

would take approximately 19 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$159,600, or \$1,140 per airplane.

The cost impact figure discussed above is 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:

Airbus Industrie: Docket 98–NM–270–AD.

Applicability: Models A319, A320, and A321 series airplanes on which Airbus Modification 25995 has not been accomplished, 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 (b) 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 damage to computer electrical connectors due to ingress of water into the avionics bay, which could result in malfunctioning of the avionics computers, accomplish the following:

Modification

(a) Within 2 years after the effective date of this AD, modify the 90VU electronics rack umbrellas, the 91VU upper shelf assembly, the cockpit drain circuit, and the electrical wire routing above the 90VU electronics rack; in accordance with Airbus Service Bulletin A320–25–1186, Revision 01, dated September 23, 1998.

Note 2: Accomplishment of the modification required by paragraph (a) of this AD in accordance with Airbus Service Bulletin A320–25–1186, dated December 1, 1997, prior to the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(b) 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, International Branch, ANM–116, 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, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) 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.

Note 4: The subject of this AD is addressed in French airworthiness directive 98–178–115(B), dated May 6, 1998.

Issued in Renton, Washington, on May 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 99–13876 Filed 6–1–99; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–41442; File No. S7–17–99]

RIN 3235–AH74

Recordkeeping Requirements for Transfer Agents

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (Commission) is publishing for comment a proposal to allow registered transfer agents to use electronic storage media to produce and preserve the records that they are required to retain. In addition, the Commission is proposing to expressly allow registered transfer agents to use microfiche in addition to microfilm for record retention purposes. The proposed amendments are designed to increase the flexibility and efficiency of transfer agent recordkeeping.

DATES: Comments should be received on or before July 2, 1999.

ADDRESSES: Interested persons should submit three copies of their written data, views, and opinions to Jonathan G. Katz, Secretary, Mail Stop 0609, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–17–99; this file number should be used 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 Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet site (<http://www.sec.gov>).

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Theodore R. Lazo, Attorney, at 202/942–4187, Office of Risk Management and

Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 1001, Washington, DC 20549-1001.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Section 17(a)(1) of the Securities Exchange Act of 1934 (Exchange Act) requires registered transfer agents to make, keep, and disseminate reports prescribed by the Commission as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.¹ Rules 17Ad-6 and 17Ad-7 under the Exchange Act specify the records that registered transfer agents must make and keep and the amount of time that the records must be preserved.² Depending on the type of record, the records covered by these rules generally must be maintained for two years,³ six years,⁴ or until one year after the termination of a transfer agency relationship.⁵

Rule 17Ad-7(f) permits registered transfer agents to preserve the records listed in Rule 17Ad-6 on microfilm, subject to certain conditions.⁶ However, Rule 17Ad-7 provides no other alternative to maintaining records in hard copy. In light of advances in electronic recordkeeping technology, we believe that Rule 17Ad-7 should be amended to accommodate a wider range of storage media.

The Securities Transfer Association has requested the Commission to allow transfer agents to use optical disk storage systems to fulfill their recordkeeping requirements under Rule 17Ad-7.⁷ We believe that this request has merit, and so we are proposing to amend Rule 17Ad-7 under the Exchange Act to permit registered transfer agents to preserve records using electronic storage media. We also are proposing to amend Rule 17Ad-7 to permit the preservation of records on micrographic media.⁸ These proposals incorporate the essential provisions of

our rule that permits broker-dealers to use alternative recordkeeping methods.⁹

B. Alternative Recordkeeping Methods

1. Electronic Storage Media

There are different types of electronic storage media available for recordkeeping purposes. The principal focus of the proposed amendments is on optical storage technology, which allows for digital data recording in a non-rewriteable, non-erasable format that provides a permanent and unalterable record.¹⁰ Optical storage systems record digital information by using a laser to burn a pattern on a metallic film on a disk surface (known as an optical disk) that can hold billions of bytes of data. Optical disks are removable from the hardware that records the information onto the disk. Using optical disk storage, any record, whether it is computer generated (such as a computer report) or electronically digitized from another medium (such as paper or micrographics), can be recorded and then accessed and managed using computers.

2. Micrographic Media

Microfilm and microfiche are types of micrographic media that photographically reduce the size of document images. However, microfiche images are stored on a sheet of film while microfilm images are stored on spooled film.

II. Proposed Amendments and Discussion

The Commission believes that the use of optical disks and other electronic storage media for the preservation of records must be conditioned with safeguards against erasability, provisions for the immediate verification of the stored information, and mandatory backup facilities. The proposed amendments to Rule 17Ad-7 would contain additional conditions to ensure that the documents stored on the disk are indexed and may be accessed by Commission examiners or by examiners from another appropriate regulatory agency.¹¹

Exchange Act Rule 17a-4 contains conditions on broker-dealers' use of

electronic storage media that are similar to the ones we are proposing for transfer agents. However, we anticipate that transfer agents (unlike broker-dealers) would use electronic storage media to store canceled securities certificates. The storage and destruction of canceled securities certificates present issues unique to transfer agents' use of electronic storage media. As a result, we believe that these conditions are particularly necessary for transfer agents. In addition, we believe that these conditions are necessary because optical disk storage technology is relatively new and there does not appear to be an industry standard for its development and for compatibility among different optical disk storage systems.

The proposed amendments to Rule 17Ad-7 would contain additional conditions to ensure that the documents stored on the disk are indexed and may be downloaded by Commission examiners or by examiners from another appropriate regulatory agency.¹²

The proposed amendments would require transfer agents that use electronic storage media to store the records in a non-rewriteable, non-erasable format. This requirement should ensure that the information stored on electronic storage media cannot be modified or removed without detection. As an additional protection, the proposed amendments would require that electronic storage media label the storage units used (e.g., the optical disks) in sequential order and record the date and time that information is electronically stored. In addition, transfer agents would be required to keep a duplicate of any records that are stored using electronic storage media. The duplicates may be kept on any type of medium that is acceptable under Rule 17Ad-7.¹³

In order to ensure efficient and complete access to records during examinations, transfer agents using electronic storage media would be required to create an index of the records that are electronically stored and store the index with those records. In addition, the proposed amendments would require transfer agents to maintain a duplicate index along with the duplicates of the indexed records separately from the originals. Transfer

¹ 15 U.S.C. 78q(a)(1).

² 17 CFR 240.17Ad-6 and 240.17Ad-7.

³ 17 CFR 240.17Ad-7 (a) and (b).

⁴ 17 CFR 240.17Ad-7(d).

⁵ 17 CFR 240.17Ad-7(c).

⁶ 17 CFR 240.17Ad-7(f).

⁷ Letter from Charles Rossi, President, Securities Transfer Association, to Arthur Levitt, Chairman, Commission (July 2, 1996). The letter is available for inspection and copying in the Commission's Public Reference Room in File No. S7-17-99.

⁸ Under the proposed amendments, the term "micrographic media" would be defined to mean microfilm or microfiche, or any similar medium.

⁹ See Securities Exchange Act Release No. 38245 (February 5, 1997), 62 FR 6469 (Broker-Dealer Release) (adopting amendments to Rule 17a-4(f) to allow broker-dealers to use electronic storage media and micrographic media).

¹⁰ This format is sometimes referred to as "write once, read many" or "WORM."

¹¹ The term "appropriate regulatory agency" is defined in section 3(a)(34) of the Exchange Act, 15 U.S.C. 78c(a)(34), and includes the Commission, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

¹² The term "appropriate regulatory agency" is defined in section 3(a)(34) of the Exchange Act, 15 U.S.C. 78c(a)(34), and includes the Commission, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

¹³ The Commission does not intend that the proposed amendments to Rule 17Ad-7 would override any state laws or regulations regarding destruction of canceled securities certificates.

agents would also be required to have the capacity to download records stored on electronic storage media so that the records could be promptly transferred to an alternate medium such as paper, microfilm or microfiche.

In addition, the proposed amendments contain conditions on the use of electronic storage media that are designed to provide access to information stored on electronic storage media if a transfer agent is no longer operating, refuses to cooperate with the Commission or another appropriate regulatory agency, or has not properly or fully indexed electronically stored records. Accordingly, the proposed amendments to Rule 17Ad-7 would require transfer agents to preserve, keep current, and surrender upon request the information necessary to download records stored on electronic storage media. As an alternative, transfer agents that use another party to maintain their records (such as an outside service bureau) would be permitted to place in escrow and keep current a copy of the information necessary to access the format of the electronic storage media and to download records that are electronically stored. Moreover, before a transfer agent uses electronic storage media, the proposed amendments would require that at least one party other than the transfer agent (e.g., the transfer agent's electronic storage media vendor) file representations with the Commission that it has the ability to download information from the transfer agent's electronic storage system and that it would do so at the request of either the Commission or its appropriate regulatory authority.

We understand that some broker-dealers now use electronic storage media and micrographic media to fulfill their recordkeeping requirements. We believe that the proposed amendments to Rule 17Ad-7 will similarly increase the flexibility and efficiency of transfer agent recordkeeping.

III. General Request for Comments

Any interested person wishing to submit comments on the proposed amendments to Rule 17Ad-7, as well as on other matters that might have an impact on the proposal, is requested to do so. We seek comment on whether the proposed requirements regarding the use of electronic storage media will create an undue burden on transfer agents or others. We seek comment on whether additional or fewer safeguards may be required in the context of transfer agents' use of electronic storage media. We also request comments on whether other new technologies are available for use in retaining records,

and whether the rule should allow use of these technologies. If so, under what conditions?

We specifically solicit comments as to whether the proposed amendments to Rule 17Ad-7 present any issues that are unique to transfer agents that did not arise with respect to the amendments to Rule 17a-4. In particular, we request commenters to address any issues that may arise from the use of electronic storage media to store canceled securities certificates. Are there legal issues associated with transfer agents destroying canceled securities certificates that have been electronically stored? For example, could the inability to produce an original certificate during a legal proceeding create evidentiary problems even if a facsimile of the certificate could be downloaded from the electronic storage media? Should transfer agents that use electronic storage media to store canceled securities certificates be permitted to destroy canceled securities certificates as soon as they are electronically stored, or should transfer agents be required to maintain the original certificates for some period of time after storing them electronically?

Should Rule 17Ad-7 contain specific standards regarding image quality for electronic storage media used by transfer agents? Should Rule 17Ad-7 require that any electronic storage media used by transfer agents automatically verify the resolution quality of the electronically stored records? Should transfer agents using electronic storage media be required to periodically audit the resolution quality?

IV. Cost and Benefits of the Proposed Amendments

The Commission is considering the costs and the benefits of the proposed amendments to Rule 17Ad-7. The Commission has identified certain costs and benefits relating to the proposed amendments, which are discussed below, and encourages commenters to discuss any additional costs or benefits. In particular, the Commission requests comment on the potential costs for any necessary modifications to information gathering, management, and recordkeeping systems or procedures as well as any potential benefits resulting from the proposals for issuers, transfer agents, regulators, or others. Commenters should provide analysis and empirical data to support their views on the costs and benefits associated with the proposed amendments.

A. Benefits

The proposed amendments to Rule 17Ad-7 should provide specific benefits to U.S. investors, issuers, transfer agents, and other financial intermediaries. These benefits are not readily quantifiable in terms of dollar value. Allowing registered transfer agents to maintain their records using micrographic media and electronic storage media should increase the efficiency of their recordkeeping operations by reducing the need to maintain records in hard copy format. In addition, the use of micrographic media and electronic storage media should reduce storage burdens (e.g., the need for storage space) that transfer agents currently face in keeping paper records.

B. Costs

The proposed amendments to Rule 17Ad-7 should not result in significant costs to any particular person or entity. We have identified costs associated with the proposed amendments. Transfer agents that use micrographic media or electronic storage media may incur some costs in transferring hard copy records to micrographic or electronic storage media. In addition, there could be some cost to registered transfer agents to fulfill the conditions that would be imposed on the use of electronic storage media. Specifically, the requirements that transfer agents using electronic storage media create a duplicate of the records electronically stored, that they create an index of the electronically stored records, and that they establish an audit system to account for inputting of and changes to electronically stored records all could result in costs to those transfer agents. However, any costs related to the use of micrographic media or electronic storage media should be at least partly offset by the resulting elimination of the need to maintain and store records in hard copy format. In addition, we note that transfer agents' use of micrographic media or electronic storage media would be voluntary.

We request comment on these costs and invite commenters to submit their own estimates of the costs and benefits that would result from the proposed amendments to Rule 17Ad-7. In order to fully evaluate the costs and benefits associated with the proposed amendments, we request that commenters' estimates of the costs and benefits of the proposed amendments be accompanied by specific empirical data supporting the estimates.

V. Effect of the Proposed Amendments on Competition, Efficiency, and Capital Formation

Section 23(a)(2) of the Exchange Act¹⁴ requires the Commission, in adopting rules under the Exchange Act, to consider the impact any such rule would have on competition, and to not adopt any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, section 3 of the Exchange Act¹⁵ as amended by the National Securities Markets Improvement Act of 1996¹⁶ provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

We are considering the proposed amendments to Rule 17Ad-7 in light of the standards cited in sections 3 and 23(a)(2) of the Exchange Act. For the reasons stated herein, the proposed amendments (i) should promote efficiency by allowing registered transfer agents to benefit from advances in recordkeeping technology, (ii) should not adversely affect capital formation because they relate solely to post-issuance activity, and (iii) should not impose any burden on competition because they will apply equally to all registered transfer agents.

We do not anticipate that the proposed amendments would have a significant effect on competition or impose any burden on competition that is not necessary or appropriate in furtherance of the Exchange Act. Under the proposed amendments, all registered transfer agents would be permitted to use micrographic media and electronic storage media to fulfill their recordkeeping obligations. In addition, the proposed conditions with respect to using electronic storage media would apply equally to all registered transfer agents. However, in order to fully evaluate fully the effects on competition of the proposed amendments, the Commission requests commenters to provide their views and specific empirical data as to any effects on competition that might result from the Commission's proposed amendments to Rule 17Ad-7.

VI. Summary of Regulatory Flexibility Analysis

The Commission has prepared an initial regulatory flexibility analysis ("IRFA") in accordance with 5 U.S.C. 603(a) regarding the proposed amendments to Rule 17Ad-7. The IRFA states that the proposed amendments are intended to allow registered transfer agents to take advantage of advances in electronic recordkeeping technology. The IRFA sets forth the statutory basis for the proposed amendments.

The IRFA states that, for purposes of Commission rulemaking, paragraph (h) of Rule 0-10 under the Exchange Act defines the term "small business" or "small organization" to include any 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) transferred items only of issuers that would be deemed "small businesses" or "small organizations" as defined in Rule 0-10 under the Exchange Act; (3) 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 (4) is not affiliated with any person (other than a natural person) that is not a small business or small organization under Rule 0-10.¹⁷ The IRFA states that we estimate that 180 registered transfer agents qualify as small entities and would be subject to the proposed amendments to Rule 17Ad-7.

The IRFA states that the proposed amendments would impose certain reporting, recordkeeping, and compliance requirements. The proposed amendments also would require each registered transfer agent that uses electronic storage media to set up a system to record the inputting of records to electronic storage media and the inputting of any changes to that are electronically stored.

The proposed amendments would require transfer agents that use electronic storage media to store the records in a non-rewriteable, non-erasable format. In addition, the proposed amendments would require that electronic storage media label the storage units used in sequential order and record the date and time that the information is electronically stored. Transfer agents would be required to keep a duplicate of any records that are stored using electronic storage media

which could be kept on any type of medium that is acceptable under Rule 17Ad-7.

Transfer agents using electronic storage media would be required to create an index of the records that are electronically stored and store the index with those records. In addition, transfer agents would be required to maintain a duplicate index along with the duplicate records separately from the originals. Transfer agents would also be required to have the capacity to download records stored on electronic storage media so that the records could be promptly transferred to an alternate medium such as paper, microfilm or microfiche.

The proposed amendments would require transfer agents to preserve, keep current, and surrender upon request the information necessary to download records stored on electronic storage media. Moreover, before a transfer agent uses electronic storage media, the proposed amendments would require that at least one party other than the transfer agent (e.g., the transfer agent's electronic storage media vendor) file representations with the Commission that the third party has the ability to download information from the transfer agent's electronic storage system and that it would do so at the Commission's request.

The IRFA notes that the reporting, recordkeeping, and compliance requirements contained in the proposed amendments to Rule 17Ad-7 would apply only to registered transfer agents that specifically choose to use electronic storage media. The IRFA notes further that some small transfer agents will not be able to afford the costs involved with storing records electronically and therefore will not choose to use electronic storage media. The IRFA states that the proposed amendments to Rule 17Ad-7 should not have a significant economic impact on a substantial number of small entities.

The IRFA states that as an alternative to the proposed amendments we considered proposing different compliance and reporting requirements and timetables with respect to transfer agents' use of electronic storage media. However, the IRFA states that the Commission believes that the compliance and reporting requirements and timetables as proposed are necessary to ensure the accuracy and integrity of transfer agent records that are electronically stored and to ensure the access to such records by the Commission or another appropriate regulatory agency. The IRFA also states that the timetables contained in the proposed amendments are consistent

¹⁴ 15 U.S.C. 78w(a)(2).

¹⁵ 15 U.S.C. 78c.

¹⁶ Pub. L. 104-290, 110 Stat. 3416 (1996).

¹⁷ 17 CFR 240.0-10(h).

with the timetables that are already contained in Rule 17Ad-7.

The IRFA states that we believe that it is not feasible to further clarify, consolidate, or simplify the proposed amendments for small entities. The IRFA also states that the Commission believes that the use of performance standards rather than design standards is not applicable to the proposed amendments.

The IRFA states that we believe that creating an exemption from the requirements of the proposed amendments would not reduce the impact of the proposed amendments on small entities. The IRFA notes that Rule 17Ad-4(b) under the Exchange Act¹⁸ already exempts small transfer agents from many of the recordkeeping requirements of Rules 17Ad-6 and 17Ad-7. In addition, the IRFA notes that any burden imposed by the proposed amendments would apply only to those transfer agents that choose to use electronic storage media. The IRFA states that we believe that there are no rules that duplicate, overlap, or conflict with the proposed alternative versions of the rule.

The IRFA contains information concerning the solicitation of comments with respect to the IRFA. In particular, the IRFA requests comment on whether the proposed amendments to Rule 17Ad-7 would have a significant economic impact on a substantial number of small entities and requests that any such comments be accompanied by specific empirical data. Cost-benefit information reflected in the "Cost/Benefit Analysis" section of this Release also is reflected in the IRFA. A copy of the IRFA may be obtained by contacting Theodore R. Lazo, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 1001, Washington, DC 20549-1001.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed amendments on the economy on an annual basis. Commenters should provide empirical data to support their views.

VII. Paperwork Reduction Act

Certain provisions of the proposed amendments to Rule 17Ad-7 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995,¹⁹ and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C.

3507(d) and 5 CFR 1320.11. The title for the collection of information is: "Record Retention Requirements for Registered Transfer Agents." The OMB control number for the collection of information is 3235-0136. The collection of information requirements are necessary both to ensure the integrity of transfer agents' records that are maintained on electronic storage media and to ensure the Commission's ability to access such records.

Proposed Rules 17Ad-7(f)(1)(iii) and 17Ad-7(f)(1)(iv) contain a collection of information requirements that are intended to ensure that the Commission would have full and complete access to transfer agents' records during examinations. Proposed Rule 17Ad-7(f)(1)(iii) and 17Ad-7(f)(1)(iv) would require transfer agents that use electronic storage media to create an index of all electronically stored records and to maintain a duplicate of each index. We do not propose to specify the format of the index that would be required to be maintained. However, the original and duplicate indexes would be required to be kept in separate locations in order to protect against loss or damage. The indexes would be required to be maintained for as long as the transfer agent was using electronic storage media.

Proposed Rule 17Ad-7(f)(3) contains a collection of information requirement that is intended to ensure the integrity of transfer agents' records that are stored on electronic storage media. Proposed Rule 17Ad-7(f)(3) would require each registered transfer agent that uses electronic storage media to set up a system to record the inputting of records to electronic storage media and to record the inputting of any changes to records that are electronically stored. We do not propose to specify the contents of each audit system, but any data stored regarding inputting of records and changes to existing records would be part of that system. We anticipate that the names of the individuals that input and make changes to records and the identities of documents inputted and changed are the kinds of information that automatically should be collected pursuant to the audit system requirement. The results of the audit system would be required to be preserved for the time required for the audited records.

Proposed Rules 17Ad-7(f)(4) and 17Ad-7(f)(5) contain collection of information requirements that would ensure the Commission's access to records of a transfer agent that was no longer operating, refused to cooperate with the investigative efforts of the

Commission or another appropriate regulatory agency, or had not properly or fully indexed electronically stored records. Proposed Rule 17Ad-7(f)(4) would require each transfer agent that uses electronic storage media to maintain and provide upon request or to keep in escrow all information necessary to access records and indexes that are electronically stored. We do not propose to specify the types of information that the transfer agent would be required to maintain if such information is maintained on the transfer agent's premises. However, if the transfer agent chose to place such information in escrow, it would have to keep in escrow a copy of the physical and logical format of the electronic storage media, the field format of all different information types written on the electronic storage media and the source code, together with appropriate documentation and information necessary to access records and indexes. The information required by Proposed Rule 17Ad-7(f)(4) would be required to be maintained for as long as the transfer agent was using electronic storage media.

Proposed Rule 17Ad-7(f)(5) would require that for each transfer agent using electronic storage media at least one party other than the transfer agent would have to file with the Commission written undertakings that it has the ability to download the transfer agent's electronically stored records and that it would do so at the request of either the Commission or its appropriate regulatory authority. This requirement is intended to assure that examining authorities would be able to access a transfer agent's electronically stored records if the transfer agent could not or would not download the records. We anticipate that this requirement could be fulfilled in the form of a letter to the Commission staff. This collection of information requirement does not contain any new recordkeeping requirements.

The collection of information required by the proposed amendments to Rule 17Ad-7 should not result in any new significant burden to transfer agents. All information required as a condition of transfer agents' use of electronic storage media is specifically tied to a transfer agent's decision to use electronic storage media to satisfy its already existing recordkeeping obligations.

The likely respondents to the collection of information are large registered transfer agents. At this time, we estimate that there are 40 likely respondents to the collection of information requirements contained in the proposed amendments to Rule

¹⁸ 17 CFR 240.17Ad-4(b).

¹⁹ 44 U.S.C. 3501 *et seq.*

17Ad-7. The proposed frequency of response to the collection of information requirements varies depending on the specific requirement. The collection of information requirements contained in Proposed Rules 17Ad-7(f)(3)(vi) and 17Ad-7(f)(3)(vii) would require a one time response. The collection of information requirements contained in Proposed Rules 17Ad-7(f)(3)(iv) and 17Ad-7(f)(3)(v) would require continuing responses.

The Commission estimates that the average amount of time needed to comply with the collection of information requirements of the proposed amendments to Rule 17Ad-7 would be 125 hours per year. However, this time burden would apply only to registered transfer agents that choose to use electronic storage media. Based on the Commission's estimate of 40 likely respondents, we estimate that the proposed collection of information requirements would result in 5000 additional burden hours (40 x 125) and would increase the total number of burden hours for Rule 17Ad-17 from 142,272 to 147,272.²⁰

If a transfer agent chooses to use electronic storage media, then providing the information will be mandatory. Responses to the collection of information requirements will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

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 Commission'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 collection of information on those who are to respond, including through the use of automated collection techniques or other forms for information technology.

Persons desiring to submit comments on the collection of information

requirements should direct them to the following persons: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 0609, Washington, DC 20549-0609, and refer to File No. S7-17-99. The Office of Management and Budget (OMB) is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release in the **Federal Register**, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication.

VIII. Statutory Bases

The amendments to Rule 17Ad-7 are being proposed pursuant to sections 17A(a)(2) and 17A(d) of the Exchange Act (15 U.S.C. 78q-1(a)(2) and 78q-1(d)).

Text of the Amendments

List of Subjects in 17 CFR part 240

Reports and recordkeeping requirements, Securities, Transfer agents.

In accordance with the foregoing, the Commission proposes to amend part 240 of Chapter II of Title 17 of the Code of Federal Regulation as follows:

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

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

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 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, 80-23, 80a-29, 80a-37, 80b-3, 80b-4, and 80b-11, unless otherwise noted.

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2. Section 240.17Ad-7 is amended by revising paragraph (f) to read as follows:

§ 240.17Ad-7 Record retention.

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(f) *Record retention using micrographic media or electronic storage media.* Registered transfer agents may use micrographic media or electronic storage media that complies with the conditions in this paragraph to store the records that they are required to keep under §§ 240.17Ad-6 and 240.17Ad-7.

(1) If you as a registered transfer agent use either micrographic media or electronic storage media to store your records you must:

(i) Have available at all times for examination by the staffs of the Commission and of your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency) facilities for immediate projection or production of easily readable images of the records that you store on electronic storage media;

(ii) Be ready at all times to immediately provide any facsimile enlargement of the records that you store on electronic storage media that the staffs of the Commission and of your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency) or their representatives may request;

(iii) Create an accurate index of the records that you store on electronic storage media, store the index with those records, and have the index available at all times for examination by the staffs of the Commission and of your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency); and

(iv) Maintain a duplicate of the index of the records that you store on electronic storage along with duplicates of the indexed records separately from the originals. You may store the duplicates of the indexed records on any medium permitted by this section. You must preserve the duplicate index and the duplicates of the indexed records for the same time that is required by this section for the indexed records, and you must have them available at all times for examination by the staffs of the Commission and of your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency).

(2) Any electronic storage media that you use to store your records must:

(i) Preserve the records in a format that is not rewriteable and not erasable;

(ii) Automatically verify the quality and accuracy of its recording process;

(iii) Label all units of storage media used in sequential order and record the date and time that information is stored on the electronic storage media; and

(iv) Have the capacity to readily download indexes and records preserved on the electronic storage media to any medium acceptable under this paragraph as required by the staffs of the Commission and of your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency).

(3) If you use electronic storage media to store your records, you must set up an audit system that accounts for the inputting of and any changes to every record that is stored on electronic storage media:

²⁰ Based on an estimated average administrative labor cost of \$50.00 per hour, the Commission's staff estimates that the total labor cost to the transfer agent industry for complying with the collection of information requirements contained in the proposed amendments would be \$250,000 annually (\$50.00 x 5000). The Commission's staff developed these estimates in consultation with representatives of the transfer agent industry.

(i) You must be able to have the results of the audit system available at all times for examination by the staffs of the Commission and of your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency); and

(ii) The audit results must be preserved for the time required for the audited records.

(4) If you use electronic storage media to store your records you must either:

(i) Maintain, keep current, and provide promptly upon request by the staffs of the Commission and of your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency) all information necessary to access records and indexes stored on electronic storage media; or

(ii) If you use another party to maintain your records, place in escrow and keep current a copy of the physical and logical format of the electronic storage media, the field format of all different information types written on the electronic storage media and source code, and the appropriate documentation and information necessary to access records and indexes.

(5) Before you begin to use electronic storage media to preserve some or all of your records under this section, there must be at least one party other than you who has access to your electronic storage media system and has the ability to download information from your system and that party must file with the Commission and with your appropriate regulatory agency (if the Commission is not your appropriate regulatory agency) the following undertakings with respect to such records:

The undersigned hereby undertakes to furnish promptly to the U.S. Securities and Exchange Commission ("Commission"), the transfer agent's appropriate regulatory agency ("ARA") (if its ARA is not the Commission), and their designees or representatives, upon reasonable request, such information as is deemed necessary by the Commission's, ARA's, or designee's staff to download information kept on the registered transfer agent's electronic storage media to any medium acceptable pursuant to Rule 17Ad-7 under the Securities Exchange Act of 1934.

Furthermore, the undersigned hereby undertakes to take reasonable steps to provide access to information contained on the registered transfer agent's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be maintained and preserved by the registered transfer agent pursuant to Rules 17Ad-6 and 17Ad-7 under the Securities Exchange Act of 1934 in a format acceptable to the Commission's staff and the ARA's staff or their designees. Such arrangements will provide specifically that in the event of the registered transfer agent's failure to download the record into a

readable format and, after reasonable notice to the registered transfer agent, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to download the record into a readable format as the Commission's staff and the ARA's staff or their designees may request.

(6) For purposes of this section, the following definitions apply:

(i) The term *micrographic media* means microfilm or microfiche or any similar medium; and

(ii) The term *electronic storage media* means any digital storage medium or system that meets the conditions in this paragraph.

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By the Commission.

Dated: May 25, 1999.

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. PL98-1-001]

Public Access to Information and Electronic Filing; Technical Conference

May 26, 1999.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of technical conference on electronic filing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) notifies interested persons that the Commission Staff will conduct a technical conference for the purpose of discussing: the phasing plan and schedule for implementing electronic filings; the proposed policies and procedures for electronic filings; the changes to the Commission's regulations that will be required to accommodate electronic filing; a prototype for submitting certain electronic filings to the Commission; the profile of capabilities that the Commission plans to pilot by October 1, 1999; and other electronic filing-related issues of concern to those in attendance.

DATES: The conference will be held on Thursday, June 24, 1999, beginning at 9:30 a.m.

ADDRESSES: The technical conference will be held in the Commission Meeting Room at the Federal Energy Regulatory

Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Brooks Carter, Office of the Chief Information Officer, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 42-29, Washington, D.C. 20426, (202) 501-8145, FAX: (202) 208-2425, E-Mail: brooks.carter@ferc.fed.us

Wilbur Miller, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 91-17, Washington, D.C. 20426, (202) 208-0953

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Home Page (<http://www.fed.us>) using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. User assistance is available at 202-208-2474 or by E-mail to CipsMaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202-208-2222, or by E-mail to RimsMaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, N.E., Washington, DC 20436.

Technical Conference

Take notice that the Commission Staff (Staff) will convene a technical conference to discuss issues related to the Commission's Electronic Filing Initiative (EFI). The conference will be held on Thursday, June 24, 1999, and will commence at 9:30 a.m. in the