considered the availability of necessary parts. The FAA finds that 18 months corresponds closely to the interval representative of most of the affected operators' normal maintenance schedules. The FAA considers that this interval will provide an acceptable level of safety.

Cost Impact

There are approximately 1,631 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 830 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that 485 Group 1 airplanes would be affected by this proposed AD. For Group 1 airplanes, the FAA estimates that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $707 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators of Group 1 airplanes is estimated to be $401,095, or $827 per airplane.

The FAA estimates that 345 Group 2 airplanes would be affected by this proposed AD. For Group 2 airplanes, the FAA estimates that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $224 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators of Group 2 airplanes is estimated to be $118,680, or $344 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption '''ADDRESSES.''

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 96–NM–153–AD.

Applicability: Model 737 series airplanes; as listed in Boeing Service Bulletin 737–27–1155, dated October 26, 1989; as revised by Notices of Status Change No. 737–27–1155NSC1, dated January 25, 1990, No. 737–27–1155NSC2, dated February 15, 1990, and No. 737–27–1155NSC3, dated May 17, 1990; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the aileron control system during flight, which could result in reduced lateral control of the airplane, accomplish the following:

(a) Within 18 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD, as applicable, in accordance with Boeing Service Bulletin 737–27–1155, dated October 26, 1989; as revised by Notice of Status Change No. 737–27–1155NSC1, dated January 25, 1990, and Notice of Status Change No. 737–27–1155NSC2, dated February 15, 1990, and Notice of Status Change No. 737–27–1155NSC3, dated May 17, 1990.

(1) For Groups 1 and 2 airplanes: Replace the aileron centering springs, part number (P/N) 69–39429–2, with improved springs, P/N 69–39429–3, in accordance with the service bulletin and Notices of Status Change.

(2) For Groups 1 and 2 airplanes: Install a two-piece plug, P/N 69–78072–1, in the weight reduction hole in the feel cam in accordance with the service bulletin and Notices of Status Change.

(3) For Group 1 airplanes: Replace the two eyebolts, P/N 69–39423–1, of the aileron centering spring attachment with new eyebolts, P/N 69–74646–1, in accordance with the service bulletin and Notices of Status Change.

(b) As of the effective date of this AD, no person shall install the items specified in paragraphs (b)(1) and (b)(2) of this AD on any airplane, as specified:

(1) For Groups 1 and 2 airplanes: Aileron centering springs having P/N 69–39429–2 shall not be installed.

(2) For Group 1 airplanes: Eyebolts, P/N 69–39423–1, of the aileron centering spring attachment shall not be installed.

(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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

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

Issued in Renton, Washington, on August 21, 1996.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–21885 Filed 8–23–96; 9:03 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232 and 240

[Release No. 34–37595; File No. S7–21–96]

RIN 3235–AG99

Lost Securityholders

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Proposed Rulemaking and Request for Comments.

SUMMARY: The Securities and Exchange Commission (''Commission'') is publishing for comment proposed Rule 17Ad–17 and proposed Rule 17a–24 which are designed to address the problem of ''lost securityholders.'' Rule 17Ad–17 would require transfer agents to conduct searches in an effort to locate lost securityholders. Rule 17a–24 would allow the Commission to gather data related to lost securityholders and to provide it to information distributors or others. The Commission also is seeking comments on the extent to which further regulatory or remedial steps are necessary, including whether the Commission should operate a national database for lost securityholders.

DATES: Comments should be received on or before October 28, 1996.

ADDRESSES: Interested persons should submit three copies of their written data, views, and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–21–96; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying at the Commission's public reference room, 450 Fifth St., N.W., Washington D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director; Christine Sibille, Senior Counsel; or Michele Bianco, Attorney; at 202/942–4187, Office of Risk Management and Control, Mail Stop 5–1, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction and Summary

From time to time, issuers lose contact with some of their securityholders (''lost securityholders''). Loss of contact may result from a change in the securityholder's address or a transfer of beneficial ownership (*e.g.*, through inheritance). As a result, these securityholders do not receive principal, dividend, or interest distributions to which they are entitled, and their property is at risk of being deemed abandoned under state escheat laws.[1] At a point in time established under the applicable escheat law, the custodians of these assets must turn them over to the appropriate state unclaimed property administrator. In some states, that can occur in as few as three years after the custodian loses contact with the securityholder.[2] Transfer agents, as the primary custodians of the records that determine the ownership of securities and the entitlement to corporate distributions, can reduce significantly the number of lost securityholders by maintaining accurate records and by promptly initiating corrective measures when records no longer reflect the current status of a securityholder.[3]

Some transfer agents already take meaningful steps to prevent the loss of contact with securityholders and to reestablish contact after it has been lost. However, the Commission is concerned that some transfer agents may not be making sufficient use of currently available technology to locate securityholders with whom contact has been lost.

To address this problem, the Commission is seeking comment on several proposals. Proposed Rule 17Ad–17 would require that transfer agents take certain minimum steps to locate the correct address of each securityholder in their master securityholder files as well as require them to take such additional steps as are reasonable. Transfer agents would be required at a minimum to make two good faith attempts to locate lost securityholders before turning assets over to an unclaimed property administrator. These searches would be made at no cost to the securityholder. The Commission believes that this requirement should help reduce the number of lost securityholders and the escheatment of investor assets.

The Commission preliminarily believes that imposing an affirmative obligation on transfer agents to search for lost securityholders is in the public interest and would enhance investor protection. The Commission recognizes that regulatory obligations impose financial burdens and that the costs of complying with proposed Rule 17Ad–17 may fall upon transfer agents or indirectly on issuers. In proposing specific requirements, the Commission has attempted to minimize compliance costs. Also, decreasing the number of lost securityholders should reduce the costs to transfer agents and issuers of complying with state escheat laws.

The Commission also is proposing Rule 17a–24 to gather data related to lost securityholders that would be available to information distributors and others. Under this rule, the Commission would require entities that hold assets for investors, such as transfer agents and broker-dealers, to file electronically with the Commission certain lost securityholder information. The Commission would make such data available to private entities which could establish information services that could be accessed by investors to determine if they have been reported as lost.

As discussed more fully below, the Commission is also soliciting comment on the concept of a national database of lost securityholders to be operated by the Commission in order to facilitate the ability of lost securityholders to reestablish contact with issuers and transfer agents.

In summary, the proposals would:

- Establish a definition of lost securityholder.
- Require transfer agents to search for lost securityholders at no cost to the securityholders using at least one information database.
- Require certain entities that hold assets for securityholders to file with the Commission certain information pertaining to lost securityholders.
- Solicit comment on the establishment of a national lost securityholder database to be maintained by the Commission.

II. Transfer Agent Responsibilities to Maintain Accurate Records and to Locate Lost Securityholders

A. Maintenance of Master Securityholder Files

Rule 17Ad-10 under the Securities Exchange Act of 1934 (''Exchange Act'')[4] requires every recordkeeping

[1] *See* House Committee on Small Business, 103d Cong., 2nd Sess., Report on Business Opportunities and Technology (1993); Letter from Richard Breeden, Chairman, Commission, to Ron Wyden, Chairman, Committee on Small Business, U.S. House of Representatives (February 22, 1993); Letter from Arthur Levitt, Chairman, Commission, to Ron Wyden, Chairman, Committee on Small Business, U.S. House of Representatives (October 29, 1993).

[2] In some states, an investor's failure to vote or to communicate with the issuer during a period of five successive years, even if no communication from the investor has been required, can become the basis for constructive abandonment. *See, e.g.*, Letter from John K. Dalton, Associate Counsel, State of New York Office of the State Comptroller, to the Division of Market Regulation (''Division'') (December 12, 1994).

[3] Other financial institutions, such as registered broker-dealers, also may maintain records of securities ownership on behalf of customers for which they hold assets. In such instances, the transfer agent has recorded the financial institution as the owner in its account records, and the financial institution's customer account records will identify the beneficial owner of the securities. The Commission understands that such financial institutions have a lower incidence of lost securityholders. Letter from Judith Poppalardo, Assistant General Counsel, Securities Industry Association (''SIA''), to Division (June 7, 1996).

[4] 17 CFR 240.17Ad-10.

transfer agent[5] to maintain and keep current an accurate master securityholder file[6] that contains the minimum appropriate ''certificate detail'' for all securities transferred, purchased, redeemed, or issued and to which the transfer agent must post debits and credits. Certificate detail is defined by Rule 17Ad–9(a) to include information such as the securityholder's registration (including name), address of the securityholder, the size of the position, and other information used to identify the securities and the securityholder.[7]

The Commission believes that an accurate master securityholder file is one of the most basic steps in addressing the lost securityholder problem. Therefore, the Commission believes that recording of patently inadequate or inaccurate certificate detail to the master securityholder files is inconsistent with Rule 17Ad-10. For example, recording an address of ''New York, New York'' without a street address will almost certainly result in the return by the U.S. Postal Service as undeliverable of all correspondence sent to such address. Thus, in most cases a transfer agent should not post to the master securityholder files items it receives for transfer that contain a patently incorrect address or items that do not contain a complete address[8] and should return such transfer request to the presenter without effecting the transfer.[9]

B. Current Transfer Agent Practices Regarding Lost Securityholders

Currently, most transfer agents rely on the standards contained in Rule 14a-3(e)(2) under the Exchange Act to determine when to code as ''lost'' the accounts of securityholders whose correspondence has been returned as ''undeliverable'' because of an incorrect or insufficient address.[10] That rule provides that unless otherwise required by state law, the obligation to mail an annual report or proxy statement to a securityholder is suspended if (1) an annual report and a proxy statement for two consecutive annual meetings, or (2) all payments of dividends or interest on securities sent by first class mail (of which there has been at least two payments) during a twelve month period which have been mailed to such securityholder's address have been returned as undeliverable.

Generally, the first time a distribution check is returned as undeliverable, a transfer agent will place the returned check in another specially marked (*e.g.*, color-coded) envelope and will remail the distribution check to the registered owner at the same address (''remailing procedure'').[11] If the remailing is returned, the issuer or the transfer agent will hold the check until the next distribution payment. This remailing procedure may be repeated if the next distribution payment or other issuer correspondence is returned as undeliverable. If two consecutive distribution payment mailings are returned as undeliverable, the transfer agent will code the securityholder's account as undeliverable (*i.e.*, the securityholder is ''lost'') and will hold any further distributions and communications to the securityholder. Some transfer agents also conduct a mass mailing at the end of each year to all securityholders whose accounts they deem to be undeliverable.

After two consecutive mailings are returned as undeliverable, some transfer agents conduct searches for the securityholder by using information databases.[12] In addition to information databases, transfer agents also use various other methods in their attempts to obtain the current addresses of lost securityholders.[13] However, not all transfer agents take such actions to search for lost securityholders.

C. Proposed Rule 17Ad–17

The Commission is proposing Rule 17Ad–17 under the Exchange Act to require transfer agents to conduct searches for securityholders once the transfer agents have determined that a securityholder is lost. The proposed rule would require each recordkeeping transfer agent to exercise reasonable care to locate the correct address of lost securityholders, and would establish minimum search requirements.[14] However, the rule would not impose on transfer agents an absolute obligation actually to locate each lost securityholder.

1. Definition of Lost Securityholder

For purposes of Rule 17Ad–17, a securityholder will be classified as a lost securityholder when two items of correspondence,[15] such as distribution payments, that were sent by first class mail at least three months apart, have been returned as undeliverable. Because at times transfer agents receive change of address notifications soon after the mailing and subsequent return of a distribution payment, a three month period will be required to have elapsed between the two correspondences. If and when a transfer agent receives a

[5] 17 CFR 240.17Ad-9(h) defines recordkeeping transfer agent as the registered transfer agent that maintains and updates the master securityholder file.

[6] 17 CFR 240.17Ad-10(b) requires every recordkeeping transfer agent to maintain and keep current an accurate master securityholder file and subsidiary files. If there is a record difference, the master securityholder file and subsidiary files must accurately represent all relevant debits and credits until the record difference is resolved. The recordkeeping transfer agent must exercise diligent and continuous attention to resolve all record differences. *See also* 17 CFR 240.17Ad-9(b).

[7] 17 CFR 240.17Ad-9(a).

[8] Transfer agents should use their experience in their reviews for adequacy of addresses contained in items submitted for transfer. For example, the absence of a street address in some rural areas and small towns may not render an address incomplete or inadequate. Accordingly, posting such certificate detail may not violate Rule 17Ad-10.

[9] The Commission understands that there are situations where rejecting a transfer request because of an incomplete address may result in financial harm to the investor (*e.g.*, when a transfer request is received near or on a record date or in connection with a tender or an exchange offer). Letter from Michael Foley, President, The Securities Transfer Association (''STA''), to the Division (May 26, 1994). In such situations, the Commission believes that a transfer agent should have the flexibility to follow the general practice of accepting the transfer request and using the address of the presenting financial intermediary in care of the securityholder before seeking an accurate address.

[10] 17 CFR 240.14a-3(e)(2).

[11] Transfer agents use this second mailing to test the possibility that the first mailing did not reach the intended recipient because of an error by the postal service. The second mailing also can be used to generate a better or current address by requesting an address correction from the postal service. Letter from Michael Foley, President, STA, to the Division (May 26, 1994). Transfer agents have estimated the success rate for this remailing from less than 10% to 50%. *See, e.g.*, Letters from Charles Rossi, Boston EquiServe, to the Division (February 26, 1996) and from Anthony J. Calcagni, Harris Trust and Savings Bank, to the Division (February 23, 1996).

[12] Many transfer agents and corporate issuers that conduct the transfer functions for their own securities currently use vendor-maintained, computer databases to assist them in searching for lost securityholders. Letters from Michael Foley, President, STA, to the Division (May 26, 1994), and Anthony F. Fireman, President, Corporate Transfer Agents Association, Inc. (''CTAA''), to the Division (April 25, 1994). These searches are usually based on name, address, or social security number. Many professional transfer agents (*e.g.*, transfer agents that perform transfer functions for issuers for a fee) also have the capability to perform searches by taxpayer identification number for issuers that are willing to pay an additional fee. In addition to using vendor-maintained information databases (*e.g.*, credit bureaus), some transfer agents and corporate issuers employ the services of the Social Security Administration (''SSA'') or the Internal Revenue Service (''IRS'') in an attempt to contact the lost securityholder.

[13] Among others, these methods include using CD–ROM technology for searching telephone directories, and inquiring at the bank where previously endorsed distribution checks were presented to learn if the bank has a current address. *See also*, Guttman, *Modern Securities Transfers*, ¶ 16.04 (3rd ed. 1987), noting that other methods include, but are not limited to, (i) checking all past correspondence with the registered owner, (ii) checking the source of transfer instructions for a proper address (for example, the broker through whom the securities had been acquired by the registered owner), and (iii) contacting the occupant of the premises of the last-known address for a forwarding address.

[14] *See supra* note 5 for a definition of recordkeeping transfer agent.

[15] The remailing of the same correspondence does not constitute a second item of correspondence.

new address for a lost securityholder, either directly from the securityholder or through the transfer agent's efforts, the securityholder will no longer be classified as lost.[16]

The Commission requests comments on whether the proposed standards for classifying a lost securityholder is appropriate or whether a different standard should be employed. For example, is the three month period between the mailing of two correspondences an appropriate time period?

2. Transfer Agents' Search Requirements

Rule 17Ad–17 would require every recordkeeping transfer agent whose master securityholder file includes accounts of lost securityholders to search an information database for such securityholders' current address. The transfer agent's initial search for the securityholder must be based on either name, if reasonably likely to locate the lost securityholder, or taxpayer identification number (typically an individual's social security number) using at least one information database. The search must be conducted within three months of the securityholder being classified as lost. If the lost securityholder is not found on the initial search, the transfer agent also must conduct a second search for the lost securityholder between one year and eighteen months after the initial search. This search is intended to identify address changes that were added to the database after the time of the earlier search. The transfer agent must conduct these searches without charge to the lost securityholder.

The Commission understands that database searches generally are considered a cost-effective way in which to locate lost securityholders. The Commission requests comment with respect to the potential costs of proposed Rule 17Ad–17 and its potential effectiveness in addressing the lost securityholder issue. The Commission requests commenters to submit specific data on costs involved in utilizing various vendors' information databases and costs involved in using other methods in an effort to locate lost securityholders. The Commission also requests comment on whether there are other entities that maintain ownership records such as broker-dealers, that should also have search requirements.[17]

In conducting an information database search, should a transfer agent have the option as proposed of conducting a search using either the names or taxpayer identification numbers of the lost securityholders or should the transfer agent be required to conduct a search using taxpayer identification numbers? The Commission understands that conducting searches using the taxpayer identification numbers may be more costly than a search using lost securityholders' names, but searches using taxpayer identification numbers may be more effective in locating lost securityholders.

Should the requirement to search for lost securityholders apply only where the transfer agent is holding assets over some de minimis amount? A de minimis threshold would avoid a situation where a transfer agent would be required to expend funds in excess of the amount at risk of escheating.

The Commission also is requesting comment on the time frames within which a search must be made. The purpose of the three month time frame is to require a transfer agent to search within a short period of time after the securityholder becomes lost, because generally chances of locating a lost securityholder are better the sooner a search is initiated. However, if the search is conducted too soon, there may not be an opportunity for the information databases to be updated with the securityholder's new address. Further, the three month period will permit transfer agents to conduct searches on a quarterly basis, which may be more cost-effective. The period between the first and the second search, one year to eighteen months, is intended to provide sufficient time for a lost securityholder's new address to appear in an information database subsequent to the first search.

Comments also are requested on whether the rule should include (1) a requirement that transfer agents periodically assess the effectiveness and appropriateness of the search procedures and technology they employ, and/or (2) a requirement that transfer agents' search procedures meet a performance-based standard based on success in locating lost securityholders.

3. Definition of Information Database

For purposes of Rule 17Ad–17, an information database would be defined as any automated database service that (1) contains addresses of United States residents including addresses in the geographic area in which the lost securityholder's last known address is located, (2) covers a reasonably broad geographic area, (3) is indexed by the search criterion used by the transfer agent (*e.g.*, name or taxpayer identification number), and (4) is updated at least four times a year.[18] The Commission requests comments on these criteria. Comment is also sought on whether instead of setting forth specific criteria for an acceptable database, the rule should require transfer agents to use technology reasonably designed to locate a lost securityholder.

4. Use of Professional Search Firms to Meet Search Requirements

Currently, some transfer agents rely on professional search firms that charge lost securityholders a fee for locating the lost securityholders' assets instead of using database services.[19] Under proposed Rule 17Ad–17, the use of such firms as the method of locating a lost securityholder would satisfy the transfer agent's search obligation only if the securityholder would not be charged a fee as the result of a successful search. Therefore, the use of a professional search firm that charges the securityholder a fee for recovering his or her assets would be permissible only after the transfer agent has conducted the required two information database searches described above.

Comment is sought on the extent to which transfer agents currently employ professional search firms and on any problems or concerns that arise from their use. Specifically, the Commission

[16] While not specifically required by the proposed rule, the Commission encourages transfer agents to take steps that may prevent securityholders from becoming ''lost.'' In particular, the remailing procedure described in the text above and the procedures described in footnote 13 appear to be effective methods of correcting misdeliveries of mail and other delivery problems. Such early measures may prove especially beneficial because the ''trail'' of the securityholder may still be fresh.

[17] The Commission understands that many broker-dealers currently conduct searches for missing customers. Letter from Judith Poppalardo, Assistant General Counsel, SIA, to Division (June 7, 1996).

[18] Some examples of vendors of information databases that satisfy these criteria are credit bureaus, the SSA, and the IRS.

[19] The CTAA stated that some of its members utilize professional search firms which generally have extensive search methods. The CTAA believes that the decision to use a professional search firm should be an independent one made by the transfer agent or issuer taking into consideration potential cost to either the issuer or the securityholder. Letter from Anthony F. Fireman, President, CTAA, to the Division (April 25, 1994). The National Association of Unclaimed Property Administrators (''NAUPA'') has informed the Commission that transfer agents should use caution when employing information vendors because many such vendors are also in the business of contacting lost securityholders and charging them a fee, which may be between 30% and 50% of the value of the distributions, for information about the distributions. While NAUPA supports the use of all available methods of facilitating transfer agents' searches, it is concerned about any search effort that causes a shareholder to lose a substantial portion of the value of the property and believes that such firms should be used only as a last resort and not as a routine method to find lost securityholders. Letter from Dawn E. Rockey, Second Vice President, NAUPA, to the Division (April 29, 1994).

requests comment on whether the limitation contained in the proposed rule, prohibiting charging the shareholder for use of such firms until after a transfer agent has conducted the two prescribed searches using an information database, is appropriate.

5. Verification of Shareholder Identity

Although a careful search is unlikely to result in an erroneous match of a lost securityholder and the information obtained from an information database, information databases are not 100% accurate. Thus, in order to guard against delivery of distributions to an incorrect recipient, the Commission strongly suggests that transfer agents verify that the person at the newly obtained address is its lost shareholder before disbursing securities or funds.[20] Among other methods, verification could consist of confirming the shareholder's taxpayer identification number and former address.

6. Recordkeeping Requirements

Proposed Rule 17Ad–17 will require that all recordkeeping transfer agents maintain records necessary to demonstrate their compliance with the requirements of the rule. At a minimum, transfer agents should document the date a securityholder was classified as lost and the date a database search was conducted for such securityholder. The Commission also is proposing an amendment to Rule 17Ad–7 under the Exchange Act to require that transfer agents maintain the records required by the proposed rule for a period of not less than three years with the first year in an easily accessible place.

[20] The STA notes that currently most transfer agents send a search letter to the new address obtained from an information database in order to obtain additional information to assure that the shareholder and the new addressee are the same person. However, for small money values, some transfer agents automatically update their records and forward lost distributions to the address obtained from the information database. The STA believes that transfer agents should establish contact with the shareholder at the new address before releasing distributions. Letter from Michael Foley, President, STA, to the Division (May 26, 1994). The CTAA states that many transfer agents and issuers currently require the person at the new address to confirm the shareholder's taxpayer identification number and former address before issuing a check for past dividend or interest distributions. The CTAA also states that when an estate is being probated, most transfer agents or issuers will issue the check in the name of the deceased so that the personal representative or trustee of the estate is required to use legal documents to cash the check. Letter from Anthony F. Fireman, President, CTAA, to the Division (April 25, 1994).

III. Collection of Lost Securityholder Data

A. Proposed Rule 17a–24—Background

As discussed further in Section IV below, the Commission has been urged to support the establishment of a national lost securityholder database. In the alternative, the Commission is proposing to facilitate the gathering of data related to lost securityholders to provide access to the information by information distributors or others, including individuals.

The Commission proposes to collect information on lost securityholders [21] from entities such as transfer agents and broker-dealers that hold assets for investors, and to make such information available to private entities which could establish databases accessible by the public. For example, a distributor could obtain this information from the Commission and charge a fee to persons who inquire about whether they have been reported as lost. The inquirer could then contact the reporting entity or otherwise take steps to recover the property. The Commission requests comment as to whether it would be economically feasible for communication vendors to develop a lost securityholders database and to make the information available to the general public at a reasonable cost.

B. Definition of Recordkeeper

The filing requirements under proposed Rule 17a–24 would apply to any entity defined by that rule as a recordkeeper. The proposed rule defines the term recordkeeper to mean (1) a member of a national securities exchange, a registered broker or dealer, or a registered municipal securities dealer which maintains records of securities received, acquired, held, or carried by or on behalf of such entity for the account of any securityholder, or (2) a recordkeeping transfer agent. Exchange members and broker-dealers carry accounts for others, which may include retail investors, institutional investors, or other broker-dealers.[22] Recordkeeping transfer agents maintain records of ownership on behalf of issuers.

The Commission seeks comment concerning the scope of this definition. Should any other entities, such as investment advisors, be included within the definition of recordkeeper? Does the proposed definition cover entities that should not be deemed recordkeepers because they do not typically have lost securityholders?

[21] The rule would include a definition of the term lost securityholder that is consistent with the definition under proposed Rule 17Ad-17.

[22] Exchange members and broker-dealers which carry accounts for others are frequently listed on the books of issuers, clearing agencies, or financial intermediaries as the holder of a security. These exchange members or broker-dealers know the identity of the entity for which they hold the security.

C. Recordkeeper Filing Requirements

Proposed Rule 17a–24 will require each recordkeeper to file electronically with the Commission on or before May 31 of each year information on all lost securityholders contained in such recordkeeper's records as of May 1 of such year.[23] With the same filing date for all filers, the Commission could easily compile all the submissions into one file for downloading.

The filing would include the identity of the reporting recordkeeper, a contact name and telephone number at the recordkeeper, and the period covered by the report. In an effort to protect confidentiality, the report contents would consist solely of a list of taxpayer identification numbers of lost securityholders contained in the recordkeeper's records.[24] No names, number of shares, or dollar amounts would be provided.

The Commission requests comment on the feasibility of the filing requirement under the proposed rule. A private entity that wants to establish a database would only need to download the information once a year from the Commission. Is an annual filing sufficient? Should more frequent submissions be required? Should filers submit such information concerning all lost securityholders, securityholders who have been lost for some specified time period, or lost securityholders after a specific occurrence, such as after the two database searches required under proposed Rule 17Ad–17 have been conducted? Should filers be required to file information with the Commission indicating that a securityholder has been found? If so, how soon after the securityholder is found? In addition to the costs they currently incur in providing information on lost property to state unclaimed property administrators, what costs would filers incur in providing the requested information to the Commission?

The Commission also requests comment on whether the privacy of lost securityholders will be compromised by filers providing the required taxpayer identification numbers.[25] Would information other than taxpayer

[23] The annual filing would include information on a lost securityholder even if the securityholder was reported as lost in the previous year's filing.

[24] The Commission understands that some professional search firms have databases that can identify an individual's name based on a social security number.

[25] *Supra* note 24.

identification numbers provide greater privacy protection and still accomplish the stated goals? For example, would the gathering of specific information about a lost securityholder (*e.g.*, the lost securityholder's name, last known city and state) be an effective means of addressing the problem while presenting fewer privacy concerns?[26] Are there any other steps that should be taken to protect securityholders' privacy? Should information on the lost securityholder's assets (*e.g.*, the issues and the CUSIP numbers) be included, and would the inclusion of such information serve any useful function so as to override any privacy concerns?

D. Method of Filing

The Commission believes that two methods of electronic filing are feasible. First, recordkeepers could utilize the Commission's Electronic Data Gathering Analysis and Retrieval System (''EDGAR'') to submit their filings in accordance with current Commission rules.[27] The Commission is proposing the use of the EDGAR system in an effort to employ available technology to facilitate the objectives of the proposed rule. EDGAR filings generally are made through a dial-up connection to the Commission's host equipment and transmitted using Commission supplied, personal computer based software called EDGARLink. Therefore, the cost to recordkeepers should be limited to a long distance telephone call.

In addition to built-in communications and data compression capability, EDGARLink contains features which help EDGAR filers create and prevalidate their submission prior to making a transmission. Use of the EDGAR system also would enable the Commission to validate the identity of the submitter, the type of submission, and whether the filing meets certain minimal format requirements.

As an alternative to filing through the EDGAR system, filings could be submitted to the Commission through the Internet.[28] Under this approach, the same document structure required for EDGAR could be used. However, the filer would not receive validation of the filing, and there would be no validation for header accuracy or format compliance. The cost may be somewhat higher because entities would be required to obtain access to the Internet either directly through a provider or through use of a service which would file on their behalf.

Comments are requested on whether the EDGAR system or the Internet would be the better vehicle for the submission of such information. Commenters are requested to provide specific alternative cost estimates for compliance using both systems. Are there limits on the ability of smaller transfer agents and broker-dealers to submit this information due to their level of automation?

E. Dissemination of Information

The Commission anticipates that the information filed under proposed Rule 17a-24 could be disseminated as part of the existing EDGAR data dissemination stream. Alternatively, the Commission could provide access to the data on its Internet Web site. On the Internet Web site, any entity or individual could download the information submitted to the Commission for whatever reason(s) it deemed appropriate. The Commission requests comment on the costs and benefits associated with this proposal. Does the release of this information to any outside party create the possibility of fraud, and if so, is there some method to eliminate this possibility? Alternatively, should the Commission limit access to the information collected with respect to lost securityholders? For example, should dissemination of the information be limited to information vendors that agree to restrict the use and protect the confidentiality of the information?

F. Proposed Recordkeeping Requirements

The proposed rule would require every recordkeeper to maintain such records necessary to demonstrate compliance with the requirements set forth in this rule. The proposed rule also would provide that such records must be maintained for a period of not less than three years, the first year in an easily accessible place. Comment is requested as to the feasibility of this requirement.

IV. Commission Supported Database

As an alternative to the data collection proposed in Section III above, it has been suggested that the Commission should directly support the establishment of a national lost securityholder database which would be analogous to the database used in the Commission's lost and stolen securities program.[29] Such a database would contain information such as the names and/or taxpayer identification number of lost securityholders. Information would be required to be submitted to the database by entities that are required to make other filings with the Commission (*e.g.*, issuers, transfer agents, and broker-dealers).[30] All securities and funds of lost securityholders would continue to be held by the issuers, transfer agents, or broker-dealers. The database would be accessible by telephone or by computer linkage by shareholders or any other interested party. A user fee (*i.e.*, a small charge for each inquiry) would be used to fund the operation of the database. The register could be searched by using a securityholder's name or taxpayer identification number and would reveal whether an entity is holding securities or funds for the securityholder. However, the register would not disclose the value of the assets being held.

Alternatively, it has been suggested that the Commission could directly maintain and operate a lost securityholder database utilizing the Commission's Internet Web site. Similar to the above proposal, transfer agents, issuers, and broker-dealers would be required to submit information concerning lost securityholders to the Commission. Individuals would have access to the database through the Internet.[31]

Recently, the National Association of Unclaimed Property Administrators (''NAUPA'') advised the Commission that it is in the process of developing a national database of lost securityholders.[32] NAUPA indicated that most, if not all, of the states that belong to the association will provide names and last known addresses to its centralized database. The NAUPA database will be accessible by any

[26] Listing lost shareholders by name may allow for greater privacy because of the potential for multiple individuals to have the same name while a social security number will identify one specific individual.

[27] 17 CFR 202.7(b). As set forth in part VIII below, the Commission is proposing to amend 17 CFR 232.101, which specifies mandated electronic submissions, to include filings under proposed Rule 17a–24.

[28] If this alternative is adopted it would be necessary to amend 17 CFR 202.7 and 17 CFR 232.101 to reflect the use of the Internet for these submissions.

[29] Letter from Robert N. Shamansky, Benesch, Friedlander, Coplan & Aronoff, to the Division (May 16, 1994).

[30] Specifically, the proposal suggests that an issuer, transfer agent, or broker-dealer enroll each lost securityholder on an expanded version of the register which is maintained for the Commission by the Securities Information Center for information on lost and stolen securities. Letter from Robert N. Shamansky (May 16, 1994).

[31] This proposal differs from the proposal discussed under Section III above in terms of the level of Commission involvement in developing and running the database. In addition, the Commission might need to institute a small charge for each search to cover the costs of development and operations. Furthermore, it might take longer to implement this proposal due to the complexities of such a database.

[32] Letter from Randall A. Ross, President, NAUPA, to Steven M. H. Wallman, Commissioner, Commission (January 18, 1996). NAUPA members represent fifty jurisdictions which have unclaimed property laws.

person through the Internet for a nominal fee, which will be used to maintain the database. NAUPA believes that a centralized database managed by states is an effective way to return property to rightful owners because states have considerable expertise in administering unclaimed property programs and locating missing owners. However, the Commission notes that NAUPA's database would not list a lost securityholder until such securityholder's assets had escheated to a state.

The Commission requests comment on the establishment of a national lost securityholder database. Specifically, the Commission seeks comment on whether such a database would be of significant benefit to investors and the cost-effectiveness of such a database, particularly in light of the potential impact of proposed Rule 17Ad–17. Comments should also contrast the benefits of a national database with the data collection concept proposed in Section III.

Commenters favoring a database should discuss, among other things, (i) the entity best suited to administer the database, (ii) the appropriate frequency of submission of information, (iii) the allocation of costs to maintain and to operate the database, (iv) methods of access to the database, and (v) the potential necessity for and design of safeguards to prevent unauthorized access into the database and to prevent fraud. In addition to the issues cited above, the Commission is interested in obtaining comment with respect to potential privacy concerns arising from the dissemination of financial information via the Internet. The Commission also requests comment on whether the NAUPA database or other available databases would be an adequate mechanism to address the lost securityholder problem.[33]

V. Initial Regulatory Flexibility Analysis

Section 603(a)[34] of the Administrative Procedure Act,[35] as amended by the Regulatory Flexibility Act (the ''Flexibility Act'')[36] generally requires the Commission to undertake a Regulatory Flexibility Act Analysis of all proposed rules or proposed rule amendments to determine the impact of such rulemaking on ''small entities.''[37] Approximately 470 registered transfer agents qualify as ''small entities'' for purposes of the Flexibility Act and would be subject to the requirements of proposed Rules 17a–24 and 17Ad–17. Of the approximately 650 registered broker-dealers that would be classified as recordkeepers under proposed Rule 17a–24, approximately 85 are small entities.

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') pursuant to the requirements of the Flexibility Act, regarding the proposed rules. The IRFA notes that the proposed rules are intended to reduce the number of securityholders with whom contact is lost and to address the associated problems of undeliverable dividend and interest distributions by establishing standards for transfer agents with respect to their obligation to conduct searches in an effort to locate such securityholders and by facilitating the collection of data related to lost securityholders to permit information distributors or others the opportunity to establish databases in whatever form is most cost efficient. Proposed Rule 17Ad–17 establishes a single standard for all transfer agents regardless of size and is not anticipated to have any significant economic impact on small entities. Similarly, proposed Rule 17a–24 sets forth a uniform filing requirement for all recordkeepers and is not anticipated to have any significant economic impact on the small entities subject to the rule.

A. Rule 17Ad–17

Some registered transfer agents will not incur significant additional compliance costs because they currently use an information database to search for lost securityholders. Thus, the proposed requirements will have a practical effect only on transfer agents that do not presently conduct searches using an information database. The Commission estimates that even for such transfer agents, the cost of compliance with proposed Rule 17Ad–17 will be small.[38] In addition, because a transfer agent's cost of compliance generally will be based upon the quantity of lost securityholders it must attempt to locate, small transfers agents should not, on average, bear disproportionately high compliance costs. On average, compliance costs should be roughly proportional to the number of securityholder records maintained by the transfer agent. Some database vendors may charge discounted rates for bulk searches, which could inure to the benefit of larger transfer agents. However, such discounts are small, and thus they should not disadvantage small transfer agents significantly.

The proposed rule will impose on transfer agents an additional recordkeeping requirement. The requirement has been broadly drafted to provide transfer agents with sufficient flexibility to minimize recordkeeping costs. Specifically, proposed Rule 17Ad–17 will require that all recordkeeping transfer agents maintain records necessary to demonstrate their compliance with the rule's requirements. The Commission also is proposing an amendment to Rule 17Ad–7 to require that transfer agents maintain the records required by the proposed rule for a period of not less than three

[33] The Commission notes that in April of 1994, Indiana placed all of its unclaimed property information on the Internet. Since going on-line, Indiana has received approximately six additional calls per week; however, professional search firms (*i.e.,* entities employed by corporate issuers to locate lost securityholders and that charge lost securityholders a percentage of their assets for such efforts) account for about sixty percent of the additional calls. Very recently, Wyoming also placed its unclaimed property information on the Internet.

[34] 5 U.S.C. 603(a).

[35] 5 U.S.C. 551, et seq.

[36] 17 Pub. L. No. 96–354 (September 19, 1980), 94 Stat. 1164, reprinted in (1980) U.S. Code Cong. & Ad. News 1169.

[37] Although section 601(b) of the Flexibility Act defines the term ''small entity'' the statute permits agencies to formulate their own definitions. The Commission published final definitions of the term ''small business'' and ''small organization'' in Securities Exchange Act Release No. 6380 (February 4, 1982), 47 FR 5215. Section 240.0–10(h) defines a small transfer agent for purposes of the Flexibility Act as follows:

For purposes of the Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 et seq.) and unless otherwise defined for purposes of a particular rulemaking proceeding, the term ''small business'' or ''small organization'' shall . . .

(c) When used with reference to a broker or dealer, mean a broker or dealer that:

(1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and

(2) Is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section; . . .

(h) When used with reference to a transfer agent, mean a transfer agent that:

(1) Received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter);

(2) Maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and

(3) Is not affiliated with any person (other than a natural person) that is not a small business or small organization under this section.

[38] Based upon information supplied to the Commission by transfer agents, vendors other than the SSA and the IRS typically charge $.95 to $1.75 per account for lost securityholder searches. The charge for searches conducted through the SSA and IRS using securityholder social security or tax identification numbers is $3.00 per account.

years, the first year in an easily accessible place.

The Commission considered various alternatives to the proposed rule and found no alternatives consistent with the proposed rule's objective and the Commission's statutory mandate.[39] However, as set forth in Section II.B. above, the Commission is seeking comment on alternative search and reasonable care standards including (i) a requirement that transfer agents use technology reasonably designed to locate a lost securityholder instead of following specific guidelines as to what constitutes an acceptable database, (ii) a requirement that transfer agents periodically assess the effectiveness and appropriateness of the search procedures and technology they employ, and/or (iii) a requirement that transfer agents' satisfaction of their reasonable care obligations be based upon their search procedures meeting a performance-based standard based on success in locating lost securityholders.

B. Rule 17a–24

Proposed Rule 17a–24 will impose some additional compliance costs upon all registered transfer agents and such registered broker-dealers that fall within the definition of recordkeeper under the rule. However, the Commission estimates that the cost of compliance with proposed Rule 17a–24 will be small[40] and that the impact of the rule upon recordkeepers' operations will be insignificant, regardless of the recordkeepers' size.

The proposed rule will impose on registered transfer agents and broker-dealers an additional recordkeeping requirement. The requirement has been broadly drafted to provide transfer agents and broker-dealers with sufficient flexibility to minimize recordkeeping costs. Specifically, proposed Rule 17a–24 will require that all recordkeepers under the proposed rule maintain records necessary to demonstrate their compliance with the rule's requirements. The Commission also is requiring that transfer agents maintain the records required by the proposed rule for a period of not less than three years, the first year in an easily accessible place.

The Commission considered various alternatives to the proposed rule and preliminarily concluded that Rule 17a–24 best fulfilled the proposed rule's objective and the Commission's statutory mandate.[41] However, as set forth in Section IV above, the Commission is seeking comment on alternative information databases.

Commenters are encouraged to comment on any aspect of the analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed rule is adopted. A copy of the Analysis may be obtained by contacting Michele Bianco, Attorney, Division of Market Regulation, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549 at 202/942–4187.

VI. Paperwork Reduction Act

Certain provisions of proposed Rule 17Ad–17 and proposed Rule 17a–24 may contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995,[42] and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d). The titles for the collection of information are: ''Proposed Rule 17Ad–17 (Transfer Agents' Obligation to Search for Lost Securityholders)'' and ''Proposed Rule 17a–24 (Data Collection for Private Databases).''

The collection of information under proposed Rule 17Ad–17 and under proposed Rule 17a–24 is intended to facilitate greater accuracy of transfer agents' and broker-dealers' records. The collection of information is necessary to enable recordkeeping transfer agents, as the usual custodians of the records that determine the ownership of securities and the entitlement to corporate distributions, and broker-dealers, as holders of customer assets, to reduce significantly the number of lost securityholders.

Under the proposed rules, transfer agents and broker-dealers may use any appropriate method (e.g., through computerized or manual means) to collect the names of the lost securityholders. Under proposed Rule 17Ad–17, information must be submitted by transfer agents to a database service that is automated. Broker-dealers and transfer agents must submit information to the Commission pursuant to proposed Rule 17a–24 through computerized means. The information required to be collected by Rule 17Ad–17 and Rule 17a–24 (*i.e.*, the taxpayer identification numbers of lost securityholders) generally is already maintained by registered transfer agents and broker-dealers. Therefore, the Commission anticipates that the increased costs imposed by the rules will be relatively minimal.[43]

The proposed rules also require that all recordkeeping transfer agents (and all recordkeepers with respect to

[39] Among other things, the Commission considered (i) the establishment of a national database to which transfer agents would be required to submit the names of all lost securityholders and (ii) the effects of a database to be established by the National Association of Unclaimed Property Administrators and populated with information provided by the states that will include the names of all persons whose property has escheated to the states. In both instances, securityholders would need to take affirmative action to discover the existence of their lost assets. Because many if not most lost securityholders are unaware that they have property which is considered undeliverable and escheatable, many would not realize the importance of accessing the database. With respect to the first alternative, many of the same costs would be incurred by transfer agents because they would need to submit the names of the lost securityholders to the national database rather than to a database service. With respect to the second alternative, lost securityholders would be deprived of their assets for a longer period of time because their names would not be included in the database until their assets had escheated to the state. However, the Commission believes that it may be beneficial to pursue one of the alternatives as an additional mechanism for locating lost securityholders in conjunction with the proposed rule.

[40] Establishing filing capability through EDGAR should not require any expenditure by recordkeepers because the Commission supplies the necessary software. Even if the small entity does not currently have computer capability, the entity should be able to find a service provider to file on its behalf for a small charge. The Commission estimates an additional administrative cost of approximately $50.00 per year for gathering and transmission of the required information and approximately $10.00 per year for the cost of a long distance telephone call.

[41] As noted in footnote 37 above, the Commission considered (i) the establishment of a national database to which transfer agents would be required to submit the names of all lost securityholders and (ii) the effects of a database to be established by the National Association of Unclaimed Property Administrators and populated with information provided by the states that will include the names of all persons whose property has escheated to the states. With respect to the first alternative, the Commission believes that private vendors will be able to establish an effective database more quickly than the Commission. As previously noted with respect to the second alternative, lost securityholders would be deprived of their assets for a longer period of time because their names would not be included in the database until their assets had escheated to the state.

[42] 44 U.S.C. 3501 et seq.

[43] The cost of compliance with proposed Rule 17Ad–17 will depend on the number of undeliverable accounts at each transfer agent. Based upon the information received from transfer agents and broker-dealers, the Commission believes there will be approximately 250,000 securityholders lost annually by all transfer agents. The Commission estimates that approximately $3.00 will be spent per account (comprised of approximately $1.00 for each of two searches and approximately $1.00 in increased administrative costs for downloading and forwarding the information). Therefore, the estimated total annual cost for all transfer agents is $750,000.

The cost of compliance with proposed Rule 17a–24 should be a minimal amount comprised of the cost of a long distance telephone call and administrative costs. Transfer agents and broker-dealers will be required to make an annual electronic filing. Filing capability through EDGAR should not require any significant start-up expense. The Commission estimates a long distance telephone charge of approximately $10.00 per year and an additional administrative cost of approximately $50.00 per year for downloading and forwarding the information. Thus, at a total cost of approximately $60.00 per year for each recordkeeper, the total annual cost for all recordkeepers is estimated to be $129,000.

proposed Rule 17a–24) maintain records necessary to demonstrate their compliance with the rules' requirements. This recordkeeping requirement is intended to provide transfer agents and broker-dealers with sufficient flexibility to record and to maintain necessary information in a manner that minimizes recordkeeping costs. The Commission will require that transfer agents (and all recordkeepers with respect to proposed Rule 17a–24) maintain the records required by the proposed rules for a period of not less than three years, the first year in an easily accessible place.

The Commission does not anticipate that the collection of information will result in any significant burden to transfer agents or broker-dealers. The likely respondents to the proposed collection of information under proposed Rule 17Ad–17 will be the approximately 1500 registered transfer agents. The likely respondents to the proposed collection of information under proposed Rule 17a–24 will be the approximately 1500 transfer agents and approximately 650 of the registered broker-dealers. The Commission estimates registered transfer agents will devote approximately five hours per year [44] to providing information on lost securityholders to third party database vendors, totalling 7,500 hours industry-wide. The Commission estimates registered transfer agents and broker-dealers will devote approximately two hours per year to make the required annual filing under proposed Rule 17a–24, totalling 4300 hours industry-wide.[45]

The collection of information under proposed Rule 17Ad–17 and proposed Rule 17a–24 would be mandatory. Any information collected pursuant to proposed Rule 17Ad–17 or proposed Rule 17a–24 would not be confidential. Unless a valid Office of Management and Budget (''OMB'') control number is displayed, for Commission may not sponsor or conduct or require response to an information collection.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to—

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, and should also send a copy of their comments directly to the Commission. OMB is required to make a decision concerning the collections of information between thirty and sixty days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within thirty days of publication.

VII. Burden on Competition

The Commission believes that the proposed rules will not have a significant impact on transfer agent or broker-dealer competition. Under proposed Rule 17Ad–17, all transfer agents will be subject to the same specified minimum standard for reasonable care in attempting to locate securityholders with whom contact has been lost. Similarly, proposed Rule 17a–24 will require all transfer agents and broker-dealers to submit the same information to the Commission.

The cost of compliance with proposed Rule 17Ad–17 is minimal.[46] For many transfer agents that currently conduct securityholder searches using an information database, proposed Rule 17Ad–17 will pose no additional cost. Because a transfer agent's cost of compliance generally is based upon the number of securityholders it must attempt to locate, transfers agents regardless of their size and exercising comparable care should incur comparable relative costs. On average, compliance costs should be roughly proportional to the number of securityholder records maintained by the transfer agent. In addition, the extent of the effort required by a transfer agent to meet its reasonable care obligations will require a balancing of cost against the value of assets at issue. Accordingly, larger transfer agents which are likely to have a greater proportion of accounts of considerable value, often will be required to take more extensive measures and incur greater costs in meeting their reasonable care obligations under proposed Rule 17Ad–17.

With respect to proposed Rule 17a–24, the cost of compliance also should be minimal.[47] While the cost to each entity will be approximately the same regardless of the entities' size (*i.e.*, the number of lost securityholders should not affect significantly the amount of time it takes to collect the information and to transmit it to the Commission), the total cost to each entity should be so limited as to not raise competition concerns.

VIII. Text of the Amendments

List of Subjects

17 CFR Part 232

Reporting and recordkeeping requirements; Securities.

17 CFR Part 240

Transfer agents; Broker-dealers; Reporting and recordkeeping requirements; Securities.

For the reasons set out in the preamble, the Commission proposes to amend Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for part 232 continues to read as follows:

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

2. By amending § 232.101 paragraph (a)(1)(iv) by revising the phrase ''format; and'' to read ''format;''.

3. By amending § 232.101 paragraph (a)(1)(v) by revising the phrase ''*et seq.*).'' to read ''*et seq.*); and''.

4. By adding paragraph (a)(1)(vi) to § 232.101 to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(vi) Documents filed with the Commission pursuant to § 240.17a–24 of this chapter.

* * * * *

5. By amending § 232.101(c)(11) by revising the phrase ''Regulation;'' to read ''Regulation, other than those filed with the Commission pursuant to § 240.17a–24 of this chapter;''

[44] Transfer agents will need to submit this information to a database a maximum of four times a year to insure that a search is made within three months of a securityholder becoming lost. Each download and forwarding of information should take approximately 1.2 hours.

[45] Recordkeepers will submit information once a year. Each download and transmission of information should take approximately two hours.

[46] *Supra* note 43.

[47] *Supra* note 43.

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

6. 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, 78q, 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.

* * * * *

7. By adding § 240.17a–24 to read as follows:

§ 240.17a–24 Reports of Lost Securityholders.

(a) Each recordkeeper shall file electronically with the Commission on or before May 31 of each year a list of the taxpayer identification numbers (*e.g.*, social security number or employer identification number) of all lost securityholders for which such recordkeeper maintains records of ownership interests as of May 1 of such year. The list of lost securityholders shall include the name and telephone number of the appropriate person to contact at the recordkeeper.

(b) For purposes of this section:

(1) *Lost securityholder* means the holder of record of a security or any person from whom or on whose behalf a recordkeeper has received, has acquired, holds, or carries securities;

(i) To whom two separate items of correspondence that were sent by first class mail by the recordkeeper at least three months apart have been returned as undeliverable; and

(ii) For whom the recordkeeper has not received information regarding the securityholder's new address.

(2) *Recordkeeper* means:

(i) A member of a national securities exchange, a registered broker or dealer, or a registered municipal securities dealer which maintains records of securities received, acquired, held, or carried by or on behalf of such entity for the account of any securityholder; or

(ii) A recordkeeping transfer agent as defined in § 240.17Ad–9(h).

(c) Every recordkeeper shall maintain such records necessary to demonstrate compliance with the requirements set forth in this section. Such records shall be maintained for a period of not less than three years, the first year in an easily accessible place.

8. By amending § 240.17Ad–7 by adding paragraph (i) to read as follows:

§ 240.17Ad–7 Record retention.

* * * * *

(i) The records required by § 240.17Ad–17(c) shall be maintained for a period of not less than three years, the first year in an easily accessible place.

9. By adding § 240.17Ad–17 to read as follows:

§ 240.17Ad–17 Transfer agents' obligation to search for lost securityholders.

(a)(1) Every recordkeeping transfer agent whose master securityholder file includes accounts of lost securityholders shall exercise reasonable care to ascertain the correct address of such securityholders. In exercising reasonable care to ascertain for its master securityholder file such lost securityholders' current address, each recordkeeping transfer agent shall conduct two database searches using at least one information database service. The transfer agent shall search by name (if reasonably likely to locate the securityholder) or taxpayer identification number (*e.g.*, social security number or employer identification number). Such database searches must be conducted without charge to a lost securityholder and with the following frequency:

(i) Within three months of such securityholder becoming a lost securityholder; and

(ii) Between one year and eighteen months after the transfer agent's first search for such lost securityholder.

(2) A transfer agent may not use a search method or service to establish contact with lost securityholders that results in a charge to a lost securityholder prior to completing the searches set forth in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(b) For purposes of this section:

(1) *Information database service* means any automated database service that:

(i) Contains addresses of United States residents including addresses in the geographic area in which the lost securityholder's last known address is located;

(ii) Covers a reasonably broad geographic area;

(iii) Is indexed by name or taxpayer identification number; and

(iv) Is updated at least four times a year.

(2) *Lost securityholder* means a securityholder:

(i) To whom two separate items of correspondence that were sent by first class mail at least three months apart have been returned as undeliverable; and

(ii) For whom the transfer agent has not received information regarding the securityholder's new address.

(c) Every recordkeeping transfer agent shall maintain such records necessary to demonstrate compliance with the requirements set forth in this section.

Dated: August 22, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–21892 Filed 8–27–96; 8:45 am]

BILLING CODE 8010–10–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–040]

Maryland Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Maryland regulatory program (hereinafter the ''Maryland program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Maryland statutes pertaining to permit revocation, reinstatement, and reissuance. The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., [e.d.t.] September 27, 1996. If requested, a public hearing on the proposed amendment will be held on September 23, 1996. Requests to speak at the hearing must be received by 4:00 p.m., [e.d.t.], on September 12, 1996.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to George Rieger, Field Branch Chief, at the address listed below.

Copies of the Maryland program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3