

a 6.25-mile radius centered at lat. 45°54'50" N, long. 122°02'50" W clockwise to lat. 45°49'40" N, long. 121°58'00" W; thence via a line to lat. 45°46'30" N, long. 122°04'00" W; south along long. 122°04'00" W; bounded on the south by lat. 45°09'59" N, and on the west by long. 123°30'04" W, and within a 4.3-mile radius of the McMinnville Municipal Airport and within 2 miles each side of the Newburg VORTAC 215° radial extending from lat. 45°09'59" N, to 19.8 miles southwest of the Newburg VORTAC; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 46°30'29" N, extending from 2.7 miles offshore to V-25, and on the east by V-25, on the south by V-536 to Corvallis VOR/DME, thence via lat. 44°29'59" N, to a point 2.7 miles offshore, and on the west by a line 2.7 miles offshore to the point of beginning.

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Issued in Seattle, Washington, on July 20, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94-20658 Filed 8-23-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 93-ASW-28]

Establishment of Restricted Area-6302E, Fort Hood, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Area R-6302E, Fort Hood, TX, above the existing Restricted Areas R-6302A, B, C, and D, at Fort Hood, TX. Restricted Area R-6302E will provide special use airspace to accommodate the firing of heatseeker missiles at the Fort Hood Army Airfield (AAF) weapons complex.

EFFECTIVE DATE: 0901 UTC, October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Steve Riley, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-7130.

SUPPLEMENTARY INFORMATION:

History

On May 6, 1994, the FAA proposed to amend part 73 of the Federal Aviation Regulations (14 CFR part 73) by establishing Restricted Area, R-6302E, Fort Hood, TX, above the existing Restricted Areas R-6302A, B, C, and D (59 FR 23644). Interested parties were invited to participate in this rulemaking

proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 73.63 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

The Rule

This amendment to part 73 of the Federal Aviation Regulations establishes Restricted Area, R-6302E, Fort Hood, TX, above the existing Restricted Areas R-6302A, B, C, and D, to accommodate the firing of heatseeker missiles at the Fort Hood AAF weapons complex. The maximum altitude of the existing Fort Hood restricted area is 30,000 feet mean sea level (MSL). Restricted Area R-6302E will coincide with the existing lateral boundaries of Restricted Areas R-6302A, B, C, and D, and will extend from 30,000 feet MSL to 45,000 feet MSL. This action is a result of a Special Use Airspace Review conducted at the Fort Hood AAF in May 1993. Restricted Area R-6302E will be a joint-use restricted area, activated by NOTAM 48 hours in advance, not to exceed 90 days per year, weather makeup days included. The airspace will be returned to the controlling agency when not required for military activities. The U.S. Army does not expect any increase in the total annual usage of the area.

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

Environmental Review

This action is not subject to environmental assessments or procedures under FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.63 [Amended]

2. Section 73.63 is amended as follows:

R-6302E Fort Hood, TX [New]

Boundaries. Beginning at lat. 31°24'01"N., long. 97°48'01"W.:

To lat. 31°23'01"N., long. 97°43'01"W.;

To lat. 31°22'08"N., long. 97°41'56"W.;

To lat. 31°21'01"N., long. 97°41'01"W.;

To lat. 31°20'01"N., long. 97°41'01"W.;

To lat. 31°14'01"N., long. 97°33'01"W.;

To lat. 31°06'01"N., long. 97°33'01"W.;

To lat. 31°08'01"N., long. 97°39'01"W.;

To lat. 31°10'01"N., long. 97°41'01"W.;

To lat. 31°09'01"N., long. 97°43'31"W.;

To lat. 31°09'01"N., long. 97°55'01"W.;

To lat. 31°16'01"N., long. 97°54'01"W.;

To lat. 31°19'01"N., long. 97°51'01"W.;

To the point of beginning.

Designated altitudes. 30,000 feet MSL to

45,000 feet MSL.

Times of designation. By NOTAM 48 hours

in advance.

Controlling agency. FAA, Houston ARTCC.

Using agency. U.S. Army, Commanding

Officer, Fort Hood, TX.

Issued in Washington, DC, on August 17,

1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical

Information Division.

[FR Doc. 94-20791 Filed 8-23-94; 8:45 am]

BILLING CODE 4910-13-U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 230, 239, 270 AND 274

[Release Nos. 33-7083; IC-20486; File No. S7-26-93]

RIN 3235-AF96

Post-Effective Amendments to Investment Company Registration Statements

AGENCY: Securities and Exchange Commission.

ACTION: Final rule and form amendments; rescission of rule.

SUMMARY: The Commission is adopting rule and form amendments to revise the procedures by which investment

companies, including insurance company separate accounts, file post-effective amendments to registration statements. The Commission also is adopting a rule providing procedures by which closed-end interval companies file post-effective amendments and subsequent registration statements. The amendments simplify the operation of the current rules and expand the conditions under which post-effective amendments filed by investment companies are permitted to become effective automatically.

EFFECTIVE DATE: The amendments will become effective on October 11, 1994.

FOR FURTHER INFORMATION CONTACT: Janice M. Bishop, Attorney, or Kenneth J. Berman, Deputy Office Chief, (202) 942-0721, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is adopting: (1) amendments to rule 485 [17 CFR 230.485] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("Securities Act"), the rule under which post-effective amendments to registration statements filed by open-end management investment companies ("mutual funds") and unit investment trusts ("UITs") (collectively, "funds") become effective automatically; (2) rule 486 [17 CFR 230.486], which establishes procedures similar to rule 485 for closed-end interval funds;¹ (3) conforming amendments to Form N-1A [17 CFR 239.15A, 274.11A], Form N-2 [17 CFR 239.14, 274.11a-1], Form N-3 [17 CFR 274.11b and 239.17a], and Form N-4 [17 CFR 274.11c and 239.17b], the forms used by mutual funds, closed-end management investment companies and insurance company separate accounts that offer variable annuity contracts, to satisfy the registration statement requirements of the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*] ("1940 Act") and to register securities under the Securities Act, and Form S-6 [17 CFR 239.16], the form used by UITs to

register securities under the Securities Act; and (4) technical and conforming amendments to rule 6e-3(T) under the 1940 Act [17 CFR 270.6e-3(T)], rule 487 under the Securities Act [17 CFR 230.487], and rule 30-5 of the Commission's Rules of Practice and Investigations [17 CFR 200.30-5].

I. Executive Summary

The Commission is amending rule 485 under the Securities Act. Rule 485 permits post-effective amendments to registration statements filed by mutual funds and UITs to become effective automatically (*i.e.*, without Commission or staff action). The amendments simplify the operation of the current rules and expand the conditions under which post-effective amendments filed under paragraph (b) of rule 485 by mutual funds and UITs are permitted to become effective immediately ("B-Amendments").

The amendments to rule 485 permit funds to file B-Amendments for seven additional purposes—four purposes as originally proposed by the Commission and three purposes as suggested by commenters. These purposes include delaying the effective date of a previously-filed post-effective amendment, updating the fund's discussion of its performance, revising portfolio manager disclosure, and adding interim financial statements. The Commission may suspend the ability of a fund to file B-Amendments for a specified time if the fund has filed a B-Amendment under circumstances in which paragraph (b) is not available. In addition, the Commission is amending rule 485 to provide that a post-effective amendment filed pursuant to paragraph (a) ("A-Amendment") that adds a new series will not become effective until the seventy-fifth day after filing.

Finally, the Commission is adopting new rule 486 to permit closed-end management investment companies and business development companies that periodically repurchase their shares in accordance with rule 23c-3 under the 1940 Act [17 CFR 270.23c-3] to file certain post-effective amendments and registration statements that become effective automatically.

II. Background

On September 21, 1993, the Commission issued a release proposing for public comment amendments to rule 485 under the Securities Act ("Proposing Release").² Rule 485 permits post-effective amendments to registration statements filed by mutual

funds and UITs to become effective automatically (*i.e.*, without Commission or staff action). Post-effective amendments eligible to be filed under paragraph (b) of rule 485 ("B-Amendments"), which only may be for one or more of the four purposes specified by the rule,³ may become effective immediately upon filing or, at the option of the fund, up to 20 days after filing. All other post-effective amendments are filed under paragraph (a) of rule 485 ("A-Amendments"), and become effective 60 days after filing or, at the option of the fund, up to 80 days after filing. The 60-day period provides the staff of the Division of Investment Management ("Division") with time to review and comment on the post-effective amendments. The amendments will simplify the operation of the current rules and expand the conditions under which post-effective amendments filed by mutual funds and UITs are permitted to become effective immediately.

The Commission received 15 comment letters on the proposed amendments.⁴ In general, the commenters supported the adoption of the proposed amendments and stated that the revisions would improve the process by which mutual funds file post-effective amendments. Most of the commenters, however, believed that certain aspects of the proposal should be modified or eliminated. The Commission is adopting the proposed amendments and related form changes, modified to reflect many of the comments received.

III. Discussion

A. Additional Purposes for Filing B-Amendments

Under rule 485, as amended, a fund may file a B-Amendment for seven additional purposes. The first four purposes, which are being adopted substantially as proposed, were supported by most of the commenters. The remaining purposes were recommended by commenters in response to the Commission's request for comment on additional purposes for

¹ Current rule 486, which is the counterpart to rule 485 for post-effective amendments filed by insurance company separate accounts that issue variable annuity and variable life insurance contracts, is being rescinded. These separate accounts are eligible to use rule 485, as amended. New rule 486 was originally proposed as rule 485a in Investment Company Act Release No. 19391 (Apr. 7, 1993) [58 FR 19361 (Apr. 14, 1993)]. The Commission is adopting separately a related amendment to rule 415 under the Securities Act that will permit closed-end interval funds to offer securities on a delayed or continuous basis. See Investment Company Act Rel. No. 20487.

² Investment Company Act Rel. No. 19722 (Sept. 21, 1993) [58 FR 50291 (Sept. 27, 1993)].

³ These purposes include: increasing the amount of securities offered; registering an indefinite amount of securities as permitted by section 24(f) of the 1940 Act [15 U.S.C. 80a-24(f)]; updating financial statements within four to six months after the effective date of the registration statement; and amending the registration statement to update financial statements "and other information" as required by section 10(a)(3) of the Securities Act and "in conjunction therewith" to make "such other non-material changes as the registrant deems appropriate."

⁴ All comment letters, including a summary of the comments prepared by the staff, have been placed in Public Comment File No. S7-26-93.

which B-Amendments would be appropriate.

1. Delaying the Effective Date of a Post-Effective Amendment Under Paragraph (a)

The Commission is adopting new paragraph (b)(1)(v) to permit funds to use a B-Amendment to delay the effective date of an A-Amendment for up to 30 days (rather than 20 days, as proposed). Previously, a fund had to file another A-Amendment to delay the effectiveness of an A-Amendment beyond the 60- to 80-day period and then had to request that the staff accelerate the effective date of the second A-Amendment if the desired delay was for less than 60 days.⁵

2. Disclosure in Response to Item 5A of Form N-1A

The Commission is adopting paragraph (b)(1)(vi), as proposed, to allow funds to file a B-Amendment to include a description of, or changes to, the management's discussion of fund performance provided in response to Item 5A of Form N-1A. The information provided in response to this item will change every year, and permitting these changes to be made pursuant to a B-Amendment will alleviate administrative burdens on both funds and the Commission.⁶

3. Non-Material Changes to the Registration Statement

The Commission is adopting paragraph (b)(1)(vii), as proposed, to permit B-Amendments to be filed to make any non-material change to the registration statement at any time. Previously, rule 485 only permitted certain non-material changes to be made in conjunction with an annual update of the registration statement.

The Commission solicited comment whether the "materiality" standard has proved workable for funds and whether a different standard would provide greater certainty while facilitating staff review of post-effective amendments that may raise legal or disclosure issues. Several commenters stated that the materiality standard has proved workable and that funds and their counsel are accustomed to making determinations as to materiality when drafting disclosure for prospectuses and statements of additional information. One commenter asked whether, under

the materiality standard, rule 485 permits use of a B-Amendment for the purpose of converting a single prospectus that relates to several series funds to multiple prospectuses each of which relates to one or more series.⁷ The Commission believes that the changes made in such a post-effective amendment (or in a post-effective amendment that combines several series that are being sold pursuant to separate prospectuses into one prospectus) generally would not be material and that the post-effective amendment could be filed as a B-Amendment.⁸

4. Discretionary Authority to Permit Automatic Effectiveness

The Commission is adopting paragraph (b)(1)(ix), as proposed, to allow the Commission, on a discretionary basis, to permit certain types of post-effective amendments not otherwise eligible to be filed as B-Amendments to become effective automatically without opportunity for staff review. Requests for permission to file post-effective amendments under this new paragraph should be made by a letter to the Division of Investment Management.⁹

5. Adding Interim Financial Statements

As suggested by two commenters, the Commission is amending paragraph (b)(1)(iii) to allow a fund to file a B-Amendment for the purpose of amending the registration statement to add interim financial statements as required by applicable accounting rules.¹⁰ Rule 3-18 of Regulation S-X [17 CFR 210.3-18] requires a fund to add interim financial statements if the fund files a post-effective amendment under rule 485(a) that it expects to become

effective more than 245 days after the date of the fund's balance sheet.¹¹ Under new paragraph (b)(1)(iii), a post-effective amendment otherwise eligible to be filed as a B-Amendment would not lose its eligibility because it contains interim financial statements.

6. Disclosing a Change in Portfolio Manager

As suggested by one commenter, the Commission is amending proposed paragraph (b)(1)(vi) to permit a fund to file a B-Amendment to reflect a change in portfolio managers.¹²

7. Separate Account UITs

As suggested by two commenters, the Commission is adding a new paragraph (b)(1)(viii) to permit certain separate accounts to file B-Amendments in certain additional circumstances. A separate account offering variable insurance products may be organized as a UIT ("trust account") investing all of its assets in an open-end management investment company ("underlying fund"). The trust account prospectus discloses information about the separate account and the insurance contracts being offered and also contains summary information about the underlying fund. Paragraph (b)(1)(viii) permits a trust account to amend disclosure pursuant to a B-Amendment to reflect amendments to the registration statement of an underlying fund. For example, a trust account could file a B-Amendment to add summary disclosure about an additional sub-account that would hold the shares of a new underlying fund. In such instance, the staff would have had the opportunity to review the A-Amendment filed by the underlying fund.

B. Conditions for Filing B-Amendments

As proposed, the Commission is deleting the list of events in paragraph (b)(2) that preclude the filing of a B-Amendment. Funds will continue to be

⁷ Mutual funds often organize themselves as series companies and offer investors an opportunity to invest in one or more "portfolios," each of which has a specific investment objective. The mutual fund will offer a series or class of shares that represents an interest in the portfolio in which the investor desires to participate.

⁸ Of course, other revised disclosure may be included in such a post-effective amendment that would be material and preclude the use of a B-Amendment.

⁹ As discussed in the Proposing Release, exercise of this authority would permit, for example, substantially identical revisions contained in post-effective amendments filed by a number of funds in a fund complex to become effective upon filing without Division review if the Division had previously had an opportunity to review one of them. Four commenters suggested codifying this standard as an additional purpose for filing a B-Amendment. The Commission believes that it is preferable to address these situations on a case-by-case basis since revised language in the prospectus of one type of a fund may not constitute full disclosure in a prospectus of another type of fund.

¹⁰ Previously, paragraph (b)(1)(iii) only allowed a fund to file a B-Amendment to bring annual financial statements up to date under section 10(a)(3) of the Securities Act [15 U.S.C. 77(a)(3)].

¹¹ In addition, a UIT could file a post-effective amendment under rule 485(a) that it expects to become effective more than 135 days after the date of the UIT's balance sheet. Rule 3-12 of Regulation S-X [17 CFR 210.3-12] requires the UIT to include interim financial statements in such an amendment.

¹² Item 5(c) of Form N-1A requires funds (except money market funds and index funds) to disclose the name and title of the person or persons employed by or associated with the fund or its adviser "who are primarily responsible for the day-to-day management of the fund's portfolio." A fund would generally inform investors of a change in the portfolio manager by means of a "sticker" to the fund's prospectus. The sticker would be filed with the Commission in accordance with rule 497 under the Securities Act [17 CFR 270.497]; a post-effective amendment to the registration statement would not be necessary at that time. Investment Company Act Rel. No. 19382 (Apr. 6, 1993) [58 FR 68 (Apr. 12, 1993)] at 7. The change would typically be reflected in the next post-effective amendment filed by the fund.

⁵ A new note to rule 485 clarifies how to determine the date of automatic effectiveness. The note explains that funds should count the day following the filing date as the first date of the time period. For example, an A-Amendment filed on November 1 would become effective on December 31.

⁶ The information required by Item 5A may be omitted from the prospectus if it is included in the fund's annual report.

required to represent that no material event requiring disclosure in the prospectus has occurred (other than one of the events specified in paragraph (b)(1)).¹³ Commenters agreed that the list of events has rarely, if ever, been relevant to determining whether a filing could be made under paragraph (b), since the events described would clearly result in material changes.

One of the proposed amendments would have precluded a fund from filing a B-Amendment if the fund had failed to file a report on Form N-SAR for the most recent period for which a filing is required. This proposal was criticized as unnecessary and potentially unfair to funds. The Commission was urged to use enforcement remedies to punish late filers rather than condition rule 485, as proposed. Upon reconsideration, the Commission has decided not to adopt the proposed limitation on use of paragraph (b). Funds are reminded that failure to timely file Form N-SAR is a violation of Section 30 of the 1940 Act [15 USC 80a-30] for which penalties are prescribed.¹⁴

C. Extending Time Period for B-Amendments

As suggested by several commenters, the Commission is amending paragraph (b) of the rule to permit B-Amendments to become effective up to 30 days (rather than 20 days, as proposed) after filing.

D. Suspension of Use of 485(b)

The Commission is adopting, as proposed, a new provision that will permit the Commission to suspend a fund's ability to use paragraph (b) if a fund designates an amendment as a B-Amendment when it is not eligible to use that paragraph.¹⁵ The amendment is intended to deter misuse of paragraph (b) and is similar to a provision in rule 487 under which registration statements of UITs may become effective automatically.¹⁶

Two commenters opposed the provision, one of which asserted that misuse of rule 485 stems from uncertainty over the availability of paragraph (b). The amendments to paragraph (b) (discussed above) that are being adopted today should clarify the

requirements for filing B-Amendments. Funds and their counsel who are unsure whether a particular amendment might preclude use of paragraph (b) are encouraged to contact the Division staff prior to filing the amendment.¹⁷

E. Post-Effective Amendments Adding Series

The Commission is amending rule 485 to provide that an A-Amendment adding a new series will not become effective until 75 days after filing. Previously, A-Amendments became effective 60 days after filing or, at the option of the fund, up to 80 days after filing.

The Commission proposed an amendment to rule 485 to prohibit funds from using rule 485 for amendments that add a new series to an existing open-end investment company. Under the proposal, a post-effective amendment that added a series would not become effective automatically, but would, under section 8(c) of the Securities Act [15 U.S.C. 77h(c)], become effective only when the Division declared it effective pursuant to delegated authority. The Commission proposed this amendment because the staff and funds have often found that, due to the significance of the disclosure issues presented, the 60-day period for an A-Amendment to become automatically effective often did not provide an adequate opportunity to complete the disclosure review process.¹⁸

Nearly all of the commenters opposed the proposed amendment. Several commenters noted that the new disclosure in a post-effective amendment adding a new series usually is limited to the discussion of investment objectives, policies and risks of investment in the new series and thus such an amendment is not the equivalent of a new registration statement as suggested in the Proposing Release. All the commenters agreed that the level of certainty in the effective date of a post-effective amendment is important for controlling the costs of printing prospectuses and to the successful launch of a new series.

After balancing the commenters' concern for certainty in the effective date of a post-effective amendment with the need for sufficient time to review post-effective amendments adding a new series, the Commission is amending paragraph (a) to provide that post-effective amendments adding a new series become effective 75 days after filing.¹⁹ This amendment would provide funds with a greater degree of certainty concerning when their registration statement will become effective, yet provide sufficient time for comments to be resolved.²⁰

F. Rule 486

The Commission is adopting new rule 486 substantially as repropounded in the Proposing Release, with minor changes to conform to those made in rule 485. Rule 486 permits closed-end management investment companies and business development companies that periodically repurchase their shares in accordance with rule 23c-3 under the 1940 Act ("closed-end interval funds") to file certain post-effective amendments and registration statements that become effective automatically.²¹ The initial proposal of rule 486 recognized that closed-end interval funds may need continuously effective registration statements and would benefit if certain filings could become effective automatically.²² Most comments on the original proposal supported the rule.²³ The Proposing Release repropounded the rule to conform

¹⁹ Paragraph (a)(2) of rule 485 as amended. A fund may designate a longer period—up to 95 days—before the registration statement becomes effective. The Commission expects that a fund will designate a longer period if it believes that the filing raises issues that will require more than 75 days to resolve. In addition, a fund could file a B-Amendment pursuant to new paragraph (b)(1)(v) to extend the time period by up to 30 days. See Section II.A. of this Release.

²⁰ The Division intends to continue to seek to provide comments on post-effective amendments that add a new series within 45 days of filing.

²¹ Like rule 23c-3, rule 486 originated in a recommendation of the Division of Investment Management, Division of Investment Management, SEC, Protecting Investors: A Half Century of Investment Company Regulation at 453 (1992) (discussion of the possibility of subjecting closed-end companies that make repurchase offers to registration requirements like those applicable to open-end funds).

²² Investment Company Act Rel. No. 19391, *supra* note 1.

²³ Several commenters urged the Commission to extend the proposed rule to all closed-end funds that repurchase their own securities, not just those making periodic repurchase offers under rule 23c-3, or to all closed-end funds. None of the commenters, however, identified any other group of closed-end funds with a clear need for automatically effective amendments. In the absence of a showing of such a need, the Commission has retained the proposed limitation of the rule to interval funds.

¹³ As under the current rule, if counsel prepares or reviews the B-Amendment, counsel must furnish a written representation that the amendment does not contain disclosure that would render it ineligible to become effective under paragraph (b) of this section. Paragraph (b)(5) of rule 485.

¹⁴ See Section 42 of the 1940 Act [15 U.S.C. 80a-41].

¹⁵ Paragraph (c)(2). The Commission is also amending the Rule 30-5 of the Rules of Organization and Program Management to delegate to the Division Director the authority to issue suspensions.

¹⁶ Paragraph (c)(2) of rule 487.

¹⁷ B-Amendments are generally not reviewed by the staff and the misuse of paragraph (b) may not be discovered for some time after the B-Amendment has become effective. Under paragraph (c)(2) of rule 485, as amended, the suspension would become effective on, and the period of the suspension measured from, the date on which the Commission furnishes written notice of the suspension and not on the date on which the improper B-Amendment was filed. Paragraph (c)(2) of rule 485, as amended.

¹⁸ Although it is the policy of the staff to provide comments on post-effective amendments within 45 days of filings, funds often find it difficult to respond to the staff's comments prior to the 60th day after filing.

to proposed changes in rule 485.²⁴ Comments on the Proposing Release did not address rule 486.

G. Technical and Conforming Changes

The Commission is adopting revisions to the cover page of Forms N-1A, N-2, N-3, N-4 and S-6 to provide additional boxes for the fund to indicate the paragraph of rule 485 or rule 486 on which it is relying. The Commission also is adding a new paragraph 4 of Instruction E of Form N-2 which explains that closed-end interval funds may file automatically effective post-effective amendments or registration statements under rule 486, that rule 429 under the Securities Act [17 CFR 230.429] permits the use of a combined prospectus when filing a new registration statement to register additional shares, and that the filing fee for such a statement extends only to additional shares registered.

IV. Effective Date

The amendments will become effective on October 11, 1994 as to post-effective amendments (or, in the case of closed-end interval funds, new registration statements registering additional shares) filed on or after that date with the Commission.

V. Regulatory Flexibility Act Analysis

A summary of the Initial Regulatory Flexibility Analysis, which was prepared in accordance with 5 U.S.C. 603, was published in Investment Company Act Rel. No. 19722. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis, a copy of which may be obtained by contacting Janice M. Bishop, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

List of Subjects in 17 CFR Parts 200, 230, 239, 270 and 274

Administrative practice and procedure; Authority delegations (Government agencies); Investment companies; Reports and recordkeeping requirements; Securities.

Text of Final Rule and Form Amendments

In accordance with the foregoing, Chapter II, Title 17 of the Code of

Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Subpart A continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d-1, 78d-2, 78w, 78ll(d), 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

* * * * *

2. The authority citation for Subpart M is revised to read as follows:

Authority: 15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11; E.O. 11222, 3 CFR, 1964-1965 Comp.; 5 CFR 735.104 unless otherwise noted.

3. Section 200.30-5 is amended by revising paragraph (b-2) introductory text and paragraph (b-2)(1); by redesignating paragraphs (b-3) and (b-4) as paragraphs (b-4) and (b-5); and by adding a new paragraph (b-3) to read as follows:

§ 200.30-5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(b-2) With respect to post-effective amendments filed pursuant to § 230.485(a) or § 230.486(a) of this chapter:

(1) To suspend the operation of paragraph (a) of such sections and to issue written notices to registrants of such suspensions;

* * * * *

(b-3) With respect to post-effective amendments filed pursuant to § 230.485(b) or § 230.486(b) of this chapter:

(1) To approve additional purposes for post-effective amendments which shall be eligible for immediate effectiveness pursuant to paragraph (b) of such sections.

(2) To suspend the operation of paragraph (b) of such sections and to issue written notices to registrants of such suspensions.

* * * * *

4. By amending paragraph (e)(1)(ii) of § 200.735-5 by revising the reference "17 CFR 230.486(b)" to read "17 CFR 230.485(b)".

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

5. The authority citation Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o, 78w,

78ll(d), 79t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

6. By revising § 230.485 to read as follows:

§ 230.485 Effective date of post-effective amendments filed by certain registered investment companies.

(a) **Automatic Effectiveness.** (1) Except as otherwise provided in this section, a post-effective amendment to a registration statement filed by a registered open-end management investment company, unit investment trust or separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 USC 80a-2(a)(37)] shall become effective on the sixtieth day after the filing thereof, or a later date designated by the registrant on the facing sheet of the amendment, which date shall be no later than eighty days after the date on which the amendment is filed.

(2) A post-effective amendment filed by a registered open-end management investment company for the purpose of adding a series shall become effective on the seventy-fifth day after the filing thereof or a later date designated by the registrant on the facing sheet of the amendment, which date shall be no later than ninety-five days after the date on which the amendment is filed.

(3) The Commission, having due regard to the public interest and the protection of investors, may declare an amendment filed under this paragraph (a) effective on an earlier date.

(b) **Immediate Effectiveness.** Except as otherwise provided in this section, a post-effective amendment to a registration statement filed by a registered open-end management investment company, unit investment trust or separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 USC 80a-2(a)(37)] shall become effective on the date upon which it is filed with the Commission, or a later date designated by the registrant on the facing sheet of the amendment, which date shall be not later than thirty days after the date on which the amendment is filed, except that a post-effective amendment including a designation of a new effective date pursuant to paragraph (b)(1)(v) of this section shall become effective on the new effective date designated therein, *Provided*, that the following conditions are met:

(1) It is filed for no purpose other than one or more of the following:

(i) Increasing the number or amount of securities proposed to be offered under section 24(e)(1) of the Investment

²⁴As repropoed, rule 486 generally expanded the permissible use of B-Amendments, subject to certain contingencies, including prior effectiveness of a related registration statement or post-effective amendment within the prior two years. Some changes in rule 485 were not proposed for rule 486, such as revisions concerning financial statements for a new fund, investment performance information, and adding a new series or portfolio.

Company Act of 1940 [15 U.S.C. 80a-24(e)(1)];

(ii) Registering an indefinite number or amount of securities under section 24(f) of the Investment Company Act of 1940 [15 U.S.C. 80a-24(f)] and § 270.24f-2 of this chapter;

(iii) Bringing the financial statements up to date under section 10(a)(3) of the Securities Act of 1933 [15 U.S.C. 77(a)(3)] or Rules 3-12 or 3-18 of Regulation S-X [17 CFR 210.3-12 and 210.3-18];

(iv) Complying with an undertaking to file an amendment containing financial statements, which may be unaudited, within four to six months after the effective date of the registrant's registration statement under the Securities Act of 1933 [15 U.S.C. 77a et seq.];

(v) Designating a new effective date for a previously filed post-effective amendment pursuant to paragraph (a) of this section, which has not yet become effective, *Provided*, that the new effective date shall be no earlier than the effective date designated in the previously filed amendment under paragraph (a) of this section and no later than thirty days after that date;

(vi) Disclosing or updating the information required by Items 5(c) or 5A of Form N-1A [17 CFR 239.15A and 274.11A];

(vii) Making any non-material changes which the registrant deems appropriate;

(viii) In the case of a separate account registered as a unit investment trust, to make changes in the disclosure in the unit investment trust's registration statement to reflect changes to disclosure in the registration statement of the investment company in which the unit investment trust invests all of its assets; and

(ix) Any other purpose which the Commission shall approve.

(2) The registrant represents that the amendment is filed solely for one or more of the purposes specified in paragraph (b)(1) of this section and that no material event requiring disclosure in the prospectus, other than one listed in paragraph (b)(1) of this section or one for which the Commission has approved a filing under paragraph (b)(1)(ix) of this section, has occurred since the latest of the following three dates:

(i) the effective date of the registrant's registration statement;

(ii) the effective date of its most recent post-effective amendment to its registration statement which included a prospectus; or

(iii) the filing date of a post-effective amendment filed under paragraph (a) of this section which has not become effective.*

(3) The amendment recites on its facing sheet that the registrant proposes that the amendment will become effective under paragraph (b) of this section.

(4) The representations of the registrant referred to in paragraph (b)(2) of this section shall be made by certification on the signature page of the post-effective amendment that the amendment meets all the requirements for effectiveness under paragraph (b) of this section. If counsel prepared or reviewed the post-effective amendment filed under paragraph (b) of this section, counsel shall furnish to the Commission at the time the amendment is filed a written representation that the amendment does not contain disclosures that would render it ineligible to become effective under paragraph (b) of this section.

(c) *Incomplete or Inaccurate Amendments; Suspension of Use of Paragraph (b) of this section.* (1) No amendment shall become effective under paragraph (a) of this section if, prior to the effective date of the amendment, it should appear to the Commission that the amendment may be incomplete or inaccurate in any material respect, and the Commission furnishes to the registrant written notice that the effective date of the amendment is to be suspended. Following such action by the Commission, the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for such a hearing is included in the petition. If the Commission has suspended the effective date of an amendment, the amendment shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

(2) The Commission may, in the manner and under the circumstances set forth in this paragraph (c)(2), suspend the ability of registrant to file a post-effective amendment under paragraph (b) of this section. The notice of such suspension shall be in writing and shall specify the period for which such suspension shall remain in effect. The Commission may issue a suspension if it appears to the Commission that a registrant which files a post-effective amendment under paragraph (b) of this section has not complied with the conditions of that paragraph. Any suspension under this paragraph (c)(2) shall become effective at such time as the Commission furnishes written notice thereof to the registrant. Any such suspension, so long as it is in effect, shall apply to any post-effective

amendment that has been filed but has not, at the time of such suspension, become effective, and to any post-effective amendment that may be filed after the suspension. Any suspension shall apply only to the ability to file a post-effective amendment pursuant to paragraph (b) of this section and shall not otherwise affect any post-effective amendment. Following this action by the Commission the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for a hearing is included in the petition.

(d) *Subsequent Amendments.* (1) Except as provided in paragraph (d)(2) of this section, a post-effective amendment that includes a prospectus shall not become effective under paragraph (a) of this section if a subsequent post-effective amendment relating to the prospectus is filed before such amendment becomes effective.

(2) A post-effective amendment that includes a prospectus shall become effective under paragraph (a) of this section notwithstanding the filing of a subsequent post-effective amendment relating to the prospectus, *Provided*, that the following conditions are met:

(i) the subsequent amendment is filed under paragraph (b) of this section; and

(ii) the subsequent amendment designates as its effective date either:

(A) the date on which the prior post-effective amendment was to become effective under paragraph (a) of this section; or

(B) a new effective date designated under paragraph (b)(1)(v) of this section.

In this case the prior post-effective amendment filed under paragraph (a) of this section and any prior post-effective amendment filed under paragraph (b) of this section shall also become effective on the new effective date designated under paragraph (b)(1)(v) of this section.

(3) Notwithstanding paragraphs (d)(1) and (d)(2) of this section, if another post-effective amendment relating to the same prospectus is filed under paragraph (a) of this section before the prior amendments filed pursuant to paragraphs (a) and (b) of this section have become effective, none of such prior amendments shall become effective under this section.

(e) *Certain Separate Accounts.* For purposes of this section, a post-effective amendment to a registration statement for an offering of securities by a registered open-end management investment company or unit investment trust as those terms are used in paragraphs (a), (b), and (e) of this section and as such amendments are

referred to in paragraphs (c) and (d) of this section, shall include a post-effective amendment to an offering of securities by an insurance company funded through a separate account, as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(37)], where the separate account need not register under the Investment Company Act of 1940 under section 3(c)(11) thereof [15 U.S.C. 80a-3(c)(11)].

(f) *Electronic Filers.* (1) When ascertaining the date of filing, electronic filers should not presume a registration statement has been accepted until notice of acceptance has been received from the Commission.

(2) Attention is directed to the requirements of the relevant registration statement form and § 230.483 concerning certain items of financial information (the Financial Data Schedule) that may be required.

Note: To determine the date of automatic effectiveness, the day following the filing date is the first day of the time period. For example, a post-effective amendment filed under paragraph (a) of this section on November 1 would become effective on December 31.

7. By revising § 230.486 to read as follows:

§ 230.486 Effective date of post-effective amendments and registration statements filed by certain closed-end management investment companies.

(a) *Automatic Effectiveness.* Except as otherwise provided in this section, a post-effective amendment to a registration statement, or a registration statement filed for the purpose of registering additional shares of common stock for which a registration statement filed on Form N-2 (§§ 239.14 and 274.11a-1 of this chapter) is effective, filed by a registered closed-end management investment company or business development company which makes periodic repurchase offers under § 270.23c-3 of this chapter, shall become effective on the sixtieth day after the filing thereof, or a later date designated by the registrant on the facing sheet of the amendment or registration statement, which date shall not be later than eighty days after the date on which the amendment or registration statement is filed, *Provided*, that the Commission, having due regard to the public interest and the protection of investors, may declare an amendment or registration statement filed under this paragraph (a) effective on an earlier date.

(b) *Immediate Effectiveness.* Except as otherwise provided in this section, a

post-effective amendment to a registration statement, or a registration statement for additional shares of common stock, filed by a registered closed-end management investment company or business development company which makes periodic repurchase offers under § 270.23c-3 of this chapter, shall become effective on the date on which it is filed with the Commission, or a later date designated by the registrant on the facing sheet of the amendment or registration statement, which date shall be not later than thirty days after the date on which the amendment or registration statement is filed, except that a post-effective amendment including a designation of a new effective date under paragraph (b)(1)(iii) of this section shall become effective on the new effective date designated therein, *Provided*, that the following conditions are met:

(1) It is filed for no purpose other than one or more of the following:

(i) Registering additional shares of common stock for which a registration statement filed on Form N-2 (§§ 239.14 and 274.11a-1 of this chapter) is effective;

(ii) Bringing the financial statements up to date under section 10(a)(3) of the Act [15 U.S.C. 77j(a)(3)] or rule 3-18 of Regulation S-X [17 CFR 210.3-18];

(iii) Designating a new effective date for a previously filed post-effective amendment or registration statement for additional shares under paragraph (a) of this section, which has not yet become effective, *Provided*, that the new effective date shall be no earlier than the effective date designated in the previously filed amendment or registration statement under paragraph (a) of this section and no later than thirty days after that date;

(iv) Disclosing or updating the information required by Item 9c of Form N-2 [17 CFR 239.14 and 274.11a-1];

(v) Making any non-material changes which the registrant deems appropriate; and

(vi) Any other purpose which the Commission shall approve.

(2) The registrant represents that the amendment is filed solely for one or more of the purposes specified in paragraph (b)(1) of this section and that no material event requiring disclosure in the prospectus, other than one listed in paragraph (b)(1) or one for which the Commission has approved a filing under paragraph (b)(1)(vi) of this section, has occurred since the latest of the following three dates:

(i) the effective date of the registrant's registration statement;

(ii) the effective date of its most recent post-effective amendment to its

registration statement which included a prospectus; or

(iii) the filing date of a post-effective amendment or registration statement filed under paragraph (a) of this section which has not become effective; and

(3) The amendment or registration statement recites on the facing sheet thereof that the registrant proposes that the amendment or registration statement will become effective under paragraph (b) of this section.

(4) The representations of the registrant referred to in paragraph (b)(2) of this section shall be made by certification on the signature page of the post-effective amendment or registration statement that the amendment or registration statement meets all of the requirements for effectiveness under paragraph (b) of this section. If counsel prepared or reviewed the post-effective amendment or registration statement filed under paragraph (b) of this section, counsel shall furnish to the Commission at the time the amendment or registration statement is filed a written representation that the amendment or registration statement does not contain disclosure which would render it ineligible to become effective under paragraph (b) of this section.

(c) *Incomplete or Inaccurate Amendments; Suspension of Use of Paragraph (b) of this section.* (1) No amendment or registration statement shall become effective under paragraph (a) of this section if, prior to the effective date of the amendment or registration statement, it should appear to the Commission that the amendment or registration statement may be incomplete or inaccurate in any material respect, and the Commission furnishes to the registrant written notice that the effective date of the amendment or registration statement is to be suspended. Following such action by the Commission, the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for such a hearing is included in the petition. If the Commission has suspended the effective date of an amendment or registration statement, the amendment or registration statement shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

(2) The Commission may, in the manner and under the circumstances set forth in this paragraph (c)(2), suspend the ability of a registrant to file a post-effective amendment or registration statement under paragraph (b) of this section. The notice of such suspension

shall be in writing and shall specify the period for which such suspension shall remain in effect. The Commission may issue a suspension if it appears to the Commission that a registrant which files a post-effective amendment under paragraph (b) of this section has not complied with the conditions of that paragraph. Any suspension under this paragraph shall become effective at such time as the Commission furnishes written notice thereof to the company. Any such suspension, so long as it is in effect, shall apply to any post-effective amendment or registration statement that has been filed but has not, at the time of such suspension, become effective, and to any post-effective amendment or registration statement that may be filed after the suspension. Any suspension shall apply only to the ability to file a post-effective amendment or registration statement under paragraph (b) of this section and shall not otherwise affect any post-effective amendment or registration statement. Following this action by the Commission, the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for a hearing is included in the petition.

(d) *Subsequent Amendments.* (1) Except as provided in paragraph (d)(2) of this section, a post-effective amendment or registration statement which includes a prospectus shall not become effective under paragraph (a) of this section if a subsequent post-effective amendment or registration statement relating to the prospectus is filed before such amendment or registration statement becomes effective.

(2) A post-effective amendment or registration statement which includes a prospectus shall become effective under paragraph (a) of this section notwithstanding the filing of a subsequent post-effective amendment or registration statement relating to the prospectus, *Provided*, that the following conditions are met:

(i) the subsequent amendment or registration statement is filed under paragraph (b) of this section; and

(ii) the subsequent amendment or registration statement designates as its effective date either:

(A) the date on which the prior post-effective amendment or registration statement was to become effective under paragraph (a) of this section or

(B) a new effective date designated under paragraph (b)(1)(iii) of this section.

In this case the prior post-effective amendment or registration statement

filed under paragraph (a) of this section and any prior post-effective amendment or registration statement filed under paragraph (b) of this section shall also become effective on the new effective date designated under paragraph (b)(1)(iii) of this section.

(3) Notwithstanding paragraphs (d)(1) and (d)(2) of this section, if another post-effective amendment or registration statement relating to the same prospectus is filed under paragraph (a) of this section before the prior amendments or registration statements filed under paragraphs (a) and (b) of this section have become effective, none of such prior amendments or registration statements shall become effective under this section.

(e) *Condition to Use of Paragraphs (a) or (b).* A post-effective amendment or new registration statement shall not become effective under paragraphs (a) or (b) of this section unless within two years prior to the filing thereof a post-effective amendment or registration statement relating to the common stock of the registrant has become effective.

(f) *Electronic Filers.* (1) When ascertaining the date of filing, electronic filers should not presume a registration statement has been accepted until notice of acceptance has been received from the Commission.

(2) Attention is directed to the requirements of the relevant registration statement form and § 230.483 concerning certain items of financial information (the Financial Data Schedule) that may be required.

Note: To determine the date of automatic effectiveness, the day following the filing date is the first day of the time period. For example, a post-effective amendment filed under paragraph (a) of this section on November 1 would become effective on December 31.

8. By revising paragraph (c) of § 230.487 to read as follows:

§ 230.487 Effectiveness of registration statements filed by certain unit investment trusts.

* * * * *

(c)(1) The Commission may, in the manner and under the circumstances set forth in paragraph (c)(2) of this section, suspend the ability of a unit investment trust to designate the date and time of effectiveness of a series of such trust. Any such suspension, so long as it is in effect, shall apply to any registration statement that has been filed but has not, at the time of such suspension, become effective, and to any registration statement with respect to any series of such trust that may be filed after such suspension. Any suspension shall apply

only to the ability to designate the date and time of effectiveness pursuant to paragraph (a) of this section and shall not otherwise affect any registration statement.

(2) Any suspension pursuant to paragraph (c)(1) of this section shall become effective at such time as the Commission furnishes written notice thereof to the company or the sponsor of the unit investment trust. The notice of such suspension shall be in writing and shall specify the period for which such suspension shall remain in effect. The Commission may issue such suspension if it appears to the Commission that any registration statement containing a designation pursuant to this section is incomplete or inaccurate in any material respect, whether or not such registration statement has become effective, or that the registrant has not complied with the conditions of this section. Following such action by the Commission, the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for a hearing is included in the petition.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

9. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-37, 80a-39 unless otherwise noted.

* * * * *

10. By amending the undesignated paragraph following paragraph (b)(13)(iii)(F)(4)(ii)(B) of § 270.6e-3(T) by revising the reference "Rule 486 [17 CFR 230.486] to read "Rule 485 [17 CFR 230.485]".

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

11. The Authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78f, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a-8, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

* * * * *

12. The authority citation for Part 274 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78f, 78m, 78n, 78o(d), 80a-8, 80a-24, and 80a-29, unless otherwise noted.

Note: Forms N-1A, N-2, N-3, N-4 and S-6 do not and the amendments will not appear in the Code of Federal Regulations.

13. In Form S-6 (referenced in § 239.16) the reference to "rule (485 or 486)" on the facing sheet is revised to read "rule 485," the references to "paragraph (a)" are revised to read "paragraph (a)(i)" (two places), and the reference to "rule (485(b) or 486(b))" in the Signature block is revised to read "rule 485(b)", the period is removed following "(485 or 486)" on the facing sheet and the following is added on the facing after section D.: "If appropriate, check the following box:

☐ this post-effective amendment designates a new effective date for a previously filed post-effective amendment."

14. Form N-1A (referenced in §§ 239.15A and 274.11A) is amended by revising the facing sheet before the heading "Calculation of Registration Fee under the Securities Act of 1933" to read as follows:

FORM N-1A

It is proposed that this filing will become effective (check appropriate box):

- ☐ immediately upon filing pursuant to paragraph (b)
- ☐ on (date) pursuant to paragraph (b)
- ☐ 60 days after filing pursuant to paragraph (a)(i)
- ☐ on (date) pursuant to paragraph (a)(i)
- ☐ 75 days after filing pursuant to paragraph (a)(ii)
- ☐ on (date) pursuant to paragraph (a)(ii) of rule 485.

If appropriate, check the following box:

☐ this post-effective amendment designates a new effective date for a previously filed post-effective amendment.

15. Form N-2 (referenced in §§ 239.14 and 274.11a-1) is amended by revising the facing sheet before the heading "Calculation of Registration Fee under the Securities Act of 1933" and by adding Instruction E.4 to the General Instructions to read as follows:

FORM N-2

It is proposed that this filing will become effective (check appropriate box):

☐ when declared effective pursuant to section 8(c)

The following boxes should only be included and completed if the registrant

is a registered closed-end management investment company or business development company which makes periodic repurchase offers under Rule 23c-3 under the Investment Company Act and is making this filing in accordance with Rule 486 under the Securities Act:

- ☐ immediately upon filing pursuant to paragraph (b)
- ☐ on (date) pursuant to paragraph (b)
- ☐ 60 days after filing pursuant to paragraph (a)
- ☐ on (date) pursuant to paragraph (a)

If appropriate, check the following box:

☐ this [post-effective] amendment designates a new effective date for a previously filed [post-effective amendment][registration statement].

General Instructions

E. Amendments

4. A post-effective amendment to a registration statement on this Form, or a registration statement filed for the purpose of registering additional shares of common stock for which a registration statement filed on this Form is effective, filed on behalf of a Registrant which makes periodic repurchase offers pursuant to Rule 23c-3 under the Investment Company Act [17 CFR 270.23c-3] may become effective automatically in accordance with Rule 486 under the Securities Act [17 CFR 230.486]. In accordance with Rule 429 under the Securities Act [17 CFR 230.429], a Registrant filing a new registration statement for the purpose of registering additional shares of common stock may use a prospectus with respect to the additional shares also in connection with the shares covered by earlier registration statements if such prospectus includes all of the information which would currently be required in a prospectus relating to the securities covered by the earlier statements. The filing fee required by the Act and Rule 457 under the Securities Act [17 CFR 230.457] shall be paid with respect to the additional shares only.

16. In Form N-3 (referenced in §§ 239.17a and 274.11b) all references to "Rule 486" are revised to read "Rule 485" on the facing sheet (four places), General Instruction H.5. (one place) and the Signature block (one place) and the reference "[17 CFR 230.486]" is revised to read "[17 CFR 230.485]" in General Instruction H.5. (one place) and by revising the facing sheet before the

heading "Calculation of Registration Fee under the Securities Act of 1933" to read as follows:

FORM N-3

It is proposed that this filing will become effective (check appropriate box):

- ☐ immediately upon filing pursuant to paragraph (b)
- ☐ on (date) pursuant to paragraph (b)
- ☐ 60 days after filing pursuant to paragraph (a)(i)
- ☐ on (date) pursuant to paragraph (a)(i)
- ☐ 75 days after filing pursuant to paragraph (a)(ii)
- ☐ on (date) pursuant to paragraph (a)(ii) of rule 485.

If appropriate, check the following box:

☐ this post-effective amendment designates a new effective date for a previously filed post-effective amendment.

17. In Form N-4 (referenced in §§ 239.17b and 274.11c) all references to "Rule 486" are revised to read "Rule 485" on the facing sheet (four places), General Instruction H.5. (one place) and the Signature block (one place) and the reference "[17 CFR 230.486]" is revised to read "[17 CFR 230.485]" in General Instruction H.5. (one place) and by revising the facing sheet before the heading "Calculation of Registration Fee under the Securities Act of 1933" to read as follows:

FORM N-4

It is proposed that this filing will become effective (check appropriate box):

- ☐ immediately upon filing pursuant to paragraph (b)
- ☐ on (date) pursuant to paragraph (b)
- ☐ 60 days after filing pursuant to paragraph (a)(i)
- ☐ on (date) pursuant to paragraph (a)(i)
- ☐ 75 days after filing pursuant to paragraph (a)(ii)
- ☐ on (date) pursuant to paragraph (a)(ii) of rule 485.

If appropriate, check the following box:

☐ this post-effective amendment designates a new effective date for a previously filed post-effective amendment.

By the Commission.

Dated: August 17, 1994.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-20624 Filed 8-23-94; 8:45 am]

BILLING CODE 8010-01-P

17 CFR Part 230

[Release Nos. 33-7084; IC-20487; File No. S7-15-93]

RIN 3235-AF86

Continuous or Delayed Offerings by Certain Closed-End Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Securities and Exchange Commission is adopting an amendment to the "shelf registration" rule. The amendment will enable a closed-end management investment company or business development company that makes periodic repurchase offers to offer securities on a continuous or delayed basis under the shelf registration provisions of the Securities Act of 1933.

EFFECTIVE DATE: This rule amendment will become effective on September 26, 1994.

FOR FURTHER INFORMATION CONTACT: Robert G. Bagnall, Assistant Chief, (202) 942-0686, or Thomas M. J. Kerwin, Staff Attorney, (202) 942-0692, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 10-6, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting substantially as proposed paragraph (a)(1)(xi) of rule 415 [17 CFR 230.415] under the Securities Act of 1933 [15 U.S.C. 77a] (the "Securities Act"). The Commission also is adopting separately a related provision, new rule 486 [17 CFR 230.486] under the Securities Act.¹ Rule 486 permits closed-end investment companies making periodic repurchase offers to file certain post-effective amendments that become effective automatically, assisting those funds that make continuous or delayed offerings in maintaining continuously effective registration statements.

I. Background and Discussion

On April 7, 1993, the Commission adopted rule 23c-3 [17 CFR 270.23c-3]

under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Investment Company Act").² Rule 23c-3, among other things, authorizes certain closed-end management investment companies and business development companies ("closed-end interval funds") to make periodic repurchase offers for their own shares. The Commission recognized that closed-end interval funds may need to replenish their assets from time to time by selling new shares of common stock. To facilitate such sales, the Commission proposed to amend the shelf registration rule, rule 415 under the Securities Act, to permit closed-end interval funds to make delayed or continuous offerings.³

Comments generally favored the proposed amendment to rule 415. The Commission is adopting the amendment substantially as proposed.⁴ New paragraph (a)(1)(xi) of rule 415 permits closed-end interval funds to register "shares of common stock which are to be offered and sold on a delayed or continuous basis." Most commenters agreed that closed-end interval funds need authority to make delayed as well as continuous offerings.⁵ For example, interval funds making offerings only at specific times, such as in offerings coinciding with periodic repurchases, would require authority to make delayed offerings.⁶ Offerings under paragraph (a)(1)(xi) are not subject to the two-year limitation in paragraph (a)(2).

Paragraph (a)(1)(xi) would apply only to offerings of common stock by closed-end interval funds and would not be available to other closed-end investment companies. Several commenters asserted that other closed-end companies need the ability to use shelf

registration for delayed offerings.⁷ Closed-end interval funds will benefit from authority to undertake continuous or delayed offerings of equity securities to replenish assets periodically depleted by repurchases. While closed-end companies other than interval funds may repurchase shares occasionally and therefore seek to sell new securities, or may wish to offer additional shares depending on market conditions, closed-end interval funds have a fundamental policy of making periodic repurchase offers. Closed-end interval funds have a clear, ongoing need to make continuous or periodic offerings of shares, evidencing the "bona fide intent to offer and sell" traditionally required for delayed shelf offerings.⁸ Therefore, the Commission is retaining the limitation in paragraph 415(a)(1)(xi) to closed-end interval funds. While the Commission is not now authorizing other closed-end companies to make delayed offerings, it expects to continue to consider the matter.

II. Cost Benefit Analysis

The amendment to rule 415 will benefit closed-end interval funds by permitting them to conduct continuous or delayed offerings of their shares. Interval funds may conduct such offerings more efficiently and on shorter notice, filing fewer registration statements and other related documents. The amendment does not impose any significant new burdens on investment companies. The Commission also may benefit because its staff need not review as many registration statements as otherwise might be filed.

III. Summary of Final Regulatory Flexibility Analysis

The Commission prepared a summary of the Initial Regulatory Flexibility Analysis concerning the amendment to

² See Repurchase Offers by Closed-End Management Investment Companies, Investment Company Act Release No. 19399 (April 7, 1993), 58 FR 19330.

³ Continuous or Delayed Offerings by Certain Closed-End Management Investment Companies; Automatic Effectiveness of Certain Registration Statements and Post-Effective Amendments, Investment Company Act Release No. 19391 (April 7, 1993), 58 FR 19361.

⁴ As adopted, paragraph (a)(1)(xi) adds the word "registered" before the words "closed-end management investment company" to conform to the wording of rule 23c-3.

⁵ E.g., Letter from Investment Company Institute to Jonathan G. Katz, Secretary, SEC at 2 (June 14, 1993), File No. S7-15-93; Letter from American Bar Association to Jonathan G. Katz, Secretary, SEC at 3 (June 10, 1993), File No. S7-15-93; Letter from Dechert Price & Rhoads to Jonathan G. Katz, Secretary, SEC at 2 (June 14, 1993), File No. S7-15-93.

⁶ Delayed or continuous offerings by closed-end interval funds may require careful attention to share pricing. Rule 23c-3(b)(7)(iii) applies section 23(b) to require that shares be priced by reference to the net asset value next determined after receipt of a purchase order, and generally requires daily calculation of net asset value when an interval fund is offering its shares.

⁷ E.g., Letter from Investment Company Institute, *supra* note 3, at 2, 4 (authority should be available to all closed-end companies that repurchase their own shares, even if not under rule 23c-3); Letter from American Bar Association, *supra* note 3, at 3-4 (should be available to all closed-end companies, or at least those similar to interval funds); Letter from Dechert Price & Rhoads, *supra* note 3, at 2-3 (should be available to all closed-end funds).

⁸ E.g., Proposed Revision of Regulation S-K and Guides for the Preparation and Filing of Registration Statements and Reports, Securities Act Release No. 6276 § III.E. (Dec. 23, 1980), 46 FR 78, 88 (addressing proposed rule 462A, predecessor to rule 415; "essential conditions" of proposed shelf registration authority include "a bona fide intent to offer and sell"); cf. Simplification of Registration Procedures for Primary Securities Offerings, Securities Act Release No. 6964, § I.A.6. (Oct. 22, 1992), 57 FR 48970, 48974 (Form S-3 registrant eligible to file "delayed basis" shelf registration should do so only if the registration statement accurately reflects the registrant's current distribution plans and arrangements).

¹ See Post-Effective Amendments to Investment Company Registration Statements, Investment Company Act Release No. 20486.

rule 415 in accordance with 5 U.S.C. 603 and published it in the proposing release.⁹ No comments addressed the analysis. The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604. The Analysis explains that the amendment will aid closed-end interval funds, including certain business development companies, in replenishing assets as needed in conjunction with periodic repurchases of their shares. The Analysis states that the amendment enhances flexibility and maintains investor protection in a manner that should minimize any impact on, or cost to, small entities. A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Thomas M. J. Kerwin at Mail Stop 10-6, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

IV. Statutory Authority

The Commission is adopting the amendment to rule 415 pursuant to sections 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77f, 77g, 77j, and 77s(a)].

List of Subjects in 17 CFR Part 230

Investment companies, Reports and recordkeeping requirements, Securities.

Text of Adopted Rule Amendment

For the reasons set out in the preamble, Chapter II, Title 17 of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

2. Section 230.415 is amended by removing the word "or" at the end of paragraph (a)(1)(ix), removing the period and adding the word "or" at the end of paragraph (a)(1)(x), and adding new paragraph (a)(1)(xi) to read as follows:

§ 230.415 Delayed or continuous offering and sale of securities.

(a) * * *

(1) * * *

(xi) Shares of common stock which are to be offered and sold on a delayed or continuous basis by or on behalf of a registered closed-end management

investment company or business development company that makes periodic repurchase offers pursuant to § 270.23c-3 of this chapter.

* * * * *

By the Commission.

Dated: August 17, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-20623 Filed 8-23-94; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960-AD35

Supplemental Security Income for the Aged, Blind, and Disabled; Treatment of Certain Royalties and Honoraria

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: In these final regulations we are amending the supplemental security income (SSI) regulations to reflect the provisions of section 5034 of Pub. L. 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA '90). The provisions of this section change the treatment of certain royalties and honoraria from unearned income to earned income. In some cases, the statutory change will permit the individual to receive a larger SSI benefit, while in other cases there will be no effect or a reduced SSI benefit may result. We are also amending the SSI regulations to clarify the definition of royalties.

EFFECTIVE DATE: August 24, 1994. The provisions of section 5034 of Pub. L. 101-508 are effective for determinations of eligibility and benefit amount beginning December 1, 1991.

FOR FURTHER INFORMATION CONTACT: Regarding this document—Duane Heaton, Legal Assistant, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-8470; regarding eligibility or filing for benefits—our national toll-free number, 1-800-772-1213.

SUPPLEMENTARY INFORMATION:

Background

Section 5034 of OBRA '90, enacted November 5, 1990, amended section 1612(a)(1) and (2) of the Social Security Act (the Act). Prior to this amendment, the Act provided that royalties were counted as unearned income under the

SSI program unless the royalties were from self-employment in a royalty-related trade or business. Honoraria also were counted as unearned income. As unearned income, any expenses of obtaining this income were not counted. Then, the first \$20 of the SSI beneficiary's income in a month was excluded, and the remaining unearned income resulted in a dollar-for-dollar reduction in benefits.

This OBRA '90 amendment provides that any royalties earned by an individual in connection with any publication of the work of the individual, as well as that portion of any honoraria received for services rendered, are earned income under the SSI program. The provisions of section 5034 are effective for determinations of eligibility and benefit amount as of December 1, 1991.

As a result of this statutory provision, the statutory earned income exclusions, which in many cases are more generous than the unearned income exclusions, will now apply to such earnings. Under the earned income exclusions, SSA will exclude the first \$65 of monthly earnings plus 50 percent of the remaining earnings per month. Other earned income exclusions, such as impairment-related work expenses, also may apply.

In many cases, the application of the earned income exclusions will result in considering a smaller portion of the royalties and honoraria as countable income. However, in those cases in which the individual receives a royalty for the publication of his or her work and incurs a large amount of expenses in obtaining this income, but does not have a royalty-related trade or business, the individual may have a greater portion of his or her royalty treated as countable income. This is because there is no statutory or regulatory provision that permits the deduction of expenses from earned income that parallels the deduction of expenses for obtaining unearned income. Further, we believe the statute does not provide authority for us to permit, through regulations, the deduction of expenses from earned royalty income.

Current regulations in § 416.1121(c) state that royalties may include, among other things, payments to the owner of a mine, oil well, timber tract, or other natural resource for extraction of a product. In the past, we interpreted this provision to mean that royalties include the proceeds from timber sales as well as from timber leases.

We are clarifying this section of the regulations to make it clear that proceeds from the conversion of a resource are not income. For example,

⁹ Inv. Co. Act Rel. 19391, *supra* note 2, § IV, 58 FR at 19363.

the term royalties may include the proceeds from timber leases, but not from timber sales. A timber sale is the conversion of a resource from one form (timber) to another (cash) as provided for in §§ 416.1103(c) and 416.1207(e). Thus, royalties would include fees for the use of the land, but not payments resulting from a sale.

Under that definition of royalties, if an owner of timberland enters into a long-term lease agreement which permits the lessee to manage and cut timber, with payment to be dependent on the amount of timber actually harvested, the payments to the lessor would be considered royalties. However, a contract for the sale of standing timber would not result in royalties. We propose to amend the regulations to clarify the definition of royalties accordingly.

Final Regulations

We are revising §§ 416.1110, 416.1111, and 416.1121 to reflect the statutory changes of section 5034 of OBRA '90 and the change in the definition of royalties as follows:

- Section 416.1110, which lists what we consider to be earned income, is revised by adding a new paragraph (e) to provide that payments of royalties to an individual in connection with any publication of the work of the individual are earned income. Also, that portion of honoraria received in consideration of services rendered is included as earned income. Honoraria that are earned income include rewards and donations received in consideration of services rendered for which no payment can be enforced by law.

- Section 416.1111, which explains how we count each type of earned income, is revised by adding paragraph (e), which provides that payments of royalties to an individual in connection with the publication of the work of the individual and honoraria, to the extent received for services rendered, count at the earliest of the following points: when received, credited, or set aside for the individual's use.

- Section 416.1121(c) is revised by clarifying the definition of royalties and adding a cross-reference to show that payments of royalties to an individual in connection with the publication of the work of the individual are treated differently from other royalties.

Public Comments

These regulations were published as a Notice of Proposed Rulemaking on October 8, 1993 (58 FR 52464). A 60-day comment period was provided. We did not receive any public comments. We

are, therefore, adopting the regulations as proposed.

Regulatory Procedures

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under E.O. 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because these regulations affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These final regulations impose no additional reporting and recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance: Program No. 93.807—Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental security income.

Dated: June 28, 1994.

Shirley Chater,

Commissioner of Social Security.

Approved: August 11, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, Part 416 of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart K of Part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93-66, 87 Stat. 154.

2. Section 416.1110 is amended by adding a new paragraph (e) as follows:

§ 416.1110 What is earned income.

(e) *Certain royalties and honoraria.* Royalties that are earned income are payments to an individual in connection with any publication of the

work of the individual. (See § 416.1110(b) if you receive a royalty as part of your trade or business. See § 416.1121(c) if you receive another type of royalty.) Honoraria that are earned income are those portions of payments, such as an honorary payment, reward, or donation, received in consideration of services rendered for which no payment can be enforced by law. (See § 416.1120 if you receive another type of honorarium.)

3. Section 416.1111 is amended by adding a new paragraph (e) as follows:

§ 416.1111 How we count earned income.

* * * * *

(e) *Royalties and honoraria.* We count payments of royalties to you in connection with any publication of your work, and honoraria, to the extent received for services rendered, at the earliest of the following points: when you receive them, when they are credited to your account, or when they are set aside for your use. (See § 416.1111(b) if you receive royalties as part of your trade or business.)

4. Section 416.1121 is amended by revising paragraph (c) to read as follows:

§ 416.1121 Types of unearned income.

* * * * *

(c) *Dividends, interest, and certain royalties.* Dividends and interest are returns on capital investments, such as stocks, bonds, or savings accounts. Royalties are compensation paid to the owner for the use of property, usually copyrighted material or natural resources such as mines, oil wells, or timber tracts. Royalty compensation may be expressed as a percentage of receipts from using the property or as an amount per unit produced. (See § 416.1110(b) if you receive royalties as part of your trade or business and § 416.1110(e) if you receive royalties in connection with the publication of your work.)

* * * * *

[FR Doc. 94-20627 Filed 8-23-94; 8:45 am]

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