

it is not subject to the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

List of Subjects in 15 CFR Part 280

Business and industry, Fastener industry, Imports.

Dated: June 25, 1998.

Robert E. Hebner,

Acting Deputy Director, National Institute of Standards and Technology.

PART 280—FASTERNER QUALITY

For the reasons set forth in the preamble, Title 15 of the Code of Federal regulations part 280 is amended as follows:

1. The authority for part 280 continues to read as follows:

Authority: Sec. 13 of the Fastener Quality Act (Pub. L. 101-592, as amended by Pub. L. 104-113).

2. Section 280.12 is revised to read as follows:

§ 280.12 Applicability.

(a) The requirements of the Fastener Quality Act and this report shall be applicable only to fasteners manufactured on or after October 25, 1998.

(b) Metal manufactured prior to October 25, 1998 may not be used to manufacture fasteners subject to the Act and this part unless the metal has not tested for chemistry pursuant to § 280.15 of this part by a laboratory accredited under the Act and this part and the chemical characteristics of the metal conform to those required by the standards and specifications.

(c) Nothing in the Act and this part prohibits selling finished fasteners manufactured prior to October 25, 1998 or representing that such fasteners meet standards and specifications of a consensus standards organization or a government agency.

3. Section 280.602(k) is revised to read as follows:

§ 280.602 Violations.

* * * * *

(k) *Sale of fasteners manufactured prior the implementation date as compliant with the Act.* No person shall represent, sell, or offer for sale fasteners manufactured prior to October 25, 1998 as being in conformance with the Act of this part except as provided for in § 280.12 (d) or (e) of this part.

* * * * *

4. Section 280.810(c)(3)(i) is revised to read as follows:

§ 280.810 Listing of recognized accreditors, accredited registrars, and registered facilities.

* * * * *

(c) List of Facilities. * * *

(3)(i) If a Facility intends to be listed in accordance with § 280.810(c)(1) but the registration process will not be completed by October 25, 1998, the Facility may be provisionally listed on the Facilities List by providing the following to NIST on or before September 30, 1998:

(A) Certification that:

(1) The Facility is registered to QS-9000 or an equivalent by a quality systems registrar;

(2) The facility conforms to all other requirements of the Act and these regulations at the time of certification;

(3) If the Facility ceases to be registered to QS-9000 or an equivalent by an accredited Registrar and/or ceases to conform to any other requirement of the Act and these regulations at any time during the provisional listing period, it will notify NIST of that fact within three working days; and

(4) If the Facility fails to apply to an accredited Registrar for registration under the FQA within 30 days of the time the Registrar is accredited by a NIST-approved Accreditor, an authorized representative of the Facility will immediately notify NIST. (If the Facility's current Registrar decides not to seek accreditation under the FQA, it is the Facility's responsibility to apply to another Registry that has been approved by NIST-ABEP.);

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 240, 270, and 275

[Release Nos. 33-7548, 34-40122, IC-23272, and IA-1727; File No. S7-4-97]

RIN 3235-AG62; 3235-AH01

Definitions of "Small Business" or "Small Organization" Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission is amending the definitions of "small business" and "small organization" that are used in connection with Commission rulemaking under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities

Exchange Act of 1934, and the Securities Act of 1933 regarding regulatory requirements applicable to investment companies, investment advisers, exchanges, securities information processors, transfer agents and issuers, and broker-dealers. These definitions are used specifically for purposes of the Regulatory Flexibility Act, which requires the Commission to consider the impact of its regulations on small entities. The amendments to these definitions reflect recent changes in the law as well as changes in the securities markets over the past decade, including technological innovations and increased business relationships among participants in the securities industry.

EFFECTIVE DATE: The rule amendments will become effective July 30, 1998.

FOR FURTHER INFORMATION CONTACT:

General

Christopher Gilkerson, Assistant General Counsel at (202-942-0929), or Anne H. Sullivan, Senior Counsel at (202-942-0954), Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 6-6, Washington, D.C. 20549.

Divisions with Particular Responsibility

Thomas M.J. Kerwin, Senior Counsel, Division of Investment Management, (definitions applicable to investment companies and investment advisers) (202-942-0690).

Glenn J. Jessee, Special Counsel, Office of the Chief Counsel, Division of Market Regulation (definitions applicable to brokers, dealers, exchanges, transfer agents and issuers, securities information processors, and broker-dealers) (202-942-0073).

SUPPLEMENTARY INFORMATION: The Commission is amending the definitions of "small business" and "small organization" (together, "small business") set forth in Rule 0-10 (17 CFR 270.0-10) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) ("Investment Company Act"), Rule 0-7 (17 CFR 275.0-7) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) (the "Advisers Act"), Rule 0-10 (17 CFR 240.0-10) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) (the "Exchange Act"), and Rule 157 (17 CFR 230.157) under the Securities Act of 1933 (15 U.S.C. 77a et seq.) (the "Securities Act") as those terms are used for purposes of Chapter Six of the Administrative Procedure Act, 5 U.S.C. 601 et seq. (the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980), as amended, Pub. L. No. 104-

121, Title II, Subtitle D, 110 Stat. 864 (1996) (the "Reg. Flex. Act").

The Reg. Flex. Act, enacted in 1980, requires federal agencies, among other things, to consider the impact of rulemaking on entities that qualify as "small" under applicable standards in the Reg. Flex. Act,¹ the Small Business Act,² or regulations promulgated by the Small Business Administration ("SBA").³ In 1982, the Commission adopted definitions that it considered appropriate for issuers and other entities subject to its regulation.

On January 22, 1997, the Commission published for comment proposed amendments to its definitions of "small business" for purposes of the Reg. Flex. Act, when used in connection with rulemaking affecting investment companies, investment advisers, exchanges, securities information processors, transfer agents and issuers, and broker-dealers.⁴ In addition to publishing the rule proposal in the **Federal Register**, the Commission posted the proposed rule changes on the small business page of the Commission's Website.⁵ To give the public additional time to comment, the Commission extended the comment period for the proposed amendments.⁶ The Commission received no comments on the proposal. The Commission is adopting the amendments to the "small business" definitions as proposed.⁷ The Commission is, however, making some modifications to the "small business" definition of investment adviser to reflect amendments to the Investment Advisers Act enacted under the National Securities Markets Improvement Act of 1996 (the "Improvement Act")⁸ and to simplify the definition. As required under the Reg. Flex. Act, the Commission has consulted with the SBA Office of Advocacy regarding the amendments it is adopting.⁹

I. Background

The Reg. Flex. Act defines the term "small entity" as a "small business," "small organization," or "small governmental jurisdiction."¹⁰ The definition of "small business" incorporates the Small Business Size Regulations ("SBA size standards")¹¹ established by the SBA under the Small Business Act.¹² In addition, the Reg. Flex. Act definition of "small business" authorizes agencies to establish their own definitions if they determine that specialized definitions are more appropriate to the activities of the agency.¹³

As discussed in greater detail in the Proposing Release, the Commission has a longstanding commitment to understanding and addressing the concerns of small business.¹⁴ Consistent with this commitment, in 1982, the Commission chose to adopt its own definitions of "small business" for purposes of Commission rulemaking after reviewing size standards adopted by the SBA.¹⁵

As discussed in the Proposing Release, the Commission's definitions adopted in 1982 were, in many ways, more expansive than the statutory definitions of "small business" and "small organization" in the Reg. Flex. Act. Under the Reg. Flex. Act, a business is not considered "small" if it is not "independently owned and operated."¹⁶ The Commission's

definitions went beyond the Reg. Flex. Act requirements because, for the most part, the Commission's definitions did not limit "small businesses" to those that were independently owned and operated. The Commission's original definitions also were broader in certain respects than the SBA size standards, which consider various limiting factors when determining if an entity is "small."¹⁷ For example, the SBA size standards aggregate the interests of affiliated entities for the purpose of determining whether an entity is "independently owned and operated," and thus, "small."¹⁸ In determining whether entities are affiliated, the SBA size standards consider such factors as control, management, ownership, and contractual relationships.¹⁹ In addition, the SBA may treat multiple entities that have identical or substantially identical business or economic interests as a single entity.²⁰ Although the Commission's current definitions in some cases address the concept of control,²¹ none of the other affiliation concepts set forth in the SBA size standards were considered when the Commission originally adopted its definitions of "small business" in 1982.

Under the Commission's current definitions, a majority of broker-dealers and investment advisers qualify as small.²² Some of those "small" broker-dealers handle customer orders in excess of \$200 million from which they earn more than \$6 million per year in

¹⁰ *Id.* § 601(6).

¹¹ 13 CFR Part 121.

¹² 15 U.S.C. 632(a)(2)(A) (SBA authority to establish standards for determining "small business concern").

¹³ 5 U.S.C. 601(3), 601(4).

¹⁴ See Proposing Release, *supra* note 4.

¹⁵ The SBA adopted its size standards in 1980. Small Business Size Standards, Revisions of Methods of Establishing Size Standards and Definitions of Small Business, 45 FR 15442 (Mar. 10, 1980). The Commission determined that the SBA size standards were generally inappropriate in the context of regulations affecting securities issuers and reporting companies. See Proposed Definitions of "Small Business" and "Small Organization" for Purposes of the Regulatory Flexibility Act, Securities Act Release No. 6302, Exchange Act Release No. 17645, PUHCA Release No. 21970, Trust Indenture Act Release No. 619, Investment Company Act Release No. 11694, Investment Advisers Act Release No. 754, 46 FR 19251 (Mar. 30, 1981) ("1981 Proposing Release"); see also Final Definitions of "Small Business" and "Small Organization" for Purposes of the Regulatory Flexibility Act, Securities Act Release No. 6380, Exchange Act Release No. 18452, PUHCA Release No. 22371, Trust Indenture Act Release No. 693, Investment Company Act Release No. 12194, Investment Advisers Act Release No. 791, 47 FR 5215, 5216 (Feb. 4, 1982) ("1982 Adopting Release").

¹⁶ See 5 U.S.C. 601(4) ("small organization" under the Reg. Flex. Act means an entity that is "independently owned and operated and is not dominant in its field"); 15 U.S.C. 632(a)(1) (definition of "small-business concern" under the

Small Business Act (as incorporated in the Reg. Flex. Act definition of "small business," 5 U.S.C. 601(3)) means an entity that is "independently owned and operated and * * * is not dominant in its field").

¹⁷ See SBA size standards, 13 CFR 121.102 (size eligibility provisions and standards).

¹⁸ *Id.* § 121.103.

¹⁹ *Id.* § 121.103(a)(1) (describing control relationships that constitute affiliation); *id.* § 121.103(a)(2) (describing factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships that SBA considers in determining whether affiliation exists).

²⁰ See *id.* § 121.103(a)(3).

²¹ Under certain of the current definitions of "small business" under the Exchange Act (broker, dealer, clearing agency, municipal securities dealer, securities information processor, transfer agent), the Commission has considered control interests in determining whether an entity was "small." Exchange Act Rule 0-10 (17 CFR 240.0-10). The SBA regulations also address factors of control. 13 CFR 121.103(a)(1).

²² Under the current definitions, approximately 75 percent of investment advisers and 60 percent of registered broker-dealers qualify as "small." The number of "small" investment advisers registered with the Commission was significantly reduced as of July 8, 1997, however, as a result of legislation that reallocated primary responsibility for regulating most smaller investment advisers to the states. See *infra* notes 45-47 and accompanying text.

¹ 5 U.S.C. 603, 604.

² 15 U.S.C. 631 *et seq.*

³ 13 CFR Part 121.

⁴ Securities Act Release No. 7383, Exchange Act Release No. 38190, Investment Company Act Release No. 22478, Investment Advisers Act Release No. 1609, 62 FR 4106 (Jan. 28, 1997) (the "Proposing Release").

⁵ The Commission's Website is located at <http://www.sec.gov>.

⁶ Securities Act Release No. 7404, Exchange Act Release No. 38401, Investment Company Act Release No. 22566, Investment Advisers Act Release No. 1619, 62 FR 13356 (Mar. 20, 1997).

⁷ The Commission intends to maintain its current definitions of "small business" as they relate to small business issuers, clearing agencies, bank municipal securities dealers, and public utility holding company systems.

⁸ Pub. L. No. 104-290, 110 Stat. 3416 (1996).

⁹ See 5 U.S.C. 601(3), 601(4).

revenue.²³ These entities are classified as "small" under current Commission rules even though they may be affiliated with larger entities that are responsible for many of the smaller firms' securities functions. Similarly, today most mutual funds are affiliated with large mutual fund families, and many investment advisers are affiliated with larger financial services firms. These relationships allow the "small" affiliates to rely on a larger entity that centralizes administrative and compliance systems for all affiliates, significantly reducing regulatory burdens for each individual affiliate.

A similar relationship exists between introducing broker-dealers and the large firms through which they clear securities trades. Although introducing and clearing firms share responsibility for ensuring that a customer's account is handled properly, introducing firms typically depend on clearing firms to execute customer trades, to handle customer funds and securities, and to handle many back-office functions, including issuing the confirmation of the customer's trade. The increase in these affiliations since 1982 occurred along with tremendous growth and significant technological changes in the securities industry that facilitate such arrangements.²⁴ These changes in the securities industry prompted the Commission to begin reviewing certain

of its "small business" definitions in 1995.²⁵

The Commission expanded its review of "small business" definitions in 1996, after Congress enacted the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").²⁶ Among other things, SBREFA (i) imposed new obligations on the Commission and other agencies to assist small entities in understanding and complying with regulatory requirements,²⁷ (ii) amended the Reg. Flex. Act to allow small entities to seek judicial review of agency compliance with the Reg. Flex. Act,²⁸ and (iii) amended the Equal Access to Justice Act ("EAJA")²⁹ by expanding the class of litigants eligible to receive EAJA awards to include small entities as defined under the Reg. Flex. Act.³⁰ In view of the Commission's expanded obligations under SBREFA,³¹ and changes in the securities industry discussed above, the Commission is adopting amendments to certain of its "small business" definitions to take into account more of the factors suggested by SBA size standards in determining whether an entity qualifies as "small."³² The following sections of this release describe the amendments to specific "small business" definitions. The release also discusses how the amended definition of "small business" as it relates to investment advisers differs from the proposal and the reasons for the changes.

²³ The revenue amount is based on information provided by broker-dealers in quarterly FOCUS reports. The amount of customer order flow is derived using revenue data in the FOCUS reports.

²⁴ Between 1980 and 1996, the value of public offerings (including debt and equity, but not investment company securities) increased from \$58 billion to over \$1 trillion. Between 1990 and 1996, the dollar volume of equity securities traded on registered national securities exchanges and Nasdaq grew 277 percent, with over \$7.8 trillion traded in 1996. Assets under management by investment advisers (excluding bank advisers to registered investment companies) rose from \$205 billion to over \$10 trillion (a 4,778 percent increase) between 1980 and 1996. Over the same period, assets of investment companies increased 1,514 percent from \$235 billion to \$3,794 trillion. The number of securities firms and professionals registered with the Commission or with self-regulatory organizations has also surged. The number of broker-dealers grew, over the same period, from around 5,200 to approximately 7,760 (a 49 percent increase). In addition, technological progress has changed the securities industry. For example, advances in information technology have resulted in the proliferation of information vendors and electronic trading systems not contemplated in 1982. Since 1982, the markets have seen the development of fully automated electronic broker-dealers and exchanges, improved electronic order execution systems at broker-dealers, exchanges, and national securities associations, and improved electronic linkages among markets and between broker-dealers and their customers. These changes have created substantially deeper and more liquid markets and have made trading more immediate and less expensive for both institutional and retail customers.

²⁵ See Introduction to the Regulatory Plan and the Unified Agenda of Federal Regulations, 60 FR 59503, 61073 (Nov. 28, 1995) (noting Division of Investment Management's consideration whether to recommend that the Commission propose amended definition of "small entity" in Rule 0-10 (17 CFR 270.0-10) under the Investment Company Act).

²⁶ Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

²⁷ *Id.* §§ 212, 213(b), 110 Stat. 858, 859.

²⁸ *Id.* § 242, 110 Stat. 865.

²⁹ 5 U.S.C. 504; 28 U.S.C. 2412.

³⁰ Pub. L. No. 104-121, § 232(b)(2), 110 Stat. 863.

³¹ The Commission is concerned that, as a result of the Commission's existing broad definitions of "small business," certain of the amendments made by SBREFA could result in a significant increase in the Commission's exposure to litigation beyond that reasonably contemplated by the Reg. Flex. Act. The Commission's enforcement litigation and other litigation matters have increased in recent years. In light of increased exposure to litigation under SBREFA, which could further strain the Commission's limited budget, the Commission believes it is appropriate to revise certain small business definitions under its own rules to reflect better the policies underlying the Reg. Flex. Act and the SBA size standards.

³² In instances where the Commission has already instituted a rulemaking proceeding and prepared an Initial Regulatory Flexibility Analysis (IRFA) under the old small business definitions, those definitions will apply for purposes of any final rulemaking and the Commission's preparation of the required Final Regulatory Flexibility Analysis (FRFA).

II. Discussion of Amendments

A. Investment Companies

The Commission is adopting, as proposed, amendments to the rule under the Investment Company Act that defines "small business" as applied to investment companies.³³ The current rule treats as a small business each investment company ("fund") that has \$50 million or less in assets as of the end of its fiscal year.³⁴ As amended, the rule generally treats a fund as a small business only if it and any group of related funds have aggregate net assets of \$50 million or less.³⁵ The Commission estimates that approximately 400 funds will be treated as small businesses under the amended rule.

The amended rule defines a group of related funds to include two or more management companies (including any series of such a company) that hold themselves out to investors as related companies for purposes of investment and investor services, and share either a common investment adviser (or affiliated advisers) or a common administrator.³⁶ In the case of a unit investment trust ("UIT"), a group of related funds means two or more UITs that have a common sponsor.³⁷

There is a special rule applicable to insurance company separate accounts.³⁸

³³ See amended Rule 0-10 (17 CFR 270.0-10); Proposing Release, *supra* note 4.

³⁴ Rule 0-10 (17 CFR 270.0-10).

³⁵ Amended Rule 0-10. Conforming amendments to Rule 157(b) (17 CFR 230.157(b)) under the Securities Act and Rule 0-10(b) (17 CFR 240.0-10(b)) under the Exchange Act adopt the same small business definition of an investment company. To facilitate the efficient computation of net assets, the amended rule provides that the Commission may base its count of the assets of any group of related funds on the net assets of each fund (or series) in the group at the end of each fund's fiscal year, as generally reported in Form N-SAR. Amended Rule 0-10(c) (17 CFR 270.0-10(c)); see 17 CFR 274.101; Form N-SAR, Item 74T. As under the current rule, small business status will be determined on a company-by-company basis rather than a series-by-series basis (even in the unusual circumstances when some series of a multi-series company may not constitute a group of related funds with respect to other series).

³⁶ Amended Rule 0-10(a)(1) (17 CFR 270.0-10(a)(1)). Under this definition, the assets to be aggregated for a multi-series company would include those of all series of the company, and of any separately organized company (and its series) in a related group.

³⁷ Amended Rule 0-10(a)(2) (17 CFR 270.0-10(a)(2)). A UIT holds a fixed portfolio of securities deposited by its sponsor, and does not have an investment adviser. See generally Section 4(2) of the Investment Company Act (15 U.S.C. 80a-4(2)). The amended rule does not define a group of related funds as applied to a face amount certificate company, another type of fund, which will continue to be subject to the \$50 million test on a company-by-company basis.

³⁸ Separate accounts contain assets used to fund certain insurance and investment contracts between

Because state law generally treats separate account assets as the property of the sponsoring insurance company, the amended rule aggregates each separate account's assets with the assets of its sponsor, including other sponsored accounts.³⁹ As a result, the Commission expects few, if any, separate accounts to be treated as small businesses.

B. Investment Advisers

The Commission is adopting proposed amendments to the rule under the Advisers Act that defines "small business" as applied to investment advisers, with changes designed to reflect recent legislation and to simplify the proposed amendments.⁴⁰ The current rule defines as a small business each investment adviser that either (i) manages assets ("client assets") with a total value of \$50 million or less as of the end of its most recent fiscal year, and performs no other advisory services; or (ii) performs other advisory services, manages client assets of \$50 million or less if it manages client funds, and has assets related to its advisory business ("business assets") that do not exceed \$50,000.⁴¹ As amended, Rule 0-7 treats an adviser as a small business if (i) neither the adviser nor an adviser it controls, is controlled by, or is under common control with has \$25 million or more of assets under management, and (ii) neither the adviser nor any person it controls, is controlled by, or is under common control with has \$5 million or more of total assets.⁴²

In the Proposing Release, the Commission requested comment whether, in light of the Improvement Act's transfer of primary responsibility for regulating small advisers to the states, a threshold of \$25 million for client assets under management would be more appropriate than the \$50

million threshold.⁴³ The Commission also requested comment whether the \$50,000 threshold for business assets continued to be appropriate.⁴⁴ The Commission has now determined that the \$25 million client asset threshold coupled with a \$5 million total assets test more appropriately reflects the Improvement Act's allocation of regulatory responsibilities between the Commission and the states.

The Improvement Act reallocated regulatory responsibility over investment advisers between the Commission (which is now responsible for larger advisers with national businesses) and state securities regulators (which are now responsible for smaller advisers with essentially local businesses).⁴⁵ To effect this division of responsibility, Congress generally prohibited advisers with less than \$25 million of assets under management from registering with the Commission after July 8, 1997.⁴⁶ Thus, Congress viewed "small advisers" as those having less than \$25 million of assets under management.⁴⁷ The Commission believes that the definition of small business as applied to investment advisers for Reg. Flex. Act

purposes should be revised to reflect the threshold that Congress used in the Improvement Act for similar purposes. Therefore, the Commission is reducing the threshold to \$25 million of assets under management.⁴⁸

Under the proposed amendments, an adviser having less than \$50 million of client assets would *not* have been considered a small business if the adviser (i) had substantial business assets or (ii) was affiliated with a large firm.⁴⁹ Amended Rule 0-7 reflects the policy of extending an asset test to all investment advisers, but substantially simplifies the proposed amendments and reduces the amount of information the Commission must collect to determine whether an adviser is a small business.⁵⁰ As adopted, the rule excludes from the definition of small business an adviser having less than \$25 million of assets under management if, based on information filed with the Commission, the adviser (i) has \$5 million or more of "total assets," or (ii) controls, is controlled by, or is under common control with (a) another adviser that has \$25 million or more of assets under management or (b) any person (other than a natural person) that

³⁹ See Proposing Release, *supra* note , at text accompanying n.60.

⁴⁰ *Id.* As noted above, the Commission received no comments.

⁴¹ See Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 (May 15, 1997) at text accompanying note 5 (62 FR 28112 (May 22, 1997)) ("Adviser Registration Release").

⁴² See Section 203A(a)(1) of the Advisers Act (15 U.S.C. 80b-3a(a)(1)) (prohibiting an adviser from registering with the Commission if it is subject to regulation by its home state unless it has assets under management of \$25 million or more). The Commission retains primary responsibility for larger advisers, advisers to investment companies, advisers whose principal office and place of business is located in one of the four states that do not regulate advisers or is located overseas, and advisers exempted by rule from the prohibition on registration with the Commission. See Section 203A(a)(1) and (c) of the Advisers Act (15 U.S.C. 80b-3a(a)(1) and (c)); Rule 203A-2 (17 CFR 275.203A-2) (exempting nationally recognized statistical rating organizations, certain pension consultants, any smaller adviser having the same principal office and place of business as a registered adviser affiliated with it through a control relationship, and any new firm reasonably expecting to have \$25 million or more of assets under management).

⁴³ See Report on S. 1815, "The Securities Investment Promotion Act of 1996," S. Rep. No. 293, 104th Cong., 2d Sess. 1-4 (1996) (legislation would focus SEC supervision "on investment advisers most likely to be engaged in interstate commerce" and focus state supervision "on advisers whose activities are most likely to be centered in their home state"; "legislation allows states to assume the primary role with respect to regulating advisers that are small, local businesses, managing less than \$25 million in client assets, while the Commission's role is focused on larger advisers with \$25 million or more in client assets under management").

⁴⁴ The Advisers Act permits the Commission to increase (but not to reduce) the \$25 million minimum threshold for registration with the Commission. See Section 203A(a)(1)(A) of the Advisers Act (15 U.S.C. 80b-3a(a)(1)(A)). To coordinate amended Rule 0-7 with future Commission rulemaking in this regard, the amended rule provides that the maximum threshold for a small business will increase in tandem with any increase in the minimum threshold for Advisers Act registration. Amended Rule 0-7(a)(1) and (3) (17 CFR 275.0-7(a)(1) and (3)). Rule 203A-1 (17 CFR 275.203A-1), which gives an adviser discretion whether to register with the Commission instead of a state if the adviser has between \$25 million and \$30 million of assets under management, does not affect the definition of small business for purposes of amended Rule 0-7. See Adviser Registration Release, *supra* note 45, at text accompanying nn.48-49 (Rule 203A-1 merely makes registration optional within a specified range without raising the minimum threshold for registration).

⁴⁵ See Proposing Release, *supra* note , at nn.51-58 and accompanying text (proposing to extend current Rule 0-7's \$50,000 business asset test to all advisers; proposing not to treat adviser as small entity if affiliated with large adviser or fund or entity deemed large under Rule 0-10 under the Exchange Act (17 CFR 240.0-10)).

⁵⁰ See 1981 Proposing Release, *supra* note 15 at 19257, 19263 (two attributes desirable in size standards are capacity to differentiate the small members of an industry from other members and the use of readily available information to derive standards). Under the amended rule, the determination of the adviser's small status will be based on information reported by the adviser about its size and the size of its affiliates under two tests, as explained below. In contrast, the proposed amendments would have applied two size tests to the adviser and several other tests to affiliates. The Commission expects to propose to amend Form ADV to add questions needed to obtain the information.

the sponsoring insurance company and contract owners. Each account typically is organized as a UIT, or in some cases as a management company having a sponsor-affiliated investment adviser. See generally Section 2(a)(37) of the Investment Company Act (15 U.S.C. 80a-2(a)(37)).

³⁹ Amended Rule 0-10(b) (17 CFR 270.0-10(b)).

⁴⁰ See amended Rule 0-7 (17 CFR 275.0-7); Proposing Release, *supra* note .

⁴¹ Rule 0-7 (17 CFR 275.0-7).

⁴² Amended Rule 0-7. "Total assets" is a broader and simpler term than "business assets." See amended Rule 0-7(b)(2) (total assets means total assets as shown on the balance sheet of investment adviser or other "person" in a control relationship with the adviser). It includes business assets, such as leases and equipment, as well as other types of assets, such as cash and accounts receivable. Total assets should be easier for advisers to calculate than business assets, since the information on total assets is readily available on the balance sheets of advisers and their affiliates.

has \$5 million or more of total assets.⁵¹ The Commission estimates that under amended Rule 0-7, approximately 1,500 registered advisers will be treated as small businesses, approximately 500 fewer than under the proposed amendments.⁵² Most of this change is attributable to reducing the threshold for client assets to less than \$25 million of assets under management. The advisers considered small businesses under the amended rule will consist primarily of the advisers that have less than \$25 million of assets under management but are registered with the Commission because they have a principal office and place of business in one of the four states that does not regulate advisers.⁵³

C. Definitions Under the Exchange Act

1. Exchanges

As discussed in the Proposing Release, the Commission is expanding the definition of "small business" as it applies to exchanges to include a requirement that an exchange also not be affiliated with any person (other than a natural person) that is not a small business as defined in Rule 0-10.⁵⁴ Under the amended rule, an exchange is "affiliated" with another entity when the exchange controls, is controlled by, or is under common control with the

⁵¹ See amended Rule 0-7(a) (2) and (3) (17 CFR 275.0-7(a)(2) and (3)). The \$5 million total assets test is one measure of a small entity under Rule 0-10 (17 CFR 240.0-10(a)) under the Exchange Act. Amended Rule 0-7(b)(1) defines control consistent with Rule 203A-2(c) under the Advisers Act (17 CFR 275.203A-2(c)).

⁵² The number of small businesses for which the Commission has primary regulatory responsibility has dropped sharply as a result of the Improvement Act's prohibiting most small advisers from registering with the Commission. See *supra* text accompanying notes 45-47. Following the final de-registration of those advisers no longer eligible to register with the Commission, there will be approximately 7,600 Commission-registered advisers. In contrast, prior to July 8, 1997 there were approximately 23,000 advisers registered with the Commission.

⁵³ See *supra* note 46. When one or more of these four states institutes a registration scheme for advisers with assets under management of less than \$25 million, the number of small business advisers registered with the Commission will decrease. See also Adviser Registration Release, *supra* note 45, at n.42 ("Commission data suggests that most advisers that will remain registered with the Commission have assets under management well in excess of \$25 million").

⁵⁴ The term "exchange" is defined in Section 3(a)(1) of the Exchange Act (15 U.S.C. 78c(a)(1)). The Commission is retaining the existing provisions of Rule 0-10 that define as "small" those exchanges that are exempt from the requirements of rule 11Aa3-1 (17 CFR 240.11Aa3-1) regarding the dissemination of transaction reports and last sale data with respect to transactions in securities. Currently, none of the eight registered exchanges is fully exempted from the requirements of Rule 11Aa3-1 and, consequently, none is considered a "small business" under Rule 0-10.

other entity. This change will conform the definition applicable to exchanges with other definitions of "small business" under the Exchange Act by applying the affiliation standard already applicable to broker-dealers, clearing agencies, bank municipal securities dealers, securities information processors, and transfer agents.⁵⁵

2. Securities Information Processors

The Commission is retaining in substantially the same form the existing criteria for determining whether a securities information processor is a "small business." This includes the requirement that, to be considered small, a securities information processor must have serviced less than 100 interrogation devices or moving tickers during the preceding fiscal year.⁵⁶ As proposed, the Commission also is modifying the definition of "interrogation device" for purposes of Rule 0-10 to take into account new technologies used to disseminate securities industry information to markets and market participants through increasingly diverse methods. Accordingly, for purposes of the amended small business definition, "interrogation device" includes any device that may be used to read or receive electronic information, including proprietary terminals or personal computers via computer-to-computer interfaces, or gateway access. This will include electronic devices that display securities information such as quotations and indications of interest, as well as those that display only last sale data or transaction reports.

3. Transfer Agents and Issuers

The amended small business definition for transfer agents retains the existing criteria based on volume of transfer business and number of shareholder accounts.⁵⁷ As discussed in the Proposing Release, however, the Commission is adding a third criterion: whether a transfer agent transfers only the items of "small issuers," as defined under Exchange Act Rule 0-10.⁵⁸ The shares of small issuers, as opposed to

⁵⁵ This amendment is consistent with the Commission's belief that it is appropriate to exclude entities with significant economic and financial resources from regulatory treatment as small businesses under the Reg. Flex. Act. See 1981 Proposing Release, 46 FR at 19257.

⁵⁶ The term "securities information processor" is defined in Section 3(a)(22) of the Exchange Act (15 U.S.C. 78c(a)(22)). Currently, neither of the two registered exclusive securities information processors is designated as a "small business" under Rule 0-10.

⁵⁷ The term "transfer agent" is defined in Section 3(a)(25) of the Exchange Act (15 U.S.C. 78c(a)(25)).

⁵⁸ Small issuers, for this purpose, are issuers with total assets of \$5 million or less.

those of large publicly-traded companies, typically are held by a small portion of the investing public and are less likely to be the subject of a substantial amount of trading activity. Thus, the activities of small transfer agents, many of which are not subject to registration under Section 17A of the Exchange Act, are not likely to have a substantial effect on the investing public or the operation of the national clearance and settlement system. In contrast, transfer agents for large companies whose shares are heavily traded are likely to have a far greater effect on securities processing, generally, and on the operation of the national clearance and settlement system.⁵⁹

The Commission also is deleting language in Rule 0-10(a) that currently limits the definition of small business, as it refers to "issuer" or "person," to Sections 12, 13, 14, 15(d), or 16 of the Exchange Act.⁶⁰ This deletion reflects that, under the amended rule, transfer agents who transfer items of issuers with total assets greater than \$5 million will not be considered small for purposes of the Reg. Flex. Act. In addition, no transfer agent, broker-dealer, exchange, clearing agency, securities information processor, or bank municipal securities dealer will be classified as small if it is affiliated with an issuer that does not qualify as small under Rule 0-10. This change is consistent with the intent of the Reg. Flex. Act that only businesses and organizations that are "independently owned" may qualify as small entities.⁶¹

4. Broker-Dealers

As discussed in the Proposing Release, the Commission is retaining the capital standard currently set forth in Rule 0-10 that is used for determining whether a broker⁶² or dealer⁶³ is deemed a "small business."⁶⁴ The

⁵⁹ See Securities and Exchange Commission, *Study of Unsafe and Unsound Practices of Broker and Dealers* 37-39 (1971).

⁶⁰ 15 U.S.C. 78l, 78m, 78n, 78o(d), and 78p.

⁶¹ See *supra* note 16. As noted above, amended Rule 0-10 provides that only those transfer agents that limit the number of items they transfer, handle a limited number of shareholder accounts, and transfer small issuer securities are considered small businesses. Because this category is limited to those transfer agents that would generally be exempt from registration under Exchange Act Section 17A, the Commission believes that there will be few, if any, registered transfer agents that qualify as small businesses for purposes of the Reg. Flex. Act.

⁶² The term "broker" is defined in Section 3(a)(4) of the Exchange Act (15 U.S.C. 78c(a)(4)).

⁶³ The term "dealer" is defined in Section 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(5)).

⁶⁴ Rule 0-10 under the Exchange Act (17 CFR 240.0-10(c)) currently defines "small business" to include any broker or dealer that has total capital of less than \$500,000 and that is not affiliated with

Commission, however, is expanding the affiliation standard applicable to broker-dealers. Under the amended definition, the Commission estimates that approximately 13 percent of all registered broker-dealers will be characterized as "small."

The affiliation test currently only looks to whether a broker-dealer controls, is controlled by, or is under common control with, an entity other than a small business or small organization. This test focuses primarily on relationships between broker-dealers based on voting control or the sharing of profits. As discussed in the Proposing Release, the structure and operation of broker-dealer activities suggest that other kinds of business relationships, such as the contractual relationship between an introducing broker and its clearing firm, can give rise to an opportunity by which a clearing firm can exercise substantial influence over the business of its introducing brokers. In order to conform better its affiliation standard to the nature of business relationships that exist between broker-dealers, the Commission is expanding the definition of affiliation applicable to broker-dealers under Rule 0-10 to include arrangements whereby one broker-dealer introduces transactions in securities to another.⁶⁵

This new affiliation standard is consistent with SBA regulations addressing affiliation that consider whether individuals or firms have identical or substantially identical business interests, as in the case of firms that are economically dependent through contractual or other relationships.⁶⁶ As a practical matter,

any person (other than a natural person) that is not a small business under the rule.

⁶⁵ From a functional perspective, introducing and clearing brokers act as a unit in handling a customer's account. In most respects, introducing brokers are dependent on clearing firms to clear and to execute customer trades, to handle customer funds and securities, and to handle many back-office functions, including issuing confirmations of customer trades and customer account statements. The clearing agreement outlining the respective duties and obligations of an introducing broker and its clearing firm typically contains various requirements imposed by the clearing firm with respect to the handling of customer accounts by the clearing and introducing brokers, and the clearing firm's maintenance of customer assets. Although the customer places its order directly with the introducing firm, the Commission considers the account to be an account of the clearing firm, which has primary legal responsibility with respect to the handling of customer funds and securities, and for sending account statements to the customer. Thus, both introducing and clearing firms have a shared responsibility for ensuring that a customer's account is handled properly.

⁶⁶ See *supra* notes 19-20 and accompanying text (SBA size standard considerations in determining "small business concern"). See also Report to Accompany H.R. 4660, H.R. Rep. No. 96-519, pt. 1,

clearing and introducing firms have identical business interests. In fact, most introducing brokers could not be in business without the capital, technology, and back-office support provided by the clearing firm. Introducing and clearing brokers also have a shared legal responsibility for ensuring that a customer's account is handled properly.⁶⁷

Under amended Rule 0-10, an introducing broker that introduces transactions to a large clearing firm generally will not be considered a "small business" for purposes of the Reg. Flex. Act. The Commission acknowledged in the Proposing Release, however, that certain broker-dealers that limit their activities to handling only investment company securities or interests or participations in insurance company separate accounts typically are small, sometimes one-person operations that combine limited securities activities with broader tax, financial planning, and insurance services. Accordingly, the Commission is providing an exception from the affiliation standard for these broker-dealers.

III. Effects on Competition and Regulatory Flexibility Considerations

Section 23(a)(2) of the Exchange Act⁶⁸ requires the Commission, in adopting rules under the Exchange Act, to consider the impact a rule would have on competition and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission is of the view that the amendments to Exchange Act Rule 0-10 will not impose any burden on competition. The rule changes will not affect the manner in which any regulated entity conducts its business. Moreover, entities that will no longer be classified as small businesses for Reg. Flex. Act purposes should suffer no resulting competitive disadvantage. Although the Commission considers the

at 19 (1979) (suggesting that the definition of "small businesses" was intended to encompass businesses that are independently owned and operated and not dominant in their field of operation). Consistent with the Reg. Flex. Act definitions of small business, SBA regulations that address affiliation consider whether individuals or firms have identical or substantially identical business interests, as in the case of firms that are economically dependent through contractual or other relationships. 13 CFR 121.103(a).

⁶⁷ As a legal matter, for purposes of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa *et seq.*) and the Commission's financial responsibility rules, a customer is the customer of the clearing firm. See Exchange Act Release No. 31511, 57 FR 56973 (Dec. 2, 1992).

⁶⁸ 15 U.S.C. 78w(a)(2).

impact of its rules and rule proposals on small entities, any modification or accommodation relating to size is based on objective criteria such as net assets and not whether an entity meets a "small business" definition under the Commission's Rules.

As discussed in the Proposing Release, the Commission has conferred with the SBA and the SBA concurs that no regulatory flexibility analysis is required for the amendments.⁶⁹ The definitions of the terms "small business" do not impose any requirements on small businesses. The definitions are interpretations of terms that identify those entities that the Commission will study for Reg. Flex. Act purposes when proposing and adopting rules, and are rules of agency practice and procedure.

IV. Statutory Authority

The Commission is amending Rule 157 (17 CFR 230.157), Rule 0-10 (17 CFR 240.0-10), Rule 0-10 (17 CFR 270.0-10), and Rule 0-7 (17 CFR 275.0-7) pursuant to chapter 6 of title 5 of the United States Code (particularly Section 601 thereof (5 U.S.C. 601)), and pursuant to Section 19 of the Securities Act of 1933 (15 U.S.C. 77s), Section 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78w), Section 38 of the Investment Company Act of 1940 (15 U.S.C. 80a-37), and Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-11).

Text of Rule Amendments

List of Subjects

17 CFR Parts 230 and 270

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

17 CFR Part 275

Investment advisers, Reporting and recordkeeping requirements, Securities.

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

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

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

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

⁶⁹ See Proposing Release, 62 FR at 4113.

78ll(d), 79t, 80a-8, 80a-24, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

Section 230.157 is amended by revising the section heading and paragraph (b) to read as follows:

§ 230.157 Small entities under the Securities Act for purposes of the Regulatory Flexibility Act.

* * * * *

(b) When used with reference to an investment company that is an issuer for purposes of the Act, have the meaning ascribed to those terms by § 270.0-10 of this chapter.

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

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

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

4. Section 240.0-10 is amended to revise the section heading and paragraphs (a), (b), (e), (g)(2), (g)(3), and (i); redesignate paragraphs (h)(2) and (h)(3) as paragraphs (h)(3) and (h)(4), respectively; and add paragraphs (h)(2), (j) and (k) to read as follows:

§ 240.0-10 Small entities under the Securities Exchange Act for purposes of the Regulatory Flexibility Act.

* * * * *

(a) When used with reference to an "issuer" or a "person," other than an investment company, mean an "issuer" or "person" that, on the last day of its most recent fiscal year, had total assets of \$5 million or less;

(b) When used with reference to an "issuer" or "person" that is an investment company, have the meaning ascribed to those terms by § 270.0-10 of this chapter;

* * * * *

(e) When used with reference to an exchange, mean any exchange that:

(1) Has been exempted from the reporting requirements of § 240.11Aa3-1; 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;

* * * * *

(g) * * *

(2) Provided service to fewer than 100 interrogation devices or moving tickers 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; and

(h) * * *

(2) Transferred items only of issuers that would be deemed "small businesses" or "small organizations" as defined in this section; and

* * * * *

(i) For purposes of paragraph (c) of this section, a broker or dealer is affiliated with another person if:

(1) Such broker or dealer controls, is controlled by, or is under common control with such other person; a person shall be deemed to control another person if that person has the right to vote 25 percent or more of the voting securities of such other person or is entitled to receive 25 percent or more of the net profits of such other person or is otherwise able to direct or cause the direction of the management or policies of such other person; or

(2) Such broker or dealer introduces transactions in securities, other than registered investment company securities or interests or participations in insurance company separate accounts, to such other person, or introduces accounts of customers or other brokers or dealers, other than accounts that hold only registered investment company securities or interests or participations in insurance company separate accounts, to such other person that carries such accounts on a fully disclosed basis.

(j) For purposes of paragraphs (d) through (h) of this section, a person is affiliated with another person if that person controls, is controlled by, or is under common control with such other person; a person shall be deemed to control another person if that person has the right to vote 25 percent or more of the voting securities of such other person or is entitled to receive 25 percent or more of the net profits of such other person or is otherwise able to direct or cause the direction of the management or policies of such other person.

(k) For purposes of paragraph (g) of this section, "interrogation device" shall refer to any device that may be used to read or receive securities information, including quotations, indications of interest, last sale data and transaction reports, and shall include proprietary terminals or personal computers that receive securities information via computer-to-computer interfaces or gateway access.

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

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

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, 80a-39, unless otherwise noted;

* * * * *

6. Section 270.0-10 is revised to read as follows:

§ 270.0-10. Small entities under the Investment Company Act for purposes of the Regulatory Flexibility Act.

(a) *General.* For purposes of 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, the term *small business* or *small organization* for purposes of the Investment Company Act of 1940 shall mean an investment company that, together with other investment companies in the same group of related investment companies, has net assets of \$50 million or less as of the end of its most recent fiscal year. For purposes of this section:

(1) In the case of a management company, the term *group of related investment companies* shall mean two or more management companies (including series thereof) that:

(i) Hold themselves out to investors as related companies for purposes of investment and investor services; and

(ii) Either:

(A) Have a common investment adviser or have investment advisers that are affiliated persons of each other; or

(B) Have a common administrator; and

(2) In the case of a unit investment trust, the term *group of related investment companies* shall mean two or more unit investment trusts (including series thereof) that have a common sponsor.

(b) *Special rule for insurance company separate accounts.* In determining whether an insurance company separate account is a *small business* or *small entity* pursuant to paragraph (a) of this section, the assets of the separate account shall be cumulated with the assets of the general account and all other separate accounts of the insurance company.

(c) *Determination of net assets.* The Commission may calculate its determination of the net assets of a group of related investment companies based on the net assets of each investment company in the group as of the end of such company's fiscal year.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

7. The authority citation for Part 275 continues to read, in part, as follows:

Authority: 15 U.S.C. 80b-2(a), 80b-3, 80b-4, 80b-6(4), 80b-6A, 80b-11, unless otherwise noted.

* * * * *

8. Section 275.0-7 is revised to read as follows:

§ 275.0-7. Small entities under the Investment Advisers Act for purposes of the Regulatory Flexibility Act.

(a) For purposes of 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* for purposes of the Investment Advisers Act of 1940 shall mean an investment adviser that:

(1) Has assets under management, as defined under Section 203A(a)(2) of the Act (15 U.S.C. 80b-3a(a)(2)) and reported on Form ADV-T (17 CFR 279.3) or its most recent Schedule I to Form ADV (17 CFR 279.1), having a total value of less than \$25 million, or such higher amount as the Commission may by rule deem appropriate under Section 203A(a)(1)(A) of the Act (15 U.S.C. 80b-3a(a)(1)(A));

(2) Did not have total assets of \$5 million or more on the last day of the most recent fiscal year; and

(3) Does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of \$25 million or more (or such higher amount as the Commission may deem appropriate), or any person (other than a natural person) that had total assets of \$5 million or more on the last day of the most recent fiscal year.

(b) For purposes of this section:

(1) *Control* means the power to direct or cause the direction of the management or policies of a person, whether through ownership of securities, by contract, or otherwise. Any person that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of another person is presumed to control the other person.

(2) *Total assets* means the total assets as shown on the balance sheet of the investment adviser or other person described above under paragraph (a)(3) of this section, or the balance sheet of the investment adviser or such other

person with its subsidiaries consolidated, whichever is larger.

Dated: June 24, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-17387 Filed 6-29-98; 8:45 am]

BILLING CODE 8010-01-M

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960-AE86

Administrative Review Process; Prehearing Proceedings and Decisions by Attorney Advisors; Extension of Expiration Date

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: These final rules extend the time period set out in our regulations during which attorney advisors in our Office of Hearings and Appeals (OHA) may conduct certain prehearing proceedings and, where the documentary record developed as a result of these proceedings warrants, issue decisions that are wholly favorable to the parties to the hearing in claims for Social Security or Supplemental Security Income (SSI) benefits based on disability. We are extending the date at which these rules will no longer be effective from July 1, 1998, until April 1, 1999.

EFFECTIVE DATE: These rules are effective June 30, 1998.

FOR FURTHER INFORMATION CONTACT:

Harry J. Short, Legal Assistant, Office of Process and Innovation Management, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-6243 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1-800-772-1213.

SUPPLEMENTARY INFORMATION: On June 30, 1995, in an action undertaken to reduce the record numbers of requests for an administrative law judge (ALJ) hearing pending in our OHA hearing offices, we published final rules in the **Federal Register** (60 FR 34126) that authorize OHA's attorney advisors to conduct certain prehearing proceedings and, if a decision that is wholly favorable to the parties to the hearing may be issued at the completion of these proceedings, to issue such a decision. These regulations, which are codified at §§ 404.942 and 416.1442, included a provision stating that the rules would

no longer be effective on June 30, 1997, unless the Commissioner of Social Security extended the expiration date of the provisions by publication of a final rule in the **Federal Register**. We subsequently published a final rule in the **Federal Register** on June 30, 1997 (62 FR 35073), stating that these rules would no longer be effective on July 1, 1998.

In order to maximize our ability to meet our hearing production goals, we have decided to extend the date on which these rules will no longer be effective from July 1, 1998, to April 1, 1999. The final rules amend the sunset provision in §§ 404.942 and 416.1442 (which expressly provides for extending the expiration date of those sections) to provide that the provisions authorizing prehearing proceedings and decisions by attorney advisors will no longer be effective on April 1, 1999, unless the provisions are extended by the Commissioner of Social Security by publication of a final rule in the **Federal Register**.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Public Law 103-296, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 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 dispensing with the notice and public comment procedures in this case. Good cause exists because these rules only extend the date on which the regulatory provisions concerning prehearing proceedings and decisions by attorney advisors will no longer be effective. These rules make no substantive change to those provisions. The current regulations expressly provide that the provisions may be extended. Therefore, opportunity for prior comment is unnecessary, and we are issuing these regulations as final rules.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, we are not making any substantive changes in the provisions on prehearing proceedings and decisions by attorney advisors. However, without a timely extension of the expiration date for these provisions, we will lack