a full fiscal year, state the aggregate fee paid to the adviser for the most recent fiscal year as a percentage of average net assets. If the Fund has not operated for a full fiscal year, state what the adviser's fee is as a percentage of average net assets, including any breakpoints.

(B) If the adviser's fee is not based on a percentage of average net assets (*e.g.*, the adviser receives a performance-based fee), describe the basis of the adviser's compensation.

Instructions.

1. If the Fund changed advisers during the fiscal year, describe the compensation and the dates of service for each adviser.

2. Explain any changes in the basis of computing the adviser's compensation during the fiscal year.

3. If a Fund has more than one investment adviser, disclose the aggregate fee paid to all of the advisers, rather than the fees paid to each adviser, in response to this Item.

(2) *Portfolio Manager.* State the name, title, and length of service of the person or persons employed by or associated with an investment adviser of the Fund (or the Fund), if any, who are primarily responsible for the day-to-day management of the Fund's portfolio. Also state each person's business experience during the past 5 years.

Instructions.

1. This requirement does not apply to a Money Market Fund or to a Fund that has an investment objective to replicate the performance of an index.

2. If a committee, team or other group of persons associated with an investment adviser of the Fund ("Adviser Group") is jointly and primarily responsible for the day-to-day management of the Fund's portfolio, provide disclosure to the effect that the Fund's investments are managed by the Adviser Group; the names of the members of the Adviser Group need not be provided.

3. If the role of the Adviser Group is generally limited to overseeing, approving or ratifying the decisions of an individual(s) who is primarily responsible for the day-to-day management of the Fund, information in response to this Item is required only about the individual(s).

4. If an Adviser Group and an individual(s) share day-to-day responsibility with respect to the Fund, provide disclosure to the effect that the Fund's investments are managed jointly by the Adviser Group and an individual(s) associated with the Fund's adviser; disclosure about the individual(s) contemplated by this Item need be provided only if the individual(s) is primarily responsible for implementing a principal investment strategy of the Fund as that term is defined in the Instruction to Item 4. For example, assume that a Fund has an investment strategy of investing in certain industry sectors, and that the Fund considers the selection of specific investments within those sectors generally not determinative in achieving the Fund's objective. If an Adviser Group was responsible for selecting the sectors in which the Fund invests and an individual was responsible for selecting the Fund's investments within the sectors, the Fund would not be required to disclose the information contemplated by this Item about the individual. If, however, the selection of companies within a certain sector or sectors was central to the Fund's achieving its investment objective, and an individual was responsible for selecting the Fund's investments within the sector or sectors, the Fund would be required to provide the information contemplated by this Item for that individual.

(3) *Legal Proceedings.* Describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Fund or the Fund's investment adviser or principal underwriter is a party. Include the name of the court in which the proceedings are pending, the date instituted, the principal parties involved, a description of the factual basis alleged to underlie the proceeding, and the relief sought. Include similar information as to any legal proceedings instituted, or known to be contemplated, by a governmental authority.

Instruction. For purposes of this requirement, legal proceedings are material only to the extent that they are likely to have a material adverse effect on the Fund or the ability of the investment adviser or principal underwriter to perform its contract with the Fund.

(b) *Capital Stock.* Disclose any unique or unusual restrictions on the right freely to retain or dispose of the Fund's shares or material obligations or potential liabilities associated with holding the Fund's shares (not including investment risks) that may expose investors to significant risks.

Item 7. Shareholder Information

(a) *Pricing of Fund Shares.* Describe the procedures for pricing the Fund's shares, including:

(1) An explanation that the price of Fund shares is based on the Fund's net asset value and the method used to value Fund shares (market price, fair value, or amortized cost).

Instruction. If a Fund has a policy that contemplates using fair value pricing under special circumstances (*e.g.*, when an event occurs after the close of the exchange on which the Fund's portfolio securities are principally traded that is likely to have changed the value of the securities), provide a brief explanation of the circumstances and the effects of this policy. If the Fund's policy is to use fair value pricing only when market prices are unavailable, it need not explain the circumstances and the effects of the policy.

(2) A statement as to when calculations of net asset value are made and that the price at which a purchase or redemption is effected is based on the next calculation of net asset value after the order is placed.

(3) A statement identifying in a general manner any national holidays when shares will not be priced and specifying any additional local or regional holidays when the Fund shares will not be priced.

Instructions.

1. In responding to this Item, a Fund may use a list of specific days or any other means that effectively communicates the information (*e.g.*, explaining that shares will not be priced on the days on which the New York Stock Exchange is closed for trading).

2. If the Fund has portfolio securities that are primarily listed on foreign exchanges that trade on weekends or other days when the Fund does not price its shares, disclose that the net asset value of the Fund's shares may change on days when shareholders will not be able to purchase or redeem the Fund's shares.

(b) *Purchase of Fund Shares.* Describe the procedures for purchasing the Fund's shares, including any minimum initial or subsequent investment requirements.

(c) *Redemption of Fund Shares.* Describe the procedures for redeeming the Fund's shares, including:

(1) Any restrictions on redemptions.

(2) Any redemption charges, including how these charges will be collected and under what circumstances the charges will be waived.

(3) If the Fund has reserved the right to redeem in kind.

(4) Any procedure that a shareholder can use to sell the Fund's shares to the Fund or its underwriter through a broker-dealer, noting any charges that may be imposed for such service.

Instruction. The specific fees paid through the broker-dealer for such service need not be disclosed.

(5) The circumstances, if any, under which the Fund may redeem shares automatically without action by the shareholder in accounts below a certain number or value of shares.

(6) The circumstances, if any, under which the Fund may delay honoring a request for redemption for a certain time after a shareholder's investment (e.g., whether a Fund does not process redemptions until clearance of the check for the initial investment).

(7) Any restrictions on, or costs associated with, transferring shares held in street name accounts.

(d) *Dividends and Distributions.* Describe the Fund's policy with respect to dividends and distributions, including any options that shareholders may have as to the receipt of dividends and distributions.

(e) *Tax Consequences.*

(1) Describe the tax consequences to shareholders of buying, holding, exchanging and selling the Fund's shares, including, as applicable, that:

(i) The Fund intends to make distributions that may be taxed as ordinary income and capital gains (which may be taxable at different rates depending on the length of time the Fund holds its assets). If the Fund expects that its distributions, as a result of its investment objectives or strategies, will consist primarily of ordinary income or capital gains, provide disclosure to that effect.

(ii) The Fund's distributions, whether received in cash or reinvested in additional shares of the Fund, may be subject to federal income tax.

(iii) An exchange of the Fund's shares for shares of another fund will be treated as a sale of the Fund's shares and any gain on the transaction may be subject to federal income tax.

(2) For a Fund that holds itself out as investing in securities generating tax-exempt income:

(i) Modify the disclosure required by paragraph (e)(1) to reflect that the Fund intends to distribute tax-exempt income.

(ii) Also disclose, as applicable, that:

(A) The Fund may invest a portion of its assets in securities that generate income that is not exempt from federal or state income tax;

(B) Income exempt from federal tax may be subject to state and local income tax; and

(C) Any capital gains distributed by the Fund may be taxable.

(3) If the Fund does not expect to qualify as a regulated investment company under Subchapter M of the Internal Revenue Code [I.R.C. 851 *et seq.*], explain the tax consequences. If the Fund expects to pay an excise tax under the Internal Revenue Code [I.R.C. 4982] with respect to its distributions, explain the tax consequences.

(f) *Separate Disclosure Document.* A Fund may omit from the prospectus information about purchase and redemption procedures required by Items 7(b)–(d) and 8(a)(2) and provide it in a separate document if the Fund:

(1) Incorporates the separate purchase and redemption document into the prospectus by reference and files the document with Part A of Form N–1A;

(2) Includes a legend on the front cover page of the separate document explaining that the information disclosed is part of, and incorporated in, the prospectus;

(3) Includes a statement on the outside back cover page of the prospectus that the purchase and sale information is provided in a separate document that is incorporated by reference into the prospectus; and

(4) Delivers the separate purchase and redemption document with the prospectus.

Instruction. When delivering multiple prospectuses, all of which incorporate the same separate purchase and sale document by reference, a Fund may deliver a single separate document.

Item 8. Distribution Arrangements

(a) Sales Loads.

(1) Describe any sales loads, including deferred sales loads, applied to purchases of the Fund's shares. Include in a table any front-end sales load (and each breakpoint in the sales load, if any) as a percentage of both the offering price and the net amount invested.

Instructions.

1. If the Fund's shares are sold subject to a front-end sales load, explain that the term "offering price" includes the front-end sales load.

2. Disclose, if applicable, that sales loads are imposed on shares, or amounts representing shares, that are purchased with reinvested dividends or other distributions.

3. Discuss, if applicable, how deferred sales loads are imposed and calculated, including:

(a) Whether the specified percentage of the sales load is based on the offering price, or the lesser of the offering price or net asset value at the time the sales load is paid.

(b) The amount of the sales load as a percentage of both the offering price and the net amount invested.

(c) A description of how the sales load is calculated (*e.g.*, in the case of a partial redemption, whether or not the sales load is calculated as if shares or amounts representing shares not subject to a sales load are redeemed first, and other shares or amounts representing shares are then redeemed in the order purchased).

(d) If applicable, the method of paying an installment sales load (*e.g.*, by withholding of dividend payments, involuntary redemptions, or separate billing of a shareholder's account).

(2) Unless disclosed in response to paragraph (a)(1), in the SAI, or in a separate disclosure document under Item 7(f), describe any other arrangements that result in breakpoints in, or elimination of, sales loads (*e.g.*, letters of intent, accumulation plans, dividend reinvestment plans, withdrawal plans, exchange privileges, employee benefit plans, and redemption reinvestment plans). Identify each class of individuals or transactions to which the arrangements apply and state each different breakpoint as a percentage of both the offering price and the amount invested.

(b) *Rule 12b–1 Fees.* If the Fund has adopted a plan under rule 12b–1, state the amount of the distribution fee payable under the plan and provide disclosure to the following effect:

(1) The Fund has adopted a plan under rule 12b–1 that allows the Fund to pay distribution fees for the sale and distribution of its shares; and

(2) Because these fees are paid out of the Fund's assets on an on-going basis, over time these fees will increase the cost of your investment and may cost you more than paying other types of sales charges.

Instructions. If the Fund pays service fees under its rule 12b–1 plan, modify this disclosure to reflect the payment of these fees (*e.g.*, by indicating that the Fund pays distribution and other fees for the sale of its shares and for services provided to shareholders). For purposes of this paragraph, service fees have the same meaning given that term under rule 2830(b)(9) of the NASD Conduct Rules [NASD Manual (CCH) 4622].

(c) *Multiple Class and Master-Feeder Funds.*

(1) Describe the main features of the structure of the Multiple Class Fund or Master-Feeder Fund.

(2) If more than one Class of a Multiple Class Fund is offered in the prospectus, provide the information required by paragraphs (a) and (b) for each of those Classes.

(3) If a Multiple Class Fund offers in the prospectus shares that provide for mandatory or automatic conversions or exchanges from one Class to another Class, provide the information required by paragraphs (a) and (b) for both the shares offered and the Class into which the shares may be converted or exchanged.

(4) If a Feeder Fund has the ability to change the Master Fund in which it invests, describe briefly the circumstances under which the Feeder Fund can do so.

Instruction. A Feeder Fund that does not have the authority to change its Master Fund need not disclose the possibility and consequences of its no longer investing in the Master Fund.

Item 9. Financial Highlights Information

(a) Provide the following information for the Fund, or for the Fund and its subsidiaries, audited for at least the latest 5 years and consolidated as required in Regulation S–X [17 CFR 210].

Financial Highlights

The financial highlights table is intended to help you understand the Fund's financial performance for the past 5 years [or, if shorter, the period of the Fund's operations]. Certain information reflects financial results for a single Fund share. The total returns in the table represent the rate that an investor would have earned [or lost] on an investment in the Fund (assuming reinvestment of all dividends and distributions). This information has been audited by _____, whose report, along with the Fund's financial statements, are included in [the SAI or annual report], which is available upon request.

Net Asset Value, Beginning of Period
Income From Investment Operations
Net Investment Income
Net Gains or Losses on Securities (both realized and unrealized)

Total From Investment Operations
Less Distributions
Dividends (from net investment income)
Distributions (from capital gains)
Returns of Capital
Total Distributions
Net Asset Value, End of Period
Total Return
Ratios/Supplemental Data
Net Assets, End of Period
Ratio of Expenses to Average Net Assets
Ratio of Net Income to Average Net Assets
Portfolio Turnover Rate

Instructions.

1. *General.*

(a) Present the information in comparative columnar form for each of the last 5 fiscal years of the Fund (or for such shorter period as the Fund has been in operation), but only for periods subsequent to the effective date of the Fund's registration statement. Also present the information for the period between the end of the latest fiscal year and the date of the latest balance sheet or statement of assets and liabilities. When a period in the table is for less than a full fiscal year, a Fund may annualize ratios in the table and disclose that the ratios are annualized in a note to the table.

(b) List per share amounts at least to the nearest cent. If the offering price is expressed in tenths of a cent or more, then state the amounts in the table in tenths of a cent. Present the information using a consistent number of decimal places.

(c) Include the narrative explanation before the financial information. A Fund may modify the explanation if the explanation contains comparable information to that shown.

2. *Per Share Operating Performance.*

(a) Derive net investment income data by adding (deducting) the increase (decrease) per share in undistributed net investment income for the period to (from) dividends from net investment income per share for the period. The increase (decrease) per share may be derived by comparing the per share figures obtained by dividing undistributed net investment income at the beginning and end of the period by the number of shares outstanding on those dates. Other methods of computing net investment income may be acceptable. Provide an explanation in a note to the table of any other method used to compute net investment income.

(b) The amount shown at the Net Gains or Losses on Securities caption is the balancing figure derived from the other amounts in the statement. The amount shown at this caption for a share outstanding throughout the year may not agree with the change in the aggregate gains and losses in the portfolio securities for the year because of the timing of sales and repurchases of the Fund's shares in relation to fluctuating market values for the portfolio.

(c) For any distributions made from sources other than net investment income and capital gains, state the per share amounts separately at the Returns of Capital caption and note the nature of the distributions.

3. *Total Return.*

(a) Assume an initial investment made at the net asset value calculated on the last business day before the first day of each period shown.

(b) Do not reflect sales loads or account fees in the initial investment, but, if sales loads or account fees are imposed, note that they are not reflected in total return.

(c) Reflect any sales load assessed upon reinvestment of dividends or distributions.

(d) Assume a redemption at the price calculated on the last business day of each period shown.

(e) For a period less than a full fiscal year, state the total return for the period and disclose that total return is not annualized in a note to the table.

4. *Ratios/Supplemental Data.*

(a) Calculate "average net assets" based on the value of the net assets determined no less frequently than the end of each month.

(b) Calculate the Ratio of Expenses to Average Net Assets using the amount of expenses shown in the Fund's statement of operations for the relevant fiscal period, including increases resulting from complying with paragraph 2(g) of rule 6–07 of Regulation S–X and reductions resulting from complying with paragraphs 2(a) and (f) of rule 6–07 regarding fee waivers and reimbursements. If a change in the methodology for determining the ratio of expenses to average net assets results from applying paragraph 2(g) of rule 6–07, explain in a note that the ratio reflects fees paid with brokerage commissions and fees reduced in connection with specific agreements only for periods ending after September 1, 1995.

(c) A Fund that is a Money Market Fund may omit the Portfolio Turnover Rate.

(d) Calculate the Portfolio Turnover Rate as follows:

(i) Divide the lesser of amounts of purchases or sales of portfolio securities for the fiscal year by the monthly average of the value of the portfolio securities owned by the Fund during the fiscal year. Calculate the monthly average by totaling the values of portfolio securities as of the beginning and end of the first month of the fiscal year and as of the end of each of the succeeding 11 months and dividing the sum by 13.

(ii) Exclude from both the numerator and the denominator amounts relating to all securities, including options, whose maturities or expiration dates at the time of acquisition were one year or less. Include all long-term securities, including long-term U.S. Government securities. Purchases include any cash paid upon the conversion of one portfolio security into another and the cost of rights or warrants. Sales include net proceeds of the sale of rights and warrants and net proceeds of portfolio securities that have been called or for which payment has been made through redemption or maturity.

(iii) If the Fund acquired the assets of another investment company or of a personal holding company in exchange for its own shares during the fiscal year in a purchase-of-assets transaction, exclude the value of securities acquired from purchases and securities sold from sales to realign the Fund's portfolio. Adjust the denominator of the portfolio turnover computation to reflect these excluded purchases and sales and disclose them in a footnote.

(iv) Include in purchases and sales any short sales that the Fund intends to maintain for more than one year and put and call options with expiration dates more than one year from the date of acquisition. Include proceeds from a short sale in the value of the portfolio securities sold during the period; include the cost of covering a short sale in the value of portfolio securities purchased during the period. Include premiums paid to purchase options in the value of portfolio securities purchased during the reporting period; include premiums received from the sale of options in the value of the portfolio securities sold during the period.

(b) A Fund may incorporate by reference the Financial Highlights Information from a report to shareholders under rule 30d–1 into the prospectus in response to this Item if the Fund delivers the shareholder report with the prospectus or, if the report has been previously delivered (*e.g.*, to a current shareholder), the Fund includes the statement required by Item 1(b)(1).

Part B: Information Required in a Statement of Additional Information:

Item 10. Cover Page and Table of Contents

(a) *Front Cover Page.* Include the following information on the outside front cover page of the SAI:

(1) The Fund's name and, if the Fund is a Series, also provide the Registrant's name.
(2) A statement or statements:
(i) That the SAI is not a prospectus;
(ii) How the prospectus may be obtained; and
(iii) Whether and from where information is incorporated by reference into the SAI, as permitted by General Instruction D.

Instruction. Any information incorporated by reference into the SAI must be delivered with the SAI unless the information has been previously delivered in a shareholder report (*e.g.*, to a current shareholder), and the Fund states that the shareholder report is available, without charge, upon request. Provide a toll-free (or collect) telephone number to call to request the report.

(3) The date of the SAI and of the prospectus to which the SAI relates.

(b) *Table of Contents.* Include under appropriate captions (and subcaptions) a list of the contents of the SAI and, when useful, provide cross-references to related disclosure in the prospectus.

Item 11. Fund History

(a) Provide the date and form of organization of the Fund and the name of the state or other jurisdiction in which the Fund is organized.

(b) If the Fund has engaged in a business other than that of an investment company during the past 5 years, state the nature of the other business and give the approximate date on which the Fund commenced business as an investment company. If the Fund's name was changed during that period, state its former name and the approximate date on which it was changed. Briefly describe the nature and results of any change in the Fund's business or name that occurred in connection with any bankruptcy, receivership, or similar proceeding, or any other material reorganization, readjustment or succession.

Item 12. Description of the Fund and Its Investments and Risks

(a) *Classification.* State that the Fund is an open-end, management investment company and indicate, if applicable, that the Fund is diversified.

(b) *Investment Strategies and Risks.* Describe any investment strategies, including a strategy to invest in a particular type of security, used by an investment adviser of the Fund in managing the Fund that are not principal strategies and the risks of those strategies.

(c) *Fund Policies.*
(1) Describe the Fund's policy with respect to each of the following:
(i) Issuing senior securities;
(ii) Borrowing money, including the purpose for which the proceeds will be used;
(iii) Underwriting securities of other issuers;
(iv) Concentrating investments in a particular industry or group of industries;
(v) Purchasing or selling real estate or commodities;
(vi) Making loans; and
(vii) Any other policy that the Fund deems fundamental or that may not be changed without shareholder approval, including, if applicable, the Fund's investment objectives.

Instruction. If the Fund reserves freedom of action with respect to any practice specified in paragraph (c)(1), state the maximum percentage of assets to be devoted to the practice and disclose the risks of the practice.

(2) State whether shareholder approval is necessary to change any policy specified in paragraph (c)(1). If so, describe the vote required to obtain this approval.

(d) *Temporary Defensive Position.* Disclose, if applicable, the types of investments that a Fund may make while assuming a temporary defensive position described in response to Item 4(b).

(e) *Portfolio Turnover.* Explain any significant variation in the Fund's portfolio turnover rates over the two most recently completed fiscal years or any anticipated variation in the portfolio turnover rate from that reported for the last fiscal year in response to Item 9.

Instruction. This paragraph does not apply to a Money Market Fund.

Item 13. Management of the Fund

(a) *Board of Directors.* Briefly describe the responsibilities of the board of directors with respect to the Fund's management.

Instruction. A Fund may respond to this paragraph by providing a general statement as to the responsibilities of the board of directors with respect to the Fund's management under the applicable laws of the state or other jurisdiction in which the Fund is organized.

(b) *Management Information.* Provide the information required by the following table for each director and officer of the Fund, and, if the Fund has an advisory board, for each member of the board. Explain in a footnote to the table any family relationship between persons listed.

(1) Name, address, and age	(2) Position(s) held with fund	(3) Principal occupation(s) during past 5 years

Instructions.

1. For purposes of this paragraph, the term "officer" means the president, vice-president, secretary, treasurer, controller, and any other officers who perform policy-making functions for the Fund. The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. State the principal business of any corporation or other organization listed under column (3) unless the principal business is implicit in its name.

3. Identify members of any executive or investment committee, and provide a concise statement of the duties and functions of each committee.

4. Indicate with an asterisk the directors who are interested persons.

(c) For each individual listed in column (1) of the table required by paragraph (b), describe any positions held with affiliated persons or principal underwriters of the Fund.

Instruction. When an individual holds the same position(s) with two or more registered investment companies that are part of a "Fund Complex" as that term is defined in Item 22(a) of Schedule 14A under the Securities Exchange Act [17 CFR 240.14a–101], the Fund may, rather than listing each investment company, identify the Fund Complex and provide the number of positions held.

(d) *Compensation.* For all directors of the Fund and for all members of any advisory board who receive compensation from the Fund, and for each of the three highest paid executive officers or any affiliated person of the Fund who received aggregate compensation from the Fund for the most recently completed fiscal year exceeding $60,000 ("Compensated Persons"):

(1) Provide the information required by the following table:

COMPENSATION TABLE

(1) Name of person, position	(2) Aggregate compensation from fund	(3) Pension or retirement benefits accrued as part of fund expenses	(4) Estimated annual benefits upon retirement	(5) Total compensation from fund and fund complex paid to directors

Instructions.

1. For column (1), indicate, as necessary, the capacity in which the remuneration is received.

For Compensated Persons who are directors of the Fund, compensation is amounts received for service as a director.

2. If the Fund has not completed its first full year since its organization, provide the information for the current fiscal year, estimating future payments that would be made under an existing agreement or understanding. Disclose in a footnote to the Compensation Table the period for which the information is given.

3. Include in column (2) amounts deferred at the election of the Compensated Person, whether under a plan established under section 401(k) of the Internal Revenue Code [I.R.C. 401(k)] or otherwise, for the fiscal year in which earned. Disclose in a footnote to the Compensation Table the total amount of deferred compensation (including interest) payable to or accrued for any Compensated Person.

4. Include in columns (3) and (4) all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Fund, any of its subsidiaries, or other investment companies in the Fund Complex. Omit column (4) when retirement benefits are not determinable.

5. For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide the information required in column (4) in a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Also provide the estimated credited years of service for each Compensated Person.

6. Include in column (5) only aggregate compensation paid to a director for service on the board and all other boards of investment companies in a Fund Complex specifying the number of any other investment companies.

(2) Describe briefly the material provisions of any pension, retirement, or other plan or any arrangement, other than fee arrangements disclosed in paragraph (d)(1), under which the Compensated Persons are or may be compensated for services provided, including amounts paid, if any, to the Compensated Person under these arrangements during the most recently completed fiscal year. Specifically include the criteria used to determine amounts payable under the plan, the length of service or vesting period required by the plan, the retirement age or other event that gives rise to payment under the plan, and whether the payment of benefits is secured or funded by the Fund.

(e) *Sales Loads.* Disclose any arrangements that result in breakpoints in, or elimination of, sales loads for directors and other affiliated persons of the Fund. Identify each class of individuals and transactions to which the arrangements apply and state each different breakpoint as a percentage of both the offering price and the net amount invested of the Fund's shares. Explain, as applicable, the reasons for the difference in the price at which securities are offered generally to the public, and the prices at which securities are offered to directors and other affiliated persons of the Fund.

Item 14. Control Persons and Principal Holders of Securities

Provide the following information as of a specified date no more than 30 days prior to the date of filing the registration statement or an amendment.

(a) *Control Persons.* State the name and address of each person who controls the Fund and explain the effect of that control on the voting rights of other security holders. For each control person, state the percentage of the Fund's voting securities owned or any other basis of control. If the control person is a company, give the jurisdiction under the laws of which it is organized. List all parents of the control person.

Instruction. For purposes of this paragraph, "control" means (i) the beneficial ownership, either directly or through one or more controlled companies, of more than 25% of the voting securities of a company; (ii) the acknowledgment or assertion by either the controlled or controlling party of the existence of control; or (iii) an adjudication under section 2(a)(9), which has become final, that control exists.

(b) *Principal Holders.* State the name, address, and percentage of ownership of each person who owns of record or is known by the Fund to own beneficially 5% or more of any Class of the Fund's outstanding equity securities.

Instructions.

1. Calculate the percentages based on the amount of securities outstanding.

2. If securities are being registered under or in connection with a plan of acquisition, reorganization, readjustment or succession, indicate, as far as practicable, the ownership that would result from consummation of the plan based on present holdings and commitments.

3. Indicate whether the securities are owned of record, beneficially, or both. Show the respective percentage owned in each manner.

(c) *Management Ownership.* State the percentage of the Fund's equity securities owned by all officers, directors, and members of any advisory board of the Fund as a group. If the amount owned by directors and officers as a group is less than 1% of the Class, provide a statement to that effect.

Item 15. Investment Advisory and Other Services

(a) *Investment Advisers.* Disclose the following information with respect to each investment adviser:

(1) The name of any person who controls the adviser, the basis of the person's control, and the general nature of the person's business. Also disclose, if material, the business history of any organization that controls the adviser.

(2) The name of any affiliated person of the Fund who also is an affiliated person of the adviser, and a list of all capacities in which the person is affiliated with the Fund and with the adviser.

Instruction. If an affiliated person of the Fund alone or together with others controls the adviser, state that fact. It is not necessary to provide the amount or percentage of the outstanding voting securities owned by the controlling person.

(3) The method of calculating the advisory fee payable by the Fund including:

(i) The total dollar amounts that the Fund paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years;

(ii) If applicable, any credits that reduced the advisory fee for any of the last three fiscal years; and
(iii) Any expense limitation provision.

Instructions.

1. If the advisory fee payable by the Fund varies depending on the Fund's investment performance in relation to a standard, describe the standard along with a fee schedule in tabular form. The Fund may include examples showing the fees that the adviser would earn at various levels of performance as long as the examples include calculations showing the maximum and minimum fee percentages that could be earned under the contract.

2. State separately each type of credit or offset.

3. When a Fund is subject to more than one expense limitation provision, describe only the most restrictive provision.

4. For a Registrant with more than one Series, or a Multiple Class Fund, describe the methods of allocation and payment of advisory fees for each Series or Class.

(b) *Principal Underwriter.* State the name and principal business address of any principal underwriter for the Fund. Disclose, if applicable, that an affiliated person of the Fund is an affiliated person of the principal underwriter and identify the affiliated person.

(c) *Services Provided by Each Investment Adviser and Fund Expenses Paid by Third Parties.*

(1) Describe all services performed for or on behalf of the Fund supplied or paid for wholly or in substantial part by each investment adviser.

(2) Describe all fees, expenses, and costs of the Fund that are to be paid by persons other than an investment adviser or the Fund, and identify those persons.

(d) *Service Agreements.* Summarize the substantive provisions of any other management-related service contract that may be of interest to a purchaser of the Fund's shares, under which services are provided to the Fund, indicating the parties to the contract, and the total dollars paid and by whom for the past three years.

Instructions.

1. The term "management-related service contract" includes any contract with the Fund to keep, prepare, or file accounts, books, records, or other documents required under federal or state law, or to provide any similar services with respect to the daily administration of the Fund, but does not include the following:

(a) Any contract with the Fund to provide investment advice;

(b) Any agreement with the Fund to perform as custodian, transfer agent, or dividend-paying agent for the Fund; and

(c) Any contract with the Fund for outside legal or auditing services, or contract for personal employment entered into with the Fund in the ordinary course of business.

2. No information need be given in response to this paragraph with respect to the service of mailing proxies or periodic reports to the Fund's shareholders.

3. In summarizing the substantive provisions of any management-related service contract, include the following:

(a) The name of the person providing the service;

(b) The direct or indirect relationships, if any, of the person with the Fund, an investment adviser of the Fund or the Fund's principal underwriter; and

(c) The nature of the services provided, and the basis of the compensation paid for the services for the last three fiscal years.

(e) *Other Investment Advice.* If any person (other than a director, officer, member of an advisory board, employee, or investment adviser of the Fund), through any understanding, whether formal or informal, regularly advises the Fund or the Fund's investment adviser with respect to the Fund's investing in, purchasing, or selling securities or other property, or has the authority to determine what securities or other property should be purchased or sold by the Fund, and receives direct or indirect remuneration, provide the following information:

(1) The person's name;

(2) A description of the nature of the arrangement, and the advice or information provided; and

(3) Any remuneration (including, for example, participation, directly or indirectly, in commissions or other compensation paid in connection with transactions in the Fund's portfolio securities) paid for the advice or information, and a statement as to how the remuneration was paid and by whom it was paid for the last three fiscal years.

Instruction. Do not include information for the following:

(a) Persons who advised the investment adviser or the Fund solely through uniform publications distributed to subscribers;

(b) Persons who provided the investment adviser or the Fund with only statistical and other factual information, advice about economic factors and trends, or advice as to occasional transactions in specific securities, but without generally advising about the purchase or sale of securities by the Fund;

(c) A company that is excluded from the definition of "investment adviser" of an investment company under section 2(a)(20)(iii) [15 U.S.C. 80a–2(a)(20)(iii)];

(d) Any person the character and amount of whose compensation for these services must be approved by a court; or

(e) Other persons as the Commission has by rule or order determined not to be an "investment adviser" of an investment company.

(f) *Dealer Reallowances.* Disclose any front-end sales load reallowed to dealers as a percentage of the offering price of the Fund's shares.

(g) *Rule 12b–1 Plans.* If the Fund has adopted a plan under rule 12b–1, describe the material aspects of the plan, and any agreements relating to the implementation of the plan, including:

(1) A list of the principal types of activities for which payments are or will be made, including the dollar amount and the manner in which amounts paid by the Fund under the plan during the last fiscal year were spent on:

(i) Advertising;
(ii) Printing and mailing of prospectuses to other than current shareholders;
(iii) Compensation to underwriters;
(iv) Compensation to broker-dealers;
(v) Compensation to sales personnel;
(vi) Interest, carrying, or other financing charges; and
(vii) Other (specify).

(2) The relationship between amounts paid to the distributor and the expenses that it incurs (*e.g.*, whether the plan reimburses the distributor only for expenses incurred or compensates the distributor regardless of its expenses).

(3) The amount of any unreimbursed expenses incurred under the plan in a previous year and carried over to future years, in dollars and as a percentage of the Fund's net assets on the last day of the previous year.

(4) Whether the Fund participates in any joint distribution activities with another Series or investment company. If so, disclose, if applicable, that fees paid under the Fund's rule 12b–1 plan may be used to finance the distribution of the shares of another Series or investment company, and state the method of allocating distribution costs (*e.g.*, relative net asset size, number of shareholder accounts).

(5) Whether any of the following persons had a direct or indirect financial interest in the operation of the plan or related agreements:

(i) Any interested person of the Fund; or
(ii) Any director of the Fund who is not an interested person of the Fund.

(6) The anticipated benefits to the Fund that may result from the plan.

(h) *Other Service Providers.*

(1) Unless disclosed in response to paragraph (d), identify any person who provides significant administrative or business affairs management services for the Fund (e.g., an "administrator"), describe the services provided, and the compensation paid for the services.
(2) State the name and principal business address of the Fund's transfer agent and the dividend-paying agent.
(3) State the name and principal business address of the Fund's custodian and independent public accountant and describe generally the services performed by each. If the Fund's portfolio securities are held by a person other than a commercial bank, trust company, or depository registered with the Commission as custodian, state the nature of the business of that person or persons.
(4) If an affiliated person of the Fund, or an affiliated person of the affiliated person, acts as custodian, transfer agent, or dividend-paying agent for the Fund, describe the services that the person performs and the basis for remuneration.

Item 16. Brokerage Allocation and Other Practices

(a) *Brokerage Transactions.* Describe how transactions in portfolio securities are effected, including a general statement about brokerage commissions, markups, and markdowns on principal transactions and the aggregate amount of any brokerage commissions paid by the Fund during its three most recent fiscal years. If, during either of the two years preceding the Fund's most recent fiscal year, the aggregate dollar amount of brokerage commissions paid by the Fund differed materially from the amount paid during the most recent fiscal year, state the reason(s) for the difference(s).
(b) *Commissions.*
(1) Identify, disclose the relationship, and state the aggregate dollar amount of brokerage commissions paid by the Fund during its three most recent fiscal years to any broker:
(i) That is an affiliated person of the Fund or an affiliated person of that person; or
(ii) An affiliated person of which is an affiliated person of the Fund, its investment adviser, or principal underwriter.
(2) For each broker identified in response to paragraph (b)(1), state:
(i) The percentage of the Fund's aggregate brokerage commissions paid to the broker during the most recent fiscal year; and
(ii) The percentage of the Fund's aggregate dollar amount of transactions involving the payment of commissions effected through the broker during the most recent fiscal year.
(3) State the reasons for any material difference in the percentage of brokerage commissions paid to, and the percentage of transactions effected through, a broker disclosed in response to paragraph (b)(1).
(c) *Brokerage Selection.* Describe how the Fund will select brokers to effect securities transactions for the Fund and how the Fund will evaluate the overall reasonableness of brokerage commissions paid, including the factors that the Fund will consider in making these determinations.
Instructions.
1. If the Fund will consider the receipt of products or services other than brokerage or research services in selecting brokers, specify those products and services.
2. If the Fund will consider the receipt of research services in selecting brokers, identify the nature of those research services.
3. State whether persons acting on the Fund's behalf are authorized to pay a broker a higher brokerage commission than another broker might have charged for the same transaction in recognition of the value of (a) brokerage or (b) research services provided by the broker.
4. If applicable, explain that research services provided by brokers through which the Fund effects securities transactions may be used by the Fund's investment adviser in servicing all of its accounts and that not all of these services may be used by the adviser in connection with the Fund. If other policies or practices are applicable to the Fund with respect to the allocation of research services provided by brokers, explain those policies and practices.
(d) *Directed Brokerage.* If, during the last fiscal year, the Fund or its investment adviser, through an agreement or understanding with a broker, or otherwise through an internal allocation procedure, directed the Fund's brokerage transactions to a broker because of research services provided, state the amount of the transactions and related commissions.
(e) *Regular Broker-Dealers.* If the Fund has acquired during its most recent fiscal year or during the period of time since organization, whichever is shorter, securities of its regular brokers or dealers as defined in rule 10b–1 [17 CFR 270.10b–1] or of their parents, identify those brokers or dealers and state the value of the Fund's aggregate holdings of the securities of each issuer as of the close of the Fund's most recent fiscal year.
Instruction. The Fund need only disclose information about an issuer that derived more than 15% of its gross revenues from the business of a broker, a dealer, an underwriter, or an investment adviser during its most recent fiscal year.

Item 17. Capital Stock and Other Securities

(a) *Capital Stock.* For each class of capital stock of the Fund, provide:
(1) The title of each class; and
(2) A full discussion of the following provisions or characteristics of each class, if applicable:
(i) Restrictions on the right freely to retain or dispose of the Fund's shares;
(ii) Material obligations or potential liabilities associated with owning the Fund's shares (not including investment risks);
(iii) Dividend rights;
(iv) Voting rights (including whether the rights of shareholders can be modified by other than a majority vote);
(v) Liquidation rights;
(vi) Preemptive rights;
(vii) Conversion rights;
(viii) Redemption provisions;
(ix) Sinking fund provisions; and
(x) Liability to further calls or to assessment by the Fund.
Instructions.
1. If any class described in response to this paragraph possesses cumulative voting rights, disclose the existence of those rights and explain the operation of cumulative voting.
2. If the rights evidenced by any class described in response to this paragraph are materially limited or qualified by the rights of any other class, explain those limitations or qualifications.
(b) *Other Securities.* Describe the rights of any authorized securities of the Fund other than capital stock. If the securities are subscription warrants or rights, state the title and amount of securities called for, and the period during which and the prices at which the warrants or rights are exercisable.

Item 18. Purchase, Redemption, and Pricing of Shares

(a) *Purchase of Shares.* Describe how the Fund's shares are offered to the public. Include any special purchase plans or methods not described in the prospectus or elsewhere in the SAI, including letters of intent, accumulation plans, withdrawal plans, exchange privileges, and services in connection with retirement plans.
Instruction. A Fund may incorporate the information required by Item 18(a) into the SAI by reference to a separate disclosure document that may be provided to investors with the SAI or separately, in response to investor requests. File the separate document, if any, with Part B of Form N–1A.
(b) *Fund Reorganizations.* Disclose any arrangements that result in breakpoints in, or elimination of, sales loads in connection with the terms of a merger, acquisition, or exchange offer made under a plan of reorganization. Identify each class of individuals

to which the arrangements apply and state each different sales load available as a percentage of both the offering price and the net amount invested.

(c) *Offering Price.* Describe the method followed or to be followed by the Fund in determining the total offering price at which its shares may be offered to the public and the method(s) used to value the Fund's assets.

Instructions.

1. Describe the valuation procedure(s) that the Fund uses in determining the net asset value and public offering price of its shares.

2. Explain how the excess of the offering price over the net amount invested is distributed among the Fund's principal underwriters or others and the basis for determining the total offering price.

3. Explain the reasons for any difference in the price at which securities are offered generally to the public, and the prices at which securities are offered for any class of transactions or to any class of individuals.

4. Unless provided as a continuation of the balance sheet in response to Item 22, include a specimen price-make-up sheet showing how the Fund calculates the total offering price per unit. Base the calculation on the value of the Fund's portfolio securities and other assets and its outstanding securities as of the date of the balance sheet filed by the Fund.

(d) *Redemption in Kind.* If the Fund has received an order of exemption from section 18(f) or has filed a notice of election under rule 18f-1 that has not been withdrawn, describe the nature, extent, and effect of the exemptive relief or notice..

Item 19. Taxation of the Fund

(a) If applicable, state that the Fund is qualified or intends to qualify under Subchapter M of the Internal Revenue Code. Disclose the consequences to the Fund if it does not qualify under Subchapter M.

(b) Disclose any special or unusual tax aspects of the Fund, such as taxation resulting from foreign investment or from status as a personal holding company, or any tax loss carry-forward to which the Fund may be entitled.

Item 20. Underwriters

(a) *Distribution of Securities.* For each principal underwriter distributing securities of the Fund, state:

(1) The nature of the obligation to distribute the Fund's securities;

(2) Whether the offering is continuous; and

(3) The aggregate dollar amount of underwriting commissions and the amount retained by the principal underwriter for each of the Fund's last three fiscal years.

(b) *Compensation.* Provide the information required by the following table with respect to all commissions and other compensation received by each principal underwriter, who is an affiliated person of the Fund or an affiliated person of that affiliated person, directly or indirectly, from the Fund during the Fund's most recent fiscal year:

(1) Name of principal underwriter	(2) Net underwriting discounts and commissions	(3) Compensation on redemptions and repurchases	(4) Brokerage commissions	(5) Other compensation

Instruction. Disclose in a footnote to the table the type of services rendered in consideration for the compensation listed under column (5).

(c) *Other Payments.* With respect to any payments made by the Fund to an underwriter or dealer in the Fund's shares during the Fund's last fiscal year, disclose the name and address of the underwriter or dealer, the amount paid and basis for determining that amount, the circumstances surrounding the payments, and the consideration received by the Fund. Do not include information about:

(1) Payments made through deduction from the offering price at the time of sale of securities issued by the Fund;

(2) Payments representing the purchase price of portfolio securities acquired by the Fund;

(3) Commissions on any purchase or sale of portfolio securities by the Fund; or

(4) Payments for investment advisory services under an investment advisory contract.

Instructions.

1. Do not include in response to this paragraph information provided in response to paragraph (b) or with respect to service fees under the Instruction to Item 8(b)(2). Do not include any payment for a service excluded by Instructions 1 and 2 to Item 15(d) or by Instruction 2 to Item 30.

2. If the payments were made under an arrangement or policy applicable to dealers generally, describe only the arrangement or policy.

Item 21. Calculation of Performance Data

(a) *Money Market Funds.* If a Money Market Fund advertises a yield quotation(s), disclose, as applicable, the yield quotation(s) calculated according to paragraphs (a)(1)–(4). Use the same calculations for a yield quotation(s) included in the prospectus.

(1) *Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's yield by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period, subtracting a hypothetical charge reflecting deductions from shareholder accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent.

(2) *Effective Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's effective yield, carried to at least the nearest hundredth of one percent, by determining the net change, exclusive of capital changes, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period, subtracting a hypothetical charge reflecting deductions from shareholder accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then compounding the base period return by adding 1, raising the sum to a power equal to 365 divided by 7, and subtracting 1 from the result, according to the following formula:

$$\text{EFFECTIVE YIELD} = [(\text{BASE PERIOD RETURN} + 1)^{365/7}] - 1.$$

(3) *Tax Equivalent Current Yield Quotation.* Calculate the Fund's tax equivalent current yield by dividing that portion of the Fund's yield (as calculated under paragraph (a)(1)) that is tax-exempt by 1 minus a stated income tax rate and adding the quotient to that portion, if any, of the Fund's yield that is not tax-exempt.

(4) *Tax Equivalent Effective Yield Quotation.* Calculate the Fund's tax equivalent effective yield by dividing that portion of the Fund's effective yield (as calculated under paragraph (a)(2)) that is tax-exempt by 1 minus a stated income tax rate and adding the quotient to that portion, if any, of the Fund's effective yield that is not tax-exempt.

(5) State:
(i) The length of and the last day in the base period used in calculating the quotation(s);
(ii) A description of the method(s) by which the yield quotation(s) is calculated; and
(iii) The income tax rate used in the calculation, if applicable.

Instructions.

1. When calculating yield or effective yield quotations, the calculation of net change in account value must include:

(a) The value of additional shares purchased with dividends from the original share and dividends declared on both the original shares and additional shares; and

(b) All fees, other than nonrecurring account or sales charges, that are imposed on all shareholder accounts in proportion to the length of the base period. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size.

2. Exclude realized gains and losses from the sale of securities and unrealized appreciation and depreciation from the calculation of yield and effective yield. Exclude income other than investment income.

3. Disclose the amount or specific rate of any nonrecurring account or sales charges not included in the calculation of the yield.

4. If the Fund holds itself out as distributing income that is exempt from federal, state, or local income taxation, in calculating yield and effective yield (but not tax equivalent yield or tax equivalent effective yield), reduce the yield quoted by the effect of any income taxes on the shareholder receiving dividends, using the maximum rate for individual income taxation. For example, if the Fund holds itself out as distributing income exempt from federal taxation and the income taxes of State A, but invests in some securities of State B, it must reduce its yield by the effect of state income taxes that must be paid by the residents of State A on that portion of the income attributable to the securities of State B.

(b) *Other Funds.* If the Fund advertises performance data, disclose, as applicable, the performance information calculated according to paragraphs (b)(1)–(4). Use the same calculations for performance information included in the prospectus.

(1) *Average Annual Total Return Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet included in the registration statement (or for the periods the Fund has been in operation), calculate the Fund's average annual total return by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods (or for the periods of the Fund's operations) that would equate the initial amount invested to the ending redeemable value, according to the following formula:

$P(1+T)^n = ERV$

Where:

P = a hypothetical initial payment of $1,000.
T = average annual total return.
n = number of years.
ERV = ending redeemable value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10-year periods (or fractional portion).

Instructions.

1. Assume the maximum sales load (or other charges deducted from payments) is deducted from the initial $1,000 payment. If shareholders are assessed a deferred sales load, assume the maximum deferred sales load is deducted at the times, in the amounts, and under the terms disclosed in the prospectus.

2. Assume all dividends and distributions by the Fund are reinvested at the price stated in the prospectus (including any sales load imposed upon reinvestment of dividends) on the reinvestment dates during the period.

3. Include all recurring fees that are charged to all shareholder accounts. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

4. Determine the ending redeemable value by assuming a complete redemption at the end of the 1-, 5-, or 10-year periods and the deduction of all nonrecurring charges deducted at the end of each period.

5. State the total return quotation to the nearest hundredth of one percent.

6. Total return information in the prospectus need only be current to the end of the Fund's most recent fiscal year.

(2) *Yield Quotation.* Based on a 30-day (or one month) period ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's yield by dividing the net investment income per share earned during the period by the maximum offering price per share on the last day of the period, according to the following formula:

$$YIELD = 2\left[\left(\frac{a-b}{cd}+1\right)^6 - 1\right]$$

Where:

a = dividends and interest earned during the period.
b = expenses accrued for the period (net of reimbursements).
c = the average daily number of shares outstanding during the period that were entitled to receive dividends.
d = the maximum offering price per share on the last day of the period.

Instructions.

1. To calculate interest earned on debt obligations for purposes of "a" above:

(a) Calculate the yield to maturity of each obligation held by the Fund based on the market value of the obligation (including actual accrued interest) at the close of business on the last business day of each month or, with respect to obligations purchased during the month, the purchase price (plus actual accrued interest). The maturity of an obligation with a call provision(s) is the next call date on which the obligation reasonably may be expected to be called, or if none, the maturity date.

(b) Divide the yield to maturity by 360 and multiply the quotient by the market value of the obligation (including actual accrued interest) to determine the interest income on the obligation for each day of the subsequent month that the obligation is in the portfolio. Assume that each month has 30 days.

(c) Total the interest earned on all debt obligations and all dividends accrued on all equity securities during the 30-day (or one month) period. Although the period for calculating interest earned is based on calendar months, a 30-day yield may be calculated by aggregating the daily interest on the portfolio from portions of 2 months. In addition, a Fund may recalculate daily interest income on the portfolio more than once a month.

(d) For a tax-exempt obligation issued without original issue discount and having a current market discount, use the coupon rate of interest in lieu of the yield to maturity. For a tax-exempt obligation with original issue discount in which the discount is based on the current market value and exceeds the then-remaining portion of original issue discount (market discount), base the yield to maturity on the imputed rate of the original issue discount calculation. For a tax-exempt obligation with original issue discount, where the discount based on the current market value is less than the then-remaining portion of original issue discount (market premium), base the yield to maturity on the market value.

2. For discount and premium on mortgage or other receivables-backed obligations that are expected to be subject to monthly payments of principal and interest ("paydowns"):

(a) Account for gain or loss attributable to actual monthly paydowns as an increase or decrease to interest income during the period; and

(b) The Fund may elect:

(i) To amortize the discount and premium on the remaining securities, based on the cost of the securities, to the weighted average maturity date, if the information is available, or to the remaining term of the securities, if the weighted average maturity date is not available; or

(ii) Not to amortize the discount or premium on the remaining securities.

3. Solely for the purpose of calculating yield, recognize dividend income by accruing 1/360 of the stated dividend rate of the security each day that the security is in the portfolio.

4. Do not use equalization accounting in calculating yield.

5. Include expenses accrued under a plan adopted under rule 12b–1 in the expenses accrued for the period. Reimbursement accrued under the plan may reduce the accrued expenses, but only to the extent the reimbursement does not exceed expenses accrued for the period.

6. Include in the expenses accrued for the period all recurring fees that are charged to all shareholder accounts in proportion to the length of the base period. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size.

7. If a broker-dealer or an affiliate of the broker-dealer (as defined in rule 1–02(b) of Regulation S–X [17 CFR 210.1–02(b)]) has, in connection with directing the Fund's brokerage transactions to the broker-dealer, provided, agreed to provide, paid for, or agreed to pay for, in whole or in part, services provided to the Fund (other than brokerage and research services as those terms are used in section 28(e) of the Securities Exchange Act [15 U.S.C. 78bb(e)]), add to expenses accrued for the period an estimate of additional amounts that would have been accrued for the period if the Fund had paid for the services directly in an arm's length transaction.

8. Undeclared earned income, calculated in accordance with generally accepted accounting principles, may be subtracted from the maximum offering price. Undeclared earned income is the net investment income that, at the end of the base period, has not been declared as a dividend, but is reasonably expected to be and is declared as a dividend shortly thereafter.

9. Disclose the amount or specific rate of any nonrecurring account or sales charges.

10. If, in connection with the sale of the Fund's shares, a deferred sales load payable in installments is imposed, the "maximum public offering price" includes the aggregate amount of the installments ("installment load amount").

(3) *Tax Equivalent Yield Quotation.* Based on a 30-day (or one month) period ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's tax equivalent yield by dividing that portion of the Fund's yield (as calculated under paragraph (b)(2)) that is tax-exempt by 1 minus a stated income tax rate and adding the quotient to that portion, if any, of the Fund's yield that is not tax-exempt.

(4) *Non-Standardized Performance Quotation.* A Fund may calculate performance using any other historical measure of performance (not subject to any prescribed method of computation) if the measurement reflects all elements of return.

(5) State:

(i) The length of and the last day in the base period used in calculating the quotation(s);

(ii) A description of the method(s) by which the performance data is calculated; and

(iii) The income tax rate used in the calculation, if applicable.

Item 22. Financial Statements

(a) *Registration Statement.* Include, in a separate section following the responses to the preceding Items, the financial statements and schedules required by Regulation S–X. The specimen price-make-up sheet required by Instruction 4 to Item 18(c) may be provided as a continuation of the balance sheet specified by Regulation S–X.

Instructions..

1. The statements of any subsidiary that is not a majority-owned subsidiary required by Regulation S–X may be omitted from Part B and included in Part C.

2. In addition to the requirements of rule 3–18 of Regulation S–X [17 CFR 210.3–18], any Fund registered under the Investment Company Act that has not previously had an effective registration statement under the Securities Act must include in its initial registration statement under the Securities Act any additional financial statements and condensed financial information (which need not be audited) necessary to make the financial statements and condensed financial information included in the registration statement current as of a date within 90 days prior to the date of filing.

(b) *Annual Report.* Every annual report to shareholders required under rule 30d–1 must contain the following:

(1) The audited financial statements required, and for the periods specified, by Regulation S–X.

(2) The condensed financial information required by Item 9(a) with at least the most recent fiscal year audited.

(3) Unless shown elsewhere in the report as part of the financial statements required by paragraph (b)(1), the aggregate remuneration paid by the Fund during the period covered by the report to:

(i) All directors and all members of any advisory board for regular compensation;

(ii) Each director and each member of an advisory board for special compensation;

(iii) All officers; and

(iv) Each person of whom any officer or director of the Fund is an affiliated person.

(4) The information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S–K [17 CFR 229.304].

(c) *Semi-Annual Report.* Every semi-annual report to shareholders required by rule 30d–1 must contain the following information (which need not be audited):

(1) The financial statements required by Regulation S–X for the period commencing either with:

(i) The beginning of the Fund's fiscal year (or date of organization, if newly organized); or

(ii) A date not later than the date after the close of the period included in the last report under rule 30d–1 and the most recent preceding fiscal year.

(2) The condensed financial information required by Item 9(a), for the period of the report as specified by paragraph (c)(1), and the most recent preceding fiscal year.

(3) Unless shown elsewhere in the report as part of the financial statements required by paragraph (c)(1), the aggregate remuneration paid by the Fund during the period covered by the report to the persons specified under paragraph (b)(3).

(4) The information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S–K.

Part C: Other Information

Item 23. Exhibits

Subject to General Instruction D regarding incorporation by reference and rule 483 under the Securities Act [17 CFR 230.483], file the exhibits listed below as part of the registration statement. Letter or number the exhibits in the sequence indicated and file

copies rather than originals, unless otherwise required by rule 483. Reflect any exhibit incorporated by reference in the list below and identify the previously filed document containing the incorporated material.

(a) *Articles of Incorporation.* The Fund's current articles of incorporation, charter, declaration of trust or corresponding instruments and any related amendment.

(b) *By-laws.* The Fund's current by-laws or corresponding instruments and any related amendment.

(c) *Instruments Defining Rights of Security Holders.* Instruments defining the rights of holders of the securities being registered, including the relevant portion of the Fund's articles of incorporation or by-laws.

(d) *Investment Advisory Contracts.* Investment advisory contracts relating to the management of the Fund's assets.

(e) *Underwriting Contracts.* Underwriting or distribution contracts between the Fund and a principal underwriter, and agreements between principal underwriters and dealers.

(f) *Bonus or Profit Sharing Contracts.* Bonus, profit sharing, pension, or similar contracts or arrangements in whole or in part for the benefit of the Fund's directors or officers in their official capacity. Describe in detail any plan not included in a formal document.

(g) *Custodian Agreements.* Custodian agreements and depository contracts under section 17(f) [15 U.S.C. 80a–17(f)] concerning the Fund's securities and similar investments, including the schedule of remuneration.

(h) *Other Material Contracts.* Other material contracts not made in the ordinary course of business to be performed in whole or in part on or after the filing date of the registration statement.

(i) *Legal Opinion.* An opinion and consent of counsel regarding the legality of the securities being registered, stating whether the securities will, when sold, be legally issued, fully paid, and nonassessable.

(j) *Other Opinions.* Any other opinions, appraisals, or rulings, and related consents relied on in preparing the registration statement and required by section 7 of the Securities Act [15 U.S.C. 77g].

(k) *Omitted Financial Statements.* Financial statements omitted from Item 22.

(l) *Initial Capital Agreements.* Any agreements or understandings made in consideration for providing the initial capital between or among the Fund, the underwriter, adviser, promoter or initial shareholders and written assurances from promoters or initial shareholders that purchases were made for investment purposes and not with the intention of redeeming or reselling.

(m) *Rule 12b–1 Plan.* Any plan entered into by the Fund under rule 12b–1 and any agreements with any person relating to the plan's implementation.

(n) *Financial Data Schedule.* A Financial Data Schedule meeting the requirements of rule 483 under the Securities Act.

(o) *Rule 18f–3 Plan.* Any plan entered into by the Fund under rule 18f–3, any agreement with any person relating to the plan's implementation, and any amendment to the plan or an agreement.

Item 24. Persons Controlled by or Under Common Control With the Fund

Provide a list or diagram of all persons directly or indirectly controlled by or under common control with the Fund. For any person controlled by another person, disclose the percentage of voting securities owned by the immediately controlling person or other basis of that person's control. For each company, also provide the state or other sovereign power under the laws of which the company is organized.

Instructions.

1. Include the Fund in the list or diagram and show the relationship of each company to the Fund and to the other companies named, using cross-references if a company is controlled through direct ownership of its securities by two or more persons.

2. Indicate with appropriate symbols subsidiaries that file separate financial statements, subsidiaries included in consolidated financial statements, or unconsolidated subsidiaries included in group financial statements. Indicate for other subsidiaries why financial statements are not filed.

Item 25. Indemnification

State the general effect of any contract, arrangements or statute under which any director, officer, underwriter or affiliated person of the Fund is insured or indemnified against any liability incurred in their official capacity, other than insurance provided by any director, officer, affiliated person, or underwriter for their own protection.

Item 26. Business and Other Connections of the Investment Adviser

Describe any other business, profession, vocation or employment of a substantial nature that each investment adviser, and each director, officer or partner of the adviser, is or has been engaged within the last two fiscal years for his or her own account or in the capacity of director, officer, employee, partner, or trustee.

Instructions.

1. Disclose the name and principal business address of any company for which a person listed above serves in the capacity of director, officer, employee, partner, or trustee, and the nature of the relationship.

2. The names of investment advisory clients need not be given in answering this Item.

Item 27. Principal Underwriters

(a) State the name of each investment company (other than the Fund) for which each principal underwriter currently distributing the Fund's securities also acts as a principal underwriter, depositor, or investment adviser.

(b) Provide the information required by the following table for each director, officer, or partner of each principal underwriter named in the response to Item 20:

(1) Name and principal business address	(2) Positions and offices with underwriter	(3) Positions and offices with fund

(c) Provide the information required by the following table for all commissions and other compensation received, directly or indirectly, from the Fund during the last fiscal year by each principal underwriter who is *not* an affiliated person of the Fund or any affiliated person of an affiliated person:

(1) Name of principal underwriter	(2) Net underwriting discounts and commissions	(3) Compensation on redemption and repurchases	(4) Brokerage commissions	(5) Other compensation

Instructions.
1. Disclose the type of services rendered in consideration for the compensation listed under column (5).
2. Instruction 1 to Item 20(c) also applies to this Item.

Item 28. Location of Accounts and Records

State the name and address of each person maintaining physical possession of each account, book, or other document required to be maintained by section 31(a) [15 U.S.C. 80a–30(a)] and the rules under that section.

Item 29. Management Services

Provide a summary of the substantive provisions of any management-related service contract not discussed in Part A or B, disclosing the parties to the contract and the total amount paid and by whom for the Fund's last three fiscal years.

Instructions.
1. The instructions to Item 15 also apply to this Item.
2. Exclude information about any service provided for payments totaling less than $5,000 during each of the last three fiscal years.

Item 30. Undertakings

In initial registration statements filed under the Securities Act, provide an undertaking to file an amendment to the registration statement with certified financial statements showing the initial capital received before accepting subscriptions from more than 25 persons if the Fund intends to raise its initial capital under section 14(a)(3) [15 U.S.C. 80a–14(a)(3)].

Signatures

Pursuant to the requirements of (the Securities Act and) the Investment Company Act, the Fund (certifies that it meets all of the requirement for effectiveness of this registration statement under rule 485(b) under the Securities Act and) has duly caused this registration statement to be signed on its behalf by the undersigned, duly authorized, in the City of _____, and State of _____ on the day of _____, _____ (year)

Fund _____

By _____
(Signature and Title)

Pursuant to the requirements of the Securities Act, this registration statement has been signed below by the following persons in the capacities and on the date(s) indicated.

_____
(Signature)

_____
(Title)

_____
(Date)

Dated: March 13, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[**Note:** Appendix A and Appendix B to the preamble will not appear in *the Code of Federal Regulations.*]

APPENDIX A—ANALYSIS OF FORM N–1A ITEMS, AS AMENDED

Form N–1A, as amended	Source of form N–1A items
Facing Sheet	Facing Sheet—revised.
General Instructions:	
A. Definitions	New.
B. Filing and Use of Form N–1A	Revised General Instructions A, B, C, and F.
C. Preparation of the Registration Statement	Revised General Instructions G and I.
D. Incorporation by Reference	Revised General Instruction E.
Part A	
Item 1. Front and Back Cover Pages:	
(a) Front cover page	Revised Item 1.
(b) Back cover page.	New.
Item 2. Risk/Return Summary: Investments, Risks, and Performance:	
(a) Fund investment objectives/goals	New.
(b) Principal investment strategies of the fund	New.
(c) Principal risks of investing in the fund	New.
(1) Narrative risk disclosure	New.
(2) Risk/Return Bar Chart and Table	New.
Item 3. Risk/Return Summary: Fee Table	Revised Item 2.
Item 4. Investment Objectives, Principal Strategies, and Related Risks:	
(a) Investment Objectives	Revised Item 4(a)(ii).
(b) Implementation of Investment Objectives	Revised Item 4(a)(ii)(B).
(c) Risks	Revised Item 4(c).
Item 5. Management's Discussion of Fund Performance	Item 5A.
Item 6. Management, Organization, and Capital Structure:	

APPENDIX A—ANALYSIS OF FORM N–1A ITEMS, AS AMENDED—Continued

Form N–1A, as amended	Source of form N–1A items
(a) Management	
(1) Investment adviser	Revised Item 5(b).
(2) Portfolio manager	Revised Item 5(c).
(3) Legal proceedings	Revised Item 9.
(b) Capital stock	Revised Item 6(a).
Item 7. Shareholder Information:	
(a) Pricing of Fund Shares	Revised Items 7(b)(i) and (ii).
(b) Purchase of Fund Shares	Revised Items 7 (introductory sentence) and 7(d).
(c) Redemption of Fund Shares	Revised Item 8.
(d) Dividends and Distributions	Revised Item 6(f).
(e) Tax Consequences	Revised Item 6(g).
(f) Separate Disclosure Document	New.
Item 8. Distribution Arrangements:	
(a) Sales Loads	Revised Items 7(b)(iii), (c) and (g).
(b) Rule 12b–1 Fees	Revised Items 7 (e) and (f).
(c) Multiple Class and Master-Feeder Funds	Revised General Instruction I and Item 6(h).
Item 9. Financial Highlights Information:	
(a) Financial Highlights	Revised Item 3(a).
(b) Shareholder Reports	Revised Item 3(d).
Part B	
Item 10. Cover Page and Table of Contents:	
(a) Front Cover Page	Revised Item 10.
(b) Table of Contents	Item 11.
Item 11. Fund History:	
(a) Date and Form of Organization	Item 4(a)(i)(A).
(b) Prior Businesses of Fund	Item 12.
Item 12. Description of the Fund and Its Investments and Risks:	
(a) Classification	Revised Item 4(a)(i)(B).
(b) Investments Strategies and Risks	Revised Items 4(b) and 13(c).
(c) Fund Policies	Revised Items 13(a) and (b).
(d) Temporary Defensive Position	New.
(e) Portfolio Turnover	Revised Item 13(d).
Item 13. Management of the Fund:	
(a) Board of Directors	Revised Item 5(a).
(b) Management Information	Item 14(a).
(c) Affiliated Positions Held	Item 14(b).
(d) Compensation	Item 14(c).
(e) Sales Loads	Revised Item 7(c).
Item 14. Control Persons and Principal Holders of Securities:	
(a) Control Persons	Revised Items 6(b) and 15(a).
(b) Principal Holders	Revised Item 15(b).
(c) Management Ownership	Item 15(c).
Item 15. Investment Advisory and Other Services:	
(a) Investment Advisers	Revised Item 16(a).
(b) Principal Underwriter	Revised Item 7(a).
(c) Services Provided by Each Investment Adviser and Fund Expenses Paid by Third Parties.	Revised Items 5(b)(ii) and 16(c).
(d) Service Agreements	Item 16(d).
(e) Other Investment Advice	Item 16(e).
(f) Dealer Reallowances	Item 7(b)(iv).
(g) Rule 12b–1 Plans	Revised Items 7(f) and 16(f).
(h) Other Service Providers:	
(1) Administrator	Item 5(d).
(2) Dividend-paying agent/transfer agent	Item 5(e).
(3) Custodian/accountant	Revised Items 16(g) and (h).
(4) Affiliated persons	Item 16(i).
Item 16. Brokerage Allocation and Other Practices	Revised Items 5(g) and 17.
Item 17. Capital Stock and Other Securities:	
(a) Capital Stock	Revised Items 6(a), 6(c), and 18(a).
(b) Other Securities	Item 18(b).
Item 18. Purchase, Redemption and Pricing of Shares:	
(a) Purchase of Shares	Revised Item 19(a).
(b) Fund Reorganizations	Revised Item 7(c).
(c) Offering Price	Revised Item 19(b).
(d) Redemptions in Kind	Revised Item 19(c).
Item 19. Taxation of the Fund	Revised Item 20.
Item 20. Underwriters	Revised Item 21.
Item 21. Calculation of Performance Data	Revised Item 22.
Item 22. Financial Statements	Revised Item 23.
Part C	
Item 23. Exhibits	Revised Item 24.

APPENDIX A—ANALYSIS OF FORM N–1A ITEMS, AS AMENDED—Continued

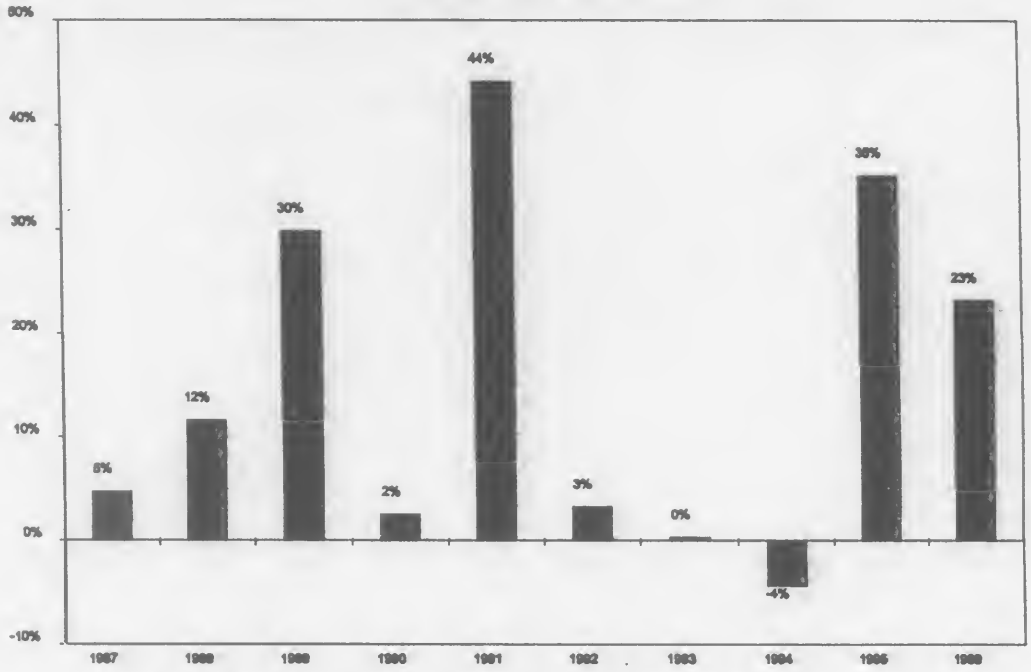
Form N–1A, as amended	Source of form N–1A items
Item 24. Persons Controlled by or Under Common Control with the Fund	Item 25.
Item 25. Indemnification	Revised Item 27.
Item 26. Business and Other Connections of the Investment Adviser	Item 28.
Item 27. Principal Underwriters	Item 29.
Item 28. Location of Accounts and Records	Item 30.
Item 29. Management Services	Item 31.
Item 30. Undertakings	Revised Item 32.

BILLING CODE 8010–01–U

APPENDIX B

BAR CHART AND PERFORMANCE TABLE

The bar chart and table shown below provide an indication of the risks of investing in the XYZ Stock Fund by showing changes in the Fund's performance from year to year over a 10-year period and by showing how the Fund's average annual returns for one, five, and ten years compare to those of a broad-based securities market index. How the Fund has performed in the past is not necessarily an indication of how the Fund will perform in the future.



During the 10-year period shown in the bar chart, the highest return for a quarter was 25.3% (quarter ending Sept. 30, 1995) and the lowest return for a quarter was -13.6% (quarter ending June 30, 1989).

Average Annual Total Returns (for the periods ending December 31, 1996)	Past One Year	Past 5 Years	Past 10 Years
XYZ Stock Fund	23.2%	11.5%	15%
S & P 500*	20.26%	12.87%	12.58%

* The S & P 500® is the Standard & Poor's Composite Index of 500 Stocks, a widely recognized, unmanaged index of common stock prices.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 270

[Release Nos. 33–7513; IC–23065; File No. S7–18–96]

RIN 3235–AH03

New Disclosure Option for Open-End Management Investment Companies

AGENCY: Securities and Exchange Commission

ACTION: Final rule

SUMMARY: The Securities and Exchange Commission is adopting a new rule that would permit a mutual fund to offer investors a new disclosure document called a "Aprofile," which summarizes key information about the fund, including the fund's investment strategies, risks, performance, and fees, in a concise, standardized format. A fund that offers a profile will be able to give investors a choice of the amount of information that they wish to consider before making a decision about investing in the fund; investors will have the option of purchasing the fund's shares after reviewing the information in the profile or after requesting and reviewing the fund's prospectus (and other information). An investor deciding to purchase fund shares based on the information in a profile will receive the fund's prospectus with the confirmation of purchase.

DATES: Effective on June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen K. Clarke, Assistant Director, George J. Zornada, Team Leader, or Laura J. Riegel, Attorney, (202) 942–0721, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–6, Washington, D.C. 20549–6009. Contact the Office of Chief Counsel, Division of Investment Management, Securities and Exchange Commission, at (202) 942–0659 or 450 Fifth Street, N.W., Mail Stop 5–6, Washington, D.C. 20549–6009 for additional information, including interpretive guidance, relating to this release or the profile.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the "Commission") today is adopting new rule 498 [17 CFR 230.498] under the Securities Act of 1933 [15 U.S.C. 77a, *et seq.*] ("Securities Act") and the Investment Company Act of 1940 [15 U.S.C. 80a-1, *et seq.*] ("Investment Company Act"). Rule 498 permits an open-end management investment company that registers on Form N–1A [17 CFR 274.11A] (a "fund") to provide to investors a disclosure document called a "profile," which summarizes key information about the fund and gives investors the option of purchasing the fund's shares based on the information in the profile. The Commission also is adopting amendments to rule 497 under the Securities Act [17 CFR 230.497] to require a fund to file a profile with the Commission at least 30 days prior to the profile's first use. In a companion release, the Commission is adopting revisions to the prospectus disclosure requirements in Form N–1A, the registration statement used by funds.[1] These revisions seek to minimize prospectus disclosure about technical, legal, and operational matters that generally are common to all funds and to focus prospectus disclosure on essential information about a particular fund that would assist an investor in making a decision about investing in that fund.

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I. Introduction and Background

Over the last decade, the fund industry has grown tremendously. Over 6,000 funds are now available to investors and close to 40 million American households own funds.[2] Today, fund assets exceed the deposits of commercial banks.[3]

As more investors turn to funds for professional management of current and retirement savings, funds have introduced new investment options and shareholder services to meet the needs of investors. While benefiting from these developments, investors also face an increasingly difficult task in choosing among different fund investments. The Commission, fund investors, and others have recognized the need to improve fund disclosure documents to help investors evaluate and compare funds.[4] In the Commission's view, the growth of the fund industry and the diversity of fund investors warrant a new approach to fund disclosure that will offer more choices in the format and amount of information available about fund investments.[5]

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[1] Investment Company Act Release No. 23064 (Mar. 13, 1998) ("Form N–1A Release").

[2] See INVESTMENT COMPANY INSTITUTE ("ICI"), Trends in Mutual Fund Investing: September 1997 at 3 (Oct. 30, 1997) (ICI News No. 97–93) ("ICI Trends") (as of Sept. 1997, there were 6,666 funds) and ICI, Mutual Fund Ownership in the U.S., FUNDAMENTALS, Dec. 1996, at 1 (approximately 36.8 million households owned mutual funds either directly or through a retirement plan as of April 1996).

[3] Compare ICI Trends at 1 (fund net assets exceeded $4.4 trillion as of Sept. 1997) with Federal Reserve Bank Statistical Release H.8: Assets and Liabilities of Commercial Banks in the United States (Nov. 7, 1997) (commercial bank deposits were approximately $3.0 trillion as of Oct. 1997).

[4] See, *e.g.*, "Fulfilling the Promise of Disclosure," Remarks by Arthur Levitt, Chairman, SEC, before the American Savings Education Council, New York, NY (July 23, 1997); Remarks by Steven M.H. Wallman, Commissioner, SEC, before the ICI's 1995 Investment Company Directors Conference and New Directors Workshop, Wash., D.C. (Sept. 22, 1995); "Mutual Funds and the International Marketplace: "A Regulatory Challenge," Remarks by Isaac C. Hunt, Jr., Commissioner, SEC, before the Sixth Annual Conference on International Issues, The University of Tulsa, Tulsa, Okla. (Mar. 6, 1997). See also McTague, Simply Beautiful: Shorn of Legalese, Even Prospectuses Make Sense, BARRON'S, Oct. 7, 1996, at F10 (concerning the recent efforts of the John Hancock funds and other fund groups to simplify their prospectuses).

[5] The Commission has demonstrated an on-going commitment to improve the information provided in fund disclosure documents to meet changes in the fund industry and investors' needs. The Commission has taken a number of steps in recent years to meet this goal. See Investment Company Act Release No. 20974 (Mar. 29, 1995) [60 FR 17172] (requesting comment on ways to improve risk disclosure and comparability of fund risk levels) ("Risk Concept Release"); Investment Company Act Release No. 19382 (Apr. 6, 1993) [58 FR 19050] (simplifying financial highlights information and requiring management's discussion of fund performance ("MDFP")); Investment Company Act Release No. 16245 (Feb. 2, 1988) [53 FR 3868] ("Fund Performance Release") (adopting a uniform formula for calculating fund performance); Investment Company Act Release No. 16244 (Feb. 1, 1988) [53 FR 3182] (adopting a uniform fee table in fund prospectuses). See also SEC, REPORT OF THE ADVISORY COMMITTEE ON THE CAPITAL FORMATION AND REGULATORY PROCESSES (July 24, 1996); SEC, REPORT OF THE TASK FORCE ON DISCLOSURE SIMPLIFICATION (1996) (recommending specific improvements in the disclosure provided by corporate issuers).

In seeking to meet this goal, the Commission proposed, on February 27, 1997, new rule 498, which would permit a fund to provide investors with a profile (the "Proposed Profile").[6] The Proposed Profile would summarize key information about a fund, including the fund's investment objectives, strategies, risks, performance, fees, investment adviser and portfolio manager, purchase and redemption procedures, distributions, and the services available to the fund's investors. The Proposed Profile was designed to provide summary information about a fund that would assist an investor in deciding whether to invest in a fund or to request additional information about the fund before deciding whether to buy shares in that fund. Proposed rule 498 would require a fund to mail the prospectus and other information to the requesting investor within 3 business days of a request. An investor deciding to purchase fund shares based on the Proposed Profile would receive the fund's prospectus with the purchase confirmation.

On the same day that it proposed rule 498 for comment, the Commission published a release in which it proposed major changes to the prospectus disclosure requirements in Form N–1A ("Form N–1A Proposing Release").[7] The proposed amendments to Form N–1A were designed to focus prospectus disclosure on essential information about a particular fund that would assist an investor in making a decision about investing in that fund. The proposed amendments reflected the Commission's strongly-held belief that a prospectus, as the primary disclosure document contemplated under the federal securities laws, should present clear, concise, and understandable information about an investment in a fund.

The Proposed Profile was based on a number of initiatives undertaken by the Commission to assess options for improving fund disclosure documents. One of these initiatives was a pilot program conducted by the Commission, with participation by the Investment Company Institute ("ICI") and several large fund groups, in which the funds used profile-like summaries ("Pilot Profiles") with their prospectuses.[8] The Pilot Profiles, like the profile adopted today, summarized important information about funds. The purpose of the pilot program was to assess whether investors found the Pilot Profiles helpful in making investment decisions. Focus groups conducted on the Commission's behalf ("Focus Groups") responded positively to the profile concept, indicating that a disclosure document such as the Pilot Profile would assist them in making investment decisions. Fund investors participating in a survey sponsored by the ICI also strongly supported the Pilot Profiles.[9]

The Commission received 256 comment letters on the Proposed Profile, a large percentage of which were from individual investors (226 letters or 88%).[10] Commenters expressed strong support for the Proposed Profile.[11] Many commenters cited the advantages of a document that is less technical and easier to read. Commenters believed that the Proposed Profile would assist investors in selecting a fund in which to invest. Many of those commenting on the Proposed Profile, particularly individual investors, endorsed the Proposed Profile's goal of providing standardized, summary information about a fund.[12]

The Commission is adopting rule 498 with modifications that reflect the Commission's consideration of commenters' suggestions. Rule 498 permits a fund to provide investors with a new disclosure option in the form of a profile that summarizes key information about the fund.[13] A fund that makes a profile available will be able to offer an investor the option of purchasing the fund's shares after reviewing the information in the profile or of requesting and reviewing the fund's prospectus (and other information) before making an investment decision. An investor deciding to purchase fund shares based on the profile will receive the fund's prospectus with the purchase confirmation.

Under rule 498, as adopted, the profile will include:

—*Standardized Fund Summaries.* The profile includes concise disclosure of 9 items of key information about a fund in a specific sequence.

—*Improved Risk Disclosure.* A risk/return summary (also required at the beginning of a fund's prospectus) provides information about a fund's investment objectives, principal strategies, risks, performance, and fees.

—*Graphic Disclosure of Variability of Returns.* The risk/return summary provides a bar chart of a fund's annual returns over a 10-year period that illustrates the variability of those returns and gives investors some idea of the risks of an investment in the fund. To help investors evaluate a fund's risks and returns relative to "the market," a table accompanying the bar chart compares the fund's average annual returns for 1-, 5-, and 10-year periods to that of a broad-based securities market index.

—*Other Fund Information.* The profile includes information on the fund's investment adviser and portfolio manager, purchase and redemption procedures, tax considerations, and shareholder services.

—*Plain English Disclosure.* The Commission's recently adopted plain English disclosure requirements, which are designed to give investors understandable disclosure documents, will apply to the profile.[14] The Commission's plain English rule requires the use of plain English writing principles, including short sentences, everyday language, active voice, tabular presentation of complex

[6] Investment Company Act Release No. 22529 (Feb. 27, 1997) [62 FR 10943], correction [62 FR 24160] ("Profile Proposing Release").

[7] Investment Company Act Release No. 22528 (Feb. 27, 1997) [62 FR 10898], correction [62 FR 24160] ("Form N–1A Proposing Release").

[8] See Investment Company Institute (pub. avail. July 31, 1995) ("1995 Profile Letter"); Investment Company Institute (pub. avail. July 29, 1996) ("1996 Profile Letter"). The Division of Investment Management ("Division") has permitted the pilot program to continue until adoption of proposed rule 498. See Investment Company Institute (pub. avail. July 16, 1997) ("1997 Profile Letter").

[9] Letter from Paul Schott Stevens, Senior Vice President and General Counsel, ICI, to Barry P. Barbash, Director, Division of Investment Management, SEC, at 5–6 (May 20, 1996) ("ICI Survey Letter") (enclosing Investment Company Institute, The Profile Prospectus: An Assessment by Mutual Fund Shareholders (1996) (survey of over 1,000 fund investors) ("ICI Profile Survey")).

[10] In addition to the comment letters from individuals, the Commission received comment letters from 6 broker-dealers and investment advisers, 8 funds, 3 law firms, 1 rating agency, 4 trade associations, and 8 other interested organizations. The comment letters, as well as a comment summary prepared by the Commission's staff, are available for public inspection and copying at the Commission's public reference room in File No. S7–18–96.

[11] Of the comment letters received by the Commission, 88% supported the Proposed Profile.

[12] See also Middleton, Cure on the Way for * * * Prospectusphobia, Mutual Funds Magazine, June 1997, at 58; Fosback, Profiles—A Valuable New Tool for Investors, Mutual Funds Magazine, May 1997, at 10; Profile Prospectuses: An Idea Whose Time Has Come, Mutual Funds Magazine, Aug. 1996, at 11.

[13] The ICI recently conducted a survey to assess information that investors considered before making a fund purchase. The results indicated that investors considered fund risk levels, total returns, and investment goals most frequently (listed respectively as first, second, and fourth). ICI, Uncerstanding Shareholders' Use of Information and Advisers at 4 (1997) ("ICI Shareholder Survey").

[14] See Securities Act Release No. 7497 (Jan. 28, 1998) [63 FR 6370] ("Plain English Release") (adopting amendments to rule 421 under the Securities Act [17 CFR 230.421] requiring the use of plain English disclosure principles).

material, no legal or business jargon, and no multiple negatives.[15]

Rule 498, as adopted, also permits a fund that serves as an investment option for a participant-directed defined contribution plan (or for certain other tax-deferred arrangements) to provide investors with a profile that includes disclosure that is tailored for the plan (or other arrangement). Profiles tailored for such use can exclude information relating to the purchase and sale of fund shares, fund distributions, tax consequences, and fund services otherwise required in a profile.

The Commission has determined to adopt rule 498 and permit funds to use summary disclosure documents in accordance with the rule under the authority of section 10(b) of the Securities Act[16] and other provisions of the federal securities laws.[17] Section 10(b) gives the Commission the authority to adopt rules allowing the use of a summary prospectus if the Commission determines that doing so is "necessary or appropriate in the public interest and for the protection of investors."[18] In making this determination about profiles, the Commission considered, among other things: An extensive analysis of fund disclosure issues it recently conducted; its assessment of funds' use of Pilot Profiles; its assessment of certain other disclosure initiatives; and its substantial experience gained in administering the two-part disclosure format adopted in 1983 permitting a fund to provide investors with a simplified prospectus containing essential information about the fund and to place more detailed information about the fund in a Statement of Additional Information ("SAI"), which investors can obtain upon request.[19] The Commission believes, and the broad support for the Proposed Profile confirms its belief, that rule 498 will benefit investors and promote effective communication of information about funds.

Today, the Commission also is adopting the proposed amendments to Form N–1A.[20] As they did with the Proposed Profile, commenters strongly supported the revised prospectus disclosure requirements. Taken together, these two disclosure initiatives are intended to allow funds flexibility to respond to the diverse information needs of investors and to improve fund disclosure.[21]

II. DISCUSSION

A. General

1. Overview of Comments

The vast majority of commenters on the Proposed Profile expressed strong support for the profile and specifically supported the concept of giving investors the option of purchasing shares of a fund on the basis of information contained in a summary disclosure document.[22] A small number of commenters, however, questioned whether providing investors with this option was in the best interests of fund investors. These commenters asserted that investors may not appreciate the significance of an investment in a fund if they purchase its shares based on a summary document rather than the prospectus. These commenters also were concerned that widespread use of a profile could cause fewer investors to read the prospectus and asserted that the Commission would be better advised to direct its efforts to improving the prospectus.

Implicit in these comments would seem to be the view that all investors should use a longer document—the prospectus—rather than a shorter document—the profile—in making a decision about investing in a fund. Such a view appears to be inconsistent with the sentiments of fund investors. The Commission and others, in seeking to identify ways to improve the disclosure of information about mutual funds to investors, have collected data about investors. This data demonstrates that different investors desire and use different types and amounts of materials in determining whether to invest in funds.[23] The Commission believes that the data supports its conclusion to allow funds the option of offering their shares through the profile with delivery of a prospectus with the confirmation of purchase.

The Commission's strongly held belief is that the principal goal of fund disclosure, whether it takes the form of a long or short document, should be to provide investors with useful and relevant information. Each of the disclosure initiatives that the Commission is adopting today has this goal, which the Commission believes complements the themes underlying the recently adopted plain English rule.[24] To further this goal, the Commission encourages all funds that decide to use profiles to take the steps necessary to ensure that their prospectuses effectively communicate information to investors. The Commission believes that funds need to take this action if the initiatives adopted today are to achieve their objectives.

2. Liability

In its release proposing new rule 498 ("the Profile Proposing Release"), the Commission discussed the protections

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[15] Rule 421(d).

[16] 15 U.S.C. 77j(b). Section 10(b) of the Securities Act of 1933 ("Securities Act") permits the use of a summary prospectus (which provides information the substance of which is included in the prospectus) to communicate information for purposes of an offer under section 5(b)(1) of the Securities Act [15 U.S.C. 77e(b)(1)]. Section 5(b)(2) of the Securities Act [15 U.S.C. 77e(b)(2)] requires, as a condition of selling a security, the delivery to investors of a prospectus that meets the requirements of section 10(a) of the Securities Act [15 U.S.C. 77j(a)].

[17] Congress recently confirmed the authority of the Commission to permit the use of a summary prospectus by adding new section 24(g) to the Investment Company Act [15 U.S.C. 80a-24(g)]. National Securities Markets Improvement Act of 1996, Pub. L. 104–290 (1996) ("Improvements Act"), section 204 (amending section 24 to add new paragraph (g)). While the profile, as adopted, will include a summary of information that is required in the prospectus, the Commission may adopt other rules under section 24(g) allowing a fund to use a summary prospectus that includes information the substance of which is not included in the prospectus.

[18] See supra note 16.

[19] Investment Company Act Release No. 13436 (Aug. 12, 1983) [48 FR 37928] ("1983 Form N–1A Adopting Release"). See also supra note 5.

[20] See Form N–1A Release, *supra note 1.*

[21] The Commission also proposed as part of these disclosure initiatives a new rule to address investment company names that are likely to mislead investors about the investments and risks of an investment company. Investment Company Act Release No. 22530 (Feb. 27, 1997) [62 FR 10955], correction [62 FR 24161]. The proposed rule would require, among other things, funds and other registered investment companies with names suggesting a specific investment emphasis to invest at least 80% of their assets in the type of investment suggested by their name. The Commission received a number of substantive comments on the proposed rule, many of which asserted that the proposal had flaws that the Commission should address. The Division is analyzing the comments and expects to recommend a final rule for Commission consideration in the near future.

[22] The Commission has long encouraged summary prospectuses under section 10(b) of the Securities Act to provide investors with a condensed statement of important information included in the prospectus. In 1956, the Commission adopted a rule permitting the use of a summary prospectus under section 10(b), which was extended to investment companies in 1972. See Securities Act Release No. 3722 (Nov. 23, 1956) (adopting rule 434A [17 CFR 230.434A] to permit the use of a summary prospectus); Securities Act Release No. 5248 (May 9, 1972) [37 FR 10071] (extending rule 434A to investment companies); Securities Act Release No. 6383 (Mar. 3, 1982) [47 FR 11380] (renumbering rule 434A as rule 431) [17 CFR 230.431]. The profile permitted by rule 498 is intended to replace the summary prospectuses that funds are currently permitted to use by rule 431 under the Securities Act, and the Commission is amending rule 431 to clarify that the rule no longer applies to funds. The Commission also is eliminating the "Instructions as to Summary Prospectuses" that now accompany Form N–1A. See Form N–1A Release, supra note 1.

[23] As noted above, Focus Groups responded very positively to the profile option. A number of individual investors also have written to the Commission and expressed strong support for the profile. *See* Profile Proposing Release, supra note 6, at 10944. See also ICI Profile Survey, *supra* note 9, at 22, 26; ICI Shareholder Survey, *supra* note 13, at 4.

[24] See Plain English Release, *supra* note 14.

afforded investors under the federal securities laws for false and misleading statements in a profile.[25] These protections include the provisions of sections 12(a)(2) and 17(a) of the Securities Act, which impose civil and criminal liability upon any person who offers or sells securities using an untrue statement of material fact or who omits to state a material fact necessary in order to make a statement, in light of the circumstances under which it was made, not misleading.[26] Investor protections applicable to a profile also include the antifraud provisions of section 10(b) of the Securities Exchange Act of 1934 and rule 10b-5 under that Act.[27]

When it gave the Commission the authority to permit the use of a summary prospectus under section 10(b) of the Securities Act, Congress provided a specific exception from strict liability for misleading statements and omissions imposed under section 11 of the Securities Act [28] for these type of disclosure documents. The purpose of the exception was to encourage the use of a summary prospectus while maintaining investor protection by requiring delivery of a section 10(a) prospectus at or before the time that the investor receives the confirmation of the purchase of the security described in the summary prospectus.[29]

The Commission believes that the profile fits squarely within the statutory framework contemplated by Congress for the offering and sale of securities under the federal securities laws. The profile of a fund will be a summary prospectus under section 10(b) of the Securities Act, but the fund's section 10(a) prospectus will remain the primary disclosure document under the federal securities laws. To inform investors about the availability of the prospectus, a profile includes a legend on the cover page (or at the beginning of the profile) explaining that the profile is a summary document and stating that more information about the fund is available in the prospectus.[30]

While most commenters strongly favored the profile, several commenters expressed concern that a fund using a profile could face increased liability under the federal securities laws. These commenters argued in particular that a fund's use of a profile could result in claims under section 12(a)(2) of the Securities Act alleging that the profile is misleading because it omits information disclosed in the fund's prospectus.[31]

To address this concern, several commenters urged the Commission to permit funds to incorporate by reference the prospectus into the profile to provide funds with a defense against unwarranted claims that a profile omits material information. As stated in the Profile Proposing Release, however, the Commission believes that allowing funds to incorporate by reference the prospectus into the profile would be inconsistent with the purpose of the profile and not in the public interest.[32] The profile is designed to provide summary information about a fund in a self-contained format that will assist an investor in deciding to invest in, or in deciding to request additional information about, the fund. Permitting a fund to incorporate by reference the prospectus into the profile would result in the prospectus being considered a part of the profile and would be inconsistent with the profile being a self-contained document.[33]

On the basis of, among other things, its prior experience with summary documents, such as advertisements designed to meet the requirements of rule 482 under the Securities Act,[34] the Commission does not agree with commenters' claims that the use of profiles will lead to significant potential liabilities under the federal securities laws. In the Commission's view, a fund using a profile generally should not face liability for omitting information included in the fund's prospectus if the profile includes the information required or permitted by rule 498; potential liability would arise only if a profile contains a material misstatement or omits a statement necessary to make the disclosure in the profile not materially misleading. The mere omission of information from the profile that is required or permitted in the prospectus should not, in the Commission's view, give rise to liability under the federal securities laws.[35]

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[25] See Profile Proposing Release, *supra* note 6, at 10950.

[26] 15 U.S.C. 77l(a)(2); 15 U.S.C. 77q(a).

[27] 15 U.S.C. 78j(b); 17 CFR 240.10b-5. In addition, the Commission has the authority under section 10(b) of the Securities Act to suspend the use of a profile, as a summary prospectus, if the profile includes a false or misleading statement or omits to state a material fact necessary in order to make the statements, in light of the circumstances under which they were made, not misleading. This authority supplements the Commission's authority under section 8(b) of the Securities Act [15 U.S.C. 77h(b)] to issue an order to stop the sale of securities by means of a materially inaccurate or incomplete section 10(a) prospectus.

[28] 15 U.S.C. 77k.

[29] See I LOSS & SELIGMAN, SECURITIES REGULATION 480 and n.214 (3d ed. 1989) (citing S. Rep. 1036, 83d Cong., 2d Sess. 17–18 (1954) and H.R. Rep. 1542, 83d Cong., 2d Sess. 26 (1954)). Although section 11 liability would not apply to the profile, section 11 liability would apply to the sale of a fund's securities if a misleading statement is included in both the profile and the prospectus.

[30] The legend also indicates that other information about the fund is available in addition to the prospectus. See *infra* Section II.B.1 for a discussion of the profile legend.

[31] Section 12(a)(2) imposes liability for material misstatements or omissions when the seller cannot demonstrate the exercise of "reasonable care." An action under section 12(a)(2) does not require proof of scienter (*i.e.*, intent to mislead investors), *e.g.*, *Wigand* v. *Flo-Tek, Inc.*, 609 F.2d 1028, 1034 (2d Cir. 1979), or investor reliance on a misleading statement or omission, *e.g.*, *MidAmerica Fed. S. & L. Assoc.* v. *Shearson/American Express, Inc.*, 886 F.2d 1249, 1256 (10th Cir. 1989); *Sanders* v. *John Nuveen & Co.*, 619 F.2d 1222, 1225 (7th Cir. 1980), *cert. denied*, 450 U.S. 1005 (1981). In contrast, claims by private plaintiffs under the antifraud provisions of section 10(b) of the Securities Exchange Act of 1934 ("Securities Exchange Act") require proof of scienter and investor reliance. Under either type of claim, however, it must be established that the misrepresentation or omission was "material," which generally means that a substantial likelihood exists that a reasonable investor would consider the information important in making an investment decision. *TSC Industries, Inc.* v. *Northway, Inc.*, 426 U.S. 438, 449 (1976); *Basic, Inc.* v. *Levinson*, 485 U.S. 224, 231–32 (1988). Commenters cited several cases as examples of the claims funds may face under section 12(a)(2) for alleged nondisclosures in profiles. See, *e.g.*, *In re TCW/DW North Am. Gov. Income Trust Secs. Litigation*, 941 F. Supp. 326, 337–38 (S.D.N.Y. 1996) (dismissing certain allegations that fund misstated and omitted information regarding risks of international investing on the basis that a reasonable investor would not have been misled); *In Re Alliance North Am. Gov. Income Trust, Inc. Secs. Litigation*, 1996 U.S. Dist. LEXIS 14209 (S.D.N.Y. 1996) (same); *Tabankin* v. *Kemper Short-Term Global Income Fund*, 1994 U.S. Dist. LEXIS 965 (N.D.Ill. 1994) (dismissing allegations that fund failed to disclose adequately the risks of investment).

[32] Profile Proposing Release, *supra* note 6, at 10950. One commenter suggested as an alternative to incorporation by reference that the Commission create a liability "safe harbor" for funds using profiles. Under such a provision, a fund using a profile meeting the requirements of rule 498 would be deemed to have disclosed all material information about a fund for purposes of the profile if the fund's prospectus contained all material information. Such a provision, in effect, would amount to incorporation by reference and, in the Commission's view, would be inconsistent with the purpose of the profile.

[33] See *White* v. *Melton*, 757 F. Supp. 267, 271–72 (S.D.N.Y. 1991). See also 1983 Form N–1A Adopting Release, *supra* note 19, at 37930.

[34] In 1979, the Commission adopted rule 434d under the Securities Act [17 CFR 230.434d], subsequently redesignated rule 482 [17 CFR 230.482], which permits investment companies to use advertisements that are designed to be omitting prospectuses of the type contemplated by section 10(b) of the Securities Act. Securities Act Release No. 6116 (Aug. 31, 1979) [44 FR 52816].

[35] Like those commenting on the Proposed Profile, commenters on proposed rule 434d argued that a fund using an advertisement under the rule would be subject to potential liability under section 12(a)(2) if the advertisement did not contain all of the information included in the fund's prospectus. In adopting rule 434d, the Commission stated its belief that a fund should not be liable under section 12(a)(2) merely because information included in the fund's section 10(a) prospectus was not included in the advertisement. 44 FR at 52817. The Commission is not aware of any lawsuits brought since the adoption of rule 434d in which a fund was found liable for an advertisement meeting the requirements of the rule on the basis that the

Continued

The Commission believes that the intended purpose of a profile as a summary disclosure document supports the view that a fund using a profile should not be subject to liability under the federal securities laws for omitting information from the profile that is included in the fund's prospectus. Rule 498 specifies the information that can or must be included in a fund's profile and requires the fund to state that the profile contains a summary of certain information in the fund's prospectus. The Commission's goal in adopting rule 498, which is to facilitate the use of a short, summary disclosure document that investors can use to evaluate and compare funds, would not be met unless rule 498 is read as limiting the information required to be included in the profile.

Commenters on the Proposed Profile requested that the Commission provide guidance about the applicability of section 19(a) of the Securities Act to a fund that uses a profile under new rule 498. By its terms, section 19(a) protects a defendant from liability for actions taken in good faith in conformity with any rule of the Commission.[36] The Commission believes that a fund that provides investors with a profile in good faith compliance with rule 498 would be able to rely on section 19(a) against a claim that its profile did not include information that is disclosed in the fund's prospectus.

3. Plain English Disclosure

In seeking to encourage all issuers, including funds, to provide disclosure materials required under the federal securities laws that are simpler, clearer, and more useful to investors, the Commission recently adopted initiatives that would require the use of plain English in drafting those materials.[37] These initiatives contemplate disclosure documents using plain English writing principles including short sentences, everyday language, active voice, tabular presentation of complex material, no legal or business jargon, and no multiple negatives. The Commission strongly believes that, by drafting profiles in strict compliance with plain English principles, funds can provide improved disclosure to investors. Rule 498, as adopted, reflects this belief. The rule requires that funds disclose the information in the profile using the plain English writing principles set out in the Commission's plain English rule.[38]

4. Use of the Profile by Other Types of Investment Companies

The Commission proposed to permit funds to use profiles, but did not propose to permit other types of investment companies, such as closed-end investment companies, unit investment trusts, and separate accounts that offer variable annuities, to rely on rule 498. Several commenters disagreed with the Commission's decision and urged the Commission to allow other types of investment companies to use profiles. The Commission is not persuaded at this time by these commenters, and rule 498, as adopted, is available only to funds. Although it recognizes that a short, summary disclosure document such as the profile could potentially benefit investors in other types of investment companies, the Commission has concluded that it should assess the use of profiles by funds over a period of time before considering a rule that would allow other types of investment companies to use similar summary documents. As the Commission gains experience with funds' use of the profile and analyzes the results of other pilot profile programs that are underway,[39] it will consider expanding use of the concept to other types of investment companies.[40]

5. Standardized Format

The Proposed Profile required disclosure of 9 items of key information presented in a specific sequence following a question-and-answer format. The purpose of standardizing the order of the items was to help investors locate similar information in the profiles of different funds and compare the funds. The proposed question-and-answer format, frequently used by many funds in their prospectuses, was intended to help communicate the required information effectively. Most commenters supported a standardized presentation in profiles, but several commenters criticized the prescribed question-and-answer format, suggesting that funds should be able to choose other formats to set out the information required in a profile. The Commission is adopting the standardized presentation requirement as proposed because it believes that requiring the profile items in a specific sequence will substantially assist investors in locating information and comparing funds. Consistent with the goal of allowing funds to design effective disclosure documents, however, rule 498 does not limit the presentation of the required information to a question-and-answer format.[41] Any fund that chose to do so could use a question-and-answer format in its profile.

6. Additional Disclosure Items

Several commenters suggested that additional disclosure items would be useful in a profile, including:
—a fund's top ten portfolio holdings;
—an investment style box;
—additional measures of risk; and
—financial highlights.
The Commission acknowledges that the disclosure suggested by the commenters could be useful to some fund investors and could generally enhance the information available about funds. Nonetheless, the Commission has concluded that none of these items should be required by rule 498 at this time.

In considering fund disclosure requirements, the Commission must balance many factors, including, among other things, the amount of information that is consistent with the purpose of a particular disclosure document. The purpose of the profile is to provide investors with a short, standardized disclosure document containing summary information about a fund. In the Commission's view, the additional items suggested by commenters could be of interest to some fund investors but are not necessarily essential information for the average or typical investor. The Commission believes that some of the

advertisement failed to include information contained in the fund's prospectus.

[36] 15 U.S.C. 77s(a). See also section 38(c) of the Investment Company Act [15 U.S.C. 80a–37(c)].

[37] See Plain English Release, *supra* note 14. As part of the plain English initiatives, the Commission plans to issue A Handbook on Plain English: How to Create Clear SEC Disclosure Documents, prepared by the Commission's Office of Investor Education and Assistance.

[38] Instruction 2 to rule 498(b) (requiring funds to use the plain English writing principles set out in rule 421(d) in drafting the disclosure in the profile). See *supra* note 14 and accompanying text.

[39] See National Association for Variable Annuities (pub. avail. June 4, 1996) (staff no-action letter allowing pilot program for variable annuity profiles). The Division has permitted this program to continue pending its taking any further action with respect to variable annuity profiles. National Association for Variable Annuities (pub. avail. May 30, 1997) (staff no-action letter).

[40] The Proposed Profile refined the prototype profile used in the pilot program, which allowed the Commission to evaluate use of the profile concept for funds. See *supra* note 8 and accompanying text. The Commission believes that further initiatives to adapt the profile concept for other types of investment companies should follow a similar approach that includes a review of existing prospectus disclosure requirements and an assessment of investor responses to a different disclosure format.

[41] The profile is, however, subject to certain other format requirements. Under rule 498, as adopted, profiles must meet requirements with respect to font size and legibility set out in rule 420 under the Securities Act [17 CFR 230.420]. Rule 420 requires, among other things, that prospectuses be in roman type at least as large and as legible as 10-point modern type.

types of information cited by commenters may be more helpful in connection with a fund's discussion of its current investment activities that is presently included in fund shareholder reports.[42] The Commission has directed the Division of Investment Management ("Division") to begin work on a comprehensive assessment of the Commission's existing rules specifying the disclosure to be included in fund reports to shareholders to assess whether other types of information should be added to those reports.[43]

7. Eligibility

In the Profile Proposing Release, the Commission suggested that certain funds might not be eligible to use a profile. In particular, the Commission stated that, if material information about a fund exists but is not addressed by the 9 items of disclosure required to be in a profile, the fund might not appropriately use a profile.[44] Several commenters strongly objected to this assertion. They argued that it is inconsistent with the premise underlying the profile initiative that a typical fund investor would have enough information to make an investment decision about a fund using a summary disclosure document containing the 9 required items accompanied by a statement about the availability of additional information in the fund's prospectus and other documents. One commenter suggested that the Commission address the eligibility issue by requiring the profile to provide additional summary information about other items of disclosure that are required in prospectuses. Another commenter suggested that, as an alternative, the Commission provide for a tenth item in the profile in response to which a fund could include at its option any other information that the fund believed was material to an investor's consideration of an investment in the fund. Several other commenters, however, argued that such an item was not consistent with the Commission's purpose in developing the Proposed Profile as a short, standardized, self-contained disclosure document.

After consideration of these comments, the Commission has determined to adopt rule 498 to require funds to include only the information specified by the 9 items in the rule and to delete any suggestion that certain funds may be ineligible to use profiles.[45] The Commission has selected these items because it believes that they fulfill the goal of providing investors with a short, summary disclosure document on the basis of which investors can make decisions about investing in a fund. Under rule 498, as adopted, an investor who believes that he or she needs more information before making such a decision has the option of obtaining additional information by requesting the fund's prospectus or other disclosure materials.[46]

8. Number of Funds Described in a Profile

Rule 498, as proposed, would permit a profile to describe more than one fund. As discussed in the Profile Proposing Release, the Commission concluded, on the basis of the Pilot Program and Focus Group responses, that a profile that describes more than one fund can be consistent with the goal of a summary disclosure document that assists investors in evaluating and comparing funds. Describing more than one fund or class in a profile, for example, could be a useful means of providing investors with information about related investment alternatives offered by a fund group (*e.g.*, a range of tax-exempt funds or different types of money market funds) or about the classes of a multiple class fund.

Recognizing that too much information could make the profile lengthy, complex, and difficult to understand, the Commission requested comment whether use of a profile should be limited to one fund or to some other number of funds. Most commenters supported the proposal to allow a profile to describe more than one fund. One commenter expressed concerns about the proposal and suggested that funds instead be allowed to bind separate profiles together.

The Commission believes that the ability to describe different investment options in one summary document will enable funds to develop profiles that help investors compare investment alternatives offered by a fund group. Therefore, the Commission is adopting rule 498, as proposed, with no express limitation on the number of funds that can be described in a profile. Information about multiple funds in a single profile, however, would need to be set out in a concise and summary manner in a format designed to communicate the information effectively.[47]

B. Profile Disclosure

1. Cover Page

Proposed rule 498 would require the cover page of a fund's profile to include certain basic information about the fund

[42] See section 30(d) of the Investment Company Act [15 U.S.C. 80a–29(d)] and rule 30d–1 [17 CFR 270.30d–1] (requiring funds to provide investors with semi-annual reports about a fund's current operations).

[43] See Form N–1A Release, *supra* note 1. In proposing changes to improve the disclosure in fund prospectuses, the Commission recognized that revisions to shareholder report requirements could enhance the disclosure provided to investors. See Form N–1A Proposing Release, *supra* note 7, at 10912. Recent legislation gives the Commission greater authority to specify the content of annual reports and to require additional disclosure in annual and semi-annual reports as necessary or appropriate in the public interest or for the protection of investors. Improvements Act, *supra* note 16, section 206(f) (amending section 30 of the Investment Company Act [15 U.S.C. 80a–29] to add new paragraph (f)). The Commission notes its preliminary view that an "integrated" approach to registration and reporting requirements applicable to funds could improve the overall information about funds available to investors. See Form N–1A Release, *supra* note 1.

[44] See Profile Proposing Release, *supra* note 6, at 10945.

[45] Rule 498(b). The profile generally will provide a summary of certain items in the prospectus, while the prospectus will provide a fuller description of each of these items. The prospectus, for example, discloses the amount of any rule 12b–1 fees charged by a fund in the fee table and includes a narrative discussion about the fund's rule 12b–1 fees. In contrast, the profile as a summary disclosure document discloses the amount of the fund's rule 12b–1 fees as part of the fee table disclosure. Similarly, a prospectus identifies each investment adviser of a fund, including a sub-adviser of the fund, while, in certain cases, a profile could disclose the number of sub-advisers managing the fund's portfolio without identifying each sub-adviser. See Form N–1A Release, *supra* note 1, and *infra* notes 90 and 93–94 and accompanying text.

[46] Proposed rule 498 provided that a fund could not use footnotes or include cross-references within the profile or to information appearing in another of the fund's disclosure documents, unless specifically required or permitted in the rule. See Profile Proposing Release, *supra* note 6, at 10945 n.22. The Commission believes that footnotes and cross-references should generally be unnecessary in a summary document such as a profile. The Commission acknowledges, however, that circumstances may exist under which footnotes or cross-references within the profile may result in better disclosure. Thus, the Commission is revising rule 498 to discourage, but not to preclude, the use of footnotes or cross-references within a profile; under the rule, a fund may use footnotes or cross-references within a profile if their use promotes a better understanding of the information about the fund contained in the profile. Instruction 1 to rule 498(b). Rule 498, as adopted, continues to preclude use of cross-references to information appearing in another of the fund's disclosure documents. Such cross-references would be inconsistent with the purpose that the profile be a self-contained document. For purposes of the profile only, a hyperlink to a fund's prospectus from the fund's profile when both documents are available electronically would not be deemed a cross-reference. See *infra* note 120 (describing and explaining the use of hyperlinks in a profile).

[47] Instruction 2 to rule 498(b). A fund must use plain English writing principles in drafting disclosure in the profile. See *supra* note 37. In response to a comment, the Commission is modifying rule 498 to clarify that information that is common to all funds or classes described in a profile need be stated only once and not repeated for each fund or class. Instruction 4 to rule 498(b). Rule 498, as adopted, does not preclude binding separate profiles for different funds together in one document.

and to disclose that the profile is a summary disclosure document. As proposed, the cover page would identify the disclosure document as a "profile," would include a legend explaining the profile's purpose, and would include the fund's name. A fund also could describe its investment objectives or its type or category (*e.g.*, that the fund is a growth fund or invests its assets in a particular country). Proposed rule 498 also would require the cover page to state the approximate date of the profile's first use and, if applicable, the date of the most recent updated performance information included in the profile.

The Commission is adopting the proposed cover page requirements with modifications to reflect the suggestions of various commenters.[48] Some commenters questioned the proposed requirement to state on a profile's cover page the date of the most recent performance information included in the profile, asserting that this requirement would necessitate a fund's reprinting its profile frequently to reflect updated performance information. These commenters suggested that, as an alternative, the Commission permit the date of the most recent performance information to accompany that information in the body of the profile. The Commission has concluded that the date of performance information included in a profile can be communicated to investors effectively if the date accompanies the disclosure of performance information. Rule 498, as adopted, reflects this conclusion.[49]

Proposed rule 498 would require funds to identify the document on the cover page as a "profile" without using the term "prospectus."[50] Several commenters asserted that funds should be able to refer to the profile as a prospectus because a profile is a summary prospectus under the federal securities laws.[51] When proposing the profile as an optional disclosure document, the Commission made it clear that the profile was not intended to supersede the section 10(a) prospectus as the primary disclosure document for funds under the federal securities laws.[52] In restricting funds from referring to the profile as a prospectus, the Commission intended to avoid investor confusion by distinguishing between the two documents. The Commission believes that, if a profile is labeled a prospectus, investors may not understand the difference between the two documents. In the Commission's view, the technical legal status of the profile as a summary prospectus should not be determinative of the appropriate label for the document. The Commission believes that investors will benefit from clear identification of the disclosure documents and is adopting rule 498, as proposed, with the restriction on the use of the term "prospectus."[53]

The Commission proposed that the cover page of the profile include a legend designed to alert an investor to the summary nature of a fund's profile and to inform the investor that he or she can obtain the fund's prospectus and other disclosure materials of the fund before making a decision about investing in the fund. In considering an appropriate profile legend, the Commission sought a concise, clear statement that minimized technical or legal jargon; provided investors with a description of a fund's profile; and informed them about the availability of other information about the fund. The Profile Proposing Release set out two alternative legends about which a number of commenters expressed strong views.[54]

The primary difference between the two legends proposed by the Commission was the reference to information in the prospectus. The first legend, which was similar to that used in the Pilot Profile, stated that the profile summarizes key information in the prospectus.[55] The second legend added a statement that the prospectus includes additional material information about the fund.[56]

No commenters expressed support for the first proposed legend, and the comments on the second were mixed. Many commenters believed that the second legend would clearly inform investors that the profile contains summary disclosure of key information about a fund and that additional important information about the fund is available in the prospectus. Several of these commenters, however, strongly urged the Commission to delete the word *material* from the legend. They asserted that the use of that term would imply incorrectly that a fund's profile may be legally deficient simply because it did not contain all of the information contained in the fund's prospectus. Several commenters suggested that both of the proposed legends were insufficient and should be strengthened to alert investors more clearly about the summary nature of the profile and the availability of additional information in the prospectus.

The Commission believes that the profile legend serves an important purpose and that the numerous comments that it received on the proposed legends clearly indicate that commenters share this belief. To ensure that the legend sufficiently serves its purpose of informing investors of the summary nature of the profile, the Commission has determined to strengthen the legend and include specific language offered by commenters. As adopted, rule 498 requires the following legend on the cover page, or at the beginning, of a profile:

> This profile summarizes key information about a Fund that is included in the Fund's prospectus. The Fund's prospectus includes additional information about the Fund, including a more detailed description of the risks associated with investing in the Fund that you may want to consider before you invest. You may obtain the prospectus and other information about the Fund at no cost by calling _____.[57]

To ensure that fund investors who, after reviewing a profile, request other information about a fund receive that

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[48] One commenter requested clarification whether a profile must include a separate cover page. Rule 498, as adopted, clarifies that a profile need not have a separate cover page so long as the specified cover page disclosure is included as introductory information at the beginning of the profile. The proposed cover page requirements were intended to identify introductory information that should appear at the beginning of a profile.

[49] Rule 498(c)(2)(iii). Rule 498 permits a fund to reflect updated performance information in a "sticker" or similar means to avoid requiring frequent reprinting of the profile to change this section of the profile. Instruction to rule 498(c)(2)(iii).

[50] Proposed rule 498(c)(1)(ii).

[51] See *supra* note 16.

[52] See Profile Proposing Release, supra note 6, at 10950. See also *supra* Section II.A.2.

[53] Rule 498(c)(1)(ii).

[54] See Profile Proposing Release, *supra* note 6, at 10946.

[55] See id. The first proposed legend read as follows:

> This Profile summarizes key information about the Fund that is included in the Fund's prospectus. If you would like more information before you invest, you may obtain the Fund's prospectus and other information about the Fund at no cost by calling _____.

[56] See id. The second proposed legend read as follows:

> This Profile summarizes key information about the Fund that is included in the Fund's prospectus. The prospectus includes additional material information about the Fund that you may want to consider before you invest. You may obtain the Fund's prospectus and other information about the Fund at no cost by calling _____.

[57] Rule 498(c)(1)(iv). A fund will be required to provide a toll-free or collect telephone number for investors to request the prospectus or other information. A fund also may, if applicable, indicate that the prospectus is available on its Internet web site or by E-mail. Rule 498(c)(1)(v). Rule 498 requires that an application to purchase shares of a fund that accompanies the fund's profile present with equal prominence the option to invest in the fund based on the information included in the profile or to request the prospectus and other information before making an investment decision. Rule 498(c)(3). See *infra* note 104 and accompanying text.

information promptly, the Commission proposed to require a fund to send its prospectus to the requesting investors within 3 business days of a request. Those commenters addressing this requirement generally supported it, although one commenter maintained that revising the requirement to state that mailings need to be made "reasonably promptly," which the commenter stated should normally be deemed to be within 3 business days of a request, would protect funds against claims that they failed to meet the requirements as a result of unforeseen circumstances. The Commission continues to believe, as discussed in the Profile Proposing Release, that prompt mailing of the prospectus to investors who request it is an essential component of the profile initiative and the goal of promoting effective communication of information about funds.[58] Therefore, the Commission is adopting the 3-business day mailing requirement as proposed.[59]

Some commenters requested clarification from the Commission about the procedure that a fund should follow in responding to requests for additional information when its shares are sold through financial intermediaries, such as broker-dealers or banks. Commenters recommended that the Commission revise rule 498 to permit the legend to state that additional information in such a case may be obtained from financial intermediaries. The Commission acknowledges that many funds use intermediaries in distributing or servicing their shares and that investors may look to these intermediaries for information about the funds. Thus, rule 498, as adopted, allows funds to state that additional information about a fund is available from a financial intermediary.[60] A fund whose information is available through another entity, however, retains the obligation to ensure that information is sent to investors within 3 business days of an investor's request. The Commission expects that funds will fulfill this obligation through contractual arrangements with broker-dealers, banks, or other financial intermediaries.

2. Risk/Return Summary

The Commission proposed that the first 4 items of the profile elicit information that would be substantially identical to the proposed risk/return summary at the beginning of every prospectus. Most commenters supported the risk/return summary in the profile, and the Commission is adopting it generally as proposed. The Form N–1A Release discusses in detail the prospectus risk/return summary.[61] The risk/return summary required in the profile by rule 498, as adopted, will incorporate substantially all of the requirements for the summary in Form N–1A, as amended. The following discussion summarizes the main features of the risk/return summary required by Form N–1A and discusses specific disclosure required in the profile.

—Fund Investment Objectives/Goals

To assist investors in identifying funds that meet their general investment needs, the proposed risk/return summary would require a fund to disclose its investment objectives or goals. The Commission is adopting this disclosure requirement in rule 498 as proposed.[62]

—Principal Investment Strategies

The proposed risk/return summary would require a fund to summarize, based on the information provided in its prospectus, how the fund intends to achieve its investment objectives. The purpose of the proposed disclosure was to provide a summary of the fund's principal investment strategies, including the specific types of securities in which the fund invests or will invest principally, and any policy of the fund to concentrate its investments in an industry or group of industries. The Commission is adopting this requirement in rule 498 as proposed.[63]

In seeking to supplement the information about a fund's principal investment strategies set out in a profile, the Commission proposed to require that a fund's risk summary inform investors about the availability in the fund's shareholder reports of additional information about the fund's investments.[64] Some commenters questioned the proposed placement of this disclosure, arguing that the disclosure should appear together with the legend on the cover page of the profile, while other commenters supported requiring the disclosure in the profile's risk/return summary. The Commission believes that requiring this disclosure on the cover page of the profile would result in too much information on the cover page. Therefore, the Commission is adopting the proposal requiring a fund's profile to indicate in its risk summary that additional information about a fund's investments is available in its shareholder reports.[65]

—Principal Risks of Investing in the Fund

Summary Risk Disclosure. The proposed risk/return summary would require a fund to summarize the information contained in the fund's prospectus about the principal risks of investing in the fund. Reflecting the Commission's proposed new approach to risk disclosure described in the Form N–1A Proposing Release, the profile disclosure was intended to summarize the risks of a fund's anticipated portfolio holdings as a whole, and the circumstances reasonably likely to affect adversely the fund's net asset value, yield, and total return.[66] Commenters generally supported the summary risk disclosure contemplated by proposed rule 498, agreeing that it would be focused and brief and would assist investors in identifying the principal risks of investing in a particular fund. The Commission is adopting this disclosure requirement with modifications to reflect certain commenters' suggestions.[67]

The Commission proposed to require that the risk summary identify the types

[58] See Profile Proposing Release, *supra* note 6, at 10946.

[59] Instruction to rule 498(c)(1)(v). The Commission's Office of Compliance Inspections and Examinations will, as a part of its routine periodic inspections of a fund's operations, examine a fund's compliance with the 3-business day mailing requirement. In addition to the 3-business day mailing requirement for prospectuses, rule 498 requires a fund to send within 3 business days of a request its annual or semi-annual shareholder report and Statement of Additional Information ("SAI"). *Id.* The Commission staff also will examine a fund's compliance with this requirement. Failure to comply with either requirement could result in action by the Commission to ensure compliance, including an enforcement action in an appropriate case.

[60] Instruction to Rule 498(c)(1)(v).

[61] See Form N–1A Release, *supra* note 1.

[62] Rule 498(c)(2)(i).

[63] Rule 498(c)(2)(ii).

[64] A fund's annual report to its shareholders typically contains a MDFP. The Commission believes that the information in a fund's MDFP, including the discussion of the fund's performance during its most recent fiscal year, could be useful to some investors considering an investment in the fund.

[65] Rule 498(c)(2)(ii). This provision requires a fund (other than a new fund) to include disclosure in the risk/return summary to the following effect:

> Additional information about the fund's investments is available in the fund's annual and semi-annual reports to shareholders. In the fund's annual report you will find a discussion of the market conditions and investment strategies that significantly affected the fund's performance during the last fiscal year. You may obtain either or both of these reports at no cost by calling _____.

Unlike rule 498, as adopted, Form N–1A, as amended, requires that the statement about the availability of a fund's shareholder reports appear together with disclosure about the availability of the fund's SAI and other information about the fund on the back cover page of the fund's prospectus. Item 1(b)(1) of Form N–1A.

[66] See Form N–1A Proposing Release, *supra* note 7 (regarding fund risk disclosure required in the prospectus).

[67] Rule 498(c)(2)(iii) (incorporating Item 2(c)(1)(i) of Form N–1A).

of investors for whom the fund may be an appropriate or inappropriate investment. Commenters either opposed or raised significant concerns about this provision, arguing that it could be viewed as requiring a fund to determine whether its shares, among other things, are an investment suitable for a particular investor.[68] Commenters also stated that the disclosure would tend to be generic and not meaningful or useful for investors.

The Commission is persuaded by commenters that disclosure about the appropriateness of funds for particular investors should not be required in all profiles and has deleted this requirement from the risk summary. The Commission believes, however, that disclosure indicating whether a fund is appropriate for specific types of investors or is consistent with certain investment goals, even if generic in nature, may be useful for some investors and may provide a means for the fund to distinguish itself from other investment alternatives. Therefore, the risk summary requirement, as adopted, will give a fund the option to include disclosure in its profile about the types of investors for whom the fund is intended and the types of investment goals that may be consistent with an investment in the fund.[69]

Under the proposed risk/return summary, a fund could at its option discuss the potential rewards of investing in the fund in the risk summary as long as the discussion provided a balanced presentation of the fund's risks and rewards. One commenter strongly questioned this provision of the proposal, asserting that it would detract from a clear presentation of risks in the summary. The Commission has reconsidered this disclosure in light of the intended standardized and summary nature of the risk summary and has concluded that the disclosure there should focus solely on the risks of investing in the fund. Thus, the Commission has determined to eliminate the option to describe the rewards of investing in a fund in the risk summary.[70]

Special Risk Disclosure Requirements. The Commission proposed to require special disclosure in the risk summary for money market funds[71] and for funds advised by or sold through banks. Commenters supported the proposed disclosure requirements, and the Commission is adopting them substantially as proposed.[72]

The Commission proposed to require a tax-exempt money market fund that concentrates its investments in a particular state (a "single state money market fund") to include specific disclosure in its profile risk summary describing certain risks associated with an investment in such a fund.[73] In the Form N–1A Proposing Release, the Commission asked, however, whether it should continue to require this disclosure in prospectuses.[74] The Commission noted that this disclosure may exaggerate the risk of investing in single state money market funds. As the Form N–1A Proposing Release pointed out, although these funds are subject to less stringent issuer diversification provisions under Commission rules than other money market funds, they are subject to credit quality and maturity investment restrictions that are comparable to other money market funds.

In response to the Commission's question regarding single state money market funds, commenters indicated that the special disclosure now required in fund prospectuses overstates the risks of investing in single state money market funds, particularly in view of the minimal risk that commenters asserted is associated with these funds. The Commission is persuaded by these commenters and has determined not to require the disclosure in either the profile or the prospectus.[75]

Risk/Return Bar Chart and Table. The proposed risk/return summary would require a fund's profile to include a bar chart showing the fund's annual returns for each of the last 10 calendar years and a table comparing the fund's average annual returns for the last 1-, 5-, and 10-fiscal years to those of a broad-based securities market index. The bar chart reflects the Commission's determination that investors need improved disclosure about the risks of investing in a fund. The bar chart is intended to illustrate graphically the variability of a fund's returns (*e.g.*, whether a fund's annual returns for a 10-year period have varied significantly from year to year or were relatively even over the period). Presenting return information in this format was designed to give investors some indication of the variability of a fund's annual returns and thus some idea of the risk of an investment in the fund. The average annual return information in the table would assist investors in evaluating a fund's performance and risks relative to "the market." Commenters generally supported the proposed bar chart and performance table, and the Commission is adopting these requirements with

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[68] As several commenters pointed out, applicable regulatory rules for brokers and other investment professionals require that these determinations be made on the basis of a review of information about the unique circumstances of an individual investor. See, *e.g.*, rule 2310(a) of the National Association of Securities Dealers, Inc. ("NASD") Conduct Rules, NASD Manual (CCH) ¶4261 (suitability of recommendations); rule 405 of the New York Stock Exchange, 2 N.Y.S.E. Guide (CCH) ¶2403 (the "know your customer rule").

[69] Rule 498(c)(2)(iii) (incorporating Item 2(c)(1)(i) of Form N–1A).

[70] In keeping with the disclosure flexibility provided to funds under Form N–1A, as amended, a fund could discuss the potential rewards of investing in the fund elsewhere in its prospectus as long as the information is not incomplete, inaccurate, or misleading. See Form N–1A Release, *supra* note 1.

[71] For these purposes, a money market fund is a fund that holds itself out to investors as a money market fund and meets the conditions of paragraphs (c)(2), (c)(3), and (c)(4) of rule 2a–7 under the Investment Company Act [17 CFR 270.2a–7].

[72] Rule 498(c)(2)(iii) (incorporating Item 2(c)(1)(ii) of Form N–1A). This provision, as adopted, requires the following disclosure by a money market fund in the risk summary of its profile:

An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in the Fund.

A fund advised by or sold though a bank would disclose in the risk summary of its profile:

An investment in the Fund is not a deposit of the bank and is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.

Some commenters asserted that the proposed disclosure was inconsistent with that required by bank regulators in the Interagency Statement on Retail Sales of Nondeposit Investment Products. See Board of Governors of the Federal Reserve System, FDIC, Office of the Comptroller of the Currency, and Office of Thrift Supervision, Interagency Statement on Retail Sales of Nondeposit Products, 6 Fed. Banking L. Rep. (CCH) ¶70–113, at 82,598 (Feb. 15, 1994) ("Interagency Statement") (requiring disclosure that the fund is not a deposit or other obligation of the bank). The Commission has confirmed with these bank regulators that no such inconsistency exists, because the disclosure required by the Interagency Statement applies to sales material and not to fund prospectuses. In response to suggestions from bank regulators, the Commission has revised the required disclosure to add language indicating that an investment in a fund advised by or sold through a bank is not a deposit of the bank. The requirement, as amended in this way, is consistent with the requirement now in effect.

The Commission is making conforming amendments to the disclosure requirement contained in rule 482(a)(7) for advertisements by money market funds. The Commission also is amending rule 482(d) under the Securities Act and rule 34b–1 under the Investment Company Act [17 CFR 270.34b–1] to conform to changes made in Item 21 of Form N–1A, as amended. See Form N–1A Release, *supra* note 1.

[73] Proposed rule 498 would require a single state money market fund to make disclosure similar to that Form N–1A currently requires such a fund to disclose in its prospectus. Existing Form N–1A requires a single state money market fund to disclose that it may invest a significant percentage of its assets in a single issuer and that investing in it may be riskier than investing in other types of money market funds. See Form N–1A Proposing Release, *supra* note 7, at 10903.

[74] See Form N–1A Proposing Release, *supra* note 7, at 10904.

[75] See Form N–1A Release, *supra* note 1.

modifications to reflect suggestions of commenters.[76]

In the Form N–1A Proposing Release, the Commission requested comment about alternative presentations that could improve fund risk disclosure.[77] In particular, the Commission expressed interest in disclosure that would show a fund's highest and lowest returns (or "range" of returns) for annual or other periods as an alternative, or in addition, to the bar chart. The Commission suggested that this information could be presented in a separate table or included in the performance table.

In response to the Commission's request, some commenters suggested including in a fund's bar chart one or more indexes or other benchmarks (such as 3-month Treasury returns or the rate of inflation) to help investors evaluate the fund's returns by comparisons to other measures of market performance or economic factors.[78] Most commenters, however, opposed requiring additional information in the bar chart, asserting that it could complicate and reduce the effectiveness of the bar chart.

Several commenters supported the inclusion of annual return information in the bar chart on a quarterly or semi-annual rather than an annual basis. They argued that this change to the bar chart would respond to concerns that fund investors may not sufficiently appreciate that an investment in a fund may be subject to the risk of a short-term decline in value. This risk, commenters asserted, may not be apparent from the annual returns proposed to be shown in the bar chart.

The Commission acknowledges that a fund's returns may vary significantly and could decrease in value over short periods and that the annual returns in the bar chart, as proposed, would not necessarily reflect this pattern. On the other hand, the Commission is concerned that requiring quarterly returns over a 10-year period would make the bar chart more complex and less useful in communicating information to investors. In balancing the desire to make typical fund investors aware that fund shares may experience price fluctuations over shorter periods with its underlying goal that fund documents communicate information in as straightforward and uncomplicated a manner as possible, the Commission has determined to require a fund to disclose, in addition to the bar chart, its best and worst returns for a quarter during the 10-year (or other) period reflected in the bar chart.[79] The Commission believes that this information will assist investors in understanding the variability of a fund's returns and the risks of investing in the fund by illustrating, without adding unwarranted complexity to the bar chart, that the fund's shares may be subject to short-term price fluctuations.

Presentation of Return Information. The proposed risk/return summary would require a fund to include the bar chart and table under a separate sub-heading that referred to both risk and performance. Several commenters argued that the separate sub-heading requirement was unnecessary and suggested that a fund should be able to choose whether to include any sub-heading. Consistent with the objective of encouraging funds to develop disclosure formats that are most helpful to investors, the profile risk/return summary, as adopted, does not require the sub-heading including the proposed risk/return summary. To help investors use the information in the bar chart and table, the profile risk/return summary, as adopted, however, does require a fund to provide a brief narrative explanation of how the information illustrates the variability of the fund's returns.[80]

Bar Chart Return Information. The Commission proposed to require that a fund's bar chart show the fund's annual returns for the last 10-calendar years of the fund's existence. The purpose of the calendar-year requirement was to facilitate the comparison of the annual returns among funds, which typically have fiscal periods that do not correspond to the calendar year.[81] Unlike the proposed bar chart, the proposed performance table required disclosure of a fund's returns for fiscal year periods. In requiring this disclosure to be made for fiscal year periods, the proposal was consistent with existing disclosure requirements for the presentation of other financial information included in a fund's prospectus.

Several commenters argued that using different time periods for the proposed bar chart and performance table would confuse investors and urged the Commission to minimize potential investor confusion by adopting consistent time periods for this information. The Commission is persuaded by these comments and believes that requiring both the bar chart and the performance table to be based on calendar periods will promote understandable information in the profile. Therefore, the risk/return summary, as adopted, requires calendar-year periods for both the bar chart and table.[82] Under rule 498, as adopted, the average annual return information in the table in a fund's profile risk/return summary must be as of the most recent calendar quarter and updated quarterly.[83]

The proposed bar chart would not reflect sales loads assessed upon the sale of a fund's shares, although the average annual return information for the fund in the table would reflect the payment of any sales loads. Commenters generally supported this presentation of annual return information. The Commission believes that, in light of the different types of sales loads that may be charged on fund shares, it would be difficult for funds to compute annual returns for the purpose of the bar chart and to communicate the information effectively to investors.[84] In addition, the Commission has concluded that more precise return information is not necessary for the bar chart to serve the purposes of graphically showing a fund's annual returns and illustrating

[76] Rule 498(c)(2)(iii) (incorporating Item 2(c)(2) of Form N–1A). This provision requires a fund to have at least one calendar year of returns before including the bar chart and requires a fund whose profile does not include a bar chart because the fund does not have annual returns for a full calendar year to modify the narrative explanation to refer only to information presented in the table. The provision also requires the bar chart of a fund in operation for fewer than 10 years to include annual returns for the life of the fund.

In adopting the bar chart requirement, the Commission does not mean to suggest that all, or even a significant portion of all fund investors equate the variation in a fund's returns to the risk of investing in the fund. As it indicated in the Form N–1A Release, the Commission acknowledges that investors have a wide range of ideas of what "risk" means. See Form N–1A Release, *supra* note 1.

[77] See Form N–1A Proposing Release, *supra* note 7, at 10907.

[78] Rule 498, as adopted, in incorporating the requirements of Form N–1A, as amended, permits a fund to use other indexes in the presentation of the average annual return information in the table accompanying the bar chart. Rule 498(c)(2)(iii) (incorporating Instruction 2(b) to Item 2(c)(2) of Form N–1A).

[79] Rule 498(c)(2)(iii) (incorporating Item 2(c)(2)(ii) of Form N–1A).

[80] Rule 498(c)(2)(iii) (incorporating Item 2(c)(2)(i) of Form N–1A).

[81] The Commission understands that funds increasingly organize themselves as series companies and tend to stagger the financial periods of their series to spread audits and financial reporting periods over an entire calendar year.

[82] Rule 498(c)(2)(iii) (incorporating Item 2(c)(2) of Form N–1A).

[83] Rule 498(c)(2)(iii). Unlike rule 498, as adopted, Form N–1A, as amended, requires the fund's prospectus risk/return summary to reflect average annual return information as of the end of a fund's most recent calendar year. Item 2(c)(2) of Form N–1A, as amended. A fund would update the information in the prospectus in connection with the filing of an annual post-effective amendment to update a fund's registration statement.

[84] In contrast, sales loads can be accurately and fairly reflected in return information of the type contained in the table by deducting sales loads at the beginning (or end) of particular periods from a hypothetical initial fund investment.

the variability of an investment in the fund over a 10-year period. Therefore, the bar chart, as adopted, is not required to show returns adjusted for sales loads.

Bar Chart Presentation. Consistent with the bar chart as proposed, the bar chart, as adopted, may include return information for more than one fund.[85] In contrast, the risk/return summary, as adopted, would require a fund offering more than one class of shares in a profile to include annual return information in its bar chart for only one class.[86] Unlike individual funds, classes of funds represent interests in the same portfolio of securities and the returns of each class differ only to the extent that the classes do not have the same expenses. The Commission believes that including return information for all classes offered through a fund's profile is not necessary to provide an indication of the risks of investing in the fund. In addition, the table accompanying such a fund's bar chart would provide return information for each class offered in the profile so that investors will be able to identify and compare the performance of each class.[87]

The proposed risk/return summary would require the bar chart of a fund offering more than one class of shares through a profile to reflect annual return information for the class offered in the profile that had the longest performance history over the last 10 years. Most commenters considering the issue suggested that the Commission instead permit such a fund to include the performance of any existing class in the bar chart, maintaining that the effect of expenses on the returns for different classes of shares is not significant.[88] The Commission is persuaded that allowing a multiple class fund in such a case to choose the class reflected in the fund's bar chart will simplify compliance with the bar chart requirement and provide investors with sufficient information to evaluate the variability of returns for any class of the fund. Therefore, the profile risk/return summary, as adopted, permits a fund to choose the class to be reflected in the bar chart, subject to certain limitations.[89]

—Fees and Expenses of the Fund

The proposed risk/return summary would require a table accompanying a fund's bar chart showing the fund's fees and expenses, including any sales loads charged in connection with an investment in the fund. Including the fee table in both the profile and the prospectus reflects the Commission's strongly held belief in the importance of fees and expenses in a typical investor's decision to invest in a fund. The fee table is designed to help investors understand the costs of investing in a fund and to compare those costs with the costs of other funds. The Commission is adopting the requirement for a fee table with modifications incorporating suggestions from commenters.[90]

3. Other Disclosure Requirements

The Commission proposed to require the profile of a fund to include not only the risk/return summary, but also disclosure about other key aspects of investing in the fund. Commenters generally supported these disclosure requirements, which are summarized below, and the Commission is adopting them substantially as proposed.

—Investment Adviser and Portfolio Manager of the Fund

Proposed rule 498 would generally require a fund to identify in its profile its investment adviser and the person or persons primarily responsible for the day-to-day management of the fund's portfolio ("portfolio manager"). The proposed disclosure in the profile about portfolio managers also would require a fund to indicate the length of time that a portfolio manager has managed the fund and to summarize the portfolio manager's business experience for the last 5 years. Proposed rule 498 contemplated that a fund for which a committee or other group shared day-to-day management of its portfolio would disclose that it was managed in this fashion and not identify any individual portfolio manager. Commenters supported all of these proposed requirements, which the Commission has determined to adopt.[91]

In seeking to meet its goal that profile disclosure be clear, concise, and summary in nature, the Commission proposed that, subject to one exception, a fund having 3 or more portfolio managers, each with responsibility over a portion of the fund's portfolio, could choose to disclose the number, and not the names, of its portfolio managers. Under the proposed exception, a fund would be required to disclose the identity of a portfolio manager who was responsible for managing 40% or more of its portfolio.[92] One commenter questioned the operation of these provisions and suggested that the Commission instead adopt a requirement that a fund disclose the name and experience of only those portfolio managers having responsibility over the day-to-day management of a significant portion of the fund's investments. The commenter suggested further that 30 to 40% of a fund's portfolio should be deemed significant for this purpose.

The Commission believes that the commenter's suggestions are consistent with the goal underlying the profile and could result in better disclosure than that contemplated by the Commission's proposal. Thus, under rule 498, as adopted, a fund with 3 or more portfolio managers need not identify each of the managers, except that the fund must identify any manager who is (or is reasonably expected to be) responsible for the management of a significant portion of the fund's assets.[93] Under rule 498, as adopted, a portfolio manager of 30% or more of a fund's net assets generally would be deemed to be responsible for the management of a

[85] While rule 498 does not limit the number of funds whose return information may be included in a bar chart, the presentation of the bar chart is subject to the general requirement that disclosure should be presented in a format designed to communicate information effectively. Instruction 2 to rule 498(b).

[86] Rule 498(c)(2)(iii) (incorporating Instruction 3(a) to Item 2(c)(2) of form N–1A).

[87] Rule 498(c)(2)(iii) (incorporating Instruction 3(b) to Item 2(c)(2) of form N–1A).

[88] In making this argument, commenters cited rule 18f–3 under the Investment Company Act [17 CFR 270.18f–3], which provides that a class of shares may have different expenses for shareholder services, distribution fees, or other expenses actually incurred in a different amount by the class. The rule does not permit expenses for advisory or custodial fees, or other management fees, to vary among classes.

[89] Rule 498(c)(2)(iii) (incorporating Instruction 3(a) to Item 2(c)(2) of Form N–1A). The bar chart must reflect the performance of any class that has returns for at least 10 years (*e.g.*, a fund could not present a class in the bar chart with 2 years of returns when another class has returns for at least 10 years). In addition, if two or more classes offered in the profile have returns for less than 10 years, the bar chart must reflect returns for the class that has returns for the longest period.

[90] Rule 498(c)(2)(iv) (incorporating Item 3 of Form. N–A). The modifications adopted by the Commission are discussed in Form N–1A Release, *supra* note 1.

[91] Rule 498(c)(2)(v). Item 6(a)(2) of Form N–1A sets out the disclosure requirements for Form N–1A covering this information. As discussed in the Form N–1A Release, the Commission has provided additional guidance in Form N–1A regarding the prospectus disclosure obligations of a fund for which day-to-day management responsibilities are shared. *See* Form N–1A Release, *supra* note 1 (Instructions to Item 6(a)(2)).

[92] Under the 1996 Profile Letter, *supra* note 8, at 3, a fund could disclose that 3 or more persons managed the fund's portfolio, without regard to the percentage of the portfolio managed by any one person.

[93] Rule 498(c)(2)(v)(C). In tying this disclosure to the portion of a fund's net assets over which a person has day-to-day responsibility, the Commission intends to provide funds with a standard way of determining whether a person has responsibility over a significant portion of a fund's portfolio. Like Form N–1A, as amended, rule 498, as adopted, does not require disclosure about the portfolio manager of a money market fund or an index fund.

significant portion of the fund's net assets.[94]

Proposed rule 498 generally would require a fund to identify in its profile any person or entity serving as a sub-adviser of the fund.[95] Under the proposal, a fund would not need to identify a sub-adviser whose sole responsibility for the fund is limited to managing the fund's cash positions on a day-to-day basis.[96] Commenters supported, and the Commission has adopted, this provision, with a clarification that recognizes that responsibility for cash management generally is incidental to a fund's investment objectives and unlikely to affect the fund's overall portfolio management and risks.[97]

Under rule 498, as proposed, a fund with 3 or more sub-advisers, each of which manages a portion of the fund's portfolio, could choose to disclose the number, and not the identity, of its sub-advisers, subject to one exception. Under the exception, a fund would be required to identify any sub-adviser that manages 40% or more of its net assets. Consistent with the modification to the disclosure requirement for portfolio managers, rule 498, as adopted, requires a fund to identify any sub-adviser that is (or is reasonably expected to be) responsible for the management of a significant portion of the fund's net assets. The rule defines a significant portion of the fund's net assets for this purpose generally to be 30% or more of the fund's net assets.[98]

—Purchase and Sale of Fund Shares

The Commission proposed to require a fund to describe in its profile how to purchase its shares under one caption and how to redeem its shares under another caption. Proposed rule 498 would require, under the purchase caption, information about the fund's minimum investment requirements (*e.g.*, initial and minimum account balances) and, when applicable, any breakpoints in or waivers of sales loads.

Several commenters criticized the generic nature of the information on purchases and sales of fund shares contemplated by proposed rule 498. They argued that without some guidance as to the specific kinds of information relating to purchases and sales of fund shares that the Commission believes is of importance to investors, funds would include an excessive amount of information in their profiles. The Commission believes that such a result would be inconsistent with the profile's intended purpose as a summary disclosure document and has revised rule 498 to specify in greater detail the information about a fund's purchase and sale procedures that funds must include in a profile. Under rule 498, as adopted, a fund must disclose the minimum initial or subsequent investment requirements, the initial sales load (or other loads), and, if applicable, the initial sales load breakpoints or waivers.[99] Rule 498 also requires a fund to state that its shares are redeemable, to identify the procedures for redeeming shares (*e.g.*, on any business day by written request, telephone, or wire transfer), and to identify any charges or sales loads that may be assessed upon redemption (including, if applicable, the existence of waivers of these charges).[100]

—Fund Distributions and Tax Information

The Commission is adopting the proposed requirement that a fund disclose information in its profile about the terms and conditions under which it makes distributions, as well as the expected tax treatment of those distributions.[101] Rule 498, as adopted, requires a fund's profile to describe how frequently the fund intends to make distributions and what reinvestment options for distributions (if any) are available to investors in the fund. Rule 498 also requires a fund to disclose whether its distributions to shareholders may be taxed as ordinary income or capital gains and that the rates shareholders pay on capital gains will depend on the length of time that the fund holds its assets.[102] Rule 498 requires a tax-exempt fund to state that it intends to distribute tax-exempt income and to disclose, as applicable, that a portion of its distributions may be taxable.

—Other Services Provided by the Fund

Recognizing that funds often seek to distinguish themselves by the services that they offer investors and that investors often select funds for the services that they provide, the Commission proposed to require a fund to summarize or list in its profile the services available to its investors, including, for example, any exchange privileges or automated information services. One commenter expressed concern about the open-ended nature of this item and suggested that the Commission clarify that a fund need not respond to the item by disclosing all of its services available to all investors. This clarification, according to the commenter, would ensure that the profile serves its intended purpose as a summary document that includes information of use to a typical fund investor. The Commission agrees, and as adopted, rule 498 requires only that a fund's profile provide a summary of services available to typical investors in the fund.[103]

4. Application to Purchase Shares

The Commission proposed to permit a fund to include in its profile an application to purchase its shares.[104] To ensure that investors are informed of the

[94] Rule 498, as adopted, requires disclosure about a portfolio manager of a fund who is, or who is reasonably expected to be, responsible for the management rather than one who "manages" a significant portion of the fund's portfolio. The revised language recognizes that the portion of a fund's portfolio over which a manager has responsibility may change from time to time.

[95] See section 2(a)(20) of the Investment Company Act [15 U.S.C. 80a–2(a)(20)] (defining "investment adviser" broadly so as to include a sub-adviser).

[96] In contrast the 1996 Profile Letter, *supra* note 8, at 3, required disclosure about a sub-adviser only if it managed a material portion of a fund's portfolio.

[97] Rule 498(c)(2)(v). As adopted, this exception does not apply to any sub-adviser for a money market fund because the primary investment objective for such a fund can be viewed as cash management. The exception also does not apply to any other type of fund with a principal strategy of regularly holding cash or cash equivalent instruments. A fund, for example, with a principal strategy of allocating its assets among cash equivalents, equity securities, and income securities, and which employed different sub-advisers to manage each of these asset categories, would need to identify all of the sub-advisers.

[98] Rule 498(c)(2)(v)(B)(2).

[99] Rule 498(c)(2)(vi).

[100] Rule 498(c)(2)(vii).

[101] Rule 498(c)(2)(viii).

[102] If a fund expects that its distributions, as a result of its investment objectives or strategies, primarily will consist of ordinary income or capital gains, the fund must provide disclosure to that effect in responding to rule 498(c)(2)(viii). Funds subject to this requirement would include, for example, those often described as "tax-managed," "tax-sensitive," or "tax-advantaged," which have investment strategies to maximize long-term capital gains and minimize ordinary income. To the extent that a fund has a principal investment objective or strategy to achieve tax-managed results (*e.g.*, to maximize long-term gains and minimize ordinary income), the fund would be required under rule 498 to provide disclosure to that effect in the discussion of its investment objectives. Rule 498(c)(2)(ii).

[103] Rule 498(c)(2)(ix).

[104] Proposed rule 498(c)(3). Rule 482 under the Securities Act prohibits a fund from including an application to purchase its shares in an advertisement. This prohibition was based on concerns that an application would be inconsistent with the purpose of rule 482, which was to provide a limited amount of information about a fund and a means of requesting a fund's prospectus. See Fund Performance Release, *supra*, note 5. In 1993, the Commission proposed to amend rule 482 to permit a fund to include in an advertisement a purchase application if the advertisement included certain information about a fund. Investment Company Act Release No. 19342 (Mar. 5, 1993) [58 FR 16141]. In lieu of adopting the proposed revisions to rule 482, the Commission is adopting rule 498. The Commission is amending rule 482 in a number of respects to reflect the adoption of rule 498. In addition, the Commission is adopting revisions to rule 482 to permit letters or other materials permitted under the rule to accompany a profile. See *infra note 123 and accompanying text.*

availability of a fund's prospectus, which can be reviewed by an investor before investing in the fund, proposed rule 498 would require the application to note with equal prominence that an investor has the option of purchasing shares of the fund after reviewing the information in the profile or after requesting and reviewing the fund's prospectus (and other information).

Commenters generally supported permitting a fund to include an application in its profile, and the Commission is adopting rule 498 as proposed. One commenter questioned why an application needed to be included within a profile and suggested that it should be sufficient for an application to accompany the profile. The Commission recognizes that allowing funds to separate purchase applications from profiles may facilitate the printing and distribution of profiles and make it easier for funds to administer and process investors' applications. The Commission is concerned, however, that separating the application from the profile may cause investors to overlook the information provided in the profile. Balancing these concerns with a desire to ease the administrative burden on funds, the Commission has revised rule 498 to permit a fund to provide an application for purchase of fund shares either in the profile, or together with the profile in a manner reasonably designed to alert investors that the application is to be considered along with the information about the fund disclosed in the profile.[105]

C. Filing Requirements

The Commission proposed to require a fund to file its profile with the Commission at least 30 days before its first use.[106] Proposed rule 498 would require a fund to file any profile containing substantive changes to a previously filed profile 30 days before use. The proposed rule would not require a fund to re-file a previously filed profile that has been revised only to update return information about the fund's past performance included in the risk/return summary. Commenters generally supported the proposed filing requirement, although some commenters suggested that it was unnecessary to require the subsequent re-filing of a profile with substantive changes 30 days before use. Commenters recommended that, if the Commission believes that such a filing requirement is necessary, the period before an amended profile can be used should be shortened to 5 days. Other commenters requested clarification about the kinds of changes made to a profile in use that would trigger a second filing requirement.

The Commission has determined to adopt the proposed filing requirements with modifications to address commenters' concerns.[107] As discussed in the Profile Proposing Release, requiring profiles to be filed prior to their first use will allow the Commission's staff to monitor the document's compliance with the provisions of rule 498 and other provisions under the federal securities laws.[108] The Commission believes that the 30-day filing requirement for a new profile will provide the staff with sufficient time to review the profile.[109] The subsequent filing of an amended profile was intended to enable the Commission to continue to monitor and assess the use of profiles by funds. Because substantive changes to the profile, particularly the risk/return summary, will be reflected in amended prospectus filed with the Commission that can be reviewed by the Division, the Commission believes that a subsequent filing of amendments to a profile before its use is not necessary. Therefore, the Commission has revised the procedures under which profiles are filed to require that a fund file its amended profile within 5-business days after its use.[110]

Funds would be required to submit profiles electronically on the Commission's electronic data gathering analysis and retrieval ("EDGAR") system.[111] Because filings on the EDGAR system currently are text-only, do not reflect formatting, and do not reproduce graphic images (such as the bar chart required to be in the profile), the Commission proposed to require a fund to submit 2 copies of the profile in the primary form intended to be distributed to investors (*e.g.*, paper or electronic media) with its electronically-filed profile. The purpose of this requirement was to allow the Commission to assess how funds present information in the profile.[112] Pointing out that all funds are now required to file their disclosure documents required under the federal securities laws electronically and are no longer permitted to file paper copies, one commenter argued that it would be burdensome to require an additional paper submission of a profile and that the paper filing was not necessary to review the content of the profile. The commenter suggested that, if the Commission determines that a paper (or other distributed form of) filing is necessary, the Commission should require that the first filing of the profile be in its primary format and allow subsequent filings to be made electronically on EDGAR only. The Commission believes that review of profiles in the form in which they will be distributed to investors will allow its staff to evaluate the effectiveness of the profile and will be helpful in assessing whether the Commission should permit other types of investment companies to use a form of profile.[113] To avoid unnecessary administrative burdens on funds, which file most forms required by the Commission electronically, however, the Commission is revising the additional profile filing requirement. Under these revisions, the first profile filing must be accompanied by the submission of a profile in the format in which it will be distributed to investors.[114] Subsequent filings will not require the additional formatted profile.

D. Dissemination of Profiles

The Commission believes, on the basis of its own research and studies

[105] Instruction to rule 498(c)(3).

[106] Proposed rule 498 would require a fund to file the profile under rule 497, which sets out general filing requirements for fund prospectuses. The Commission proposed to include the profile requirement in new paragraph (k) to rule 497.

[107] The Commission has determined that it is not necessary or appropriate in the public interest or for the protection of investors to require that a fund's profile be filed as part of the fund's registration statement on Form N–1A. Filing the profile as part of a registration statement would not add to the Commission's ability to monitor the disclosure in the profile, would provide no additional protection to investors, and would impose unnecessary administrative burdens on funds.

[108] See Profile Proposing Release, *supra* note 6, at 10950. Under rule 498, as adopted, a profile can be used by a fund only with an effective registration statement and a current prospectus.

[109] Rule 497, as amended, requires a fund to file a definitive form of any profile required to be filed with the Commission within 5 days after it is used.

[110] Rule 497(k)(1)(ii). Rule 497(k) separates filings of amended profiles into those that contain a material change to the investment objectives/goals, strategies, or risks of investing in the fund (changes to the information in, respectively, paragraphs (c)(2)(i)–(iii) of rule 498) and those that do not. Rule 497(k)(1)(iii) (A) and (B). As with any profile filing, rule 497 requires that a fund filing an amended profile designate under which paragraph and sub-paragraph of rule 497 the fund is filing the amended profile. Rule 497(k)(2)(i). This requirement will assist the staff of the Division in determining whether an amended profile contains substantive changes to the information in the risk/return summary.

[111] The Commission requires most other filings to be made in the same manner. Rule 101(a)(1)(i) of Regulation S–T [17 CFR 232.101(a)(1)(i)], for example requires prospectuses filed pursuant to the Securities Act to be submitted in electronic format.

[112] See Profile Proposing Release, *supra* note 6, at 10951 nn. 86–88 and accompanying text.

[113] See *supra* Section II.A.4 (discussion of use of profile by other investment companies).

[114] Rule 497(k)(2)(ii). If a fund intends to disseminate its profile electronically, the supplemental submission need only include the Internet web site electronic address ("URL").

undertaken by others, that the profile has the potential to be used by a significant number of fund investors. To facilitate use of the profile, the Commission proposed to permit profiles to be distributed to investors through any form of media.[115] Commenters generally supported this approach, although one commenter urged the Commission to limit distribution of the profile to mass print media, arguing that the use of electronic media or direct mail to distribute a profile could promote fraud. The Commission believes that the profile's filing requirements and its staff's periodic regular review of fund operations through its inspections program provide important safeguards against the fraudulent use of the profile. In addition, the Commission has determined that it is in the interest of fund investors to provide them with different means to access sources of information about funds. Therefore, the Commission has decided not to restrict the means that funds may use to distribute profiles.

- Notwithstanding its decision to permit funds to use all media to distribute profiles, the Commission acknowledges that some media may have limitations that make communicating information in a profile difficult or that raise issues about whether investors have adequate opportunity to consider the information conveyed by that form of media.[116]

Regardless of how it is distributed (*e.g.*, through electronic means or in paper format), a profile must contain all of the information contemplated by rule 498.[117] In addition, while a fund's profile may be delivered without the fund's prospectus, the profile, if accompanied by supplemental sales literature, cannot be delivered without the prospectus.[118]

As discussed in the Profile Proposing Release, electronic media, such as the Internet, may be particularly well suited for the delivery of the profile to investors.[119] Including the profile together with the prospectus (and other information) on a fund's Internet web site may be an efficient method for the fund to disseminate, and for investors to receive, disclosure documents. Electronic availability of both the profile and prospectus would allow investors to access the fund's prospectus for more information contemporaneously with deciding to make an investment in the fund.[120]

Several commenters pointed out that funds could decide to send profiles to prospective investors with cover letters designed to be "omitting prospectuses" within the meaning of rule 482 under the Securities Act.[121] Noting that rule 482 materials are designed for a purpose different from that of the profile and are required to contain a legend that is inconsistent with the legend in the profile, the commenters requested that the Commission clarify the circumstances under which these materials could be used with a profile. The commenters suggested specifically that the statement required by rule 482, that a prospectus is available from a fund and that the investor should read it carefully before investing, could confuse investors who receive rule 482 materials with a profile that contains an application to purchase shares of the fund. To avoid this type of confusion, the Commission is revising rule 482 so that a fund can indicate in a letter or other rule 482 material accompanying the fund's profile that information about the fund, and the procedures for investing in the fund, are available in the accompanying profile.[122] The Commission also is revising rule 482 to provide that a profile containing, or accompanied by, an application can be used with rule 482 materials.[123]

E. Modified Profiles for Certain Funds

The Commission proposed to permit a fund to tailor a profile for use by investors in participant-directed defined contribution plans ("plans"). The Commission believes that plan participants may find a profile helpful in evaluating and comparing the funds offered as investment alternatives in a plan.[124] In proposing rule 498, the Commission recognized that certain information of importance to typical fund investors is of little importance to participants in plans. Thus, proposed rule 498 would permit a fund offered through a plan to omit information relating to the purchase and sale of fund

[115] For example, a fund could make a profile available through direct mail and mass print (*e.g.*, magazines and newspapers), broadcast, and electronic media, such as electronic bulletin boards, E-mail, facsimiles, Internet web sites, audiotapes. *See e.g.*, Investment Company Act Release No. 21399 (Oct. 6, 1995) [60 FR 53458, 53458 n.9] ("Electronic Distribution Release"). A fund may find that posting both its profile and its prospectus (and other information) on its Internet web site may disseminate disclosure documents to investors more efficiently than other ways.

The Commission has encouraged the electronic dissemination of information by allowing funds and other types of companies significant choice in selecting and using distribution media. See, *e.g.*, *id.* at 53460 n.20 (providing guidance on the electronic delivery of documents including prospectuses, shareholder reports, and proxies, under the Securities Act, the Securities Exchange Act, and the Investment Company Act); Investment Company Act Release No. 21945 (May 9, 1996) [61 FR 24644] (addressing the use of electronic media by broker-dealers, transfer agents, and investment advisers); Investment Company Act Release No. 21946 (May 9, 1996) [61 FR 24652] ("Release 21946") (adopting technical amendments to rules premised on the delivery of paper documents).

[116] The Commission noted the same point generally in the Electronic Distribution Release, *supra* note 115, at 53460 & n.20. For example, broadcast media may be more difficult to use for disseminating the profile because they may not communicate the profile information effectively (*e.g.*, the bar chart may not be effectively conveyed by a radio broadcast) or provide a meaningful opportunity for retaining the information (*e.g.*, a short television commercial).

[117] Release 21946, *supra* note 115, at 24653. The Commission has taken the position generally that any document contemplated by the federal securities laws, whether delivered electronically or on paper, must contain all required information and, if the order of information has been specified by the Commission, must present the information in substantially the prescribed order. Electronic Distribution Release, *supra* note 115, at 53460 n.20.

[118] Profiles may be accompanied by material deemed to be an omitting prospectus within the meaning of rule 482 under the Securities Act. The conclusion that a profile accompanied by supplemental sales literature cannot be delivered to investors without the prospectus is based on section 2(a)(10) of the Securities Act [15 U.S.C. 77b(a)(10)], which excludes sales literature from the definition of a "prospectus" (and from the filing requirements under the Securities Act) if a section 10(a) prospectus (but not a summary prospectus under section 10(b)) precedes or accompanies the sales literature. For a discussion of the use of a profile with rule 482 materials, see *infra* notes 121 and 122 and accompanying text. See also Electronic Distribution Release, *supra* note 115, at 53463 and 53465 (examples 15 and 35).

[119] See Profile Proposing Release, *supra* note 6, at 10951.

[120] A fund could provide a hyperlink to its prospectus from its profile. A hyperlink in a document (which, for example, may be an underlined word or phrase) permits a viewer to move to another document (or part of the same document) with a computer command. The words "investment strategies" in the profile, for example, could be set up as a hyperlink to the discussion of investment strategies in the prospectus. Using hyperlinks could facilitate the profile's serving as a means through which fund investors can obtain additional information in the prospectus and other documents. An investor's use of an electronic profile application contemplated by rule 498 would create the inference of delivery of the prospectus if both the profile and the prospectus are available at the same electronic site. *Cf.* Electronic Distribution Release, *supra* note 115, at 43565–66 (example (39)) ("If the fund can identify the application form as coming from the electronic system that contains both the application and the prospectus, electronic delivery of the prospectus can be inferred."). A fund that does not electronically disseminate the profile and prospectus together could not rely on this presumption and generally would be required to provide a copy of the prospectus with the purchase confirmation.

[121] See *supra* note 104.

[122] Rule 482(a)(3).

[123] Rule 482(a)(5).

[124] The Division has taken the view that certain informational materials about a fund offered as an investment option in a defined contribution plan can be deemed an omitting prospectus within the meaning of rule 482. Fidelity Institutional Retirement Services Company, Inc. (pub. avail. Apr. 5, 1995) (staff no-action letter). None of the initiatives being adopted by the Commission today is intended to supersede this position of the Division.

shares, fund distributions, and tax consequences.[125]

Commenters generally supported allowing funds to develop profiles containing disclosure of particular relevance for plan participants who invest in funds. The Commission is adopting the special provisions for profiles used for plans as proposed with modifications to reflect suggestions of the commenters.[126]

Under rule 498, as adopted, funds can tailor disclosure for profiles to be used for investments in defined contribution plans qualified under the Internal Revenue Code.[127] One commenter suggested that the Commission also permit funds that serve as investment options for variable insurance contracts to modify profiles to take into account specialized purchase and sale procedures and tax consequences applicable to these funds.[128] In response to the commenter's suggestions, the Commission is revising rule 498 to permit the profile to be tailored for funds offered through variable insurance contracts. The Commission believes that this revision will help to ensure that profiles contain information that investors will find meaningful and useful. Rule 498, as adopted, permits a profile for a fund offered as an investment option for a plan to include, or be accompanied by, an enrollment form for the plan.[129] An application or enrollment form for a variable insurance contract may accompany the profile for the funds that serve as investment options, however, only if the form also is accompanied by a full prospectus for the contract.[130]

Some commenters suggested that rule 498 permit other modifications to the disclosure in fund profiles used in connection with plans, such as including information about purchases and sales of the fund's shares, taxation, or transfer of participant accounts under the plan or describing from whom this information can be obtained. Commenters also suggested that rule 498 permit such a fund to alter the legend in its profile used by plans to distinguish clearly that profile from another profile of the same fund. Consistent with the goal of providing meaningful and useful information that is effectively communicated to investors, rule 498, as adopted, permits funds to modify the legend and other disclosure in profiles intended for use in connection with defined contribution plans, other tax-deferred arrangements described in the rule, and variable insurance contracts.

III. Effective Date

The Commission proposed a transition period after the effective date of revised Form N–1A to give funds sufficient time to prepare their registration statements under the proposed amendments.[131] One commenter suggested that, in light of the significant overlap of information in fund prospectuses and profiles, funds would revise their prospectuses and develop profiles concurrently, and requested that the transition period be the same for both rule 498 and Form N–1A, as amended. The commenter also requested that the Commission continue to permit funds to use Pilot Profiles during the transition period.[132] The Commission expects that the practical result of the adoption of rule 498 and revisions to prospectus disclosure requirements may be that funds begin using both documents at the same time. In light of the profile's purpose to provide investors with a new source of clear, concise information about funds, the Commission believes that funds should have the option to use the profile as soon as possible and is making rule 498 effective on June 1, 1998.[133] The amendments to Form N–1A will become effective on the same date.[134] Although existing funds will have until December 1, 1999 to comply with the Form N–1A amendments, a fund may, at its option, prepare documents in accordance with the requirements of the amended Form at any time after the effective date of the amendments.

IV. Cost/Benefit Analysis and Effects on Competition, Efficiency, and Capital Formation

Section 2(b) of the Securities Act provides that whenever the Commission engages in rulemaking requiring it to consider whether its action is in the public interest, the Commission also must consider whether the action will promote efficiency, competition, and capital formation.[135] For the reasons stated in the cost/benefit analysis below, as well as the reasons discussed elsewhere in this adopting release, the Commission has concluded that rule 498 will protect investors and will promote efficiency, competition, and capital formation.

Evaluating and comparing funds has become an increasingly difficult task for investors as the number of funds has grown. The Commission has designed the profile to allow funds to use different offering documents to meet the diverse information needs of investors. The Commission believes that rule 498 allows funds to provide investors with a profile that conveys information to investors efficiently, to the benefit of investors and funds. For example, funds may include profiles in various media, such as magazines, and may use profiles specifically tailored for investors in defined contribution plans, certain other tax-deferred arrangements, and variable insurance contracts. The profile, by providing investors with a concise, standardized information option, also may enable investors to use information

[125] Proposed rule 498(c)(4). The proposed rule also would permit funds to exclude information about some fund services (*e.g.*, exchange privileges) that may not apply to plan participants. In addition, the proposed rule acknowledged that a plan typically effects purchases and sales of a fund's shares on behalf of plan participants and would permit the fund's profile to include the plan's enrollment form in lieu of the application form.

[126] Rule 498(d). General Instruction C.3.(d) of Form N–1A includes similar provisions enabling funds to omit certain information from their prospectuses that are used in connection with plans. Form N–1A Release, *supra* note 1.

[127] In addition to plans under rule 401(k) of the Internal Revenue Code [26 U.S.C. 401(k)], these plans include those under section 403(b) [26 U.S.C. 403(b)] (available to employees of certain tax-exempt organizations and public educational systems) and section 457 [26 U.S.C. 457] (available to employees of state and local governments and other tax-exempt employers).

[128] The prospectus for a variable insurance contract discloses the purchase and sale procedures and tax consequences of investing in the contract and is provided to investors in addition to prospectuses for one or more funds that are offered as investment options under the contract. Use of a profile for the available investment options could make it easier for investors in variable contracts to compare and select from the investment alternatives available under the contract.

[129] Rule 498(d)(3).

[130] The Commission is currently considering whether it should extend the profile to variable annuity contracts. See *supra* note 39 and accompanying text. The staff of the Division has indicated that, for variable annuity contracts used to fund employee retirement plans, summaries of the contract and fund prospectuses, accompanied by payroll deduction and allocation forms, could be treated as satisfying the requirements of rule 482 under certain circumstances. See Aetna Life Insurance and Annuity Co. (pub. avail. Jan. 6, 1997) (staff no-action letter). A profile could be used as a summary of a fund prospectus for these purposes.

[131] See Form N–1A Proposing Release, *supra* note 7, at 10921.

[132] In the 1977 Profile Letter, *supra* note 8, the Division stated that the Commission would address the transition from use of a Pilot Profile in connection with the adoption of proposed rule 498.

[133] After the effective date of rule 498, funds could continue to use a Pilot Profile as supplemental sales literature.

[134] To simplify compliance with rule 498 and the revised prospectus disclosure requirements, the Commission is specifying the same effective date for both as June 1, 1998. All new registration statements or post-effective amendments that are annual updates to effective registration statements filed after December 1, 1998 must comply with the amendments to Form N–1A. The final compliance date for filing amendments to effective registration statements to conform with the new Form N–1A requirements is December 1, 1999. See Form N–1A Release, *supra* note 1.

[135] 15 U.S.C. 77b(b). See also section 2(c) of the Investment Company Act [15 U.S.C. 80a–2(c)].

efficiently by making it easier to compare funds before investing. This result will promote competition among funds and better enable investors to select an investment that is appropriate and consistent with their investment goals.

The Commission did not receive any comments addressing specifically the cost associated with rule 498. Acknowledging that it is difficult to quantify costs and benefits related to the use of a profile, the Commission notes that commenters strongly favored the proposal. A fund's use of a profile under rule 498 is voluntary and not every fund will choose to prepare a profile. Developing a profile consistent with rule 498, however, would not be burdensome, because a fund that chooses to use a profile is likely to have developed much of the information required to appear in a profile as a part of its registration statement on Form N–1A. As discussed in the Commission's Paperwork Reduction Act submission in conjunction with the Profile Proposing Release, the Commission estimated that approximately 2,500 funds, or one third of eligible funds, will prepare profiles, and that the average profile will describe 2 funds. The Commission estimated that the annual cost to the industry of preparing and filing updated profiles would be approximately $5,600,000.[136]

The Commission anticipates that the use of profiles may cause funds to restructure their expenditures on advertising. It is difficult, however, to determine how the use of profiles will affect aggregate expenditures on advertising. Expenditures on profiles may be offset by reductions in other advertising costs, resulting in no net cost increase.

The Commission has taken steps to minimize the costs associated with the use of a profile, such as designing the required risk/return summary to allow funds to update return information without necessitating the reprinting of the entire profile. The ability to provide better information to investors and encourage investments in a fund may offset any additional costs to funds created by the development of a profile. Profiles also may lead to lower printing and distribution costs for funds that mail fewer prospectuses. On balance, the Commission believes that rule 498 fosters efficiency and tends to promote competition and capital formation without imposing significant costs on funds.

[136] Profile Proposing Release, *supra* note 6.

V. Paperwork Reduction Act

As set forth in the Profile Proposing Release, this rulemaking contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[137] The collection of information requirements in the Profile Proposing Release were submitted to the Office of Management and Budget ("OMB") for review under section 3507(d) of the PRA. OMB approved the collection of information under the title "Profiles for Open-End Management Investment Companies" and assigned it control number 3235–0488. The collection of information contained in the Profile Proposing Release is in accordance with the clearance requirements of 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless an agency displays a valid OMB control number.

Rule 498 permits funds to provide investors with a profile that contains a summary of key information about a fund. A fund that chooses to make a profile available would give investors the option of purchasing the fund's shares after reviewing the information contained in the profile or after requesting and reviewing the fund's prospectus (and other information about the fund). Under rule 498, use of the profile by a fund is voluntary, but compliance with the rule is mandatory for any fund that decides to use a profile. Responses to the collection of information will not be confidential.

The Profile Proposing Release solicited public comment on the collection of information requirements contained in that release. The Commission received no comments on the PRA portion of the release. The estimated total reporting burden, purpose, use and necessity of the collection of information, as detailed in the Profile Proposing Release, remains the same.

VI. Summary of Final Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis ("Analysis"), which was prepared in accordance with the Regulatory Flexibility Act, 5 U.S.C. 603, was published in the Profile Proposing Release. The Commission received no comments on the Analysis. The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 604. The FRFA explains that a profile would include a summary of key information about a fund in a concise, standardized format designed to help investors evaluate and compare funds. The FRFA also explains that, if a fund makes a profile available, investors will have the option to purchase the fund's shares after reviewing the information in the profile or after requesting and reviewing the fund's prospectus (and other information about the fund). An investor deciding to purchase fund shares based on the information in the profile would receive the fund's propsectus no later than with the confirmation of the purchase.

The FRFA discusses the effect of rule 498 on small entity investment companies, which are defined, for the purposes of the Securities Act and Investment Company Act, as investment companies with net assets of $50 million or less as of the end of the most recent fiscal year [17 CFR 230.157(b) and 270.0–10]. The Commission estimates that there are approximately 620 small entity investment companies and that approximately one-third (207) could choose to use proposed rule 498. As explained in more detail in the FRFA, the Commission estimates that the total hour burden on small entities to prepare, file, and update the profile annually would be approximately 2,420 hours. While the profile would include a summary of key information about the fund that is included in the prospectus, the disclosure requirements for the profile and the prospectus are designed for different purposes.

The FRFA explains that rule 498 would not be significantly burdensome for small entity investment companies because use of the profile is optional, and the information to be included in a fund's profile will typically be drawn from information required to be disclosed in the fund's prospectus. In addition, some investors may use profiles instead of prospectuses to narrow their choices among funds, which would reduce a fund's printing and distribution costs. Lower printing and distribution costs could benefit small entities as much as or more than it could for large funds.

As stated in the FRFA, the Commission considered several alternatives to rule 498, including establishing different compliance or reporting requirements for small entity investment companies or exempting them from all or part of the rule. Because use of the profile would be optional, and, if used, profiles of all funds would be subject to the same disclosure requirements, the Commission believes that the rule would not impose additional burdens

[137] 44 U.S.C. 3501, *et seq.*

on small entity investment companies. Separate treatment for small entity investment companies would be inconsistent with the protection of investors.

A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting George J. Zornada, Team Leader, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–6, Washington, DC 20549–6009.

VII. Statutory Authority

The Commission is adopting rule 498 under sections 5, 7, 8, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77g, 77h, 77j, and 77s(a)] and sections 8, 22, 24(g), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–22, 80a–24(g), 80a–29, and 80a–37]. The authority citations for the rule precede the text of the amendments.

List of Subjects in 17 CFR Parts 230 and 270

Investment companies, Reporting and recordkeeping requirement, Securities.

Text of Rule

For the reasons set out in the preamble, the Commission amends chapter II, title 17 of the Code of Federal Regulations as follows:

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

1. The general authority citation for part 230 is revised to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Amend § 230.431 to revise the introductory text of paragraph (a) to read as follows:

§ 230.431 Summary prospectuses.

(a) A summary prospectus prepared and filed (except a summary prospectus filed by an open-end management investment company registered under the Investment Company Act of 1940) as part of a registration statement in accordance with this section shall be deemed to be a prospectus permitted under section 10(b) of the Act (15 U.S.C. 77j(b)) for the purposes of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)) if the form used for registration of the securities to be offered provides for the use of a summary prospectus and the following conditions are met:

* * * * *

3. Amend § 230.482 to revise the introductory text of paragraph (a), paragraphs (a)(3), (a)(5), and (a)(7), and in paragraph (d) remove the period at the end of paragraph (d)(1)(ii) and add in its place "; or" and add paragraph (d)(1)(iii) to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

(a) An advertisement or other sales material that is not a prospectus, or an advertisement or sales material excluded from the definition of prospectus by section 2(10) of the Act (15 U.S.C. 77b(10)) and related § 230.134, will be deemed to be a prospectus under section 10(b) of the Act (15 U.S.C. 77j(b)) for the purpose of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)), if:

* * * * *

(3) It includes a conspicuous statement that:

(i) Identifies a source from which an investor may obtain a prospectus containing more complete information about the investment company, which should be read carefully before investing; or

(ii) If used with a profile under § 230.498 ("Profile"), indicates that information is available in the Profile about the investment company, the procedures for investing in the investment company, and the availability of the investment company's prospectus.

Note to Paragraph (a)(3). The fact that the statements included in the advertisement are included in the section 10(a) prospectus does not relieve the issuer, underwriter, or dealer of the obligation to ensure that the advertisement is not false or misleading.

* * * * *

(5) It does not contain and is not accompanied by any application by which a prospective investor may invest in the investment company, except that:

(i) A prospectus meeting the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) by which a unit investment trust offers periodic payment plan certificates may contain a contract application although the prospectus includes another prospectus that, pursuant to this section, omits certain information required by section 10(a) of the Act, regarding investment companies in which the unit investment trusts invests; and

(ii) It may be used with a Profile that includes, or is accompanied by, an application to purchase shares of the investment company as permitted under § 230.498.

* * * * *

(7)(i) In the case of an investment company that holds itself out to be a money market fund, it includes the following statement:

An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in the Fund.

(ii) A money market fund that does not hold itself out as maintaining a stable net asset value may omit the second sentence of the statement in (a)(7)(i) of this section.

* * * * *

(d) * * *

(1) * * *

(iii) A quotation or quotations of tax equivalent yield or tax equivalent effective yield if it appears in the same advertisement as a quotation of current yield and each quotation relates to the same base period as the quotation of current yield, is presented with equal prominence, and states the income tax rate used in the calculation.

* * * * *

4. Amend § 230.497 to revise paragraph (a) and to add paragraph (k) to read as follows:

§ 230.497 Filing of investment company prospectuses—number of copies.

(a) Five copies of every form of prospectus sent or given to any person prior to the effective date of the registration statement that varies from the form or forms of prospectus included in the registration statement filed pursuant to § 230.402(a) shall be filed as part of the registration statement not later than the date that form of prospectus is first sent or given to any person, except that:

(1) An investment company advertisement under § 230.482 shall be filed under this paragraph (a) (but not as part of the registration statement) unless filed under paragraph (i) of this section; and

(2) A profile under § 230.498 shall be filed in accordance with paragraph (k) of this section and not as part of the registration statement.

* * * * *

(k)(1) *Profile filing requirements.* A form of profile under § 230.498 shall not be used unless:

(i) The form of profile that has not been previously filed with the Commission is filed at least 30 days before the date that it is first sent or given to any person.

(A) No additional filing is required during the 30-day period for changes (material or otherwise) to a form of

profile filed under this paragraph if the changes are included in the definitive profile that is filed with the Commission under paragraph (k)(2)(ii) of this section.

(B) The form of profile filed under this paragraph (k)(1)(i) can be used on the later of 30 days after the date of filing or, if the profile is filed in connection with an initial registration statement or a post-effective amendment that adds a series of an investment company to a registration statement, or reflects changes to a prospectus included in a post-effective amendment filed to update a registration statement under § 230.485, the date that the registration statement or post-effective amendment becomes effective.

(ii) A definitive form of a profile filed under paragraph (k)(1)(i) of this section is filed with the Commission no later than the fifth business day after the date that it is used.

(iii) A form of profile that differs from any definitive form of profile that was filed under this paragraph (k) is filed with the Commission in definitive form no later than the fifth business day after the date that it is first used. This filing shall be made under one of the following according to the character of the change contained in the form of profile:

(A) A form of profile that contains a material change to the information disclosed under § 230.498 (c)(2)(i)–(iii); and

(B) A form of profile that does not contain a material change to the information under § 230.498 (c)(2)(i)–(iii).

(2) *Filing procedures.* (i) Designate, at the top of the first page of any form of profile that is filed under this paragraph (k), the paragraph and sub-paragraph under which the profile is filed.

(ii) Send two additional copies of the first definitive form of profile filed electronically under paragraph (k)(1)(ii) of this section to the Commission, in the primary form intended to be used for distribution to investors (*e.g.*, paper, electronic media), by mail or other means reasonable calculated to result in receipt by the Commission, no late than the fifth business day after the date the profile is first sent or given to any person. Send copies to the following address: Office of Disclosure and Review, Division of Investment Management, U.S. Securities and Exchange Commission, 450 Fifth St., N.W., Mail Stop 5–6, Washington, D.C. 20549–6009. Note prominently that the submission is made in accordance with § 230.497(k)(2) of Regulation C under the Securities Act. If the profile is distributed primarily on the Internet, supply, in lieu of copies, the electronic address ("URL") of the profile page(s) in an exhibit to the electronic filing under this paragraph (k). This additional requirement will expire on June 1, 2000.

5. Add § 230.498 under the undesignated center heading "Regulation C–Registration" to read as follows:

§ 230.498 Profiles for certain open-end management investment companies.

(a) *Definitions.* (1) A *Fund* means an open-end management investment company, or any series of such a company, that has, or is included in, an effective registration statement on Form N–1A (§§ 274.11A and 239.15A of this chapter) and that has a current prospectus under section 10(a) of the Act (15 U.S.C. 77j(a)).

(2) A *Profile* means a summary prospectus that is authorized under section 10(b) of the Act (15 U.S.C. 77j(b)) and section 24(g) of the Investment Company Act (15 U.S.C. 80a–24(g) for the purpose of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)).

(b) *General requirements.* A Fund may provide a Profile to investors, which may include, or be accompanied by, and application that investors may use to purchase the Fund's shares, if the Profile contains the information required or not precluded by paragraph (c) of this section and does not incorporate any information by reference to another document.

Instructions to paragraph (b).

1. The Profile is intended to be a standardized summary of key information in the Fund's prospectus under section 10(b) of the Act. Additional information is available in the Fund's prospectus under section 10(a) of the Act, in the Fund's Statement of Additional Information under Form N–1A, and in the Fund's annual and semi-annual shareholder reports prepared in accordance with § 270.30d–1. Funds may not use cross-references in the Profile to other Fund disclosure documents unless required or permitted by this rule. Funds should minimize cross-reference and the use of footnotes within the Profile; cross-references and footnotes should generally be used only to promote a better understanding of the information about the Fund contained in the Profile.

2. Provide clear and concise information in the Profile in a format designed to communicate the information effectively. Avoid excessive detail, technical or legal terms, and long sentences and paragraphs. Provide the information in the Profile using the plain English writing principles in § 230.421(d).

3. A Fund may use document design techniques intended to promote effective communication of the information in the Profile unless inconsistent with the requirements of this section.

4. A Profile may describe more than one Fund or class of a Fund. A Profile that offers the securities of more than one Fund or class of a Fund does not need to repeat information that is the same for each Fund or class of Fund described in the Profile.

5. File the Profile with the Commission as required by § 230.497(k).

(c) *Specific requirements.* (1) Include on the cover page of the Profile or at the beginning of the Profile:

(i) The Fund's name and, at the Fund's option, the Fund's investment objective or the type of fund or class offered, or both;

(ii) A statement identifying the document as a "Profile," without using the term "prospectus";

(iii) The approximate date of the Profile's first use;

(iv) The following legend:

This Profile summarizes key information about the Fund that is included in the Fund's prospectus. The Fund's prospectus includes additional information about the Fund, including a more detailed description of the risks associated with investing in the Fund that you may want to consider before you invest. You may obtain the prospectus and other information about the Fund at no cost by calling _____.

(v) Provide a toll-free (or collect) telephone number that investors can use to obtain the prospectus and other information. The Fund may indicate, as applicable, that the prospectus and other information is available on the Fund's Internet site or by E-mail request. The Fund also may indicate, if applicable, that the prospectus and other information is available from a financial intermediary (such as a broker-dealer or bank) through which shares of the Fund may be purchased or sold.

Instruction to Paragraph (c)(1)(v). When the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the Fund's prospectus, the Fund's Statement of Additional Information, or the Fund's annual or semi-annual report, the Fund (or financial intermediary) must send the requested document within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery. Funds are encouraged to send other information requested by shareholders within the same period.

(2) Provide the information required by paragraphs (c)(2) (i) through (ix) of this section in the order indicated:

(i) *Fund objectives/goals.* Provide the information about the Fund's investment objectives or goals required by Item 2(a) of Form N–1A.

(ii) *Principal investment strategies of the Fund.* Provide the information about the Fund's principal investment strategies required by Item 2(b) of Form N–1A. In addition, a Fund (other than a Fund that has not yet been required to deliver a semi-annual or annual

report under § 270.30d–1 of this chapter) must provide disclosure to the following effect:

Additional information about the Fund's investments is available in the Fund's annual and semi-annual reports to shareholders. In the Fund's annual report you will find a discussion of the market conditions and investment strategies that significantly affected the Fund's performance during the last fiscal year. You may obtain either or both of these reports at no cost by calling _____.

(iii) *Principal risks of investing in the Fund.* Provide the narrative disclosure, bar chart, and table required by Item 2(c) of Form N–1A. Provide in the table the Fund's average annual total returns and, if applicable, yield as of the end of the most recent calendar quarter prior to the Profile's first use. Update the return information as of the end of each succeeding calendar quarter as soon as practicable after the completion of the quarter. Disclose the date of the return information adjacent to the table.

Instruction to Paragraph (c)(2)(iii). A Fund may reflect the updated performance information in this section of the profile by affixing a label or sticker, or by other reasonable means.

(iv) *Fees and expenses of the Fund.* Include the fee table required by Item 3 of Form N–1A.

(v) *Investment adviser, sub-adviser(s) and portfolio manager(s) of the Fund.* (A) Identify the Fund's investment adviser.

(B) Identify the Fund's sub-adviser(s) (if any) except that:

(*1*) A Fund need not identify a sub-adviser(s) whose sole responsibility for the Fund is limited to day-to-day management of the Fund's holdings of cash and cash equivalent instruments, unless the Fund is a money market fund or other Fund with a principal investment strategy of regularly holding cash and cash equivalent instruments.

(*2*) A Fund having three or more sub-advisers, each of which manages a portion of the Fund's portfolio, need not identify each such sub-adviser, except that the Fund must identify any sub-adviser that is (or is reasonably expected to be) responsible for the management of a significant portion of the Fund's net assets. For purposes of this paragraph (c)(2)(v)(B)(*2*), a significant portion of a Fund's net assets generally will be deemed to be 30% or more of the fund's net assets.

(C) State the name and length of service of the person or persons employed by or associated with the Fund's investment adviser (or the Fund) who are primarily responsible for the day-to-day management of the Fund's portfolio and summarize each person's business experience for the last five years in accordance with the Instructions to Item 6(a)(2) of Form N–1A. A Fund with three or more such persons, each of whom is (or is reasonably expected to be) responsible for the management of a portion of the Fund's portfolio, need not identify each person, except that a Fund must identify and summarize the business experience for the last five years of each person who is (or is reasonably expected to be) responsible for the management of a significant portion of the Fund's net assets. For purposes of this paragraph (c)(2)(v)(C), a significant portion of a Fund's net assets generally will be deemed to be 30% or more of the Fund's net assets.

(vi) *Purchase of Fund shares.* Disclose the Fund's minimum initial or subsequent investment requirements, the initial sales load (or other loads) to which the Fund's shares are subject, and, if applicable, the initial sales load breakpoints or waivers.

(vii) *Sale of Fund shares.* Disclose that the Fund's shares are redeemable, identify the procedures for redeeming shares (*e.g.*, on any business day by written request, telephone, or wire transfer), and identify any charges or sales loads that may be assessed upon redemption (including, if applicable, the existence of waivers of these charges).

(viii) *Fund distributions and tax information.* Describe how frequently the Fund intends to make distributions and what options for reinvestment of distributions (if any) are available to investors. State, as applicable, that the Fund intends to make distributions that may be taxed as ordinary income or capital gains (which may be taxable at different rates depending on the length of time that the Fund holds its assets) or that the Fund intends to distribute tax-exempt income. If a Fund expects that its distributions, as a result of its investment objectives or strategies, primarily will consist of ordinary income or capital gains, provide disclosure to that effect. For a Fund that holds itself out as investing in securities generating tax-exempt income, provide, as applicable, a general statement to the effect that a portion of the Fund's distributions may be subject to federal income tax.

(ix) *Other services are available from the Fund.* Provide a brief summary of services available to the Fund's shareholders (*e.g.*, any exchange privileges or automated information services), unless otherwise disclosed in response to paragraphs (c)(2)(vi) through (viii) of this section.

Instruction to Paragraph (c)(2)(ix). A Fund should disclose only those services that generally are available to typical investors in the Fund.

(3) The Profile may include an application that a prospective investor can use to purchase the Fund's shares as long as the application explains with equal prominence that an investor has the option of purchasing shares of the Fund after reviewing the information in the Profile or after requesting and reviewing the Fund's prospectus (and other information) before making a decision about investing in the Fund.

Instruction to Paragraph (c)(3). a Fund may include the application in a Profile or otherwise provide an application together with a Profile in any manner reasonably designed to alert investors that the application is to be considered along with the information about the Fund disclosed in the Profile.

(d) *Modified Profile for certain funds.* (1) A Fund may modify or omit the information required by paragraphs (c)(2)(vi) through (ix) of this section for a Profile to be used for a Fund that is offered as an investment option for:

(i) A defined contribution plan that meets the requirements for qualification under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k));

(ii) A tax-deferred arrangement under section 403(b) or 457 of the Internal Revenue Code (26 U.S.C. 403(b) and 457); and

(iii) Variable contracts as defined in section 817(d) of the Internal Revenue Code (26 U.S.C. 817(d)).

(2) A Fund that uses a Profile permitted under paragraph (d)(1) of this section may:

(i) Alter the legend required by paragraph (c)(1)(iv) of this section to include a statement to the effect that the Profile is intended for use in connection with a defined contribution plan, another tax-deferred arrangement, or a variable contract, as applicable, and is not intended for use by other investors; and

(ii) Modify other disclosure in a Profile consistent with offering the Fund as a specific investment option for a defined contribution plan, tax-deferred arrangement, or variable contract.

(3) A Profile used under paragraph (d)(1)(i) or (ii), but not paragraph (d)(1)(iii), of this section may include, or be accompanied by, an enrollment form for the plan or arrangement. The enrollment form does not need to be filed with the Profile under § 230.497.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

6. The general authority citation for part 270 is revised to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted:

* * * * *

7. Amend § 270.34b–1 to revise paragraph (b)(1)(ii)(B) to read as follows:

§ 270.34b–1 Sales literature deemed to be misleading.

* * * * *

(b)(1) * * *

(ii) * * *

(B) Accompany any quotation of the money market fund's tax equivalent yield or tax equivalent effective yield with a quotation of current yield as specified in § 230.482(d)(1)(iii) of this chapter; and

* * * * *

Dated: March 13, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7071 Filed 3–20–98; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270, and 274

[Release Nos. 33–7514; IC–23066; File No. S7–9–98]

RIN 3235–AG37

Registration Form for Insurance Company Separate Accounts Registered as Unit Investment Trusts that Offer Variable Life Insurance Policies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing a new Form N–6 for insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies. The form would be used by these separate accounts to register under the Investment Company Act of 1940 and to offer their securities under the Securities Act of 1933. For these registrants, the proposed form would replace Form N–8B–2, currently used by all unit investment trusts to register under the Investment Company Act, and Form S–6, currently used by all unit investment trusts to offer their securities under the Securities Act. The proposed form would focus prospectus disclosure on essential information that would assist an investor in deciding whether to invest in a particular variable life insurance policy. The proposed form also would minimize prospectus disclosure about technical and legal matters, improve disclosure of fees and charges, and streamline the registration process by replacing two forms that were not specifically designed for variable life insurance policies with a single form tailored to these products.

DATES: Comments must be received on or before July 1, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–6009. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–9–98; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549–6009. Electronically submitted comments also will be posted on the Commission's Internet site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Keith E. Carpenter, Senior Counsel, Ethan D. Corey, Senior Counsel, Megan L. Dunphy, Attorney, Michael B. Koffler, Attorney, Susan M. Olson, Attorney, Kevin M. Kirchoff, Branch Chief, Cindy J. Rose, Chief Financial Analyst, or Susan Nash, Assistant Director, (202) 942–0670, Office of Insurance Products, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–6, Washington, D.C. 20549–6009.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is proposing for comment a new Form N–6 [17 CFR 239.17c; 17 CFR 274.11d] for insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies. The form would be used by these separate accounts to register under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] ("Investment Company Act") and to offer their securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("Securities Act"). For these registrants, the proposed form would replace Forms N–8B–2 [17 CFR 274.12] and S–6 [17 CFR 239.16], currently used by all unit investment trusts to register under the Investment Company Act and to offer their securities under the Securities Act. The Commission also is proposing technical amendments to rules 134b, 430, 430A, 495, 496, and 497 under the Securities Act [17 CFR 230.134b, 230.430, 230.430A, 230.495, 230.496, 230.497]; rules 8b–11 and 8b–12 under the Investment Company Act [17 CFR 270.8b–11, 270.8b–12]; and Form N–8B–2 [17 CFR 274.12]. Finally, the Commission is requesting comment on whether it should rescind Form N–1 [17 CFR 274.11], the registration form used by insurance company separate accounts that are registered as open-end management investment companies and that offer variable life insurance policies.

Table of Contents

I. Introduction and Executive Summary

Variable Life Insurance

Variable life insurance is similar to traditional life insurance, except that the cash value and/or death benefit vary based on the investment performance of the assets in which the premium payments are invested. Under a traditional life insurance policy, premium payments are allocated to an insurer's general account and invested, consistent with state law requirements, to enable the insurer to meet its death benefit and cash value guarantees. The investment return on assets in the general account has little or no direct effect on the cash value or the death benefit received.

Premium payments under a variable life policy, in contrast, are invested in an insurance company separate account, which generally is not subject to state law investment restrictions. A variable life policyholder typically is offered a variety of investment options (*e.g.*, equity, bond, and money market mutual funds). Death benefits and cash values are directly related to performance of the separate account, although typically there is a guaranteed minimum death benefit.

Variable life insurance was introduced in the early 1970s. During the years from the end of World War II to the late 1960s, there was a significant decline in the share of savings dollars invested with life insurance companies. In an effort to counteract this trend, insurers began to offer a greater variety of products, including equity-based products such as variable life

insurance.[1] In recent years, variable life insurance has become an increasingly important segment of the insurance industry. By the end of 1996, variable life insurance accounted for almost one quarter of U.S. life insurance sales, up from 6% four years earlier.[2] Throughout the 1990s, assets in variable life products have grown steadily, from $4.3 billion in 1990 to more than $33 billion in December 1997.[3]

Current Forms for Variable Life Insurance Registration

A separate account funding a variable life insurance policy most commonly is registered as a unit investment trust under the Investment Company Act.[4] Separate accounts registered as unit investment trusts are divided into sub-accounts, each of which invests in a different open-end management investment company, or mutual fund ("Portfolio Company").[5]

Both separate account unit investment trusts and the Portfolio Companies in which they invest are registered as investment companies under the Investment Company Act, and their securities are registered under the Securities Act. Investors in variable life insurance policies receive the prospectuses for both the separate account unit investment trust and the Portfolio Companies. Portfolio Companies, as mutual funds, use Form N–1A to register under the Investment Company Act and to register their shares under the Securities Act.[6] Variable life separate accounts, as unit investment trusts, register under the Investment Company Act on Form N–8B–2 and register their securities under the Securities Act on Form S–6.

Forms N–8B–2 and S–6 were designed for non-separate account unit investment trusts and were adopted before the establishment of the first separate account to fund variable life insurance policies. While much of their required disclosure is useful, the forms request some information that is not typically of consequence to a buyer of variable life insurance. More importantly, many matters that would be significant to a buyer of a variable life insurance policy are not addressed at all by the forms. Over time, the Commission staff has sought to deal with these shortcomings on a piecemeal basis by developing disclosure standards that require a description of the important features of the variable life insurance policy and the separate account. The Commission believes that these standards should be codified in a more appropriately designed form.

Another shortcoming of Forms N–8B2 and S–6 is that they do not reflect fundamental improvements that the Commission has made to other investment company registration forms, such as Form N–4 for variable annuities and Form N–1A for mutual funds, which facilitate clearer and more concise disclosure to investors.[7] As a result, variable life insurance prospectuses are often unnecessarily lengthy and complex.

When Form N–4 was considered in the 1980s, the Commission indicated that it did not expect to propose separate registration forms for variable life insurance registrants until it had acquired more experience with variable life insurance policies.[8] The Commission now believes that the benefits of its prospectus improvement initiatives should be extended to unit investment trust separate accounts that offer variable life insurance policies. These benefits include a two-part registration form, consisting of a simplified prospectus designed to contain essential information that assists an investor in making an investment decision, and a "Statement of Additional Information" ("SAI"), containing more extensive information and detailed discussion of matters included in the prospectus that investors could obtain upon request. They also include the use of a single integrated form for both Investment Company Act and Securities Act registration, eliminating unnecessary paperwork and duplicative reporting.[9]

Improved Communication to Investors

The Commission is committed to improving the disclosure provided to variable life insurance investors. Toward that end, the Commission has developed Form N–6, which it proposes today for public comment. Unlike the current forms, proposed Form N–6 is specifically tailored to variable life insurance. The proposed requirements of the form focus on information that is essential to a decision to invest in a particular variable life insurance policy, and the form is intended to enhance the comparability of information about variable life insurance policies. The proposal seeks to promote more effective communication of information about variable life insurance policies.

Today's proposal is the latest Commission action in its continuing effort and long-standing commitment to improve the quality of disclosure available to investment company investors. In 1983, the Commission introduced the innovative two-part disclosure format for mutual funds.[10] This format was extended to variable annuities in 1985.[11] Subsequently, the Commission adopted a number of other initiatives to improve investment company disclosure, including uniform fee tables for mutual funds and variable annuities.[12]

In the past few years, the Commission has taken significant steps to improve investment company disclosure. In 1995, the Commission issued a release requesting comment on ways to improve risk disclosure and comparability of mutual fund risk levels.[13] Today, the Commission is adopting a comprehensive revision of Form N–1A,

[1] SEC, Division of Investment Management, Variable Life Insurance and the Petition for the Issuance and Amendment of Exemptive Rules at 1–2 (Jan. 1973).

[2] Rybka, The Variable Life Revolution, NAVA Outlook, July/Aug. 1997, at 1.

[3] Lipper Variable Insurance Products Performance Analysis Service, Vol. I, at 190–91 (Jan. 1998).

[4] Section 4(2) of the Investment Company Act defines "unit investment trust" as "an investment company which (A) is organized under a trust indenture, contract of custodianship or agency, or similar instrument, (B) does not have a board of directors, and (C) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities, but does not include a voting trust." 15 U.S.C. 80a–4(2).

[5] An open-end management investment company is an investment company, other than a unit investment trust or face amount certificate company, that offers for sale or has outstanding any redeemable security of which it is the issuer. Section 4(3) of the Investment Company Act [15 U.S.C. 80a–4(3)]; Section 5(a)(1) of the Investment Company Act [15 U.S.C. 80a–5(a)(1)]. As an alternative to the structure described in the text, a variable life insurance separate account can be organized in a single-tier structure, as an open-end management investment company. Today, this structure is used by few, if any, variable life insurance registrants.

[6] 17 CFR 274.11A.

[7] Form N–1A [17 CFR 274.11A]; Form N–4 [17 CFR 274.11c]; Investment Company Act Release No. 13689 (Dec. 23, 1983) [49 FR 614] ("N–4 Proposing Release"); Investment Company Act Release No. 14575 (June 14, 1985) [50 FR 26145] ("N–4 Adopting Release"); Investment Company Act Release No. 12927 (Dec. 27, 1982) [48 FR 813] ("1982 N–1A Proposing Release"); Investment Company Act Release No. 13436 (Aug. 12, 1983) [48 FR 37928] ("1983 N–1A Adopting Release"); Investment Company Act Release No. 22528 (Feb. 27, 1997) [62 FR 10898], correction [62 FR 24160] ("1997 N–1A Proposing Release"); Investment Company Act Release No. 23064 (Mar. 13, 1998) ("1998 N–1A Adopting Release").

[8] N–4 Proposing Release, supra note 7, at 615, note 6.

[9] See Investment Company Release No. 10378 (Aug. 28, 1978) [43 FR 39548] (integration of Investment Company Act and Securities Act reporting and disclosure requirements in adoption of Form N–1).

[10] 1983 N–1A Adopting Release, *supra* note 7.

[11] N–4 Adopting Release, *supra* note 7.

[12] Investment Company Act Release No. 16244 (Feb. 1, 1988) [53 FR 3192] ("N–1A Fee Table Adopting Release"); Investment Company Act Release No. 16766 (Jan. 23, 1989) [54 FR 4772] ("N–4 Fee Table Adopting Release").

[13] Investment Company Act Release No. 20974 (Mar. 29, 1995) [60 FR 17172] ("Risk Concept Release").

the mutual fund disclosure form, to provide a standardized risk/return summary at the beginning of every mutual fund prospectus, require mutual funds to prepare disclosure documents using plain English, and eliminate prospectus clutter that obscures information that is helpful to investors making an investment decision.[14] The Commission also is adopting a new rule to permit mutual funds to provide investors with a "profile," a disclosure document summarizing key information about a fund, including the fund's investment strategies, risks, performance, and fees, in a concise, standardized format. A fund that makes a profile available will be able to offer investors a choice of the amount of information that they wish to consider before making an investment decision.[15]

The Commission's investment company disclosure initiatives are part of its broad undertaking to bring sweeping revisions to prospectus disclosure for all public companies.[16] The Commission is committed to making all prospectuses simpler, clearer, and more useful, and to eliminating jargon and boilerplate. As part of its commitment, the Commission recently adopted rule amendments to require the use of plain English principles in drafting prospectuses and to provide other guidance on improving the readability of prospectuses.[17] The Commission's plain English principles reflect fundamentals of clear communication and contemplate disclosure documents that:

- Present information in an easily readable format;
- Use everyday language that investors can easily understand; and
- Eliminate repetition of disclosure that lengthens a document and overwhelms the investor.

[14] 1998 N–1A Adopting Release, *supra* note 7.

[15] Rule 498 under the Securities Act [17 CFR 230.498]; Investment Company Act Release No. 23065 (Mar. 13, 1998) ("Profile Adopting Release").

[16] See Levitt, Plain English in Prospectuses, N.Y. ST. B.J., Nov. 1997, at 36.

[17] *See* Securities Act Release No. 7497 (Jan. 28, 1998) [63 FR 6370]("Plain English Adopting Release"). The Commission adopted a plain English rule that sets out six basic principles of clear writing. Rule 421(d) under the Securities Act [17 CFR 230.421(d)]. The six principles specified in the rule are: (i) Active voice; (ii) short sentences; (iii) definite, concrete everyday words; (iv) tabular presentation or "bullet" lists for complex material, whenever possible; (v) no legal jargon, or highly technical business terms; and (vi) no multiple negatives. As part of the plain English initiatives, the Commission plans to issue A Handbook on Plain English: How to Create Clear SEC Disclosure Documents, prepared by the Commission's Office of Investor Education and Assistance.

Goals of Proposed Form N–6

The proposed Form N–6 is another significant step to improve disclosure to investment company investors. If adopted, Form N–6 would have the following benefits.

- *Tailored Registration Form.* Proposed Form N–6 would eliminate requirements in the current registration forms that are not relevant to variable life insurance.[18] Proposed Form N–6 also would include items that are specifically addressed to variable life insurance products, such as descriptions of contractual provisions relating to premiums, death benefits, cash values, surrenders and withdrawals, and loans.[19]
- *Plain English.* The Commission's recently adopted plain English rule would apply to the front and back cover pages and the risk/benefit summary in the variable life insurance prospectus.[20] This should result in better, clearer disclosure to investors.
- *Reducing Complex and Lengthy Prospectus Disclosure.* Proposed Form N–6 would streamline variable life prospectus disclosure by adopting a two-part format consisting of a simplified prospectus, designed to contain essential information that assists an investor in making an investment decision, and an SAI, containing more extensive information and detailed discussion of matters included in the prospectus that investors could obtain upon request.
- *Standardized Fee Information.* Mutual funds and variable annuities are required to provide a uniform, tabular presentation of fees and charges that is intended to improve investor understanding of fees and charges and increase comparability. Proposed Form N–6 would impose a similar requirement on variable life insurance registrants, in order to improve the disclosure to investors of the often complex charges associated with variable life insurance policies and increase, to the greatest extent possible, the comparability of charges among policies.
- *Integrated Disclosure Document.* Proposed Form N–6 would provide variable life insurance registrants with an integrated form for Investment Company Act and Securities Act registration, eliminating unnecessary paperwork and duplicative reporting.

[18] For example, Item 33 of Form N–8B–2 requires extensive disclosure about compensation of the insurer's employees.

[19] Proposed Items 7 (premiums), 8 (death benefits and cash values), 9 (surrenders and withdrawals), and 10 (loans).

[20] Rule 421(d) under the Securities Act [17 CFR 230.421(d)].

Proposed Form N–6 is designed to promote more effective communication of information about variable life insurance policies. The proposal would advance Commission efforts to improve investment company prospectus disclosure beginning with the adoption of the two-part disclosure format for mutual funds in 1983. Proposed Form N–6, if adopted, would represent a significant step toward the Commission's goal of better, clearer, more concise disclosure for all investors.

II. Discussion

To make the requirements of proposed Form N–6 easy to follow, this release addresses items in the order in which they appear in the form:

A. General Instructions

The proposed General Instructions to Form N–6 provide guidance on the use and content of the form. They are similar to the General Instructions to Forms N–4 and N–1A. The General Instructions to Form N–6 would consist of: (i) Definitions; (ii) Filing and Use of Form N–6; (iii) Preparation of the Registration Statement; and (iv) Incorporation by Reference. They reflect the recent amendments to Form N–1A that updated and reorganized the General Instructions to make them easier to use.[21]

Proposed General Instruction A would define certain terms used throughout Form N–6, providing clarity and avoiding repeated references throughout the form. Proposed General Instruction B on the filing and use of Form N–6 would incorporate the user-friendly, question-and-answer format of Form N–1A.[22]

Proposed General Instruction C would provide streamlined instructions for preparing the registration statement. Like the comparable Instructions in Forms N–4 and N–1A, General Instruction C would emphasize the need to provide clear and concise prospectus disclosure.[23] It would permit a registrant to include in its prospectus or SAI information that is not otherwise required by Form N–6, as long as the information is not misleading and does not, because of its nature, quantity, or manner of presentation, obscure required disclosures.

Like the comparable instruction in Form N–1A, Proposed General Instruction C includes a statement of the

[21] General Instructions to Form N–1A; 1998 N–1A Adopting Release, *supra* note 7; 1997 N–1A Proposing Release, *supra* note 7, at 10919–20.

[22] General Instruction B of Form N–1A.

[23] General Instruction C.1(a) of Form N–1A; General Instruction I of Form N–4.

basic disclosure principles that underlie today's proposal.[24] The Commission believes that applying these principles consistently when preparing variable life insurance disclosure documents will result in high quality documents that effectively communicate information to investors.

General Instruction C includes a set of drafting guidelines that are designed to improve prospectus disclosure. The proposed Instruction would encourage registrants to avoid cross-references in the prospectus to the SAI. Repeated cross-references to the SAI add unnecessary length and complexity to prospectuses and often preclude prospectuses from disclosing information effectively to investors.

Proposed General Instruction C would clarify that the recently adopted plain English requirements of rule 421 under the Securities Act apply to a prospectus prepared on Form N–6.[25] Rule 421(b) sets out general requirements that the entire prospectus be clear, concise, and understandable and provides guidance on how to draft prospectuses that meet this standard.

Under proposed Form N–6, a registrant would need to draft the front and back cover pages and the risk/benefit summary of a variable life insurance prospectus in accordance with the provisions of rule 421(d).[26] In meeting these requirements, a registrant would need to use plain English principles in the organization, language, and design of these sections of its prospectus. Registrants also would be required to comply substantially with the following six principles of clear writing:

- Short sentences;
- Definite, concrete, everyday language;
- Active voice;
- Tabular presentation or bullet lists for complex material, whenever possible;
- No legal jargon or highly technical business terms; and
- No multiple negatives.

Proposed General Instruction C would address the manner in which information should be presented when a single prospectus is used for more than one variable life insurance policy or for a policy that is sold in both the group and individual markets. Generally, registrants would be given flexibility to present the information in a format designed to communicate the information effectively. The Commission notes, however, that a single prospectus should be used for more than one variable life insurance policy, or for a policy that is sold in both the group and individual markets, only when the disclosure can be presented clearly, concisely, and in a manner that is understandable to investors.

Proposed General Instruction D would address incorporation by reference in a manner similar to Form N–1A.[27] The proposed Instruction would permit, but not require, a registrant to incorporate the SAI by reference into the prospectus. The Instruction clarifies that incorporating information by reference from the SAI is not permitted as a response to information required to be included in the prospectus.

Form N–4 contains an instruction permitting the form to be used for registration under the Securities Act of variable annuity contracts funded by separate accounts that would be required to be registered under the Investment Company Act as unit investment trusts except for the exclusion in Section 3(c)(11) of the Act.[28] Proposed Form N–6 does not contain a comparable instruction because the Commission is not aware of any variable life insurance policies that are funded by separate accounts that are not registered under the Investment Company Act. Comment is requested on whether such an instruction should be included in Form N–6.

B. Part A—Information in the Prospectus

1. Item 1—Front and Back Cover Pages

Proposed Item 1 contains requirements for the outside front and back cover pages of the prospectus similar to those in Form N–1A.[29] The proposed requirements are intended to prevent "cluttering" the prospectus cover page and avoid repeating information contained within the prospectus.

The front cover page would be required to include the names of the registrant and depositor. In addition, the registrant would be required to indicate the types of variable life insurance policies offered by the prospectus (*e.g.*, group, individual, scheduled premium, flexible premium) and the date of the prospectus. Finally, the form would require the disclaimer pursuant to rule 481 under the Securities Act that the Commission has not approved the securities being offered or the accuracy or adequacy of the prospectus.[30]

Unlike Form N–4, the cover page would not be required to state the names of the Portfolio Companies or to disclose limitations on the class or classes of purchasers to whom the policy is being offered.[31] This disclosure would be repetitive because registrants would be required to provide the same information within the prospectus.[32]

The proposal would consolidate disclosure about the availability of additional information on the back cover page of the prospectus. As in Form N–1A, the back cover page would include a statement that the SAI is available, without charge, on request and a telephone number that investors could use to obtain the SAI as well as other information. Registrants would be required to send the SAI within three days of receipt of a request. Registrants also would be required to indicate whether information is incorporated by reference into the prospectus and, unless the information is delivered with the prospectus, explain that it will be provided, without charge, on request. Finally, the proposal would require that the back cover page include disclosure that information about the registrant is available from the Commission and how that information may be obtained.[33]

2. Item 2—Risk/Benefit Summary: Benefits and Risks

Proposed Form N–6 would require at the beginning of every prospectus a risk/benefit summary that would provide key information about a policy's risks, benefits, and fees. This information would be required to appear in a specific sequence. The risk/benefit summary is intended to respond to investors' strong preference for summary information in a standardized format.[34] It would provide all investors

[24] 1998 N–1A Adopting Release, *supra* note 7.

[25] 17 CFR 230.421; Proposed General Instruction C.1.(e).

[26] 17 CFR 230.421(d); Proposed Items 1, 2, and 3.

[27] General Instruction D of Form N–1A.

[28] General Instruction A of Form N–4; N–4 Adopting Release, *supra* note 7, at 26148; N–4 Proposing Release, *supra* note 7, at 619. Section 3(c)(11) of the Investment Company Act excludes from the definition of investment company "any separate account the assets of which are derived solely from (A) contributions under pension or profit-sharing plans which meet the requirements of section 401 of the Internal Revenue Code of 1986 or the requirements for deduction of the employer's contribution under section 404(a)(2) of such Code, (B) contributions under governmental plans in connection with which interests, participations, or securities are exempted from the registration provisions of section 5 of the Securities Act of 1933 by section 3(a)(2)(C) of such Act, and (C) advances made by an insurance company in connection with the operation of such separate account." 15 U.S.C. 80a–3(c)(11).

[29] Item 1 of Form N–1A; 1998 N–1A Adopting Release, *supra* note 7; 1997 N–1A Proposing Release, *supra* note 7, at 10902.

[30] Proposed Item 1(a).

[31] Items 1(a) (iv) and (viii) of Form N–4.

[32] Proposed Items 4(c) and 6(f).

[33] Proposed Item 1(b).

[34] Participants in focus groups conducted on behalf of the Commission, for example, expressed

Continued

with key information about a policy in a standardized, easily accessible place. This would help investors to evaluate and compare variable life insurance policies. The proposed risk/benefit summary is consistent with the approach taken in today's amendments to Form N–1A and the release adopting the plain English rule.[35] The Commission requests comment on the sequence requirement and whether any particular format should be required for the risk/benefit summary.

Risks associated with Portfolio Companies would be addressed in the Portfolio Companies' prospectuses and profiles, not the variable life insurance prospectus. Policies frequently offer 10 or more Portfolio Companies, and the Commission believes that a variable life insurance prospectus may become too long and complex if it includes risk information specific to each Portfolio Company. The Commission believes that investors are better served by consulting the Portfolio Company prospectus or profile for risk information relating to Portfolio Companies in which they are interested.

The risk/benefit summary, however, would require a registrant to present narrative information concerning the benefits available under the policy; the allocation of premium payments to insurance coverage, investments, and charges; and the risks of purchasing a policy in a single location in the variable life prospectus. Risks to be covered would include the risks of poor investment performance, the unsuitability of variable life insurance policies as short-term savings vehicles, the risks of policy lapse, limitations on access to cash value through withdrawals, and the possibility of adverse tax consequences. Variable life insurance prospectuses generally disclose this information, particularly risk information, in the context of long, often complex descriptions of the policy. The Commission believes that the proposed narrative summary will help achieve more effective communication of risks.[36]

The Commission requests comment on the proposed narrative summary of policy benefits, allocation of premiums, and risks. Is this narrative summary necessary or helpful for variable life insurance prospectuses? Are the particular items included useful, and should other items be included? Should the risks of particular Portfolio Companies be described in the variable life insurance prospectus?

3. Item 3—Risk/Benefit Summary: Fee Table

Purpose of Fee Table. Along with investment performance, fees and charges are a crucial element in determining the return that an investor will realize from any investment company. For that reason, the Commission has required a fee table in the prospectuses of both mutual funds and variable annuities.[37] Through the fee tables, the Commission has sought to provide uniformity, simplicity, and comparability in fee disclosure.[38] The Commission believes that clear, understandable disclosure of fees and charges is equally important to investors considering the purchase of variable life insurance and, for that reason, Item 3 of Proposed Form N–6 would extend a fee table requirement to variable life insurance.

The fees and charges associated with variable life insurance products often are quite complex for several reasons. First, the structure of fees often differs from one policy to another, making comparisons among products difficult. Second, fees typically are imposed at several levels within a variable life insurance policy, making it difficult to assess the aggregate effect of charges. For example, management and other expenses may be deducted at the Portfolio Company level, asset-based charges such as a mortality and expense risk charge may be deducted against separate account assets, and other charges, such as cost of insurance, may be assessed against a policyholder's individual cash value. Third, some variable life charges, particularly cost of insurance (i.e., the charge imposed for death benefit coverage), vary based upon the individual characteristics of the purchaser and change over the life of a policy.

The complexity of variable life insurance fees and charges makes it more difficult to prescribe a standardized disclosure format than for mutual funds or variable annuities. The Commission believes, however, that this complexity also makes it particularly important that investors receive clear, understandable disclosure about this essential aspect of the investment decision. The importance of this disclosure has been heightened since the passage of the National Securities Markets Improvement Act of 1996 ("NSMIA"). NSMIA amended Sections 26 and 27 of the Investment Company Act to replace specific limits on the amount, type, and timing of charges that applied to variable insurance contracts with a requirement that aggregate charges be reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.[39] The increased flexibility to structure variable life insurance charges given to insurers by NSMIA increases the need for clear, understandable disclosure of charges.[40] Proposed Item 3 is intended to facilitate uniformity, simplicity, and comparability of variable life insurance fees and charges, while permitting flexibility when the nature of the product requires it.

Variable life insurance prospectuses typically have included hypothetical illustrations that reflect the effect of charges under specified assumptions and thereby serve some of the purposes of a fee table.[41] The Commission is concerned, however, that the illustration of one or a limited number of scenarios that demonstrate the effect of policy charges on particular policyholders with particular premium payment patterns is not an adequate substitute for clear, tabular disclosure of

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strong support for summary information about mutual funds in a standardized format. In addition, in connection with an initiative to permit mutual funds to use profiles summarizing key information, many individual investors have written to the Commission about the need for concise, summary information relating to a fund. In keeping with the goal of providing key information in a standardized summary, proposed General Instruction C.3.(b) would not permit a registrant to include in the risk/benefit summary information that is not required or otherwise permitted by the items prescribing the risk/benefit summary.

[35] 1998 Form N–1A Adopting Release, *supra* note 7; Plain English Adopting Release, *supra* note 17, at 6373.

[36] In 1995, the Commission issued a release requesting comment on ways to improve risk disclosure and comparability of investment company risk levels. Risk Concept Release, *supra* note 13. More than 75% of the individual investors commenting on the Risk Concept Release specifically favored requiring a risk summary in mutual fund prospectuses.

[37] Item 3 of Form N–1A; Item 3 of Form N–4.

[38] N–1A Fee Table Adopting Release, *supra* note 12, at 3194; Investment Company Act Release No. 15932 (Aug. 18, 1987) [52 FR 32018, 32019] ("N–1A Fee Table Proposing Release").

[39] 15 U.S.C. 80a–26; 15 U.S.C. 80a–27; National Securities Markets Improvement Act of 1996, Pub. L. No. 104–290 (1996), Section 205; S. Rep. No. 293, 104th Cong., 2d Sess. 22 (1996) ("Senate Report"); H. Rep. No. 622, 104th Cong., 2d Sess. 45–46 (1996) ("House Report").

[40] In addition, in light of NSMIA, the National Association of Securities Dealers, Inc. ("NASD") recently filed with the Commission a proposed rule change that would eliminate the maximum sales charge limitations applicable to variable insurance contracts. SR–NASD–98–14 (filed Feb. 17, 1998) (available in the Commission's Public Reference Room).

[41] See N–1A Fee Table Adopting Release, *supra* note 12, at 3194; N–4 Fee Table Adopting Release, *supra* note 12, at 4775.

the level of each charge imposed by a policy.[42]

Further, in recent years, the Commission has observed that a number of variable life insurance registrants, on their own initiative, have added relatively simple, tabular presentations of fees and charges to their prospectuses. The Commission believes that these efforts represent a significant step toward enhanced communication with investors about fees and charges and that it is appropriate, at this time, to extend these voluntary efforts to the industry as a whole. Commenters are requested to discuss the relative merits of hypothetical illustrations and fee tables in communicating charges to investors in a manner that is clear and understandable and that facilitates comparisons from one policy to another.

Fee Table Format. The proposed fee table consists of three separate sections. The first section shows policyholder transaction fees, such as sales loads, surrender charges, and transfer fees. The second section shows annual charges, excluding annual Portfolio Company operating expenses. The third section shows annual Portfolio Company operating expenses, including management fees, distribution fees, and other expenses. Comment is requested on the proposed organization of the fee table and whether it would facilitate investor understanding of fees and charges. Is some other organization preferable? Should registrants have greater flexibility to organize the presentation of charges?

For each charge, the proposed table would use a four-column format to require a registrant to identify the charge, when the charge is deducted, the amount of the charge, and whether the charge is deducted from all policies or only certain policies. This format differs from that of the fee tables in Form N–1A and Form N–4, which simply require identification of the charge, with a parenthetical statement of the basis on which it is imposed, and specification of the amount of the charge.

The proposed format is intended to recognize the complexity of variable life insurance charges, help investors to locate information about charges readily, and provide flexibility to registrants to describe policy charges completely. The "Amount Deducted" column, for example, will provide an opportunity for registrants to describe the level of a particular charge and the basis on which it is deducted, *e.g.*, percentage of premiums, cost per $1,000 of face amount, percentage of average daily net assets. The "Policies from Which Charge is Deducted" column will permit registrants to identify clearly charges that apply to all policies and those that do not, *e.g.*, charges that apply only to policyholders with a certain account value or that elect a particular death benefit option or optional rider.

The Commission requests comment on the four-column format of the table. Should the information required by each of the columns be included in a variable life fee table? Is the four-column format the best means for providing this information or are there better ways for communicating this information to investors?

Fee Table Requirements. The proposed fee table would require registrants to disclose all fees and charges, whether or not a specific caption is provided for a charge in the proposed fee table.[43] The Commission believes that complete disclosure of fees and charges is appropriate. At the same time, the Commission is concerned that disclosure of fees and charges that apply to a very small proportion of policyholders could potentially overwhelm investors with information of limited relevance. The Commission therefore requests comment on whether there should be any limitations on the charges required to be disclosed in the fee table. For example, should charges be disclosed only if they apply to some minimum number or percentage of policyholders? Should all charges for optional riders, e.g., accidental death benefit, children's insurance, or guaranteed insurability, be disclosed? Should the instructions provide additional guidance on the fees that are required to be disclosed?

Disclosure of the maximum charge for each item is required unless a specific instruction directs otherwise.[44] For cost of insurance, registrants are required to disclose the minimum and maximum charges. Cost of insurance generally is a significant expense item for variable life insurance policyholders.[45] For that reason, the Commission believes that it is important for investors to receive information about the level of this charge. The Commission recognizes, however, that this charge varies from policyholder to policyholder, based on individual characteristics such as age, sex, and risk classification, so that the charge does not readily lend itself to quantification in a table that applies to all policyholders. The Commission has proposed disclosure of the range of this charge, which could be accompanied by brief explanatory material, such as the factors that affect the level of the charge.

The Commission requests comment on the possible approaches to disclosure of the cost of insurance, including the range of the charge, the maximum charge, the average charge for existing policyholders, the level of the charge for a policyholder with characteristics that are fairly representative of purchasers of the policy, and line item narrative disclosure that the charge is imposed and the factors on which it is based. Commenters also are requested to address whether charges other than the cost of insurance may be quantified in the manner that would be required by the proposed fee table.

If a registrant invests in multiple Portfolio Companies, the proposed fee table would require disclosure of the range of expenses for all of the Portfolio Companies.[46] This approach is different from Form N–4, which requires separate disclosure of the expenses of each Portfolio Company.[47] Because variable life fees and charges are complex, and because policies frequently offer 10 or more Portfolio Companies, the Commission believes that investors could be overwhelmed by information of limited relevance if the fees and charges for each Portfolio Company were separately stated in the fee table.[48] The Commission requests comment on how Portfolio Company fees and charges should be disclosed in Form N–6. Should a range be used, as proposed; should the fees and charges for each

[42] See discussion of illustrations *infra* Section II.C.3.

[43] Instructions 2(c) and 3(e) to proposed Item 3.

[44] Instruction 1(e) to proposed Item 3.

[45] See Blease, Costs Count: A Best's Policy Reports Survey Examines the Costs Incurred with the Life Insurance Portion of Variable Universal Life Policies, BEST'S REVIEW—LIFE-HEALTH INSURANCE EDITION, Jan. 1997, at 37.

[46] Instruction 4(b) to proposed Item 3. Portfolio Company operating expenses would be required to be disclosed before expense reimbursements and fee waiver arrangements. Registrants would be permitted to disclose expenses after reimbursement or waiver in a footnote. *See* Instructions 4(f)(i) and (g) to proposed Item 3. This approach mirrors the approach recently adopted by the Commission in Form N–1A. Item 3 of Form N–1A; 1998 Form N–1A Adopting Release, *supra* note 7; 1997 Form N–1A Proposing Release, *supra* note 7, at 10908.

[47] Item 3 of Form N–4; Investment Company Act Release No. 16482 (July 15, 1988) [53 FR 27872, 27873–74] ("N–4 Fee Table Proposing Release").

[48] This is less of a concern in the case of Form N–4 because the simpler, more uniform nature of variable annuity charges results in a less complex fee table. The Commission notes, however, that, in recent years, the number of investment options that is typically available in variable annuity contracts has expanded. See O'Brian and Fitzsimmons, Variable Annuities Put More Eggs In The Basket, THE WALL STREET JOURNAL, Sept. 29, 1997, at C22. For that reason, the Commission expects to reconsider the appropriate disclosure of Portfolio Company fees and charges in a variable annuity prospectus as part of a broader consideration of ways to improve communication of information to variable annuity investors.

Portfolio Company be separately stated; or should some other approach be adopted?

Form N–1A does not require a mutual fund that offers its shares exclusively as investment options for variable annuity and variable life insurance contracts to include the fee table in its prospectus.[49] The Commission intends to amend Form N–1A to require the prospectus of a mutual fund that offers its shares as investment options for variable life insurance policies to include a fee table if the Form N–6, as adopted, does not require separate disclosure of the operating expenses of each Portfolio Company. This would ensure that variable life insurance investors have access to complete information about Portfolio Company fees and expenses. The Commission requests comment on whether the exemption from the fee table requirement in Form N–1A should be eliminated for mutual funds that offer their shares as investment options for variable life insurance policies. The Commission also requests comment on whether the exemption from the fee table requirement in Form N–1A should be eliminated for mutual funds that offer their shares as investment options for variable annuity contracts if the exemption is eliminated for mutual funds that offer their shares as investment options for variable life insurance policies.

Fee Table Example. Proposed Item 3 would not require an example of the expenses that would be incurred by an investor over specified periods. This is different from the fee tables of Form N–1A and Form N–4, both of which require such an example.[50] Because of the individualized nature of fees and charges associated with variable life insurance, particularly the cost of insurance, the Commission believes that it would be difficult to design a single example or small number of examples that would provide a useful comparison tool for investors considering different variable life insurance policies.

In amending Form N–1A, the Commission today is reiterating its belief that the fee table example provides useful information that helps a typical mutual fund investor understand and compare the expenses of different funds.[51] The Commission concluded that expressing expense amounts solely as a percentage, as is done in the fee table, may not give the average mutual fund investor enough information to assess the likely effect of a fund's expenses on an investment in the fund. Mutual fund fees, which typically are less individualized than the fees of variable life insurance policies, may be easier to reflect in an example that has broad application. The Commission requests comment on whether a fee table example should be required by Form N–6 and, if so, what should be required by the example.

4. Item 4—General Description of Registrant, Depositor, and Portfolio Companies

Proposed Item 4 would require a concise discussion of the organization and operation of the registrant, including the name and address of the depositor and a brief description of the registrant. This requirement is similar to, but more streamlined than, Item 5 of Form N–4. For example, Item 5 of Form N–4 requires registrants to disclose the general nature of the depositor's business, the date and form of organization of the depositor and the state in which it is organized, the name of any ultimate controlling person of the depositor and the general nature of its business, and the date and form of organization of the registrant and its classification under the Investment Company Act. Proposed Form N–6 would include this information in the SAI because it is technical information that does not appear to be essential to an investor when evaluating a particular variable life insurance policy or comparing different variable life insurance policies.[52] The Commission requests comment on appropriate disclosure of matters relating to the general description of the registrant and depositor. For example, is any information omitted from proposed Item 4 that is essential to an investment decision? Is any information included in Item 4 that is not essential to an investment decision?

Proposed Item 4 also would require that the prospectus briefly describe each Portfolio Company, including (i) its name; (ii) its type (*e.g.*, money market fund, bond fund, balanced fund) or a brief statement concerning its investment objectives; and (iii) its investment adviser and any sub-adviser. Registrants would be required to state how investors may obtain a prospectus and, if available, a profile for the Portfolio Companies. Item 4 also would require a discussion of the rights of policyholders to instruct the depositor on the voting of Portfolio Company shares.

Over time, many registrants have included the investment objectives of Portfolio Companies along with additional information about the investment advisers and the risks associated with the Portfolio Companies in variable life prospectuses, as well as in the Portfolio Company prospectuses. The Commission believes that including detailed information about Portfolio Companies in a variable life prospectus is redundant and conflicts with the Commission's efforts to eliminate prospectus clutter that tends to obscure information that could help an investor make a decision about purchasing a variable life insurance policy.[53] Instruction 2 therefore would clarify that detailed Portfolio Company information is not required in the variable life insurance prospectus. In addition, if a Portfolio Company's name describes its type, the prospectus would not be required to include the Portfolio Company's type or a statement concerning its investment objectives.[54] Commenters are asked to address whether proposed Item 4 requires sufficient information about Portfolio Companies or whether additional information should be included.

5. Item 5—Charges

Proposed Item 5 would require registrants to describe briefly all charges deducted from premiums, cash value, assets of the registrant, or any other source. These charges include sales loads, premium and other taxes, administrative and transaction charges, risk charges, contract loan charges, cost of insurance, and rider charges. Registrants would be required to indicate the source from which each charge will be deducted, and specify the amount of the charge as a percentage or dollar figure and the frequency of its deduction. Registrants also would be required to identify the recipient of any amount deducted and the consideration provided for any charge, and explain the extent to which the charge can be modified.

The cost of insurance charge represents a significant expense associated with a variable life insurance policy. Instruction 2 to Item 5(a) would require a registrant to identify the factors upon which the cost of insurance

[49] Item 3 of Form N–1A.

[50] Item 3 of Form N–1A; Item 3(a) of Form N–4.

[51] 1998 Form N–1A Adopting Release, *supra* note 7.

[52] Proposed Item 16. *Cf.* 1998 Form N–1A Adopting Release, *supra* note 7 (moves to SAI disclosure about a fund's form and date of organization and state of incorporation).

[53] See, *e.g.*, 1998 Form N–1A Adopting Release, *supra* note 7; 1997 Form N–1A Proposing Release, *supra* note 7, at 10900.

[54] *Cf.* Cova Financial Services Life Ins. Co. (pub. avail. Apr. 15, 1996) (clarifying that variable annuity separate account prospectuses need not include detailed information about Portfolio Companies).

charge will be based, including the insurer's amount at risk and the expected longevity of the insureds. A registrant would be required to identify the factors reflected in the rate scale, and specify whether the mortality charges guaranteed in the contracts differ from the current charges. A registrant also would be required to identify the factors that affect the amount at risk, including investment performance, payment of premiums, and charges. If the insurer intends to use simplified underwriting or other underwriting methods that would cause healthy individuals to pay higher cost of insurance charges than they would pay if the insurance company used conventional underwriting methods, a registrant would be required to state that the cost of insurance charges are higher for healthy individuals when this method of underwriting is used.

Proposed Item 5 also would require registrants to state that there are charges deducted from and expenses paid out of the assets of the Portfolio Companies that are described in the prospectuses for those companies and to disclose, if applicable, that charges will be deducted for incidental insurance benefits offered with the policy. The item also would require a statement about the registrant's expenses. If the organizational expenses of the registrant are to be paid out of its assets, the registrant would be required to disclose, if applicable, how the expenses will be amortized and the period of amortization.

6. Item 6—General Description of Contracts

Proposed Item 6 would require registrants to identify all persons who have material rights under the variable life insurance policies and the nature of those rights. The item also would require a brief description of any provisions for allocation of premiums among sub-accounts of the registrant, transfer of cash value between sub-accounts, and conversion or exchange of policies for other life insurance or annuity contracts.

The item also would require a brief description of the changes that can be made in the policies or the operations of the registrant by the registrant or its depositor, including (i) why a change may be made, (ii) who must approve any change, and (iii) who must be notified of any change. The instruction to Proposed Item 6(c) specifically restricts the information that must be provided to changes that would be material to a purchaser of the policies, such as a reservation of the right to deregister the registrant under the Investment Company Act. The item would require a registrant to identify any other material incidental benefits in the policies. Finally, the item would require disclosure of any limitations on the class of purchasers to whom the policies are being offered.

7. Item 7—Premiums

Proposed Item 7 would require registrants to describe how to purchase a variable life insurance policy and the provisions of the policy relating to premiums. Registrants would be required to disclose the minimum initial and subsequent premiums required, any limits on the amount and frequency of premiums that will be accepted, how long investors must continue to pay premiums, and whether investors can prevent a policy from lapsing by paying a certain level of premiums. The item also would require registrants to discuss any circumstances in which (i) premiums may be required to prevent lapse and how the amount of additional premiums will be determined; (ii) a policy will not lapse if an investor does not pay a required premium; (iii) an investor may pay more in premiums than the policy requires; and (iv) the level of a policy's required premiums may change, and, if so, how the amount of the change will be determined. The item also would require disclosure of the factors that determine the amount of any required premiums, such as face amount, death benefit option, and charges and expenses.

The item would require registrants to identify the premium payment plans available. Registrants would be required to include the available payment frequencies, payment mechanisms such as payroll deduction plans and preauthorized checking arrangements, and any special billing arrangements. Registrants would be required to indicate whether the premium payment plan or schedule may be changed.

Registrants also would be required to explain the policy's provisions regarding premium due dates and how any grace period operates. The item would require registrants to describe any circumstances under which required premiums may be paid by means of an automatic premium loan.

Finally, proposed Item 7 would require registrants to describe when sub-account assets are valued and when required premiums and additional premiums are credited to cash value. Registrants would be required to explain the basis on which premiums are credited. Registrants would be instructed to describe where premiums are held during any time period (e.g., a "free-look" period) in which the crediting of premiums to sub-accounts is delayed.

8. Item 8—Death Benefits and Contract Values

Proposed Item 8 would require registrants to describe briefly the death benefits available under the variable life insurance policy. The prospectus would be required to disclose when insurance coverage is effective, when the death benefit is calculated and payable, how the death benefit is calculated, what forms of death benefit are available, who may choose the form of death benefit and how, what the default death benefit is, and whether the policy guarantees a minimum death benefit. Registrants also would be required to describe if and how a policyholder may increase or decrease the face amount. The item also would require registrants to explain how the investment performance of the Portfolio Companies and expenses and charges affect policy values and death benefits.

9. Item 9—Surrenders, Partial Surrenders, and Partial Withdrawals

Proposed Item 9 would require registrants to describe briefly how a policyholder may surrender a policy. Registrants would be required to disclose any limits on the ability to surrender, how surrender proceeds are calculated, and when proceeds are payable. The item also would require registrants to disclose whether and under what circumstances partial surrenders and partial withdrawals are available under a policy, including the minimum and maximum amounts that may be surrendered or withdrawn and any limits on the availability of partial surrenders or partial withdrawals. The item also would require registrants to describe whether partial surrenders or partial withdrawals will affect a policy's cash value or death benefit, whether any charges will apply, and the manner in which partial surrenders and partial withdrawals will be allocated among sub-accounts.

Finally, the item would require registrants to describe briefly any revocation rights (*e.g.*, free-look provisions). Registrants would be required to describe how the amount refunded is determined, the method for crediting earnings to premiums during the free-look period, and whether investment options are limited during the free-look period (e.g., premiums must be allocated to the money market sub-account).

10. Item 10—Loans

Proposed Item 10 would require registrants to describe the policy

provisions governing loans of a policy's cash value and any limits on loan availability. Registrants would be required to state the amount of interest charged on a loan and the amount of interest credited to the policy in connection with the loan. A description of loan procedures would be required, including how and when amounts borrowed are transferred out of the registrant and how and when amounts repaid are credited to the registrant. A registrant would be required to explain briefly that amounts borrowed do not participate in the registrant's investment experience and that loans can affect the policy's cash value and death benefit regardless of whether the loan is repaid. Registrants also would be required to explain that the cash surrender value and the proceeds payable on death will be reduced by the amount of any outstanding loan plus accrued interest.

11. Item 11—Lapse and Reinstatement

Proposed Item 11 would require registrants to state when a policy will lapse and under what circumstances a lapsed policy may be reinstated. Registrants would be required to explain any requirements for reinstatement, including payments of charges and outstanding loans and presentation of evidence of insurability. Registrants also would be required to describe briefly any lapse options available, indicate whether any of those options is subject to limits on availability, and indicate which options will not apply unless elected and which options are default options. Registrants would be required to describe briefly the factors that will determine the amount of insurance coverage provided under the available lapse options. Registrants would be required to describe concisely how the cash value, surrender value, and death benefit will be determined upon lapse.

12. Item 12—Taxes

Proposed Item 12 would require registrants to describe the material tax consequences to the policyholder and beneficiary of buying, holding, exchanging, or exercising rights under the policy. Registrants would be required to discuss the taxation of death benefit proceeds, periodic and non-periodic withdrawals, loans, and any other distribution that may be received under the policy, as well as tax benefits accorded the policy.

Proposed Item 12 is intended to focus tax disclosure on the likely tax consequences to policyholders of purchasing a variable life insurance policy. The proposal is intended to elicit disclosure that is not overly lengthy or technical and that does not use jargon that is difficult for the average or typical investor to understand.

13. Item 13—Legal Proceedings

Proposed Item 13 would require a registrant to describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant, the registrant's principal underwriter, or the depositor is a party. Registrants also would be required to include information as to legal proceedings contemplated by a governmental authority. For purposes of this item, legal proceedings are material only to the extent that they are likely to have a material adverse effect on the registrant, the ability of the principal underwriter to perform its contract with the registrant, or the ability of the depositor to perform its obligations under the policies. Proposed Item 13 would require information comparable to that required by Form N–1A and Commission forms that apply to other issuers.[55]

14. Item 14—Financial Statements

Proposed Form N–6, like Form N–4, would not require financial statements of the registrant and the depositor to be included in the prospectus. Item 14, however, would require the registrant to state in the prospectus where the financial statements may be found and explain how any financial statements not in the SAI may be obtained. This requirement is similar to Item 4(c) of Form N–4.

Unlike Form N–4 and Form N–1A, proposed Form N–6 would not require a registrant to include summary financial information in its prospectus.[56] Form N–4 requires a registrant to disclose, for the last ten fiscal years and for each sub-account, the accumulation unit value at the beginning and end of each period and the number of accumulation units outstanding at the end of each period. For variable annuity contracts, the change in accumulation unit value provides a measure of performance of the registrant's sub-accounts. Because of the individual nature of variable life insurance charges, such as the cost of insurance, there does not appear to be a comparable measure of performance that is applicable to all holders of a particular variable life insurance policy.[57] Each Portfolio Company, however, would continue to provide its own summary financial information in its prospectus.[58]

The Commission requests comment on the appropriate location for registrant and depositor financial statements. The Commission also requests comment on whether variable life insurance registrants should be required to include summary financial information in their prospectuses. Can sub-account performance be meaningfully measured in a manner that is applicable to all holders of a particular variable life insurance policy, *e.g.*, by reflecting Portfolio Company fees and expenses and any other charges that are uniformly applied to all policyholders? Should summary financial information of the Portfolio Companies be required to be included in the Form N–6 prospectus?

C. Part B—Statement of Additional Information

The SAI would provide a more detailed discussion of matters described in the prospectus as well as additional information about a fund.[59] Many of the items are similar to the items in Part B of Forms N–4 and N–1A and therefore are not discussed in this release. Three items, however, merit separate attention.

1. Item 24—Financial Statements

The financial statements of the registrant required by proposed Item 24 are the same as the financial statements required by Item 23 of Form N–4. The full financial statements of the registrant would be in the SAI. The only financial information for the depositor required to be in the SAI would be comparative balance sheets for the last two fiscal years and, in certain cases, a more current interim balance sheet. As with Form N–4, the other financial statements of the depositor (e.g., statement of operations and statement of changes) would be required to be included in the registration statement, but could be included in Part C rather than the SAI. These financial statements would be required to be made available to investors upon request, free of charge. The Commission believes that this would allow a shorter SAI, while still providing investors with adequate information about the solvency of the depositor.

[55] See Item 6(a)(3) of Form N–1A; Item 12 of Form N–2 [17 CFR 274.11a–1] (closed-end investment companies); Item 103 of Regulation S-K [17 CFR 229.103] (non-investment company issuers). See also Investment Company Act Release No. 19155 (Nov. 30, 1992) [57 FR 56862] (modifying Form N–2 to conform to Item 103).

[56] See Item 4(a) of Form N–4; Item 9 of Form N–1A.

[57] See discussion of performance data infra Section II.C.2.

[58] See Item 9 of Form N–1A.

[59] See proposed General Instruction C.2.(b).

Instruction 1 to proposed Item 24, like Instruction 1 to Item 23 of Form N–4, would provide that a depositor's financial statements may be prepared in accordance with statutory requirements if the depositor would not have to prepare financial statements in accordance with generally accepted accounting principles ("GAAP") except for use in a registration statement filed on Form N–3, N–4, or N–6.[60] In recent years, increasing numbers of depositors have elected to prepare financial statements in accordance with GAAP for use in business transactions.[61] In addition, when a depositor's parent company prepares financial statements on a GAAP basis, the depositor typically prepares either partial GAAP financial statements or a GAAP reporting package to be used by the parent in its consolidated financial statements. In these circumstances, Form N–6 would require full GAAP financial statements of the depositor. In those limited circumstances when GAAP financial statements are not prepared for either the depositor or its parent, or the depositor's accounts are immaterial to its parent's consolidated financial statements and, therefore, neither partial GAAP financial statements nor a GAAP reporting package is prepared by the depositor, statutory financial statements could be used in Form N–6.

Instruction 3 to proposed Item 24, like Instruction 3 to Item 23 of Form N–4, would provide that the financial statements of the depositor need not be more current than as of the end of the most recent fiscal year of the depositor. In addition, Instruction 3 would provide that if the anticipated effective date of a registration statement is within 90 days of the end of the depositor's fiscal year and audited financial statements for the fiscal year are unavailable, the financial statements of the depositor need not be more current than the close of the third quarter of the previous fiscal year.[62] This instruction would extend to depositors of variable life insurance separate accounts the relief that is generally provided by Regulation S-X when the anticipated effective date of a filing falls within 46 to 90 days of the end of a registrant's fiscal year.[63] The instruction codifies relief that the Commission staff has informally provided to variable annuity and variable life insurance registrants.

The Commission requests comment on the requirements concerning the use of financial statements prepared in accordance with GAAP and financial statements prepared in accordance with statutory requirements. The Commission also requests comment on the requirements concerning the age of financial statements.

2. Item 25—Performance Data

Proposed Item 25 would require the registrant to include in the SAI an explanation of how it calculates performance data used in advertising, including how charges are reflected in the data. Registrants also would be required to provide a quotation of performance for each sub-account for which performance data is advertised.

Proposed Form N–6 would not require disclosure of any historical performance information. The Commission believes that, at the present time, no method of measuring variable life insurance performance has been devised that is useful enough that its disclosure should be required.

Variable life insurance performance is difficult to measure because of the complexity of the product and because policy charges and values are linked to individual characteristics of a particular investor. In addition, variable life policies provide cash value and death benefits, and both of these may be affected over time, in different ways, by policy charges and earnings.

Three types of performance information are sometimes included in variable life insurance registration statements, but each has the limitations noted.

- *Portfolio Company performance.* This measure is net of investment management fees and other Portfolio Company fees and expenses, but unadjusted for fees and expenses imposed on the separate account or individual policyholders. It may be useful as a measure of Portfolio Company performance, but it significantly overstates the performance policyholders will receive after deductions for all charges.
- *Portfolio Company performance adjusted for separate account asset-based charges.* This is a hybrid measure that is net of investment management fees, other Portfolio Company fees and expenses, and separate account asset-based charges. This form of performance does not measure either Portfolio Company performance (because of the deduction of separate account asset-based charges) or the performance a policyholder will receive (because of the failure to deduct charges imposed on the individual policyholder).
- *Illustrations of cash values and death benefits.* These illustrations are based on actual investment performance of a Portfolio Company and specified assumptions about premiums and the insured individual (*e.g.*, sex, age, rating classification). This form of performance does not have the defects of the other two, because it reflects all of the fees and charges at the Portfolio Company, separate account, and individual policyholder levels. It has very limited usefulness, however, to the many prospective investors whose proposed

[60] GAAP is an accounting term that encompasses the conventions, rules, and practices that define accepted accounting at a particular time issued by various authoritative bodies including the Financial Accounting Standards Board ("FASB") and the American Institute of Certified Public Accountants ("AICPA"). See Codification of Financial Reporting Policies of the SEC, Section 101. Financial statements prepared in accordance with statutory requirements, which may vary from state to state, differ from those prepared in accordance with GAAP. Statutory requirements are the basis of accounting that insurance companies use to comply with the financial reporting requirements of state insurance regulations. Regulation S-X permits financial statements for mutual life insurance companies and wholly owned stock insurance company subsidiaries of mutual life insurance companies to be prepared in accordance with statutory requirements, except when the applicable registration forms specifically provide otherwise. 17 CFR 210.1–01(a); 17 CFR 210.7–02(b).

[61] Prior to the 1993 issuance of Interpretation 40 ("IN 40") by FASB, many mutual life insurance companies prepared financial statements solely on a statutory basis. The FASB became aware that financial statements prepared in accordance with statutory accounting practices were often described as having been prepared in accordance with GAAP. IN 40 clarified that companies, including mutual life insurance companies, that issue financial statements described as prepared in conformity with GAAP must apply all applicable authoritative accounting pronouncements in preparing those statements. FASB Interpretation No. 40, Applicability of Generally Accepted Accounting Principles to Mutual Life Insurance and Other Enterprises (Apr. 1993). See also Financial Accounting Standards Board, Statement on Financial Accounting Standards No. 120, Accounting and Reporting by Mutual Life Insurance Enterprises and by Insurance Enterprises for Certain Long-Duration Participation Contracts (Jan. 1995) ("SFAS 120") (deferring the effective date of IN 40 and stating that mutual life insurance companies that prepare financial statements based on statutory accounting practices that differ from GAAP and distribute those financial statements to regulators should not describe the financial statements as prepared in accordance with GAAP). As a result of SFAS 120, if insurance company financial statements are not prepared in accordance with GAAP, the financial statements must include either an adverse or qualified audit opinion as to conformity with GAAP. Codification on Statements on Auditing Standards, AU Section 544 (AICPA).

[62] Third quarter financial statements would not need to be audited in these circumstances. Rule 10–01(a)(1) of Regulation S-X [17 CFR 210.10–01].

[63] See Rule 3–12(b) of Regulation S-X [17 CFR 210.3–12] (when anticipated effective date of filing falls within 90 days subsequent to the fiscal year, the filing need not include financial statements more current than as of the end of the third fiscal quarter, unless the audited financial statements of such fiscal year are available, or the anticipated effective date falls after 45 days subsequent to the end of the fiscal year and the registrant does not meet the conditions of Rule 3–01(c)). The relief provided in Rule 3–12(b) is not available to mutual insurance companies, when the anticipated effective date falls within 46 to 90 days subsequent to the fiscal year end, because those companies do not file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934, which is a condition of Rule 3–01(c).

premium payment patterns and individual characteristics diverge from those assumed.

Proposed Form N–6 would not require performance information in the prospectus. Nothing in the proposal, however, would preclude the inclusion of historical performance information, including Portfolio Company performance information, provided that the information is not incomplete, inaccurate, or misleading and does not obscure or impede understanding of the information that is required to be included.[64] The Commission believes, however, that Portfolio Company performance information is most appropriately included in the Portfolio Company's prospectus, where it can be considered along with the risks of investing in the Portfolio Company.[65] Registrants should bear this in mind in determining whether it is appropriate to include Portfolio Company performance information in a Form N–6 prospectus.

The Commission requests that commenters discuss the advantages and disadvantages of various forms of variable life insurance performance information. Should any form of historical performance information be required by Form N–6? What forms of performance information should be permitted by Form N–6? Should any types of performance information be prohibited by Form N–6?

3. Item 26—Illustrations

Permitted Use of Hypothetical Illustrations. Proposed Item 26 would permit, but not require, registrants to include hypothetical illustrations of a variable life insurance policy in either the prospectus or the SAI. These are tabular presentations of numbers that demonstrate how the cash value, cash surrender value, and death benefit under a policy change over time based on (i) assumed gross rates of return of the Portfolio Companies; and (ii) deduction of fees and charges for a hypothetical policyholder (*e.g.*, a 40-year old, non-smoking male) with a specified policy face amount and premium payment pattern. Currently, variable life insurance prospectuses commonly include hypothetical illustrations using several different gross rates of return (*e.g.*, 0%, 6%, and 12%), two different expense levels (current charges and guaranteed maximum charges), and multiple death benefit options.

The Commission believes that hypothetical illustrations can enhance an investor's understanding of the mechanics of a variable life insurance policy. Illustrations of varying rates of investment return, with other elements (*e.g.*, policy face amount, premium payment pattern, expenses, rating classification) held constant, can provide general information about the relationship among death benefits, cash values, and investment returns. Similarly, illustrations reflecting varying expense levels, with other elements held constant, can provide general information about how a policy would perform under different expense scenarios.

The Commission believes, however, that there are some limits on the usefulness of hypothetical illustrations. Any particular illustration has limited relevance for most investors, because it is based on a hypothetical investor with unique characteristics of age, sex, rating classification, policy face amount, and premium payments that is different from most investors. Further, it is probably impractical to provide enough hypothetical illustrations in a variable life insurance prospectus to permit comparison shopping among variable life insurance policies by a broad range of investors, each with unique characteristics. Because of the individualized nature of variable life insurance policies and associated charges, comparison of illustrations could show one product to be more advantageous than another, but a change in the assumptions used in the illustrations could have the opposite result. Finally, hypothetical illustrations are fairly extensive tables of numbers that add complexity to a prospectus and can be difficult to understand.

In light of the limited nature of hypothetical illustrations and the complexity that they can add to variable life insurance prospectuses, proposed Form N–6 would not require hypothetical illustrations. The Commission believes, however, that hypothetical illustrations can be useful tools to improve investor understanding of a variable life insurance policy when they are presented clearly and in a manner designed to help investors understand both the information presented and the limited nature of that information. For that reason, proposed Form N–6 would give a registrant the flexibility to include hypothetical illustrations in the prospectus or SAI when it believes that they would be helpful to investors. The Commission requests comment on whether hypothetical illustrations should be permitted, required, or prohibited in a variable life insurance prospectus or SAI.

Requirements for Hypothetical Illustrations. Proposed Item 26 would impose requirements for any hypothetical illustrations included in the prospectus or SAI. The proposed requirements are not intended to standardize illustrations in order to permit comparison shopping because, as noted above, the Commission believes that this goal may be impractical within the bounds of a prospectus. Rather, the requirements are intended to place reasonable limits on the assumptions that may be used and discourage the presentation of misleading illustrations. Registrants would, however, remain responsible for ensuring that the illustrations are not incomplete, inaccurate, or misleading and do not, because of their nature, quantity, or manner of presentation, obscure or impede understanding of information required to be included.[66]

Consistent with the Commission's commitment to the principles of plain English, illustrations would be required to be preceded by a clear and concise explanation.[67] Similarly, headings for the illustrations would be required to contain the information necessary to identify clearly the scenario illustrated, including sex, age, rating classification, premium amount and payment schedule, face amount, and death benefit option.[68]

Premium amounts used in the illustrations should not be unduly larger or smaller than the actual or expected average policy size, and ages used should be representative of actual or expected policy sales.[69] The proposal would require that illustrations be shown for the rating classification with the greatest number of outstanding policies.[70]

Proposed Item 26 would require illustrated values to be provided for policy years one through ten, for every five years beyond the tenth policy year, and for the year of policy maturity.[71] Registrants using illustrations would be required to illustrate death benefits and cash surrender values and could also illustrate cash values. Illustrated values would be determined as of the end of the policy year.[72]

Proposed Item 26 would require registrants to use gross rates of return of 0% and one other rate not exceeding

[64] Proposed General Instruction C.3.(b).

[65] See 1998 Form N–1A Adopting Release, *supra* note 7; 1997 Form N–1A Proposing Release, *supra* note 7, at 10902.

[66] Proposed General Instruction C.3.(b).

[67] Proposed Item 26(a).

[68] Proposed Item 26(b).

[69] Proposed Item 26(c).

[70] Proposed Item 26(d).

[71] Proposed Item 26(e).

[72] Proposed Item 26(f).

10%. Additional gross rates of return not greater than 10% would be permitted.[73] Currently, variable life insurance prospectuses typically use rates of 0%, 6%, and 12% in illustrations.[74] The Commission believes that the use of two rates of return is necessary to fulfill a basic purpose of illustrations, demonstrating the effect of changing investment returns. The Commission does not believe, however, that it would be helpful to require registrants using illustrations to use more than two rates of return because of the potential for overwhelming investors with excessive quantitative information that is of limited relevance to their particular circumstances. Notwithstanding current practice, which permits illustrations at rates up to 12%, the proposal would cap the maximum permissible rate at 10%. This reflects the Commission's concern that rates above 10% may have a significant tendency to invite unrealistic investor expectations because long-term stock market returns have averaged approximately 10–11% per year and long-term returns on other asset classes have been lower. Moreover, investors may give undue weight to a 12% illustration because they may discount a 0% illustration as unrealistically low.

The Commission invites comment on the number of rates of return that should be required for registrants using illustrations. The Commission also invites comment on the appropriate minimum and maximum rates to be used for hypothetical illustrations.

Proposed Item 26 would require that Portfolio Company management fees and other Portfolio Company charges and expenses be reflected using the arithmetic average of those charges and expenses for all available Portfolio Companies. The average would be based on Portfolio Company charges and expenses incurred during the most recent fiscal year or any materially greater amount expected to be incurred during the current fiscal year.[75] The Commission requests comment on how Portfolio Company charges and expenses should be reflected in illustrations.

Proposed Item 26 would require that illustrations reflect both current and guaranteed maximum charges for charges not attributable to the Portfolio Companies. The proposal would require that illustrations reflect all charges deducted under the policy, as well as the timing of those charges.[76] The Commission believes that requiring illustrations of both current and maximum guaranteed charges would be useful to investors in comparing the interaction of different rates of return and different charge levels. Commenters are requested to address how charges not attributable to the Portfolio Companies should be reflected in illustrations, including whether both current and guaranteed maximum charges should be required.

Finally, proposed Item 26 would permit additional information to be included in illustrations, provided that it is consistent with the standards of Item 26.[77] The Commission believes this flexibility is important to permit registrants to design illustrations that are useful to investors. Comment is requested on this approach.

Commenters are requested to address the proposed requirements for the optional hypothetical illustrations. Is each of these requirements appropriate and, if not, how should it be modified? Should any of the requirements be eliminated or should others be added? Is it possible to standardize hypothetical illustrations in a manner that would facilitate comparison shopping among variable life insurance policies? Commenters who believe that hypothetical illustrations should be required, rather than permitted, also should address the criteria that they believe would be appropriate for required hypothetical illustrations.

Hypothetical Illustrations Based on Historical Rates of Return. The Commission also is seeking comment on the use of hypothetical illustrations constructed using historical rates of return for the Portfolio Companies ("hypothetical historical illustrations") rather than assumed rates of return (*e.g.*, 0% and 10%). Some variable life insurance registrants currently include these illustrations in their prospectuses, although this practice is not widespread. Proposed Form N–6 does not specifically address hypothetical historical illustrations.

The Commission has some concerns about the use of hypothetical historical illustrations. Hypothetical historical illustrations share all of the limitations of other hypothetical illustrations. They are of limited relevance to investors having characteristics other than those illustrated, they are not useful for comparison shopping, and they add complexity to the prospectus. Further, hypothetical illustrations that show a pattern of assumed returns, *e.g.*, 0%, 5%, and 10%, can help investors understand how different rates of return affect policy performance. The actual historical rates of return illustrated in hypothetical historical illustrations, however, will not have a pattern and therefore are not useful to an investor attempting to understand how a particular change in rates might affect policy values.

In addition, hypothetical historical illustrations are not a useful means for presenting past performance because they depend on the particular hypothetical policyholder, face amount, and premium payment pattern selected.[78] Hypothetical historical illustrations also tend to invite prospective investors to assume that the cash values and death benefits presented represent the values that they can expect and may be misconstrued as projections. Finally, if a prospectus were to include a hypothetical historical illustration for each Portfolio Company, this could entail many pages of complex data. On the other hand, creating a single hypothetical historical illustration with a composite rate of return earned by all available Portfolio Companies would render the illustration of still more limited relevance to an investor who did not intend to allocate his or her investment in the manner used to determine the composite rate of return.

The Commission requests comment on hypothetical historical illustrations and whether they should be required, permitted, or prohibited by Form N–6. If hypothetical historical illustrations should be required or permitted, should the Commission specify any standards for their use?

Personalized Illustrations. Personalized illustrations are frequently provided by insurers to prospective variable life insurance investors at the point of sale. These illustrations reflect the investor's particular circumstances, including age, sex, risk classification, proposed face amount, and expected premium payment pattern. The Commission believes that such illustrations can be a highly useful tool for investors. Unlike hypothetical prospectus illustrations, they reflect policy values based on an individual's unique characteristics and therefore can provide more relevant information for a particular investor. Further, personalized illustrations are a

[73] Proposed Item 26(g).

[74] The Commission staff has required registrants using illustrations to include a 0% illustration and has prohibited rates greater than 12%. See also NASD Conduct Rules, "Communications with the Public About Variable Life Insurance and Variable Annuities," IM–2210–2(b)(5)(A)(ii) (requiring variable life insurance illustrations used for advertising and sales literature to use a rate of 0% and any other rates not greater than 12%).

[75] Proposed Item 26(h).

[76] Proposed Item 26(i)

[77] Proposed Item 26(j).

[78] See discussion of performance data *supra* Section II.C.2.

potentially useful comparison shopping tool, enabling a particular investor to compare how different variable life insurance policies would operate in the investor's particular circumstances.

Proposed Form N–6 does not address personalized illustrations because these are customized for individual investors, delivered at the point of sale, and not susceptible to inclusion in a prospectus. Absent Commission action, insurers may use personalized illustrations in sales literature subject to the antifraud provisions of the federal securities laws and rule 156 under the Securities Act, as long as the sales literature is preceded or accompanied by the prospectus.[79] The antifraud provisions make it unlawful to use materially misleading sales literature in connection with the purchase or sale of investment company securities.

Although personalized illustrations do not appear in a variable life insurance prospectus, these illustrations can be a very important part of the information communicated to prospective variable life insurance investors. For that reason, the Commission is requesting comment on personalized illustrations. Should the prospectus be required to state whether or not personalized illustrations are available? Should the Commission require variable life insurance registrants to deliver personalized illustrations to prospective investors? If not, should the Commission nonetheless prescribe requirements governing personalized illustrations for registrants that elect to use them? What, if any, requirements should the Commission prescribe for registrants using personalized illustrations? Should they be the same criteria as those that apply to hypothetical illustrations in proposed Form N–6, or should there be other requirements? The Commission also seeks comment regarding the use of Portfolio Company historical rates of return in personalized illustrations. Should the Commission address this area and, if so, how?

The Commission understands that some insurers are using personalized illustrations that reflect assumed rates of return, together with the fees and charges of a single Portfolio Company rather than the arithmetic average of fees and charges for all available Portfolio Companies. In some cases, the chosen Portfolio Company may have fees and charges that are lower than the arithmetic average for all available Portfolio Companies. For example, personalized illustrations might be based on the relatively low expenses of a money market fund.

As discussed above, proposed Form N–6 would require that hypothetical prospectus illustrations reflect the arithmetic average of fees and charges for all available Portfolio Companies. The proposal incorporates the Commission's view that it may be misleading to market a variable life insurance policy based on illustrations that reflect assumed rates of return and the fees and charges of a single Portfolio Company when those fees and charges are less than the arithmetic average of fees and charges for all available Portfolio Companies. For that reason, the Commission is concerned about the practice of using a single Portfolio Company's fees and charges in personalized illustrations. The Commission has directed its examinations staff to give heightened scrutiny to this issue in inspections of variable life insurance registrants. The Commission also has discussed this matter with the staff of the National Association of Securities Dealers Regulation, Inc., ("NASD Regulation") and requested that the NASD Regulation staff consider this issue in its review of variable life insurance sales literature. Comment is requested on whether Form N–6 should address the use of personalized illustrations that reflect the fees and charges of a single available Portfolio Company.

D. Part C—Other Information

Part C of proposed Form N–6 would contain information in support of a variable life insurance registration statement that is not included in the prospectus or the SAI. Part C of proposed Form N–6 is based on Part C of Form N–4 and Form N–1A, modified as appropriate to variable life insurance. Certain exhibits required under proposed Item 27; proposed Item 34, the fee representation; and an undertaking required by Form N–4 but not proposed Form N–6 merit separate attention.

1. Item 27—Exhibits

If illustrations are included in the registration statement as permitted by proposed Item 26, an opinion of an actuarial officer of the depositor would be required by Item 27(l). The actuarial opinion would be required to indicate that: (i) The values illustrated are consistent with the provisions of the policy and the depositor's administrative procedures; (ii) the rate structure of the policy, and the assumptions selected for the illustrations, do not result in an illustration of the relationship between premiums and benefits that is materially more favorable than for a substantial majority of other prospective policyholders; and (iii) the illustrations are based on a commonly used rating classification and premium amounts and ages appropriate for the markets in which the policy is sold.

Proposed Item 27(l) would require the opinion to indicate that the rate structure and selected assumptions do not, in fact, have certain results. As an alternative, the Commission considered whether the actuary should be required to opine only that the rate structure and the selected assumptions were not intended or designed to have certain results. The Commission rejected the "intent or design" test because it would permit illustrations that, in fact, distort the relationship between premiums and benefits for a policy. Comment is requested on the actuarial opinion requirement, including the "in fact" and "intent or design" tests and other tests that could be used. Commenters are requested to address the "substantial majority of other prospective policyholders" standard in the second prong of the opinion. Should this standard be stricter (*e.g.*, all policyholders) or less strict (*e.g.*, majority of policyholders)?

Proposed Item 27(m) would require registrants that include illustrations in their registration statements to provide one sample calculation for each item illustrated, showing how the illustrated values for the fifth policy year have been calculated. The calculation would be required to demonstrate how the annual investment returns of the sub-accounts were derived from the hypothetical gross rates of return, how charges against sub-account assets were deducted from the returns of the sub-accounts, and how the periodic deductions for policy charges were made. Finally, the exhibit would be required to describe how the calculation would differ for other years.

Consistent with the approach previously announced by the Commission staff in connection with Form N–4, proposed Form N–6 would not require submission of a financial data schedule meeting the requirements of rule 483 under the Securities Act.[80] In addition, the staff currently does not require financial data schedules in connection with filings on Form S–6 by

[79] Section 17(a) of the Securities Act [15 U.S.C. 77q(a)]; Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)] and Rule 10b–5 thereunder [17 CFR 240.10b–5]; Rule 156 under the Securities Act [17 CFR 230.156]; Section 34(b) of the Investment Company Act [15 U.S.C. 80a–33(b)]; Section 2(a)(10)(a) of the Securities Act [15 U.S.C. 77b(a)(10)(a)].

[80] See **Edgar News**, Third Quarter 1996, at 3.

separate accounts offering variable life insurance policies.

2. Item 34—Fee Representation

NSMIA amended Sections 26 and 27 of the Investment Company Act, replacing specific limits on the amount, type, and timing of charges that applied to variable insurance contracts with a requirement that aggregate charges be reasonable.[81] Section 26(e) of the Investment Company Act, added by NSMIA, requires that fees and charges deducted under variable insurance contracts, in the aggregate, be reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company. Section 26(e) also requires insurance companies to represent in variable insurance registration statements that the reasonableness standard of Section 26(e) is satisfied. Proposed Item 34 requests the representation required by Section 26(e).

3. Undertaking to Update Prospectus

Section 10(a)(3) of the Securities Act requires an issuer that is engaging in a continuous offering to update the information in its registration statement, so that the information is not more than 16 months old.[82] Form N–4 requires a separate account registered as a unit investment trust that offers variable annuity contracts to include in Part C of its registration statement an undertaking to maintain a current prospectus for so long as payments may be accepted under the contracts.[83] Proposed Form N–6 would not require a similar undertaking. This reflects the Commission's view that issuers of variable life insurance policies, like issuers of variable annuity contracts, are required by Section 10(a)(3) of the Securities Act to maintain a current prospectus for so long as payments may be accepted under the policies, regardless of whether new policies are being sold. The Commission believes that it is unnecessary to include in proposed Form N–6 a requirement for an undertaking similar to that in Form N–4, because this undertaking simply restates an issuer's obligation under the Securities Act.

E. Technical Rule Amendments

The Commission is proposing technical amendments to several rules under the Securities Act and Investment Company Act to accommodate proposed Form N–6. The Commission is proposing to amend rules 134b, 430, 430A, 495, 496, and 497 under the Securities Act and rules 8b–11 and 8b–12 under the Investment Company Act to add Form N–6 to the list of forms referenced in those rules.[84] The Commission also is proposing new rules prescribing the use of Form N–6 to register insurance company separate accounts that are registered as unit investment trusts and that offer variable life insurance policies under the Investment Company Act and to register their securities under the Securities Act.[85] Finally, the Commission proposes to amend Form N–8B–2 to clarify that Form N–8B–2 is not the proper form for Investment Company Act registration of insurance company separate accounts registered as unit investment trusts.[88]

F. Transition Period

If the Commission adopts proposed Form N–6, it would replace current Forms S–6 and N–8B–2 for registration of unit investment trust separate accounts funding variable life insurance policies. The Commission expects to provide for a transition period after the effective date of Form N–6 to give registrants sufficient time to update their registration statements or to prepare new registration statements on Form N–6. All new registration statements and post-effective amendments that are annual updates to effective registration statements filed 6 months after the effective date of Form N–6 would be required to comply with its requirements. The final compliance date for filing amendments to effective registration statements to conform with the Form N–6 requirements would be 18 months after the effective date of the form. At its option, a registrant could comply with the requirements of Form N–6 at any time after the effective date of the form. The Commission requests comment on the proposed transition period.

G. Form N–1

The Commission previously prescribed Form N–1 as the registration form to be used by open-end management investment companies that are separate accounts of insurance companies for registering under the Investment Company Act and for registering their securities under the Securities Act.[87] In 1985, Form N–1 was superseded by Form N–3 for open-end management investment companies that are separate accounts of insurance companies issuing variable annuity contracts.[88] Currently, Form N–1 would be used only by an open-end management investment company that is a separate account of an insurance company offering variable life insurance policies.[89] Today, virtually all separate accounts issuing variable life insurance policies are organized as unit investment trusts. For that reason, few, if any, registrants continue to use Form N–1.

The Commission requests comment on whether Form N–1 should be rescinded as obsolete and whether there is any continuing need for the form. Would any registrants, including any variable annuity or variable life registrants no longer offering contracts to new purchasers and using Form N–1, be affected by the rescission of Form N–1? If Form N–1 is rescinded, should the Commission prescribe another registration form for use by open-end management investment companies that are separate accounts of insurance companies issuing variable life insurance policies? If so, what form should be used for this purpose and what changes should be made to the suggested form to adapt it for this category of registrants?

III. General Request for Comments

The Commission requests that any interested persons submit comments on the proposed Form N–6, suggest changes (including changes to related provisions of rules and forms that the Commission is not proposing to amend), or submit comments on other matters that might affect the proposed form. Commenters suggesting alternative approaches are encouraged to submit proposed rule or form text. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 [5 U.S.C. 801 *et seq.*], the Commission also is requesting information regarding the

[81] See Senate Report, *supra* note 39, at 22; House Report, *supra* note 39, at 12, 17.

[82] 15 U.S.C. 77j(a)(3).

[83] Item 32(a) of Form N–4. See also N–4 Adopting Release, *supra* note 7, at 26155.

[84] 17 CFR 230.134b, 230.430, 230.430A, 230.495, 230.496, and 230.497; 17 CFR 270.8b–11 and 270.8b–12.

[85] Proposed 17 CFR 239.17c; Proposed 17 CFR 274.11d.

[88] See proposed amendments to Form N–8B–2 and 17 CFR 274.12 (prescribing Form N–8B–2). The Commission is not proposing to amend Form S–6 or 17 CFR 239.16 (prescribing Form S–6) because the form and the rule state that Form S–6 is to be used to register the securities of unit investment trusts registered on Form N–8B–2.

[87] 17 CFR 274.11; General Instruction A of Form N–1; Investment Company Act Release No. 14084 [49 FR 32058] (Aug. 7, 1984).

[88] 17 CFR 274.11b; N–4 Adopting Release, *supra* note 7, at 26156; N–4 Proposing Release, supra note 7, at 620.

[89] When Form N–3 was implemented, separate accounts funding variable annuity contracts were permitted to continue to use Form N–1 if they no longer offered the contracts to new purchasers. N–4 Adopting Release, *supra* note 7 , at 26156. The Commission is not aware of any such variable annuity registrants that continue to use Form N–1.

potential effect of proposed Form N–6 on the economy on an annual basis. Commenters should provide empirical data to support their views.

IV. Paperwork Reduction Act

Proposed Form N–6 contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("Paperwork Reduction Act") [44 U.S.C. 3501 *et seq.*], and the Commission has submitted the amendments to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is "Form N–6 Under the Investment Company Act of 1940 and the Securities Act of 1933, Registration Statement of Variable Life Insurance Separate Accounts Registered as Unit Investment Trusts."

A registration statement on proposed Form N–6 would be required to contain information the Commission has determined to be necessary or appropriate in the public interest or for the protection of investors. Forms S–6 and N–8B–2 were not designed for variable life insurance registrants and do not reflect fundamental improvements that the Commission has made to other investment company registration forms, including Forms N–1A and N–4, which facilitate clearer and more concise disclosure. If adopted, proposed Form N–6 would:

- Eliminate requirements in the current registration forms that are not relevant to variable life insurance and include items that are specifically addressed to variable life insurance;
- Streamline variable life prospectus disclosure by adopting a two-part format consisting of a simplified prospectus, designed to contain essential information, and an SAI, containing more extensive information that investors could obtain upon request; and
- Provide variable life insurance separate accounts a single, integrated form for Investment Company Act and Securities Act registration, eliminating unnecessary paperwork and duplicative reporting.[90]

For purposes of the Paperwork Reduction Act, the Commission has estimated the hour burden and the cost burden that proposed Form N–6 would impose on variable life insurance registrants. The hour burden is the number of hours of staff time a variable life insurance registrant will use annually to comply with the requirements of proposed Form N–6. The cost burden is the annual cost of services purchased to prepare and update proposed Form N–6, such as the cost of independent auditors and outside counsel. The cost burden does not include the wages, salaries, or fees paid for the hour burden. Each of the hour burden and the cost burden are calculated for both initial registration statements on proposed Form N–6 and post-effective amendments to the form.

The Commission estimates that there are approximately 200 separate accounts registered as unit investment trusts and offering variable life insurance policies that would file registration statements on proposed Form N–6. The Commission estimates that there will be as many as 50 initial registration statements on proposed Form N–6 filed annually. The Commission estimates, therefore, that approximately 250 registration statements (200 post-effective amendments plus 50 initial registration statements) will be filed on Form N–6 annually.

The Commission estimates that the hour burden for preparing and filing a post-effective amendment on proposed Form N–6 will be 100 hours. Thus, the total annual hour burden for preparing and filing post-effective amendments would be 20,000 hours (200 post-effective amendments annually times 100 hours per amendment). The Commission estimates that the hour burden for preparing and filing an initial registration statement on proposed Form N–6 will be 800 hours. Thus, the annual hour burden for preparing and filing initial registration statements would be 40,000 hours (50 initial registration statements annually times 800 hours per registration statement). The total annual hour burden for proposed Form N–6, therefore, is estimated to be 60,000 hours (20,000 hours for post-effective amendments plus 40,000 hours for initial registration statements).

The Commission estimates that the cost burden for preparing and filing a post-effective amendment on proposed Form N–6 will be $7,500. Thus, the total annual cost burden for preparing and filing post-effective amendments would be $1,500,000 (200 post-effective amendments annually times $7,500 per amendment). The Commission estimates that the cost burden for preparing and filing an initial registration statement on proposed Form N–6 will be $20,000. Thus, the annual cost burden for preparing and filing initial registration statements would be $1,000,000 (50 initial registration statements annually times $20,000 per registration statement). The total annual cost burden for proposed Form N–6, therefore, is estimated to be $2,500,000 ($1,500,000 for post-effective amendments plus $1,000,000 for initial registration statements).

The number of post-effective amendments is estimated based on the Commission's records and industry statistics. The number of initial registration statements is estimated based on the Commission's records for the past year. The hour and cost burdens are estimated on the basis of comparison of proposed Form N–6 with other forms that are used for registration under both the Investment Company Act and the Securities Act.

The hour and cost burdens would be offset by a decrease in the burdens attributable to Forms N–8B–2 and S–6 because separate accounts registering on Form N–6 would no longer be required to register on Forms N–8B–2 and S–6. The Commission expects that the aggregate burden imposed by Forms N–6, S–6, and N–8B–2 after Form N–6 is adopted will be no greater, and may be less, than the burden currently imposed by Forms S–6 and N–8B–2.

The information collection requirements that would be imposed by Form N–6 are mandatory. Responses to the collection of information will not be kept confidential. 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 control number.

Under 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. The Commission also requests comment on whether the burden imposed on registrants using proposed Form N–6 will be less than that currently imposed on these registrants by Forms S–6 and N–8B–2

Those who want to submit comments on the collection of information requirements should direct their comments to OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and also should send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange

[90] See *supra* Section I.

Commission, 450 5th Street, N.W., Washington, D.C. 20549–6009 with reference to File No. S7–9–98. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Cost/Benefit Analysis

The Commission believes that proposed Form N–6 would facilitate improved disclosure to investors; be simpler to use than the registration forms that it would replace, Forms S–6 and N–8B–2; and eliminate unnecessary paperwork and reporting. Specifically, proposed Form N–6, if adopted, would:

- Eliminate requirements in the current registration forms that are not relevant to variable life insurance and include items that are specifically addressed to variable life insurance products;
- Streamline variable life prospectus disclosure by adopting a two-part format consisting of a simplified prospectus, designed to contain essential information, and an SAI, containing more extensive information; and
- Provide an integrated form for Investment Company Act and Securities Act registration, eliminating unnecessary paperwork and duplicative reporting.[91]

The Commission believes that proposed Form N–6 would not impose greater costs on variable life insurance registrants than the forms that it would replace, Forms S–6 and N–8B–2. The Commission believes that proposed Form N–6 may impose lesser costs on variable life insurance registrants than Forms S–6 and N–8B–2. The Commission requests comment on this cost/benefit analysis. Commenters are requested to provide views and empirical data relating to any costs and benefits associated with the proposed form.

VI. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that proposed Form N–6 would not, if adopted, have a significant economic impact on a substantial number of small entities. Few, if any, small entities would be affected by Form N–6. The Chairman's certification is attached to this release as Appendix A. The Commission encourages written comment on the certification. Commenters are asked to describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

[91] See supra Section I.

VII. Statutory Authority

The amendments to the Commission's rules and forms are being proposed pursuant to sections 5, 7, 8, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77g, 77h, 77j, and 77s(a)] and sections 8, 22, 24(g), 26(e), 30, and 38 of the Investment Company Act [15 U.S.C. 80a-8, 80a-22, 80a-24(g), 80a-26(e), 80a-29, and 80a-37]. The authority citations for the amendments to the rules and forms precede the text of the amendments.

Text of Proposed Amendments

List of Subjects in 17 CFR Parts 230, 239, 270, and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission proposes to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

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

1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. Revise § 230.134b to read as follows:

§ 230.134b Statements of additional information.

For the purpose only of Section 5(b) of the Act (15 U.S.C. 77e(b)), the term "prospectus" as defined in Section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)) does not include a Statement of Additional Information filed as part of a registration statement on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter) transmitted prior to the effective date of the registration statement if it is accompanied or preceded by a preliminary prospectus meeting the requirements of § 230.430.

3. Amend § 230.430 to revise the introductory text of paragraph (b) to read as follows:

§ 230.430 Prospectus for use prior to effective date.

* * * * *

(b) A form of prospectus filed as part of a registration statement on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter) shall be deemed to meet the requirements of Section 10 of the Act (15 U.S.C. 77j) for the purpose of Section 5(b)(1) thereof (15 U.S.C. 77e(b)(1)) prior to the effective date of the registration statement, provided that:

* * * * *

4. Amend § 230.430A to revise paragraph (e) before the Note to read as follows:

§ 230.430A Prospectus in a registration statement at the time of effectiveness.

* * * * *

(e) In the case of a registration statement filed on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), the references to "form of prospectus" in paragraphs (a) and (b) of this section and the accompanying Note shall be deemed also to refer to the form of Statement of Additional Information filed as part of such a registration statement.

* * * * *

5. Amend § 230.495 to revise paragraphs (a), (c), and (d) to read as follows:

§ 230.495 Preparation of registration statement.

(a) A registration statement on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), shall consist of the facing sheet of the applicable form; a prospectus containing the information called for by such form; the information, list of exhibits, undertakings and signatures required to be set forth in such form; financial statements and schedules; exhibits; and other information or documents filed as part of the registration statement; and all documents or information incorporated

by reference in the foregoing (whether or not required to be filed).

* * * * *

(c) In the case of a registration statement filed on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), Parts A and B shall contain the information called for by each of the items of the applicable Part, except that unless otherwise specified, no reference need be made to inapplicable items, and negative answers to any item may be omitted. Copies of Parts A and B may be filed as part of the registration statement in lieu of furnishing the information in item-and-answer form. Wherever such copies are filed in lieu of information in item-and-answer form, the text of the items of the form is to be omitted from the registration statement, as well as from Parts A and B, except to the extent provided in paragraph (d) of the section.

(d) In the case of a registration statement filed on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), where any item of those forms calls for information not required to be included in Parts A and B (generally Part C of such form), the text of such items, including the numbers and captions thereof, together with the answers thereto, shall be filed with Parts A or B under cover of the facing sheet of the form as part of the registration statement. However, the text of such items may be omitted, provided the answers are so prepared as to indicate the coverage of the item without the necessity of reference to the text of the item. If any such item is inapplicable, or the answer thereto is in the negative, a statement to that effect shall be made. Any financial statements not required to be included in Parts A and B shall also be filed as part of the registration statement proper, unless incorporated by reference pursuant to § 230.411.

* * * * *

6. Revise § 230.496 to read as follows:

§ 230.496 Contents of prospectus and statement of additional information used after nine months.

In the case of a registration statement filed on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), there may be omitted from any prospectus or Statement of Additional Information used more than 9 months after the effective date of the registration statement any information previously required to be contained in the prospectus or the Statement of Additional Information insofar as later information covering the same subjects, including the latest available certified financial statements, as of a date not more than 16 months prior to the use of the prospectus or the Statement of Additional Information is contained therein.

7. Amend § 230.497 to revise paragraphs (c) and (e) to read as follows:

§ 230.497 Filing of investment company prospectuses—number of copies.

* * * * *

(c) For investment companies filing on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), within five days after the effective date of a registration statement or the commencement of a public offering after the effective date of a registration statement, whichever occurs later, ten copies of each form of prospectus and form of Statement of Additional Information used after the effective date in connection with such offering shall be filed with the Commission in the exact form in which it was used.

* * * * *

(e) For investment companies filing on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), after the effective date of a registration statement, no prospectus that purports to comply with Section 10 of the Act (15 U.S.C. 77j) or Statement of Additional Information that varies from any form of prospectus or form of Statement of Additional Information filed pursuant to paragraph (c) of this section shall be used until five copies thereof have been filed with, or mailed for filing to the Commission.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

8. The general authority citation for Part 239 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u-5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a-8, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

9. Add § 239.17c to read as follows:

§ 239.17c Form N–6, registration statement for separate accounts organized as unit investment trusts that offer variable life insurance policies.

Form N–6 shall be used for registration under the Securities Act of 1933 of securities of separate accounts that offer variable life insurance policies and that register under the Investment Company Act of 1940 as unit investment trusts. This form is also to be used for the registration statement of such separate accounts pursuant to section 8(b) of the Investment Company Act of 1940 (§ 274.11d of this chapter).

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

10. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a-1, *et seq.*, 80a-34(d), 80a-37, 80a-39 unless otherwise noted;

* * * * *

11. Amend § 270.8b-11 to revise paragraph (b) to read as follows:

§ 270.8b-11 Number of copies; signatures; binding.

* * * * *

(b) In the case of a registration statement filed on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and § 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), three complete copies of each part of the registration statement (including, if applicable, exhibits and all other papers and documents filed as part of Part C of the registration statement) shall be filed with the Commission.

* * * * *

12. Amend § 270.8b-12 to revise paragraph (b) to read as follows:

§ 270.8b-12 Requirements as to paper, printing and language.

* * * * *

(b) In the case of a registration statement filed on Form N–1A (§ 239.15A and § 274.11A of this chapter), Form N–2 (§ 239.14 and

§ 274.11a-1 of this chapter), Form N–3 (§ 239.17a and § 274.11b of this chapter), Form N–4 (§ 239.17b and § 274.11c of this chapter), or Form N–6 (§ 239.17c and § 274.11d of this chapter), Part C of the registration statement shall be filed on good quality, unglazed, white paper, no larger than 8 1/2 x 11 inches in size, insofar as practicable. The prospectus and, if applicable, the Statement of Additional Information, however, may be filed on smaller-sized paper provided that the size of paper used in each document is uniform.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

13. The general authority citation for Part 274 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, and 80a-29, unless otherwise noted.

14. Add § 274.11d to read as follows:

§ 274.11d Form N–6, registration statement of separate accounts organized as unit investment trusts that offer variable life insurance policies.

Form N–6 shall be used as the registration statement to be filed pursuant to section 8(b) of the Investment Company Act of 1940 by separate accounts that offer variable life insurance policies to register as unit investment trusts. This form shall also be used for registration under the Securities Act of 1933 of the securities of such separate accounts (§ 239.17c of this chapter).

15. Revise § 274.12 to read as follows:

§ 274.12 Form N–8B–2, registration statement of unit investment trusts that are currently issuing securities.

This form shall be used as the registration statement to be filed, pursuant to section 8(b) of the Investment Company Act of 1940, by unit investment trusts other than separate accounts that are currently issuing securities, including unit investment trusts that are issuers of periodic payment plan certificates.

16. Revise General Instruction 1 of Form N–8B–2 (referenced in § 274.12) to read as follows:

Note: The text of Form N–8B–2 does not and this amendment will not appear in the *Code of Federal Regulations.*

Form N–8B–2

* * * * *

General Instructions for Form N–8B–2.

* * * * *

1. Rule as to Use of Form

This form shall be used as the form for registration statements to be filed, pursuant to Section 8(b) of the Investment Company Act of 1940, by unit investment trusts other than separate accounts that are currently issuing securities, including unit investment trusts that are issuers of periodic payment plan certificates and unit investment trusts of which a management investment company is the sponsor or depositor.

* * * * *

17. Add Form N–6 (referenced in § 239.17c and § 274.11d) to read as follows:

Note: The text of Form N–6 will not appear in the *Code of Federal Regulations.*

OMB Approval
OMB Number:
Expires:
Estimated average burden hours per response

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form N–6

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933 [ ]
Pre-Effective Amendment No. _____ [ ]
Post-Effective Amendment No. _____ [ ]
and/or
REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940 [ ]
Amendment No. _____ [ ]
(Check appropriate box or boxes)

_____
(Exact Name of Registrant)

_____
(Name of Depositor)

_____
(Address of Depositor's Principal Executive Offices)

_____
(Zip Code)

Depositor's Telephone Number, including Area Code _____

_____
(Name and Address of Agent for Service)

Approximate Date of Proposed Public Offering _____

It is proposed that this filing will become effective (check appropriate box)

[ ] Immediately upon filing pursuant to paragraph (b)
[ ] On (date) pursuant to paragraph (b)
[ ] 60 days after filing pursuant to paragraph (a)(1)
[ ] On (date) pursuant to paragraph (a)(1) of Rule 485.

If appropriate, check the following box:

[ ] This post-effective amendment designates a new effective date for a previously filed post-effective amendment.

Omit from the facing sheet reference to the other Act if the registration statement or amendment is filed under only one of the Acts. Include the "Approximate Date of Proposed Public Offering" only where securities are being registered under the Securities Act of 1933.

Form N–6 is to be used by separate accounts that are unit investment trusts that offer variable life insurance contracts to register under the Investment Company Act of 1940 and to offer their securities under the Securities Act of 1933. The Commission has designed Form N–6 to provide investors with information that will assist them in making a decision about investing in a variable life insurance contract. The Commission also may use the information provided in Form N–6 in its regulatory, disclosure review, inspection, and policy making roles.

A Registrant is required to disclose the information specified by Form N–6, and the Commission will make this information public. A Registrant is not required to respond to the collection of information contained in Form N–6 unless the Form displays a currently valid Office of Management and Budget ("OMB") control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–6009. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

Contents of Form N–6

General Instructions

General Instructions

A. Definitions

References to sections and rules in this Form N–6 are to the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*] (the "Investment Company Act"), unless otherwise indicated. Terms used in this Form N–6 have the same meaning as in the Investment Company Act or the related rules, unless otherwise indicated. As used in this Form N–6, the terms set out below have the following meanings:

"Depositor" means the person primarily responsible for the organization of the Registrant and the person, other than the trustee or custodian, who has continuing functions or responsibilities for the administration of the affairs of the Registrant. "Depositor" includes the sponsoring insurance company that establishes and maintains the Registrant. If there is more than one Depositor, the information called for in this Form about the Depositor must be provided for each Depositor.

"Portfolio Company" means any company in which the Registrant invests.

"Registrant" means the separate account (as defined in section 2(a)(37) of the Investment Company Act [15 U.S.C. 80a-2(a)(37)]) that offers the Variable Life Insurance Contracts.

"SAI" means the Statement of Additional Information required by Part B of this Form.

"Securities Act" means the Securities Act of 1933 [15 U.S.C. 77a *et seq.*].

"Securities Exchange Act" means the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*].

"Variable Life Insurance Contract" or "Contract" means a life insurance contract that provides for death benefits and cash values that may vary with the investment experience of any separate account. Unless the context otherwise requires, "Variable Life Insurance Contract" or "Contract" refers to the Variable Life Insurance Contracts being offered pursuant to the registration statement prepared on this Form.

B. Filing and Use of Form N–6

1. What is Form N–6 Used for?

Form N–6 is used by all separate accounts that are registered under the Investment Company Act as unit investment trusts and offering Variable Life Insurance Contracts to file:

(a) An initial registration statement under the Investment Company Act and amendments to the registration statement;
(b) An initial registration statement under the Securities Act and amendments to the registration statement, including amendments required by section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)]; or
(c) Any combination of the filings in paragraph (a) or (b).

2. What is Included in the Registration Statement?

(a) For registration statements or amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act, include the facing sheet of the Form, Parts A, B, and C, and the required signatures.
(b) For registration statements or amendments filed only under the Investment Company Act, include the facing sheet of the Form, responses to all Items of Parts A (except Items 1, 2, 3, and 14), B, and C (except Items 27 (c), (k), (l), (n), and (o)), and the required signatures.

3. What Are the Fees for Form N–6?

No registration fees are required with the filing of Form N–6 to register as an investment company under the Investment Company Act or to register securities under the Securities Act. If Form N–6 is filed to register securities under the Securities Act and securities are sold to the public, registration fees must be paid on an ongoing basis after the end of the Registrant's fiscal year. *See* section 24(f) [15 U.S.C. 80a–24f–2] and related rule 24f–2 [17 CFR 270.24f–2].

4. What Rules Apply to the Filing of a Registration Statement on Form N–6?

(a) For registration statements and amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act, the general rules regarding the filing of registration statements in Regulation C under the Securities Act [17 CFR 230.400–230.497] apply to the filing of Form N–6. Specific requirements concerning investment companies appear in rules 480–485 and 495–497 of Regulation C.
(b) For registration statements and amendments filed only under the Investment Company Act, the general provisions in rules 8b–1–8b–32 [17 CFR 270.8b–1–270.8b–32] apply to the filing of Form N–6.
(c) The plain English requirements of rule 421 under the Securities Act [17 CFR 230.421] apply to prospectus disclosure in Part A of Form N–6.
(d) Regulation S-T [17 CFR 232.10–232.903] applies to all filings on the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR").

C. Preparation of the Registration Statement

1. Administration of the Form N–6 Requirements

(a) The requirements of Form N–6 are intended to promote effective communication between the Registrant and prospective investors. A Registrant's prospectus should clearly disclose the fundamental features and risks of the Variable Life Insurance Contracts, using concise, straightforward, and easy to understand language. A Registrant should use document design techniques that promote effective communication.
(b) The prospectus disclosure requirements in Form N–6 are intended to elicit information for an average or typical investor who may not be sophisticated in legal or financial matters. The prospectus should help investors to evaluate the risks of an investment and to decide whether to invest in a Variable Life Insurance Contract by providing a balanced disclosure of positive and negative factors. Disclosure in the prospectus should be designed to assist an investor in comparing and contrasting a Variable Life Insurance Contract with other Contracts.
(c) Responses to the Items in Form N–6 should be as simple and direct as reasonably possible and should include only as much information as is necessary to enable an average or typical investor to understand the particular characteristics of the Variable Life Insurance Contracts. The prospectus should avoid including lengthy legal and technical discussions and simply restating legal or regulatory requirements to which Contracts generally are subject. Brevity is especially important in describing the practices or aspects of the Registrant's operations that do not differ materially from those of other separate accounts. Avoid excessive detail, technical or legal terminology, and complex language. Also avoid lengthy sentences and paragraphs that may make the prospectus difficult for many investors to understand and detract from its usefulness.
(d) The requirements for prospectuses included in Form N–6 will be administered by the Commission in a way that will allow variances in disclosure or presentation if appropriate for the circumstances involved while remaining consistent with the objectives of Form N–6.

2. Form N–6 is Divided Into Three Parts:

(a) *Part A.* Part A includes the information required in a Registrant's prospectus under section 10(a) of the Securities Act. The purpose of the prospectus is to provide essential information about the Registrant and the Variable Life Insurance Contracts in a way that will help investors to make informed decisions about whether to purchase the securities described in the prospectus. In responding to the Items in Part A, avoid cross-references to the SAI. Cross-references within the prospectus are most useful when their use assists investors in understanding the information presented and does not add complexity to the prospectus.
(b) *Part B.* Part B includes the information required in a Registrant's SAI. The purpose of the SAI is to provide additional information about the Registrant and the Variable Life Insurance Contracts that the Commission has concluded is not necessary or appropriate in the public interest or for the protection of investors to be in the prospectus, but that some investors may find useful. Part B affords the Registrant an opportunity to expand discussions of the matters described in the prospectus by including additional information that the Registrant believes may be of interest to some investors. The Registrant should not duplicate in the SAI information that is provided in the prospectus, unless necessary to make the SAI comprehensible as a document independent of the prospectus.
(c) *Part C.* Part C includes other information required in a Registrant's registration statement.

3. Additional Matters

(a) *Organization of Information.* Organize the information in the prospectus and SAI to make it easy for investors to understand. Disclose the information required by Items 2 and 3 (the Risk/Benefit Summary) in numerical order at the front of the prospectus. Do not precede these Items with any other Item except the Cover Page (Item 1) or a table of contents meeting the requirements of rule 481(c) under the Securities Act [17 CFR 230.481(c)].
(b) *Other Information.* A Registrant may include, except in the Risk/Benefit Summary, information in the prospectus or the SAI that is not otherwise required. For example, a Registrant may include charts, graphs, or tables so long as the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of the information that is required to be included. Specifically, Registrants are free to include in the prospectus financial statements required to be in the SAI, and may include in the SAI financial statements that may be placed in Part C. The Risk/Benefit Summary may not include disclosure other than that required or permitted by Items 2 and 3.
(c) *Use of Form N–6 to Register Multiple Contracts or Contracts Sold in Both the Group and Individual Markets.*

(i) When disclosure is provided in a single prospectus for more than one Variable Life Insurance Contract, or for a Contract that is sold in both the group and individual markets, the disclosure should be presented in a format designed to communicate the information effectively. Registrants may order or group the response to any Item in any manner that organizes the information into readable and comprehensible segments and is consistent with the intent of the prospectus to provide clear and concise information about the Registrants or Variable Life Insurance Contracts. Registrants are encouraged to use, as appropriate, tables, side-by-side comparisons, captions, bullet points, or other organizational techniques when presenting disclosure for multiple Variable Life Insurance Contracts or for Contracts sold in both the group and individual markets.

(ii) Paragraph (a) requires Registrants to disclose the information required by Items 2 and 3 in numerical order at the front of the prospectus and not to precede the Items with other information. As a general matter, Registrants providing disclosure in a single prospectus for more than one Variable Life Insurance Contract, or for Contracts sold in both the group and individual markets, may depart from the requirement of paragraph (a) as necessary to present the required information clearly and effectively (although the order of information required by each Item must remain the same). For example, the prospectus may present all of the Item 2 information for several Variable Life Insurance Contracts followed by all of the Item 3 information for the Contracts, or may present Items 2 and 3 for each of several Contracts sequentially. Other presentations also would be acceptable if they are consistent with the Form's intent to disclose the information required by Items 2 and 3 in a standard order at the beginning of the prospectus.

(d) *Dates.* Rule 423 under the Securities Act [17 CFR 230.423] applies to the dates of the prospectus and the SAI. The SAI should be made available at the same time that the prospectus becomes available for purposes of rules 430 and 460 under the Securities Act [17 CFR 230.430 and 230.460].

(e) *Sales Literature.* A Registrant may include sales literature in the prospectus so long as the amount of this information does not add substantial length to the prospectus and its placement does not obscure essential disclosure.

D. Incorporation by Reference

1. Specific Rules for Incorporation by Reference in Form N–6

(a) A Registrant may not incorporate by reference into a prospectus information that Part A of this Form requires to be included in a prospectus, except as specifically permitted by Part A of the Form.

(b) A Registrant may incorporate by reference any or all of the SAI into the prospectus (but not to provide any information required by Part A to be included in the prospectus) without delivering the SAI with the prospectus.

(c) A Registrant may incorporate by reference into the SAI or its response to Part C information that Parts B and C require to be included in the Registrant's registration statement.

2. General Requirements

All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: rule 10(d) of Regulation S–K under the Securities Act [17 CFR 229.10(d)] (general rules on incorporation by reference, which, among other things, prohibit, unless specifically required by this Form, incorporating by reference a document that includes incorporation by reference to another document, and limits incorporation to documents filed within the last 5 years, with certain exceptions); rule 411 under the Securities Act [17 CFR 230.411] (general rules on incorporation by reference in a prospectus); rule 303 of Regulation S–T [17 CFR 232.303] (specific requirements for electronically filed documents); and rules 0–4, 8b–23, and 8b–32 [17 CFR 270.0–4, 270.8b–23, and 270.8b–32] (additional rules on incorporation by reference for investment companies).

Part A: Information Required in a Prospectus

Item 1. Front and Back Cover Pages

(a) *Front Cover Page.* Include the following information, in plain English under rule 421(d) under the Securities Act [17 CFR 230.421(d)], on the outside front cover page of the prospectus:

(1) The Registrant's name.

(2) The Depositor's name.

(3) The types of Variable Life Insurance Contracts offered by the prospectus (*e.g.*, group, individual, scheduled premium, flexible premium).

(4) The date of the prospectus.

(5) The statement required by rule 481(b)(1) under the Securities Act.

Instruction. A Registrant may include on the front cover page any additional information, subject to the requirement set out in General Instruction C.3.(b).

(b) *Back Cover Page.* Include the following information, in plain English under rule 421(d) under the Securities Act [17 CFR 230.421(d)], on the outside back cover page of the prospectus:

(1) A statement that the SAI includes additional information about the Registrant. Explain that the SAI is available, without charge, upon request, and explain how contractowners may make inquiries about their Contracts. Provide a toll-free (or collect) telephone number for investors to call: to request the SAI; to request other information about the Contracts; and to make contractowner inquiries.

Instructions.

1. A Registrant may indicate, if applicable, that the SAI and other information are available on its Internet site and/or by E-mail request.

2. A Registrant may indicate, if applicable, that the SAI and other information are available from an insurance agent or financial intermediary (such as a broker-dealer or bank) through which the Contracts may be purchased or sold.

3. When a Registrant (or an insurance agent or financial intermediary through which Contracts may be purchased or sold) receives a request for the SAI, the Registrant (or insurance agent or financial intermediary) must send the SAI within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

(2) A statement whether and from where information is incorporated by reference into the prospectus as permitted by General Instruction D. Unless the information is delivered with the prospectus, explain that the Registrant will provide the information without charge, upon request (referring to the telephone number provided in response to paragraph (b)(1)).

Instruction. The Registrant may combine the information about incorporation by reference with the statements required under paragraph (b)(1).

(3) A statement that information about the Registrant (including the SAI) can be reviewed and copied at the Commission's Public Reference Room in Washington, D.C. Also state that information on the operation of the public reference room may be obtained by calling the Commission at 1–800–SEC–0330. State that reports and other information about the Registrant are available on the Commission's Internet site at http://www.sec.gov and that copies of this information may be obtained, upon payment of a duplicating fee, by writing the Public Reference Section of the Commission, Washington, D.C. 20549–6009.

(4) The Registrant's Investment Company Act file number on the bottom of the back cover page in type size smaller than that generally used in the prospectus (*e.g.*, 8-point modern type).

Item 2. Risk/Benefit Summary: Benefits and Risks

Include the following information, in plain English under rule 421(d) under the Securities Act [17 CFR 230.421(d)], in the order indicated:

(a) *Contract Benefits.* Summarize the benefits available under the Contract, including death benefits, withdrawal and surrender benefits, and loans.

(b) *Use of Premiums.* Disclose that part of the premium is allocated to insurance coverage, part of the premium is invested, and part of the premium payment is used to pay sales loads and other charges.

(c) *Contract Risks.* Summarize the principal risks of purchasing a Contract, including the risks of poor investment performance, that Contracts are unsuitable as short-term savings vehicles, the risks of Contract lapse, limitations on access to cash value through withdrawals, and the possibility of adverse tax consequences.

Item 3. Risk/Benefit Summary: Fee Table

Include the following information, in plain English under rule 421(d) under the Securities Act [17 CFR 230.421(d)], after Item 2:

The following tables describe the fees and expenses that you will pay when buying, owning, and surrendering the Policy. The first table describes the fees and expenses that you will pay at the time that you buy the Policy, surrender the Policy, or transfer cash value between investment options.

Transaction fees

Charge	When charge is deducted	Amount deducted	Policies from which charge is deducted
Maximum Sales Charge Imposed on Premiums (Load).			
Premium Taxes			
Maximum Deferred Sales Charge (Load).			
Other Surrender Fees			
Transfer Fees			

The next table describes the fees and expenses that you will pay periodically during the time that you own the Policy, not including [Portfolio Company] fees and expenses.

Annual charges other than [portfolio company] operating expenses

Charge	When charge is deducted	Amount deducted	Policies from which charge is deducted
Cost of Insurance			
Annual Maintenance Fee			
Mortality and Expense Risk Fees			
Administrative Fees			

The next table describes the [Portfolio Company] fees and expenses that you will pay periodically during the time that you own the Policy. The table shows the minimum and maximum fees and expenses charged by any of the [Portfolio Companies]. More detail concerning each [Portfolio Company's] fees and expenses is contained in the prospectus for each [Portfolio Company].

Annual [portfolio company] operating expenses

Charge	When charge is deducted	Amount deducted	Policies from which charge is deducted
Management Fees			
Distribution [and/or Service] (12b-1) Fees.			
Other Expenses			
Total [Portfolio Company] Annual Expenses.			

Instructions.

1. *General.*

(a) Include the narrative explanations in the order indicated. A Registrant may modify a narrative explanation if the explanation contains comparable information to that shown.

(b) A Registrant may omit captions if the Registrant does not charge the fees or expenses covered by the captions.

(c) If a Registrant uses one prospectus to offer a Contract in both the group and individual variable life markets, the Registrant may include narrative disclosure in a footnote or following the tables identifying markets where certain fees are either inapplicable or waived or lower fees are charged. In the alternative, a Registrant may present the information for group and individual contracts in another format consistent with General Instruction C.3.(c).

(d) The "When Charge is Deducted" column must be used to show when a charge is deducted, *e.g.*, upon purchase, surrender or partial surrender, policy anniversary, monthly, or daily.

(e) Under the "Amount Deducted" column, the Registrant must disclose the maximum charge unless a specific instruction directs otherwise. The Registrant should include the basis on which the charge is imposed (*e.g.*, 0.95% of average daily net assets, $5 per exchange, $5 per thousand dollars of face amount). In addition, the Registrant may include in a footnote to the table a tabular, narrative, or other presentation providing further detail regarding variations in the charge. For example, if deferred sales charges decline over time, the Registrant may include in a footnote a presentation regarding the scheduled reductions in the deferred sales charges. Charges assessed on the basis of the face amount should be disclosed as the charge per $1000 of face amount. Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

(f) If a charge is deducted from all Contracts, the word "All" should be placed in the "Policies from Which Charge is Deducted" column. Otherwise, Registrant should specify the Contracts from which the charge is deducted.

2. *Transaction Fees.*

(a) "Other Surrender Fees" include any fees charged for surrender or partial surrender, other than sales charges imposed upon surrender or partial surrender.

(b) "Transfer Fees" include any fees charged for any transfer or exchange of cash value from the Registrant to another investment company, from one sub-account of the Registrant to another sub-account or the Depositor's general account, or from the Depositor's general account to the Registrant.

(c) If the Registrant (or any other party pursuant to an agreement with the Registrant) charges any other transaction fee, add another caption describing it and complete the other columns of the table for that fee.

3. *Annual Charges Other Than [Portfolio Company] Operating Expenses.*

(a) The Registrant may substitute the term used in the prospectus to refer to the Portfolio Companies for the bracketed portion of the caption provided.

(b) For "Cost of Insurance," the Registrant should disclose the minimum and maximum charges that may be imposed for a Contract.

(c) "[Annual] Maintenance Fee" includes any Contract, account, or similar fee imposed on any recurring basis. Any non-recurring Contract, account, or similar fee should be included in the "Transaction Fees" table.

(d) "Mortality and Expense Risk Fees" may be listed separately on two lines in the table.

(e) If the Registrant (or any other party pursuant to an agreement with the Registrant) imposes any other recurring charge other than annual Portfolio Company Operating Expenses, add another caption describing it and complete the other columns of the table for that charge.

4. *Annual [Portfolio Company] Operating Expenses.*

(a) The Registrant may substitute the term used in the prospectus to refer to the Portfolio Companies for the bracketed portion of the caption provided.

(b) If a Registrant has multiple sub-accounts, it should disclose the minimum and maximum expenses of any Portfolio Companies for each line item. For example, if a Registrant has five sub-accounts with management fees of 0.50%, 0.70%, 1.00%, 1.10%, and 1.25%, respectively, it should disclose that management fees range from 0.50% to 1.25%. The minimum and maximum amounts disclosed for "Total [Portfolio Company] Annual Expenses" should be the minimum and maximum "Total [Portfolio Company] Annual Expenses" for any Portfolio Company, and not the sum of the minimum and maximum amounts disclosed for the individual line items. For example, assume a Registrant has three sub-accounts. Sub-account 1 has management fees of 0.50%, 12b-1 fees of 0.25%, and other expenses of 0.30%; sub-account 2 has management fees of 0.90%, 12b-1 fees of 0.00%, and other expenses of 0.25%; and sub-account 3 has management fees of 1.00%, 12b-1 fees of 0.00%, and other expenses of 0.25%. The minimum and maximum amounts to be disclosed in the table are: management fees—0.50%-1.00%; 12b-1 fees: 0.00%-0.25%; other expenses—0.25%-0.30%; total [Portfolio Company] annual expenses—1.05%-1.25%. The total [Portfolio Company] annual expenses are the expenses of sub-accounts 1 and 3, respectively, not the sum of the minimum and maximum amounts disclosed for the individual line items, which would be 0.75%-1.55%.

(c) "Management Fees" include investment advisory fees (including any fees based on a Portfolio Company's performance), any other management fees payable to a Portfolio Company's investment adviser or its affiliates, and administrative fees payable to a Portfolio Company's investment adviser or its affiliates that are not included as "Other Expenses."

(d) "Distribution [and/or Service] (12b-1) Fees" include all distribution or other expenses incurred during the most recent fiscal year under a plan adopted pursuant to rule 12b-1 [17 CFR 270.12b-1]. Under an appropriate caption or subcaption of "Other Expenses," disclose the amount of any distribution or similar expenses deducted from a Portfolio Company's assets other than pursuant to a rule 12b-1 plan.

(e)(i) "Other Expenses" include all expenses not otherwise disclosed in the table that are deducted from a Portfolio Company's assets. The amount of expenses deducted from a Portfolio Company's assets are the amounts shown as expenses in the Portfolio Company's statement of operations (including increases resulting from complying with paragraph 2(g) of rule 6–07 of Regulation S–X [17 CFR 210.6–07]).

(ii) "Other Expenses" do not include extraordinary expenses as determined under generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred by any Portfolio Company that would, if included, materially affect the minimum or maximum amounts shown in the table, disclose in a footnote to the table what the minimum and maximum "Other Expenses" would have been had the extraordinary expenses been included.

(f)(i) Base the percentages of "Annual [Portfolio Company] Operating Expenses" on amounts incurred during the most recent fiscal year, but include in expenses amounts that would have been incurred absent expense reimbursement or fee waiver arrangements. If a Portfolio Company has a fiscal year different from that of the Registrant, base the expenses on those incurred during either the period that corresponds to the fiscal year of the Registrant, or the most recently completed fiscal year of the Portfolio Company. If the Registrant or a Portfolio Company has changed its fiscal year and, as a result, the most recent fiscal year is less than three months, use the fiscal year prior to the most recent fiscal year as the basis for determining "Annual [Portfolio Company] Operating Expenses."

(ii) If there have been any changes in "Annual [Portfolio Company] Operating Expenses" that would materially affect the information disclosed in the table:

(A) Restate the expense information using the current fees as if they had been in effect during the previous fiscal year; and

(B) In a footnote to the table, disclose that the expense information in the table has been restated to reflect current fees.

(iii) A change in "Annual [Portfolio Company] Operating Expenses" means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. A change in "Annual [Portfolio Company] Operating Expenses" does not include a decrease in operating expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in a Portfolio Company's assets.

(g) A Registrant may reflect minimum and maximum actual [Portfolio Company] operating expenses that include expense reimbursement or fee waiver arrangements in a footnote to the table. If the Registrant provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of a Portfolio Company.

5. *New Registrants.* For purposes of this Item, a "New Registrant" is a Registrant (or sub-account of the Registrant) that does not include in Form N–6 financial statements reporting operating results or that includes financial statements for the Registrant's (or sub-account's) initial fiscal year reporting operating results for a period of 6 months or less. The following Instructions apply to New Registrants.

(a) Base the percentages in "Annual [Portfolio Company] Operating Expenses" on payments that will be made, but include in expenses amounts that will be incurred without reduction for expense reimbursement or fee waiver arrangements, estimating amounts of "Other Expenses." Disclose in a footnote to the table that "Other Expenses" are based on estimated amounts for the current fiscal year.

(b) A New Registrant may reflect in a footnote to the table expense reimbursement or fee waiver arrangements that are expected to reduce any minimum or maximum [Portfolio Company] operating expense or the estimate of minimum or maximum "Other Expenses" (regardless of whether the arrangement has been guaranteed). If the New Registrant provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of a Portfolio Company.

Item 4. General Description of Registrant, Depositor, and Portfolio Companies

Concisely discuss the organization and operation or proposed operation of the Registrant. Include the information specified below.

(a) *Depositor.* Provide the name and address of the Depositor.

(b) *Registrant.* Briefly describe the Registrant. Include a statement indicating that:

(1) income. gains. and losses credited to. or charged against. the Registrant reflect the Registrant's own investment experience and not the investment experience of the Depositor's other assets:

(2) the assets of the Registrant may not be used to pay any liabilities of the Depositor other than those arising from the Contracts: and

(3) the Depositor is obligated to pay all amounts promised to Contractowners under the Contracts.

(c) *Portfolio Companies.* Briefly describe the Registrant's sub-accounts and each Portfolio Company. For each Portfolio Company. include:

(1) its name:

(2) its type (e.g.. money market fund. bond fund. balanced fund. etc.) or a brief statement concerning its investment objectives: and

(3) its investment adviser and any sub-investment adviser.

Instructions.

1. Do not describe sub-accounts that fund obligations of the Depositor under contracts that are not offered by this prospectus.

2. Registrants are not required to include detailed information about Portfolio Companies in the prospectus. If a Portfolio Company's name describes its type. a Registrant need not separately provide the Portfolio Company's type or a statement concerning its investment objectives.

(d) *Portfolio Company Prospectus.* State conspicuously how investors may obtain a prospectus and. if available. a fund profile. containing more complete information on each Portfolio Company.

(e) *Voting.* Concisely discuss the rights of Contractowners to instruct the Depositor on the voting of shares of the Portfolio Companies. including the manner in which votes will be allocated.

Item 5. Charges

(a) *Description.* Briefly describe all charges deducted from premiums. cash value. assets of the Registrant. or any other source (e.g., sales loads. premium and other taxes. administrative and transaction charges. risk charges. contract loan charges. cost of insurance. and rider charges). Indicate whether each charge will be deducted from premium payments. cash value. the Registrant's assets. the proceeds of withdrawals or surrenders. or some other source. When possible. specify the amount of any charge as a percentage or dollar figure (e.g.. 0.95% of average daily net assets. $5 per exchange. $5 per thousand dollars of face amount). For recurring charges. specify the frequency of the deduction (e.g.. daily. monthly. annually). Identify the person who receives the amount deducted. briefly explain what is provided in consideration for each charge. and explain the extent to which the charge can be modified.

Instructions.

1. Describe the sales loads applicable to the Contract and how sales loads are charged and calculated. including the factors affecting the computation of the amount of the sales load. If the Contract has a front-end sales load. describe the sales load as a percentage of the applicable measure of premium payments (e.g.. actual premiums paid. target or guideline premiums). For Contracts with a deferred sales load. describe the sales load as a percentage of the applicable measure of premium payments (or other basis) that the deferred sales load may represent. Percentages should be shown in a table. Identify any events on which a deferred sales load is deducted (e.g.. surrender. partial surrender. increase or decrease in face amount). The description of any deferred sales load should include how the deduction will be allocated among sub-accounts of the Registrant and when. if ever. the sales load will be waived (e.g., if the Contract provides a free withdrawal amount).

2. Identify the factors upon which the cost of insurance charge will be based. including the insurer's amount at risk and the expected longevity of the insureds. Identify the factors reflected in the rate scale. and specify whether the mortality charges guaranteed in the contracts differ from the current charges. Identify the factors that affect the amount at risk. including investment performance. payment of premiums. and charges. If the Depositor intends to use simplified underwriting or other underwriting methods that would cause healthy individuals to pay higher cost of insurance charges than they would pay if the insurance company used conventional underwriting methods, state that the cost of insurance charges are higher for healthy individuals when this method of underwriting is used.

3. If the Contract's charge for premium or other taxes varies according to jurisdiction. identification of the range of current premium or other taxes is sufficient.

4. Identify charges that may be different in amount or method of computation when imposed in connection with. or subsequent to. increases in face amount of a Contract and briefly describe the differences.

(b) *Portfolio Company Charges.* State that charges are deducted from and expenses paid out of the assets of the Portfolio Companies that are described in the prospectuses for those companies.

(c) *Incidental Insurance Charges.* If incidental insurance benefits (as defined in Rules 6e-2 and 6e-3(T) [17 CFR 270.6e-2. 17 CFR 270.6e-3(T)]) are offered along with the Contract. state that charges also will be made for those benefits.

(d) *Operating and Organizational Expenses.* Describe the type of operating expenses for which the Registrant is responsible. If organizational expenses of the Registrant are to be paid out of its assets. explain how the expenses will be amortized and identify the period over which the amortization will occur.

Item 6. General Description of Contracts

(a) *Contract Rights.* Identify the person or persons (e.g.. the Contract owner. insured. or beneficiary) who have material rights under the Contracts. and the nature of those rights.

(b) *Contract Limitations.* Briefly describe any provisions for and limitations on:

(1) allocation of premiums among sub-accounts of the Registrant:

(2) transfer of Contract values between sub-accounts of the Registrant: and

(3) conversion or exchange of Contracts for another contract. including a fixed or variable annuity or life insurance contract.

Instruction. In discussing conversion or exchange of Contracts, the Registrant should include any time limits on conversion or exchange. the name of the company issuing the other contract and whether that company is affiliated with the issuer of the Contract. and how the cash value of the Contract will be affected by the conversion or exchange.

(c) *Contract or Registrant Changes.* Briefly describe the changes that can be made in the Contracts or the operations of the Registrant by the Registrant or the Depositor. including:

(1) why a change may be made (e.g.. changes in applicable law or interpretations of law):

(2) who. if anyone. must approve any change (e.g.. the Contract owner or the Commission); and

(3) who. if anyone. must be notified of any change.

Instruction. Describe only those changes that would be material to a purchaser of the Contracts. such as a reservation of the right to deregister the Registrant under the Investment Company Act. Do not describe possible non-material changes. such as changing the time of day at which Contract values are determined.

(d) *Other Benefits.* Identify any other material incidental benefits in the Contracts.

(e) *Class of Purchasers.* Disclose any limitations on the class or classes of purchasers to whom the Contracts are being offered.

Item 7. Premiums

(a) *Purchase Procedures.* Describe the provisions of the Contract that relate to premiums and the procedures for purchasing a Contract, including:

(1) the minimum initial and subsequent premiums required and any limitations on the amount and the frequency of premiums that will be accepted. If there are separate limits for each sub-account, state these limits;

(2) whether required premiums, if any, are payable for the life of the Contract or some other term;

(3) whether payment of certain levels of premiums will guarantee that the Contract will not lapse regardless of the Contract's cash value;

(4) if applicable, under what circumstances premiums may be required in order to avoid lapse and how the amount of the additional premiums will be determined;

(5) if applicable, under what circumstances nonpayment of a required premium will not cause the Contract to lapse;

(6) if applicable, under what circumstances premiums in addition to the required premiums will be permitted; and

(7) if applicable, whether the level of the Contract's required premiums may change and, if so, how the amount of the change will be determined.

(b) *Premium Amount.* Briefly describe the factors that determine the amount of any required premiums (*e.g.*, face amount, death benefit option, and charges and expenses).

(c) *Premium Payment Plans.* Identify the premium payment plans available. Include the available payment frequencies, payment facilities such as employee payroll deduction plans and preauthorized checking arrangements, and any special billing arrangements. Indicate whether the premium payment plan or schedule may be changed.

(d) *Premium Due Dates.* Briefly explain the provisions of the Contract that relate to premium due dates and the operation of any grace period, including the effect of the insured's death during the grace period.

(e) *Automatic Premium Loans.* If applicable, briefly describe the circumstances under which required premiums may be paid by means of an automatic premium loan.

(f) *Sub-Account Valuation.* Describe the procedures for valuing sub-account assets, including:

(1) an explanation of when the required premiums and additional premiums are credited to the Contract's cash value in the sub-accounts, and the basis (*e.g.*, accumulation unit value) on which premiums are credited;

(2) an explanation, to the extent applicable, that premiums are credited to the Contract's cash value on the basis of the sub-account valuation next determined after receipt of a premium;

Instruction. If, in any case, a delay occurs between the receipt of premiums and the crediting of premiums to the sub-accounts (*e.g.*, a delay during the "free-look" period), describe where the premiums are held in the interim.

(3) an explanation of when valuations of the assets of the sub-accounts are made; and

(4) a statement identifying in a general manner any national holidays when sub-account assets will not be valued and specifying any additional local or regional holidays when sub-account assets will not be valued.

Instruction. In responding to this paragraph, a Registrant may use a list of specific days or any other means that effectively communicates the information (*e.g.*, explaining that sub-account assets will not be valued on the days on which the New York Stock Exchange is closed for trading).

Item 8. Death Benefits and Contract Values

(a) *Death Benefits.* Briefly describe the death benefits available under the Contract.

Instruction. Include:

(i) when insurance coverage is effective;

(ii) when the death benefit is calculated and payable;

(iii) how the death benefit is calculated;

(iv) who has the right to choose the form of benefit and the procedure for choosing the form of benefit, including when the choice is made and whether the choice is revocable;

(v) the forms the benefit may take and the form of benefit that will be provided if a particular form has not been elected; and

(vi) whether there is a minimum death benefit guarantee associated with the Contract.

Also describe if and how a Contract owner may increase or decrease the face amount, including the minimum and the maximum amounts, any requirement of additional evidence of insurability, and whether charges, including sales load, are affected.

(b) *Charges and Contract Values.* Explain how the investment performance of the Portfolio Companies, expenses, and deduction of charges affect Contract values and death benefits.

Item 9. Surrenders, Partial Surrenders, and Partial Withdrawals

(a) *Surrender.* Briefly describe how a Contract owner can surrender a Contract, including any limits on the ability to surrender, how the proceeds are calculated, and when they are payable.

(b) *Partial Surrender and Withdrawal.* Indicate generally whether and under what circumstances partial surrenders and partial withdrawals are available under a Contract, including the minimum and maximum amounts that may be surrendered or withdrawn, any limits on their availability, how the proceeds are calculated, and when the proceeds are payable.

(c) *Effect of Partial Surrender and Withdrawal.* Briefly describe whether partial surrenders or partial withdrawals will affect a Contract's cash value or death benefit and whether any charge(s) will apply.

(d) *Sub-Account Allocation.* Describe how partial surrenders and partial withdrawals will be allocated among the sub-accounts.

Instruction. The Registrant should generally describe the terms and conditions that apply to these transactions. Technical information regarding the determination of amounts available to be surrendered or withdrawn should be included in the SAI.

(e) *Revocation Rights.* Briefly describe any revocation rights (*e.g.*, "free-look" provisions), including a description of how the amount refunded is determined, the method for crediting earnings to premiums during the free-look period, and whether investment options are limited during the free look period.

Item 10. Loans

Briefly describe the loan provisions of the Contract, including any of the following that are applicable.

(a) *Availability of Loans.* A brief statement that a portion of the Contract's cash surrender value may be borrowed.

(b) *Limitations.* Any limits on availability of loans (*e.g.*, a prohibition on loans during the first contract year).

(c) *Interest.* A statement of the amount of interest charged on the loan and the amount of interest credited to the Contract in connection with the loaned amount.

(d) *Effect on Cash Value and Death Benefit.* A brief explanation that amounts borrowed under a Contract do not participate in a Registrant's investment experience and that loans, therefore, can affect the Contract's cash value and death benefit whether or not the loan is repaid. Also, a brief explanation that the cash surrender value and the death proceeds payable will be reduced by the amount of any outstanding Contract loan plus accrued interest.

(e) *Procedures.* The loan procedures, including how and when amounts borrowed are transferred out of the Registrant and how and when amounts repaid are credited to the Registrant.

Item 11. Lapse and Reinstatement

(a) *Lapse.* State when and under what circumstances a Contract will lapse.

(b) *Lapse Options.* Describe briefly any lapse options available. Indicate those that will not apply unless they are elected and those that will apply in the absence of an election. Indicate whether the availability of any of the lapse options is limited.

(c) *Effect of Lapse.* Describe briefly the factors that will determine the amount of insurance coverage provided under the available lapse options. Describe concisely how the cash value, surrender value, and death benefit will be determined. If these values and benefits will be determined in the same manner as prior to lapse, a statement to that effect is sufficient.

(d) *Reinstatement.* State under what circumstances a Contract may be reinstated. Explain any requirements for reinstatement, including charges to be paid by the Contractowner, outstanding loan repayments, and evidence of insurability.

Item 12. Taxes

(a) *Tax Consequences.* Describe the material tax consequences to the Contractowner and beneficiary of buying, holding, exchanging, or exercising rights under the Contract.

Instruction. Discuss the taxation of death benefit proceeds, periodic and non-periodic withdrawals, loans, and any other distribution that may be received under the Contract, as well as the tax benefits accorded the Contract and other material tax consequences. Describe, if applicable, whether the tax consequences vary with different uses of the Contract.

(b) *Effect.* Describe the effect, if any, of taxation on the determination of cash values or sub-account values.

Item 13. Legal Proceedings

Describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Registrant, the Registrant's principal underwriter, or the Depositor is a party. Include the name of the court in which the proceedings are pending, the date instituted, the principal parties involved, a description of the factual basis alleged to underlie the proceeding, and the relief sought. Include similar information as to any legal proceedings instituted, or known to be contemplated, by a governmental authority.

Instruction. For purposes of this requirement, legal proceedings are material only to the extent that they are likely to have a material adverse effect on the Registrant, the ability of the principal underwriter to perform its contract with the Registrant, or the ability of the Depositor to meet its obligations under the Contracts.

Item 14. Financial Statements

If all of the required financial statements of the Registrant and the Depositor (see Item 24) are not in the prospectus, state, under a separate caption, where the financial statements may be found. Briefly explain how investors may obtain any financial statements not in the Statement of Additional Information.

Part B: Information Required in a Statement of Additional Information

Item 15. Cover Page and Table of Contents

(a) *Front Cover Page.* Include the following information on the outside front cover page of the SAI:

(1) The Registrant's name.

(2) The Depositor's name.

(3) A statement or statements:

(A) That the SAI is not a prospectus;

(B) How the prospectus may be obtained; and

(C) Whether and from where information is incorporated by reference into the SAI, as permitted by General Instruction D.

Instruction. Any information incorporated by reference into the SAI must be delivered with the SAI.

(4) The date of the SAI and of the prospectus to which the SAI relates.

(b) *Table of Contents.* Include under appropriate captions (and subcaptions) a list of the contents of the SAI and, when useful, provide cross-references to related disclosure in the prospectus.

Item 16. General Information and History

(a) *Depositor.* Provide the date and form of organization of the Depositor, the name of the state or other jurisdiction in which the Depositor is organized, and a description of the general nature of the Depositor's business.

Instruction. The description of the Depositor's business should be short and need not list all of the businesses in which the Depositor engages or identify the jurisdictions in which it does business if a general description (e.g., "life insurance" or "reinsurance") is provided.

(b) *Registrant.* Provide the date and form of organization of the Registrant and the Registrant's classification pursuant to Section 4 [15 U.S.C. 80a–4] (i.e., a separate account and a unit investment trust).

(c) *History of Depositor and Registrant.* If the Depositor's name was changed during the past five years, state its former name and the approximate date on which it was changed. If, at the request of any state, sales of contracts offered by the Registrant have been suspended at any time, or if sales of contracts offered by the Depositor have been suspended during the past five years, briefly describe the reasons for and results of the suspension. Briefly describe the nature and results of any bankruptcy, receivership, or similar proceeding, or any other material reorganization, readjustment, or succession of Depositor during the past five years.

(d) *Ownership of Sub-Account Assets.* If 10 percent or more of the assets of any sub-account are not attributable to Contracts or to accumulated deductions or reserves (*e.g.*, initial capital contributed by the Depositor), state what percentage those assets are of the total assets of the Registrant. If the Depositor, or any other person controlling the assets, has any present intention of removing the assets from the sub-account, so state.

(e) *Control of Depositor.* State the name of each person who controls the Depositor and the nature of its business.

Instruction. If the Depositor is controlled by another person that, in turn, is controlled by another person, give the name of each control person and the nature of its business.

Item 17. Services

(a) *Expenses Paid by Third Parties.* Describe all fees, expenses, and costs of the Registrant that are to be paid by persons other than the Depositor or the Registrant, and identify those persons.

(b) *Service Agreements.* Summarize the substantive provisions of any management-related service contract that may be of interest to a purchaser of the Registrant's securities, under which services are provided to the Registrant, unless the contract is described in response to some other item of this form. Indicate the parties to the contract, and the total dollars paid and by whom for each of the past three years.

Instructions.

1. The term "management-related service contract" includes any contract with the Registrant to keep, prepare, or file accounts, books, records, or other documents required under federal or state law, or to provide any similar services with respect to the daily administration of the Registrant, but does not include the following:

(a) Any agreement with the Registrant to act as custodian or agent to administer purchases and redemptions under the Contracts; and

(b) Any contract with the Registrant for outside legal or auditing services, or contract for personal employment entered into with the Registrant in the ordinary course of business.

2. In summarizing the substantive provisions of any management-related service contract, include the following:

(a) The name of the person providing the service;

(b) The direct or indirect relationships, if any, of the person with the Registrant, its Depositor, or its principal underwriter; and

(c) The nature of the services provided, and the basis of the compensation paid for the services for the Registrant's last three fiscal years.

(c) *Other Service Providers.*

(1) Unless disclosed in response to paragraph (b) or another item of this form, identify and state the principal business address of any person who provides significant administrative or business affairs management services for the Registrant (*e.g.*, an "Administrator," "Sub-Administrator," "Servicing Agent"), describe the services provided, and the compensation paid for the services.

(2) State the name and principal business address of the Registrant's custodian and independent public accountant and describe generally the services performed by each.

(3) If the Registrant's assets are held by a person other than the Depositor, a commercial bank, trust company, or depository registered with the Commission as custodian, state the nature of the business of that person.

(4) If an affiliated person of the Registrant or the Depositor, or an affiliated person of the affiliated person, acts as administrative or servicing agent for the Registrant, describe the services the person performs and the basis for remuneration. State, for the past three years, the total dollars paid for the services, and by whom.

Instruction. No disclosure need be given in response to paragraph (c)(4) of this item for an administrative or servicing agent who is also the Depositor.

(5) If the Depositor is the principal underwriter of the Contracts, so state.

Item 18. Premiums

(a) *Administrative Procedures.* Discuss generally the Registrant's administrative rules applicable to premium payments, to the extent that they are not discussed in the prospectus.

Instruction. Examples include information regarding any condition applicable to changes in premium payment schedules, any limitations on prepayments of premiums, any relevant rules for classifying payments made other than in response to a bill or in an amount other than the amount billed for, etc.

(b) *Automatic Premium Loans.* If the contract provides an automatic premium loan option, describe the option, including the circumstances under which it will be used to pay a required premium and whether, and how, interest will be charged on the loan. Describe any effect not described in the prospectus that an automatic premium loan could have on the Contract (*e.g.*, how automatic premium loans affect cash value).

Item 19. Additional Information About Operation of Contracts and Registrant

(a) *Incidental Benefits.* To the extent not described in the prospectus, explain the manner in which the purchase or operation of other incidental benefits affects the exercise of rights and the determination of benefits under the Contract such as whether the Contract or any rider provides for a change of insured or for all or a portion of the death benefit to be paid while the insured is still alive.

(b) *Surrender and Withdrawal.* To the extent not described in the prospectus, explain the Contract's surrender and withdrawal provisions.

(c) *Material Contracts Relating to the Registrant.* Disclose any material contract relating to the operation or administration of the Registrant.

Item 20. Underwriters

(a) *Identification.* Identify each principal underwriter (other than the Depositor) of the Contracts, and state its principal business address. If the principal underwriter is affiliated with the Registrant, the Depositor, or any affiliated person of the Registrant or the Depositor, identify how they are affiliated (*e.g.*, the principal underwriter is controlled by the Depositor).

(b) *Offering and Commissions.* For each principal underwriter distributing Contracts of the Registrant, state:

(1) whether the offering is continuous; and

(2) the aggregate dollar amount of underwriting commissions paid to, and the amount retained by, the principal underwriter for each of the Registrant's last three fiscal years.

(c) *Other Payments.* With respect to any payments made by the Registrant to an underwriter of or dealer in the Contracts during the Registrant's last fiscal year, disclose the name and address of the underwriter or dealer, the amount paid and basis for determining that amount, the circumstances surrounding the payments, and the consideration received by the Registrant. Do not include information about:

(1) Payments made through deduction from premiums paid at the time of sale of the Contracts; or

(2) Payments made from cash values upon full or partial surrender of the Contracts or from an increase or decrease in the face amount of the Contracts.

Instructions.

1. Information need not be given about the service of mailing proxies or periodic reports of the Registrant.

2. Information need not be given about any service for which total payments of less than $5,000 were made during each of the Registrant's last three fiscal years.

3. Information need not be given about payments made under any contract to act as administrative or servicing agent.

4. If the payments were made under an arrangement or policy applicable to dealers generally, describe only the arrangement or policy.

(d) *Commissions to Dealers.* State the commissions paid to dealers as a percentage of premiums.

Item 21. Additional Information About Charges

(a) *Sales Load.* Describe the method that will be used to determine the sales load on the Contracts offered by the Registrant.

(b) *Special Purchase Plans.* Describe any special purchase plans (*e.g.*, group life insurance plans) or methods that reflect scheduled variations in, or elimination of, any applicable charges (*e.g.*, group discounts, waiver of deferred sales loads for a specified percentage of cash value, investment of proceeds from another Contract, exchange privileges, employee benefit plans, or the terms of a merger, acquisition, or exchange offer made pursuant to a plan of reorganization). Identify each class of individuals or transactions to which the plans or methods apply, including officers, directors, members of the board of managers, or employees of the Depositor, underwriter, Portfolio Companies, or investment adviser to Portfolio Companies, and the amount of the reductions, and state from whom additional information may be obtained. For special purchase plans or methods that reflect variations in, or elimination of, charges other than according to a fixed schedule, describe the basis for the variation or elimination (*e.g.*, the size of the purchaser, a prior existing relationship with the purchaser, the purchaser's assumption of certain administrative functions, or other characteristics that result in differences in costs or services).

(c) *Underwriting Procedures.* Briefly identify underwriting procedures used in connection with the Contract and any effect of different types of underwriting on the charges in the Contract. Specify the basis of the mortality charges guaranteed in the Contracts.

(d) *Increases in Face Amount.* Describe in more detail the charges assessed on increases in face amount, including the procedures used following an increase in face amount to allocate cash values and premium payments between the original Contract and incremental Contracts.

Item 22. Lapse and Reinstatement

To the extent that the prospectus does not do so, describe the lapse and reinstatement provisions of the Contract. Include a discussion of any time limits that apply, how the charge to reinstate is determined, and any other conditions that apply to reinstatement. Describe the features of any lapse options not described in the prospectus, including any factors that will determine the amount or duration of the insurance coverage, and the limitations and conditions on availability of each lapse option. Identify which contract transactions (e.g., loans, partial withdrawals and surrenders, transfers) are available while the Contract is continued under a lapse option. Indicate when limits on contract transactions are different from those that apply prior to lapse.

Item 23. Loans

(a) *Loan Provisions.* To the extent that the prospectus does not do so, explain the loan provisions of the Contract.

(b) *Amount Available.* State how the amount available for a policy loan is calculated.

(c) *Effect on Cash Value and Sub-Accounts.* Describe how loans and loan repayments affect cash value and how they are allocated among the sub-accounts.

(d) *Interest.* Describe how interest accrues on the loan, when it is payable, and how interest is treated if not paid. Explain how interest earned on the loaned amount is credited to the Contract and allocated to the sub-accounts.

(e) *Other Effects.* Describe any other effect not already described in the prospectus that a loan could have on the Contract (*e.g.*, the effect of a Contract loan in excess of cash value).

Item 24. Financial Statements

(a) *Registrant.* Provide financial statements of the Registrant.

Instruction. Include, in a separate section, the financial statements and schedules required by Regulation S–X [17 CFR 210]. Financial statements of the Registrant may be limited to:

(i) An audited balance sheet or statement of assets and liabilities as of the end of the most recent fiscal year;

(ii) An audited statement of operations for the most recent fiscal year conforming to the requirements of Rule 6–07 of Regulation S–X [17 CFR 210.6–07];

(iii) An audited statement of cash flows for the most recent fiscal year if necessary to comply with generally accepted accounting principles; and

(iv) Audited statements of changes in net assets conforming to the requirements of Rule 6–09 of Regulation S–X [17 CFR 210.6–09] for the two most recent fiscal years.

(b) *Depositor.* Provide financial statements of the Depositor.

Instructions.

1. Include, in a separate section, the financial statements and schedules of the Depositor required by Regulation S–X. If the Depositor would not have to prepare financial statements in accordance with generally accepted accounting principles except for use in this registration statement or other registration statements filed on Forms N–3, N–4, or N–6, its financial statements may be prepared in accordance with statutory requirements. The Depositor's financial statements must be prepared in accordance with generally accepted accounting principles if the Depositor prepares financial information in accordance with generally accepted accounting principles for use by Depositor's parent.

2. All statements and schedules of the Depositor required by Regulation S–X, except for the consolidated balance sheets described in Rule 3–01 of Regulation S–X [17 CFR 210.3–01], and any notes to these statements or schedules, may be omitted from Part B and instead included in Part C of the registration statement. If any of this information is omitted from Part B and included in Part C, the consolidated balance sheets included in Part B should be accompanied by a statement that additional financial information about the Depositor is available, without charge, upon request. When a request for the additional financial information is received, the Registrant should send the information within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. Notwithstanding Rule 3–12 of Regulation S–X [17 CFR 210.3–12], the financial statements of the Depositor need not be more current than as of the end of the most recent fiscal year of the Depositor. In addition, when the anticipated effective date of a registration statement falls within 90 days subsequent to the end of the fiscal year of the Depositor, the registration statement need not include financial statements of the Depositor more current than as of the end of the third fiscal quarter of the most recently completed fiscal year of the Depositor unless the audited financial statements for such fiscal year are available. The exceptions to Rule 3–12 of Regulation S–X contained in this Instruction 3 do not apply when:

(i) The Depositor's financial statements have never been included in an effective registration statement under the Securities Act of a separate account that offers variable annuity contracts or variable life insurance contracts; or

(ii) The balance sheet of the Depositor at the end of either of the two most recent fiscal years included in response to this Item shows a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of less than $1,000,000; or

(iii) The balance sheet of the Depositor at the end of a fiscal quarter within 135 days of the expected date of effectiveness under the Securities Act (or a fiscal quarter within 90 days of filing if the registration statement is filed solely under the Investment Company Act) would show a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of less than $1,000,000. If two fiscal quarters end within the 135 day period, the Depositor may choose either for purposes of this test.

4. Any interim financial statements required by this Item need not be comparative with financial statements for the same interim period of an earlier year.

Item 25. Performance Data

(a) *Calculation.* If the Registrant advertises any performance data, include an explanation of how performance is calculated, whether the data reflects all charges, the nature of any charges that are not reflected in the data, and the effect on performance of excluding those charges. If the Registrant advertises its performance calculated in more than one manner, briefly explain the material differences between the calculations.

(b) *Quotation.* For each sub-account for which the Registrant advertises any performance data, furnish:

(1) a quotation of performance, computed by each of the methods used in advertising; and

(2) the length of and the last day in the period used in computing the quotation.

Item 26. Illustrations

The Registrant may, but is not required to, include a table of hypothetical illustrations of death benefits, cash surrender values, and cash values in either the prospectus or the SAI. The following standards should be used to prepare any table of hypothetical illustrations that is included in the prospectus or the SAI:

(a) *Narrative Information.* A clear and concise explanation of the illustrations should precede the illustrations.

(b) *Headings.* The headings should contain the following information: sex, age, rating classification (*e.g.*, nonsmoker, smoker, preferred, or standard), premium amount and payment schedule, face amount, and death benefit option.

(c) *Premiums, Ages.* Premium amounts used in the illustrations should not be unduly larger or smaller than the actual or expected average Contract size. Ages used in the illustrations should be representative of actual or expected Contract sales.

(d) *Rating Classifications.* Illustrations should be shown for the rating classification with the greatest number of outstanding Contracts (or expected Contracts in the case of a new Contract).

(e) *Years.* Illustrated values should be provided for Contract years one through ten, for every five years beyond the tenth Contract year, and for the year of Contract maturity.

(f) *Illustrated Values.* Death benefits and cash surrender values should be illustrated at two rates of return and two levels of charges (described in paragraphs (g) and (i)). The Registrant may also illustrate cash values, but cash values must be accompanied by corresponding cash surrender values. All illustrated values should be determined as of the end of the Contract year.

(g) *Rates of Return.* The Registrant should use gross rates of return of 0% and one other rate not greater than 10%. Additional gross rates of return no greater than 10% may be used. Explain that the gross rates of return used in the illustrations do not reflect the deductions of the charges and expenses of the Portfolio Companies.

(h) *Portfolio Company Charges.* Portfolio Company management fees and other Portfolio Company charges and expenses should be reflected using the arithmetic average of those charges and expenses incurred during the most recent fiscal year for all of the available Portfolio Companies or any materially greater amount expected to be incurred during the current fiscal year. In determining charges and expenses incurred during the most recent fiscal year or expected to be incurred during the current fiscal year, include amounts that would have been incurred absent expense reimbursement or fee waiver arrangements.

(i) *Other Charges.* Values should be illustrated using both current and guaranteed maximum charges at both the 0% rate of return and one other rate of return no greater than 10%. Illustrated values should accurately reflect all charges deducted under the Contract (*e.g.*, mortality and expense risk, administrative, cost of insurance) as well as the actual timing of the deduction of those charges (*e.g.*, daily, monthly, annually). For example, for a Contract with a mortality and expense risk charge that is deducted from sub-account assets at a given annual rate, the illustrated values will be lower if the charge is deducted from assets on a daily basis rather than on a monthly or annual basis.

(j) *Additional Information.* Subject to the requirement set out in General Instruction C.3.(b), additional information may be shown as part of the illustrations, provided that it is consistent with the standards of this Item 26.

Part C: Other Information

Item 27. Exhibits

Subject to General Instruction D regarding incorporation by reference and rule 483 under the Securities Act [17 CFR 230.483], file the exhibits listed below as part of the registration statement. Letter or number the exhibits in the sequence indicated and file copies rather than originals, unless otherwise required by rule 483. Reflect any exhibit incorporated by reference in the list below and identify the previously filed document containing the incorporated material.

(a) *Board of Directors Resolution.* The resolution of the board of directors of the Depositor authorizing the establishment of the Registrant.

(b) *Custodian Agreements.* All agreements for custody of securities and similar investments of the Registrant, including the schedule of remuneration.

(c) *Underwriting Contracts.* Underwriting or distribution contracts between the Registrant or Depositor and a principal underwriter and agreements between principal underwriters or the Depositor and dealers.

(d) *Contracts.* The form of each Contract, including any riders or endorsements.

(e) *Applications.* The form of application used with any Contract provided in response to (d) above.

(f) *Depositor's Certificate of Incorporation and By-Laws.* The Depositor's current certificate of incorporation or other instrument of organization and by-laws and any related amendment.

(g) *Reinsurance Contracts.* Any contract of reinsurance related to a Contract.

(h) *Participation Agreements.* Any participation agreement or other contract relating to the investment by the Registrant in a Portfolio Company.

(i) *Administrative Contracts.* Any contract relating to the performance of administrative services in connection with administering a Contract.

(j) *Other Material Contracts.* Other material contracts not made in the ordinary course of business to be performed in whole or in part on or after the filing date of the registration statement.

(k) *Legal Opinion.* An opinion and consent of counsel regarding the legality of the securities being registered, stating whether the securities will, when sold, be legally issued and represent binding obligations of the Depositor.

(l) *Actuarial Opinion.* If illustrations are included in the registration statement as permitted by Item 26, an opinion of an actuarial officer of the Depositor as to those illustrations indicating that:

(1) the illustrations of cash surrender values, cash values, death benefits, and/or any other values illustrated are consistent with the provisions of the Contract and the Depositor's administrative procedures;

(2) the rate structure of the Contract, and the assumptions selected for the illustrations (including sex, age, rating classification, and premium amount and payment schedule), do not result in the relationship between premiums and benefits, as shown in the illustrations, being materially more favorable than for a substantial majority of other prospective Contractowners; and

(3) the illustrations are based on a commonly used rating classification and premium amounts and ages appropriate for the markets in which the Contract is sold.

(m) *Calculation.* If illustrations are included in the registration statement as permitted by Item 26, one sample calculation for each item illustrated, *e.g.*, cash surrender value, cash value, and death benefits, showing how the illustrated values for the fifth Contract year have been calculated. Demonstrate how the annual investment returns of the sub-accounts were derived from the hypothetical gross rates of return, how charges against sub-account assets were deducted from the annual investment returns of the sub-accounts, and how the periodic deductions for cost of insurance and other Contract charges were made to arrive at the illustrated values. Describe how the calculation would differ for other years.

(n) *Other Opinions.* Any other opinions, appraisals, or rulings, and related consents relied on in preparing the registration statement and required by section 7 of the Securities Act [15 U.S.C. 77g].

(o) *Omitted Financial Statements.* Financial statements omitted from Item 24.

(p) *Initial Capital Agreements.* Any agreements or understandings made in consideration for providing the initial capital between or among the Registrant, Depositor, underwriter, or initial Contractowners and written assurances from the Depositor or initial Contractowners that purchases were made for investment purposes and not with the intention of redeeming or reselling.

(q) *Redeemability Exemption.* Disclosure (if not provided elsewhere in the registration statement) of insurance procedures for which the Registrant and Depositor claim any exemption pursuant to rule 6e–2(b)(12)(ii) or rule 6e–3(T)(b)(12)(iii) under the Investment Company Act.

Item 28. Directors and Officers of the Depositor

Provide the following information about each director or officer of the Depositor:

(1) Name and principal business address	(2) Positions and offices with depositor

Instruction. Registrants are required to provide the above information only for officers or directors who are engaged directly or indirectly in activities relating to the Registrant or the Contracts, and for executive officers including the Depositor's president, secretary, treasurer, and vice presidents who have authority to act as president in his or her absence.

Item 29. Persons Controlled by or Under Common Control with the Depositor or the Registrant

Provide a list or diagram of all persons directly or indirectly controlled by or under common control with the Depositor or the Registrant. For any person controlled by another person, disclose the percentage of voting securities owned by the immediately controlling person or other basis of that person's control. For each company, also provide the state or other sovereign power under the laws of which the company is organized.

Instructions.

1. Include the Registrant and the Depositor in the list or diagram and show the relationship of each company to the Registrant and Depositor and to the other companies named, using cross-references if a company is controlled through direct ownership of its securities by two or more persons.

2. Indicate with appropriate symbols subsidiaries that file separate financial statements, subsidiaries included in consolidated financial statements, or unconsolidated subsidiaries included in group financial statements. Indicate for other subsidiaries why financial statements are not filed.

Item 30. Indemnification

State the general effect of any contract, arrangements, or statute under which any underwriter or affiliated person of the Registrant is insured or indemnified against any liability incurred in his or her official capacity, other than insurance provided by any underwriter or affiliated person for his or her own protection.

Item 31. Principal Underwriters

(a) *Other Activity.* State the name of each investment company (other than the Registrant) for which each principal underwriter currently distributing the Registrant's securities also acts as a principal underwriter. depositor, sponsor, or investment adviser.

(b) *Management.* Provide the information required by the following table for each director, officer, or partner of each principal underwriter named in the response to Item 20:

(1) Name and principal business address	(2) Positions and offices with depositor

Instruction. If a principal underwriter is the Depositor or an affiliate of the Depositor, and is also an insurance company, the above information for officers or directors need only be provided for officers or directors who are engaged directly or indirectly in activities relating to the Registrant or the Contracts, and for executive officers including the Depositor's or its affiliate's president, secretary, treasurer, and vice presidents who have authority to act as president in his or her absence.

(c) *Compensation From the Registrant.* Provide the information required by the following table for all commissions and other compensation received, directly or indirectly, from the Registrant during the Registrant's last fiscal year by each principal underwriter:

(1) Name of principal underwriter	(2) Net underwriting discounts and commissions	(3) Compensation on events occasioning the deduction of a deferred sales load	(4) Brokerage commissions	(5) Other compensation

Instructions.

1. Disclose the type of services rendered in consideration for the compensation listed under column (5).

2. Exclude information about bona fide contracts with the Registrant or its Depositor for outside legal or auditing services, or bona fide contracts for personal employment entered into with the Registrant or its Depositor in the ordinary course of business.

3. Exclude information about any service for which total payments of less than $5,000 were made during each of the Registrant's last three fiscal years.

4. Exclude information about payments made under any agreement whereby another person contracts with the Registrant or its Depositor to perform as custodian or administrative or servicing agent.

Item 32. Location of Accounts and Records

State the name and address of each person maintaining physical possession of each account, book, or other document required to be maintained by section 31(a) [15 U.S.C. 80a-30(a)] and the rules under that section.

Item 33 Management Services

Provide a summary of the substantive provisions of any management-related service contract not discussed in Part A or B, disclosing the parties to the contract and the total amount paid and by whom for the Registrant's last three fiscal years.

Instructions.

1. The instructions to Item 17 also apply to this Item.

2. Exclude information about any service provided for payments totaling less than $5,000 during each of the Registrant's last three fiscal years.

Item 34. Fee Representation

Provide a representation of the Depositor that the fees and charges deducted under the Contracts, in the aggregate, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the Depositor.

SIGNATURES

Pursuant to the requirements of (the Securities Act and) the Investment Company Act, the Registrant (certifies that it meets all of the requirements for effectiveness of this registration statement under rule 485(b) under the Securities Act and) has duly caused this registration statement to be signed on its behalf by the undersigned, duly authorized, in the City of _____ and State of _____ on the day of _____

_____
Registrant

By _____
(Signature and Title)

By _____
(Depositor)

By _____
(Name of officer of Depositor)

00 _____
(Title)

Instruction. If the registration statement is being filed only under the Securities Act or under both the Securities Act and the Investment Company Act, it should be signed by both the Registrant and the Depositor. If the registration statement is being filed only under the Investment Company Act, it should be signed only by the Registrant.

Pursuant to the requirements of the Securities Act, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

_____
(Signature)

(Title)

_____
(Date)

Dated: March 13, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary

Appendix A

20[**Note:** Appendix A to the preamble will not appear in the *Code of Federal Regulations.*]

Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that proposed Form N–6, if adopted, would not have a significant economic impact on a substantial number of small entities. Form N–6 would be used by insurance company separate accounts registered as unit investment trusts that offer variable life insurance policies for registration under the Investment Company Act of 1940 and offer securities under the Securities Act of 1933.

Proposed Form N–6 generally would not have a significant economic impact on small entities. Few, if any, registered insurance company separate accounts have assets of less than $50,000,000, when separate account assets are aggregated with the assets of the sponsoring insurance company. As a result, few, if any, small entities within the definitions contained in rule 0–10 under the Investment Company Act and rule 157 under the Securities Act would be affected by proposed Form N–6.

Dated: March 2, 1998.

Arthur Levitt,

Chairman.

[FR Doc. 98–7072 Filed 3–20–98; 8:45 am]

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Reader Aids

Federal Register

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Monday, March 23, 1998

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids — 202–523–5227

E-mail — infofedreg.nara.gov

Laws

For additional information — 523–5227

Presidential Documents

Executive orders and proclamations — 523–5227

The United States Government Manual — 523–5227

Other Services

Electronic and on-line services (voice) — 523–4534

Privacy Act Compilation — 523–3187

Public Laws Update Service (numbers, dates, etc.) — 523–6641

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

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