(4) The ambient sound level (including wind effects) at the test site due to sources other than the motorcycle being measured shall be at least 10 dB(A) lower than the sound level at the microphone location produced by the motorcycle under test.

(5) Wind speed at the test site during test shall be less than 32 km/h (20 mph).

(e) *Required data.* For each valid test, the following data shall be recorded:

(1) Motorcycle type, serial number, model year, and date of manufacture.

(2) Names of persons conducting the test.

(3) Test location.

(4) Ambient sound level measured on the same day as the test and representative of the conditions during the test.

(5) Motorcycle engine displacement, maximum rated RPM, and test RPM.

(6) Description of testing if motorcycle is equipped with automatic transmission.

(7) Reported sound level.

(8) Other information as appropriate to completely describe testing conditions and procedure.

Appendix II.—Sampling Labels

Table I.—*Sample size code letters*

Batch size:	*Code letters*
4 to 8	A
9 to 15	B
16 to 25	C
25 and larger	D

Table II.—*Sampling plans for inspecting batches*

Sample size code letter	Test sample	Test sample size	Cumulative test sample size	Batch inspection criteria: Acceptance No.	Rejection No.
A	1st	4	4	0	1
B	1st	3	3	0	1
C	1st	3	3	0	2
	2d	2	6	1	2
D	1st	2	2	(1)	2
	2d	2	4	(1)	2
	3d	2	6	0	2
	4th	2	8	0	3
	5th	2	10	1	3
	6th	2	12	1	3
	7th	2	14	2	3

[1]Batch acceptance not permitted at this sample size.

Table III.—*Batch sequence plans*

Sample size code letter	Number of batches	Cumulative number of batches	Batch inspection criteria: Acceptance No.	Rejection No.
A	2	2	1	(2)
	2	4	2	4
	2	6	3	5
	2	8	4	5
B	2	2	0	
	2	4	1	4
	2	6	2	5
	2	8	4	6
	2	10	5	6
	2	12		
C	2	2	(1)	2
	2	4	0	2
	2	6	0	3
	2	8	1	3
	2	10	2	4
	2	12	3	4
D	2	2	0	2
	2	4	1	3
	2	6	2	4
	2	8	3	4

[1]Batch sequence acceptance not permitted for this number of batches.
[2]Batch sequence rejection not permitted for this number of batches.

Table IV.—*Stationary sound level acceptance ranges for test samples*

Size of test sample	Acceptance range [number of allowable vehicles in sample exceeding labeled stationary sound level]: Minimum[1]	Maximum
10	0	3
20	0	5
30	0	7
40	1	9
50	1	10
60	2	12

[1]Acceptance not permitted if zero. 10 additional vehicles must be tested.

Table V.—*Exhaust system category acceptance and rejection*

Size of test sample	Rejection number[1]	Size of test sample	Rejection number[1]
10	4	40	8
20	5	45	9
30	7		

[1]If the number of failing exhaust systems is equal to or greater than this number, the category is rejected; if less, then the category is accepted.

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federal register

WEDNESDAY, MARCH 15, 1978
PART III

ENVIRONMENTAL PROTECTION AGENCY

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Petroleum Refinery Claus Sulfur Recovery Plants

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 836-1]

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Petroleum Refinery Claus Sulfur Recovery Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes standards of performance which will limit emissions of sulfur dioxide (SO_2) and reduced sulfur compounds from new, modified, and reconstructed petroleum refinery Claus sulfur recovery plants. The standards implement the Clean Air Act and are based on the Administrator's determination that emissions from petroleum refinery Claus sulfur recovery plants contribute significantly to air pollution. The intended effect of the standards is to require new, modified, and reconstructed petroleum refinery Claus sulfur recovery plants to use the best technological system of continuous emission reduction.

EFFECTIVE DATE: March 15, 1978.

ADDRESSES: Copies of the standard support documents are available on request from the U.S. EPA Library (MD-35), Research Triangle Park, N.C. 27711. The requestor should specify "Standards Support and Environmental Impact Statement, Volume I: Proposed Standards of Performance for Petroleum Refinery Sulfur Recovery Plants" (EPA-450/2-76-016a) and/or "Standards Support and Environmental Impact Statement, Volume II: Promulgated Standards of Performance for Petroleum Refinery Sulfur Recovery Plants" (EPA-450/2-76-016b). Comment letters responding to the proposed rules published in the FEDERAL REGISTER on October 4, 1976 (41 FR 43866), are available for public inspection and copying at the U.S. Environmental Protection Agency, Public Information Reference Unit (EPA Library), Room 2922, 401 M Street SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Don R. Goodwin, Emission Standards and Engineering Division (MD-13), Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone number 919-541-5271.

SUPPLEMENTARY INFORMATION:

SUMMARY

On October 4, 1976 (41 FR 43866), EPA proposed standards of performance for new petroleum refinery Claus sulfur recovery plants under section 111 of the Clean Air Act, as amended. The promulgated standards are essentially the same as those proposed, although an exemption for small petroleum refineries has been included in the promulgated standards. The standards are based on the use of tail gas scrubbing systems which have been determined to be the best technological system of continuous emission reduction, taking into consideration the cost of achieving such emission reduction, any nonair quality, health, and environmental impact and energy requirements. Compliance with these standards will increase the overall sulfur recovery efficiency of a typical refinery Claus sulfur recovery plant to about 99.9 percent, compared to a recovery efficiency of about 94 percent for an uncontrolled refinery Claus sulfur recovery plant, or a recovery efficiency of about 99 percent for a Claus sulfur recovery plant complying with typical State emission control regulations for these plants.

The promulgated standards will apply to: (1) any Claus sulfur recovery plant with a sulfur production capacity of more than 20 long tons per day (LTD) which is associated with a small petroleum refinery (i.e., a petroleum refinery having a crude oil processing capacity of 50,000 barrels per stream day (BSD) or less which is owned or controled by a refiner whose total combined crude oil processing capacity is 137,500 BSD or less) and (2) any size Claus sulfur recovery plant associated with a large petroleum refinery. Specifically, the standards limit the concentration of sulfur dioxide (SO_2) in the gases discharged into the atmosphere to 0.025 percent by volume at zero percent oxygen on a dry basis. Where the emission control system installed to comply with these standards discharges residual emissions of hydrogen sulfide (H_2S), carbonyl sulfide (COS), and carbon disulfide (CS_2), the standards limit the concentration of H_2S and the total concentration of H_2S, COS and CS_2 (calculated as SO_2) in the gases discharged into the atmosphere to 0.0010 percent and 0.030 percent by volume at zero percent oxygen on a dry basis, respectively.

Compliance with these standards will reduce nationwide sulfur dioxide emissions by some 55,000 tons per year by 1980. This reduction will be achieved without any significant adverse impact on other aspects of environmental quality, such as solid waste disposal, water pollution, or noise. This reduction in emissions will also be accompanied by a reduction in the growth of nationl energy consumption equivalent to about 90,000 barrels of fuel oil per year by 1980.

The economic impact of the promulgated standards is reasonable. They will result in an increase in the annual operating costs of the petroleum refining industry by some $16 million per year in 1980. An individual refiner who installs alternative II controls will need to increase his prices from 0.1 to 1 percent to maintain his profitability.

It should be noted that standards of performance for new sources established under section 111 of the Act reflect the degree of emission limitation achievable through application of the best adequately demonstrated technological system of continuous emission reduction (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements). State implementation plans (SIPs) approved or promulgated under section 110 of the Act, on the other hand, must provide for the attainment and maintenance of national ambient air quality standards (NAAQS) designed to protect public health and welfare. For that purpose, SIPs must in some cases require greater emission reduction than those required by standards of performance for new sources. Section 173(2) of the Act requires, among other things, that a new or modified source constructed in an area which exceeds the NAAQS must reduce emissions to the level which reflects the "lowest achievable emission rate" for such category of source, unless the owner or operator demonstrates that the source cannot achieve such an emission rate. In no event can the emission rate exceed any applicable standard of performance.

A similar situation may arise when a major emitting facility is to be constructed in a geographic area which falls under the prevention of significant deterioration of air quality provisions of the Act (part C). These provisions require, among other things, that major emitting facilities to be constructed in such areas are to be subject to the best available control technology. The term "best available control technology" (BACT) means "an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this Act emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of 'best available control technology' result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 111 or 112 of this Act."

Standards of performance should not be viewed as the ultimate in achievable emission control and should not preclude the imposition of a more stringent emission standard, where appropriate. For example, while cost of achievement may be an important factor in determining standards of performance applicable to all areas of the country (clean as well as dirty), costs must be accorded far less weight in determining the "lowest achievable emission rate" for new or modified sources locating in areas violating statutorily-mandated health and welfare standards. Although there may be emission control technology available that can reduce emissions below those levels required to comply with standards of performance, this technology might not be selected as the basis of standards of performance due to costs associated with its use. This in no way should preclude its use in situations where cost is a lesser consideration, such as determination of the "lowest achievable emission rate."

In addition, States are free under section 116 of the Act to establish even more stringent emission limits than those established under section 111 or those necessary to attain or maintain the NAAQS under section 110. Thus, new sources may in some cases be subject to limitations more stringent than standards of performance under section 111, and prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the Federal Register of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the standards recommended for proposal. This meeting was open to the public and each person attending was given ample opportunity to comment on the standards recommended for proposal. The standards were proposed on October 4, 1976, and copies of the proposed standards and the Standards Support and Environmental Impact Statement (SSEIS) were distributed to members of the petroleum refining industry and several environmental groups at this time. The public comment period extended from October 4, 1976, to December 3, 1976.

Twenty-two comment letters were received on the proposed standards of performance. These comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the standards which were proposed.

Major Comments

Comments on the proposed standards were received from several oil industry representatives, State and local air pollution control agencies, a vendor of emission source testing equipment, and several Federal agencies. These comments covered four major areas: the costs of implementing the standards, the ability of emission control technology to meet the standards, the environmental impacts of the standards, and the energy impacts of the standards.

COSTS

The major comments concerning costs were that the costs of the emission control systems required to meet the standards were underestimated, that these costs were excessive; and that small sulfur recovery plants, or small petroleum refineries should be exempt from the standard.

The basic cost data used to develop the cost estimates were obtained from pretroleum refinery sources. No specific data or information was provided in the public comments, however, which would indicate that these costs are significantly in error.

In the preamble to the proposed standards, comments were specifically invited concerning the impact of the standards on the small refiner. After considering these comments, EPA has concluded that some relief from the standards is appropriate. The major factor involved in this decision was a consideration of the cost effectiveness of the standards on large and small refiners. The incremental cost per incremental unit of sulfur emissions that must be controlled to meet the standards is substantially greater for the small refiner than for the large refiner. Furthermore, the impact of these costs on the small refiner is more severe than the impact on the large refiner, because the small refiner cannot readily pass on the cost of emission control equipment. Consequently, as discussed in volume II of the Standards Support and Environmental Impact Statement (SSEIS), the promulgated standards include a lower size cutoff for small petroleum refineries and Claus sulfur recovery plants. Claus sulfur recovery plants with a sulfur production capacity of 20 long tons per day or less associated with a petroleum refinery with a crude oil processing capacity of 50,000 BSD or less, which is owned or controlled by a refiner whose total combined crude oil processing capacity is 137,500 BSD or less, are exempt from the standards. This definition of a small petroleum refinery is consistent with that included in section 211 of the Clean Air Act, as amended.

EMISSION CONTROL TECHNOLOGY

A major concern of many commenters was the limited amount of source test data used in support of the numerical emission limits included in the standards and the fact that some of these data were collected at refineries where the emission control system was operating below design capacity. Also, some commenters questioned the ability of the alternative II emission control systems to continuously operate at a 99.9 percent control efficiency because of the adverse impact of Claus sulfur recovery plant fluctuations and CO_2-rich waste gas streams.

In arriving at the numerical emissions limits included in the standards, source test data collected by a local agency at times when the emission control systems were operating at normal capacities, information from vendors of emission control equipment, published literature on emission control technology, and contractor reports on the performance of emission control technology were considered, in addition to the data collected during EPA's source tests. Based on the information and data from these sources and the lack of any new information and data submitted by the commenters, no change in the emission limits of the standards is warranted. Furthermore, the numerical emission limits in the standards contain an adequate safety margin to allow for increased emissions due to Clause sulfur recovery plant fluctuations.

With repect to the potential adverse impact of high CO_2 gas streams, this is not likely to impair the overall emission control system efficiency since high CO_2 gas streams are seldom found in the gases treated in refinery Claus sulfur recovery plants.

ENVIRONMENTAL IMPACT

Several commenters felt that the assessment of the environmental impact of the standards was, in some cases, biased and not always clear. One of these commenters suggested that a thorough environmental impact statement should be prepared to clarify the impacts of the standards.

Litigation involving standards of performance has established that preparation of a formal environmental impact statement under the National Environmental Policy Act is not necessary for actions under section 111 of the Clean Air Act. While a formal environmental impact statement is not prepared, the beneficial as well as the adverse impacts of standards of performance are considered. The promulgated standards will significantly reduce emissions of sulfur from petroleum refineries without resulting in any significant adverse environmental, energy, or economic impacts.

Other commenters felt that standards based on 99 percent control (alternative I) would be essentially as environmentally beneficial as standards based on 99.9 percent control and would be less costly to the public. This argument was based on the premise that most State regulations do not require control of Claus sulfur plant emissions at the 99 percent level as claimed in volume I of the SSEIS. Hence, standards based on alternative I would significantly reduce national sulfur emissions from refinery Claus sulfur recovery plants.

A review of State regulations for controlling emissions from refinery sulfur recovery plants has shown that the majority of the States with the largest petroleum refining capacities require 99 percent control of emissions from new and existing sulfur recovery plants. Since refinery sulfur recovery plant growth will likely occur in these States, the conclusion that standards based on 99 percent control would have little or no beneficial impact is essentially correct.

ENERGY IMPACT

Several commenters questioned the conclusion that compliance with standards based on alternative II could lead to an energy savings, compared to standards based on alternative I. A review of the information and data available confirms this conclusion. In any case, the important consideration is whether the energy impact of the standards is reasonable. No information was submitted which would indicate that the energy impact of the standards is unreasonable.

OTHER CONSIDERATIONS

At proposal comments were requested relative to EPA's decision to regulate reduced sulfur compound emissions, which are designated pollutants, without implementing section 111(d) of the Clean Air Act at this time. The one commenter who responded to this issue was in agreement with this decision.

As discussed in both the preamble to the proposed standards and volumes I and II of the SSEIS, petroleum refinery Claus sulfur recovery plants are sources of SO_2 emissions, not reduced sulfur compound emissions. One of the emission control technologies for reducing SO_2 emissions, however, first converts these emissions to reduced sulfur compounds and then controls these compounds. Consequently, this technology may discharge residual emissions of reduced sulfur compounds to the atmosphere.

Currently, there are about 30 refinery Claus sulfur recovery plants in the United States which have installed reduction emission control systems to reduce SO_2 emissions. A review of these plants indicates that these emission control systems are well designed and well maintained and operated. Emissions of reduced sulfur compounds are less than 0.050 percent (i.e., 500 ppm), which is only slightly higher than the numerical emission limit included in the promulgated standard. Thus, there is little to gain at this time by requiring States to develop regulations limiting emissions from these sources. Consequently, section 111(d) will not be implemented until resources permit, taking into consideration other requirements of the Clean Air Act, as amended, which EPA must implement.

Several commenters were concerned that Reference Method 15 might not be practical for use in a refinery environment. The basis for most of these objections was that the commenters thought this method was being proposed as a continuous monitoring method. However, Reference Method 15 was not proposed for use as a continuous monitoring method. Performance specifications for continuous monitors for reduced sulfur compounds have not been developed and therefore such monitors are not required to be installed until performance specifications for these monitors are proposed and promulgated under Appendix B of 40 CFR Part 60.

Reference Method 15 has been revised to allow greater flexibility in operating details and equipment choice. The user is now permitted to design his own sampling and analysis system as long as he preserves the operating principle of gas chromatography with flame photometric detection and meets the design and performance criteria.

MISCELLANEOUS

The effective date of this regulation is March 15, 1978. Section 111(b)(1)(B) of the Clean Air Act provides that standards of performance or revisions of them become effective upon promulgation and apply to affected facilities, construction or modification of which was commenced after the date of proposal (October 4, 1976).

ECONOMIC IMPACT ASSESSMENT: An economic assessment has been prepared as required under section 317 of the Act. This also satisfies the requirements of Executive Orders 11821 and 11949 and OMB Circular A-107.

Dated: March 1, 1978.

DOUGLAS M. COSTLE,
Administrator.

1. Section 60.100 is amended as follows:

§ 60.100 Applicability and designation of affected facility.

(a) The provisions of this subpart are applicable to the following affected facilities in petroleum refineries: fluid catalytic cracking unit catalyst regenerators, fuel gas combustion devices, and all Claus sulfur recovery plants except Claus plants of 20 long tons per day (LTD) or less associated with a small petroleum refinery. The Claus sulfur recovery plant need not be physically located within the boundaries of a petroleum refinery to be an affected facility, provided it processes gases produced within a petroleum refinery.

(b) Any fluid catalytic cracking unit catalyst regenerator of fuel gas combustion device under paragraph (a) of this section which commences construction or modification after June 11, 1973, or any Claus sulfur recovery plant under paragraph (a) of this section which commences construction or modification after October 4, 1976, is subject to the requirements of this part.

(Secs. 111 and 301(a), Clean Air Act, as amended (42 U.S.C. 7411, 7601 (a)), and additional authority as noted below.)

2. Section 60.101 is amended as follows:

§ 60.101 Definitions.

* * * * *

(i) "Claus sulfur recovery plant" means a process unit which recovers sulfur from hydrogen sulfide by a vapor-phase catalytic reaction of sulfur dioxide and hydrogen sulfide.

(j) "Oxidation control system" means an emission control system which reduces emissions from sulfur recovery plants by converting these emissions to sulfur dioxide.

(k) "Reduction control system" means an emission control system which reduces emissions from sulfur recovery plants by converting these emissions to hydrogen sulfide.

(l) "Reduced sulfur compounds" mean hydrogen sulfide (H_2S), carbonyl sulfide (COS) and carbon disulfide (CS_2).

(m) "Small petroleum refinery" means a petroleum refinery which has a crude oil processing capacity of 50,000 barrels per stream day or less, and which is owned or controlled by a refinery with a total combined crude oil processing capacity of 137,500 barrels per stream day or less.

3. Section 60.102 is amended by revising paragraph (a) introductory text and paragraph (b) as follows:

§ 60.102 Standard for particulate matter.

(a) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from any fluid catalytic cracking unit catalyst regenerator:

(1) * * *

(2) * * *

(b) Where the gases discharged by the fluid catalytic cracking unit catalyst regenerator pass through an incinerator or waste heat boiler in which auxiliary or supplemental liquid or sold fossil fuel is burned, particulate matter in excess of that permitted by paragraph (a)(1) of this section may be emitted to the atmosphere, except that the incremental rate of particulate matter emissions shall not exceed 43.0 g/MJ (0.10 lb/million Btu) of heat input attributable to such liquid or solid fossil fuel.

4. Section 60.104 is amended as follows:

§ 60.104 Standard for sulfur dioxide.

(a) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall:

(1) Burn in any fuel gas combustion device any fuel gas which contains hydrogen sulfide in excess of 230 mg/dscm (0.10 gr/dscf), except that the gases resulting from the combustion of fuel gas may be treated to control sulfur dioxide emissions provided the owner or operator demonstrates to the satisfaction of the Administrator that this is as effective in preventing sulfur dioxide emissions to the atmosphere as restricting the H_2 concentration in the fuel gas to 230 mg/dscm or less. The combustion in a flare of process upset gas, or fuel gas which is released to the flare as a result of relief valve leakage, is exempt from this paragraph.

(2) Discharge or cause the discharge of any gases into the atmosphere from any Claus sulfur recovery plant containing in excess of:

(i) 0.025 percent by volume of sulfur dioxide at zero percent oxygen on a dry basis if emissions are controlled by an oxidation control system, or a reduction control system followed by incineration, or

(ii) 0.030 percent by volume of reduced sulfur compounds and 0.0010 percent by volume of hydrogen sulfide calculated as sulfur dioxide at zero percent oxygen on a dry basis if emissions are controlled by a reduction control system not followed by incineration.

(b) [Reserved]

5. Section 60.105 is amended as follows:

§ 60.105 Emission monitoring.

(a) * * *

(2) An instrument for continuously monitoring and recording the concentration of carbon monoxide in gases discharged into the atmosphere from fluid catalytic cracking unit catalyst regenerators. The span of this continuous monitoring system shall be 1,000 ppm.

(3) * * *

(4) An instrument for continuously monitoring and recording concentrations of hydrogen sulfide in fuel gases burned in any fuel gas combustion device, if compliance with § 60.104(a)(1) is achieved by removing H_2S from the fuel gas before it is burned; fuel gas combustion devices having a common source of fuel gas may be monitored at one location, if monitoring at this location accurately represents the concentration of H_2S in the fuel gas burned. The span of this continuous monitoring system shall be 300 ppm.

(5) An instrument for continuously monitoring and recording concentrations of SO_2 in the gases discharged into the atmosphere from any Claus sulfur recovery plant if compliance with § 60.104(a)(2) is achieved through the use of an oxidation control system or a reduction control system followed by incineration. The span of this continuous monitoring system shall be sent at 500 ppm.

(6) An instrument(s) for continuously monitoring and recording the concentration of H_2S and reduced sulfur compounds in the gases discharged into the atmosphere from any Claus sulfur recovery plant if compliance with § 60.104(a)(2) is achieved through the use of a reduction control system not followed by incineration. The span(s) of this continuous monitoring system(s) shall be set at 20 ppm for monitoring and recording the concentration of H_2S and 600 ppm for monitoring and recording the concentration of reduced sulfur compounds.

* * * * *

(e) * * *

(1) * * *

(2) Carbon monoxide. All hourly periods during which the average carbon monoxide concentration in the gases discharged into the atmosphere from any fluid catalytic cracking unit catalyst regenerator subject to § 60.103 exceeds 0.050 percent by volume.

(3) Sulfur dioxide. (i) Any three-hour period during which the average concentration of H_2S in any fuel gas combusted in any fuel gas combustion device subject to § 60.104(a)(1) exceeds 230 mg/dscm (0.10 gr/dscf), if compliance is achieved by removing H_2S from the fuel gas before it is burned; or any three-hour period during which the average concentration of SO_2 in the gases discharged into the atmosphere from any fuel gas combustion device subject to § 60.104(a)(1) exceeds the level specified in § 60.104(a)(1), if compliance is achieved by removing SO_2 from the combusted fuel gases.

(ii) Any twelve-hour period during which the average concentration of SO_2 in the gases discharged into the atmosphere from any Claus sulfur recovery plant subject to § 60.104(a)(2) exceeds 250 ppm at zero percent oxygen on a dry basis if compliance with § 60.104(b) is achieved through the use of an oxidation control system or a reduction control system followed by incineration; or any twelve-hour period during which the average concentration of H_2S, or reduced sulfur compounds in the gases discharged into the atmosphere of any Claus sulfur plant subject to § 60.104(a)(2)(b) exceeds 10 ppm or 300 ppm, respectively, at zero percent oxygen and on a dry basis if compliance is achieved through the use of a reduction control system not followed by incineration.

6. Section 60.106 is amended as follows:

§ 60.106 Test methods and procedures.

* * * * *

(c) For the purpose of determining compliance with § 60.104(a)(1), Method 11 shall be used to determine the concentration of H_2S and Method 6 shall be used to determine the concentration of SO_2.

(1) If Method 11 is used, the gases sampled shall be introduced into the sampling train at approximately atmospheric pressure. Where refinery fuel gas lines are operating at pressures substantially above atmosphere, this may be accomplished with a flow control valve. If the line pressure is high enough to operate the sampling train without a vacuum pump, the pump may be eliminated from the sampling train. The sample shall be drawn from a point near the centroid of the fuel gas line. The minimum sampling time shall be 10 minutes and the minimum sampling volume 0.01 dscm (0.35 dscf) for each sample. The arithmetic average of two samples of equal sampling time shall constitute one run. Samples shall be taken at approximately 1-hour intervals. For most fuel gases, sample times exceeding 20 minutes may result in depletion of the collecting solution, although fuel gases containing low concentrations of hydrogen sulfide may necessitate sampling for longer periods of time.

(2) If Method 6 is used, Method 1 shall be used for velocity traverses and Method 2 for determining velocity and volumetric flow rate. The sampling site for determining SO_2 concentration by Method 6 shall be the same as for determining volumetric flow rate by Method 2. The sampling point in the duct for determining SO_2 concentration by Method 6 shall be at the centroid of the cross section if the cross sectional area is less than 5 m^2 (54 ft^2) or at a point no closer to the walls than 1 m (39 inches) if the cross sectional area is 5 m^2 or more and the centroid is more than one meter from the wall. The sample shall be extracted at a rate proportional to the gas velocity at the sampling point. The minimum sampling time shall be 10 minutes and the minimum sampling volume 0.01 dscm (0.35 dscf) for each sample. The arithmetic average of two

samples of equal sampling time shall constitute one run. Samples shall be taken at approximately 1-hour intervals.

(d) For the purpose of determining compliance with § 60.104(a)(2), Method 6 shall be used to determine the concentration of SO_2 and Method 15 shall be used to determine the concentration of H_2S and reduced sulfur compounds.

(1) If Method 6 is used, the procedure outlined in paragraph (c)(2) of this section shall be followed except that each run shall span a minimum of four consecutive hours of continuous sampling. A number of separate samples may be taken for each run, provided the total sampling time of these samples adds up to a minimum of four consecutive hours. Where more than one sample is used, the average SO_2 concentration for the run shall be calculated as the time weighted average of the SO_2 concentration for each sample according to the formula:

$$C_R=\sum_{i=1}^{N} C_{S_i}\frac{t_{S_i}}{T}$$

Where:

C_R = SO_2 concentration for the run.
N = Number of samples.
C_{Si} = SO_2 concentration for sample i.
t_{Si} = Continuous sampling time of sample i.
T = Total continuous sampling time of all N samples.

(2) If Method 15 is used, each run shall consist of 16 samples taken over a minimum of three hours. The sampling point shall be at the centroid of the cross section of the duct if the cross sectional area is less than 5 m² (54 ft²) or at a point no closer to the walls than 1 m (39 inches) if the cross sectional area is 5 m² or more and the centroid is more than 1 meter from the wall. To insure minimum residence time for the sample inside the sample lines, the sampling rate shall be at least 3 liters/minute (0.1 ft³/min). The SO_2 equivalent for each run shall be calculated as the arithmetic average of the SO_2 equivalent of each sample during the run. Reference Method 4 shall be used to determine the moisture content of the gases. The sampling point for Method 4 shall be adjacent to the sampling point for Method 15. The sample shall be extracted at a rate proportional to the gas velocity at the sampling point. Each run shall span a minimum of four consecutive hours of continuous sampling. A number of separate samples may be taken for each run provided the total sampling time of these samples adds up to a minimum of four consecutive hours. Where more than one sample is used, the average moisture content for the run shall be calculated as the time weighted average of the moisture content of each sample according to the formula:

$$B_{wo}=\sum_{i=1}^{N} B_{si}\left[\frac{t_{si}}{T}\right]$$

B_{wo} = Proportion by volume of water vapor in the gas stream for the run.
N = Number of samples.
B_{si} = Proportion by volume of water vapor in the gas stream for the sample i.
t_{si} = Continuous sampling time for sample i.
T = Total continuous sampling time of all N samples.

(Sec. 114 of the Clean Air Act, as amended [42 U.S.C. 7414]).

* * * * *

APPENDIX A—REFERENCE METHODS

7. Appendix A is amended by adding a new reference method as follows:

METHOD 15. DETERMINATION OF HYDROGEN SULFIDE, CARBONYL SULFIDE, AND CARBON DISULFIDE EMISSIONS FROM STATIONARY SOURCES

INTRODUCTION

The method described below uses the principle of gas chromatographic separation and flame photometric detection (FPD). Since there are many systems or sets of operating conditions that represent usable methods of determining sulfur emissions, all systems which employ this principle, but differ only in details of equipment and operation, may be used as alternative methods, provided that the criteria set below are met.

1. Principle and applicability

1.1 Principle. A gas sample is extracted from the emission source and diluted with clean dry air. An aliquot of the diluted sample is then analyzed for hydrogen sulfide (H_2S), carbonyl sulfide (COS), and carbon disulfide (CS_2) by gas chromatographic (GC) separation and flame photometric detection (FPD).

1.2 Applicability. This method is applicable for determination of the above sulfur compounds from tail gas control units of sulfur recovery plants.

2. Range and sensitivity

2.1 Range. Coupled with a gas chromtographic system utilizing a 1-milliliter sample size, the maximum limit of the FPD for each sulfur compound is approximately 10 ppm. It may be necessary to dilute gas samples from sulfur recovery plants hundredfold (99:1) resulting in an upper limit of about 1000 ppm for each compound.

2.2 The minimum detectable concentration of the FPD is also dependent on sample size and would be about 0.5 ppm for a 1 ml sample.

3. Interferences

3.1 Moisture Condensation. Moisture condensation in the sample delivery system, the analytical column, or the FPD burner block can cause losses or interferences. This potential is eliminated by heating the sample line, and by conditioning the sample with dry dilution air to lower its dew point below the operating temperature of the GC/FPD analytical system prior to analysis.

3.2 Carbon Monoxide and Carbon Dioxide. CO and CO_2 have substantial desensitizing effects on the flame photometric detector even after 9:1 dilution. (Acceptable systems must demonstrate that they have eliminated this interference by some procedure such as eluding CO and CO_2 before any of the sulfur compounds to be measured.) Compliance with this requirement can be demonstrated by submitting chromatograms of calibration gases with and without CO_2 in the diluent gas. The CO_2 level should be approximately 10 percent for the case with CO_2 present. The two chromatographs should show agreement within the precision limits of section 4.1.

3.3 Elemental Sulfur. The condensation of sulfur vapor in the sampling line can lead to eventual coating and even blockage of the sample line. This problem can be eliminated along with the moisture problem by heating the sample line.

4. Precision

4.1 Calibration Precision. A series of three consecutive injections of the same calibration gas, at any dilution, shall produce results which do not vary by more than ±13 percent from the mean of the three injections.

4.2 Calibration Drift. The calibration drift determined from the mean of three injections made at the beginning and end of any 8-hour period shall not exceed ±5 percent.

5. Apparatus

5.1.1 Probe. The probe must be made of inert material such as stainless steel or glass. It should be designed to incorporate a filter and to allow calibration gas to enter the probe at or near the sample entry point. Any portion of the probe not exposed to the stack gas must be heated to prevent moisture condensation.

5.1.2 The sample line must be made of Teflon,[1] no greater than 1.3 cm (½ in) inside diameter. All parts from the probe to the dilution system must be thermostatically heated to 120° C.

5.1.3 Sample Pump. The sample pump shall be a leakless Teflon coated diaphragm type or equivalent. If the pump is upstream of the dilution system, the pump head must be heated to 120° C.

5.2 Dilution System. The dilution system must be constructed such that all sample contacts are made of inert material (e.g. stainless steel or Teflon). It must be heated to 120° C and be capable of approximately a 9:1 dilution of the sample.

5.3 Gas Chromatograph. The gas chromatograph must have at least the following components:

5.3.1 Oven. Capable of maintaining the separation column at the proper operating temperature ±1° C.

5.3.2 Temperature Gauge. To monitor column oven, detector, and exhaust temperature ±1° C.

5.3.3 Flow System. Gas metering system to measure sample, fuel, combustion gas, and carrier gas flows.

5.3.4 Flame Photometric Detector.

5.3.4.1 Electrometer. Capable of full scale amplification of linear ranges of 10^{-9} to 10^{-4} amperes full scale.

5.3.4.2 Power Supply. Capable of delivering up to 750 volts.

5.3.4.3 Recorder. Compatible with the output voltage range of the electrometer.

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[1] Mention of trade names or specific products does not constitute an endorsement by the Environmental Protection Agency.

5.4 Gas Chromatograph Columns. The column system must be demonstrated to be capable of resolving three major reduced sulfur compounds: H_2S, COS, and CS_2.

To demonstrate that adequate resolution has been achieved the tester must submit a chromatograph of a calibration gas containing all three reduced sulfur compounds in the concentration range of the applicable standard. Adequate resolution will be defined as base line separation of adjacent peaks when the amplifier attenuation is set so that the smaller peak is at least 50 percent of full scale. Base line separation is defined as a return to zero ± 5 percent in the interval between peaks. Systems not meeting this criteria may be considered alternate methods subject to the approval of the Administrator.

5.5.1 Calibration System. The calibration system must contain the following components.

5.5.2 Flow System. To measure air flow over permeation tubes at ± 2 percent. Each flowmeter shall be calibrated after a complete test series with a wet test meter. If the flow measuring device differs from the wet test meter by 5 percent, the completed test shall be discarded. Alternatively, the tester may elect to use the flow data that would yield the lowest flow measurement. Calibration with a wet test meter before a test is optional.

5.5.3 Constant Temperature Bath. Device capable of maintaining the permeation tubes at the calibration temperature within $\pm 1.1^\circ$ C.

5.5.4 Temperature Gauge. Thermometer or equivalent to monitor bath temperature within $\pm 1^\circ$ C.

6. Reagents

6.1 Fuel. Hydrogen (H_2) prepurified grade or better.

6.2 Combustion Gas. Oxygen (O_2) or air, research purity or better.

6.3 Carrier Gas. Prepurified grade or better.

6.4 Diluent. Air containing less than 0.5 ppm total sulfur compounds and less than 10 ppm each of moisture and total hydrocarbons.

6.5 Calibration Gases. Permeation tubes, one each of H_2S, COS, and CS_2, gravimetrically calibrated and certified at some convenient operating temperature. These tubes consist of hermetically sealed FEP Teflon tubing in which a liquified gaseous substance is enclosed. The enclosed gas permeates through the tubing wall at a constant rate. When the temperature is constant, calibration gases covering a wide range of known concentrations can be generated by varying and accurately measuring the flow rate of diluent gas passing over the tubes. These calibration gases are used to calibrate the GC/FPD system and the dilution system.

7. Pretest Procedures

The following procedures are optional but would be helpful in preventing any problem which might occur later and invalidate the entire test.

7.1 After the complete measurement system has been set up at the site and deemed to be operational, the following procedures should be completed before sampling is initiated.

7.1.1 Leak Test. Appropriate leak test procedures should be employed to verify the integrity of all components, sample lines, and connections. The following leak test procedure is suggested: For components upstream of the sample pump, attach the probe end of the sample line to a manometer or vacuum gauge, start the pump and pull greater than 50 mm (2 in.) Hg vacuum, close off the pump outlet, and then stop the pump and ascertain that there is no leak for 1 minute. For components after the pump, apply a slight positive pressure and check for leaks by applying a liquid (detergent in water, for example) at each joint. Bubbling indicates the presence of a leak.

7.1.2 System Performance. Since the complete system is calibrated following each test, the precise calibration of each component is not critical. However, these components should be verified to be operating properly. This verification can be performed by observing the response of flowmeters or of the GC output to changes in flow rates or calibration gas concentrations and ascertaining the response to be within predicted limits. If any component or the complete system fails to respond in a normal and predictable manner, the source of the discrepancy should be identifed and corrected before proceeding.

8. Calibration

Prior to any sampling run, calibrate the system using the following procedures. (If more than one run is performed during any 24-hour period, a calibration need not be performed prior to the second and any subsequent runs. The calibration must, however, be verified as prescribed in section 10, after the last run made within the 24-hour period.)

8.1 General Considerations. This section outlines steps to be followed for use of the GC/FPD and the dilution system. The procedure does not include detailed instructions because the operation of these systems is complex, and it requires an understanding of the individual system being used. Each system should include a written operating manual describing in detail the operating procedures associated with each component in the measurement system. In addition, the operator shuld be familiar with the operating principles of the components; particularly the GC/FPD. The citations in the Bibliography at the end of this method are recommended for review for this purpose.

8.2 Calibration Procedure. Insert the permeation tubes into the tube chamber. Check the bath temperature to assure agreement with the calibration temperature of the tubes within $\pm 0.1^\circ$C. Allow 24 hours for the tubes to equilibrate. Alternatively equilibration may be verified by injecting samples of calibration gas at 1-hour intervals. The permeation tubes can be assumed to have reached equilibrium when consecutive hourly samples agree within the precision limits of section 4.1.

Vary the amount of air flowing over the tubes to produce the desired concentrations for calibrating the analytical and dilution systems. The air flow across the tubes must at all times exceed the flow requirement of the analytical systems. The concentration in parts per million generated by a bube containing a specific permeant can be calculated as follows:

$$C = K \times P_r / ML \qquad \text{Equation 15-1}$$

where:

C=Concentration of permeant produced in ppm.

P_r=Permeation rate of the tube in μg/min.

M=Molecular weight of the permeant: g/g-mole.

L=Flow rate, l/min, of air over permeant @ 20°C, 760 mm Hg.

K=Gas constant at 20°C and 760 mm Hg=24.04 l/g mole.

8.3 Calibration of analysis system. Generate a series of three or more known concentrations spanning the linear range of the FPD (approximately 0.05 to 1.0 ppm) for each of the four major sulfur compounds. Bypassing the dilution system, inject these standards in to the GC/FPD analyzers and monitor the responses. Three injects for each concentration must yield the precision described in section 4.1. Failure to attain this precision is an indication of a problem in the calibration or analytical system. Any such problem must be identified and corrected before proceeding.

8.4 Calibration Curves. Plot the GC/FPD response in current (amperes) versus their causative concentrations in ppm on log-log coordinate graph paper for each sulfur compound. Alternatively, a least squares equation may be generated from the calibration data.

8.5 Calibration of Dilution System. Generate a know concentration of hydrogen sulfied using the permeation tube system. Adjust the flow rate of diluent air for the first dilution stage so that the desired level of dilution is approximated. Inject the diluted calibration gas into the GC/FPD system and monitor its response. Three injections for each dilution must yield the precision described in section 4.1. Failure to attain this precision in this step is an indication of a problem in the dilution system. Any such problem must be identified and corrected before proceeding. Using the calibration data for H_2S (developed under 8.3) determine the diluted calibration gas concentration in ppm. Then calculate the dilution factor as the ratio of the calibration gas concentration before dilution to the diluted calibration gas concentration determined under this paragraph. Repeat this procedure for each stage of dilution required. Alternatively, the GC/FPD system may be calibrated by generating a series of three or more concentrations of each sulfur compound and diluting these samples before injecting them into the GC/FPD system. This data will then serve as the calibration data for the unknown samples and a separate determination of the dilution factor will not be necessary. However, the precision requirements of section 4.1 are still applicable.

9. Sampling and Analysis Procedure

9.1 Sampling. Insert the sampling probe into the test port making certain that no dilution air enters the stack through the port. Begin sampling and dilute the sample approximately 9:1 using the dilution system. Note that the precise dilution factor is that which is determined in paragraph 8.5. Condition the entire system with sample for a minimum of 15 minutes prior to commencing analysis.

9.2 Analysis. Aliquots of diluted sample are injected into the GC/FPD analyzer for analysis.

9.2.1 Sample Run. A sample run is composed of 16 individual analyses (injects) performed over a period of not less than 3 hours or more than 6 hours.

9.2.2 Observation for Clogging of Probe. If reductions in sample concentrations are observed during a sample run that cannot be explained by process conditions, the sampling must be interrupted to determine if the sample probe is clogged with particulate matter. If the probe is found to be clogged, the test must be stopped and the results up to that point discarded. Testing may resume after cleaning the probe or replacing it with a clean one. After each run, the sample probe must be inspected and, if necessary, dismantled and cleaned.

10. Post-Test Procedures

10.1 Sample Line Loss. A known concentration of hydrogen sulfide at the level of the applicable standard, ±20 percent, must be introduced into the sampling system at the opening of the probe in sufficient quantities to ensure that there is an excess of sample which must be vented to the atmosphere. The sample must be transported through the entire sampling system to the measurement system in the normal manner. The resulting measured concentration should be compared to the known value to determine the sampling system loss. A sampling system loss of more than 20 percent is unacceptable. Sampling losses of 0-20 percent must be corrected by dividing the resulting sample concentration by the fraction of recovery. The known gas sample may be generated using permeation tubes. Alternatively, cylinders of hydrogen sulfide mixed in air may be used provided they are traceable to permeation tubes. The optional pretest procedures provide a good guideline for determining if there are leaks in the sampling system.

10.2 Recalibration. After each run, or after a series of runs made within a 24-hour period, perform a partial recalibration using the procedures in section 8. Only H_2S (or other permeant) need be used to recalibrate the GC/FPD analysis system (8.3) and the dilution system (8.5).

10.3 Determination of Calibration Drift. Compare the calibration curves obtained prior to the runs, to the calibration curves obtained under paragraph 10.1. The calibration drift should not exceed the limits set forth in paragraph 4.2. If the drift exceeds this limit, the intervening run or runs should be considered not valid. The tester, however, may instead have the option of choosing the calibration data set which would give the highest sample values.

11. Calculations

11.1 Determine the concentrations of each reduced sulfur compound detected directly from the calibration curves. Alternatively, the concentrations may be calculated using the equation for the least squares line.

11.2 Calculation of SO_2 Equivalent. SO_2 equivalent will be determined for each analysis made by summing the concentrations of each reduced sulfur compound resolved during the given analysis.

$$SO_2\ \text{equivalent} = \Sigma(H_2S,\ COS,\ 2\ CS_2)d$$

Equation 15-2

where:

SO_2 equivalent = The sum of the concentration of each of the measured compounds (COS, H_2S, CS_2) expressed as sulfur dioxide in ppm.

H_2S = Hydrogen sulfide, ppm.

COS = Carbonyl sulfide, ppm.

CS_2 = Carbon disulfide, ppm.

d = Dilution factor, dimensionless.

11.3 Average SO_2 equivalent will be determined as follows:

$$\text{Average } SO_2 \text{ equivalent} = \frac{\sum_{i=1}^{N} SO_2\ \text{equiv.}_i}{N\,(1 - Bwo)}$$

Equation 15-3

where:

Average SO_2 equivalent$_i$ = Average SO_2 equivalent in ppm, dry basis.

Average SO_2 equivalent$_i$ = SO_2 in ppm as determined by Equation 15-2.

N = Number of analyses performed.

Bwo = Fraction of volume of water vapor in the gas stream as determined by Method 4—Determination of Moisture in Stack Gases (36 FR 24887).

12. Example System

Described below is a system utilized by EPA in gathering NSPS data. This system does not now reflect all the latest developments in equipment and column technology, but it does represent one system that has been demonstrated to work.

12.1 Apparatus.

12.1.1 Sample System.

12.1.1.1 Probe. Stainless steel tubing, 6.35 mm (¼ in.) outside diameter, packed with glass wool.

12.1.1.2 Sample Line. 3/16 inch inside diameter Teflon tubing heated to 120° C. This temperature is controlled by a thermostatic heater.

12.1.1.3 Sample Pump. Leakless Teflon coated diaphragm type or equivalent. The pump head is heated to 120° C by enclosing it in the sample dilution box (12.2.4 below).

12.1.2 Dilution System. A schematic diagram of the dynamic dilution system is given in Figure 15-2. The dilution system is constructed such that all sample contacts are made of inert materials. The dilution system which is heated to 120° C must be capable of a minimum of 9:1 dilution of sample. Equipment used in the dilution system is listed below:

12.1.2.1 Dilution Pump. Model A-150 Kohmyhr Teflon positive displacement type, nonadjustable 150 cc/min. ±2.0 percent, or equivalent, per dilution stage. A 9:1 dilution of sample is accomplished by combining 150 cc of sample with 1350 cc of clean dry air as shown in Figure 15-2.

12.1.2.2 Valves. Three-way Teflon solenoid or manual type.

12.1.2.3 Tubing. Teflon tubing and fittings are used throughout from the sample probe to the GC/FPD to present an inert surface for sample gas.

12.1.2.4 Box. Insulated box, heated and maintained at 120° C, of sufficient dimensions to house dilution apparatus.

12.1.2.5 Flowmeters. Rotameters or equivalent to measure flow from 0 to 1500 ml/min. ±1 percent per dilution stage.

12.1.3.0 Gas Chromatograph.

12.1.3.1 Column—1.83 m (6 ft.) length of Teflon tubing, 2.16 mm (0.085 in.) inside diameter, packed with deactivated silica gel, or equivalent.

12.1.3.2 Sample Valve. Teflon six port gas sampling valve, equipped with a 1 ml sample loop, actuated by compressed air (Figure 15-1).

12.1.3.3 Oven. For containing sample valve, stripper column and separation column. The oven should be capable of maintaining an elevated temperature ranging from ambient to 100° C, constant within ±1° C.

12.1.3.4 Temperature Monitor. Thermocouple pyrometer to measure column oven, detector, and exhaust temperature ±1° C.

12.1.3.5 Flow System. Gas metering system to measure sample flow, hydrogen flow, oxygen flow and nitrogen carrier gas flow.

12.1.3.6 Detector. Flame photometric detector.

12.1.3.7 Electrometer. Capable of full scale amplification of linear ranges of 10^{-9} to 10^{-4} amperes full scale.

12.1.3.8 Power Supply. Capable of delivering up to 750 volts.

12.1.3.9 Recorder. Compatible with the output voltage range of the electrometer.

12.1.4 Calibration. Permeation tube system (Figure 15-3).

12.1.4.1 Tube Chamber. Glass chamber of sufficient dimensions to house permeation tubes.

12.1.4.2 Mass Flowmeters. Two mass flowmeters in the range 0-3 l/min. and 0-10 l/min. to measure air flow over permeation tubes at ±2 percent. These flowmeters shall be cross-calibrated at the beginning of each test. Using a convenient flow rate in the measuring range of both flowmeters, set and monitor the flow rate of gas over the permeation tubes. Injection of calibration gas generated at this flow rate as measured by one flowmeter followed by injection of calibration gas at the same flow rate as measured by the other flowmeter should agree within the specified precision limits. If they do not, then there is a problem with the mass flow measurement. Each mass flowmeter shall be calibrated prior to the first test with a wet test meter and thereafter at least once each year.

12.1.4.3 Constant Temperature Bath. Capable of maintaining permeation tubes at certification temperature of 30° C within ±0.1° C.

12.2 Reagents.

12.2.1 Fuel. Hydrogen (H_2) prepurified grade or better.

12.2.2 Combustion Gas. Oxygen (O_2) research purity or better.

12.2.3 Carrier Gas. Nitrogen (N_2) prepurified grade or better.

12.2.4 Diluent. Air containing less than 0.5 ppm total sulfur compounds and less than 10 ppm each of moisture and total hydrocarbons, and filtered using MSA filters 46727 and 79030, or equivalent. Removal of sulfur compounds can be verified by injecting dilution air only, described in section 8.3.

12.2.5 Compressed Air. 60 psig for GC valve actuation.

12.2.6 Calibration Gases. Permeation tubes gravimetrically calibrated and certified at 30.0° C.

12.3 Operating Parameters. The operating parameters for the GC/FPD system are as follows: nitrogen carrier gas flow rate of 100 cc/min, exhaust temperature of 110° C, detector temperature 105° C, oven temperature of 40° C, hydrogen flow rate of 80 cc/minute, oxygen flow rate of 20 cc/minute, and sample flow rate of 80 cc/minute.

12.4 Analysis. The sample valve is actuated for 1 minute in which time an aliquot of diluted sample is injected onto the separation column. The valve is then deactivated for the remainder of analysis cycle in which time the sample loop is refilled and the separation column continues to be foreflushed. The elution time for each compound will be determined during calibration.

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federal register

WEDNESDAY, MARCH 15, 1978
PART IV

SECURITIES AND EXCHANGE COMMISSION

EXAMINATION OF THE EFFECTS OF RULES AND REGULATIONS ON THE ABILITY OF SMALL BUSINESSES TO RAISE CAPITAL AND THE IMPACT ON SMALL BUSINESSES OF DISCLOSURE REQUIREMENTS UNDER THE SECURITIES ACTS

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 210, 230, 239, 240 and 249]

[Release No. 33-5914, 34-14529, S7-734]

EXAMINATION OF THE EFFECTS OF RULES AND REGULATIONS ON THE ABILITY OF SMALL BUSINESSES TO RAISE CAPITAL AND THE IMPACT ON SMALL BUSINESSES OF DISCLOSURE REQUIREMENTS UNDER THE SECURITIES ACTS

AGENCY: Securities and Exchange Commission.

ACTION: Publication of issues to be considered at hearings and order of hearings, and solicitation of written submissions and requests for oral presentations.

SUMMARY: In Securities Act Release No. 5889 (December 14, 1977), (42 FR 64163), the Commission announced that it would hold public hearings concerning the effects of its rules and regulations on the ability of small businesses to raise capital and the impact on small businesses of the disclosure requirements under the Securities Acts. The Commission has today published a list of issues to be considered at the hearings. The Commission has also published an order which specifies procedures for the hearings.

DATES: Hearings will commence on April 11, 1978, in Washington, D.C.; on April 18, 1978, in Los Angeles, Calif.; on April 25, 1978, in Denver, Colo.; on May 2, 1978 in Atlanta, Ga.; on May 9, 1978, in Chicago, Ill.; and on May 16, 1978, in Boston, Mass. Specific times and room locations will be determined later and may be obtained by phoning or writing those persons listed below. The hearing record for these proceedings will remain open until June 1, 1978, unless extended by the Commission.

ADDRESSES: Interested members of the public may comment on the following proposals through oral presentations (for which a prepared text is required), written submissions, or both. Any written submissions not prepared in connection with an oral presentation should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 and should refer to File No. S7-734.

All witnesses desiring to make oral presentations should submit copies of their prepared statements to the Commission office in the city in which they wish to testify and such materials should be directed to the attention of those persons listed below.

All written submissions, including the written texts submitted in connection with oral presentations and the transcripts of such oral presentations, will be available for public inspection at the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. 20549, and at the following Regional Offices of the Commission: 10960 Wilshire Boulevard, Suite 1710, Los Angeles, Calif. 90024; Two Park Central, Room 640, 1515 Arapahoe Street, Denver, Colo. 80202; 1375 Peachtree Street NE., Suite 788, Atlanta, Ga. 30309; Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1204, Chicago, Ill. 60604; 150 Causeway Street, Boston, Mass. 02114.

FOR FURTHER INFORMATION CONTACT:

Paul A. Belvin or John A. Granda, Office of Disclosure Policy and Proceedings, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549, 202-755-1750 or 202-376-8090; or the following persons located at the Commission's Regional Offices; James W. Mercer, 10960 Wilshire Boulevard, Suite 1710, Los Angeles, Calif. 90024, 213-984-0011; William J. Klein, Two Park Central, Room 640, 1515 Arapahoe Street, Denver, Colo. 80202, 303-327-2071; Everett Leo Mast, 1375 Peachtree Street NE., Suite 788, Atlanta, Ga. 30309, 404-257-4844; Dennis B. O'Boyle, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1204, Chicago, Ill. 60604, 312-353-3378; Katherine W. Keane, 150 Causeway Street, Boston, Mass. 02114, 617-223-2721.

SUPPLEMENTARY INFORMATION: The public hearings which are scheduled to commence on April 11, 1978, are for the purpose of giving the Commission the benefit of the views of interested members of the public with respect to the effects of its rules and regulations on the ability of small businesses to raise capital and the impact on small businesses of the disclosure requirements under the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq., as amended by Pub. L. 94-29 (June 4, 1975)). At the conclusion of these hearings, the Commission will determine whether it is necessary or appropriate in the public interest or for the protection of investors to propose amendments to its rules and regulations or to recommend legislation to Congress. Persons interested in testifying or furnishing a written submission for the record should consult the procedural instructions contained under the heading "Procedures" at the conclusion of this release.

I. INTRODUCTION

A. BACKGROUND

The study of the problems confronting small businesses, while a topic of longstanding interest, has recently become the focus of considerable public attention. The wealth of concern for the well-being of that sector stems from the pivotal role it plays in the vitality of the general economy. The contribution of small businesses in supplying jobs, technical innovation, and generally in keeping our system competitive requires that unnecessary obstacles to their formation and growth be removed.

Recent Congressional hearings[1] and studies,[2] studies by Government agencies[3] and the professional literature[4] have attempted to isolate and analyze the factors which impede the success of small businesses. These investigations have shown that the small business problem is exceedingly complex. In large part, it appears that the obstacles faced by small businesses are the product of factors deeply rooted in the economic environment as well as taxation and regulatory policies which are outside the scope of the federal securities laws.[5] Nevertheless, there have been suggestions that the Commission's registration and periodic reporting requirements impose a relatively greater compliance burden on small companies than on large ones. Some have contended further that the net effect of these policies is to endanger the continued existence of smaller companies and to inhibit the formation of new enterprises.

This concern has given rise to legislative initiatives which would relax

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[1] "Hearings on Small Business Access to Equity and Venture Capital" Before the Subcommittee on Capital, Investment and Business Opportunities of the House Committee on Small Business, 95th Cong., 1st Sess. (1977); "Hearings on the Economic Problems of Small Business" Before the Subcommittee on Energy and Environment of the House Committee on Small Business, 94th Cong., 2d Sess. (1977); "Hearings on the Overregulation of Small Business" Before the Subcomm. on Government Regulation of the Senate Select Comm. on Small Business, 94th Cong., 2d Sess. (1976).

[2] See, e.g., Doyle, "Foundations for a National Policy to Preserve Private Enterprise in the 1980's"; A Study Prepared for the Use of the Subcomm. on Economic Growth and Stabilization of the Joint Economic Comm., 95th Cong., 1st Sess. (1977).

[3] See, e.g., U.S. Small Business Administration, "The Study of Small Business" (1977).

[4] See, e.g., "Legal Reforms for Small Business—A Symposium", 33 Bus. Law. 847 (1978).

[5] See, e.g., "Report of the SBA Task Force on Venture and Equity Capital for Small Business" (U.S. Small Business Administration (1977)).

the federal securities laws and regulations promulgated thereunder as they relate to small issuers.[6] The Commission has also been urged to take similar action by the Small Business Administration,[7] venture capital groups, and a substantial number of professional commentators.[8]

In addition, The Report of the Advisory Committee on Corporate Disclosure cited a number of factors which suggest that a reduction in the reporting requirements under the Exchange Act, to lessen their impact on small businesses, may be warranted.[9] First, the cost data collected in the Advisory Committee's survey of publicly held companies indicates that the burden of reporting weighs more heavily on small than large companies.[10] Second, data from the Advisory Committee's studies and consultations with information disseminators revealed that institutional investors and their advisers evidence little or no interest in the securities of small companies.[11] Third, it did not appear that the reduction of reporting would adversely affect the possibility that smaller companies will attract analyst interest.[12] This was thought to be the case because it would be possible for companies to voluntarily meet a higher disclosure standard if that were perceived as necessary and because the limited nature of investor interest in small companies appeared to be unrelated to the amount or quality of disclosure.[13]

The Advisory Committee recognized that further study was needed before a definitive conclusion could be reached because of "the sketchy nature of the evidence, the highly judgmental nature of an evaluation of the data's implications, and particularly the difficulty of assessing the information needs of shareholders who do invest in these companies."[14] Accordingly, it recommended that public hearings be held to address the following issues:

(1) Whether and, if so, to what extent, the Commission should attempt to define a category of "small companies" for the purpose of requiring less burdensome periodic reporting requirements?

(2) Assuming that such a classification is desirable, how should it be defined?

(3) Assuming that classification is desirable and definition possible, what reduction of periodic reporting requirements can occur consistent with the purposes of the Federal Securities Laws?[15]

The Advisory Committee clearly pointed out, however, that the protection of investors, through the disclosure to them of all material information necessary to an informed investment or corporate suffrage decision, should not be subordinated to other social and economic objectives, such as the encouragement of small business enterprises.[16] This hierarchy of objectives does not, however, forceclose the inquiry for the Committee also noted that the cost of compliance must be weighed in any evaluation of a disclosure policy.[17] In their view, the "small company problem" possibly presents a situation where the compliance burden may be unduly expensive and where a reduction in Exchange Act disclosure obligations might be achieved without an adverse effect on disclosure to investors.[18]

Similarly, a reduction in the amount or quality of disclosure to be furnished to prospective investors in connection with the public offering of securities by small businesses and the liberalization for such issuers of the requirements for an exemption from the registration provisions of the Securities Act involves an inherent conflict between protecting investors and facilitating the raising of capital. Thus, the creation of a simplified registration form for the public sale of securities by small businesses might eliminate necessary decisionmaking information, thereby undercutting the objective of protecting investors through disclosure. Based on its reading of the legislative history of the federal securities laws, the Advisory Committee recommended that all such conflicts be resolved in favor of assuring the availability of investor oriented information.[19] In its view, "to the extent other objectives conflict they must give way."[20]

Other observers, however, argue that in striking a balance between these objectives the Commission must give appropriate effect to the "public interest." In their view, the public interest includes more than the protection of investors as such.[21] It requires the Commission to look beyond these immediate interests and to take into consideration the welfare of the economy as a whole.[22] Thus, while it is looking to the protection of prospective investors in dealing with small business, or big business for that matter, it must be careful not to erect such burdensome requirements as to discourage the raising of the capital necessary to the growth of business and industry.[23]

Particularly with the advent of the "140 series" of rules, many writers have espoused the view that the pendulum has swung too far in favor of investor protection.[24] While it is acknowledged that compliance with those rules does not pose a serious problem for large issuers, it is argued that they unnecessarily restrict the ability of small business to raise capital.[25]

Moreover, it should be recognized that offerings of securities by small businesses range from those in which the issuer is a relatively seasoned company with concrete business prospects, to those in which the issuer has never done any business and the investor is entirely dependent upon the viability of a proposal and the good faith of the promoter. In connection with the specific issues to be dealt with at these hearings, the Commission requests that commentators and interested persons consider the significant issue of whether special safeguards for investors are necessary in the latter case, what these safeguards should be, as for example, an escrow or other control over the disposition of funds raised from public investors, and, if such safeguards should be provided,

[6] See, e.g., H.R. 10717, 95th Cong., 2d Sess., which would raise the ceiling in Section 3(b) of the Securities Act from $500,000 to $3,000,000 and liberalize Rules 144 and 146. See Also, H.R. 9549, 95th Cong. 1st Sess., S. 2305, 95th Cong., 1st Sess.; S. 1815, 95th Cong., 1st Sess.

[7] U.S. Small Business Administration, supra note 3, at 20.

[8] See, e.g., Casey, "SEC Rules 144 and 146 Revisited", 43 Brooklyn L. Rev. 571 (1977).

[9] Report of the Advisory Committee on Corporate Disclosure (1977), at 511 (1977). It should be noted that the Advisory Committee focused only on the 1934 Act because of its awareness of the continuing efforts of the Commission to develop less burdensome 1933 Act registration procedures. Id., at 512, n. 1.

[10] Id. at 513.

[11] Id. at 514.

[12] Id. at 519.

[13] Id.

[14] Id. at 520.

[15] Id. at 520-521.

[16] Id. at 309-310 and 511-512.

[17] Id. at 317 and 512.

[18] Id. at 512.

[19] Id. at 310.

[20] Id.

[21] Gadsby, "The Securities and Exchange Commission and the Financing of Small Business," 14 Bus. Law. 144, 145 (1958).

[22] Id.

[23] Id.

[24] See, e.g., Coles, "Has Securities Law Regulation in the Private Capital Markets Become a Deterrent to Capital Growth: A Critical Review, 58 Marq. L. Rev. 1 (1975).

[25] See, e.g., Carney, "Exemptions from Securities Registration for Small Issuers: Shifting from Full Disclosure—Part I: The Private Offering Exemption, Rule 146 and an End to Access for Small Issuers", 10 Land and Water L. Rev. 507 (1975); Carney, "Exemptions from Securities Registration for Small Issuers: Shifting from Full Disclosure—Part II: The Intrastate Exemption and Rule 147," 11 Land and Water L. Rev. 161 (1976); Carney, "Exemptions from Securities Registration for Small Issuers: Shifting from Full Disclosure—Part III: The Small Offering Exemption and Rule 240," 11 Land and Water L. Rev. 483 (1976).

the standards for determining their applicability.

For these reasons, among others, the Commission directed the staff to undertake consideration of possible revisions of its rules relating to registrations, small offerings, private placements and resales of securities which might be made to facilitate capital formation by small businesses and to lessen the overall burden in a manner consistent with the protection of investors.[26]

In addition, the Commission, in early 1977, began to examine how securities regulation affects the capital-raising ability of small technology-based businesses. Under an agreement with the Department of Commerce's National Bureau of Standards Experimental Technology Incentive Program (ETIP), the Commission's Directorate of Economic and Policy Research is studying the effect of present and proposed policies on small issuers, investors, broker-dealers and other economic agents in the venture capital industry.[27]

Because of the complexity of these issues and their importance to the administration of the securities laws, the Commission is seeking the views of interested members of the public in a broad reexamination of its rules as they relate to small businesses. This will assist the Commission in identifying specific issues and facilitate the participation of constituencies with the special expertise and data conducive to the appropriate resolution of these concerns.

B. REGULATORY FRAMEWORK OF THE FEDERAL SECURITIES LAWS AS IT RELATES TO SMALL BUSINESSES[28]

A basic purpose of the Federal securities laws is to provide disclosure to investors of material financial and other information so that they might make informed investment and corporate suffrage decisions. Investors are apprised of this information, in connection with a public offering of securities, through the Securities Act and, in connection with the trading of securities or the solicitation of proxies, through the Exchange Act. The two Acts are administered with a view to integrating their requirements in such a way as to provide a continuous system of corporate disclosure at the least possible social cost.

1. Securities Act of 1933

Absent an available exemption, the Securities Act requires that before securities may be offered for sale to the public a registration statement must be filed with the Commission disclosing prescribed categories of information. The securities cannot be sold until the registration statement becomes effective. In addition, prospective investors must be furnished with a prospectus containing the most significant information in the registration statement.

While the Securities Act specifies the information to be included in a registration statement, the Commission has the authority to prescribe appropriate forms and to vary the particular items of information required to be disclosed. To facilitate the registration of securities by different types of issuers, the Commission has adopted special registration forms which vary in their disclosure requirements so as to provide maximum disclosure of the essential facts pertinent in a given type of offering while at the same time minimizing the burdens and expense of compliance with the law. In recent years, it has adopted certain short forms, notably Forms S-7 (17 CFR 239.26) and S-16 (17 CFR 239.27), which do not require disclosure of certain matters already covered in reports and proxy material filed under provisions of the Exchange Act. Small businesses are, however, generally unable to avail themselves of these forms because they either do not report under the Exchange Act or do not meet the earnings test prescribed for their use. Accordingly, Form S-1 (17 CFR 239.11), the Commission's most extensive registration form, must ordinarily be used by small businesses who wish to register an offering osecurities.[29]

The costs of registration on Forms S-1—the greatest portion of which appear to be for professional services required in order to prepare certified financial statements, attorneys' preparation and review of documents to be filed with the Commission and the attendant printing costs—are particularly substantial for a small business.[30]

Because of this the Commission has, as indicated previously, proposed Form S-18 to provide a simplified form of registration for non-reporting companies who seek to raise up to three million dollars. Nevertheless, even simplified registration may prove too costly or for other reasons may not meet the capital raising needs of small businesses. Thus, the exemptions from the registration requirements take on added significance for such enterprises.

Congress recognized that there are certain situations "where there is no practical need for * * * [registration] or where the public benefits [therefrom] are too remote."[31] Accordingly, a number of exemptions to the registration requirements are contained in the Securities Act. The exemptions which are typically most significant to small business are those provided by sections 3(a)(11), 3(b) and 4(2).[32]

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[26]Thus, the Commission, in a companion release, has today announced a proposed registration Form S-18 under the Securities Act which would reduce the narrative and financial statement disclosure requirements for sales of securities not exceeding three million dollars. Securities Act Release No. 5915 (March 6, 1977) (— FR —). The staff is also reviewing the desirability and feasibility of revising Rule 240 [17 CFR 230.144] to increase the limitation on aggregate sales price of securities offered, of simplifying the procedure for Regulation A offerings, and revising Rule 144. In response to its invitation for public comment, the Commission has also received the views of interested persons on the operation of Rule 146 [17 CFR 230.146], including the volume of transactions in reliance thereon and the practices issuers have utilized in complying with the Rule. Securities Act Release No. 5779 (December 6, 1976) (41 FR 53808). In a separate release also published today the Commission proposed amendments to Rule 146 which would (1) prohibit persons who receive compensation from the issuer in connection with the offering from also serving as an offeree representative and (2) revise the disclosure requirements when an offering is for less than $500,000. Securities Act Release No. 5913 (March 6, 1978) (— FR —).

[27]The first phase of this effort analyzes the principal rules, regulations and procedures that influence the flow of capital to new or recently established technology-based ventures. This will include investigation of Securities and Exchange Commission Regulation A and Rules 144, 145, 146, 147 and 240 in an effort to understand the workings of these rules and to determine the costs and benefits associated with their provisions.

The second phase refines and tests the analytical models developed in phase one so that an approach to monitoring the effects of SEC regulation in venture capital markets can be established. The overall objective is to institutionalize a monitoring system to provide timely economic information to the Commission about the impact of regulatory activity on issuers and the investing public. It is anticipated that this experimental system will require two years to complete.

[28]In Order to assist interested persons in understanding and responding to the issues set forth in Part II of this release, a general discussion of the background, purpose and general effect of the Federal securities laws, and the rules and regulations promulgated thereunder, which have a significant bearing on small businesses has been included. The full text of these laws and regulations should be consulted for a more complete understanding of their provisions.

[29]Development stage companies without a substantial operating history are currently required to register on Form S-2 (17 CFR 239.12).

[30]See Report of the Advisory Committee on Corporate Disclosure (1977), at 28-29.

[31]H.R. Rep. No. 85, 73rd Cong., 1st Sess. 5 (1933).

[32]It should be noted, however, that these sections do not provide an exemption from the anti-fraud provisions of the Securities Acts or from the civil liability provisions of section 12(2) of the Securities Act or other provisions of the Federal securities laws.

Section 3(a)(11), commonly referred to as the "intrastate offering exemption," exempts from the registration requirements of section 5 of the Securities Act securities that are part of an issue offered and sold only to persons resident within a single state or territory, if the issuer is a person resident and doing business within that state or territory. The legislative history reveals that the Congressional purpose underlying that exemption was to permit local financing of companies primarily intrastate in character without registration.[33] Thus, it was thought that by restricting the offering to persons who are within the same locality as the issuer the protections afforded by registration would not be needed since, by virtue of their proximity, they are likely to be familiar with the issuers and protected by the state law governing the issuer. Accordingly, to satisfy the exemption, the entire issue must be offered and sold exclusively to residents of the state in which the issuer is resident and doing business. An offer or sale of part of the issue to a single non-resident will destroy the exemption for the entire issue.

The primary interpretative questions which have arisen in connection with attempts to comply with the intrastate offering exemption involve a determination of the statutory terms: (1) "part of an issue," (2) "resident within," and (3) "doing business within." Rule 147 [17 CFR 230.147] was adopted to provide objective standards as to the meaning of those terms and thereby to facilitate compliance with section 3(a)(11). Thus, the intrastate offering exemption will be deemed available for offers and sales of securities that meet all the terms and conditions of the Rule. Those conditions are: (1) the issuer must be resident and doing business within the state or territory in which the securities are offered and sold (Rule 147(c)); (2) the offerees and purchasers must be resident within such state or territory (Rule 147(d)); resales for a period of 9 months after the last sale which is part of an issue must be limited as provided in Rule 147 (e) and (f). In addition, the Rule provides that certain offers and sales of securities by or for the issuer will be deemed not "part of an issue" for purposes of the rule only (Rule 147(b)).

The Commission is authorized under Section 3(b) of the Securities Act to exempt securities from registration if it finds that registration for these securities is not necessary to the public interest because of the small amount involved or the limited character of the public offering.[34] The section imposes a maximum limitation of $500,000 upon the size of the issues which may be exempted by the Commission. Pursuant to this authority the Commission has adopted various exemptive rules and regulations, the most significant of which, from a small business standpoint, are Regulation A [17 CFR 230.251-264] and Rule 240 [17 CFR 230.240].

Regulation A permits an issuer to obtain needed capital not in excess of $500,000 (including underwriting commissions) in any one year from a public offering of its securities without registration, provided specified conditions are met. Among other things, a notification and offering circular supplying basic information about the issuer and the securities offered must be filed with the regional office of the Commission for the region in which the issuer's principal business operations are conducted. The offering circular must be furnished to prospective investors at or prior to the time the securities are offered for sale.

Rule 240 provides a conditional exemption from registration for limited offers and sales of small dollar amounts of securities by small, closely-held businesses. It was adopted for the purpose of benefiting small businesses who do not have other exemptions, such as the intrastate or non-public offering exemption, available to them. The conditions which must be satisfied in order to use the Rule are: (1) the securities may not be offered or sold by any means of general advertising or general solicitation (Rule 240(c)); (2) no commission or similar remuneration may be paid for solicitation of prospective buyers or in connection with sales of securities (Rule 240(d)); (3) the aggregate sales price of all sales of securities in reliance on the Rule or otherwise without registration under the Securities Act within the preceding twelve months may not exceed $100,000 (Rule 240(e)); (4) immediately before and after any transaction in reliance on the Rule the securities are owned by not more than 100 persons (Rule 240(f)); (5) the issuer must exercise reasonable care to assure that the purchasers of the securities are not underwriters (Rule 240(g)); and (6) with a certain exception for an initial offering under Rule 240, a notice on Form 240 must be filed with the Commission's Regional Office for the region in which the issuer's principal business operations are conducted within ten days after the close of the first month in which a sale in reliance on the Rule is made (Rule 240(h)).

Section 4(2), commonly referred to as the private-offering exemption, exempts from the registration requirements of section 5 of the Securities Act transactions by an issuer which do not involve a public offering. The Supreme Court in the *Ralston Purina*[35] case established the basic criteria to be considered in determining the availability of that exemption. The main consideration is whether the offerees need the protection afforded by the Securities Act as evidenced by whether the offerees have "access" to the same kind of information that registration would disclose and whether they are able to fend for themselves. The application of these criteria and other guidelines set forth from time to time by the Commission and the courts was asserted to have created uncertainty about the availability of the exemption. In order to provide more objective standards for determination of the availability of the exemption and to enhance the protection of investors the Commission adopted Rule 146.

Rule 146 provides that transactions by an issuer involving the offer or sale of its securities shall be deemed not to involve any public offering within the meaning of section 4(2) of the Securities Act if they are part of an offering that meets all the conditions of the Rule. These conditions relate to limitations on the manner of offering (Rule 146(c)), the nature of the offerees (Rule 146(d)), access to or furnishing of information about the issuer (Rule 146(e)), limitations on the number of purchasers (Rule 146(g)), and limitations on the subsequent disposition of securities acquired pursuant to the rule (Rule 146(h)). When Rule 146 is used as the basis for an exemption, there may be no general advertising or solicitation in connection with the offering; offers for sale may only be made to persons the issuer reasonably believes have the requisite knowledge and experience in financial and business matters or who can bear the economic risks; sales may only be made to such persons except that persons meeting only the economic risk test must also have an offeree representative capable of providing the requisite knowledge and experience; offerees must have access to or be provided information comparable to that required by Schedule A of the Act; the issuer must inform each offeree in writing that he must continue to bear the risk of the investment indefinitely

[33] H.R. Rep. No. 85, 73d Cong., 1st Sess. 6-7 (1933). H.R. Rep. No. 1838, 73 Cong., 2nd Sess. 40-41 (1934).

[34] The House Committee report commenting on section 3(b) stated that this power "is expected to be used only in a sparing manner." H.R. Rep. No. 85, 73d Cong. 1st Sess. 6-7 (1933). Subsequent efforts by the Commission to use its exemptive power, whether to "facilitate public financing by small business," S. Rep. No. 1036, 83 Cong. 2d Sess. 8 (1954) or to reflect the effect of inflation, S. Rep. No. 1036, 82 Cong., 2d Sess. 3 (1954), have been met with some concern and skepticism.

[35] *SEC* v. *Ralston Purina Co.*, 346 U.S. 119 (1953).

since resale can only be effectuated through registration or an appropriate exemption under the Act; there may be no more than 35 purchasers in the offering; and reasonable care must be taken by the issuer to ensure that resales are not made in violation of the Act's registration provisions which would include making inquiry to determine whether the purchaser is purchasing for his own account, legending certificates, issuing stop-transfer instructions and having the purchaser agree in writing not to resell absent registration or suitable exemption.

2. Securities Act of 1934

Companies with a class of securities listed on a national securities exchange or those with total assets exceeding $1 million and a class of equity securities held of record by 500 or more persons must register those securities with the Commission under section 12(b) or 12(g), respectively. Upon registration these companies become subject to, inter alia, the periodic reporting and proxy solicitation provisions of the Exchange Act.

Section 13 of the Exchange Act requires issuers with securities registered pursuant to section 12(b) or 12(g) to file annual, quarterly and current reports on Forms 10-K (17 CFR 249.310), 10-Q (17 CFR 249.308(a)) and 8-K (17 CFR 249.308) respectively. These reports are for the purpose of keeping current the information contained in the issuers' registration application or statement. Similar reports are required pursuant to section 15(d) of certain issuers which have filed registration statements under the Securities Act which have become effective.

Where proxies are solicited from holders of securities registered under section 12, the Commission's proxy rules require that those persons be furnished with a proxy statement disclosing all material facts concerning the matter(s) on which they are being asked to vote. Where proxies are not solicited with respect to a stockholder meeting, issuers with a class of securities registered under section 12 must transmit an information statement, which is comparable to a proxy statement, to the holders thereof who are entitled to vote or give an authorization or consent in regard to any matter to be acted upon at the meeting. If a solicitation by management or the information statement relates to an annual meeting of security holders at which directors are to be elected, each proxy or information statement must be accompanied or preceded by an annual report to security holders which discloses certain basic information about the company, including audited financial statements for its latest fiscal year.

As a general matter, issuers required to file periodic reports with the Commission, whether by reason of their registration under section 12 or pursuant to section 15(d) of the Exchange Act, presently are required to provide essentially the same type and quality of information regardless of their size.[36] Similarly, the present proxy solicitation and information statement provisions do not recognize differences among issuers by size.

The Commission is authorized by section 12(h) of the Exchange Act to exempt, in whole or in part, by rule or by order after notice and opportunity for hearing, any issuer or class of issuers from the registration requirements of section 12(g) of the Act as well as from the reporting and the proxy solicitation provisions. In so acting, the Commission may permit exemptions, upon such items and conditions and for such period as it deems necessary, or appropriate, if it finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such an exemption "is not inconsistent with the public interest or the protection of investors." In addition, section 13(c) of the Exchange Act authorizes the Commission to permit a class or classes of issuers to file, in lieu of section 13(a) reports, "reports of comparable character." Thus, the Commission has broad authority to classify issuers by appropriate criteria for the purpose of reducing the burden upon small issuers of the periodic reporting and proxy solicitation or information statement requirements.

II. SCOPE OF INQUIRY

The Commission is interested in obtaining the written views of interested members of the public on the issues set forth below. Commentators and/or witnesses should note that the issues listed below are not exclusive. Issues which are relevant to the general framework outlined herein may also provide a basis for written statements and may be considered at the hearings.

In addition, commentators and/or witnesses may respond to any or all of the issues listed and general comment and/or testimony relating to the impact of the Federal securities laws on small businesses is also solicited.

The general areas of inquiry to be addressed are:

The Definition of a Small Business Issuer (questions 1 to 3).

Possible Revision of Disclosure Obligations (questions 4 to 20).

Role of Underwriters, Accountants, Attorneys and Other Professionals in a Small Business Securities Offering (questions 21 to 33).

Intrastate Offerings and Rule 147 (questions 34 to 40).

Regulation A (questions 41 to 51).

Rule 240 (questions 52 to 60).

Private Placements and Rule 146 (questions 61 to 68).

General (questions 69 to 75).

As a separate project the staff is reviewing the desirability and feasibility of revising the volume limitation and rate of sale provisions set forth in Rule 144(e).[37] In this connection, the Directorate of Economic and Policy Research has a study underway which is designed to assess the market impact of these provisions. This should provide the data conducive to a thorough review of the necessity for such revisions. In addition, the staff has met on numerous occasions with various groups interested in bringing about changes in these provisions of the Rule and has received, directly or indirectly, numerous written proposals for their modification. Accordingly, in view of the considerable body of data and views which the staff has already received with respect to the Rule as well as the data to be developed by the Directorate's study, it appears that the consideration of these issues in a public hearing covering a wide-ranging variety of concerns would not materially advance their resolution.

In responding to specific issues, interested persons should frame their comments and proposals in response thereto to cover the following:

(1) What are the principal cost and benefit items of the present rules and any proposals suggested for their modification. Can these items be quantified. If not, why?

(2) Are the proposed changes within the Commission's existing grant of authority or will additional legislation have to be enacted?

(3) What will be the effect on private rights of action under the liability provisions of the federal securities laws as a result of any proposed changes? Will those liability provisions have to be modified in order to make any proposed change effective?

(4) With reference to the exemptive rules discussed in questions 34 through 68, what is the use of each of the rules among small issuers? Do the rules do what they were supposed to do? What else do the rules do or

[36]The only general exception concerns the financial information and auditing requirements for development stage companies filing form 10-K. See Form 10-K, Instructions to Financial Statements, Instruction 8.

[37]In brief, Rule 144 provides that any affiliate or other person who sells restricted securities (as defined in Rule 144(a)(3)) of an issuer for his own account, or any person who sells restricted or any other securities for the account of an affiliate of the issuer, is not deemed to be engaged in a distribution of the securities, and therefore is not an underwriter as defined in section 2(11) of the Securities Act, if the securities are sold in accordance with all the terms and conditions of the Rule.

should they do? Identify any positive or negative side effects resulting from the availability of the rules.

A. THE DEFINITION OF A SMALL BUSINESS ISSUER

As indicated in Part I.B. of the release, the concepts of classification and differentiation of issuers, for both registration and reporting purposes, are already recognized in the federal securities laws. Because the Commission has never undertaken the broad classification or differentiation of issuers on the basis of their size there is little empirical evidence available upon which to estimate what impact such a step might have or, indeed, what factors the Commission should utilize in assessing the impact upon the public interest and the protection of investors.[38] Accordingly, this initial question the Commission must consider is whether, and, if so, to what extent, establishment of a category of "small business" should be undertaken to reduce the compliance burden of the federal securities laws on that resulting group and to facilitate their ability to raise capital.

In light of the foregoing, the Commission invites comments from interested persons on the following matters:

1. Should the Commission attempt to define a category or categories of "small business" issuers for the purposes of either registered or exempt offerings under the Securities Act or for the purposes of reporting obligations under the Exchange Act? In this connection, would such a classification be inconsistent with the protection of investors or the public interest?

2. What criteria should be utilized in formulating such a category or categories?[39] Are different criteria needed for one or more of these purposes?

3. Should the same definitional standard be adopted with regard to both the Securities Act and the Exchange Act for the purposes of revised disclosure requirements?

B. POSSIBLE REVISION OF DISCLOSURE OBLIGATIONS

As discussed in Part I of the release, it has been suggested that a reduction in the disclosure obligations imposed under the Securities Act and the Exchange Act on small businesses would redound to their benefit[40] and may not be inconsistent with the public interest and the protection of investors.

With respect to the Exchange Act, the empirical case study of the Advisory Committee, as previously noted, found that the periodic reports and proxy statements filed by or with respect to small issuers were infrequently consulted by security analysts, who normally have the greatest need for the detailed information contained therein. The Report of the Financial Analysts Federation ("FAF") to the Advisory Committee, however, stated that security analysts would not favor a significant reduction or differentiation of these requirements by size of issuer.[41] Among the FAF's reasons for believing that analysts will pay increasing attention to the smaller as well as the larger capitalization companies is their belief that the present period of stock investing should be viewed as a cyclical, rather than a secular, trend.[42] Thus, they believe that it will be a self-correcting cycle that is perhaps already in the early stages of turning.[43]

Nevertheless, the Advisory Committee was of the preliminary opinion that the relatively greater burden of such reports, when weighed against the benefits derived therefrom, raised questions as to the justification for their continuance in their present form with respect to smaller issuers. Thus, the Advisory Committee recommended that the Commission consider the possibility of revising its periodic reporting requirements so that the burden of compliance might be reduced for smaller issuers.

In light of the foregoing, the Commission invites comments on the following matters:

4. How should the basic conflict between lessening disclosure standards for small businesses and the protection of investors be reconciled?

5. Is disclosure of the sort required for an S-1 offering by a small business adequate and appropriate for the protection of investors? If not, what additional items of disclosure or revisions of disclosure items are necessary to provide investors with the information necessary to make an informed investment decision in these circumstances? Responses to these questions should assume both a seasoned and an unseasoned small business.

6. Are the investors or the nature of the investment in small businesses sufficiently different from public investors or the nature of the investment in larger firms that a different kind of protection is required? Does this mean more or less disclosure and why? What are the likely costs and benefits associated with different kinds or amounts of disclosure? Responses to these questions should assume both a seasoned and an unseasoned small business.

7. To what extent, if any, would investor interest in small businesses change due to reductions in the quality or quantity of disclosure? For example, would reduction in disclosure (however defined) lead to decreases in investor and/or underwriter and/or analyst interest and how might this affect the costs of disclosure required of an issuer? How might this affect the cost of raising capital or attracting public investors, including institutional investors?

8. To what extent, if any, would underwriter, accountant or attorney involvement in such small business offerings be reduced due to any decrease in the amount of required disclosure?

9. To what extent would private causes of action under either the Securities Act or the Exchange Act be af-

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[38]In recent years, the development of the efficient market hypothesis has led some observers to suggest that, because the market readily absorbs investment information or perhaps even anticipates such information, little if any impact would result if registrants were not required to publicly file financial and other information with the Commission. Because of limitations in obtaining the required data, however, most empirical studies have been confined to securities listed and traded on exchanges, which comprise a very small portion of the companies registered with and reporting to the Commission. Thus, it seems likely that if the efficient market hypothesis is valid at all, it is valid only with respect to those largest companies attracting widespread interest of institutional investors. In order to attract institutional interest, these issuers apparently must have revenues of about $100 million or, at a minimum, $50 million. In the aggregate there are only about 800 to 1,000 companies in either of these categories. However, there appear to be well over 4,000 companies having revenues of under $25 million and another 1,000 companies between $25 and $50 million. See Nelson's Directory of Securities Research Information (1977).

[39]Although the following factors are not exclusive, a possible revision of disclosure requirements might be considered for those companies having between 500 and 1,000 shareholders and assets and sales, respectively, of between $1-20 million. Moreover, the criteria in Section 12(h) of the Exchange Act might also serve as a useful starting point in defining sub-categories of "small companies" for the purpose of stratifying disclosure requirements.

[40]Insofar as reporting obligations under the Exchange Act are concerned, a broad classification of issuers for that purpose, while reducing burdens upon the various classes, might lead to increasing segmentation or "tiering" of issuers. Despite the fact that all issuers would be free to file or otherwise disclose the full spectrum of information currently required, such broad classification is likely to result in a somewhat lesser amount of information being disclosed. In this event, it is conceivable that institutional investors, and the security analysts who service them, will be even less interested in smaller companies because of the reduced information. Under these circumstances, small companies might view reducing reporting obligations as a mixed blessing.

[41]See Report of the Financial Analysts Federation to the Advisory Committee on Corporate Disclosure, at A-53.

[42]Id. at A-52.

[43]Id.

fected by a reduction in the amount of required disclosure? [44]

10. To what extent would a broker's or dealer's obligations pursuant to Rule 15c2-11 be affected by virtue of a reduction in the amount of information required to be filed with the Commission by small businesses?

11. To what extent would a broker's obligation to ascertain that a proposed investment be "suitable" for a customer be affected by virtue of a reduction in the amount of information required to be filed with the Commission by small businesses?

12. To what degree, if any, do the reporting requirements of the Exchange Act, particularly as they arise under Section 15(d), influence the decision to make a registered offering? If the reporting requirements for small companies subject to Section 15(d) were reduced, for example, by limiting their reporting obligation to the filing of their annual report to shareholders, including audited financials, would this facilitate their use of registered offerings?

13. To what extent, if any, should the contents or availability of Forms S-1, S-2, S-7, S-16 and proposed Form S-18 be modified in order to reduce their burden on both primary and secondary offerings of securities of small business issuers?

14. To what extent, if any, should small business offerings, either exempt or registered, be relieved of existing financial statement requirements? In particular, to what extent should such issuers be subject to the requirements of Regulation S-X? To what extent should such small businesses be subject to the requirements of Regulation S-X with regard to Exchange Act reporting obligations? What is the cost difference to a small issuer between preparing financial statements to satisfy generally accepted accounting principles and Regulation S-X?

15. To what extent, if any, should the greater use of unaudited financial statements be permitted under any of the requirements of either the Securities Act or the Exchange Act with regard to small businesses?

16. Under what circumstances, if any, should the disclosures required under the Securities Act and the Exchange Act differ for small businesses?

17. To what extent, if any, should the contents of Forms 10-K, 10-Q, 8-K, the annual report to shareholders required by Rule 14a-3 [17 CFR 240.14a-3] or proxy or information statements required by Regulation 14A [17 CFR 240.14a-1 et seg.] or 14 [CFR 240.14c-1 et seg.] be modified in order to reduce their burden on small issuers consistent with the public interest?

18. To what extent, if any, should quarterly or annual reports to small business shareholders, but not formally filed with the Commission, be permitted to suffice for any existing disclosure requirements under either the Securities Act or the Exchange Act?

19. Should the amount of disclosure required in a registered offering by a small business vary according to the nature of the distribution, i.e., self-underwriting by the issuer, best efforts underwriting or firm commitment underwriting?

20. Inasmush as the financial statement requirements for Forms S-1 and S-2 are the same, [45] are there remaining benefits to small businesses who wish to use Form S-2 which would be lost if it were rescinded?

C. ROLE OF UNDERWRITERS, ACCOUNTANTS AND ATTORNEYS IN A SMALL BUSINESS SECURITIES OFFERING

In recent years there has been substantial discussion concerning those aspects of investor protection afforded by the involvement of underwriters, accountants and attorneys in the securities offering process. The benefits of such involvement must, however, be balanced against, among other things, the cost to the issuer of the services provided by these persons. This expense becomes especially significant for a small business issuer who may pay for such services out of the proceeds of its securities offering. If the offering is for a relatively small amount of money, the portion of the proceeds utilized for third party services may be quire large.

The increased focus on the role of underwriters, attorneys and accountants in recent years has also brought about an increased awareness of the resulting liabilities which necessarily attach to such a participation. Mindful of these liabilities, such parties may be deterred from participating in an offering by a small issuer which, typically, has had little, if any, association with the public securities markets.

In light of the above factors, the Commission invites comments from interested persons on the following matters:

(a) *Role of Underwriters.* 21. To what extent should the level of independent investigation by underwriters of the accuracy of information furnished to investors differ for exempt offerings as opposed to registered offerings? Should such investigation differ for registered offerings on different Commission forms or for exempt offerings relying on various exemptions.

22. Would the reduction of the disclosure requirements imposed on small businesses result in a reduced level of independent investigation by underwriters. If so, what cost savings would this bring about?

23. Should the quality of independent investigation of underwriters differ with the size of either the offering or the issuer?

24. Should the degree of liability to which an underwriter may be subject to a registered offering vary according to the nature of the distribution—i.e., best efforts under-underwriting or firm commitment underwriting?

25. Under what circumstances, if any, would reduced liability for underwriters under the Securities Act be consistent with the protection of persons investing in small businesses and the public interest?

26. As a general matter, is the reluctance of underwriters to participate in offerings of securities by small businesses attributable to the lack of demand for such securities or the lack of an adequate economic incentive for such participation?

27. What factors would encourage underwriters to become involved with small business offerings?

(b) *Role of Accountants.* 28. To what extent does the potential personal liability to which an accountant may be subject under the federal securities laws, as a result of his involvement in an offering of securities by a small business, deter his participation in such offerings? What other factors, if any, deter such participation?

29. To what extent do the precautionary measures taken by an accountant to avoid personal liability and/or his evaluation of the risk of such liability increase the total cost of the accounting services rendered in a small business offering? What other factors increase the relative cost of such services over that incurred by larger issuers.

30. What steps might be taken consistent with the protection of investors, to reduce the liability of accoun-

[44] It should be noted that Rule 408 (17 CFR 230.408) under the Securities Act and Rule 12b-20 (17 CFR 240.12b-20) under the Exchange Act require that in addition to information expressly required in a registration or report there shall be included such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

[45] Form S-2 was designed for use by companies in the development stage and originally provided for special type financial statements that had been specified in old "Rules 5A-02, 5A-03, 5A-04, 5A-05 and 5A-06" of Regulation S-X. Essentially, those rules provided for statements of cash receipts and disbursements, and separate statements of assets, liabilities and capital shares rather than statements of income and a balance sheet. The Financial Accounting Standards Board issued Statement No. 7 in June 1975, which defined generally accepted accounting principles ("GAAP") for development stage enterprises. Shortly thereafter, the Commission issued a release amending Article 5A of Regulation S-X and Forms S-2 and 10-K to require development stage companies to file GAAP financial statements.

tants in this context and thus the costs to small businesses arising therefrom?

(c) Role of Attorneys. 31. To what extent does any potential personal liability to which an attorney may be subject under the Federal securities laws, as a result of his involvement in an offering of securities by small business, deter his participation in such offerings? What other factors, if any, deter such participation?

32. To what extent do the precautionary measures taken by an attorney to avoid any such personal liability and/or his evaluation of the risk of such liability increase the total cost of the legal services rendered in a small business offering? What other factors increase the relative cost of such services over that incurred by larger issuers?

33. What steps might be taken, consistent with the protection of investors, to reduce the liability of attorneys in this context and thus the cost to small businesses arising therefrom?

D. INTRASTATE OFFERINGS AND RULE 147

The view has been expressed that despite the goals of Rule 147, as described in Part I B of the release, it has either unduly narrowed the availability of the intrastate offering exemption or done little to improve the degree of certainty associated with its use.[46] Accordingly, the Commission is interested in the views of interested persons on the following matters:

34. Should any liberalization of Rule 147 be accompanied by the addition of minimum disclosure requirements? If so, what should those requirements include?

35. Should Rule 147 be revised, rescinded, or retained in its present form? If revision is thought to be necessary, how can the Rule be amended consistent with the purpose of section 3(a)(11), viz., local financing of companies primarily intrastate in character?

36. Is the 80 percent test in Rule 147(c)(2) for use of proceeds, location of assets and generation of gross revenues too restrictive for the purpose of determining whether the issuer is doing business within a state or territory?

37. Should Rule 147(d) be amended by limiting compliance therewith to good faith investigation? Alternatively, should the issuer be permitted to make offers, but not sales, to persons which the issuer has reasonable grounds to believe and actually believes are residents within the state or territory of which the issuer is a resident?

38. Should a de minimis exemption be added to Rule 147 which would protect the issuer acting in good faith against loss of the exemption due to offers or sales to nonresidents? Should such an exemption be defined in an absolute dollar amount or as a percentage of the offering?

39. Should Rule 147(e) be amended by limiting compliance to good faith substantial compliance? What else could be done to reduce the risk that resales to nonresidents, through no fault of the issuer, will destroy the availability of the exemption?

40. Should the nine month interstate resale restriction be amended to allow interstate resales in less than nine months?

E. REGULATION A

In recent years, the use of Regulation A for small public offerings of securities has declined significantly.[47] There has been much criticism that the regulation is no longer a viable financing vehicle for small issuers. Some critics have suggested that the present $500,000 ceiling on offerings pursuant to Regulation A is no longer adequate and should be raised.[48] Others have contended that various factors, including the fact that Regulation A does not provide for any post-offer periodic reporting, have resulted in Regulation A's becoming less desirable as a means of raising capital. Thus, many issuers encounter difficulty in raising capital under Regulation A and in finding underwriters for offerings pursuant to Regulation A, even on a "best efforts" basis. Underwriters have pointed out that so long as Regulation A does not permit the use of a "red herring" offering circular, it is unlikely that there will be any significant use of the regulation for "firm commitment" underwritings. In view of the foregoing, the Commission invites comments from interested persons on the following areas of inquiry:

41. What are the key factors influencing a small business in determining whether it should sell its securities pursuant to Regulation A or under a registration statement on Form S-1?

42. Is the present $500,000 ceiling on offerings under Regulation A too small to make it a viable financing vehicle for small issuers?

43. Should the Commission take steps to facilitate increased underwriter participation in offerings pursuant to Regulation A, and, if so, what steps would be appropriate?

44. If the $500,000 ceiling in section 3(b) is raised, how should this authority be exercised?

(a) Should offerings thereunder be subject to requirements which are categorized according to the type and amount of the offering and the characteristics of the issuer?

(b) Should requirements more stringent than those under Regulation A be imposed with respect to offerings of more than $500,000 in the event that rules are adopted implementing the higher ceiling? If so, should such requirements be relaxed for issuers meeting certain earnings, assets and other criteria? What criteria would be appropriate for this purpose?

(c) What should be the appropriate disclosure requirements for offerings categorized under Regulation A.

(d) Should the Regulation A ceiling be raised by an amount corresponding to the increase in the section 3(b) ceiling? If so, should the ceiling for offerings pursuant to Rule 257 of Regulation A (currently $50,000) be raised? What would be an appropriate increase for this purpose?

45. Assuming distinct offerings, should the amount of securities which are sold pursuant to Rule 240 continue to reduce correspondingly the amount of securities which can be sold under Regulation A?

46. Should the Commission impose post-offering periodic reporting requirements similar to those imposed under section 15(d) of the Exchange Act on issuers that conduct public offerings pursuant to Regulation A? In what respects should such requirements differ from those imposed under section 15(d)?

47. Should the use of a "red herring" offering circular be permitted under Regulation A? If so, should its use be restricted to "firm commitment" underwriting situations?

48. Should Rule 257 be amended to permit "seasoned" issuers meeting certain earnings, assets and other tests to conduct offerings up to the full ceiling limitation of Regulation A without the use of an offering circular, pursuant to Rule 257? What tests would be appropriate? Should such persons be required to circulate even a short-form offering sheet to prospective investors? What kinds of information should such an offering sheet contain? Should such an offering sheet be required of all persons making use of Rule 257?

49. In view of the Commission's adoption of Rule 240 under the Securities Act, is there any continuing need for Rule 257? Would there be any such need if Rule 240 were made available

[46] See, Cummings, "The Intrastate Exemption and the Shallow Harbor of Rule 147, 69 Nw. U.L. Rev. 167 (1974); Gardner, "Intrastate Offering Exemption: Rule 147—Progress or Stalemate?" 35 Ohio St. L.J. 340 (1974); Kant, "SEC Rule 147—"A Further Narrowing of the Intrastate Offering Exemption," 30 Bus. Law. 73 (1974); Kessler, "Private Placement Rules 146 and 240—Safe Harbor?" 44 Ford. L. Rev. 37 (1975); and Sowards, "The Twilight of the Intrastate Exemption," 23 Mercer L. Rev. 437 (1974).

[47] In the period from 1972 to 1976 the amount of capital raised under Regulation A fell from $256 million to $47 million. 37 Statistical Bulletin No. 1 (January 1978), at 31.

[48] *See, e.g.*, "Report of the SBA Task Force on Venture and Equity Capital for Small Business" (U.S. Small Business Administration 1977), at 15.

to affiliates or other persons for resales of the issuer's securities?

50. What practical problems have small issers encountered in the use of Regulation A?

51. Assuming the ceiling limitation for Regulation A is not raised, what should be the appropriate disclosure requirements?

F. RULE 240

While Rule 240 has been applauded as representing a welcome balancing of the needs of small business to raise capital with the protection of investors, it has been argued that its purpose would be better served with the addition of certain revisions.[49] The revision most commonly urged is an increase in the offering ceiling from the current $100,000.[50]

Because Rule 240 requires neither provision of information nor any assurance that offerees and buyers will be able to obtain information in some other way, it has also been criticized as creating a void in the federal design which is not adequately filled by state regulation.[51]

In light of the foregoing the Commission invites public comment on the following areas of inquiry:

52. Should the definition of "securities of the issuer" in Rule 240(a)(1) be amended to exclude those securities of affiliates which may not be treated as part of a single plan of financing?

53. In identifying persons whose transactions are excludable from the calculation of the aggregate sales price of securities sold under the Rule, the definition of the term "promoter" in Rule 240(a)(4) does not include, as does Rule 251 for purposes of Regulation A, persons receiving a specified percentage of any class of securities of the issuer. Should the definition be revised to reach that situation?

54. Should the limitation on the aggregate sales price in Rule 240(e) be increased? What would be an appropriate figure?

55. Should Rule 240(e)(2)(i) be amended to exclude from the aggregate sales price purchases of convertible or equity securities by institutional investors?

56. Should Rule 240(e)(2)(i) be amended to exclude from the aggregate sales price purchases by institutional investors for the accounts of others who do not qualify as institutional investors?

57. Is the limitation of 100 beneficial owners in Rule 240(f) too restrictive? If so, what is an appropriate limit?

58. To what extent do the restrictions on the resale of securities acquired under Rule 240 affect the terms of financings, in particular, and tha ability to raise capital, in general, by small businesses under the Rule? Should a separate rule be promulgated governing the resale of securities acquired under Rule 240? If so, what would be the appropriate provisions?

59. Should liberalization of Rule 240 be accompanied by amendments designed to facilitate enforcement of its provisions and prevent abuses thereof such as: (a) Making the rule unavailable for certain types of offerings and to certain types of issuers; (b) requiring the filings of Form 240 in all instances; (c) requiring a report of sales under the rule providing disclosure of, for example, the name and address of all purchasers; (d) provision in the rule for some type of suspension procedures to deal with abuses; (e) adding nature of offeree standards to the rule similar to those in Rule 146?

60. Should minimum disclosure requirements be added to Rule 240? if so, what shoud those requirements include? In this connection would it be more appropriate to raise the offering ceiling in Rule 257 to $100,000, rescinding Rule 240, and requiring that the Rule 257 statement be furnished to purchasers and offerees along with a current balance sheet and income statement?

G. RULE 146

The view is frequently expressed that the exemption from registration provided by Rule 146 is drawn too narrowly to be of appreciable benefit to small businesses seeking to raise capital.[52] It is argued that compliance with the rule is unnecessarily complex and costly and entails an unacceptable level of risk that the exemption may be lost inadvertently. While there is sentiment for abolishing the rule, the consensus appears to favor its revision, particularly in the areas of the nature of the offerees and the information requirement.

In light of the foregoing, the Commission invites comments on the following areas of inquiry:

61. Should Rule 146 be amended or a separate rule promulgated for offerings by small issuers?

62. Are offeree representatives, in an effort to avoid liability, more likely to make an unduly conservative and negative recommendation in a small-business offering than they would in other offerings?

If so, then what, if anything, should be done to alleviate this situation?

63. For offerings by small businesses, should the provisions of Rule 146(d) be directed exclusively to the nature of purchasers?

64. How can the information requirements of Rule 146(e) be revised to add certainty and reduce the cost of nonpublic offerings by small businesses consistent with the protection of investors?

65. For a small-business offering, should any of the requirements of Rule 146 be relaxed as to those offerees who are institutional investors or sophisticated venture capitalists? If so, then how should this special class of offerees be defined and what criteria should be considered in formulating provisions for such offerees?

66. Should special provisions be formulated to facilitate equity offerings to its existing shareholders by small-business issuers?

67. To what extent do the restrictions on the resales of securities acquired under Rule 146 affect the terms of financings, in particular, and the ability to raise capital, in general, by small businesses under the Rule?

68. What other specific revisions of Rule 146 might assist small businesses in raising capital?

H. GENERAL

69. How significant are the federal securities laws in determining whether capital can be efficiently raised?

70. What are the primary factors which influence small businesses in deciding whether they will raise capital in a registered as opposed to an unregistered offering?

71. When a small business seeks to raise capital in the following dollar ranges, how does it select a legal vehicle for the sale of securities in that amount:

$100,000 to $250,000?
$250,000 to $500,000?
$500,000 to $750,000?
over $1,000,000?

How significant is the amount of capital to be raised in determining whether the offering will be registered or conducted pursuant to an exemption from registration?

72. To what extent do the various state securities statutes, commonly known as blue sky laws, affect the Commission's ability to provide a relief to small businesses seeking to raise capital, particularly insofar as existing or any proposed rules exempting the issuer from the registration requirements of the Securities Act are concerned? What steps might be appropriately taken to alleviate this problem?

[49] Carney, "Exemptions from Securities Registration for Small Issuers: Shifting from Full Disclosure—Part III: the Small Offering Exemption and Rule 240," 11 Land and Water L. Rev. 483 (1976).

[50] Kessler, Private Placement Rules 146 and 240—Safe Harbor? 44 Ford. L. Rev. 37 (1975) at 78.

[51] Note, Federal Deregulation of Small Issuers of Securities: Rule 240, 27 Maine L. Rev. 347 (1975).

[52] See, e.g., Carney, Exemptions from Securities Registration For Small Issuers: Shifting from Full Disclosure—Part I: The Private Offering Exemption, Rule 146 and an End to Access for Small Issuers, 10 Land and Water L. Rev. 508, 514 (1975).

73. Recognizing that companies with 500 shareholders and $1 million in assets are subject to the requirements of the Exchange Act by virtue of section 12(g), is the asset test too low to assure that the compliance burden placed on companies meeting the shareholder test is commensurate with the protection of investors and the public interest?

74. What provisions of the Commission's rules and regulations, other than Rule 144, have a significant effect on the creation of a secondary trading market for small business offerings?

75. To what extent does Rule 144 influence the choice of legal vehicles under which securities of a small business are sold?

III. PROCEDURES

A. WRITTEN SUBMISSIONS

Interested persons are invited to submit their views on the foregoing questions in writing at any time. Written submissions should be made in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 and refer to File No. S7-734.

B. ORAL PRESENTATIONS

Any interested person desiring to make an oral presentation of his/her views at the hearings is requested to write or call Paul A. Belvin, 202-755-1750, or John A. Granda, 202-376-8090, Office of Disclosure Policy and Proceedings, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. It has been tentatively determined to limit oral statements to 20 minutes each plus such further time as may be necessary to answer questions. Depending upon the number of persons requesting to be heard, appearances may be more limited. Additional time may be granted at the discretion of the hearing officer upon written request timely submitted with copies of the witness's prepared statement. All witnesses shall be required to submit 25 copies of their prepared statements to the location at which they will testify, either Washington, D.C., or the appropriate regional office specified earlier in this release, 5 business days in advance of their scheduled date of appearance.

It is requested that persons making oral statements should be prepared to respond to specific inquiries from the Commission staff. Any person may submit in writing to the hearing officer questions that he wishes to have directed to a particular witness or group of witnesses, but the hearing officer will determine in his sole discretion whether, or to what extent, to direct those questions to any witness.

The Commission has designated Richard H. Rowe, Mary E. T. Beach, Alfred E. Osborne, Jr., Ruth D. Appleton, Gerald E. Boltz, Robert H. Davenport, Jule B. Greene, William D. Goldsberry, and Michael J. Stewart as hearing officers of the Commission. The Commission will issue orders designating additional hearing officers as necessary. The hearings will be conducted for the Commission by the Division of Corporation Finance.

(Secs. 4(1), 4(2), 7, 10, 19, 21, 48 Stat. 77, 78, 81, 85, 86; secs. 13(a), 21(a), 22, 23(a), 48 Stat. 894, 899, 901; secs. 203, 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; Sec. 8, 49 Stat. 1379; sec. 8, 68 Stat. 685; secs. 4, 10, 12, 78 Stat. 569, 580; sec. 18, 89 Stat. 155; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77d(1), 77d(2), 77g, 77j, 77s, 77u, 78m(a), 78u(a), 78v, 78w(a))

STATUTORY AUTHORITY

This public rulemaking proceeding has been ordered by the Commission pursuant to sections 4(1) and (2), 7, 10, 19(a) and (b) and 21(a) of the Securities Act, sections 13(a), 21(a), 22 and 23(a) of the Exchange Act and rule 4(b) of the Commission's Rules of Practice.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

MARCH 6, 1978.

ORDER DIRECTING PUBLIC PROCEEDING PURSUANT TO SECTIONS 4(1) AND (2), 7, 10(a), (b), (c) AND (d), 19(a) AND (b) AND 21(a) OF THE SECURITIES ACT OF 1933, SECTIONS 13(a), 21(a), 22, AND 23(a) OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 4(b) OF THE RULES OF PRACTICE OF THE COMMISSION

In the matter of examination of the effects of rules and regulations on the ability of small businesses to raise capital and the impact on small businesses of disclosure requirements under the Securities Acts.

I

It appears to the Commission that it is appropriate at this time to study on a broad basis issues relating to the effects of the Commissions rules and regulations on the ability of small business to raise capital and the effects on small business of the disclosure requirements under the Securities Acts. Recently, there has been considerable public attention given to the problems concerning the formation and growth of small businesses. In addition, "The Report of the Advisory Committee on Corporate Disclosure," submitted to the Commission on November 3, 1977, recommended that the Commission initiate a public inquiry to determine whether, and if so, to what extent, the Commission's continuous disclosure requirements should be revised to lessen their impact on small business.

II

Accordingly, it is ordered, pursuant to sections 3(a)(11), 3(b), 4(1) and (2), 7, 10(a), (b), (c) and (d), 19(a) and (b), and 21(a) of the Securities Act of 1933, sections 13(a), 21(a), 22 and 23(a) of the Securities Exchange Act of 1934, as amended, and Rule 4(b) of the Commission's Rules of Practice, that a public investigatory proceeding be held to give the Commission the benefit of views of interested members of the public on the above mentioned topics. At the conclusion of such proceeding, the Commission will determine whether it is necessary or appropriate in the public interest or for the protection of investors to propose amendments to its rules and regulations or to recommend legislation to Congress.

III

In general, the subjects to be considered at such proceeding shall include the following:

1. The definition of a small business issuer.
2. The possible revisions of disclosure obligations for small issuers.
3. The role of underwriters, accountants, attorneys, and other professionals in a small business securities offering.
4. Private placements and Rule 146.
5. Intrastate offerings and Rule 147.
6. Regulation A.
7. Rule 240.

A more comprehensive and detailed statement of matters to be considered at the hearing is contained in the release accompanying this order and is hereby incorporated by reference.

It has been tentatively determined to limit oral statements to 20 minutes each plus such further time as may be necessary to answer questions. Depending upon the number of persons requesting to be heard, appearances may be more limited. Additional time may be granted in the discretion of the hearing officer upon written request timely submitted with copies of the witness's prepared statement. All witnesses shall submit 25 copies of their prepared statements five business days in advance of their scheduled date of appearance.

Persons making oral statements should be prepared to respond to specific inquiries from the Commission staff. Any person may, in writing, submit to the hearing officer questions that he wishes to have directed to a particular witness or groups of witnesses; but the hearing officer will determine in his sole discretion whether or to what extent to direct those questions to any witnesses.

The Commission hereby designates Richard H. Rowe, Mary E. T. Beach, Alfred E. Osborne, Jr., Ruth D. Appleton, Gerald E. Boltz, Robert H. Davenport, Jule B. Greene, William D. Goldsberry, and Michael J. Stewart as hearing officers of the Commission. The Commission will issue additional orders designating additional hearing officers as necessary.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

MARCH 6, 1978.

[FR Doc. 78-6637 Filed 3-14-78; 8:45 am]

federal register

WEDNESDAY, MARCH 15, 1978
PART V

SECURITIES AND EXCHANGE COMMISSION

■

SIMPLIFIED REGISTRATION AND REPORTING REQUIREMENTS FOR SMALL ISSUERS

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 231, 239 and 249]

[Release No. 33-5915; 34-14530; File No. S7-734]

SIMPLIFIED REGISTRATION AND REPORTING REQUIREMENTS FOR SMALL ISSUERS

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to forms, schedules and guides.

SUMMARY: The Commission proposes as an experiment a simplified form, available to domestic or Canadian corporate issuers, provided such issuers are not subject to the Commission's continuous reporting requirements, for the registration of securities not exceeding an aggregate cash offering price of $3 million. The proposed form calls for narrative disclosure somewhat less extensive than that presently required by Form S-1 and audited financial statements substantially similar to those required by Regulation A. In addition, the Commission proposes that issuers utilizing the form be allowed to include audited financial statements substantially similar to those required by Regulation A in their initial annual report filed with the Commission.

DATE: Comments must be received on or before June 1, 1978.

ADDRESS: Comments should refer to File No. S7-734 and should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT:

Paul A. Belvin 202-755-1750 or John A. Granda 202-376-8090, Office of Disclosure Policy and Proceedings, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission announces the proposal of Form S-18 and an amendment to Guide 23, Current Financial Statements and Related Data, of the Guides For Preparation and Filing of Registration Statements, under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq. as amended by Pub. L. No. 94—29 (June 4, 1975)] and the proposal of an amendment to Instructions As To Financial Statements of Form 10-K [17 CFR 249.310] under the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)]. Form 10-K is used for annual reports to the Commission pursuant to section 13 or 15(d) of the Exchange Act where no other form is prescribed.

If adopted these proposals generally would allow issuers utilizing Form S-18 to file, as part of the registration statement, audited financial statements for two fiscal years prepared in accordance with generally accepted accounting principles and practices ("GAAP"). In addition, the proposed amendment to Form 10-K also would allow certain issuers who have had a public offering registered on Form S-18 to furnish audited financial statements substantially in accordance with those permitted by Regulation A [17 CFR 230.251 to 230.263], in lieu of those financial statements otherwise required, in their Form 10-K for the fiscal year in which the registration statement on Form S-18 was declared effective.

The simplified registration and reporting proposals contained herein are proposed in the nature of an experiment. If Form S-18 is adopted, the Commission will monitor closely its use for one year, or more, to determine whether the form has functioned as an effective means for small issuers to raise limited amounts of capital through a registered public offering consistent with the protection of investors. After such period the Commission will decide whether the form should be retained and, if so, whether the conditions for its availability should be revised.

The Commission also published today in a companion release [1] a list of issues which are to be considered at its upcoming hearings regarding the effects of Commission rules and regulations on the ability of small business to raise capital and the impact of disclosure requirements under the Securities Acts on small business. Although proposed separately herein, it is intended that Form S-18 and the corresponding amendments will serve as a topic for discussion at the hearings as a means by which the registration process may be simplified for small businesses.

. . .

BACKGROUND AND DISCUSSION

Section 3(b) of the Securities Act provides that the Commission shall have the authority to adopt rules and regulations to exempt securities from the registration requirements of that act, if it finds that registration is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering. This authority currently is subject to a ceiling which is $500,000 for each offering.

Pursuant to section 3(b), the Commission adopted Regulation A in December 1940. As initially adopted, the ceiling under section 3(b) and the regulation was $100,000. In May 1945, the Commission amended Regulation A, pursuant to statutory authorization, to increase the maximum amount of the offering to $300,000. The ceiling price of the exemption was again raised, pursuant to amended statutory authorization, in January 1971 to $500,000.

The Regulation A exemption reflects the intent of Congress, as represented by section 3(b), by exempting from registration those small issues of securities which are offered to the public in such a manner as to meet the statutory criteria specified above. One of the Commission's primary purposes in adopting Regulation A was to provide, consistent with the protection of investors, a simple and less expensive procedure by which small businesses could raise limited amounts of capital in order to become a productive enterprise or to expand an existing business. As currently written, Regulation A does not require audited financials for most issuers [2] and fees for services for independent accountants may, therefore, be limited. Also, attorneys fees are normally lower for the preparation of a Regulation A filing than a registration statement under the Securities Act. In addition, many smaller, local issuers have found that since a Regulation A offering is reviewed by the Commission's regional offices, the reviewing process is more convenient than if the filing were made in Washington, D.C.

Despite the apparent benefits of Regulation A as a method of raising capital, it is evident that the number of issuers utilizing the exemption has declined drastically from 1,087 in 1972, to 817 in 1973, 483 in 1974, 265 in 1975, 240 in 1976, and 213 in 1977. Several factors have been suggested as the reasons for this decline. First, the primary disadvantage to the use of the Regulation appears to be the inability of business to raise sufficient amounts of capital. In view of the inflationary trend that has existed for the past several years and its effect on the prices of capital equipment and structures, the $500,000 amount available through a Regulation A offering may

[1] Securities Act Release No. 5914 (March 6, 1978)(43 FR10876).

[2] Regulation A does not require certified financial statements unless the issuer is otherwise required to file or has filed with the Commission certified financial statements for the applicable periods. However, various state laws may require audited financial statements in order to qualify an issue for sale in such states.

be inadequate.[3] In addition, because of the increased costs of distribution in connection with the offering, the Regulation A issuer likely receives a lower percentage of the net proceeds as compared to earlier periods.[4]

It has also been the Commission's experience that underwriters are being used in an increasingly smaller percentage of Regulation A offerings.[5] To the extent underwriters are utilized, the compensation required for their services necessarily increases the costs of the offering and decreases the net proceeds remaining for the issuer. Since issuers are unable to recoup such costs by increasing the size of the offering above the $500,000 statutory ceiling, and since underwriters may be necessary to complete certain Regulation A offerings successfully, it would appear that these factors also may represent a major reason for the decline in the use of Regulation A.

Although Regulation A remains a viable mechanism for many companies or for the offering of securities by selling share-holders, it appears that it currently may not be helpful to those smaller businesses it was originally designed to assist. Those small nonreporting companies which seek to raise in excess of $500,000 through the public offering of securities must then comply with the requirements of the Securities Act through registration on Form S-1, the Commission's most extensive registration form.[6] In addition, a registrant on Form S-1 would, at least for the remainder of the fiscal year in which the registration statement was made effective, incur the full range of disclosure requirements imposed under the Exchange Act.

In order to provide an alternate means by which small issuers may more easily enter the capital markets, the Commission is proposing the adoption of registration Form S-18 and a corresponding amendment to Form 10-K. Under these proposals, a corporation, other than an investment company or a mining company for which Form S-3 (17 CFR 239.13) is available, not required to file reports with the Commission, might make a registered public offering on form S-18 of up to $3 million utilizing two year audited Regulation A type financial statements in lieu of those which would otherwise be required by Form S-1. Since section 15(d) under the Exchange Act otherwise would require an annual report containing audited financial statements for two fiscal years as required by Form 10-K as of the end of the fiscal year during which the Securities Act registration statement became effective, the proposals also would provide limited relief from such requirements for that initial annual report. Thereafter, if the issuer remains subject to section 15(d), or becomes subject to section 12, it would be required to file periodic reports under the Exchange Act subject to the general requirements applicable to all reporting companies.

The rationale behind this approach is that an issuer not subject to the reporting requirements of the Commission at the time the registration statement is filed under the Securities Act, may, consistent with the protection of investors, raise a limited amount of capital without immediately incurring the full range of disclosure and reporting requirements imposed upon other issuers. These procedures are intended to facilitate the process by which an issuer, over a period of time, might raise a limited amount of capital publicly, come into full compliance with the periodic reporting requirements now imposed upon other issuers, and thereby gain broader access to the capital markets without being impeded by the immediate burdens confronting many small, non-reporting issuers.

It should be noted, however, that issuers completing an offering on Form S-18 for the maximum $3 million likely would become subject to the requirements of section 12(g) under the Exchange Act. Section 12(g) requires an issuer with total assets exceeding $1 million and with a class of equity securities held of record by 500 or more persons to register that class with the Commission within 120 days after the close of its fiscal year in which these criteria were met. Nothing in the proposals set forth herein would relieve such issuers of the existing reporting requirements arising under the registration and reporting provisions of sections 12(g) and 13.

Based on its finding that the burden of periodic reporting under the Exchange Act is relatively greater for small companies than large companies, the Advisory Committee on Corporate Disclosure recommended that the Commission hold public hearings to determine: (1) Whether and to what extent, the Commission should attempt to define a category of small companies for purposes of requiring less burdensome reporting; (2) how such classification, if desirable and possible, should be defined; and (3) what reductions of reporting requirements are possible, consistent with the purposes of the Federal securities laws. The Commission's public hearings, scheduled to begin April 11, 1978, will include consideration of these issues.

PLACE OF FILING REGISTRATION STATEMENTS ON FORM S-18

One of the principal purposes of Form S-18 is to provide a means by which issuers may offer securities to the public in a offering somewhat equivalent to one made under Regulation A. Since materials filed under Regulation A are processed and reviewed in the Commission's regional offices, the Commission is considering the feasibility and desirability of giving registrants the option of filing registration statements on Form S-18 either at the Commission's principal office in Washington, D.C., or at the regional office for the region in which the issuer's principal business operations are conducted or proposed to be conducted in the United States.

If this procedure were adopted, the Commission initially would specify only certain regional offices at which such filings might be made in order that the filing and acceleration procedure might be tested, and to determine the nature and extent of any staff training which may be appropriate.

It is contemplated that this prodecure, if adopted, would involve an amendment to Rule 455 (17 CFR 230.455) under the Securities Act indicating that the regional offices at which the filing might be made would be the same one in which the registrant would make a filing under Regulation A, pursuant to Rule 255 (17 CFR 230.255).

In view of the above, the Commission specifically invites comments on whether this procedure might be beneficial to issuers and on the extent to which commentators presently believe they would elect to file with the regional office rather than with the Washington, D.C. office.

SYNOPSIS OF PROPOSALS

Following is a brief synopsis of the proposed amendments to assist in a better understanding of their purpose and effect. Attention is directed, however, to the attached text.

PROPOSED FORM S-18

A. Availability

In view of the experimental nature of proposed Form S-18, the Commission has determined to restrict the ini-

[3]The Commission is not aware of any empirical data which might suggest the accuracy of this supposition; however, for each of the past three fiscal years, approximately half of all notifications filed under Regulation A have involved offerings of $400,000 to $500,000. See Annual Report of the SEC for June 30, 1975, at 203.

[4]Rule 240 [17 CFR 230.240] also may have been a factor in the declining use of the Regulation A exemption. Rule 240 provides an exemption from section 5 of the Securities Act for certain sales of securities up to $100,000 by closely held issuers.

[5]See Annual Report of the SEC for June 30, 1975, at 203.

[6]Registration Form S-2 (17 CFR 239.12) would also be available, however, its availability is limited to companies which have not had any substantial gross returns from the sale of products or services, or any substantial net income from any source, for any fiscal year ended during the past five years.

tial availability of the form. Accordingly, Form S-18 is available to any domestic or Canadian corporation,[7] provided such corporation is not subject to the reporting requirements of the Exchange Act,[8] other than a company offering limited partnership interests in an oil and gas program or fractional undivided interests in oil and gas properties,[9] an investment company, or a mining company for which Form S-3 is available, for the registration of securities which are to be sold to the public for cash not to exceed an aggregate cash price of $3 million. The Commission believes at this time that an offering limit of $3 million will meet the needs of a substantial majority of those companies who find the dollar limit on Regulation A insufficient. However, the Commission specifically requests comment as to the appropriate offering limit for purposes of form S-18.

Form S-18, as proposed, is available for the sale of securities by the issuer only, and could not be used for secondary offerings by insiders and affiliates. The Commission specifically requests comment as to whether, in view of the primary purpose of Form S-18 to facilitate the formation of capital by small businesses, such secondary offerings should be permitted on the form. Based on the comment received, the form may be made available for certain secondary offerings.

In order to prevent a circumvention of the $3 million ceiling for an offering on Form S-18, the Rule as to the Use of the Form also provides that the aggregate offering price of certain other securities of the issuer shall be included in computing the ceiling. These include any securities of the issuer which were sold within one year prior to the commencement of the proposed Form S-18 offering when such sales were: (1) In violation of section 5(a) thereof; or (2) pursuant to a registration statement previously filed on Form S-18. In a manner similar to Rule 254 (17 CFR 230.254) under Regulation A, the proposed Rule as to Use of Form S-18 also defines the term "securities of the issuer" as including securities issued by any predecessor of the issuer or by any affiliate of the issuer which was organized or became such an affiliate within the past two years.

In certain instances, an issuer might not desire to utilize Form S-18 to raise the maximum $3 million allowed by the form. In order to make available the benefits of the form to those issuers, the Rule as to Use of Form S-18 contains a provision that registrants who have had a prior offering on Form S-18 may use the form during the same fiscal year in which the prior offering was made to raise the remaining balance of the offering limit.[10] The issuer, of course, must meet the remaining criteria of the Rule as to Use at the time of the subsequent registration.

Any issuer which was not subject to the provisions of section 15(d) on the first day of the fiscal year succeeding a fiscal year in which it had an offering on Form S-18 may also use Form S-18 subject to the offering ceiling limitations in paragraph A(b) of the Rule as to Use.

B. Narrative Disclosure

The narrative disclosure called for by Form S-18 contains fewer disclosure items than are required by Form S-1. The items that are included in the form, however, are generally consistent in content with their corresponding items in Form S-1.[11] The Commission believes that the disclosure items included in Form S-18 will provide adequate firm-oriented information to investors. Comment is requested as to whether any additional information should be included or whether any existing items should be deleted or modified.[12]

C. Financial Statements

Form S-18 requires audited financial statement disclosure substantially in accordance with that required by Regulation A. Specifically, Form S-18 requires: (1) a consolidated balance sheet as of a date within 90 days prior to the date the registration statement is declared effective; and (2) consolidated statements of income, source and application of funds, and other stockholders' equity for the 2 fiscal years prior to the date of filing prepared in accordance with generally accepted accounting principles and practices.[13]

A registrant, therefore, may include substantially less financial statement disclosure in Form S-18 than would otherwise be required in Form S-1. The Commission believes that the elimination of expenses through the reduction of the quantity of financial statements and schedules disclosure will result in costs savings to registrants and, at the same time, provide adequate information to investors with respect to offerings of $3 million or less. The Commission specifically requests comments on whether this proposed financial disclosure is adequate, and whether it will facilitate the raising of capital in a manner consistent with the protection of investors.

PROPOSED AMENDMENT TO GUIDE 23

Guide 23 of the Guides For the Preparation and Filing of Registration Statements Under the Securities Act of 1933 represents policies and practices developed by the Division of Corporation Finance with respect to the need for updating financial statements and related data in registration statements. The proposed amendment to Guide 23 provides that in the event that there is a delay between the date of filing the registration statement on Form S-18 and its effectiveness registrants with an established record of earnings and in a sound financial condition may be required to furnish later sales and net income information on a quarterly basis compared with a similar period of the preceding year, if the amendment when effective would otherwise include data over four and one-half months old. This information would follow the Statement of Income in the prospectus.

Registrants with no established record of earnings and registrants currently showing losses or a weak financial condition would be required to furnish the above data and also may be required to bring the financial statements up to the latest practicable date not more than 90 days prior to filing the amendment upon which it is expected the filing will become effective. In addition, if delay carries the effective date beyond the close of the fiscal year and by applying due dili-

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[7]The Rule as to Use of Form S-18 limits the availability of the form to corporations; consequently, offerings made by partnerships or by unincorporated business associations would be denied the use of proposed Form S-18.

[8]Insurance companies which are exempt from the provisions of Section 12(g) pursuant to Section 12(g)(2)(G) would not be eligible to use Form S-18 since they remain technically subject to the Exchange Act.

[9]In view of certain unique disclosure problems which arise in connection with such oil and gas offerings, the Commission has determined to exclude these companies from utilizing Form S-18 at this time.

[10]For example, assuming the issuer has had no other sales of securities in the preceding 12 months, as computed in paragraph A(b) of the Rule as to Use, a calendar year issuer who had an offering constituting 50 percent of the offering ceiling in March could use Form S-18 to raise the remaining 50 percent of the ceiling up until December 31 of the same year.

[11]In view of the small size of the registrants expected to utilize Form S-18, Item 9 of the form calls for disclosure with respect to each director and the 3 highest paid officers whose aggregate remuneration exceeds $20,000 rather than the $40,000 floor in Form S-1.

[12]The Commission has proposed amendments to certain registration and reporting forms relating to the disclosure of management background information and pending legal proceedings (Securities Act Release No. 5826). These proposals are reflected in proposed Form S-18, however, it is anticipated that the form would be revised if such proposals are not adopted, or adopted in revised fashion.

[13]Regulation A financial statements are required to be prepared in accordance with GAAP.

gence the registrant and its independent accountant can have an audit completed prior to the planned effective date, audited statements for that fiscal year should be substituted for interim statements whether or not the interim financial statements have been audited.

The proposed amendment also provides that when numerous or involved financial transactions have been effected since the date of the financial statements furnished or it is recognized that unusual conditions affect the determination of earnings, the Commission has indicated that later interim financial statements may be requested on an audited basis as a condition to acceleration under section 8(a) of the Act.

PROPOSED AMENDMENT TO FORM 10-K

In order to further reduce the expenses resulting from registration under the Securities Act, the Commission proposes to allow registrants filing on Form S-18 and thereby becoming subject to the reporting provisions of section 15(d) of the Exchange Act to include audited Regulation A type financial statements for two fiscal years in their initial annual report to the Commission on Form 10-K. The proposed amendment to Instructions as to Financial Statements of Form 10-K provides that the issuer may include, in lieu of those financial statements otherwise required, the following information: (1) a consolidated balance sheet as of the end of the last fiscal year and (2) statements of income, source and application of funds and other stockholders' equity for each of the last two fiscal years prepared in accordance with GAAP. Registrants would then be able to include in their initial annual report on Form 10-K financial statements prepared on the same basis as those provided in their registration on Form S-18.

OPERATION OF PROPOSALS

The Commission is mindful of the cost to registrants and others of its proposals and recognizes its responsibilities to weigh with care the costs and benefits which result from its rules. Accordingly, the Commission specifically invites comments on the costs to registrants and others of the adoption of the proposals published herein.

Pursuant to section 23(a)(2) of the Exchange Act, the Commission has considered the impact that these proposals would have on competition and is not aware, at this time, of any burden that such rules, if adopted, would impose on competition not necessary or appropriate in furtherance of the purposes of the Act. However, the Commission specifically invites comments as to the competitive impact of these proposals, if adopted.

PROPOSED AMENDMENTS

It is proposed to amend 17 CFR Chapter II as follows:

I. By adopting § 239.28 to read as follows:

§ 239.28 Form S-18, optional form for the registration of securities to be sold to the public by the issuer for an aggregate cash price not to exceed $3,000,000.

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-18—REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

(Exact name of registrant as specified in charter)

(Address of principal executive offices)

(Name and address of agent for services)

(state or other judisdiction of incorporation)	(Industrial classification code number)	(IRS employer I.D. number)

Approximate date of commencement of proposed sale to the public

Calculation of registration fee

Title of shares being registered	Amount being registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee
Rule 406	Rule 405(b)	Rule 457		Rule 457.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said section 8(a), may determine.[1]

Facing Sheet.

General Instructions.

A. Rule as to Use of Form S-18.
B. Application of General Rules and Regulations.
C. Documents Comprising Registration Statement.
D. Form and Content of Prospectus.
E. Preparation of Part II.

PART I. INFORMATION REQUIRED IN PROSPECTUS.

Item

1. Distribution Spread.
2. Plan of Distribution.
3. Use of Proceeds to Registrant.
4. Organization Within 5 Years.
5. Description of Business.
6. Description of Property.
7. Pending Legal Proceedings.
8. Directors and Officers.
9. Remuneration of Directors and Officers.
10. Options to Purchase Securities.
11. Principal Security Holders.
12. Interest of Management and Others in Certain Transactions.
13. Securities Being Registered.
14. Financial Statements.

PART II. INFORMATION NOT REQUIRED IN PROSPECTUS

15. Marketing Arrangements.
16. Other Expenses of Registration and Distribution.
17. Relationship with Registrant of Experts Named in Registration Statement.
18. Recent Sales of Unregistered Securities.
19. Financial Statements and Exhibits Filed.

Undertakings.

Signatures.

Instructions as to Exhibits.

GENERAL INSTRUCTION

A. Rule as to Use of Form S-18

(a) This form is to be used for the registration of securities of any corporation not to exceed an aggregate cash price of $3 million which are to be sold by the issuer to the public for cash, provided such corporation:

(1) Is incorporated under the laws of the United States or Canada or any State or Province thereof, and has or proposes to have its principal business operations in the United States, if a domestic corporation, or Canada or the United States if a Canadian corporation;

(2) Is not subject to the reporting provisions of the Securities Exchange Act of 1934 pursuant to section 12 or 15(d) of that Act; and

(3) Is not a company offering limited partnership interests in an oil or gas program or fractional undivided interests in oil or gas properties; and investment company; or a mining company entitled to use Form S-3.

(b) For purposes of computing the $3 million ceiling specified above, there shall be included in the aggregate price of the securities registered herein, the aggregate offering price of all securities of the issuer sold within one year prior to the commencement of the proposed offering: (i) in violation of section 5(a) of the Act; or (ii) pursuant to a registration statement filed on Form S-18. For purposes of this rule, the term "securities of the issuer" shall include securities issued by any predecessor of the issuer or by any affiliate of the issuer which was organized or became such an affiliate within the past two years.

(c) Notwithstanding the provisions of paragraph (a)(1), a registrant which has had a prior offering on Form S-18 may, during

[1]Inclusion of this paragraph is optional. See Rule 473.

the remainder of the fiscal year in which the prior registration was made effective, use the form to register additional securities until the offering limit as computed in paragraph (b) has been met.

B. Application of General Rules and Regulations

(a) Attention is directed to the General Rules and Regulations under the Act, particularly those comprising Regulation C. That regulation contains general requirements regarding the preparation and filing of the registration statement. The definitions contained in Rule 405 should be especially noted.

(b) Specific attention is directed to Form SR which is required to be filed by first-time registrants under the Securities Act showing sales of registered securities and the use of proceeds therefrom.

(c) Attention is directred to Securities Act Release No. 4968 (April 24, 1969) regarding the Commission's policy with respect to the prior delivery of preliminary prospectuses by registrants not subject to the reporting requirements of the Exchange Act.

C. Documents Comprising Registration Statement

The registration statement shall consist of the facing sheet of the form, the prospectus containing the information specified in Part I, the information called for by Part II, the undertaking to file reports, the required signatures, consents of experts, and exhibits, and any other information or doucments which are required or which the registrant may file as part of the registration statement.

D. Form and Content of Prospectus

(a) The prospectus shall contain the information called for by all of the items of Part I of the form, except that no reference need be made to inapplicable items, and negative answers to any item may be omitted. Unless clearly indicated otherwise, information set forth in any part of the prospectus need not be repeated elsewhere in the prospectus. Where it is deemed necessary or desirable to call attention to information contained elsewhere in the prospectus, this may be done by an appropriate cross reference.

(b) Where appropriate to a clear understanding by investors of the speculative or promotional nature of the enterprise, an introductory statement shall be made in the prospectus summarizing the factors which make the offering a speculation and setting forth such matters as a comparison, in percentages, of the securities being offered to the public for cash and those issued or to be issued to promoters, directors, officers, controlling persons and underwriters for cash, property and services.

(c) Attention is directed to the Division of Corporation Finance's Guides for Preparation and Filing of Registration Statements Under the Securities Act of 1933. The Guides represent Division practices with respect to the disclosures to be provided in registration statements.

E. Preparation of Part II

Part II of the registration statement shall contain the numbers and captions of the items in Part II of the form, but the text of the items may be omitted provided the answers are so prepared as to indicate to the reader the coverage of the items without the necessity of referring to the text of the items or the instructions thereto. If the information required by any item of Part II is completely disclosed in the prospectus, reference may be made to the specific page or caption of the prospectus which contains such information.

PART I. INFORMATION REQUIRED IN PROSPECTUS

Item 1. Distribution Spread.

The information called for by the following table shall be given, in substantially the tabular form indicated, on the outside front cover page of the prospectus as to all securities being registered (estimate, if necessary).

	Price to public	Underwriting discounts and commissions	Proceeds to registrant or other person
Per unit			
Total			

Instructions. 1. The term "commissions" has the meaning given in paragraphs (17) of Schedule A of the Act. Only commissions paid by the registrant in cash are to be included in the table. Commissions paid by other persons, and other considerations to the underwriters, shall be set forth following the table with a reference thereto in the second column of the table. Any finder's fees or similar payments shall be appropriately disclosed.

2. If it is impracticable to state the price to the public, the method by which it is to be determined shall be explained. In addition, if the securities are to be offered at the market, or if the offering price is to be determined by a formula related to market prices, indicate the market involved and the market price as of the latest practicable date.

Item 2. Plan of Distribution.

(a) If the securities being registered are to be offered through underwriters, give the names of the principal underwriters, and state the respective amounts underwritten. Identify each such underwriter having a material relationship to the registrant and state the nature of the relationship. State briefly The nature of the underwriters' obligation to take the securities.

Instruction. All that is requires as to the nature of the underwriters' obligation is whether the underwriters are or will be committed to take and to pay for all of the securities if any are taken, or whether it is merely an agency or "best efforts" arrangement under which the underwriters are required to take and pay for only such securities as they may sell to the public. Conditions precedent to the underwriters' taking the securities, including "market outs", need not be described except in the case of an agency or "best efforts" arrangement.

(b) State briefly the discounts and commissions to be allowed or paid to dealers, including all cash, securities, contracts or other consideration to be received by any dealer in connection with the sale of the securities.

Instruction. If any dealers are to act in the capacity of subunderwriters and are to be allowed or paid any additional discounts or commissions for acting in such capacity, a general statement to that effect will suffice without giving the additional amounts to be so paid.

(c) Outline briefly the plan of distribution of any securities being registered which are to be offered otherwise than through underwriters.

(d) Identify any principal underwriter that intends to confirm sales to any accounts over which it exercises discretionary authority and include an estimate of the amount of securities to intended to be confirmed.

Instruction. The response to this item shall be contained in a pre-effective amendment which will be circulated if the information is not available when the registration statement is filed.

Item 3. Use of Proceeds to Registrant

State the principal purposes for which the net proceeds to the registrant from the securities to be offered are intended to be used, and the approximate amount intended to be used for each such purpose.

Instructions. 1. Details of proposed expenditures are not to be given; for example, there need be furnished only a brief outline of any program of construction or addition of equipment. If any substantial portion of the proceeds has not been allocated for particular purposes, a statement to that effect shall be made together with a statement of the amount of proceeds not so allocated.

2. Include a statement as to the use of the actual proceeds if they are not sufficient to accomplish the purposes set forth and the order of priority in which they will be applied. However, such statement need not be made if the underwriting arrangements are such that, if any securities are sold to the public, it can be reasonably expected that the actual proceeds of the issue will not be substantially less than the estimated aggregate proceeds to the registrant as shown under Item 1.

3. If any material amounts of other funds are to be used in conjunction with the proceeds, state the amounts and sources of such other funds. If any material part of the proceeds is to be used to discharge a loan, the item is to be answered as to the use of the proceeds of the loan if the loan was made within one year; otherwise, it will suffice to state that the proceeds are to be used to discharge the indebtedness created by the loan.

4. If any material amount of the proceeds is to be used to acquire assets, otherwise than in the ordinary course of business, briefly describe the assets and give the names of the persons from whom they are to be acquired. State the cost of the assets to the registrant and the principle followed in determining such cost.

Item 4. Organization Within 5 Years

If the registrant was organized within the past 5 years, furnish the following instructions:

(a) State the names of the promoters, the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter directly or indirectly from the registrant, and the nature and amount of any assets, services or other consideration therefor received or to be received by the registrant. The term "promoter" is defined in Rule 405 under the Act.

(b) As to any assets acquired or to be acquired by the registrant from a promoter, state the amount at which acquired or to be acquired and the principle followed or to be followed in determining the amount. Identify the persons making the determination and state their relationship, if any, with the registrant or any promoter. If the assets were acquired by the promoter within two years prior to their transfer to the registrant, state the cost thereof to the promoter.

(c) List all parents of the registrant showing the basis of control and as to each parent, the percentage of voting securities owned or other basis of control by its immediate parent, if any.

Instruction. Include the registrant and show the percentage of its voting securities owned or other basis of control by its immediate parent. In case any parent is a resident of, or a corporation or other organization formed under the laws of, any foreign country, give the name of such country for each such foreign parent, and, if it is a corporation or other organization, state briefly the nature of the organization.

Item 5. Description of Business

(a) Describe the business done and intended to be done by the registrant and its subsidiaries and the general development of such business during the past five years, or such shorter period as the registrant may have been engaged in business. The description shall include information as to matters such as the following:

1. Competitive conditions in the industry or industries involved and the competitive position of the registrant, if known or reasonably available to the registrant. If several products or services are involved, separate consideration shall be given to the principal products or services or classes of products or services.

2. If a material part of the business is dependent upon a single customer or a few customers, the loss of any one or more of whom would have a materially adverse effect on the business of the registrant, the name of the customer or customers, their relationship, if any, to the registrant and material facts regarding their importance to the business of the registrant.

3. The principal products produced and services rendered by the registrant, the principal markets for, and methods of distribution of, such products and services, including any significant changes in the kinds of products produced or services rendered, or in the markets or methods of distribution, during the past three fiscal years.

4. To the extent that information concerning backlog is material to an understanding of the business of the registrant, the dollar amount of backlog orders believed to be firm, as of a recent date and as of a comparable date in the preceding fiscal year, together with an indication of the portion thereof not reasonably expected to be filled within the current fiscal year, and seasonal or other material aspects of the backlog.

5. The sources and availability of raw materials essential to the business.

6. The importance to the business and the duration and effect of, all materials patents, trademarks, licenses, franchises and concessions held.

7. (a) The estimated dollar amount spent during each of the last two fiscal years on material research activities relating to the development of new products or services or the improvement of existing products or services, indicating those activities which were company-sponsored and/or those which were customer-sponsored.

(b) In addition to the description of the business done and intended to be done required by paragraph 5(a) and without limiting that requirement, if there has been a public announcement of, or if information otherwise has become public about, the registrant's intent to introduce a new product or enter a new industry segment requiring the investment of a material amount of total assets, a description of the status of such product or segment (e.g., whether in the planning stage, whether prototypes exist, the degree to which product design has progressed or whether further engineering is necessary).

(c) Where material, state the approximate number of employees engaged fulltime in each of the activities described in (a) above during each fiscal year and in (b) above.

NOTE.—Item 9(a)(7)(b) requires a description of the status of product development in addition to the description of the business done and intended to be done required by paragraph 9(a). Item 9(a)(7)(b) is not intended to require disclosure of otherwise nonpublic corporate information the disclosure of which would adversely affect the registrant's competitive position. Subparagraph (a) requires disclosure of financial information relating to research and development activities. Subparagraph (b) is intended to elicit addtional specific information only where there has been a public announcement or where information has otherwise become public concerning a new product or industry segment requiring the investment of a material amount of total assets.

8. The number of persons employed by the registrant.

9. The extent to which the business of the registrant or a material portion thereof is or may be seasonal.

Instructions. 1. If the registrant proposes to introduce or has recently introduced a new product or proposes to do business or has recently begun to do business in a new industry segment requiring the investment of a material amount of its total assets, provide as supplemental information at the time of filing of the document, but not as part thereof, a copy of any studies conducted or performed by or for the registrant relating to such business or product and a statement as to the actual or proposed use of such study. If any such study is not available at the time of filing, it should be provided as soon thereafter as practicable. Where material, disclosure of the absence of such study is required.

2. The principal methods of competition (e.g., price, service, warranty or product performance) should be identified and positive and negative factors pertaining to the competitive position of the registrant, to the extent that they exist, should be explained if known or reasonably available to the registrant. An estimate of the number of competitors should be included, and, where material, the particular markets in which the registrant competes should be identified. Where one or a small number of competitors are dominant, they should be identified.

3. Where material to understanding the registrant's business, the registrant's and industry practices and conditions as they relate to working capital items should be explained (e.g. where the registrant's business is highly seasonal; where the registrant is required to carry significant amounts of inventory to meet rapid delivery requirements of customers or to assure itself of a continuous allotment of goods from suppliers; or where the registrant has provided extended payment terms to customers).

4. The description shall not relate to the powers and objects specified in the charter, but to the actual business done and intended to be done. Include the business of subsidiaries and affiliates of the registrant insofar as is necessary to understand the charter and development of the business conducted by the total enterprise.

5. Appropriate disclosure shall also be made as to the material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries. Registrant shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and its succeeding fiscal year; and such further periods as the registrant may deem material.

6. In describing developments, information shall be given as to matters such as the following: the nature and results of any bankruptcy, receivership or similar proceedings with respect to the registrant or any of its significant subsidiaries; the nature and results of any other material reorganization, readjustment or succession of the registrant or any of its significant subsidiaries; the acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business; and any material changes in the mode of conducting the business.

7. The business of a predecessor or predecessors shall be deemed to be the business of the registrant for the purpose of this item.

8. Appropriate disclosure shall be made with respect to any material portion of the business which may be subject to renegotiation of profits or termination of contracts or subcontracts at the election of the Government.

9. Describe, if formulated, the registrant's plan of operation for the remainder of the fiscal year, if the registration statement is filed prior to the end of the registrant's second fiscal quarter. Describe, if formulated, the registrant's plan of operation for the remainder of the fiscal year and for the first six months of the next fiscal year, if the registration statement is filed subsequent to the end of the second quarter. If such information is not available, the reasons for its not being available should be stated. Disclosure relating to any plan should include such matters as:

(a) A statement in narrative form indicating the registrant's opinion as to the period of time that the proceeds from the offering will satisfy cash requirements and whether in the next six months it will be necessary to raise additional funds to meet the expenditures required for operating the business of the registrant. The basis for such opinion shall be set forth with specificity and categories of expenditures and sources of cash resources shall be identified. Amounts of expenditures and cash resources need not be provided. In addition, if the narrative statement is based on a cash budget, such budget should be furnished to the Commission as supplemental information, but not as a part of the registration statement.

(b) An explanation of material product research and development to be performed during the period covered by the plan, including where there has been a public announcement of or such information has otherwise become public the registrant's intent to introduce a new product or enter a new industry segment requiring the investment of a material amount of total assets, a description of the status of such product or segment (e.g., whether in the planning stage, whether prototypes exist, the degree to which product design has progressed or whether futher engineering is necessary).

(c) Any anticipated material acquisition of plant and equipment and the capacity thereof.

(d) Any anticipated material changes in number of employees in the various departments such as research and development, production, sales or administration.

(e) Other material areas which may be peculiar to the registrant's business.

(b) If the registrant is required to include segment information in its financial statements, such information shall be disclosed in the description of business; if the segment information is located on a page that is not clearly a part of the description of business, the information shall be incorporated by reference.

Item 6. Description of Property

State briefly the location and general character of the principal plants, mines and other materially important physical properties of the registrant and its subsidiaries. If any such property is not held in fee or is held subject to any major encumbrance, so state and briefly describe how held.

Instructions. 1. What is required is information essential to an investor's appraisal of the securities being registered. Such information should be furnished as will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and should not be given.

2. In the case of an extractive enterprise, material information should be given as to production, reserves, locations, developments and the nature of the registrant's interest. Where individual properties are of major significance to the enterprise (i) more detailed information concerning these matters should be furnished, including the results of development in the area and significant geological structures and formations, where appropriate and (ii) appropriate maps should be used to disclose location data of significant properties except where numerous maps would be required. Where the report of an engineer or other expert is referred to in the prospectus, a copy of the full report normally should be furnished as supplemental information but not as a part of the registration statement.

Item 7. Legal Proceedings.

Briefly describe any material legal proceedings other than ordinary routine litigation incidental to the business to which the registrant or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought. Include similar information as to any such proceedings known to be contemplated by government authorities.

Instructions. 1. If the business ordinarily results in actions for negligence or other claims, no such action or claim need be described unless it departs from the normal kind of such actions.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Notwithstanding Instructions 1 and 2, any material bankruptcy, receivership, or similar proceeding with respect to the registrant or any of its significant subsidiaries shall be described. Any material proceeding to which any director, officer or affiliate of the registrant, any owner of record or beneficially of more than 10 percent of any class of voting securities of the registrant, or any assoicate of any such director, officer or security holder is a party adverse to the registrant or any of its subsidiaries or has a material interest adverse to the registrant or any of its subsidiaries also shall be described.

4. Notwithstanding the foregoing, administrative or judicial proceedings arising under any Federal, state or local provisions which have been enacted or adopted regulating the discharge or materials into the environment or otherwise relating to the protection of the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if such proceedings is material to the business or financial condition of the registrant or if it involves primarily a claim for damages and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. Any such proceedings by governmental authorities shall be deemed material and shall be described whether or not the amount of any claim for damages involved exceeds 10 percent of current assets on a consoldiated basis and whether or not such proceedings are considered "ordinary routine litigation incidental to the business"; provided, however, that such proceedings which are similar in nature may be grouped and described generically, stating: the number of such proceedings; the issues generally involved; and, if such proceedings in the aggregate are material to the business or financial condition of the registrant, the effect of such proceedings on the business or financial condition of the registrant.

Item 8. Directors and Executive Officers

(a) List the names and ages of all directors of the registrant and all persons chosen to become directors: indicate all positions and offices with the registrant held by such person, if such person is a member of any committee(s) of the registant's Board of Directors, indicate such membership(s); state his term of office as director and the period during which he has served as such; indicate any directorship held by each such person in any company with a class of securities registered pursuant to Section 12 of the Exchange Act or subject to the requirements of Section 15(d) of that Act or any company registered as an investment company under the Investment Company Act of 1940; briefly describe any arrangement or understanding between him and any other person pursuant to which he was selected as a director.

Instructions. 1. Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. If any person chosen to become a director has not consented to act as such, so state.

(b) List the names and ages of all executive officers of the registrant and all persons chosen to become executive officers; indicate all positions and offices with the registrant held by each such person; state his term of office as officer and the period during which he has served as such and briefly describe any arrangement or understanding between him and any other person pursuant to which he was selected as an officer.

Instructions. 1. Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. If any person chosen to become a director has not consented to act as such, so state.

3. The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, admnistration or finance) and any other person who performs similar policy making functions for the registrant.

(c) Where the registrant employs persons such as production managers, sales managers, or research scientists, who are not executive officers, but who make or are expected to make significant contributions to the business of the registrant, such persons should be identified and their background disclosed to the same extent as in the case of executive officers.

(d) State the nature of any family relationship between any director or executive officer or person named in answer to paragraph (c) and any other director or executive officer or person named in answer to paragraph (c).

Instruction. The term "family relationship" means any relationship by blood, marriage or adoption, not more remote than first cousin.

(e) Give a brief account of the business experience during the past five years of each director and each executive officer and each person named in answer to paragraph (c), including his principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. Where an executive officer or person named in response to paragraph (c) has been employed by the registrant or a subsidiary of the registrant for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. What is required is information relating to the level of this professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(f) Describe any of the following events which occurred during the past five years and which are material to an evaluation of the ability and integrity of any director or executive officer of the registrant:

(1) A petition under the Bankruptcy Act or any state insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the

business or property of, such person, or a partnership in which he was a general partner at or within two years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding (excluding traffic violations and other minor offenses) or is the subject of a criminal proceeding which is presently pending;

(3) Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction permanently or temporarily enjoining him from, or otherwise limiting the following activities:

(i) acting as an investment adviser, underwriter, broker or dealer in secutities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(ii) engaging in any type of business practice; or

(iii) engaging in any activity in connection with the purchase or sale of any security or in any violation of Federal or state securities laws.

(4) Such person was the subject of any order, judgement or decree, not subsequently reversed, suspended or vacated, of any Federal or state authority barring, suspending or otherwise limiting for more than 60 days the right of such person to engage in any activity described in subparagraph (3), above, or to be associated with persons engaged in any such activity.

(5) Such person was found by a court of competent jurisdiction in a civil action to have violated any Federal or state securities law, and the judgment in such civil action has not been subsequently reversed.

Instruction. If any event specified in this subparagraph (f) has occurred but information in regard thereto is omitted on the ground that it is not material, the registrant shall furnish the Commission, as supplemental information and not as part of this registration statement, a description of the event and a statement of the reasons for the omission of information in regard thereto.

Item 9. Remuneration of Directors and Officers

(a) Furnish the following information in substantially the tabular form indicated below as to all direct remuneration paid by the registrant and its affiliates during the registrant's last fiscal year to the following persons for services in all capacities.

(1) Each director, and each of the three highest paid officers of the registrant whose aggregate direct remuneration exceeded $20,000, naming each such person.

(2) All directors and officers of the registrant as a group, without naming them.

(A)	(B)	(C)
Name of individual or identity of group	Capacities in which remuneration was received	Aggregate direct remuneration

Instructions. 1. This item applies to any person who was a director or officer of the registrant at any time during the period specified. However, information need not be given for any portion of the period during which such person was not a director or officer of the registrant.

2. The information is to be given on an accrual basis if practicable. The tables required by this paragraph and paragraph (b) may be combined if the registrant so desires.

3. Do not include remuneration paid to a partnership in which any director or officer was a partner, but see Item 11.

4. If the registrant has not completed a full fiscal year since its organization or if it acquired or is to acquire the majority of its assets from a predecessor within the current fiscal year, the information shall be given for the current fiscal year, estimating future payments, if necessary. To the extent that such remuneration is to be computed upon the basis of a percentage of profits, it will suffice to state such percentage without estimating the amount of such profits to be paid.

5. If any part of the remuneration shown in response to this item was paid pursuant to a material bonus or profit-sharing plan, briefly describe the plan and the basis upon which directors or officers participate therein. See Instruction 1 to paragraph (b) for the meaning of the term "plan."

(b) Furnish the following information, in substantially the tabular form indicated below, as to 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 registrant or any of its subsidiaries to each director of officer named in answer to paragraph (a)(1) above:

(A)	(B)	(C)
Name of individual	Amounts set aside or accrued during registrant's last fiscal year	Estimated annual benefits upon retirement

Instructions. 1. The term "plan" in this item includes all plans, contracts, authorizations or arrangements, whether or not set forth in any formal document.

2. Column (B) need not be answered with respect to amounts computed on an actuarial basis under any plan which provides for fixed benefits in the event of retirement at a specified age or after a specified number of years of service.

3. The information called for by Column (C) may be given in a table showing the annual benefits payable upon retirement to persons in specified salary classifications.

4. In the case of any plan (other than those specified in Instruction 2) where the amount set aside each year depends upon the amount of earnings of the registrant or its subsidiaries for such year or a prior year, or where it is otherwise impracticable to state the estimated annual benefits upon retirement, there shall be set forth, in lieu of the information called for by Column (C), the aggregate amount set aside or accrued to date, unless it is impracticable to do so, in which case there shall be stated the method of computing such benefits.

(c) Describe briefly all remuneration payments (other than payments reported under paragraph (a) or (b) if this item) proposed to be made in the future, directly or indirectly, by the registrant or any of its subsidiaries pursuant to any existing plan or arrangement to (i) each director or officer named in answer to paragraph (a)(1), naming each such person, and (ii) all directors and officers of the registrant as a group, without naming them.

Instruction. Information need not be included as to payments to be made for, or benefits to be received from, group life or accident insurance, group hospitalization or similar group payments or benefits. If it is impracticable to state the amount of remeneration payments proposed to be made, the aggregate amount set aside or accrued to date in respect of such payments should be stated, together with an explanation of the basis for future payments.

Item 10. Options to Purchase Securities of the Registrant

Give the name of each person who holds or is to hold any options, warrants or rights to purchase securities of the registrant from the registrant. State the amount of securities of each class called for by each option, warrant or right and the consideration for the granting of the options, warrants or rights. Outline briefly the prices, expiration dates and other material conditions on which each option, warrant or right may be exercised.

Item 11. Security Ownership of Certain Beneficial Owners and Management

(a) Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, with respect to any person (including any "group" as that term is used in Section 13(d)(3) of the Securities Exchange Act of 1934 who is known to the registrant to be the beneficial owner of more than five percent of any class of the registrant's voting securities. Show in Column (3) the total number of shares beneficially owned and in Column (4) the percent of class so owned. Of the number of shares shown in Column (3), indicate by footnote or otherwise the amount known to be shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership, as specified in Rule 13d-3(d)(1) under the Exchange Act (17 CFR 240.13d-3(d)(1)).

(1) Title of class	(2) Name and address of beneficial owner	(3) Amount beneficially owned	(4) Percent of class

(b) Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the registrant or any of its parents or subsidiaries, other than directors' qualifying shares, beneficially owned by all directors and officers of the registrant as a group, without naming them. Show in Column (2) the total number of shares beneficially owned and in Column (3) the percent of class so owned. Of the number of shares shown in Column (2), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in Rule 13e-3(d)(1) under the Exchange Act.

(1) Title of class	(2) Amount beneficially owned	(3) Percent of class

(c) Describe any arrangements, known to the registrant, including any pledge by any person of securities of the registrant or any of its parents, the operation of which may at a subsequent date result in a change in control of the registrant.

Instructions. 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the registrant or its subsidiaries; however, such calculations may be made on the basis of outstanding securities plus securities deemed outstanding pursuant to Rule 13e-3(d)(1) under the Exchange Act provided appropriate disclosure is made as to the method of calculating.

2. For the purposes of this item, beneficial ownership shall be determined in accordance with Rule 13e—3 (17 CFR 240.13d-3) under the Exchange Act.

3. For purposes of furnishing information pursuant to paragraph (a), the registrant may indicate the source and date of such information.

4. Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure should be made to avoid confusion.

5. Paragraph (c) does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the registrant.

6. If, to the knowledge of the registrant or any principal underwriter of the securities being registered, more than five percent of any class of voting securities of the registrant are to be held subject to any voting trust or similar arrangement, state the title of such securities, the amount held or to be held and the duration of the agreement. Give the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the agreement.

Item 12. Interest of Management and Others in Certain Transactions

Describe briefly any transaction since the beginning of the issuer's last fiscal year or any presently proposed transactions, to which the issuer or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the issuer, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the issuer;

(2) Any security holder named in answer to Item 5(d); or

(3) Any associate of the foregoing persons.

Instructions. 1. See Instruction 1 to Item 9(a). No information need be given in response to this Item as to any renumeration or other transaction reported in response to Item 9 or with respect to which information may be omitted pursuant to Instruction 2 to Item 9(b) or the Instruction to Item 9(c).

2. No information need be given in answer to this Item as to any transaction where:

(a) the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

(b) the transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(c) The amount involved in the transaction or a series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed $20,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the issuer and the specified person receives no extra or special benefit not shared on a pro rata basis by all holders of securities of the class.

3. It should be noted that this item calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the issuer or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this Item where:

(a) The interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (4) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership.

(b) The interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (4) above had an interest of less than 10 percent; or

(c) The interest of such persons arises solely from the holding of an equity interest (including a limited partnership interest but excluding a general partnership interest) or a creditor interest in another person which is a party to the transaction with the issuer or any of its subsidiaries and the transaction is not material to such other person.

4. The amount of the interest of any specified person shall be computed to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be disclosed.

5. Information should be included as to any material underwriting discounts and commissions upon the sale of securities by the registrant where any of the specified persons was or is to be a principal underwriter or is a controlling person, or member, of a firm which was or is to be a principal underwriter. Information need not be given concerning ordinary management fees paid by underwriters to a managing underwriter pursuant to an agreement among underwriters the parties to which do not include the registrant or its subsidiaries.

6. As to any transaction involving the purchase or sale of assets by or to the registrant or any subsidiary, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and if acquired by the seller within two years prior to the transaction, the cost of thereof to the seller.

7. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering this item. There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of a specified person in the particular transaction or series of transaction is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this item.

Item 13. Securities Being Registered.

(a) If capital stock is being registered, state the title of the class and furnish the following information:

(1) Outline briefly (i) dividend rights; (ii) voting rights; (iii) liquidation rights; (iv) pre-emptive rights; (v) conversion rights; (vi) redemption provisions; (vii) sinking fund provisions; and (viii) liability to further calls or to assessment by the registrant.

(2) If the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(3) Outline briefly any restriction on the repurchase or redemption of shares by the registrant while there is any arrearage in the payment of dividends or sinking funds installments. If there is not such restriction, so state.

Instructions. 1. This item requires only a brief summary of the provisions which are pertinent from an investment standpoint. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions of the governing instruments verbatim; only a succinct resume is required.

2. If the rights evidenced by the securities being registered are materially limited or qualified by the rights of any other class of securities, include such information regarding such other securities as will enable investors to understand the rights evidenced by the securities being registered.

(b) If long-term debt is being registered, outline briefly such of the following as are relevant:

(1) Provisions with respect to interest, conversion, maturity, redemption, amortization, sinking fund or retirement.

(2) Provisions with respect to the kind and priority of any lien securing the issue, together with a brief identification of the principal properties subject to such lien.

(3) Provisions restricting the declaration of dividends or requiring the maintenance of any ratio of assets, the creation or maintenance of reserves or the maintenance of properties.

(4) Provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against such issuance, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions.

Instructions. 1. In the case of secured debt, there should be stated (i) the approximate amount of unbonded bondable property available for use against the issuance of bonds, as of the most recent practicable date, and (ii) whether the securities being registered are to be issued against such property, against the deposit of cash, or otherwise.

2. Provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, or the release of property no longer required in the business, obsolete property or property taken by eminent domain, the application of insurance moneys, and similar provisions, need not be described.

(5) The name of the trustee and the nature of any material relationship with the registrant or any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action, and what indemnification the trustee may require before proceeding to enforce the lien.

(6) The general type of event which constitutes a default and whether or not any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of the indenture.

Instruction. Instructions 1 and 2 under paragraph (a) above shall also apply to this item. Section 305(a)(2) of the Trust Indenture Act of 1939 shall not be deemed to require the inclusion in the registration statement or in the prospectus of any information not required by this form.

(c) If securities other than capital stock or long-term debt are being registered, outline briefly the rights evidenced thereby. If subscription warrants or rights are being registered, state the title and amount of securities called for, the period during which and the price at which the warrants or rights are exercisable.

Item 14. Financial Statements and Instructions

The following financial statements, prepared in accordance with generally accepted accounting principles and practices, shall be filed as a part of the registration statement. Regulation S-X, Form and Content of Financial Statements, shall not apply to the preparation of such financial statements.

(a) Balance Sheets of the Registrant.

(1) The registrant shall file a consolidated balance sheet as of a date within 90 days prior to the date of filing the registration statement. This balance sheet need not be audited if it is not as of the latest fiscal year.

(2) If the balance sheet required by paragraph (a) is not audited, there shall be filed in addition an audited balance sheet as of a date within one year unless the fiscal year of the registrant has ended within 90 days prior to the date of filing, in which case the audited balance sheet may be as of the end of the preceding fiscal year.

(b) Statements of Income and Source and Application of Funds of the Registrant.

The registrant shall file consolidated statements of income and source and application of funds for each of the two fiscal years preceding the date of the most recent balance sheet being filed and for the interim period, if any, between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed. These statements shall be audited to the date of the most recent audited balance sheet being filed.

If an income statement is filed for an interim period, an unaudited income statement for a comparable period of the prior year shall also be filed. In connection with any unaudited income statements for an interim period, a statement shall be made that all adjustments necessary for a fair statement of the results for such period have been included. If all such adjustments are of a normal revising nature, a statement to that effect shall be made; otherwise these shall be furnished as supplementary information but not as a part of the registration statement and letter describing in detail the nature and amount of any adjustments other than normal revising adjustments, entering into the determination of the results shown.

PART II.—INFORMATION NOT REQUIRED IN PROSPECTUS

Item 15. Marketing Arrangements

Briefly describe any arrangement known to the registrant or to any person named in answer to Item 2 or 10(a) made for any of the following purposes:

(a) To limit or restrict the sale of other securities of the same class as those to be offered for the period of distribution.

(b) To stabilize the market for any of the securities to be offered.

(c) For withholding commissions, or otherwise to hold each underwriter or dealer responsible for the distribution of his participation.

Instruction. If the answer to this item is contained in an exhibit, the item may be answered by cross-reference to the relevant paragraphs of the exhibit.

Item 16. Other Expenses of Issuance and Distribution

Furnish a reasonably itemized statement of all expenses in connection with the issuance and distribution of the securities being registered, other than underwriting discounts and commissions.

Instruction. Insofar as practicable, registration fees, Federal taxes, State taxes and fees, trustees' and transer agents' fees, cost of printing and engraving, and legal, accounting and engineering fees shall be separately itemized. The information may be given as subject to future contingencies. If the amounts of any items are not known, estimates designated as such shall be given.

Item 17. Relationship With Registrant of Experts Named in Registration Statement

If any expert named in the registration statement as having prepared or certified any part thereof was employed for such purpose on a contingent basis or, at the time of such preparation or certification or at any time thereafter, had a substantial interest in the registrant or any of its parents or subsidiaries or was connected with the registrant or any of its subsidiaries as a promoter, underwriter, voting trustee, director, officer or employee, furnish a brief statement of the nature of such contingent basis, interest or connection.

Instruction. In the case of an accountant, any direct financial interest or any material indirect financial interest held during the period covered by the financial statements prepared or certified shall be deemed a "substantial interest" for the purpose of this item.

Item 18. Recent Sales of Unregistered Securities

Furnish the following information as to all securities of the registrant sold by the registrant within the past three years which were not registered under the Securities Act of 1933. Include sales of reacquired securities as well as new issues, securities issued in exchange for property, services, or other securities, and new securities resulting from the modification of outstanding securities.

(a) Give the date of sale and the title and amount of securities sold.

(b) Give the names of the principal underwriters, if any. As to any securities sold not publicly offered, name the persons or identify the class of persons to whom the securities were sold.

(c) As to securities sold for cash, state the aggregate offering price and the aggregate underwriting discounts or commissions. As to any securities sold otherwise than for cash, state the nature of the transaction and the nature and aggregate amount of consideration received by the registrant.

(d) Indicate the section of the Act or the Rule of the Commission under which exemption from registration was claimed and state briefly the facts relied upon to make the exemption available.

Instructions. 1. Information need not be set forth as notes, drafts, bills of exchange or bankers' acceptances which mature not later than one year from the date of issuance.

2. If the sales were made in a series of transactions, the information may be given by such totals and periods as will reasonably convey the information required.

Item 19. Exhibits

List all exhibits filed as a part of the registration statement: (a) Exhibits, (b) statement of eligibility and qualification of each person designated to act as trustee under an indenture to be qualified under the Trust Indenture Act of 1939.

UNDERTAKINGS

A. The following undertaking should be included in the registration statement if equity securities are to be offered and the registrant has not previously sold securities registered under the Act:

"The undersigned registrant hereby undertakes to provide to the underwriter at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser."

NOTE.—Any request for acceleration should be accompanied by a representation from the underwriter that the registrant has been requested to provide sufficient certificates in such denominations as to permit prompt delivery.

B. The following undertaking, with appropriate modifications to suit the particular case, shall be included in the registration statement if the securities being registered are to be offered to existing security holders pursuant to warrants or rights and any securities not taken by security holders are to be reoffered to the public.

"The undersigned registrant hereby undertakes to supplement the prospectus, after the expiration of the subscription period, to set forth the results of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities to be purchased by the underwriters and the terms of any subsequent reoffering thereof. If any public offering by the underwriters is to be made on terms differing from those set forth on the cover page of the prospectus, a post-effective amendment will be filed to set forth the terms of such offering."

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of ————, and State of ————, on the — day of ——, 19—.

(Registrant) ————————

By: (Signature and title) ————————

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

(Signature) ————————

(Title) ————————

(Date) ————————

Instructions. 1. The registration statement shall be signed by the registrant, its principal executive officer of officers, its principal financial officer, its controller or principal accounting officer and by at least the majority of the board of directors or persons performing similar functions. If the registrant is a Canadian person, the registration statement shall also be signed by its authorized representative in the United States.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement.

INSTRUCTIONS AS TO EXHIBITS

Subject to the rules regarding incorporation by reference, the following exhibits shall be filed as a part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in the previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits called for by Item 18.

1. Copies of each underwriting contract with a principal underwriter, each syndicate agreement and each purchase, sub-underwriting or selling group agreement or letter pursuant to which the securities being registered are to be distributed or, if the terms of such documents are not determined, the proposed forms thereof.

2. Copies of the charter and by-laws as presently in effect.

3. (a) Specimens or copies of all securities being registered hereunder and copies of all constituent instruments defining the rights of holders of long-term debt of the registrant and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(b) There need not be filed, however, (1) any instrument with respect to long-term debt not being registered hereunder if the total amount of securities authorized thereunder does not exceed 5 percent of the total assets of the registrant and its subsidiaries on a consolidated basis and if there is filed an agreement to furnish a copy of such instrument to the Commission upon request, (2) any instrument with respect to any class of securities if appropirate steps to assure the redemption or retirement of such class will be taken prior to or upon delivery by the registrant of the securities being registered, or (3) copies of instruments evidencing script certificates for fractions of shares.

(c) If any of the securities being registered are, or are to be, issued under an indenture to be qualified under the Trust Indenture Act of 1939, the copy of such indenture which is filed as an exhibit shall include or be accompanied by (1) a reasonably itemized and informative table of contents, and (2) a cross-reference sheet showing the location in the indenture of the provisions inserted pursuant to section 310 thorugh 319(a) inclusive of the Trust Indenture Act of 1939.

4. Copies of any plan setting forth the terms and conditions upon which outstanding options, warrants or rights to purchase securities of the registrant or its subsidiaries from the registrant or any of its affiliates have been issued, together with specimen copies of such options, warrants, or rights; or, if not issued pursuant to such a plan, copies of each such option, warrant or right.

5. An opinion of counsel, as to the legality of the securities being registered, indicating whether they will when sold be legally issued, fully paid and non-assessable, and, if debt securities, whether they will be binding obligations of the registrant.

6. Copies of each material foreign patent for an invention not covered by a United States patent. If a substantial part of the securities to be offered or of the proceeds therefrom has been or is to be used for the particular purpose of acquiring, developing or exploiting one or more material patents or patent rights, furnish a list showing the number and a brief identification of each such patent or patent right.

7. If any discount on capital shares is shown as a deduction from capital shares on the most recent balance sheet being filed for the registrant, there shall be filed a statement of the circumstances under which such discount arose and an opinion of counsel as to the legality of the issuance of the shares to which such discount relates. The opinion shall set forth any applicable constitutional and statutory provisions and shall cite any decisions which in the opinion of counsel are controlling.

8. If the registrant has any shares, the preference of which upon involuntary liquidation exceeds the par or stated value thereof, there shall be filed an opinion of counsel as to whether there are any restrictions upon surplus by reason of such excess and also as to any remedies available to security holders before or after payment of any dividend that would reduce surplus to an amount less than the amount of such excess. The opinion shall set forth any applicable constitutional and statutory provisions and shall cite any decisions which, in the opinion of counsel, are controlling.

9. Copies of any voting trust agreement referred to in answer to Item 10.

10. Copies of all pension, retirement or other deferred Compensation plans, contracts or arrangements. If any such plan, contract or arrangement is not set forth in a formal document, furnish a reasonably detailed description thereof. Copies of any available booklet or other written description of any such plan, contract or arrangement shall also be filed.

11. (a) Copies of every material contract not made in the ordinary course of business which is to be performed in whole or in part at or after the filing of the registration statement or which as made not more than two years before filing, except contracts called for, or the omission of which is expressly authorized by the foregoing instructions. Only contracts need be filed as to which the registrant or a subsidiary of the registrant is a party or has succeeded to a party by assumption or assignment, or in which the registrant or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business conducted by the registrant and its subsidiaries, it is made in the ordinary course of business and need not be filed, unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance:

(1) Directors, officers, promoters, voting trustees, security holders named in answer to Item 10(a) or underwriters are parties thereto except where the contract merely involves purchase or sale of current assets having a determinable market price, at such price.

(2) It is of such materiality as to call for specific reference to it in the prospectus.

(3) The registrant's business is substantially dependent upon it, as in the case of continuing contracts to sell the major part of registrant's production in the case of a manufacturing enterprise or to purchase the major part of registrant's requirements of goods in the case of a distributing enterprise, or licenses to use a patent or formula upon which registrant's business depends to a material extent.

(4) It calls for the acquisition or sale of fixed assets for a consideration exceeding 15% of all fixed assets of the registrant and its subsidiaries.

(5) It is a lease under which a significant part of the property described under Item 6 is held by the registrant.

(6) The amount of the contract, or its importance to business of the registrant and its subsidiaries, are material, and its terms and conditions are of a nature of which investors reasonably should be informed.

(c) Any management contract or bonus or profit-sharing plan, contract or arrangement (or if not set forth in any formal document, a written description thereof) except the following, shall be deemed material and shall be filed:

(1) Ordinary purchase and sales agency agreements.

(2) Agreements with managers of stores in a chain organization or similar organization.

(3) Contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such.

II. By amending the instructions as to financial statements of Form 10-K, § 249.310, as follows:

§ 249.310 Form 10-K, annual report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

INSTRUCTIONS AS TO FINANCIAL STATEMENTS

(1)-(8) * * *

(9) Issuers filing on Form S-18.

(a) Notwithstanding the requirements of the foregoing instructions, if the issuer is subject to the reporting provisions of Section 15(d) and such obligation results solely from the issuer having filed a registration statement on Form S-18 which has become effective under the Securities Act of 1933 during the last fiscal year, the issuer may file the following audited financial statements prepared in accordance with generally accepted accounting principles and practices. The provisions of Regulation S-X, Form and Content of Financial Statements, shall not apply to financial statements prepared pursuant to this instruction.

(1) A balance sheet shall be furnished as of the end of the fiscal year.

(2) Consolidated statements of income, statements of source and application of funds, and statements of other stockholders' equity shall be furnished for each of the last two full fiscal years.

(10) Filing of other financial statements in certain cases. (This instruction is identical to instruction (9) of instruction as to financial statements of Form S-1.

III. By amending Part 231, interpretive releases relating to the Securities Act of 1933 and general rules and regulations thereunder, by revising paragraph (a)(5) of Guide 23, current financial statements and related data, of guides for preparation and filing of registration statements under the Securities Act of 1933.

23. (a)(1)-(4) [No change.]

(5) In the event that there is a delay between the date of filing the registration statement and its effectiveness, registrants with an established record of earnings and in a sound financial condition should be prepared to furnish, in a paragraph following the Statement of Income, income information on a quarterly basis compared with a similar period of the preceding year, if the amendment when effective would otherwise include financial statements over four and one-half months old.

Registrants with no established record or earnings and registrants currently showing losses or a weak financial condition should not only furnish the above sales and net income information but be prepared to bring the financial statements up to the latest practicable date not more than 90 days prior to the filing the amendment upon which it is expected the filing will become effective. If delay carries the date beyond the close of the fiscal year and by applying due diligence the registrant and its independent accountant can have an audit completed prior to the planned effective date, audited statements for the fiscal year should be substituted for interim statements whether or not the interim financial statements have been audited.

When later interim financial statements are to be furnished to supplement either fiscal year or interim statements which have been audited, the later statements would in the usual case be unaudited. However, when numerous or involved financial transactions have been effected since the date of the finanical statements furnished or it is recognized that unusual conditions affect the determination of earnings, the Commission has indicated that later financial statements may be requested on an audited basis as a condition to acceleration under Section 8(a) of the Act.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 15(d), 23(a), 48 Stat. 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 4, 6, 10, 78 Stat. 569, 570-574, 580; sec. 2, 82 Stat. 454; secs. 1, 2, 84 Stat. 1497; secs. 10, 18, 89 Stat. 119, 155; secs. 308(b), 90 Stat. 57; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78m, 78o(d), 78w(a).)

STATUTORY AUTHORITY

Form S-18 and the amendments to Guide 23 are proposed pursuant to section 6, 7, 8, 10, and 19(a) of the Securities Act. The amendment to Form 10-K is proposed pursuant to sections 13, 15(d), and 23(a) of the Exchange Act.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

MARCH 6, 1978.

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