Dated: October 5, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–24991 Filed 10–12–93; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–231–AD; Amendment 39–8675; AD 83–07–09 R1]

Airworthiness Directives; Canadair Model CL–600–1A11 and CL–600–2A12 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all Model CL–600 series airplanes, that currently requires an inspection to verify proper installation of the 8 gage feeder wires from generators 1 and 2 and the auxiliary power unit (APU), and correction or replacement of discrepant parts. That action was prompted by reports of wire overheating under heavy electrical load conditions. This amendment limits the applicability of the rule. The actions specified by this AD are intended to prevent potential wire overheating, which could result in a cabin fire.

EFFECTIVE DATE: November 12, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Michele Maurer, Aerospace Engineer, Systems and Equipment Branch, ANE–173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6427; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 83–07–09, Amendment 39–4609 (48 FR 14353, April 4, 1983), which is applicable to all Canadair Model CL–600 series airplanes, was published in the **Federal Register** on March 3, 1993 (58 FR 12192). The action proposed to supersede an existing AD to limit the applicability only to Model CL–600–1A11 and CL–600–2A12 series airplanes. The existing AD currently requires a one-time inspection to verify proper installation of the 8 gage feeder wires from generators 1 and 2 and the auxiliary power unit (APU), and correction or replacement of discrepant parts. The models that would be excluded from the applicability of the rule are later models, which are equipped with improved generator and APU feeder wires.

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

One commenter supports the proposed rule.

Another commenter requests that this AD action be issued as a "revision" rather than a "supersedure" of the existing AD. The commenter believes that the proposed change is non-substantive in nature, since certain airplanes equipped with improved wiring would be removed from the applicability statement. The FAA concurs. This AD action is relieving in nature; that is, fewer airplanes are affected by the requirements. To supersede the existing AD and replace it with a new one having a new AD number, would serve no purpose in terms of the ability of affected operators to track compliance with the AD and maintain accurate records of compliance. Because this AD requires only a one-time action and was originally effective over 10 years ago, the FAA finds that the consequent workload burden that would be associated with revising maintenance record entries (to record a new AD number) among all of the affected operators would not be appropriate. The FAA considers that a less burdensome approach is to revise the existing AD, rather than to supersede it. In accordance with this approach, the final rule for this action (1) retains the same AD number, but an "R1" has been added to it; and (2) is assigned a new amendment number. (This change does not affect the operators' obligation to maintain records indicating current AD status.)

Affected operators should note that this revised AD has been reformatted to be in compliance with the **Federal Register** style. In addition, the compliance time for corrective action has been clarified to indicate that it is required "prior to further flight;" and Canadair Drawing 600–58001, Note 17, has been included in the AD as an additional source of service information. All of these items appeared in the notice preceding this final rule.

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

Since this action amends the applicability of an existing AD to exclude certain models of airplanes, no additional operators will be affected by the requirements of this rule, nor will additional costs be incurred.

The current requirements of this AD now affect approximately 90 airplanes of U.S. registry. The costs associated with accomplishing the requirements of the AD are: 5 work hours per airplane to perform the required one-time inspection, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the current revised AD on U.S. operators is estimated to be $24,750, or $275 per airplane. (This total cost figure assumes that no operator has yet accomplished the requirements of this AD. However, based on the fact that the original AD was issued some 10 years ago, in all likelihood, the majority of affected operators have complied previously with the rule.)

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules

Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–4609 (48 FR 14353, April 4, 1983), and by adding a new airworthiness directive (AD), amendment 39–8675, to read as follows:

83–07–09 R1 Canadair: Amendment 39–8675. Docket 92–NM–231–AD. Revises AD 83–07–09, Amendment 39–4609.

Applicability: All Model CL–600–1A11 and CL–600–2A12 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: This AD requires the same actions as required by AD 83–07–09. amendment 39–4609, but is applicable to fewer airplanes. Operators affected by this AD who have accomplished these actions previously in accordance with AD 83–07–09 are considered to be in compliance with this revised AD.

To prevent possible wire overheating, which could result in a cabin fire, accomplish the following:

(a) Within 300 hours time-in-service or within 3 calendar months after April 13, 1983 (the effective date of AD 83–07–09, Amendment 39–4609), whichever occurs earlier, perform an inspection to verify proper installation of the 8 gage feeder wires from generators 1 and 2 and the auxiliary power unit (APU), in accordance with Canadair Drawings 600–58001, Note 17, or 600–58031, Note 14; and CL–600 Completion Centre Handbook Section 6. Prior to further flight, correct any discrepant wires in accordance with the drawings or handbook.

(b) Replacement of the 8 gage generator 1, generator 2, and APU feeder wires with 4 gage feeder wires of the same type constitutes an approved alternative method of compliance for the requirements of this AD.

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

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

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on November 12, 1993.

Issued in Renton, Washington, on August 23, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–25036 Filed 10–12–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 73

[Airspace Docket No. 93–ASW–1]

Establishment of Restricted Area R–3807; Glencoe, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Area R–3807 located in the vicinity of Glencoe, LA. The restricted area is necessary to provide for the safety of aircraft operations in the vicinity of a tethered aerostat airborne radar system operated by the U.S. Customs Service. The aerostat balloon will be operated as high as 15,000 feet mean sea level (MSL) to provide radar surveillance of aircraft suspected of transporting illegal drugs into the United States.

EFFECTIVE DATE: 0901 UTC, October 13, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On June 16, 1993, the FAA proposed to amend part 73 of the Federal Aviation Regulations (14 CFR part 73) to establish Restricted Area R–3807, Glencoe, LA, (58 FR 33223).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Six comments were received in response to the Notice of Proposed Rulemaking (NPRM) published on June 16, 1993. Five comments were received from interested parties that represented helicopter companies or helicopter organizations. One comment was received from the Louisiana Department of Transportation, Aviation Safety Program. The comments are as follows:

1. Air Logistics Inc., objected to the proposal and stated that numerous fixed-wing aircraft and more than 400 helicopters operate within that area, frequently during periods of reduced visibility. They also stated that the aerostat tether will neither be marked nor lighted, which will increase the hazard to general aviation, thereby placing passengers and crew members in jeopardy.

2. The Helicopter Safety Advisory conference stated that its members operate about 630 helicopters in the Gulf of Mexico while transporting a daily average of about 10,900 passengers in the vicinity of the proposed Glencoe restricted area. They believe that the combination of an unmarked and unlighted tethered balloon at 15,000 feet and within a high intensity air traffic area will present a serious safety hazard and warrants further regulatory evaluation.

3. Industrial Helicopters, Inc., stated that there is high density traffic in the area around Restricted Area R–3807 and that restricted airspace would not prevent an inadvertent encounter with the aerostat during marginal weather conditions.

4. The State of Louisiana, Department of Transportation, Aviation Safety Program, is concerned about the concentration of aviation traffic in the area around R–3807 and the aerostat balloon's effect on night visual flight rules (VFR) operations in proximity of the Le Matire Memorial Airport.

5. Petroleum Helicopters, Inc., is of the opinion that the lack of marking and lighting of the tether poses an unnecessary risk to air operations. Until a suitable means of marking and lighting is developed, the aerostat deployment should remain on hold.

6. The Helicopter Association International, commented that the establishment of Restricted Area R–3807 will not prevent air traffic from inadvertently encountering the aerostat in reduced visibility conditions. An obstruction the size of the aerostat and the tether should be marked and lighted up to at least 5,000 feet MSL.

The Environmental Assessment that was submitted by the U.S. Customs

Service referencing the Glencoe site, stated among other items, that there would be no impact on any airport in the area.

The FAA's study indicates that there would be no significant impact on instrument flight rules (IFR) and VFR operations in the area of the aerostat.

The major concerns identified by commenters are that:

(1) The aerostat is positioned in an area where there is helicopter VFR traffic servicing the off-shore oil wells;

(2) The Restricted Area R–3807 will not appear on navigational charts until the U.S. Gulf Coast Charts are published on November 11, 1993, and

(3) The tether will not be marked or lighted.

The FAA has undertaken a special effort to inform pilots of the restricted area and the aerostat location. A notice with a graphic depicting the location of Restricted Area R–3807 has been mailed to all pilots in the United States. The graphic notice will be published continuously in the bi-weekly Notice to Airmen (NOTAM) publication until R–3807 appears on the Houston Sectional Chart effective date February 11, 1994. Prior to that date R–3807 will appear on the U.S. Gulf Coast Chart, effective November 11, 1993. In addition, a nationwide NOTAM describing the restricted area is currently in effect and available to pilots.

High intensity strobe lights are installed on the balloon and, as an additional safety feature, an array of high intensity strobe lights has been installed on the ground around the balloon's anchor point. The ground array will alert pilots of the tether location if they inadvertently stray into the restricted area. Also, local NOTAM's can be obtained from appropriate air traffic control facilities in the area. These actions address the concerns of the commenters and provide the necessary safeguards for operation of the aerostat. The coordinates for this airspace docket are based on North American Datum 83. Section 73.38 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

The Rule

This amendment to part 73 of the Federal Aviation Regulations establishes Restricted Area R–3807, Glencoe, LA. The restricted area will provide airspace for the operation of a tethered aerostat-borne radar system. This system provides surveillance of airspace to detect low altitude aircraft attempting to penetrate the United States airspace. The restricted area encompasses a 3-nautical-mile radius centered at lat. 29°48'37"N., long. 91°39'47"W., from the surface up to and including 15,000 feet MSL. This system increases the probability of the interception and interdiction of suspect aircraft and provides low altitude radar coverage for the Customs Service. Restricted Area R–3807 is necessary to contain a U.S. Customs Service aerostat balloon. The circular restricted area establishes airspace that aircraft must avoid and therefore will not strike the unmarked and unlighted tether. The aerostat balloon has been operated within a temporary flight restriction area since August 30, 1993, because of urgent requirements to have the system tested and operational as soon as possible. In view of the safety measures previously described and the notification to all pilots of the current operation of the balloon, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and good cause, pursuant to 5 U.S.C. 553(d), exists for making this amendment effective in less than thirty days.

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 "major rule" under Executive Order 12291; (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

An environmental assessment of the proposal performed by C.H. Fenstermaker & Associated, Inc., Environmental Consultants, for the U.S. Customs Service, which the FAA adopts, finds no significant environmental impact. Use of the subject area as proposed is consistent with existing national environmental policies and objectives as set forth in section 101(a) of NEPA and will not significantly affected the quality of the human environment or otherwise include any condition requiring consultation pursuant to section 102(2)(c) of NEPA.

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.

§ 73.38 [Amended]

2. § 73.38 is amended as follows:

R–3807 Glencoe, LA [New]

Boundaries. A 3-nautical-mile radius centered at lat. 29°48'37"N., long. 91°39'47"W.

Designated altitudes. Surface to 15,000 feet MSL.

Time of designation. Continuous.

Controlling agency. FAA, Houston ARTCC

Using agency. USAF, Southeast Air Defense Sector, Tyndall AFB, FL.

Issued in Washington, DC, on October 5, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–25050 Filed 10–12–93; 8:45 am]

BILLING CODE 4910–12–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 240

[Release No. 33–7022; 34–33023; IC–19768; File No. S7–5–93] RIN 3235–AF85

Securities Transactions Settlement

AGENCY: Securities and Exchange Commission

ACTION: Final Rule.

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") announces the adoption of new Rule 15c6–1 under the Securities Exchange Act of 1934 ("1934 Act") which establishes three business days as the standard settlement timeframe for broker-dealer trades, effective June 1, 1995. Rule 15c6–1 is designed to reduce the risk to clearing corporations, their members, and public investors inherent in settling securities transactions by reducing the number of unsettled trades in the clearance and settlement system at any given time. The Rule also will facilitate additional risk reduction measures by achieving closer conformity between the government securities and derivative markets and the markets for other securities.

EFFECTIVE DATE: June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jack Drogin, Branch Chief, or Sonia Burnett, Attorney, at 202/272–2775, Office of Securities Processing Regulation, Branch of International and Debt Clearing Agency Regulation, Division of Market Regulation ("Division"), 450 Fifth Street, N.W., Mail Stop 5–1, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On February 23, 1993, the Commission proposed for comment Rule 15c6–1 (17 CFR 240.15c6–1) under the 1934 Act.[1] That Rule provides that, unless otherwise expressly agreed by the parties at the time of the transaction, a broker or dealer is prohibited from entering into a contract for the purchase or sale of a security (other than an exempted security, government security, municipal security, commercial paper, bankers' acceptance, or commercial bill) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract.[2] As described above, the Rule would allow a broker or dealer to agree that settlement will take place in more than three business days. The agreement, however, must be express and reached at the time of the transaction. In the Proposing Release, the Commission invited commentators to address the merits of the proposed Rule; the costs and benefits of the proposed Rule; the scope of and securities affected by the proposed Rule; broker-dealer costs to develop and employ procedures to comply with the proposed Rule; and any risk reduction benefits and costs savings that may result from the proposed rule.

The Commission received comments from 1,914 commentators concerning the proposed Rule. Over 101 commentators favor the proposed Rule, 248 commentators oppose the proposed Rule, and 15 commentators offered comments on the proposed Rule but did not state if the commentator generally supports or opposes the proposal. In addition, 1,550 commentators submitted substantially similar letters generally in favor of increasing the safety and soundness of the U.S. clearance and settlement system but urging the Commission to ensure that investors can continue to obtain direct registration of their securities on issuer records in a three-day settlement environment. Fifty-six of the commentators that oppose the Rule expressed concern about the costs of complying with the three-day settlement. A complete list of commentators is attached as Appendix 1. Staff of the Commission has prepared a summary of the comments, a copy of which has been placed in the official file.

As discussed below, the Commission agrees with many of the commentators' suggestions, and the Commission has modified Rule 15c6–1 accordingly. For example, the Commission is modifying the Rule to exempt at this time transactions in limited partnership interests that are not listed on a national securities exchange or traded in the over-the-counter market ("unlisted limited partnership interests") and certain new issues involving firm-commitment underwritings. Although the Commission is not expanding the scope of the Rule to encompass municipal securities, the Commission is calling upon the Municipal Securities Rulemaking Board ("MSRB") to take all steps necessary to shorten the routine settlement cycle for municipal securities transactions by the effective date of Rule 15c6–1. In addition, the Commission has determined not to exempt other securities issued by mutual funds and private label mortgage-backed securities, or listed limited partnership interests. Finally, the Commission is modifying the Rule to authorize the Commission, by order, to exempt additional securities from the scope of Rule 15c6–1. For the reasons discussed in the Proposing Release and below, the Commission is adopting Rule 15c6–1, as revised, effective June 1, 1995.

I. Background

In recognition of the importance of broker-dealer settlement practices to the clearance and settlement process,[3] the Securities Acts Amendments of 1975 ("1975 Amendments")[4] authorized federal regulation of the time and method by which broker-dealers settle securities transactions. In adopting the 1975 Amendments, Congress directed the Commission to act in the national interest to achieve safety and efficiency in clearance and settlement. Section 17A of the 1934 Act directs the Commission "to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (other than exempted securities)."[5] That directive was revised by the Market Reform Act of 1990[6] to reflect the interdependence of options, futures, and equity markets that trade products involving securities or stock indexes.

Currently, the settlement cycle in the U.S. varies among markets.[7] Settlement of securities transactions on the fifth business day after the trade date ("T+5") is largely a function of market custom and industry practice. There is no federal rule that mandates a specific settlement cycle for securities transactions. Indeed, at one time, other settlement periods were considered "regular-way."[8] Prior to 1953, settlement at the American Stock Exchange ("Amex") occurred on the second day after the trade date ("T+2"), and gradually moved to the third day after the trade date ("T+3") in 1953, T+4 in 1962, and to the present T+5 in 1968.[9] The New York Stock Exchange ("NYSE") originally settled trades on T+1 in the 1920s, but settlement has gradually moved to T+5.[10] Currently, self-regulatory organization ("SRO") rules define "regular way" settlement as settlement on T+5.[11] At this time, however, and for the reasons set out

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[1] Securities and Exchange Commission Release Nos. 33–6976; 34–31904; IC–19282; (February 23, 1993), 58 FR 11806 (File No. S7–5–93) ("Proposing Release").

[2] As noted in the Proposing Release, because exchange-traded options and government securities routinely settle on the day after trade date, settlement of such securities transactions will be essentially unchanged.

[3] The term "clearance" includes the comparison of data regarding the terms of settlement of securities transactions and the allocation of securities settlement responsibilities. After trade comparison, most trades clear through a continuous net settlement system ("CNS") operated by a clearing corporation registered with the Commission under Section 17A of the 1934 Act. Under CNS, the clearing corporation nets each clearing member's purchases and sales to arrive at a daily net receive or deliver obligation for each security and a daily net settlement payment obligation. The term "settlement" includes the delivery of securities in exchange for funds, pursuant to the terms of the original transaction, and the custody of securities. See section 3(a)(23)(A) of the 1934 Act, 15 U.S.C. 78c(a)(23)(A).

[4] Public Law 94–29 section 16, 89 Stat. 146.

[5] See 15 U.S.C. § 78o, 78q-1, and 78w.

[6] Public Law 101–432, 104 Stat. 963.

[7] Settlement in the futures, options, and government securities markets occurs on the day after trade date ("T+1") using same-day funds. Settlement of most trades in corporate and municipal securities, on the other hand, takes place on the fifth business day after the trade date ("T+5") with money payments among financial intermediaries made in next-day funds (*i.e.*, payment by means of certified checks passing between the clearing corporation and its members). Thus, financial intermediaries have good funds on "T+6."

[8] See e.g., Remarks of Commissioner Mary L. Schapiro before the Securities Industry Association ("SIA") Regional Conference (March 20, 1991), stating that "[p]rior to 1968, equity transactions in the U.S. were settled on the fourth day after the trade date ("T+4"), without causing undue harm to retail customers."

[9] Letter from Mary Ann Callahan, Vice President/Director of International Development, National Securities Clearing Corporation ("NSCC"), to Toshitsugu Shimizu, Assistant Manager, Tokyo Stock Exchange (June 30, 1987).

[10] Frank W. Curran, Address to Executives and Officers of Korea Securities Industry (March 28, 1974).

[11] See e.g., National Association of Securities Dealers, Inc. Uniform Practice Code ¶ 3512, section 12 and New York Stock Exchange Rule 64.

below, the Commission believes T+3 settlement should be mandated.

II. Basis and Purpose of the Rule

A. Regulatory Basis

The market break of 1987 highlighted the need for improvements in the nation's clearance and settlement system.[12] The performance of the clearance and settlement system was viewed by many as a threat to the stability of the market during this time. During and after the week of October 19, 1987, over 50 introducing brokers failed, many as a result of the inability of customers to meet margin calls and pay settlement obligations.[13] The failure to meet margin calls and/or transaction settlement obligations exposed some clearing firms to financial loss, thus threatening the entire financial system.[14]

Shortly after the 1987 market break, then Treasury Secretary Nicholas F. Brady referred to the clearance and settlement system as the weakest link in the nation's financial system and noted that improving clearance and settlement would "help ensure that a securities market failure does not become a credit market failure."[15] Gerald Corrigan, President of the Federal Reserve Bank of New York ("FRBNY"), noted: "[T]he greatest threat to the stability of the financial system as a whole [during the 1987 market break] was the danger of a major default in one of these clearing and settlement systems."[16]

The connection between a crisis in the clearance and settlement system and the financial industry was highlighted by the bankruptcy in 1990 of Drexel Burnham Lambert Group, the holding company parent of Drexel Burnham Lambert, Inc. ("Drexel"), a large broker-dealer. As described more fully in the Commission's testimony before the Senate Banking Committee,[17] near gridlock developed in the mortgaged-backed securities market and in the corporate debt and equity markets where Drexel was an active participant. Drexel had significant positions in mortgage-backed securities that required physical delivery of certificates to settle and also in corporate equity and debt that could be liquidated by book-entry transfer. Lenders and counterparties, however, were reluctant to release both physical certificates and book-entry securities to Drexel. Those counterparties were concerned that the delivery of securities to Drexel against the promise of payment at the end of the day might result in the deliverer's inability to retrieve the securities if the deliverer did not receive payment because of an intervening event, such as the filing of a petition for bankruptcy by or against Drexel, or the assertion of a lien or set-off by one or more financial institutions handling those funds or securities.[18]

The events that surrounded the subsequent liquidation of Drexel's positions in mortgage-backed and corporate securities highlighted two concerns—first, the risk that counterparty credit concerns could lead to gridlock in securities markets, even where regulators assured markets that a major participant is solvent; second, that these risks are not limited to markets where transactions are subject to netting by clearing corporations. These events forced the conclusion that the clearance and settlement system deserved immediate attention.[19]

As noted by Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System ("Federal Reserve Board" or "Board"), "The importance of strong clearing and settlement systems cannot be overemphasized. This area was identified by the Brady Commission and others after the market break last year as a potential point of vulnerability in the U.S. financial system. The overloading of the * * * clearing systems last October induced breakdowns that dramatically increased uncertainty among investors and likely contributed to additional downward pressures on prices."[20]

In the Proposing Release, the Commission set forth three reasons why adoption of Rule 15c6–1 would be necessary or appropriate. First, at any given point in time, fewer unsettled trades would be subject to credit and market risk, and there would be less time between trade execution and settlement for the value of those trades to deteriorate. Second, the proposed Rule would reduce the liquidity risk among the derivative and cash markets and reduce financing costs by allowing investors that participate in both markets to obtain the proceeds of securities transactions sooner. Finally, the Commission noted that a shorter settlement timeframe could encourage greater efficiency in clearing agency and broker-dealer operations.

Commentators that support T+3 settlement believe that the new Rule would facilitate these goals. Commentators stated specifically that the Rule would significantly reduce settlement risk. The Federal Reserve Board stated that settlement systems for securities and other financial

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[12] Commentators opposed to Rule 15c6–1 predominantly expressed concern about the cost implications of the rule, which are addressed in section II.B of this release. Fewer than ten commentators indicated that the rule was unnecessary or that Commission goals could be achieved by other means. See discussion, *infra*, at pp. 19–21.

[13] Division of Market Regulation, The October 1987 Market Break ("Market Break Report") 10–20 (February 1988).

[14] *Id.* at 10–16. Clearing firms stand between the clearing corporation, on the one side, and market professionals, introducing firms, and public investors on the other. Many customers, institutional and otherwise, open their accounts with an introducing broker. Introducing brokers use executing brokers (which are usually members of a clearing agency) to execute and clear customer trades. If the customer fails to meet margin calls made by the executing firm or fails to pay on T+5 the settlement amount for securities it has purchased, the introducing or executing broker must pay that debt. If the amount exceeds the introducing broker's ability to pay and it fails, the clearing member executing firm will be responsible for the customer's debt. If the clearing member fails to meet its obligation to the clearing agency, the clearing agency will suspend and cease to act for that member. Clearing agencies ceased to act for three clearing members during the week of October 19, 1987. The Depository Trust Company ("DTC") and NSCC ceased to act for Metropolitan Securities ("Metropolitan"), American Investors Group, and H.B. Shaine and Co. ("Shaine"). The Options Clearing Corporation ("OCC") ceased to act for Shaine, and MBS Clearing Corporation ceased to act for Metropolitan. *Id.*

[15] The Market Reform Act of 1989: Joint Hearings on S. 648 before the Subcomm. on Securities and the Senate Comm. on Banking, Housing and Urban Affairs, 101st Cong., 1st Sess. 225 (Oct. 26, 1989) (statement of Nicholas F. Brady, Secretary of the Treasury).

[16] Luncheon Address: Perspectives on Payment System Risk Reduction by E. Gerald Corrigan, President, FRBNY, reprinted in The U.S. Payment System: Efficiency, Risk and the Role of the Federal Reserve 129–30 (1990).

[17] The Issues Surrounding the Collapse of Drexel Burnham Lambert, Hearings before the United States Congress, Senate Committee on Banking, Housing, and Urban Affairs, 101st Cong., 2d Sess. 5 (1990) (testimony of Richard C. Breeden, Chairman, Commission) ("Drexel testimony").

[18] Ordinarily, lenders who accept securities in DTC's pledge program release those securities to the debtor's control without requiring full payment of outstanding loans, provided payment (including refunding through new pledge loans) occurs before the end of the day. This permits the debtor (typically, a broker-dealer) to deliver the pledged securities against payment to another participant or to NSCC during both of DTC's delivery processing cycles. Because settlement of transactions typically starts with delivery of securities, with the deliverer assuming the risk that payment will be made at or before the end of the day, release of pledged collateral can help maximize the number of trades that settle while shifting some credit risk to the deliverer's bank.

When Drexel experienced financial difficulties, however, its lenders and counterparties took steps to reduce their credit risk exposure to Drexel. In particular, because of concern about what might happen during the day or the quality of collateral that might be posted at the end of the day, lenders insisted upon repayment before release of securities, which meant Drexel could not settle open transactions even as it was winding down its portfolio. See Drexel testimony at 47.

[19] Initiatives in clearance and settlement reform undertaken since 1987 are outlined in Appendix 2.

[20] See Remarks by Alan Greenspan before the Annual Convention of the SIA (November 30, 1988).

instruments are a potential source of systemic disturbance to financial markets and to the economy.[21] In the Board's view, the key features of an ideal settlement system are the settlement of trades immediately after execution and payment in same-day funds, and compressing the settlement timeframe for corporate securities to three days from five days is an important and achievable step toward this ideal. Similarly, the FRBNY noted that shortening the settlement cycle decreases the opportunity for adverse developments to occur between the execution and settlement of each trade, thus lowering the credit and market risks that can arise when settling individual transactions. A move to T+3 reduces the total volume and value of outstanding obligations in the settlement pipeline at any point in time; the FRBNY believes this will better insulate the financial sector from the potential systemic consequences of serious market disruptions.[22]

Commentators stated also that the Rule will facilitate risk reduction by achieving closer conformity between the corporate securities markets and the markets for other securities that currently settle in fewer than five days (*i.e.*, government securities and derivative securities), and will encourage market participants to achieve greater efficiencies in clearing agency and broker-dealer operations. For example, the Government Securities Clearing Corporation ("GSCC") stated that settlement risk can arise from dissimilarities in settlement cycles among markets as well as the length of a specific market's settlement cycles, which can lead to artificial delays in moving securities and make it more difficult to establish risk reduction mechanisms such as common netting and cross margining arrangements.[23] The American Bankers Association echoed these views, noting that by reducing the lag between the settlement of derivatives and government securities and the settlement of corporate securities, investors that participate in both markets will be able to reduce their financing costs and obtain the proceeds of their securities transactions on a more timely basis.[24]

The Commission believes that the benefits of three-day settlement will inure to all market participants. As noted in the Proposing Release, the value of securities positions can change suddenly causing a market participant to default on unsettled positions. Because the markets are interwoven through common members, default at one clearing corporation or by a major market participant or end-user[25] could trigger additional failures, resulting in risk to the national clearance and settlement system ("system").[26] This risk is even more acute given the growth of the over-the-counter derivative product markets where dealers shift risk exposure among major market participants in international centers and end-users.[27] Finally, in a T+3 settlement environment, because the settlement date will be accelerated by two business days, a broker-dealer who executes a trade based on a customer's verbal agreement will be able to take action as much as two business days sooner than in a T+5 environment to mitigate losses in the event of the customer's cancellation.

B. Cost of Systems and Operational Changes

The Commission believes that the potential benefits from shortening the settlement cycle by two business days outweigh the costs associated with such a change. The benefits of a shorter settlement cycle include reduced credit, market, and systemic risk. Perhaps no single conclusion from the Bachmann Task Force ("Task Force") Report[28] is more significant than the equation "Time = Risk." A shorter settlement cycle not only reduces the number of outstanding trades, but significantly changes how market participants calculate credit and market risk.

Activity in the national clearance and settlement system measures in the tens of billions of dollars, with continuous-net-settlement ("CNS") processing at the National Securities Clearing Corporation ("NSCC") averaging over $22.5 billion in corporate equity and debt transactions a day. This activity creates considerable risk to clearing corporations, including credit risk, market risk on open contractual commitments, and systemic risk because clearing corporations interpose themselves between purchasers and sellers of securities. The Task Force found that the risk reduction to one clearing corporation, NSCC, from reducing the standard settlement cycle to T+3 in the event of the failure of an average large member could range from $6.5 million (or 58%) to $208 million (or 55%) in a worst case scenario.[29] Equally significant, if the temporary insolvency of eleven average large firms were to occur on a typical trading day, T+3 would reduce the risk to NSCC by $72 million (or 59%) to $2.3 billion (or 55%) in a worst-case situation.[30]

Notwithstanding these benefits, some commentators, generally small retail broker-dealers, thought that the costs involved in shortening the settlement cycle would outweigh the benefits. Although they were unable to quantify their estimated expenses with precision, these commentators noted problems with receipt of confirmation, payment by check, and possible financing costs resulting from the rule.[31] Commentators

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[21] Letter from William W. Wiles, Secretary to the Board, to Jonathan G. Katz, Secretary, Commission (September 1, 1993). See also Bank for International Settlements, Delivery Versus Payment in Securities Settlement Systems (September 1992).

[22] Letter from William J. McDonough, President, FRBNY, to Jonathan G. Katz, Secretary, Commission (August 27, 1993).

[23] Letter from Jeffrey F. Ingber, General Counsel and Secretary, GSCC, to Jonathan G. Katz, Secretary, Commission (June 30, 1993).

[24] Letter from Sarah A. Miller, Senior Government Relations Counsel, American Bankers Association, to Jonathan G. Katz (June 30, 1993).

[25] See Securities Exchange Act Release No. 32256 (May 14, 1993), 58 FR 27486 (concept release regarding changes to Commission's net capital treatment of derivative products); and the Group of Thirty, Derivatives: Practices and Principles (July 1993).

[26] Clearing corporations function as, among other things, post-trade processing facilities and guarantors of post-trade settlements. Upon reporting matched trade information to its members, the clearing corporation becomes the counterparty to every trade and guarantees payment and delivery. See Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 ("Full Registration Order"). To protect against the credit risk presented by unsettled positions, clearing corporations obtain contributions from their members to a pool of funds designed to provide a ready source of liquidity in case of a member default. See Securities Exchange Act Release Nos. 16900 (June 17, 1980), 45 FR 4192 (announcing the Division of Market Regulation's standards for the registration of clearing agencies); 20221 supra; and 30879 (July 1, 1992), 57 FR 30279 (order approving modifications to the CNS portions of NSCC, Midwest Clearing Corporation, and Securities Clearing Corporation of Philadelphia clearing fund formulas). Any sizable loss in liquidating the open commitments of a defaulting member, however, would be assessed pro rata against all clearing members. See e.g., NSCC Rule 4. See also, Market Break Report, Chapter 10.

[27] Task Force on Securities Settlement Report to the Governor of The Bank of England (June 1993).

[28] Bachmann Task Force, Report of the Bachmann Task Force on Clearance and Settlement in the U.S. Securities Markets ("Task Force Report") (May 1992).

[29] Task Force Report at 35.

[30] *Id.* at 36.

[31] Based on the information received from commentators upon staff requests for further data, the firms' estimated costs ranged from $0 to $5 million. Three firms stated that they expected to incur little or no cost. Other firms cited annual cost figures as follows: $12,000, $20,000, $55,000, $75–100,000, $87,000, $99,300, $1 million, $3.6 million, and $5 million.

Two clearing firms provided specific cost data. One clearing firm stated that it would have initial start-up costs of approximately one million dollars to make changes to its cash management and trade processing systems and procedures. Letter from George Minnig, Managing Director, Pershing Division of Donaldson, Lufkin and Jenrette

supporting the Rule, including exchanges, the ABA, the Securities Industry Association ("SIA"), and a significant number of broker-dealers representing a large majority of the retail customer base indicated that the risk reduction benefits of Rule 15c6–1 were important to the national clearance and settlement system, and they therefore supported the Rule.

The Commission is sensitive to the costs necessary for transition to a shorter settlement timeframe but on balance believes that the benefits to the financial system outweigh those costs. Moreover, the Commission believes Rule 15c6–1 creates an incentive for broker-dealers, particularly retail firms, to encourage timely customer payment and improve management of cash flows. With more than 19 months before the effective date of Rule 15c6–1, the Commission expects broker-dealers will have adequate notice to educate customers about the need for prompt payment and will have adequate time and incentive to implement changes to reduce the need for financing.

As discussed in more detail in the Final Regulatory Flexibility Analysis ("FRFA"), a potentially large expense for retail firms likely will be interest expenses, while a few firms projected a cost increase from hiring additional personnel.[32] Many of the cost estimates are based on assumptions of static circumstances. Firms generally projected costs, or claimed the move to T+3 settlement would be impossible for them, by assuming continued reliance upon the U.S. mail for delivery of confirmations and checks and no change in the behavior of customers who do not provide payment until receipt of confirmations; all without considering use of new practices and technologies.

The Commission believes that alternatives exist to speed processing funds payments. For example, broker-dealers could encourage clients to deposit funds or securities with the broker-dealer upon placing an order, or to send funds and securities that day. Existing technology allows firms to advise customers immediately after trade execution what the net cost is. Sixteen commentators indicated that many customers will not pay by check until they see the written confirmation which means that funds won't arrive at the firm until after a "round-trip" mailing.[33]

Alternatively, firms could establish facilities with local banks that would permit customers to authorize payments to firms using electronic funds transfer systems. One type of electronic funds transfer system is the Automated Clearing House ("ACH") system operated under the guidelines established by the National Automated Clearing House Association ("NACHA"),[34] which is now used by several retail service industries for periodic and occasional funds payments. A study done in 1990 by the U.S. Working Committee of the Group of Thirty indicated that the costs of ACH may be offset by a reduction of internal costs arising from the processing of checks and elimination of financing costs currently incurred for checks received after T+5 and could be absorbed by the initiating firm.[35] Several commentators noted that firms and customers may be uncomfortable using these systems for security, administrative, and other reasons.

Several broker-dealers have expressed reluctance to use ACH because of liability that may result from a customer exercising his sixty-day right of rescission in the current ACH system. In response to this concern, NACHA recently passed a rule that will, effective April 1994, require a receiving depository financial institution to obtain a signed affidavit from a consumer when the consumer claims that a transaction to his or her account is unauthorized or that an authorization had been revoked. NACHA is confident that this rule amendment will make the ACH network more attractive for retail security transactions.

Seven retail broker-dealers, including the three retail broker-dealers that believe the Rule is not necessary, suggested that the Commission adopt a daily mark-to-market instead of shortening the settlement cycle to three days. These commentators believe that a daily mark-to-market is the best way to reduce "real" systemic risk, *i.e.*, market risk, as opposed to time risk. The commentators suggested that the Commission propose a pass-through mark-to-market similar to the one NSCC imposes on open trades in its CNS system.[36]

The Commission believes the mark-to-market mechanism raises more concerns than it does solutions, inasmuch as it reduces, but does not eliminate, the potential risk of unsettled trades. Indeed, the Bachmann Task Force concluded that shortening the settlement cycle significantly reduced market risk to clearing agencies when a major participant defaults compared to a system that only required pass-through of daily marks-to-the-market. Moreover, it would appear to require firms to have the capacity to collect funds from customers to meet some or all mark-to-market obligations, particularly in volatile markets where the firm might not have enough working capital to meet the mark-to-market payment obligation. In addition, because the firm would not have any collateral to post, financing could be difficult to obtain except on an unsecured basis. In this regard, shortening the settlement cycle should be more manageable for firms because the firm can post the customer's securities as collateral for financing pending settlement with the customer.

As stated above, the Commission believes that greater risk reduction can be achieved through reducing the settlement timeframe. While a risk reduction measure such as a mark-to-market may be more readily acceptable to the retail segment of the industry, the Commission believes that retail broker-dealers and their customers can achieve T+3 settlement given the extended transition period for implementation.

C. Building Blocks

Several commentators expressed concern that certain "building blocks"

Securities Corporation ("Pershing"), to Jonathan G. Katz, Secretary, Commission (June 21, 1993). The other responding clearing firm stated that its informal analysis indicated that it would have annual costs, mainly based on financing late payments, of approximately five million dollars. Letter from Jeffrey R. Larsen, Senior Legal Counsel, Fidelity Investments Institutional Services Company, Inc. ("Fidelity"), to Jonathan G. Katz, Secretary, Commission (June 24, 1993).

[32] The Commission notes that the cost data received in general were very rough estimates, not based on detailed studies, and the Commission expects that actual costs will vary among firms depending on many factors, including the nature and location of the firm's clientele and the level of technology employed by the firm.

[33] In addition, three commentators indicated that the customer needed to review the confirmation to eliminate unauthorized transactions. Commentators raise valid concerns about unauthorized transactions and the utility of the written confirmation in detecting unauthorized transactions. Nevertheless, unauthorized transactions generally represent a small percentage of all trades executed each day, and the key to avoiding those transactions is prompt communication of key trade terms to the customer, which could be accomplished orally as well as in writing. Even more to the point, firms should take corrective action whenever they discover unauthorized transactions in customer accounts without regard to when the customer receives a confirmation.

[34] ACH is a domestic electronic payment system operated under the direction of NACHA and is utilized by over 22,000 banks, thrifts, and other depository financial institutions on behalf of corporations and individuals.

[35] U.S. Working Committee, Implementing the Group of Thirty Recommendations in the United States (November 1990).

[36] See *e.g.*, letter from Robert C. Disset, Director, Operations Division, A.G. Edwards & Sons, Inc. ("A.G. Edwards"), to Jonathan G. Katz, Secretary, Commission (June 1, 1993).

must be in place before the Commission mandated T+3 settlement. The building blocks most frequently cited were an interactive institutional delivery system at securities depositories (to allow institutional broker-dealers, money managers, and custodians to confirm trades, correct errors, and instruct release of funds and securities on an intraday basis), making as many securities as possible eligible for processing in those depositories, and improving retail customer payment systems to broker-dealers. Commentators also identified several regulatory initiatives they believe are predicates to T+3 settlement, including changes in the Commission's confirmation rule (Rule 10b–10), broker-dealer financial responsibility rules (Rules 15c3–1 and 15c3–3), and the Federal Reserve Board broker-dealer credit rules (Regulation T). These concerns are described briefly below and in greater detail in appendix 3.

The Commission believes that none of these building blocks justify delaying the Commission's adoption of Rule 15c6–1. Efforts to implement several of the building blocks commentators identified are underway, and the Commission reasonably anticipates implementation will be completed before June 1, 1995, the effective date of Rule 15c6–1. Indeed, if the Commission were to defer action on this Rule, those efforts might well languish. Moreover, certain changes, particularly those that involve regulation, are best considered after a date for shortening the settlement cycle has been established, as the Commission is doing today. Of course, the Commission will monitor efforts to address these and other concerns.

1. SRO and Industry Initiatives

To facilitate three-day settlement, The Depository Trust Company ("DTC") is developing an Interactive Institutional Delivery ("ID") system[37] that would permit real-time confirmation/affirmation of institutional trades. In March 1993, DTC distributed to its participants and other ID system users a design paper containing detailed descriptions of the various features of the interactive ID system as well as a tentative implementation schedule for each. DTC proposes to introduce certain features in late 1993, with the interactive receipt of trade input and affirmations, and the interactive distribution of confirmations and Eligible/Ineligible Trade Reports, scheduled for the first half of 1994.

Institutional trades comprise a large part of the U.S. securities market. As of the third quarter of 1992, institutions held 29% of the total outstanding corporate equity securities in the U.S., totaling over $1.4 trillion.[38] During 1992, institutions accounted for two-thirds, and perhaps more, of daily share volume on the NYSE.[39]

DTC's ID system is the workhorse for processing institutional trades in the national ID system, which links broker-dealers, investment managers, and custodian banks through a network of electronic communications systems to speed confirmations, settlement instructions, and corrections among the agents for institutional investors. Currently, 81% of institutional transactions are affirmed by T+1, and 94% are affirmed by T+2. An interactive ID system will allow the processes of trade data input, confirmation output, affirmation, and issuance of settlement instructions to be completed in a matter of minutes. Consequently, with an interactive ID system in place, the number of institutional trades that are affirmed by T+2 could approach 100%. DTC has filed with the Commission a proposed rule change under section 19(b)(1) of the 1934 Act outlining its proposed enhancements to the ID system.[40] Commission staff will review the proposal in light of the requirement under section 17A of the 1934 Act that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and the safeguarding of funds and securities.

Some commentators believe that T+3 settlement would be difficult to achieve without making all securities depository eligible. Currently, only a small fraction of securities listed on an exchange, the National Association of Securities Dealers Automated Quotation System ("NASDAQ"), or the over-the-counter ("OTC") Bulletin Board are not eligible for deposit at a registered clearing agency. Accordingly, the Commission does not believe this is a serious impediment to T+3 settlement, although the percentage of ineligible securities must remain minuscule. The Legal and Regulatory Subgroup of the U.S. Working Committee of the Group of Thirty ("Legal and Regulatory Subgroup") is drafting a uniform rule intended to incorporate a depository eligibility requirement into a listing standard for each registered national securities exchange and into the eligibility requirements of NASDAQ. The Commission expects the exchanges and the National Association of Securities Dealers ("NASD") to submit proposed rule changes to the Commission under section 19(b)(1) of the 1934 Act in the near future. Although the rules, if approved, would not reach settlement of transactions in securities that are not listed on a national exchange or NASDAQ, the Commission believes preliminarily that this effort could be an important step towards improving the efficiency of the national clearance and settlement system, and indeed towards facilitating T+3 settlement.

The Commission did not solicit comment on the desirability of settling securities transactions in same-day funds. However, six commentators stated that additional risk reduction could be gained by converting to a same-day funds payment system. DTC and NSCC recently distributed a memorandum outlining their plans and timetable for converting to same-day funds settlement and detailing how DTC and NSCC believe many aspects of the same-day funds settlement system will function. DTC and NSCC expect to implement the proposal by late 1994 or early 1995. The Commission supports the efforts of the SROs and will continue to work with the SROs towards early implementation of the initiatives.

2. Regulatory Initiatives

Some commentators suggested that implementation of a T+3 settlement period will require amendments to the Commission's confirmation rule, Rule 10b–10 adopted under the 1934 Act.[41] That rule, however, does not require the confirmation to be received prior to settlement, and therefore the current practice of sending the confirmation the day after trade date will satisfy Rule 10b–10 in a T+3 settlement cycle. Implementation of T+3, however, may alter the confirmation's utility as a customer invoice because confirmation delivery and transfer of customer funds and securities may not be possible within the three-day settlement period.

[37] In the ID system, brokers notify the depository of trades made by an investment manager on behalf of an institutional client. The investment manager and the client's custodian banks are notified of the trade and asked to affirm that the information is correct. Trades affirmed by T+3 settle automatically by book-entry at the depository on T+5.

The majority of settlements between broker-dealers and their institutional customers are processed through the National Institutional Delivery System ("national ID system" or "NIDS") which includes links with three securities depositories (Midwest Securities Trust Company, Philadelphia Depository Trust Company, and DTC) and their member broker-dealers. See, e.g., Securities Exchange Act Release No. 25120 (November 13, 1987), 52 FR 44506.

[38] NYSE, Fact Book for the Year 1992 (April 1993) at 28.

[39] For the first six months of 1993, an average of 264 million shares were traded daily on the NYSE.

[40] See File No. SR–DTC–93–07.

[41] 17 CFR 240.10b–10.

The Commission therefore encourages broker-dealers to consider changes to their procedures for delivery of confirmations, as necessary, to accommodate three-day settlement. Such changes might include dispatch on trade date from offices within one-day delivery range of the customer or transmission of confirmations by facsimile or other electronic means.

Commentators also asked the Commission to review Rules 15c3–1 and 15c3–3 to determine whether amendments will be required to conform those rules to a shorter settlement timeframe. Rule 15c3–1[42] establishes the net capital requirements for brokers and dealers. To determine net capital, Rule 15c3–1 requires a broker or a dealer to deduct from net worth, as computed in accordance with generally accepted accounting principles, assets not readily convertible into cash, including most unsecured receivables. A broker or a dealer also must deduct certain specific percentages from the securities and commodity positions that it carries in its proprietary account. The rule also requires that a failed to deliver contract that has been outstanding for a certain specified period of time be treated as a proprietary position of the broker-dealer and subject to a percentage deduction. This time period is dependent upon the time from the settlement date.[43]

Rule 15c3–3[44] requires brokers and dealers to maintain possession or control of all customer fully paid and excess margin securities. As with Rule 15c3–1, some of the requirements imposed on brokers and dealers by Rule 15c3–3 are dependent upon the time from settlement. One commentator referred specifically to Rule 15c3–3(m).[45] Rule 15c3–3(m) requires that a broker or dealer that has executed a sell order for a customer, and has not obtained possession of such securities from the customer within ten business days after the settlement date, must immediately close the transaction with the customer by purchasing securities of like kind and quantity. The Commission notes that Rule 15c6–1 merely changes the number of days following the trade date that settlement will occur. Therefore, being keyed to settlement date, Rules 15c3–1 and 15c3–3, including Rule 15c3–3(m), are consistent with Rule 15c6–1.

Commentators urged the Commission, in conjunction with other regulators, to review Regulation T ("Reg T")[46] to determine how, if at all, Reg T should be modified. Currently, Reg T does not require that any action be taken unless a customer fails to pay for securities within seven business days of the trade date. The commentators were concerned that Reg T as currently drafted could leave customers and broker-dealers with the impression that payment from the customer is not due in a three-day settlement environment until the expiration of the seven-day period specified by Reg T. The Commission understands that the Federal Reserve Board staff has undertaken a general review of Reg T, and the Commission has already asked the Federal Reserve Board staff informally to consider whether conforming amendments to Reg T would be necessary in a three-day settlement environment.

In the Proposing Release, the Commission solicited comment on whether the Commission should require disclosure of whether the securities being offered in an initial public offering ("IPO") are depository eligible, and if not, why not. Five commentators supported the adoption of a disclosure requirement for IPOs as described above. Three commentators stated that a disclosure requirement was not necessary. None of the commentators, however, articulated the basis for their support. Nevertheless, the Commission believes that disclosure regarding whether or not an IPO will be eligible for deposit at a securities depository may be appropriate. Accordingly, the Commission is directing the staff to pursue requiring disclosure in those instances when neither the issuer nor the underwriter intends to make the securities depository eligible.

D. Implementation Date

The Commission believes that the benefits of a shorter settlement cycle exceed the costs associated with implementing that change, including the cost to firms to finance purchases by retail customers that traditionally rely on the U.S. mail service to deliver checks. The potential reduction in systemic risk coupled with the opportunity to provide smoother transmission of value from markets using a five-day settlement convention to markets using earlier settlement timeframes (such as the next-day settling government securities and derivative product markets) are essential to maintaining investor confidence and the premier competitive position of U.S. securities markets. As one commentator stated, "The speed with which market conditions can change today and the risk inherent in the five day settlement timeframe, warrant consideration of an earlier implementation date. We believe that the move to a three business day timeframe for settlements could and should occur earlier than 1996."[47] Although the transition to T+3 will entail costs and changes, the Commission believes the U.S. securities industry is more than equal to the challenge given current technology and financing sources.

The Commission is adopting Rule 15c6–1 with an effective date of June 1, 1995. The Commission believes that changes in industry practice and custom such as an earlier settlement timeframe must involve marketplaces, marketplace regulators, and participants in those markets acting cooperatively. In connection with this, the Commission recognizes that some broker-dealers need to make operational and procedural changes to comply with a three-day settlement period and that certain building blocks must be in place prior to compressing the settlement cycle. In view of the Commission's desire to minimize the potential cost of complying with the Rule and the need for more work at the SRO and regulatory levels, the Commission is adopting an extended transition period to allow affected parties to implement necessary changes gradually.

Forty of the commentators that support adoption of proposed Rule 15c6–1 suggested that the proposal be implemented on January 1, 1996, or earlier. The Cashiers' Association of Wall Street, Inc. ("Cashiers' Association"), the Public Securities Association ("PSA"), and Data Management Division of Wall Street ("Data Management Division") agreed that the proposal should be implemented in 1996 but believed implementing the proposal in January 1996 would place an excessive strain on broker-dealers' production systems.[48] These commentators suggested implementing the proposed Rule late in the first quarter or second quarter of 1996 to allow broker-dealers more time to complete year-end processing.

[42] 17 CFR 240.15c3–1.

[43] See Rule 15c3–1(c)(2)(ix).

[44] 17 CFR 240.15c3–3.

[45] 17 CFR 240.15c3–3(m).

[46] Reg T, 12 CFR part 220, *et. seq.*, imposes, among other things, initial margin requirements and payment rules on securities transactions. See 15 U.S.C. § 78a *et seq.*, part 220.

[47] Letter from Albert Peterson, Executive Vice President, State Street Bank and Trust Company, to Jonathan G. Katz, Secretary, Commission (June 2, 1993).

[48] See letters from Paul Farace, President, Cashiers Association, to Jonathan G. Katz, Secretary, Commission (June 14, 1993); and letter from Salvatore N. Cucco, President, Data Management Division, to Jonathan G. Katz, Secretary, Commission (June 16, 1993).

Eight commentators suggested specifically that the proposed Rule be deferred until the necessary building blocks are in place or for an indefinite period, three retail broker-dealers stated that the Rule was not necessary, and one broker-dealer specifically opposed implementation earlier than January 1, 1996.

The Commission is adopting Rule 15c6–1 with an effective date of June 1, 1995, rather than January 1, 1996, for two principal reasons. First, the Commission believes it is better not to change the settlement cycle timeframe at the same time market participants, custodians, and investors might be distracted by other matters, such as year-end tax and trading concerns. Second, June 1, 1995, is reasonably close so as to draw the immediate attention of those who must take steps to initiate compliance, and is reasonably far-off to permit completion of those preparatory steps. An effective date of January 1, 1996 or June 1, 1996, would continue to expose securities markets to risks that can and should be reduced. Accordingly, the Commission believes a 19 month delay in the effective date of Rule 15c6–1 is appropriate. Nevertheless, the Commission will monitor industry efforts toward implementation and will take all appropriate steps in that regard.

As stated above, the Commission encourages broker-dealers who wish to limit financing costs or the use of overnight mail to explore the available alternatives to payment by check through the U.S. mail. In addition, the Commission believes that customer education regarding those alternatives is paramount to successful implementation of T+3 settlement. For example, broker-dealers can require clients to deposit funds or securities upon placing an order, educate customers on the necessity of providing funds earlier, and emphasize the usefulness of in-house brokerage accounts. Alternatively, broker-dealers could encourage customers to use an electronic payment system, such as the ACH system, to pay for transactions.

The Commission recognizes that it must play its part in facilitating a smooth transition to shorter securities settlements. Adoption of Rule 15c6–1 may entail expense and may be unpopular among those who would prefer to see no change in current practice or would prefer to see next-day and even same-day settlement prevail. Reducing systemic risk is important to the safety and vitality of securities markets, and the Commission's efforts and resources remain committed to those goals. The Commission invites a continuing dialogue and partnership with all interested parties.

III. Scope of Rule 15c6–1

A. Application of Rule 15c6–1 to Municipal Securities, Limited Partnership Interests, New Issues, Mutual Funds, and Mortgage-Backed Securities

The Commission received approximately 66 comment letters addressing the scope of Rule 15c6–1. Generally, those commentators were supportive of the Commission's efforts to include a broad range of products within a shortened settlement cycle. The Commission has considered these comments, and for the reasons discussed below, the Commission believes that Rule 15c6–1 appropriately applies to securities issued by mutual funds, private-label mortgage-backed securities, and limited partnership interests that are listed on an exchange. The Rule does not apply to municipal securities, and the Commission has determined that, in addition, unlisted limited partnership interests and new issues should be exempt from the Rule for the reasons discussed below. Finally, the Rule has been revised to provide that the Commission may, by order, exempt additional securities from the scope of the Rule.

1. New Issues

Several commentators voiced concerns that new issues of securities[49] could not be settled by T+3 due to the need to deliver a prospectus prior to settlement.[50] Specifically, commentators have indicated that because the prospectus cannot be printed prior to the trade date (the date on which the securities are priced), the prospectus printing and delivery process cannot be completed within a T+3 timeframe. The problems described by commentators would seem to be specific to firm commitment offerings where the underwriter must make payment with its own funds to the issuer on a specified date, whether or not its customers have purchased and paid for the securities.[51]

To address this problem, the Commission is modifying the Rule to provide a limited exemption from T+3 for the sale of securities for cash pursuant to firm commitment offerings.[52] The exemption is limited to sales to an underwriter by the issuer and initial sales by members of the underwriting syndicate and selling group. Any secondary resale of such securities must be settled within T+3.

The Commission recognizes that the comment process may not have identified all situations or types of trades where settlement on T+3 would be problematic. Accordingly, the Rule has been revised to authorize the Commission to exempt, by order, additional types of trades from the scope of Rule 15c6–1.[53] This revision and the exemption for firm commitment offerings should assure that the Rule will not interfere unduly with the settlement of securities whose characteristics make it difficult to operate within the framework of Rule 15c6–1.

2. Municipal Securities

In proposing Rule 15c6–1, the Commission invited commentators to address the merits of including municipal securities within the scope of the Rule. Due to differences between the corporate and municipal securities markets and the unique role the MSRB has in overseeing the municipal securities market, and based in part on comments received, the Commission has determined not to include municipal securities within the scope of Rule 15c6–1. The Commission makes this determination, however, with the expectation that the MSRB will take the lead in implementing three-day settlement of municipal securities by June 1, 1995, the implementation date of the new Rule.

Over fifty commentators favored including municipal securities within the scope of the Rule. Those commentators believe that maintaining separate settlement cycles for corporate and municipal securities is unnecessary and would impose significant cost and operational difficulties on industry participants.

Several other commentators favor excluding municipal securities from the scope of Rule 15c6–1, citing the many special features of the municipal

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[49] A new issue of securities includes both IPOs and offerings of additional debt or equity issues by reporting companies.

[50] See section 5 of the Securities Act of 1933 ("1933 Act") (15 U.S.C. § 77e).

[51] In a firm commitment offering, the underwriter purchases the securities from the issuer, generally for a fixed price, and then re-sells the securities to the public, thereby assuming the risk of market fluctuations in the price of securities.

[52] The exemption will apply only to offerings when cash is the sole form of consideration given in exchange for the securities. This requirement is intended to limit the exemption to the conventional firm commitment public offerings which are associated with the problems raised by the commentators rather than including transactions such as issuer exchange offers or business combinations.

[53] Concurrent with the adoption of the Rule, the Commission is delegating to the Director of the Division of Market Regulation authority to exempt such additional types of trades.

securities markets. Those features include a lower confirmation/affirmation percentage of transactions in municipal securities than corporate securities, lack of CUSIP numbers in many municipal securities,[54] non-depository eligibility of many municipal issues, and the greater reliance on confirmations by purchasing investors.

The Commission believes that the benefits of reduced systemic, market, and credit risk justify reducing the settlement timeframe for municipal securities from five to three business days consistent with Rule 15c6–1. The Commission recognizes, however, that the differences between the corporate and municipal securities markets may justify a different approach to implementing T+3 settlement for municipal securities than corporate securities. For example, while publicly-traded corporate debt issuances number in the thousands, there are over one million municipal securities "maturities," each of which is a separate security for purposes of trade clearance and settlement and not all of which are depository eligible. In addition, approximately 80,000 entities issue municipal securities, which are not subject to the provisions of the Securities Act of 1933 ("1933 Act") and are exempted from many provisions of the 1934 Act.

Despite these differences, significant progress has been made towards more efficient, automated clearance and settlement of municipal securities.[55] First, the Commission understands that the system changes at clearing agencies necessary for T+3 settlement of municipal securities should be functional by July 1, 1994. Second, as a result of recent changes to MSRB rules, most, if not all municipal securities dealers and institutional investors have access (directly or through correspondents) to clearing agencies for automated clearance, confirmation, and settlement of their municipal securities trades. Third, only a fraction of newly-issued municipal securities are not routinely made eligible for deposit at securities depositories, and efforts are underway to address the remaining newly-issued securities. This progress has been the result of cooperative efforts by the Commission, the MSRB, clearing agencies, and their members.

Although commentators have raised concerns about the differences between municipal and other debt securities, the Commission believes that these differences can be overcome. For example, it may be appropriate to consider exempting certain types of municipal securities trades for a certain amount of time. Similarly, it might be appropriate to explore alternatives to the confirmation as the means of identifying securities that have been sold and as a risk disclosure document. It might also be appropriate to consider exemptions for trades in connection with firm commitment underwritings and for trades in securities for which CUSIP numbers are not required.

The Commission also understands commentator concern about potential costs to municipal securities dealers, such as financing retail customer purchase transactions pending receipt of payment from customers. With sufficient notice, the Commission believes that the municipal securities industry can identify and address these costs in ways similar to other broker-dealers.

In summary, the Commission is confident that municipal securities dealers and market participants, under the guidance of the MSRB, can accomplish the goal of shortening the settlement timeframe by two business days and that regular-way settlement for municipal securities can be subject to the same timetable as other securities. Accordingly, the Commission is requesting a report from the MSRB within six months outlining a time schedule in which the MSRB intends to implement T+3 in the municipal securities market.

3. Limited Partnership Interests

The Commission invited comment as to whether limited partnership interests should be included in the scope of Rule 15c6–1. Eleven commentators supported inclusion of limited partnership interests, citing the difficulty caused by different settlement dates for different types of securities. Eight commentators opposed the inclusion of limited partnership interests.

Many commentators distinguished between limited partnership interests that are listed on an exchange or on NASDAQ ("listed limited partnerships") and those that are not listed ("unlisted limited partnerships"). Six commentators stated that listed limited partnerships should be included in the scope of the Rule, while no commentator specifically stated that listed limited partnerships should be excluded from the scope of the Rule. Six commentators stated that unlisted limited partnerships should be excluded from the scope of the Rule, while no commentator specifically stated that unlisted limited partnerships should be included in the scope of the Rule.

Accordingly, the Commission is modifying the Rule to distinguish between trades involving listed versus unlisted limited partnership interests, including listed limited partnership interests and excluding unlisted limited partnership interests. First, the majority of commentators appear to support the inclusion of listed limited partnerships. Second, as exchange or NASDAQ traded securities, these interests currently settle in a five-day timeframe and exclusion of listed limited partnerships from Rule 15c6–1 would unnecessarily contribute to the bifurcation of the settlement cycle in these markets. Under Rule 15c6–1, therefore, listed limited partnerships will be required to settle by T+3.

Many commentators expressed concern, however, about the ability to settle unlisted limited partnerships by T+3, indicating that extended time periods are required to settle trades in these instruments. In order to settle, transfer documentation must be obtained in order to determine whether the transfer of ownership is permitted on the books and records of the issuer.[56] In addition, several commentators noted that there is not an active secondary market in unlisted limited partnership interests. Therefore, the Commission has determined to exempt unlisted limited partnership interests from the Rule.

[54] CUSIP is an acronym for the Committee on Uniform Securities Identification Procedures. Although most outstanding municipal securities have CUSIP numbers, there probably are several thousand maturities that do not.

[55] For example, the Commission recently approved a rule proposed by the MSRB requiring the use of automated clearance and settlement systems on most Delivery Versus Payment and Receipt Versus Payment customer transactions. Securities Exchange Act Release No. 32460 (July 22, 1993), 58 FR 39260. In addition, the MSRB has filed with the Commission a proposed rule change that will require use of automated clearance and settlement systems on most interdealer transactions. Securities Exchange Act Release No. 32262 (May 4, 1993), 58 FR 27757. That proposed rule change was filed in concert with NSCC's recently implemented comparison system which accelerates the comparison cycle for municipal securities. Securities Exchange Act Release No. 32747 (August 13, 1993), 58 FR 44530. The Commission also approved an MSRB proposal requiring most interdealer transactions in municipal securities that are eligible for book-entry settlement in a registered securities depository to be settled by book-entry through the facilities of that depository or in an interface with another registered securities depository.

[56] Required paperwork varies among different issuers, and the processing requirements may take weeks. According to the comment letter from the Chicago Partnership Board, some issuers require that blank paperwork be ordered after a trade is agreed to, and these same issuers often take weeks to deliver the paperwork once ordered. Letter from James Frith, Jr., President, Chicago Partnership Board, to Jonathan G. Katz, Secretary, Commission (June 4, 1993).

4. Securities Issued by Mutual Funds

As proposed, Rule 15c6–1 would include securities issued by investment companies.[57] The Commission noted that mutual funds often permit customers to purchase shares by telephone and requested comment on whether a T+3 settlement timeframe would make it necessary for mutual funds and broker-dealers to implement operational changes to confirm the sale to the investor, to receive the proceeds, and to settle the transaction.[58] Twenty-five commentators believed the proposed three-day settlement should be applied to securities issued by mutual funds. These commentators stated that the exclusion or delayed implementation of a shortened settlement cycle for mutual funds would complicate rather than simplify the transition to T+3. Seven commentators believed the Rule should provide an exemption for securities issued by mutual funds.

The Commission has determined that Rule 15c6–1 should apply to broker-dealer contracts for the purchase and sale of securities issued by investment companies, including mutual funds shares. A broker-dealer selling securities issued by a closed-end fund or unit investment trust could avail itself of the exemption for new issues in a firm commitment underwriting under Rule 15c6–1(b). Thus, the new issue exemption would cover underwritings of closed-end funds and unit investment trusts but not open-end funds.

The Commission believes it is appropriate to include mutual fund transactions because mutual fund shares represent a significant and growing percentage of a broker-dealer's transactions. Even though some mutual fund shares may represent diversified portfolios, contracts for the purchase and sale of these securities pose many of the same systemic, market, and credit risk concerns as other securities subject to Rule 15c6–1, and in the event of a broker-dealer insolvency, these contracts will also need to be resolved. In addition, many, if not most, mutual fund purchases and redemptions are now processed through the centralized "FUND SERV" system operated by NSCC.[59] Although NSCC does not formally guarantee performance on contracts cleared in the "FUND SERV" service, its central role, coupled with potential changes to payment settlement timeframes, suggests that reducing the "FUND SERV" settlement timeframe to three business days would significantly reduce risk to the national clearance and settlement system.

Several commentators expressed concern that shortening the timeframe for redemptions by two business days would create liquidity concerns in the event of unexpectedly high volumes of redemptions. The commentators noted that although mutual funds generally meet redemption requests from cash on hand, a particularly large volume of redemption requests would require mutual funds to sell securities from their portfolios. The commentators maintain that application of the T+3 settlement requirement under these circumstances could be problematic, particularly for mutual funds with portfolios heavily invested in securities not subject to T+3 settlement.

The Commission shares commentator concern about the potential for redemptions to create a liquidity crisis, but believes several factors mitigate these concerns. First, the Commission expects that mutual fund managers will account for the risk of a liquidity crisis in planning their portfolio investments. Second, the Commission is delaying the effective date of Rule 15c6–1 by more than nineteen months, which should permit fund managers sufficient time to identify potential exposures and take appropriate remedial steps. Third, the primary components of mutual fund portfolio assets should, by June 1, 1995, settle within three business days of the date of the trade (including U.S. government, corporate equity and debt, and municipal securities). Indeed, as discussed above, the Commission expects the MSRB will act to implement T+3 settlement for municipal securities by June 1, 1995, consistent with Rule 15c6–1. Finally, the Commission will retain authority to exempt, by order, specific trades or classes of trades from the requirement of Rule 15c6–1.

Several commentators raised concerns about whether application of Rule 15c6–1 would be consistent with obligations and requirements under section 22(e)[60] of the Investment Company Act of 1940 ("1940 Act") and section 11(d)(1) of the 1934 Act.[61] Section 22(e) generally provides that investment companies may not suspend the right of redemption, or postpone payment or satisfaction upon redemption of any redeemable security for more than seven days after tender of the security being redeemed, except under certain circumstances.

The Commission believes that the primary purpose of the seven day period prescribed in section 22(e) is to set forth an outside limit on the amount of time that an investment company may take to satisfy a redeeming shareholder's request for payment. Further, the Commission believes that the underlying rationale of section 22(e) is to ensure that "redeemable" securities are, in fact, redeemable, and that that rationale does not conflict with the purposes of Rule 15c6–1.[62] Moreover, industry practice regarding the settlement timeframe for securities transactions, including transactions in mutual funds, has fluctuated since the enactment of the 1940 Act. Accordingly, while the commentators may contend that the seven-day period provided by section 22(e) is analogous to the current industry convention of effecting settlement on the fifth business day following trade date, the fact that those periods are the same today is merely fortuitous.

Section 11(d)(1) generally prohibits a person that acts as both a broker and a dealer from extending credit to a customer to allow that customer to purchase securities issued by a mutual fund. The Commission preliminarily believes these requirements should not be an obstacle to reducing the settlement timeframe for trades in mutual fund shares. At the time these requirements were enacted, the settlement timeframe was T+2. Commentators have discussed with the Commission staff the potential

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[57] The Investment Company Act of 1940 ("1940 Act"), 15 U.S.C. 80a–1, describes several forms of investment companies. Among these are "open-end" and "closed-end" management companies and unit investment trusts. Sections 4, 5, 1940 Act; 15 U.S.C. 80a–4, 80a–5. Open-end companies, commonly known as mutual funds, offer redeemable securities. Unit investment trusts also issue redeemable securities, although their sponsors generally create a secondary market for their shares. Closed-end companies resemble corporations in that at any time they have a fixed number of shares outstanding that are traded on an exchange or in the over-the-counter market at prices which reflect supply and demand.

[58] See Proposing Release, at note 33.

[59] The Mutual Fund Settlement, Entry, and Registration Service ("Fund/Serv") was implemented in 1986 to enable NSCC members to submit mutual fund purchase and redemption orders to NSCC, and to enable NSCC in turn to transmit the orders to its members acting on behalf of eligible mutual funds.

[60] 15 U.S.C. 80a–22(e).

[61] 15 U.S.C. 78k(d)(1).

[62] The legislative history of section 22(e), although sparse, indicates the significant importance placed on an open-end investment company shareholder's right to redeem shares, "and receive at once, or within a very short time, the approximate cash asset value of such shares as of the time of the tender." See Hearings Before a Subcomm. of the Comm. on Banking and Currency on S. 3580, 76th Cong., 3d Sess. (1940), at 985. The Commission believes that the wording of section 22(e)—"No registered investment company * * * shall * * * postpone the date of payment or satisfaction upon redemption of any redeemable security * * * for more than seven days after the tender of such security"—clearly suggests that the section is intended to be a "limit" rather than a "grant."

application of these provisions and the staff expect to address these concerns before June 1, 1995.

5. Mortgage-Backed Securities

As proposed in February 1993, private-label mortgage backed securities ("MBS")[63] would fall within the ambit of Rule 15c6–1. The Rule would not, however, apply to those MBSs issued by government agencies and government sponsored enterprises ("GSE").[64] In the Proposing Release, the Commission invited commentators to consider whether adopting a T+3 settlement timeframe would cause difficulties for issuers and investors in the MBS market and to consider generally whether additional safeguards relating to clearance and settlement of MBSs would be appropriate.

The commentators generally were supportive of applying the proposed Rule to MBSs. Some of the commentators stated that the Rule should apply to MBSs issued by government agencies and GSEs as well as to private-label collateralized mortgage obligations ("CMO"). The PSA stated that although it would prefer that all MBSs settle on the same basis, the bifurcation between private-label MBSs on the one hand, and government agency and GSE MBSs on the other, did not present an insurmountable barrier. The PSA stated that the larger firms probably would adopt a T+3 settlement standard for all MBSs, whether or not subject to the Rule.

Commentators identified several areas of concern with respect to MBSs. The first relates to the availability of factors,[65] and whether that could create a barrier for private-label MBSs to move to T+3. Transactions that are effected before the current month's factor is available must go through a cancel and correct procedure to ensure that the correct amount of principal and interest is attributed to the investor for that month. Shortening the settlement cycle could make it less likely that the current month's factor will be available for a given transaction, which would be reflected by more cancel and correct transactions.

The Commission notes, along with The PSA, that for private-label MBSs settling through DTC, DTC's CMO Trade Adjustment System[66] keeps track of trades settling with the previous month's factor and automatically adjusts those trades after the current factor is available. Over three-quarters of outstanding private-label CMOs are on deposit at DTC, and the CMO Trade Adjustment System is used regularly among participants.[67]

The Commission believes that trades in private-label CMOs should be included within the scope of Rule 15c6–1. First, although CMO trades could require some adjustments to reflect changing principal payments in underlying collateral, existing trade adjustment and reconciliation systems and practices appear adequate. Second, the potential for gridlock in the event of a major participant default[68] warrants the exchange of as much value as soon as possible in these markets, even if that means that some post-trade adjustment is necessary. This is even more important given the increasing complexity of CMO products, the absence of transparent markets for establishing fair value, and concern about the liquidity of CMO markets in the event of a major market event.

Commentators also expressed concern about how contracts for purchase or sale of mortgage pass-throughs in the to-be-announced ("TBA") market would be treated under Rule 15c6–1. Trading in this market occurs without providing specific mortgage pool information. Among other things, TBA trading allows an underwriter of a private-label mortgage pass-through security to acquire the financing necessary to assemble the pool of mortgages that will comprise a given mortgage pass-through security.[69] In response to those concerns, the Commission will interpret Rule 15c6–1 to require that settlement of mortgage pass-through securities occur within three days after a specific pool is identified for delivery under the contract. Under current TBA market conventions, as specified in PSA Guidelines,[70] firms must designate specific pools allocated to a TBA transaction at least 48 hours before settlement.[71] Firms following this convention will be deemed to comply with Rule 15c6–1.

In summary, all private-label MBSs shall be subject to the T+3 settlement requirement. TBA trades will not be subject to the Rule; instead, once a pool is designated, settlement must occur within three days. New issuances of CMOs that are the subject of a firm commitment underwriting will be subject to the settlement timeframe applicable to other initial issuances as provided in Rule 15c6–1(b).

B. Ability of Broker-Dealers to Override T+3 Settlement

As proposed, Rule 15c6–1 provides that, unless otherwise expressly agreed by the parties at the time of the transaction, a broker or dealer is prohibited from entering into a contract for the purchase or sale of a security (other than an exempted security, government security, municipal security, commercial paper, bankers' acceptance, or commercial bill) that provides for payment of funds and delivery of securities later than T+3. As described above, the proposed Rule allows a broker or dealer to agree that settlement will take place in more than three business days, when the agreement is express and reached at the time of the transaction.

Several letters from individual commentators and approximately 1,550 substantially similar letters expressed concern that the ability to override the three day settlement requirement could create a market inefficiency that could be exploited by some broker-dealers. Those commentators suggested that the ability of broker-dealers to override the three day settlement requirement for specific transactions will permit broker-dealers to establish two classes of investors, providing advantages to investors holding with the broker-dealer

[63] MBSs include mortgage pass through securities, collateralized mortgage obligations ("CMO"), and Real Estate Mortgage Investment Conduits ("REMIC"). Private-label MBSs include privately issued MBSs collateralized by agency or government sponsored enterprise mortgages or mortgage pass through securities.

[64] Government agencies include, for example, the Government National Mortgage Association ("Ginnie Mae"). GSEs include, without limitation, the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac").

[65] A factor is the proportion of outstanding principal to the original principal balance, expressed as a decimal. In the case of CMOs and REMICs, factors are made available once a month, and in the case of private-label MBSs, this occurs at the end of the month.

[66] See Securities Exchange Act Release No. 30277 (January 22, 1992), 57 FR 3657 (order approving DTC's CMO Trade Adjustment System).

[67] Telephone conversation with James Riley, Planning Department, DTC, and Patricia Trainor, Associate Counsel, DTC (August 23, 1993).

[68] See *e.g.*, testimony concerning the bankruptcy of Drexel.

[69] Mortgage pass-through securities have been traded for many years and frequently are the collateral from which CMOs and REMICs are created. For a description of this market, *see e.g.*, Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13266 (granting the Participants Trust Company temporary registration as a clearing agency).

[70] PSA, Uniform Practices for the Clearance and Settlement of Mortgage-Backed Securities and Other Related Securities 8.B.1 (1992).

[71] Forward trades are done typically on a TBA basis because certain specifics, such as the pool numbers, are not available at the time of the trade and are typically provided 48 hours before settlement to allow for the smooth settlement of the pass-through security. Letter from Dominick F. Antonelli, Chairman, PSA Municipal Securities Division Operations and Compliance Committee, and Stephen W. Hopkins, Chairman, PSA Mortgage Securities Division Operations Committee, to Jonathan G. Katz, Secretary, Commission (July 8, 1993).

in indirect or beneficial ownership form over those investors choosing to own shares of stock in direct ownership form.

Several commentators suggested eliminating from the Rule the ability to override the three day settlement requirement. The large majority of the letters, however, did not suggest eliminating the override provision, but rather encouraged the Commission to ensure that broker-dealers do not use the override provision to discourage direct forms of securities ownership.

The override provision was intended to apply only to unusual transactions, such as seller's option trades, that typically settle as many as sixty days after execution as specified by the parties to the trade at execution. It was not intended to permit broker-dealers to specify before execution of specific trades that a group of trades will settle in a timeframe other than T+3. In general, broker-dealers will not be able to contract out of the three day settlement timeframe.

The Commission supports industry efforts to develop products which will enhance the ability of retail investors to choose among suitable forms of ownership. The Commission, moreover, intends for the choice of securities ownership to be driven by market forces, and not for the override provision of Rule 15c6–1 to be used by market participants to prefer one form of ownership over another. The Commission will continue to monitor the use of the override provision of Rule 15c6–1, and, if such abuses are detected, will consider additional rulemaking.

IV. Competition Findings

Section 23(a)(2) of the 1934 Act[72] requires the Commission, in adopting rules under the 1934 Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the 1934 Act. Several commentators, primarily small retail broker-dealers, raised concerns that Rule 15c6–1 would increase their costs, thereby making it more difficult to compete with larger broker-dealers. The Commission notes that Rule 15c6–1 does not distinguish between categories of broker-dealers, and believes that the costs created would be imposed evenly upon larger and smaller broker-dealer firms. The costs may be higher for certain firms, regardless of their size, that have not invested in necessary infrastructure and technology.[73] These costs would be necessary in assuring that the purpose of the Rule, risk reduction, is met. The Commission has considered Rule 15c6–1 in light of the standard cited in section 23(a)(2) and believes that adoption of the Rule will not impose any burden on competition not necessary or appropriate in furtherance of the 1934 Act.

V. Conclusion

The Commission believes that Rule 15c6–1 will reduce credit and liquidity risks, reduce the settlement gap between the corporate securities market and the government securities and derivatives markets, and increase efficiency in broker-dealer and clearing agency operations. Some broker-dealers currently have the operational capability to comply with three-day settlement. However, where a broker-dealer's procedures currently are not designed to accommodate three-day settlement, the facilities to expedite the settlement process do exist (*e.g.*, bank wire systems or overnight postal courier services). The Commission believes that broker-dealers and their customers can make the necessary systems and operational changes to comply with three-day settlement given the extended transition period for implementation of the Rule. The Commission recognizes, however, that the extent and nature of modifications depends on the specific needs of each firm. Nevertheless, the Commission recommends that, as necessary, industry participants that need to make significant systems or operational changes evaluate their progress periodically as the implementation date for T+3 approaches and make adjustments as appropriate to ensure a smooth transition to T+3 settlement.

VI. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") regarding Rule 15c6–1, in accordance with 5 U.S.C. 604. The FRFA notes the potential costs of operational and procedural changes that may be necessary to comply with the Rule. In addition, the FRFA notes the importance of the risk reduction that will result from a shorter settlement cycle. The Commission believes that the benefits of Rule 15c6–1 outweigh the costs that will be incurred by industry participants in complying with the Rule.

A copy of the FRFA may be obtained by contacting Christine Sibille, Attorney, Branch of Debt and International Clearing Agency Regulation, Office of Securities Processing Regulation, Division of Market Regulation, Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organizations and functions (Government organizations).

17 CFR Part 240

Brokers and dealers, Registration and regulation, Securities.

Text of the Amendments

In accordance with the foregoing, title 17 chapter II 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 part 200, subpart A continues to read in part as follows:

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

* * * * *

2. Section 200.30–3 is amended by adding paragraph (a)(55) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(55) Pursuant to § 240.15c6–1 of this chapter, taking into account then existing market practices, to exempt contracts for the purchase or sale of any securities from the requirements of § 240.15c6–1(a) of this chapter.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.15c6–1 is added to read as follows:

[72] 15 U.S.C. 78w(a)(2).

[73] These broker-dealers, however, are not subject to a unique cost. Instead, they are incurring a cost previously paid by their competitors.

§ 240.15c6–1 Settlement cycle.

(a) Except as provided in paragraph (b) of this section, a broker or dealer shall not effect or enter into a contract for the purchase or sale of a security (other than an exempted security, government security, municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(b) Paragraph (a) of this section shall not apply to contracts:

(1) For the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association;

(2) For the sale for cash of securities by an issuer to an underwriter pursuant to a firm commitment offering registered under the Securities Act of 1933, or the sale to an initial purchaser by a broker-dealer participating in such offering; or

(3) For the purchase or sale of securities that the Commission may from time to time, taking into account then existing market practices, exempt by order from the requirements of paragraph (a) of this section, either unconditionally or on specified terms and conditions, if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

Dated: October 6, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendices 1 through 3 to the preamble will not appear in the Code of Federal Regulations.

Appendix 1—List of Commentators

The following commentators submitted comments relating to proposed Rule 15c6–1.

Government Agency

Board of Governors of the Federal Reserve System ("Federal Reserve Board" or "Board")

Self-Regulatory Organizations

Boston Stock Exchange ("BSE")
Chicago Mercantile Exchange ("CME")
The Depository Trust Company ("DTC")
Government Securities Clearing Corporation ("GSCC")
International Securities Clearing Corporation ("ISCC")
Midwest Clearing Corporation/Midwest Securities Trust Company ("CHX")
Municipal Securities Rulemaking Board ("MSRB")
National Securities Clearing Corporation ("NSCC") New York Stock Exchange ("NYSE")
The Options Clearing Corporation ("OCC")

Trade Associations

American Bankers Association ("American Bankers")
American Bar Association Section of Business Law, Subcommittee on Market Regulation and Subcommittee on Registration Statements, 1933 Act of the Committee on Federal Regulation of Securities ("American Bar Association")
American Council of Life Insurance ("American Council")
American Society of Corporate Secretaries, Inc. ("Corporate Secretaries")
Association of Reserve City Bankers ("Reserve City Bankers")
The Cashiers' Association of Wall Street, Inc. ("Cashiers' Association")
Corporate Transfer Agents Association, Inc. ("CTAA")
Data Management Division of Wall Street (Securities Industry Association) ("Data Management Division")
Investment Company Institute ("ICI")
National Association of Securities Dealers, Inc. ("NASD")
National Automated Clearing House Association ("NACHA")
New York Clearing House ("NYCH")
Public Securities Association ("PSA")
Regional Municipal Operations Association ("RMOA")
Securities Industry Association ("SIA")
Securities Operations Division of the SIA ("SOD")
Security Traders Association ("Traders Association")
The Securities Transfer Association, Inc. ("STA")
Syndicate Operations Association Incorporated ("SOA")

Broker-Dealers

A.G. Edwards & Sons, Inc. ("A.G. Edwards")
Alex. Brown & Sons Incorporated ("Alex Brown")
Arthurs Lestrange & Company Incorporated ("Arthurs Lestrange")
Asiel & Co. ("Asiel")
Robert W. Baird & Co. Incorporated ("Baird")
Baker & Co., Incorporated ("Baker")
Bear Stearns & Co., Inc. ("Bear Stearns")
Bodell Overcash Anderson & Co., Inc. ("Bodell Overcash")
Jack V. Butterfield Investment Company ("Butterfield")
J.W. Charles Securities, Inc. (4 letters) ("J.W. Charles")
Chatfield Dean & Co., Inc. ("Chatfield")
Cheevers, Hand & Angeline, Inc. ("Cheevers")
The Chicago Corporation ("Chicago Corporation")
Collopy & Company Inc. ("Collopy")
Consolidated Financial Investments, Inc. ("Consolidated")
CUSO Equities, Inc. ("CUSO")
Cygnet Resources, Inc. ("Cygnet")
D.A. Davidson & Co. ("Davidson")
Davenport & Co. of Virginia, Inc. ("Davenport")
Dean Witter Reynolds, Inc. ("Dean Witter")
J.V. Delaney & Associates ("Delaney")
Dempsey & Company ("Dempsey")
H.C. Denison Co. ("Denison")
Dorsey & Company, Incorporated ("Dorsey")
East/West Securities Co. ("East/West")
Ferris, Baker Watts, Incorporated ("Ferris Baker")
Fidelity Investments Institutional Services Company, Inc. ("Fidelity")
Financial Network Investment Corporation ("Financial Network")
John Finn & Company, Inc. ("John Finn")
The First Boston Corporation ("First Boston")
First Dallas Securities Incorporated ("First Dallas")
First Manhattan Co. ("First Manhattan")
First Northeast Securities, Inc. ("First Northeast")
Gilbert Marshall & Company ("Gilbert")
Goldman, Sachs & Co. ("Goldman Sachs")
Grove Securities, Inc. ("Grove")
Gruntal & Co. Incorporated ("Gruntal")
G–W Brokerage Group, Inc. ("G–W")
Hamilton & Company Incorporated ("Hamilton")
The Heitner Corporation ("Heitner")
Hopper Securities-Vermont ("Hopper")
Wayne Hummer & Co. ("Hummer")
Interstate/Johnson Lane Corporation ("Interstate/Johnson Lane")
Raymond James & Associates, Inc. (2 letters) ("Raymond James")
Kenneth Jerome & Company ("Jerome")
JJC Specialist Corp. ("JJC")
Edward D. Jones & Co. ("E.D. Jones")
Juran & Moody, Inc. ("Juran & Moody")
Kidder, Peabody & Co., Incorporated (2 letters) ("Kidder")
Kirk Securities Corporation ("Kirk")
La Branche & Co. ("LaBranche")
Legg Mason Wood Walker, Incorporated ("Legg Mason")
Lewco Securities Corp. ("Lewco")
Locust Street Securities, Inc. ("Locust")
McCourtney-Breckenridge & Company ("McCourtney")
M.E. Metzler Organization, Incorporated ("M.E. Metzler")
Merchant Capital Corporation ("Merchant Capital")
Mericka & Co., Inc. ("Mericka")
Meridian Associates, Inc. ("Meridian")
Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch")
Miller & Schroeder Financial, Inc. ("Miller")
Montgomery Securities ("Montgomery")
Morton Seidel & Co., Inc. ("Morton Seidel")
Mutual Service Corporation ("Mutual")
Nicodemus & Sherwood, Inc. ("Nicodemus")
Northern Trust Securities, Inc. ("Northern Trust")
Paine Webber Incorporated ("Paine Webber")
Paulson Investment Company Inc. ("Paulson")
Pershing Division of Donaldson, Lufkin and Jenrette Securities Corporation ("Pershing")
Peterson Financial Corp. ("Peterson")
Pflueger & Baerwald Inc. ("Pflueger")
Piper Jaffray Companies Inc. ("Piper Jaffray")
Pirrone & Co., Inc. ("Pirrone")
Robert A. Podesta & Co. ("Podesta")
The Principal/Eppler, Guerin & Turner, Inc. ("Principal Financial")
Protective Group Securities Corporation ("Protective")

Prudential Securities Incorporated ("Prudential")
Quick & Reilly, Inc. ("Quick & Reilly")
Quincy Cass Associates Incorporated ("Quincy")
Richards, Merrill & Peterson, Inc. ("Richards Merrill")
Robinson & Lukens, Inc. ("Robinson Lukens")
Rodgers Capital Corporation ("Rodgers")
Roland Francis & Co., Inc. ("Roland Francis")
Sands Brothers & Co., Ltd. ("Sands Bros.")
Saperston Financial Inc. ("Saperston")
Charles Schwab & Co., Inc. ("Schwab")
S.C. Parker & Co., Inc. (3 letters) ("S.C. Parker")
Janney Montgomery Scott Inc. ("Montgomery Scott")
Scott & Stringfellow Investment Corp. ("Scott Stringfellow")
Selected Securities Company ("Selected")
Sierra Trading ("Sierra Trading")
Smith, Moore & Co. ("Smith Moore")
Southwest Securities Incorporated ("Southwest")
Summitt Investment Corporation ("Summitt")
Robert Thomas Securities, Inc. ("Robert Thomas")
Robertson, Stephens & Company ("Robertson Stephens")
The Warner Group Inc. ("Warner")
U.S. Clearing Corp. ("U.S. Clearing")
Wheat, First Securities, Inc. ("Wheat First")
William J. Conway & Co., Inc. ("Conway")
Wulff, Hansen & Co. ("Wulff Hansen")
Wyoming Financial Securities, Inc. ("Wyoming")
B.C. Ziegler and Company ("B.C. Ziegler")
Ziegler Thrift Trading, Inc. ("Ziegler Thrift")

Investment Advisors

Jobel Financial, Inc. ("Jobel")
Massachusetts Financial Services Company ("Massachusetts Financial")
Neuberger & Berman ("Neuberger")
Oppenheimer Management Corporation ("Oppenheimer Management")
Seger-Elvekrog, Inc. ("Seger-Elvekrog")
Society National Bank ("Society")
St. Denis J. Villere & Company ("St. Denis")
Stephenson and Company ("Stephenson")

Bank Custodians

Bank of America National Trust and Savings Association ("Bank of America")
The Chase Manhattan Bank, N.A. ("Chase")
Citibank, N.A. ("Citibank")
Morgan Guaranty Trust Company of New York ("Morgan Guaranty")
United States Trust Company of New York ("U.S. Trust")
Wachovia Trust Services, Inc. ("Wachovia")

Insurance Company-Affiliated Broker-Dealers

Green Hill Financial Service Corp. ("Green Hill")
MML Investors Services, Inc. ("MML")
Sun Investment Services Company ("Sun")

Limited Partnerships Broker-Dealer

Chicago Partnership Board, Inc. ("Chicago Partnership Board")

Mutual Fund Broker-Dealers

Chubb Securities Corporation ("Chubb")
Penn Square Management Corporation ("Penn Square")
H.D. Vest Investment Securities, Inc. ("H.D. Vest")

Municipal Bond Broker-Dealers

Clayton Brown & Associates, Inc. ("Clayton Brown")
Halpert and Company, Inc. ("Halpert")
Hanifen, Imhoff Inc. ("Hanifen")
The Leedy Corporation ("Leedy")

Transfer Agents

Burnham Pacific Properties, Inc. ("Burnham")
Chemical Banking Corporation ("Chemical")
Fidelity Accounting & Custody Services Company ("FACS")
Morgan Stanley & Co. Incorporated ("Morgan")
Oppenheimer Shareholder Services Division of Oppenheimer Management Corporation (2 letters) ("Oppenheimer Shareholder")
State Street Bank and Trust Company ("State Street")
Southern Company Services, Inc. ("Southern")
Texaco Inc. ("Texaco")
Valero Energy Corporation ("Valero")
Wisconsin Energy Corporation ("Wisconsin")

Individuals

Scott G. Abbey
John W. Bachmann
Dr. & Mrs. L.O. Banks
Rodney E. Bate
Chris Bennett
Nelda Bergsten
Russell M. Bimber
Helen A. Bird
Allan R. Black
Weston A. Boyd
Carl R. Brasee
D.N. Bulla
Mark C. Bublak
Thomas A. Byrne
D.H. Carlson
John Cirrito
Daniel B. Coleman
Richard Conway
Douglas Czarnecki
Martin H. Drayer
Karen Frye
Gordon G. Garney
Elaine Graham
Rae T. Gaida
Professor Steven Hill
Donald R. Hollis
Frank Hutcheon
Mark Jackson
Rex and Susan Jacobsen
Kenneth S. Janke
Marilyn D. Jennings
James A. Jephcote
William P. Kilroy
David M. Klausmeyer
Donald R. Kryzan
Robert T. Levine
Lowell H. Listrom
Pearl Lurie
Ina Mandel
Joseph J.F. March
George J. Minnig
Stephen A. Molasky
H.J. Porter
Mani K. Pulimood
Richard R. Romane
Donald Rhyne
Michael A. Rogawski
Ramona B. Schafehen
Charles F. Schlein, Jr.
D. Schroeder
Kenneth Shazel
Hank Simon
Richard B. Smith
George Sneed
Murray L. Solomon
Walter Stelma
Frank C. Vogel
Robert C. Waldo, Jr.
Warren D. Weber
Martin J. Webler
Barbara Wilkinson
Theo L. Wealinsh
Daniel P. Worth

Insurance Company

Aetna

Other

Armstrong World Industries, Inc.
William Batdorf & Company, Certified Public Accountants
BellSouth Corporation ("BellSouth")
Bryan Cave
The College Retirement Equities Fund ("CREF")
DQE
E.F. Miller & Company ("E.F. Miller")
Federal Reserve Bank of New York ("FRBNY")
The Group of Thirty ("Group of Thirty")
Minnesota Utility Investors ("MUI")
Sixty Niner Investment Club ("Sixty Niner")
Texas Industries, Inc. ("Texas Industries")
Thomson Financial Services ("Thomson")

In addition, the Commission received substantially similar letters from three separate groups, as set out below.

Individual Investors

1,550 identical letters supporting direct registration

Regional Investment Brokers, Inc. ("RIBS") Letters ("RIBS Letters")

[101 letters opposing T+3 settlement]

Century Capital Corp. of South Carolina ("Century")
Corporate Securities Group, Inc. (16 letters) ("Corporate Securities")
Culverwell & Co., Inc. (5 letters) ("Culverwell")
Girard Securities, Inc. ("Girard")
Greenway Capital Corporation ("Greenway")
Investors Associates, Incorporated ("Investors Associates")
La Jolla Capital Corporation ("LaJolla")
M.H. Meyerson & Co., Inc. ("Meyerson")
Royce Investment Group, Inc. ("Royce")
RIBS
Royce Employees (69 letters)
Sentra Securities Corporation ("Sentra")
Spellman & Company, Inc. ("Spellman")
Wilson-Davis & Company Incorporated ("Wilson Davis")

Transfer Agent Letters

17 letters supporting T+3 settlement

The Bank of New York ("BONY")
Barnett Banks, Inc. ("Barnett")
CBI Industries Inc. ("CBI")
CEL-SCI Corporation ("CEL-SCI")

Central and South West Corporation ("Central")
E.I. du Pont de Nemours and Company ("DuPont")
Nevada Power Company ("Nevada Power")
First Chicago Trust Company of New York ("First Chicago")
Florida Progress Corporation ("Florida Progress")
GenCorp
Mellon Financial Services Corporation No. 17 ("Mellon")
Northern States Power Company ("Northern States")
Northwest Natural Gas Company ("Northwest")
Ottertail Power Company ("Ottertail")
Society National Bank ("Society National")
WPL Holdings, Inc.
Union Data Service Center, Inc. ("Union Data")

Appendix 2—Recent Initiatives in Clearance and Settlement Reform

Although the U.S. clearance and settlement system is among the safest in the world, recent events have demonstrated that vulnerabilities exist. Record volume and volatility during October 1987 proved detrimental to broker-dealers who were unable to resolve processing errors before settlement with their customers on T+5. Moreover, the steep decline in stock prices during that period, as well as the decline on October 16, 1989, left some broker-dealers vulnerable to loss from the positions of customers who were unable or unwilling to meet either margin calls or transaction settlement obligations. This in turn called into question the ability of those broker-dealers to meet their obligations to the clearing corporations.[1]

After the October 1987 market break, several groups sought to identify causes of the market decline and changes that could be made to shield market participants from the impact of sudden steep declines in the market.[2] All these studies identified clearance and settlement as an area which needed further attention.[3]

At the same time, in March 1988, the Group of Thirty[4] organized a symposium in London to discuss the state of clearance and settlement in the world's principal securities markets. The symposium participants concluded that there was a need for international agreement on a uniform set of practices and standards for the clearance and settlement of securities transactions in order to improve the process. In light of this conclusion, the Group of Thirty organized a Steering Committee to work with a professional and broad-based Working Committee in order to produce a set of operational proposals for practices and standards in the area of clearance and settlement.

In March 1989, the Group of Thirty issued a report by the Steering Committee setting forth nine recommendations ("Group of Thirty recommendations"),[5] including implementation of settlement on T+3, to modernize and improve clearance and settlement systems at a local level and to make them compatible with each other internationally.[6] Following the release of the Group of Thirty Report, several countries initiated separate efforts to study how their clearance and settlement systems compared with the Group of Thirty recommendations. In the U.S., a Working Group was created for this purpose. The U.S. Working Group concluded that, while the U.S. was in compliance with seven of the Group of Thirty recommendations, continued consideration should be given to the implementation of the two remaining recommendations, T+3 settlement and settlement in same-day funds.[7]

Two subcommittees, a U.S. Steering Committee and a U.S. Working Committee of the Group of Thirty ("the U.S. committees") were formed to evaluate the benefits of shortening the settlement cycle and converting to the use of same-day funds. The U.S. committees urged adoption of the two recommendations and, in order to support a move to T+3 settlement, also recommended that: (1) Book-entry settlement be mandatory for transactions between financial intermediaries and between financial intermediaries and their institutional customers;[8] and (2) all new securities issues should be made eligible for depository services.

In November 1990, the Commission held a Roundtable to discuss the recommendations of the U.S. committees. Roundtable participants generally agreed that the two recommendations should be adopted, but urged that the timetables for implementation be sufficiently flexible so that obstacles to implementation could be fully explored and practical solutions found and implemented. Roundtable participants expressed concern that broker-dealers conducting a predominantly retail business might have difficulty operating in a three business day settlement timeframe in the national clearance and settlement system because of the need, among other things, to obtain payment from retail clients for purchase transactions.

Following the Commission's Roundtable, former SEC Chairman Richard Breeden asked Howard Shallcross, Director of Operations, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), to form a committee to examine how retail firms and their customers could best be accommodated in a T+3 settlement environment and to report the committee's findings to the Commission. The committee was asked specifically to determine how to solve the problem of timely payments for retail purchase transactions as well as any other retail issues that it considered appropriate. The Shallcross Committee prepared a draft report that recommended alternative risk reduction proposals, such as marking unsettled securities transactions to the market beginning on T+1.[9] Subsequently, former Chairman Breeden asked the U.S. Steering Committee of the Group of Thirty to form a task force, chaired by John W. Bachmann, Managing Principal, Edward D. Jones & Co., to review what changes to the clearance and settlement system were

[1] See Division of Market Regulation, Commission, The October 1987 Market Break Chapter 10 at 20–21 ("Market Break Report").

[2] *Id.* See also Working Group on Financial Markets, Interim Report to the President of the United States (May 1988) (Appendix D) (the Working Group is chaired by the Secretary of the Treasury and its members include the Chairmen of the SEC, the Commodity Futures Trading Commission, and the Board of Governors of the Federal Reserve System); Presidential Task Force on Market Mechanisms, Report to the President of the United States (January 1988) (the so-called "Brady Report"); and General Accounting Office, Preliminary Observations on the October 1987 Crash (January 1988).

[3] Since 1987, considerable progress has been made toward increasing clearing corporations' capabilities to handle large volumes of trades and manage financial risk. Examples include increases in the number of cross margining facilities sponsored by The Options Clearing Corporation ("OCC") and commodity clearing organizations, expansion of the depository system to include new financial products such as commercial paper, and development of extensive lines of communication between banking, securities, and commodities organizations.

[4] The Group of Thirty, established in 1978, is an independent, non-partisan, non-profit organization composed of international financial leaders whose focus is on international economic and financial issues.

[5] See Group of Thirty, Clearance and Settlement Systems in the World's Securities Markets (March 1989) ("Group of Thirty Report").

[6] These recommendations were: (1) By 1990, trade comparison between direct market participants should occur by the day following the date of trade execution; (2) by 1992, indirect market participants should be members of a trade comparison system which achieves positive affirmation of trade details; (3) by 1992, each country should have an effective and fully developed central securities depository; (4) by 1992, if appropriate, each country should implement a netting system; (5) by 1992, a delivery versus payment system should be employed as the method for settling all securities transactions; (6) countries should adopt a same-day funds payment method for settlement of securities transactions; (7) a rolling settlement system should be adopted by all markets as follows: (a) by 1990, final settlement should occur on the fifth day after the date of trade execution, (b) by 1992, final settlement should occur on the third day after the date of execution; (8) securities lending and borrowing should be encouraged as a method of expediting the settlement of securities transactions; and (9) by 1992, each country should adopt the standards for securities numbering and messages developed by the International Standards Organization.

[7] "Same-day funds" refers to payment in funds that are available on payment date and generally are transferred by electronic means.

[8] On June 11, 1993, the Commission approved a proposed rule change filed by the securities exchanges and the National Association of Securities Dealers ("NASD") that requires members, member organizations, or affiliated members of the securities exchanges and the NASD to use the facilities of a securities depository for the book-entry settlement of all transactions in depository eligible securities with another financial intermediary (broker, dealer, or bank). In addition, the rule prohibits members, member organizations, or affiliated members of the SROs from effecting a delivery-versus-payment ("DVP") or receipt-versus-payment ("RVP") transaction in a depository eligible security with an institutional customer unless the transaction is settled by book-entry using the facilities of a securities depository. Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679.

[9] Shallcross Committee, Impact of T+3 Migration on the Retail Sector A Preface to the Interim Report to the SEC (March 20, 1991).

necessary, to identify practical solutions, and to propose a reasonable timeframe for implementation of each of those solutions.[10] The Bachmann Task Force[11] ("Task Force") undertook that challenge, identifying many of the issues that would confront retail broker-dealers in a T+3 settlement environment and proposing solutions and timetables for resolving those issues.

In May 1992, the Task Force presented its findings and recommendations to the Commission.[12] Among other things, the Task Force concluded that "time equals risk" and that the settlement cycle for corporate and municipal securities should be compressed to T+3.[13] The Task Force also evaluated the principal suggestion of the Shallcross Committee, *i.e.*, that unsettled trades should be marked-to-the-market. The Task Force produced a quantitative analysis that showed that shortening the settlement cycle to T+3 would result in greater risk reduction than a daily mark-to-market without a shortened settlement cycle.[14] The Task Force concluded that compared with T+5 settlement, T+3 settlement would result in a 58% reduction in risk to National Securities Clearing Corporation ("NSCC")[15] in the event of the failure of an average large clearing member. The Task Force's data further showed that NSCC's average expected exposure in a T+5 settlement period with a daily mark-to-market would be 30% higher than its exposure in a T+3 settlement period without a daily mark-to-market.

On June 22, 1992, the Commission published the Task Force Report in the **Federal Register** for public comment.[16] The Commission received over 1,000 comment letters from banks, broker-dealers, investment advisors, trade associations, clearing agencies, exchanges, transfer agents, and individual investors. Although many of these commentators expressed concern about the potential loss of access to physical certificates,[17] in large part they were supportive.

The Commission agrees with the Task Force conclusion that "time equals risk." Based on that analysis and recent events demonstrating that vulnerabilities still exist in the U.S. clearance and settlement system, the Commission believes that it is prudent to shorten the time that unsettled trades remain outstanding.

Appendix 3—Building Blocks

A. Industry and SRO Initiatives

1. Interactive Institutional Delivery ("ID") Process

Moving settlement to T+3 requires that the affirmation[1] process be completed on T+1. Early affirmation of institutional trades can be accomplished by enhancing DTC's existing batch processing ID system to permit DTC to process information on receipt and distribute reports on request.

Commentators consider DTC's interactive ID system a critical building block to successful implementation of Rule 15c6–1. Twenty-one of the 101 commentators that support the proposed Rule express the need for early affirmation of institutional trades. These commentators believe that DTC's proposed interactive system will allow participants to be highly interactive, allowing completion of the confirmation/affirmation process on T+1, rather than on T+2 or T+3 as is the case in DTC's current batch processing ID system. One trade association, one clearing broker-dealer, and two retail broker-dealers conditioned their support of the proposal on DTC's interactive ID system being fully operational prior to adoption of the proposed Rule. Those commentators believed that T+3 settlement was not possible if affirmation/confirmation was not completed by T+1. Finally, five opposing commentators stated that their opposition to the Rule was based in part on the need to implement first DTC's interactive ID system.

DTC is developing an enhanced ID system that would provide users with an interactive option and would unify the existing ID and International ID systems. DTC expects to offer the interactive system to ID users in early 1994.[2] System users will be able to use the system either in the present batch environment or interactively, with the capability to accomplish all ID processing within a single business day. DTC plans to implement the enhanced system in stages. The proposed system includes a Standing Instructions Database ("SID"), to be implemented in late 1993;[3] an Electronic Mail feature, to be implemented in late 1993 or early 1994;[4] a "matching" system, to be implemented in mid-1994;[5] and an Authorization/Exception Processing and Reporting feature to be implemented in mid-1994.[6]

DTC has filed a proposed rule change under Section 19 of the 1934 Act regarding the interactive ID system. Although the Commission generally supports DTC's efforts towards an interactive ID system, Commission staff will review the proposal for consistency with the purposes of the 1934 Act.

2. Revisions to the Automated Clearing House ("ACH") System

To address the problem of timely payments between a retail broker and its customer, broker-dealers should consider ACH[7] as one

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[10] Letter from Richard C. Breeden, Chairman, Commission, to Lewis W. Bernard, Chairman, U.S. Steering Committee, Group of Thirty (July 11, 1991).

[11] In addition to Mr. Bachmann, the members of the Task Force included: David M. Kelly, President and Chief Executive Officer, National Securities Clearing Corporation ("NSCC"); Richard G. Ketchum, Executive Vice President and Chief Operating Officer, NASD; John F. Lee, President, New York Clearing House; Gerard P. Lynch, Managing Director, Morgan Guaranty Trust Company of New York; James J. Mitchell, Senior Executive Vice President, Northern Trust Securities, Inc.; Richard J. Stream, Managing Director, Piper Jaffray Companies Inc.; and Arthur L. Thomas, Senior Vice President, Merrill Lynch.

[12] Bachmann Task Force, Report of the Bachmann Task Force on Clearance and Settlement in the U.S. Securities Markets (May 1992).

[13] The Task Force recommended that this be accomplished by July 1994. The Task Force made eight other recommendations that would facilitate settling securities transactions on T+3: Revising the Automated Clearing House ("ACH") system; requiring an interactive institutional delivery process; settling all transactions among financial intermediaries and their institutional customers in book-entry form only and in same-day funds; depository eligibility for new issues; monitoring flipping (*i.e.*, the sale of stock back to the underwriting syndicate during the new issue stabilization period); expanding cross-margining; streamlining the handling of physical certificates; and monitoring all market activity.

[14] Task Force Report at 34–39.

[15] NSCC is the largest U.S. clearing corporation and is registered as a clearing agency under Section 17A of the 1934 Act. NSCC, among other things, functions as a post-trade processing facility and as a guarantor of post-trade settlements. In the latter capacity, NSCC assumes the credit risk of fails to deliver and fails to receive by substituting itself as the contra party on the day after trade date. Trades that are not settled on settlement date are carried forward to the next settlement day as open obligations. NSCC seeks to protect against the financial risk of these open positions by obtaining contributions from its members to a pool of funds. Any sizable loss in liquidating the open commitments of a defaulting member essentially would be absorbed by all members.

[16] See Securities Exchange Act Release No. 30802 (June 15, 1992), 57 FR 27812.

[17] Over 800 of the comment letters were from individual investors responding to the recommendation to streamline the handling of physical certificates. The letters indicate a belief that the Task Force recommendation to streamline the handling of physical certificates would result in the elimination of physical certificates and force investors to hold securities in street name. The Task Force did not propose eliminating physical certificates for those retail investors who choose to maintain their record of ownership in that form.

[1] Under standard practice, an affirmation serves as the institution's authorization to the custodian to deliver securities against payment by (or accept securities and release payment to) the broker-dealer. A confirmation differs from an affirmation in that confirmation reports must contain all the information required by Rule 10b–10. If the broker-dealer includes all the necessary data about the trade in the ID transmission, he can comply with the trade confirmation requirements of Securities Exchange Act Rule 10b–10. 17 CFR 240.10b–10 (1992).

[2] DTC, An Interactive Option for the Institutional Delivery System, Memorandum to Participants and Other ID Users (March 31, 1993).

[3] The SID feature will be a repository for customer account and settlement information such as customer name, agent and interested parties furnished by institutions, agents and broker-dealers. This SID will eliminate the need for the broker-dealer to maintain all such information in its internal records and to provide all such information each time that it enters trade data into the ID system. *See* File No. SR–DTC–93–07, at 3–5, describing the features of the interactive ID system.

[4] The Electronic Mail feature will eliminate the need to make telephone calls or send facsimile transmissions by enabling broker-dealers and institutions to send and receive details of an order execution, allocations of block trades, or requests for cancellation (if the institution disagrees with a confirmation that the institution has received through the ID system). *Id.*

[5] The enhanced ID system will match trade data received from the broker-dealer with the instructions received from the institution automatically with the results of the matching being reported through the distribution of various output reports to the broker-dealer, the agent, and the institution. *Id.*

[6] This feature will allow delivering parties to authorize settlement of unaffirmed trades of DTC-eligible securities on the settlement date and later. *Id.*

[7] ACH is a domestic electronic payment system operated under the direction of the National

alternative to physical checks for payment and collection of funds to and from customers.

Ten of the 100 commentators that supported the proposed Rule suggested that an electronic payment system that results in finality of payment would make T+3 settlement more practicable, particularly for retail transactions. Most of the commentators addressing this issue stated that ACH would be the desired method of payment if the securities and banking industries could reach a consensus on the necessary revisions to Regulation E and NACHA operating rules so that transactions executed through registered broker-dealers would not be subject to rescission. Four commentators conditioned their support of Rule 15c6–1 on the implementation of a payment system that achieves finality of payment. NACHA, although it was officially neutral on the general merits of proposed Rule 15c6–1, stated that in a three-day settlement environment, the industry would need a payment system such as ACH for retail transactions.[8] Five opposing commentators stated that one reason for their opposition was the lack of an electronic payments system that results in finality of payment, which was considered by those commentators as an essential building block for T+3 settlement.

Following publication of the Bachmann Task Force Report, NACHA proposed a rule amendment that would remove the sixty-day right of rescission for payments in connection with securities transactions. That proposal was defeated. On August 30, 1993, NACHA approved a rule amendment that requires a receiving depository financial institution to obtain a signed affidavit from a consumer when the consumer claims that a transaction to his or her account is unauthorized or that an authorization has been revoked.[9] With the affidavit process in place, a retail securities transaction can be processed through the ACH network as follows: (1) A consumer will purchase securities from his or her broker; (2) the broker will initiate a debit to the consumer's account through its bank; and (3) the debit will be effected against the consumer's account at his or her bank. The consumer claiming that a retail securities transaction was unauthorized or that the authorization for that entry had been revoked would go to his or her bank and sign an affidavit to that effect prior to the bank returning the transaction. Under NACHA rules, the consumer has fifteen days after the receiving depository financial institution sends or makes available to the consumer information pertaining to that debit entry to claim that a transaction was unauthorized or that the authorization was revoked. The receiving depository financial institution must return the rescinded transaction within sixty days of the original settlement date. This change modifies the current process for handling unauthorized transactions over the ACH network, making it consistent with the procedures in the check processing system.

The Commission understands that further changes may be imminent. For example, NACHA is considering modifying the rule change to establish a dollar limit on the mandatory affidavit request and to establish a definition of what constitutes a reasonable timeframe for the receiving depository financial institution to respond to a request from the originating depository financial institution for a copy of the affidavit.[10]

The Commission encourages banks, broker-dealers, clearing agencies, and securities industry representatives to continue to improve the ACH process. The Commission recognizes, however, that ACH represents one of several methods of effecting payments and, accordingly, encourages broker-dealers to pursue other ways to secure good funds on T+3, including wider use of asset management accounts.

3. Mandatory Depository Eligibility

Some commentators believe that T+3 settlement would be difficult to achieve without mandating depository eligibility for all securities. In connection with this, one commentator indicated that the cost of doing business in new issues would increase significantly unless mandatory depository eligibility is developed along with an automated means of tracking flipping.[11]

Nine commentators believed that depository eligibility should be mandatory for all new issues. Two retail broker-dealers indicated that they would not support adoption of the proposed Rule without mandatory depository eligibility. Data Management Division, while neutral on the overall merits of proposed Rule 15c6–1, stated that depository eligibility for all securities should be mandatory.[12] Three opposing commentators believed that all new issues should be depository eligible.

As a practical matter, according to DTC, 94% of all issues listed on the New York Stock Exchange and 99% of issues traded in the over-the-counter market on the National Association of Securities Dealers Automated Quotation System ("NASDAQ") are depository eligible.[13]

Representatives of SROs and the Legal and Regulatory Subgroup of the U.S. Working Committee of the Group of Thirty ("Legal and Regulatory Subgroup") are drafting a uniform SRO rule for depository eligibility for new issues. The uniform rule is intended to incorporate a depository eligibility requirement into a listing standard for each registered national securities exchange and into the eligibility requirements for NASDAQ. Because listing standards for each SRO differ and the manner in which those standards are set forth in their respective rules is not uniform, however, individual SROs will consider the appropriate means to adopt such a uniform depository eligibility requirement to their current listing standards when all SROs have agreed upon and developed a uniform rule. Although the rules, if approved, would not reach settlement of transactions in securities that are not listed on a national exchange or NASDAQ, the Commission preliminarily believes this effort represents an important step towards improving the efficiency of the national clearance and settlement system, and indeed towards making T+3 settlement more practicable.

As discussed above, an issue closely related to mandatory depository eligibility is how to prevent the practice of selling back to syndicate members during the new issue stabilization period, *i.e.*, flipping. The current practice by lead managers in the settlement of IPOs is to issue and deliver certificates in physical form in order to track the sale of securities during the stabilization period. Most of the commentators addressing the depository eligibility issue suggested that an alternative method of monitoring flipping be developed. The U.S. Working Committee of the Group of Thirty Focus Group on Flipping ("Focus Group") has developed a conceptual framework as an alternative to the current practice for monitoring flipping. The Focus Group intends to provide the controls for underwriters to monitor flipping while allowing book-entry settlement to occur.

Although a number of issues remain to be resolved, the Commission recognizes the potential benefits that can be achieved from mandatory depository eligibility and the development of an automated means of monitoring flipping, such as increasing the efficient operation of the clearance and settlement system. The Commission therefore encourages efforts to address concerns and advance these initiatives.

4. Same-Day Funds Settlement

Six commentators suggested that the industry should implement same-day funds settlement prior to shortening the settlement cycle. The Commission believes that significant risk reduction can be gained by converting to a same-day funds payment system. DTC and NSCC are preparing to convert to same-day funds settlement by late 1994 or early 1995. DTC and NSCC recently distributed a Memorandum that details how DTC and NSCC believe many aspects of the new same-day funds settlement system will function, and solicited comments on the proposal.

DTC now processes securities deliveries through two different settlement systems, one that settles in same-day funds ("SDFS") and

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Automated Clearing House Association ("NACHA") and is utilized by over 22,000 banks, thrifts, and other depository financial institutions on behalf of corporations and individuals.

[8] Letter from Elliott McEntee, President & Chief Executive Officer, NACHA, to Jonathan G. Katz, Secretary, Commission (June 30, 1993).

[9] Letter from Elliott McEntee, President & Chief Executive Officer, NACHA, to Jeff Marquardt, Assistant Director, Payment Systems Studies & Payment System Risk Division of Reserve Bank Operations & Payment Systems, Board of Governors (August 31, 1993).

[10] *Id.*

[11] Letter from Stanley J. Kraska, President, SOA, to Jonathan G. Katz, Secretary, Commission (June 22, 1993). Flipping occurs when, during the new issue stabilization period, an investor sells the stock back to the syndicate or to another investor who in turn sells it back to the syndicate. Under current practice, the securities certificate number is used to identify which member of the syndicate sold the issue to the investor who "flipped" it back to the syndicate. Identifying that syndicate member allows the syndicate to recoup from the syndicate member a portion of the seller's concession.

[12] Letter from Salvatore N. Cucco, President, Data Management Division, to Jonathan G. Katz, Secretary, Commission (June 16, 1993).

[13] Telephone conversation with Richard Nesson, General Counsel, DTC (September 21, 1993).

the other in next-day funds ("NDFS"). The NDFS system primarily services corporate equities and corporate and municipal debt issues; the SDFS system primarily services commercial paper and other money market-like instruments. The vast majority of transactions that settle at DTC settle in its NDFS system, although the total value of the transactions that settle in the SDFS system is much larger than that in the NDFS system. NSCC currently operates a single NDFS system in which the money settlement obligations of NSCC's participants are the net results of all NSCC activity.

DTC's and NSCC's NDFS systems and operations are intertwined. DTC is the nation's largest depository for corporate and municipal securities, while NSCC, in addition to its other services, operates the securities industry's largest trade clearance and settlement system for corporate securities. Under the proposed SDFS system, DTC will combine its NDFS and SDFS systems into a single SDFS system, using its current SDFS system as the base design. DTC and NSCC will employ a mandatory netting procedure (expected to be implemented prior to SDFS conversion) whereby a participant's net debit at one organization will be netted against the amount of its net credit, if any, at the other organization. Participants will continue to settle separately with DTC and NSCC.

The same-day funds conversion project is intended to provide two major benefits: Standardization of the form in which funds are settled and risk reduction. It should simplify the cash management practices of firms that currently deal in both same-day and next-day funds settling securities, as well as reducing existing overnight exposure.

The Commission encourages DTC's and NSCC's efforts to finalize the details of the same-day funds proposal. The Commission urges DTC and NSCC to start an educational campaign targeting retail participants, and have the flow of information begin well ahead of the implementation date for Rule 15c6–1.

B. Regulatory Initiatives

As discussed below, the Commission will recommend to other appropriate regulatory authorities that they amend their rules as necessary and appropriate to permit three business day settlement.

1. Rule 10b–10

Some commentators suggested that implementation of a T+3 settlement period will require amendments to the Commission's confirmation rule, Rule 10b–10 adopted under the 1934 Act.[14] Rule 10b–10 requires that broker-dealers send customers written confirmation disclosing information relevant to the transaction "at or before completion" of the transaction.[15] Generally, Rule 15c1–1 under the 1934 Act defines "completion of the transaction" to mean the time when: (i) A customer is required to deliver the security being sold; (ii) a customer is required to pay for the security being purchased; or (iii) a broker-dealer makes a bookkeeping entry showing a transfer of the security from the customer's account or payment by the customer of the purchase price.[16]

Currently, broker-dealers typically send customer confirmations the day after trade date. While the confirmation must be sent by settlement, because the confirmation does not need to be received prior to settlement, the current practice of sending the confirmation the day after trade date will satisfy Rule 10b–10 even under T+3.

Implementation of T+3, however, may alter the confirmation's utility as a customer invoice because confirmation delivery and transfer of customer funds and securities may not be possible within the three day settlement period. Under the current five day settlement period, confirmations generally reach customers in time for the customer to review them prior to transferring funds or securities to the transacting broker-dealer. Under T+3, the customer frequently will not receive the confirmation through the mails by day three; thus, shortening the settlement period to three days may require broker-dealers either to cover the cost of the transaction for a longer period of time or demand funds or securities from the customer earlier than under current practice.[17] Accordingly, the Commission encourages broker-dealers to consider changes to their systems to dispatch confirmations as early as possible following execution of a trade. The Commission also encourages broker-dealers to develop and implement the systems necessary to provide customers, at the time of execution, the net purchase price.

In addition to serving currently as an invoice, the confirmation serves other significant investor protection functions. In particular, the confirmation serves as a written record of the customer's transaction, thus satisfying the Statute of Frauds,[18] provides customers a means of checking the accuracy of their trades, and informs the customer of the broker-dealer's status and often its compensation in connection with the trade. Although the Commission believes that implementation of T+3 will not create compliance problems with regard to Rule 10b–10, it is continuing to consider the effect of T+3 on the confirmation's investor protection functions.

2. Rules 15c3–1 and 15c3–3

Rule 15c3–1[19] establishes the net capital requirements for brokers and dealers. Rule 15c3–3[20] requires brokers and dealers to maintain possession or control of all customer fully paid and excess margin securities. Commentators asked the Commission to review these rules to determine whether amendments will be required to conform them to a shorter settlement timeframe.

In determining a broker-dealer's net capital under Rule 15c3–1, the broker-dealer deducts from net worth, as computed in accordance with generally accepted accounting principles, assets not readily convertible into cash, including most unsecured receivables. A broker-dealer also must deduct certain category specific percentages from the securities and commodity futures positions that it carries in its proprietary account. The rule also requires that a failed to deliver contract that has been outstanding for a certain specified period of time be treated as a proprietary position of the broker-dealer and subject to a percentage deduction. This time period is dependent upon the time from settlement date. A contract becomes a fail when it has not settled by the prescribed settlement date. By establishing a shorter settlement timeframe, Rule 15c6–1 will affect the 15c3–1 requirements correspondingly, thus a contract will become a fail in three business days rather than the current five business days.

As with Rule 15c3–1, some of the requirements imposed on broker-dealers by Rule 15c3–3 are dependent upon the time from settlement. One commentator, Goldman Sachs,[21] referred specifically to Rule 15c3–3(m).[22] Rule 15c3–3(m) requires that a broker or dealer that has executed a sell order for a customer, and has not obtained possession of such securities from the customer within ten business days after the settlement date, must immediately close the transaction with the customer by purchasing securities of like kind and quantity.

The Commission notes that Rule 15c6–1 merely changes the number of days following the trade date that settlement will occur. For example, under the new rule, the ten day time period referred to in Rule 15c3–3(m) would generally begin three business days following the trade date, instead of the five business day convention currently in effect. Therefore, Rules 15c3–1 and 15c3–3 are consistent with Rule 15c6–1.[23]

3. Regulation T ("Reg T")

Commentators urged the Commission, in conjunction with the Federal Reserve Board, to review Reg T[24] to determine how, if at all, Reg T should be modified. Currently, Reg T does not require that any action be taken unless a customer fails to pay for securities within seven business days of the trade date. The concern is that Reg T as currently drafted could leave customers and brokers and

[14] 17 CFR 240.10b–10.

[15] 17 CFR 240.10b–10(a).

[16] 17 CFR 240.15c1–1(b).

[17] Rule 10b–10 does not specify mail delivery as the sole means of sending customer confirmations. Facsimile transmissions would be acceptable under the Rule as well.

[18] Uniform Commercial Code section 8–319 states that a "contract for the sale of securities is not enforceable by way of action or defense unless * * * there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker, sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price." U.C.C. 8–319 (1990).

[19] 17 CFR 240.15c3–1.

[20] 17 CFR 240.15c3–3.

[21] Letter from Anthony J. Leitner, Vice President-Associate General Counsel, Goldman Sachs, to Jonathan G. Katz, Secretary, Commission (June 30, 1993).

[22] 17 CFR 240.15c3–3(m).

[23] Similarly, the Commission notes that the time periods indicated in the formula for determining reserve requirements for brokers and dealers, Rule 15c3–3a, also are consistent with Rule 15c6–1.

[24] Reg T, 12 CFR part 220, *et. seq.*, imposes, among other things, initial margin requirements and payment rules on securities transactions. See 15 U.S.C. 78a *et seq.*, part 220.

dealers with the impression that payment from the customer is not due in a three day settlement environment until the expiration of the seven-day period specified by Reg T.

Consistent failures of customers to make payment until seven days would diminish greatly the benefits to be achieved from Rule 15c6–1. Recently, the Federal Reserve Board published notice of its intent to review Reg T generally, including perhaps tying the deadline for payment to settlement date.[25] Accordingly, the Commission has authorized the Division to request the Federal Reserve Board staff to consider whether conforming amendments to Reg T requiring payment from customers within two business days following the settlement date would be appropriate.

4. Disclosure of Depository Eligibility

In the Proposing Release, the Commission solicited comment on whether the Commission should adopt a disclosure requirement under the 1933 Act concerning depository eligibility of an IPO. The disclosure requirement, as discussed in the Proposing Release, would require disclosure of whether the securities being offered in an IPO are depository eligible, and if not, why not.

Five commentators supported the adoption of a disclosure requirement for IPOs as described above. The Cashiers' Association, DTC, and CHX agreed that the Commission should adopt a disclosure requirement concerning depository eligibility of IPOs, but these commentators believed that it was not necessary to include as an exhibit to the registration statement a letter from a securities depository confirming that the securities are eligible for deposit with that depository. Three commentators opposed the proposal, stating that it was unnecessary.

The Commission believes that depository eligibility is important to perfecting the national clearance and settlement system. Moreover, the Commission believes that disclosure regarding whether or not an IPO is, or will be, eligible for deposit at a securities depository is appropriate. SRO rules require broker-dealers to use depositories to confirm and settle trades in depository eligible securities. Disclosure that the securities are not depository eligible will facilitate compliance and efficient clearance and settlement in the secondary market immediately after the offering. Accordingly, the Commission is directing the staff to pursue requiring disclosure when neither the issuer nor the underwriter are intending to make the securities being offered depository eligible.

[FR Doc. 93–25093 Filed 10–12–93; 8:45 am]
BILLING CODE 8010–01–P

[25] See Securities Credit Transactions, Review of Regulation T, "Credit by Brokers and Dealers" (August 18, 1992), 57 FR 37109.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960–AC28

Supplemental Security Income for the Aged, Blind, and Disabled; Payment of Benefits Due Deceased Recipients

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final regulations reflect the requirements of section 8 of the Employment Opportunities for Disabled Americans Act which expanded our authority to pay supplemental security income (SSI) benefits due persons who are deceased. We explain we are now authorized to pay SSI benefits due a deceased individual to a surviving spouse and may also pay SSI benefits due a deceased disabled or blind child to parent(s) under certain conditions. These regulations also make several other changes that are unrelated to this legislation but which clarify longstanding policy or involve overpayment and underpayment issues.

EFFECTIVE DATE: October 13, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1759.

SUPPLEMENTARY INFORMATION: These final rules reflect section 1631(b)(1) of the Social Security Act (the Act), as amended by section 8 of Public Law 99–643, the Employment Opportunities for Disabled Americans Act, by revising the circumstances under which SSI benefits, that may be due persons who have died, may be paid to survivors. Under these rules, if the deceased had a spouse, as spouse is defined in § 416.1806, in the month of death, who was not his or her "eligible spouse," as defined in § 416.1801, that spouse may be paid any benefits due the deceased for the month of June 1986 and for later months if the surviving spouse was "living in the same household" with the deceased in the month of death or within the 6 months preceding the month of death. These rules do not change the current rules that permit payment of benefits due the deceased individual to an eligible spouse.

Under section 1631(b)(1)(A)(i), a spouse and the deceased were "living in the same household" if they were "living in the same household" under the rules for title II lump-sum death payments made pursuant to section 202(i) of the Act in the month of death or within the 6 months preceding the month of death. See § 404.347. Since the rules in the SSI program for "deeming" income from one spouse to another are more restrictive than the rules in section 202(i), an ineligible spouse who was "living in the same household" with the deceased for purposes of deeming will automatically meet the "living in the same household" test of section 202(i).

Under these final rules, if the deceased individual was a disabled or blind child at the time the underpayment occurred, and was living with his or her parent(s) in the month of death or within the 6 months preceding the month of death, the underpayment may be paid to the parent(s). The term "child" is defined in § 416.1856 to mean an individual under 18 years of age, or a student under 22 years of age, who is not married and not the head of a household. However, only a natural or adoptive parent may qualify for the benefits due. A stepparent who was not an adoptive parent cannot qualify since the statute specifies payment only to a parent or parents but does not include the spouse of a parent. Without specific legislative authority or any indication in the legislative history that Congress intended stepparents to qualify for benefits due to the deceased individual, we have no clear basis for making such payments to stepparents. Therefore, if the deceased individual was living with a natural or adoptive parent or parents in the month of death or within the 6 months preceding the month of death, we can pay that parent or parents any SSI underpayment due the deceased individual which occurred while such individual was a blind or disabled child. The authority to so pay parents was effective with respect to benefits payable for months after May 1986.

Under these final regulations, if the deceased individual was living with his spouse within the meaning of section 202(i) of the Act in the month of death or within the 6 months preceding the month of death, and with a natural or adoptive parent(s) in the month of death or within the 6 months preceding the month of death, we will pay the parent(s) any SSI underpayment due a deceased individual which occurred for months the deceased was a blind or disabled child, and we will pay the spouse any SSI underpayment due the deceased individual which occurred for months he or she no longer met the definition of "child" as defined in § 416.1856. In cases in which both the parent(s) and the spouse qualify for payment of the underpayment but the parent(s) cannot be paid due to death or

some other reason, then the underpayment will be paid to the spouse.

Under these final regulations, an individual who was a disabled or blind child at the time the underpayment occurred will be considered to have been "living with" his or her parent(s) in the period if the individual satisfies the "living with" criteria we use when applying the rules for deeming of income (§ 416.1165), or would have satisfied the criteria had his or her death not precluded the application of such criteria throughout a month. We considered establishing a requirement of "actual physical cohabitation" to establish that the parent(s) and deceased individual lived together in the month of death or within the 6 months preceding the month of death. Instead, we chose a policy that would establish that the deceased individual was "living with" his or her parent(s) if the deceased individual and his or her parent(s) were in the same household under the rules for deeming of parental income. Requiring actual physical cohabitation would create a new definition of "living with" and thus would complicate the administration of the program. The definition used in "deeming" uses the general rule of "actual physical cohabitation" with some common sense exceptions for "temporary absences," and this will best effectuate the intent of the amendment.

Determinations about any SSI benefits payable to survivors, and how and to whom benefits will be paid, are "initial determinations," as defined in § 416.1402, giving rise to administrative and judicial appeal rights. If an individual dies after requesting an administrative law judge hearing or Appeals Council review, we will not dismiss the request if a spouse or parent qualified to receive any SSI benefits due the deceased individual wishes to continue the proceedings. We will also not dismiss a pending request for a hearing or Appeals Council review upon the death of the individual if the deceased authorized IAR to a State, even if there is no spouse or parent to pursue the appeal.

Regulatory Changes

The current rules at §§ 416.340 and 416.345 authorize the use of the date of a written statement or oral inquiry as an individual's date of application for SSI benefits. The current rules also provide that if the individual dies before he or she has filed an application, the date of the written statement or oral inquiry will be used as the date of application if the deceased's eligible spouse or someone on his or her behalf files an SSI application, and the eligible spouse lived with the deceased within 6 months immediately preceding the individual's death. These final regulations at §§ 416.340(d)(2) and 416.345(e)(2) provide that we will use the date of the written or oral inquiry as the date of application if the claimant dies before an application is filed and a surviving eligible or ineligible spouse or parent of an individual who was a blind or disabled child at the time the underpayment occurred who could be paid the SSI benefits as a survivor or someone on the survivor's behalf files an SSI application form within the prescribed time.

The current rules at § 416.533 bar payment of SSI benefits to a transferee or assignee of an eligible individual except for amounts due a State or political subdivision as IAR. These final regulations at § 416.533 provide that any SSI benefit amounts payable to survivors are also not subject to advance transfer or assignment.

We are also clarifying the current rules at § 416.536 to delete references to underpayment amounts for a "month." As explained in the introductory paragraph in § 416.536 and the provisions of § 416.538, we determine underpayments for a "period" rather than by month. Further, the final rule at § 416.536 contains a phrase identical to that now set forth in § 416.537(a) that explains when payment of benefits is made. This change standardizes the rule as to when payment of benefits is to be made for underpayments with the rule regarding overpayments.

The current rules at § 416.537(b)(2) provide that a penalty is not an adjustment of an overpayment and is imposed only against any amount due the penalized individual or, after death, any amount due the deceased which otherwise would be payable to his or her surviving eligible spouse. We are revising the rules at § 416.537(b)(2) to provide that a penalty is not an adjustment of an overpayment and is imposed only against any amount due the penalized individual or, after death, any amount due the deceased which otherwise would be paid to his or her survivor.

The current rules at § 416.538 permit no delay in a determination and payment of an underpayment otherwise due unless we can make a determination for an apparent overpayment before the close of the month following the month in which we discovered the underpayment. These final rules at § 416.538 will (1) maintain current rules regarding underpayments to eligible individuals and (2) add new rules which permit a postponement to enable us to resolve all overpayments, incorrect payments, adjustments, and penalties before we determine an underpayment and pay unpaid SSI benefits to an ineligible survivor or to an individual who is now ineligible. This is intended to provide additional time to apply the rule in § 416.543 accurately and thus provides the best opportunity of collecting an overpayment from a survivor or a person who is ineligible for SSI.

The current rules at § 416.538 provide that we can offset a penalty assessed against an individual's benefit against SSI benefits due the individual that are otherwise payable to his or her surviving eligible spouse. These final rules at § 416.538 provide that we can offset a penalty against SSI benefits due the deceased that are otherwise payable to a survivor.

The current rules at § 416.542(b) permit payment of SSI benefits due a deceased individual only to a surviving spouse who was eligible for SSI benefits and was living in the same household with the deceased in the month of death or was not separated from the individual for 6 months at the time of death. These final rules at § 416.542(b) permit payment to the surviving member of an eligible couple, a surviving spouse who was not a member of an eligible couple, or a natural or adoptive parent if the deceased was a blind or disabled child when the underpayment occurred and where the requirements regarding living arrangements are met.

These final rules at § 416.542 also prohibit payment of SSI benefits that may be due a deceased individual to a person who intentionally caused the death of the individual and prohibit payment of such benefits to a survivor, other than an eligible spouse, who requests the payment more than 24 months after the month of the individual's death. The first change is based on our longstanding policy of prohibiting a person who intentionally causes the death of another individual from profiting from that action. The second change responds to the need to set a reasonable administrative limit on the time a survivor may request payment of SSI benefits that may be due a deceased individual. The limit for other than the eligible spouse is set at 24 months to make the time the same as the title II rule for applying for lump-sum death benefits under § 404.391(b). There is no such time limit for eligible spouses under preexisting regulations at § 416.542.

The current rules at § 416.543 give priority consideration to applying SSI benefits due a deceased individual and

payable to a surviving eligible spouse against any overpayment to the spouse unless we have waived recovery. The final rules at § 416.543 extend this priority consideration to include benefits due a deceased individual and payable to a survivor who has received any overpayments unless we have waived recovery of the survivor's overpayment.

These final rules add the determinations concerning how much and to whom SSI benefits due a deceased individual will be paid to the list of administrative actions that are initial determinations at § 416.1402, extending administrative and judicial appeal rights to those determinations.

The current rules at § 416.1457(c)(4) authorize an administrative law judge (ALJ) to dismiss a request for a hearing if the person requesting the hearing dies, there are no other parties, and there is no information to show that the deceased may have an eligible spouse. Under these final rules at § 416.1457(c)(4), an ALJ may not dismiss the request for a hearing of a deceased individual if there is an eligible spouse or other survivor who could be qualified to receive the benefits and who wishes to pursue the request for hearing, or if the deceased individual authorized IAR to a State pursuant to section 1631(g) of the Act.

The current rules at § 416.1471(b) authorize the Appeals Council to dismiss a request for review if the person requesting the review or any other party to the proceedings dies and the record clearly shows that there is no other person who may be the deceased's eligible spouse who wishes to continue the action.

Under these final rules at § 416.1471(b), the Appeals Council may not dismiss the request for review of a deceased individual if there is an eligible spouse or survivor who could be qualified to receive the benefits and who wishes to continue the action or if the deceased individual authorized IAR to a State pursuant to section 1631(g) of the Act.

Public Comments

These rules were published as a Notice of Proposed Rulemaking (NPRM) at 55 FR 37249 on September 10, 1990. We received two responses commenting on the proposed rules.

Comment: The first commenter expressed concern that § 416.538(c) deviated from current policy of promptly paying underpayments to recipients and eligible spouses by delaying payment to ineligible individuals and/or survivors.

Response: Although § 416.538(c) of the proposed regulations states that we may delay issuance of underpayments due an individual who is no longer eligible and certain survivors, we are not deviating from present policy on the payment of underpayments to currently eligible recipients.

Prior to the enactment of this legislation, payment of benefits otherwise due could be paid only to the SSI recipient or the surviving eligible spouse. The prior regulations also specified that when there was an apparent overpayment and no determination had been reached on that overpayment, payment of benefits otherwise due had to be paid by the close of the month following the month the underpaid amount was discovered.

We did not intend to give the impression that the payment of underpayments to other survivors could be delayed indefinitely. To that end, even though we are not bound by the prior regulatory time restriction for eligible recipients, we believe that all survivors deserve prompt attention and should be paid any benefits due both timely and correctly. These new regulations only permit us to review the record of the deceased individual (or the ineligible individual's old record) to determine if there are any discrepancies on the record which need to be resolved (e.g., an overpayment, IAR to a State, or a penalty).

Otherwise, if the benefits due were paid to an ineligible individual or survivor immediately without the resolution of any overpayments or discrepancies on the deceased individual's record, we would have limited methods of collecting the outstanding debt from the ineligible individual or survivor. On the other hand, when benefits are due to an eligible individual or eligible spouse, we can recover overpaid amounts directly from the individual. In addition, this review of the record also allows us to make certain that when the benefits are paid, they are paid to the individual to whom they are due. Our present operating instructions reflect the need for expeditious action on these cases which fall under § 416.538(c).

Comment: Another commenter expressed concern that there may be a broader interpretation of a portion of section 1631(b)(1)(A)(ii) which was not being given consideration. The commenter suggested that the statutory language could be read to mean that the underpaid individual need not have been a child in the month of death in order to pay the underpayment to his or her parent(s).

Response: Our interpretation of the statutory provision, as set forth in the NPRM, required the deceased to have been a child in the month of death. In our view, this was, and continues to be, the most natural reading of the statute.

However, we have decided that the interpretation suggested by the commenter is an acceptable reading as well. This interpretation will allow us to pay underpayments to parent(s) of individuals who would have received benefits as blind or disabled children if their claims had been awarded on a timely basis. However, any underpayments payable to parent(s) will only be payable for months after May 1986 for which benefits were due and only for months of eligibility in which the deceased individual was a child as defined in § 416.1856. This latter requirement allows us to maintain the integrity of the statutory provision requiring that the underpayment have been due "a disabled or blind child."

Because of the broader interpretation of the statute resulting from the additional comment we received, it is now possible that both a spouse and parent(s) could be eligible to receive the same underpayment due a deceased individual. If the underpayment occurred for months the individual was a blind or disabled child, and if the individual subsequently married, the underpayment could be paid to *either* the parent(s) or the spouse in cases where both the parent(s) and the spouse were living in the same household with that individual within 6 months of the month of his or her death. However, if the underpayment in such a case occurred for months *after* the individual married or ceased to be a child, as that term is defined in section 1614(c) of the Act and the regulation at 20 CFR 416.1856, then, as explained above, the underpayment could not be paid to the parents under the revised interpretation of section 1631(b)(1)(A)(ii) since the underpayment was not due "a disabled or blind child."

For cases in which the underpayment could be paid to both a parent(s) and a spouse for the period of time that the individual was a child, we will pay the underpayment to the parent(s) since the underpayment occurred while the deceased was a disabled or blind child.

Of course, in cases in which both the parent(s) and the spouse qualify for payment of the underpayment but the parent(s) cannot be paid due to death or some other reason, then the underpayment will be paid to the spouse.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 since the costs are expected to be less than $100 million and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations do not impose recordkeeping or reporting requirements on the public.

Regulatory Flexibility Act

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

(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: April 8, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: July 20, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subparts C, E and N of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart C—Filing of Applications

1. The authority citation for subpart C of part 416 continues to read as follows:

Authority: Secs. 1102, 1611, and 1631(a), (d), and (e) of the Social Security Act; 42 U.S.C. 1302, 1382, and 1383(a), (d), and (e).

2. In part 416, subpart C, § 416.340(d)(2) is revised to read as follows:

§ 416.340 Use of date of written statement as application filing date.

* * * * *

(d) * * *

(2) If the claimant dies after the written statement is filed, the deceased claimant's surviving spouse or parent(s) who could be paid the claimant's benefits under § 416.542(b), or someone on behalf of the surviving spouse or parent(s) files an application form. If we learn that the claimant has died before the notice is sent or within 60 days after the notice but before an application form is filed, we will send a notice to such a survivor. The notice will say that we will make an initial determination of eligibility for SSI benefits only if an application form is filed on behalf of the deceased within 60 days after the date of the notice to the survivor.

3. In part 416, subpart C, § 416.345(e)(2) is revised to read as follows:

§ 416.345 Use of date of oral inquiry as application filing date.

* * * * *

(e) * * *

(2) If the claimant dies after the oral inquiry is made, the deceased claimant's surviving spouse or parent(s) who could be paid the claimant's benefits under § 416.542(b), or someone on behalf of the surviving spouse or parent(s) files an application form. If we learn that the claimant has died before the notice is sent or within 60 days after the notice but before an application form is filed, we will send a notice to such a survivor. The notice will say that we will make an initial determination of eligibility for SSI benefits only if an application form is filed on behalf of the deceased within 60 days after the date of the notice to the survivor.

Subpart E—Payment of Benefits, Overpayments, and Underpayments

4. The authority citation for subpart E of part 416 continues to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611(c), and 1631(a), (b), (d), and (g) of the Social Security Act; 42 U.S.C. 1302, 1381, 1381a, 1382(c), and 1383(a), (b), (d), and (g).

5. In part 416, subpart E, the first sentence of § 416.533 is revised to read as follows:

§ 416.533 Transfer or assignment of benefits.

Except as provided in § 416.525 and subpart S of this part, the Social Security Administration will not certify payment of supplemental security income benefits to a transferee or assignee of a person eligible for such benefits under the Act or of a person qualified for payment under § 416.542.

* * *

6. In part 416, subpart E, § 416.536 is revised to read as follows:

§ 416.536 Underpayments—defined.

An underpayment can occur only with respect to a period for which a recipient filed an application, if required, for benefits and met all conditions of eligibility for benefits. An underpayment, including any amounts of State supplementary payments which are due and administered by the Social Security Administration, is:

(a) Nonpayment, where payment was due but was not made; or

(b) Payment of less than the amount due. For purposes of this section, payment has been made when certified by the Social Security Administration to the Department of the Treasury, except that payment has not been made where payment has not been received by the designated payee, or where payment was returned.

7. In part 416, subpart E, § 416.537(b)(2) is revised to read as follows:

§ 416.537 Overpayments—defined.

* * * * *

(b) * * *

(2) *Penalty.* The imposition of a penalty pursuant to § 416.724 is not an adjustment of an overpayment and is imposed only against any amount due the penalized recipient, or, after death, any amount due the deceased which otherwise would be paid to a survivor as defined in § 416.542.

8. In part 416, subpart E, § 416.538 is revised to read as follows:

§ 416.538 Amount of underpayment or overpayment.

(a) *General.* The amount of an underpayment or overpayment is the difference between the amount paid to a recipient and the amount of payment actually due such recipient for a given period. An underpayment or overpayment period begins with the first month for which there is a difference between the amount paid and the amount actually due for that month. The period ends with the month the initial determination of overpayment or underpayment is made. With respect to the period established, there can be no underpayment to a recipient or his or her eligible spouse if more than the correct amount payable under title XVI of the Act has been paid, whether or not adjustment or recovery of any overpayment for that period to the recipient or his or her eligible spouse has been waived under the provisions of §§ 416.550 through 416.556. A subsequent initial determination of overpayment will require no change with respect to a prior determination of overpayment or to the period relating to such determination to the extent that

the basis of the prior overpayment remains the same.

(b) *Limited delay in payment of underpaid amount to recipient or eligible surviving spouse.* Where an apparent overpayment has been detected but determination of the overpayment has not been made (see § 416.558(a)), a determination of an underpayment and payment of an underpaid amount which is otherwise due cannot be delayed to a recipient or eligible surviving spouse unless a determination with respect to the apparent overpayment can be made before the close of the month following the month in which the underpaid amount was discovered.

(c) *Delay in payment of underpaid amount to ineligible individual or survivor.* A determination of an underpayment and payment of an underpaid amount which is otherwise due an individual who is no longer eligible for SSI or is payable to a survivor pursuant to § 416.542(b) will be delayed for the resolution of all overpayments, incorrect payments, adjustments, and penalties.

(d) *Reduction of underpaid amount.* Any underpayment amount otherwise payable to a survivor on account of a deceased recipient is reduced by the amount of any outstanding penalty imposed against the benefits payable to such deceased recipient or survivor under section 1631(e) of the Act (see § 416.537(b)(2)).

9. In part 416, subpart E, § 416.542 is amended by revising the section heading, revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 416.542 Underpayments—to whom underpaid amount is payable.

* * * * *

(b) *Underpaid recipient deceased—underpaid amount payable to survivor.* (1) If a recipient dies before we have paid all benefits due or before the recipient endorses the check for the correct payment, we may pay the amount due to the deceased recipient's surviving eligible spouse or to his or her surviving spouse who was living with the underpaid recipient within the meaning of section 202(i) of the Act (see § 404.347) in the month he or she died or within 6 months immediately preceding the month of death. (2) If the deceased underpaid recipient was a disabled or blind child when the underpayment occurred, the underpaid amount may be paid to the natural or adoptive parent(s) of the underpaid recipient who lived with the underpaid recipient in the month he or she died or within the 6 months preceding death. We consider the underpaid recipient to have been living with the natural or adoptive parent(s) in the period if the underpaid recipient satisfies the "living with" criteria we use when applying § 416.1165 or would have satisfied the criteria had his or her death not precluded the application of such criteria throughout a month. (3) If the deceased individual was living with his or her spouse within the meaning of section 202(i) of the Act in the month of death or within 6 months immediately preceding the month of death, and was also living with his or her natural or adoptive parent(s) in the month of death or within 6 months preceding the month of death, we will pay the parent(s) any SSI underpayment due the deceased individual for months he or she was a blind or disabled child and we will pay the spouse any SSI underpayment due the deceased individual for months he or she no longer met the definition of "child" as set forth at § 416.1856. If no parent(s) can be paid in such cases due to death or other reason, then we will pay the SSI underpayment due the deceased individual for months he or she was a blind or disabled child to the spouse. (4) No benefits may be paid to the estate of any underpaid recipient, the estate of the surviving spouse, the estate of a parent, or to any survivor other than those listed in paragraph (b)(1) through (3) of this section. Payment of an underpaid amount to an ineligible spouse or surviving parent(s) may only be made for benefits payable for months after May 1986. Payment to surviving parent(s) may be made only for months of eligibility during which the deceased underpaid recipient was a child. We will not pay benefits to a survivor other than the eligible spouse who requests payment of an underpaid amount more than 24 months after the month of the individual's death.

(c) *Underpaid recipient's death caused by an intentional act.* No benefits due the deceased individual may be paid to a survivor found guilty by a court of competent jurisdiction of intentionally causing the underpaid recipient's death.

10. In part 416, subpart E, § 416.543 is revised to read as follows:

§ 416.543 Underpayments—applied to reduce overpayments.

We apply any underpayment due an individual to reduce any overpayment to that individual that we determine to exist (see § 416.558) for a different period, unless we have waived recovery of the overpayment under the provisions of §§ 416.550 through 416.556. Similarly, when an underpaid recipient dies, we first apply any amounts due the deceased recipient that would be payable to a survivor under § 416.542(b) against any overpayment to the survivor unless we have waived recovery of such overpayment under the provisions of §§ 416.550 through 416.556.

Example: A disabled child, eligible for payments under title XVI, and his parent, also an eligible individual receiving payments under title XVI, were living together. The disabled child dies at a time when he was underpaid $100. The deceased child's underpaid benefit is payable to the surviving parent. However, since the parent must repay an SSI overpayment of $225 on his own record, the $100 underpayment will be applied to reduce the parent's own overpayment to $125.

Subpart N—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

11. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b; sec. 6 of Pub. L. 98–460, 98 Stat. 1802.

12. In part 416, subpart N, § 416.1402 is amended by removing the word "and" at the end of paragraph (k), replacing the period at the end of paragraph (l) with "; and", and adding paragraph (m) to read as follows:

§ 416.1402 Administrative actions that are initial determinations.

* * * * *

(m) How much and to whom benefits due a deceased individual will be paid.

13. In part 416, subpart N, § 416.1457(c)(4) is revised to read as follows:

§ 416.1457 Dismissal of a request for a hearing before an administrative law judge.

* * * * *

(c) * * *

(4) You die, there are no other parties, and we have no information to show that you may have a survivor who may be paid benefits due to you under § 416.542(b) and who wishes to pursue the request for hearing, or that you authorized interim assistance reimbursement to a State pursuant to section 1631(g) of the Act. The administrative law judge, however, will vacate a dismissal of the hearing request if, within 60 days after the date of the dismissal:

(i) A person claiming to be your survivor, who may be paid benefits due to you under § 416.542(b), submits a written request for a hearing, and shows

that a decision on the issues that were to be considered at the hearing may adversely affect him or her; or

(ii) We receive information showing that you authorized interim assistance reimbursement to a State pursuant to section 1631(g) of the Act.

14. In part 416, subpart N, § 416.1471(b) is revised to read as follows:

§ 416.1471 Dismissal by Appeals Council.

* * * * *

(b) You die, there are no other parties, and we have no information to show that you may have a survivor who may be paid benefits due to you under § 416.542(b) and who wishes to pursue the request for review, or that you authorized interim assistance reimbursement to a State pursuant to section 1631(g) of the Act. The Appeals Council, however, will vacate a dismissal of the request for review if, within 60 days after the date of the dismissal:

(1) A person claiming to be your survivor, who may be paid benefits due to you under § 416.542(b), submits a written request for review, and shows that a decision on the issues that were to be considered on review may adversely affect him or her; or

(2) We receive information showing that you authorized interim assistance reimbursement to a State pursuant to section 1631(g) of the Act.

[FR Doc. 93–24984 Filed 10–12–93; 8:45 am]
BILLING CODE 4190–29–P

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20 CFR Part 422

Review Procedures Under the Coal Industry Retiree Health Benefit Act of 1992 (Pub. L. 102–486)

AGENCY: Social Security Administration, HHS.

ACTION: Final rules, with request for comments.

SUMMARY: These final rules implement section 9706(f) of the Internal Revenue Code (IRC), enacted on October 24, 1992, as part of the Energy Policy Act of 1992, which contains the Coal Industry Retiree Health Benefit Act (the Coal Act) of 1992. Under section 9706 of the IRC, the Secretary of Health and Human Services (the Secretary) will assign to certain coal operators and related persons the responsibility for paying annual health and death benefit premiums and unassigned beneficiary premiums for retired miners and their eligible family members (eligible beneficiaries) who were eligible as of July 20, 1992 to receive and were receiving benefits under the 1950 or 1974 United Mine Workers of America (UMWA) Benefit Plans. Under section 9706(f) of the IRC, assigned operators (or related persons) may request the Secretary to provide detailed information regarding the assignments and to review the assignments. These rules explain how this review process will be carried out.

DATES: *Effective Date:* These rules are effective October 13, 1993.

Comments: Because we are not publishing proposed rules with an opportunity for comments, we are requesting comments on these final rules. Comments should be submitted on or before November 12, 1993.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–0869, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8471.

SUPPLEMENTARY INFORMATION: The 1950 and 1974 UMWA Benefit Plans for miners and their families were funded by contributions from those coal operators who signed wage agreements with the UMWA Union. These agreements provided health and other benefits for miners and certain others related to the miners and were renewed every few years in negotiations between the Union and the operators. Over the past several years, many of these operators went out of business, while others continued in business but without renewing their wage agreements with the Union. The consequence to the UMWA Benefit Plans was a continuing decline in contributions in the face of rising medical costs for miners. In effect, fewer and fewer coal operators were contributing to the costs of health insurance premiums for miners who had worked in the past for operators no longer making contributions. In 1992, with the Plans running large deficits, the Coal Act was enacted to ensure that retired miners (and their families) would continue to receive their health benefits in the future.

The Coal Act continues these benefits under a new plan, the UMWA Combined Benefit Fund, into which the old plans are merged. Per capita premiums under the Coal Act are assessed coal operators (or related persons) based upon the miner's employment history. The term "related persons" includes corporations, partnerships, and other business ventures in addition to individuals. Using rules set forth in the Coal Act, we will assign responsibility for paying such premiums for each retired miner (and his or her eligible family member) who was receiving benefits under the 1950 or the 1974 UMWA Benefit Plans as of July 20, 1992, to a particular coal operator (or related person) for which the miner worked or, if we are unable to assign, to a pool of unassigned eligible beneficiaries. Annual premiums for the "unassigned" are paid for on a proportionate basis by those operators assigned premium responsibility for other eligible beneficiaries.

Since the Social Security Administration (SSA) maintains earnings record information for the nation's workers, the Secretary has delegated to SSA the responsibility for examining the miners' earnings records and assigning eligible beneficiaries for premium liability purposes to individual coal operators (or related persons). About 120,000 beneficiaries will be affected by this one-time assignment activity which must be completed before October 1, 1993.

We will provide notices of the assignments to the assigned operators (or related persons) and to the UMWA Combined Benefit Fund Trustees who administer the new Fund, but we will not send notices to the eligible beneficiaries. The notice of assignment will inform the operator that the operator may, within 30 days of receiving the notice, request detailed information as to the work history of a miner and the basis for the assignment and that the assigned operator may thereafter ask for a review of the assignment of any eligible beneficiary within 30 days of receiving the detailed information. Alternatively, within 30 days of receiving the notice and without first requesting detailed information, the operator may ask us to review the assignment. In that case, we will not process the request for review until at least 30 days after the operator received the notice of assignment, in case the operator wants to request detailed information and submit additional evidence.

Only the assigned operator (or related person) may request the detailed information and request SSA to review

and revise its assignment. The requests must be filed within the periods specified in the Coal Act. We will review the assignment only if the assigned operator presents a prima facie case of error regarding the assignment. The review will be a review on the record and will not entail a face-to-face hearing. If review is denied, or if granted and the assignment is found correct, SSA's decision is final.

In these regulations, we explain the detailed information that the operator may request for any miner for whom we have assigned premium responsibility to that operator. We explain that the request must be filed with us within 30 days after the assigned operator received the assignment notice, as provided in the Coal Act. We will assume that the operator received the assignment notice within 5 days of the date shown on the notice. If the operator presents evidence to show that the operator received the notice more than 5 days after the date shown on the notice, we will consider the operator's request to be timely filed if the operator files the request within 30 days of the date of receipt.

We explain in these regulations how an assigned operator may request review of any assignment and explain that a request for review must be accompanied by evidence constituting a prima facie case of error. Although not required by the Coal Act, we provide in these regulations that if an operator files a request for review and asks for additional time to submit evidence, we will not process the request for review for 90 days from the date it was filed in order to allow the operator to submit the evidence. We also provide that an assigned operator may request review within 30 days after receiving the notice of assignment, without having requested detailed information. In that case, we will not process the request for review until at least 30 days after the operator received the notice of assignment. Thus, the operator will still have the 30 days provided by statute to request detailed information. If, subsequent to requesting review within 30 days of receiving the notice of assignment, the operator requests detailed information within that same 30-day period, we will send the information and not process the request for review until at least 30 days after the date the operator receives the detailed information. These time frames will allow the operator to review the detailed information, if desired, and then to submit any additional evidence.

The Coal Act provides for only a reconsideration by the Secretary of Health and Human Services, which will be a review on the record and will not include a face-to-face hearing. An SSA employee who was not previously involved in the assignment of premium responsibility to the operator will perform the review.

SSA is responsible for the accuracy of the assignment of premium responsibility in terms of the employment relationship of the miner to the assigned operator under the provisions of the Coal Act. However, we are not responsible for determining which individuals are eligible for health benefits or the amount of their benefits, or for assessing coal operators (or related persons) for premiums under the Coal Act. Accordingly, these issues cannot be raised as part of the review process set out in these rules.

Although our determination on review is final as to the operator's request, we provide in the regulations that we may on our own initiative reopen an assignment, whether or not it has been reviewed, within one year of the notice of the assignment if evidence in file shows that there is error on the face of the record or that the assignment was based on fraud. Absent any statutory provision for reopening an assignment, we believe that this policy offers reasonable protection for both the operators and SSA.

Regulatory Procedures

Justification for Final Rules Without Proposed Rules

The Department, even when not required by statute, as a matter of policy, generally follows the notice of proposed rulemaking and public comment procedures specified in the Administrative Procedure Act (APA), 5 U.S.C. 553, in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and prior public comment procedures because such procedures are impracticable in this case, as is explained below.

Although the Coal Act was enacted on October 24, 1992, Congress did not provide funding for the Department of Health and Human Services to implement the assignment provisions. Moreover, the Department did not have the authority to allocate other funds appropriated to it by Congress to carry out this activity. Because SSA could not expend money to implement the Coal Act until money was appropriated, we could not issue rules or begin implementation until funding was provided. A supplemental appropriation for these purposes was not approved until July 2, 1993 in the Supplemental Appropriation Act of 1993 (Pub. L. 103–50). At the same time, the Coal Act requires that all assignments be made before October 1, 1993.

We believe it is desirable for assigned operators to be aware that we have in place a Coal Act review process to implement section 9706(f) of the IRC. The use of prior notice and comment procedures would necessarily delay the issuance of final rules until well after the time assigned operators would have had—under statutory deadlines—to file their requests for detailed information and for review. Nevertheless, SSA is seeking public comments on these final rules to see whether there are ways to make the rules more effective. We will publish any changes to these regulations that we believe are needed as a result of the public comments.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Because we have determined that good cause exists for waiver of prior notice and comment procedures as impracticable, we are not required by the Regulatory Flexibility Act (Pub. L. 96–354) to prepare and make available for public comments a regulatory flexibility analysis. Nevertheless, we do not believe that this regulation will have a significant economic impact on a substantial number of small entities because it affects primarily large coal mine and related operators. In addition, relatively few small coal operators active prior to 1978 (when most of the retired miners now eligible for benefits under the Coal Act were working) are still in business and subject to assignment by SSA.

Paperwork Reduction Act

These final regulations contain reporting requirements in §§ 422.604 and 422.605. As required by section 2(a) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3507, we will submit a copy to the Office of Management and Budget for its review.

Public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time it will take to read the instruction, gather the necessary facts

and provide the information. If you have any comments or suggestions on this estimate, write to the Social Security Administration, ATTENTION: Reports Clearance Officer, 1–A–21 Operations Building, Baltimore, MD 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0960–NEW), Washington, DC 20503.

(Catalog of Federal Domestic Assistance Program—No listing)

List of Subjects in 20 CFR Part 422

Administrative practice and procedure; Freedom of information; Organization and functions (Government agencies); Social Security.

Dated: September 1, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: September 27, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, Subpart G is added to part 422 of 20 CFR chapter III to read as follows:

PART 422—ORGANIZATION AND PROCEDURES

Subpart G—Administrative Review Process Under the Coal Industry Retiree Health Benefit Act of 1992

Sec.

Authority: Secs. 19141–19143 of the Energy Policy Act of 1992, Pub. L. 102–486; 106 Stat. 3047.

Subpart G—Administrative Review Process Under the Coal Industry Retiree Health Benefit Act of 1992

§ 422.601 Scope and purpose.

The regulations in this subpart describe how the Social Security Administration (SSA) will conduct reviews of assignments it makes under provisions of the Coal Industry Retiree Health Benefit Act of 1992 (the Coal Act). Under the Coal Act, certain retired coal miners and their eligible family members (beneficiaries) are assigned to particular coal operators (or related persons). These operators are then responsible for paying the annual health and death benefit premiums for these beneficiaries as well as the annual premiums for certain unassigned coal miners and eligible members of their families. We will notify the assigned operators of these assignments and give each operator an opportunity to request detailed information about an assignment and to request review of an assignment. We also inform the United Mine Workers of America (UMWA) Combined Benefit Fund Trustees of each assignment made and the unassigned beneficiaries so they can assess appropriate annual premiums against the assigned operators. This subpart explains how assigned operators may request such additional information, how they may request review of an assignment, and how reviews will be conducted.

§ 422.602 Terms used in this subpart.

Assignment means our selection of the coal operator or related person to be charged with the responsibility of paying the annual health and death benefit premiums of certain coal miners and their eligible family members.

Beneficiary means either a coal industry retiree who, on July 20, 1992, was eligible to receive, and receiving, benefits as an eligible individual under the 1950 or the 1974 UMWA Benefit Plan, or an individual who was eligible to receive, and receiving, benefits on July 20, 1992 as an eligible relative of a coal industry retiree.

Evidence of a prima facie case of error means documentary evidence, records, and written statements submitted to us by the assigned operator (or related person) that, standing alone, shows our assignment was in error. The evidence submitted must, when considered by itself without reference to other contradictory evidence that may be in our possession, be sufficient to persuade a reasonable person that the assignment was erroneous. Examples of evidence that may establish a prima facie case of error include copies of Federal, State, or local government tax records; legal documents such as business incorporation, merger, and bankruptcy papers; health and safety reports filed with Federal or State agencies that regulate mining activities; payroll and other employment business records; and information provided in trade journals and newspapers.

A related person to a signatory operator means a person or entity which as of July 20, 1992, or, if earlier, the time immediately before the coal operator ceased to be in business, was a member of a controlled group of corporations which included the signatory operator, or was a trade or business which was under common control with a signatory operator, or had a partnership interest (other than as a limited partner) or joint venture with a signatory operator in a business within the coal industry which employed eligible beneficiaries, or is a successor in interest to a person who was a related person.

We or *us* refers to the Social Security Administration, or the Secretary of Health and Human Services or the Secretary's delegate, as appropriate.

You as used in this subpart refers to the coal operator (or related person) assigned premium responsibility for a specific beneficiary under the Coal Act.

§ 422.603 Overview of the review process.

Our notice of assignment will inform you as the assigned operator (or related person) which beneficiaries have been assigned to you, the reason for the assignment, and the dates of employment on which the assignment was based. The notice will explain that, if you disagree with the assignment for any beneficiary listed in the notice of assignment, you may request from us detailed information as to the work history of the miner and the basis for the assignment. Such request must be filed with us within 30 days after you receive the notice of assignment, as explained in § 422.604. The notice will also explain that if you still disagree with the assignment after you have received the detailed information, you may submit evidence that shows there is a prima facie case of error in that assignment and request review. Such request must be filed with us within 30 days after you receive the detailed information, as explained in § 422.605. Alternatively, you may request review within 30 days after you receive the notice of assignment, even if you have not first requested the detailed information. In that case, you still may request the detailed information within that 30-day period. (See § 422.606(c) for further details.)

§ 422.604 Request for detailed information.

(a) *General.* After you receive our notice of assignment listing the beneficiaries for whom you have premium responsibility, you may request detailed information as to the work histories of any of the listed miners and the basis for the assignment. Your request for detailed information must:

(1) Be in writing;

(2) Be filed with us within 30 days of receipt of that notice of assignment. Unless you submit evidence showing a later receipt of the notice, we will assume the notice was received by you within 5 days of the date appearing on the notice. We will consider the request to be filed as of the date we receive it. However, if we receive the request after the 30-day period, the postmark date on

the envelope may be used as the filing date. If there is no postmark or the postmark is illegible, the filing date will be deemed to be the fifth day prior to the day we received the request; and

(3) Identify the individual miners about whom you are requesting the detailed information.

(b) *The detailed information we will provide.* We will send you detailed information as to the work history and the basis for the assignment for each miner about whom you requested such information. This information will include the name and address of each employer for whom the miner has worked since 1978 or since 1946 (whichever period is appropriate), the amount of wages paid by each employer and the period for which the wages were reported. We will send you the detailed information with a notice informing you that you have 30 days from the date you receive the information to submit to SSA evidence of a prima facie case of error (as defined in § 422.602) and request review of the assignment if you have not already requested review. The notice will also inform you that, if you are seeking evidence to make a case of prima facie error, you may include with a timely filed request for review a written request for additional time to obtain and submit such evidence to us. Under these circumstances, you will have 90 days from the date of your request to submit the evidence before we determine whether we will review the assignment.

§ 422.605 Request for review.

We will review an assignment if you request review and show that there is a prima facie case of error regarding the assignment. This review is a review on the record and will not entail a face-to-face hearing. We will review an assignment if:

(a) You are an assigned operator (or related person);

(b) Your request is in writing and states your reasons for believing the assignment is erroneous;

(c) Your request is filed with us no later than 30 days from the date you received the detailed information described in § 422.604, or no later than 30 days from the date you received the notice of assignment if you choose not to request detailed information. Unless you submit evidence showing a later receipt of the notice, we will assume you received the detailed information or the notice of assignment within 5 days of the date shown thereon. We will consider the request to be filed as of the date we receive it. However, if we receive the request after the 30-day period, the postmark date on the envelope may be used as the filing date. If there is no postmark or the postmark is illegible, the filing date will be deemed to be the fifth day prior to the day we received the request; and

(d) Your request is accompanied by evidence establishing a prima facie case of error regarding the assignment. If your request for review includes a request for additional time to submit such evidence, we will give you an additional 90 days from the date of your request for review to submit such evidence to us.

§ 422.606 Processing the request for review.

Upon receipt of your written request for review of an assignment and where relevant, the expiration of any additional times allowed under §§ 422.605(d) and 422.606(c), we will take the following action:

(a) *Request not timely filed.* If your request is not filed within the time limits set out in § 422.605(c), we will deny your request for review on that basis and send you a notice explaining that we have taken this action;

(b) *Lack of evidence.* If your request is timely filed under § 422.605(c) but you have not provided evidence constituting a prima facie case of error, we will deny your request for review on that basis and send you a notice explaining that we have taken this action;

(c) *Request for review without requesting detailed information.* If your request is filed within 30 days after you received the notice of assignment and you have not requested detailed information, we will not process your request until at least 30 days after the date you received the notice of assignment. You may still request detailed information within that 30-day period, in which case we will not process your request for review until at least 30 days after you received the detailed information, so that you may submit additional evidence if you wish;

(d) *Reviewing the evidence.* If your request meets the filing requirements of § 422.605 and is accompanied by evidence constituting a prima facie case of error, we will review the assignment. We will review all evidence submitted with your request for review, together with the evidence used in making the assignment. An SSA employee who was not involved in the original assignment will perform the review. The review will be a review on the record and will not involve a face-to-face hearing.

(e) *Original decision correct.* If, following this review of the evidence you have submitted and the evidence in our file, we make a determination that the assignment is correct, we will send you a notice explaining the basis for our decision. We will not review the decision again, except as provided in § 422.607.

(f) *Original decision erroneous.* If, following this review of the evidence you have submitted and the evidence in our file, we make a determination that the assignment is erroneous, we will send you a notice to this effect. We will then determine who the correct operator is and assign the affected beneficiary(s) to that coal operator (or related person). If no assigned operator can be identified, the affected beneficiary(s) will be treated as "unassigned." We will notify the UMWA Combined Benefit Fund Trustees of the review decision so that any premium liability of the initial assigned operator can be adjusted.

§ 422.607 Limited reopening of assignments.

On our own initiative, we may reopen and revise an assignment, whether or not it has been reviewed as described in this subpart, under the following conditions:

(a) The assignment reflects an error on the face of our records or the assignment was based upon fraud; and

(b) We sent to the assigned operator (or related person) notice of the assignment within 12 months of the time we decided to reopen that assignment.

[FR Doc. 93–24986 Filed 10–12–93; 8:45 am]
BILLING CODE 4190–29–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–17

[FPMR Temp. Reg. D–17, Suppl. 2]

Extension of Temporary Regulation D–76

AGENCY: Public Buildings Service, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: This supplement extends the expiration date of FPMR Temporary Regulation D–76 to August 26, 1994. Temporary Regulation D–76 provides procedures governing the assignment and utilization of space in Federal or leased facilities under the custody and control of the General Services Administration.

DATES: *Effective Date:* October 13, 1993.
Expiration Date: August 26, 1994.

ADDRESSES: Comments should be submitted to the General Services Administration, (PQ), Washington, DC 20405.