Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, we are proposing to amend 9 CFR Part 92 as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.11 [Amended]

2. In § 92.11(d)(1)(i) the words "and except with respect to horses from Argentina," would be added immediately following the word "Mexico,".

Done in Washington, DC, this 8th day of March 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–5738 Filed 3–10–89; 8:45 am]

BILLING CODE 3410-34-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1259

National Space Grant College and Fellowship Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes NASA policies, responsibilities, and procedures relative to the National Space Grant College and Fellowship Program established by Title II of the National Aeronautics and Space Administration Authorization Act of 1988. This program, through the designation of Space Grant colleges/consortia and the establishment of Space Grant programs and fellowships, is designed to broaden the base of universities and individuals contributing to and benefiting from aerospace science and technology and ultimately contribute to the development and utilization of space resources.

DATE: Comments must be submitted on or before April 12, 1989.

ADDRESS: Educational Affairs Division, Code XE, NASA Headquarters, Washington, DC 20546. Comments may be inspected in FB6, Room 6127, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Elaine T. Schwartz, 202/453–8344.

SUPPLEMENTARY INFORMATION: The National Aeronautics and Space Administration has determined that this proposed rule does not constitute a major rule for the purposes of Executive Order 12291 and it will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 1259

Aerospace, Consortium, Fellowship Program, Higher Education, Space, Grant College.

Part 1259 is added to Title 14, Chapter V, to read as follows:

PART 1259—NATIONAL SPACE GRANT COLLEGE AND FELLOWSHIP PROGRAM

Authority: Pub. L. 100–147, 101 Stat. 869–875, 42 U.S.C. 2486; 42 U.S.C. 2452.

Subpart 1—Basic Policy

§ 1259.100 Scope of part.

(a) This Part 1259 establishes the policies, responsibilities, and procedures relative to the National Space Grant College and Fellowship Program established by Title II of the National Aeronautics and Space Administration Authorization Act of 1988. (Pub. L. 100–147, Oct. 30, 1987, 101 Stat. 869–875, 42 U.S.C. 2486). This statute authorizes the Administrator of the National Aeronautics and Space Administration (NASA), in order to carry out the purposes of the National Space Grant College and Fellowship Act (the Act), to accept conditional or unconditional gifts and donations, to accept and use funds from other Federal departments, agencies and instrumentalities, to make awards with respect to such needs or problems and to designate Space Grant colleges. It further directs the Administrator to establish a graduate fellowship program to provide educational assistance to qualified individuals in fields related to space, and to establish an independent committee known as the Space Grant Review Panel to review and advise the Administrator with respect to Space Grant programs.

(b) The regulations of this part do not apply to awards made by NASA under any other authority.

§ 1259.101 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) "Field related to space" means any academic discipline or field of study (including the physical, natural and biological sciences, and engineering, space technology, education, economics, sociology, communications, planning, law, international affairs and public administration) which is concerned with or likely to improve the understanding, assessment, development, and utilization of space.

(b) "Institution of higher education" means any college or university in any State which:

(1) Admits as regular students only individuals who have a certificate of

graduation or equivalent from a secondary school;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which a bachelor's degree or other higher degree is awarded;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

(c) "National of the United States" means a citizen of the United States or a native resident of a possession of the United States. It does not refer to or include a citizen of another country who has applied for United States citizenship.

(d) "Panel" means the Space Grant Review Panel established pursuant to section 210 of the Act.

(e) "Person" means any individual, public or private corporation, partnership or other association or entity (including any Space Grant college, Space Grant consortium, institution of higher education, institute, or laboratory), or any State, political subdivision thereof, or agency or officer of a State or political subdivision thereof.

(f) "Space" means "aeronautical and space activities" which has the meaning given to such term in section 103(1) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2452).

(g) "Space Grant college" means any public or private institution of higher education which is designated as such by the Administrator or designee pursuant to section 208 of the Act.

(h) "Space Grant regional consortium" means any association or other alliance which is designated as such by the Administrator or designee pursuant to section 208 of the Act.

(i) "Space Grant program" means any program which:

(1) Is administered by any Space Grant college, Space Grant regional consortium, institution of higher education, institute, laboratory or State or local agency; and

(2) Includes two or more projects involving education and one or more of the following activities in the fields related to space:

(i) Research;

(ii) Training; or

(iii) Advisory services.

(j) "Space Grant program award" means any award contemplated under section 206(a) of the Act.

(k) "Special Space Grant program award" means any award extended under section 206(b) of the Act.

(l) "Specific national need grant" means any award extended under section 207 of the Act.

(m) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

(n) "State Space Grant cooperating institution" means any institution of higher education in a State which does not have a designated Space Grant college that is named by the Administrator or designee to provide selected Space Grant program functions within that State.

§ 1259.102 General policy.

(a) In accordance with subsections 103(a)(2) and (3) of the National Aeronautics and Space Act of 1958, as amended, (42 U.S.C. 2457(a)(3)), it is NASA's policy, through various educational programs, to provide direct support for and encouragement to teachers, students, and prospective students in fields related to space.

(b) In compliance with the National Space Grant College and Fellowship Act (42 U.S.C. 2486), it shall be NASA's purpose to:

(1) Increase the understanding, assessment, development, and utilization of space resources by promoting a strong educational base, responsive research and training activities, and broad and prompt dissemination of knowledge and techniques;

(2) Utilize the abilities and talents of the universities of the Nation to support and contribute to the exploration and development of the resources and opportunities afforded by the space environment;

(3) Encourage and support the existence of interdisciplinary and multidisciplinary programs of space research, to engage in activities of training (including teacher education), research and public service and to have cooperative programs with industry;

(4) Encourage and support the existence of consortia, composed of university and industry members, to advance the exploration and development of space resources in cases in which national objectives can be better fulfilled than through the programs of single universities;

(5) Encourage and support Federal funding for graduate fellowships in fields related to space;

(6) Support activities in colleges and universities generally for the purpose of creating and operating a network of institutional programs that will enhance achievements resulting from efforts under this Act; and

(7) Encourage cooperation and coordination among Federal agencies and Federal programs concerned with space issues.

(c) It shall be NASA's policy to designate Space Grant colleges, State Space Grant cooperating institutions and Space Grant regional consortia and award fellowships, grants, contracts, and other transactions competitively in a merit-based review process.

(d) It shall be NASA's policy to designate and make awards without discriminating on the basis of sex, race, color, religion, national origin, or handicap.

§ 1259.103 Special authorities—gift acceptance and other Federal funding.

(a) *Acceptance of gifts.* (1) In order to carry out the provisions of the Act, the Administrator is authorized to accept conditional or unconditional gifts or donations of services, money or property, real, personal or mixed, tangible or intangible. This authority is delegated to the Director, Educational Affairs Division.

(2) The Administrator or designee may decline any gift or donation that the Administrator determines is not in accord with the purposes of the program. Also, conditional gifts or donations that are not in compliance with the Act or the implementing regulations shall be declined. NASA may use a reasonable amount from a gift or donation to cover any administrative costs associated with such gift or donation.

(b) *Acceptance and use of funds from other Federal agencies.* (1) To carry out the provisions of the Act, the Administrator is authorized to accept and use funds from other Federal departments, agencies, and instrumentalities to pay for awards under this program. This authority is delegated to the Director, Educational Affairs Division.

(2) The Administrator or designee may decline any such funds when the Administrator determines acceptance would not be in accord with the purposes of the program. NASA may use a reasonable amount from transferred Federal funds to cover any administrative costs associated with such transfers.

Subpart 2—Space Grant Program and Project Awards

§ 1259.200 Description.

Awards are authorized to establish any Space Grant and/or fellowship program or project if such program or project will further the purposes of the Act.

§ 1259.201 Types of Space Grant program and project awards—regular and special.

(a) A regular Space Grant program or project award shall:

(1) Be funded by NASA up to 66 percent of the total cost of the Space Grant award and/or fellowship program involved; or

(2) Be funded up to 100 percent of its cost if funded by another Federal entity.

(b) A special Space Grant program or project award may be funded up to 100 percent of the total cost of the special project if the Administrator or designee, the Director, Educational Affairs Division, finds that:

(1) No reasonable means is available through which the applicant can meet the matching requirements for a regular Space Grant award under paragraph (a) of this section;

(2) The probable benefit of such project outweighs the public interest in such matching requirement; and

(3) The same or equivalent benefit cannot be obtained through the award of a regular Space Grant program or project award under paragraph (a) of this section or the award of a specific national need grant under section 207 of the Act.

§ 1259.202 Application procedures.

(a) The opportunity to apply shall be announced by the Director, Educational Affairs Division.

(b) The application procedures and evaluation guidelines for awards under this section will be included in the announcements of such programs.

(c) The applications will be reviewed by a peer review merit selection panel appointed by the Director, Educational Affairs Division.

§ 1259.203 Limitations.

Public Law 100-147, section 206(d) (2) and (3), states that:

(a) Funds for awards made under this section may not be used to:

(1) Purchase land;

(2) Purchase, construct, preserve, or repair any building; or

(3) Purchase or construct any launch facility or launch vehicle.

(b) Funds may be used to lease any of the items listed in paragraph (a) of this section as long as prior written approval is obtained from the Administrator or designee.

Subpart 3—National Needs Grants

§ 1259.300 Description.

National needs awards may be awarded by the Administrator or designee to meet such needs or problems relating to aerospace identified by the Space Grant Review Panel, by NASA officials or by any person. Such awards may be up to 100 percent of the total cost of the program or project.

§ 1259.301 Identification of national needs.

National needs shall be identified by the Administrator who shall consider specific national needs and problems relating to space proposed by the space Grant Review Panel, any NASA official or any person.

§ 1259.302 Application procedures.

(a) The Administrator or designee has the authority to make awards to meet identified national needs.

(b) The Director, Educational Affairs Division, shall establish a competitive, merit-based review process to examine unsolicited national needs proposals.

§ 1259.303 Limitations.

The same limitations shall apply as are stated in § 1259.203.

Subpart 4—Space Grant College and Consortium Designation

§ 1259.400 Description.

(a) The Administrator may designate Space Grant colleges, Space Grant college consortia, and Space Grant regional consortia in order to establish Federal/university partnerships to promote a strong educational base in the space and aeronautical sciences. These designated colleges and consortia will provide leadership for a network of American colleges and universities, industry, and State and local governments in space-related fields. The Administrator hereby delegates this authority to the Director, Educational Affairs Division.

(b) Designation of Space Grant colleges, Space Grant college consortia, and Space Grant regional consortia shall be for 5 years. Designation of Space Grant colleges and consortia may be continued based on a merit review at the beginning of the fifth year.

(c) Each designated Space Grant college or consortium will receive:

(1) A Space Grant award that requires a 100 percent match; and

(2) Funds for fellowships.

(d) Each Space Grant college or consortium will be funded annually.

§ 1259.401 Responsibilities.

Each designated Space Grant college or consortium shall:

(a) Designate a Space Grant Program Director;

(b) Establish a Space Grant Office;

(c) Administer a fellowship program;

(d) Develop and implement programs of public service, interdisciplinary space-related programs, advisory activities, and cooperation with industry, research laboratories, State and local governments, and other colleges and universities, particularly institutions in their State and/or region with significantly large enrollments of racial minorities who are under-represented in science and technology; and

(e) Provide nonfederal matching funds (exclusive of in-kind contributions) for the Space Grant program equal to that provided by NASA.

§ 1259.402 Basic criteria and application procedures.

(a) Any institution of higher education may be designated a Space Grant college if the Administrator or designee finds that it has a balanced program of research, education, training and advisory services in fields related to space, as further defined in the program announcement.

(b) Any association or other alliance of two or more persons may be designated a Space Grant regional consortium, if the Administrator or designee finds that such association or alliance:

(1) Is established for the purpose of sharing expertise, research, educational or training facilities, and other capabilities in order to facilitate research, education, training, and advisory services, in any field related to space; and

(2) Will encourage and follow a regional approach to solving problems or meeting needs relating to space, in cooperation with other institutions of higher education, Space Grant program grantees, and other persons in the region.

(c) The opportunity to apply for designation shall be announced by the Director, Educational Affairs Division. The application procedures and evaluation guidelines for designation shall be included in the designation announcement.

(d) Designation will be decided by a competitive merit review of the program proposal measured against the purposes of the Act and including, but not limited to, proposed linkages with other colleges and universities (particularly institutions with significant enrollments of under-represented minority groups), public service, and collaboration with space-related industry.

§ 1259.403 Limitations.

The same limitations shall apply as are stated in § 1259.203.

§ 1259.404 Suspension or termination of designation.

The Administrator or designee, the Director, Educational Affairs Division, may, for cause, and after an opportunity for a hearing before an Administrative Judge appointed by the Deputy Administrator, suspend or terminate the Space Grant designation of any institution or consortium.

Subpart 5—Space Grant Fellowships

§ 1259.500 Description.

The Space Grant fellowship program will provide educational and training assistance to qualified individuals at the graduate level in fields related to space. Awards will be made to institutions of higher education for fellowships. The student recipients shall be known as NASA Space Grant Fellows.

§ 1259.501 Responsibilities.

(a) All institutions which receive Space Grant fellowships will be expected to use the awards to increase the pool of graduate students in fields related to space.

(b) The overall fellowship program shall be cognizant of institutional diversity and geographical distribution.

§ 1259.502 Application procedures.

(a) All applicants for designation as Space Grant colleges and consortia must apply for Space Grant fellowships.

(b) Applicants for Space Grant program or project grants (under 1259.200) and for national needs grants (under 1259.300) may also apply for Space Grant fellowships.

(c) There will be a merit review selection of Space Grant fellowship awards.

§ 1259.503 Limitations.

(a) Fellowships shall be awarded only to Nationals of the United States.

(b) Any students supported under this fellowship program shall not be funded for more than 4 years unless the Director, Educational Affairs Division, makes an exception.

Subpart 6—Space Grant Review Panel

§ 1259.600 Panel description.

An independent committee, the Space Grant Review Panel, which is not subject to the Federal Advisory Committee Act, shall be established to advise the Administrator with respect to Space Grant program and project awards, the Space Grant fellowship program, and the designation and operation Space Grant colleges and consortia. A majority of the voting members shall be individuals who, by reason of knowledge, experience, or training are especially qualified in one or more of the fields related to space. The other voting members shall be individuals who, by reason of knowledge, experience or training, are especially qualified in, or representative of, education, extension services, State government, industry, economics, planning, or any other activity related to the purposes of the Space Grant program.

§ 1259.601 Establishment and composition.

(a) The Panel, to be located at NASA Headquarters in Washington, DC, will be composed of ten voting members who are not current NASA employees.

(b) It shall include four from Federal departments, agencies or entities that have an interest in space programs or science and education, and six nonfederal representatives.

(c) The nonfederal representatives shall include two persons who are directly involved with the Space Grant program at a Space Grant college or consortium, one person involved with the Space Grant program at a university that is not a designated Space Grant college, a university president or chancellor, one representative of a space-related industry, and the last person to be from whatever field the Administrator determines to be of greatest concern.

(d) The Panel members shall be appointed by the Administrator or designee.

(e) The relevant organizations and associations in aerospace and science education fields will be asked to provide three names for each position on the panel. The Administrator shall consider them, but not be limited to them, in the selection process.

(f) The Administrator or designee shall select a Chair and a Vice Chair. The Vice Chair shall act as Chair in the absence or incapacity of the Chair.

(g) The Administrator or designee may select NASA officials to serve as ex officio, nonvoting members of the panel.

§ 1259.602 Conflict of interest.

Any member of the Panel who has a personal or financial interest in an issue before the Panel shall abstain from voting on such issue.

§ 1259.603 Responsibilities.

(a) The Panel shall advise the Administrator and the Director, Educational Affairs Division, with respect to:

(1) Applications or proposals for, and performance under, awards made pursuant to sections 206 and 207 of Title II of the Act;

(2) The Space Grant fellowship program;

(3) The designation and operation of Space Grant colleges and Space Grant regional consortia, and the operation of Space Grant and fellowship programs;

(4) The formulation and application of the planning guidelines and priorities pursuant to section 205(a) and (b)(1) of Title II of the Act; and

(5) Such other matters as the Administrator refers to the Panel for review and advice.

(b) The Panel shall meet biannually and at any other time at the call of the Chair or upon a request from a majority of the voting members or at the call of the Administrator.

(c) The Panel may exercise such powers as are reasonably necessary in order to carry out the duties enumerated in paragraph (a) of this section.

(d) The Director, Educational Affairs Division, shall appoint an Executive Secretary who shall perform administrative duties for the Panel.

(e) Federal members of the Panel will have their agencies reimbursed by NASA for any travel costs and per diem expenses required to attend Panel meetings.

(f) Nonfederal members of the Panel will be reimbursed by NASA for travel costs and per diem expenses required to attend Panel meetings.

March 1, 1989.

Dale D. Myers,

Deputy Administrator.

[FR Doc. 89-5487 Filed 3-10-89; 8:45 am]

BILLING CODE 7510-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Rel. No. 34-26599; File No. S7-9-89]

Disclosure of Equity Participants in Control Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Securities and Exchange Commission ("Commission") today is publishing for comment proposals to revise the instructions to certain schedules filed in connection with control transactions. The proposals are intended to provide shareholders with material information concerning significant equity participants in limited

partnerships, closely-held corporations, and similar entities engaged in control transactions.

DATE: Comments should be received on or before May 12, 1989.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-9-89. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: David A. Sirignano or Richard E. Baltz at (202) 272-3097, Office of Tender Offers, Division of Corporation Finance.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comments amendments to Schedule 13D,[1] 14D-1,[2] 14B [3] and 13E-3.[4]

I. Executive Summary

The Commission is proposing to amend the instructions to certain schedules required to be filed in connection with major acquisitions of securities, tender offers, proxy contests, and going private transactions to require disclosure of information concerning the identity and background of limited partners and other participants holding significant investments in limited partnerships or other closely-held entities or groups of such entities engaged in these transactions. The Commission is concerned that the current instructions, which require a demonstration of control before disclosure concerning an equity participant is mandated, do not adequately provide shareholders and the marketplace with material information about the identity and background of significant participants in the transaction. Accordingly, the Commission proposes to amend Instruction C to Schedules 13D, 14D-1 and 13E-3 and Instruction 2 to Schedule 14B. The revised instructions would require responses to specified items of the schedules relating to the identity, background, funding, and purposes of the filing person with respect to each person who (i) contributes more than 10 percent of the equity capital or (ii) has the right to receive, in the aggregate, more than 10 percent of the profits or assets upon liquidation or dissolution of the filing person. If the filing person is a group, for the purposes of the instructions, only the group would be considered the filing person. The disclosure would be required concerning persons contributing 10 percent or more of the group's capital or entitled to 10 percent or more of the profits or assets of the group upon liquidation or dissolution. The revised instructions would not apply if the filing person has a class of equity securities registered under section 12 of the Securities Exchange Act of 1934 ("Exchange Act").[5]

II. Background

The disclosure requirements for persons engaged in corporate control transactions are designed to publicize material facts concerning the nature of the transaction and the participants so that security holders have the opportunity to make informed investment decisions. Disclosure of this information is required primarily by the rules adopted under the Williams Act amendments [6] to the Exchange Act and the proxy rules [7] promulgated under section 14(a) of the Exchange Act.

Section 13(d) of the Exchange Act serves a pivotal role in this disclosure scheme. It requires that a Schedule 13D [8] be filed by any person that acquires beneficial ownership [9] of more than five percent of a class of equity securities.[10] Sections 14(d) and 14(e) of the Exchange Act provide for the regulation of tender offers and the filing of a Schedule 14D-1 by the bidder. Schedule 14D-1 requires that the bidder provide information about its identity and background, past contracts and transactions with the subject company, source and amount of funds, and purposes, plans, or proposals, among other items. A summary of the information contained in the Schedule 14D-1 must be adequately disseminated to security holders.[11] When corporate control is sought through a proxy contest for the election of directors, the proxy rules require that each participant in a contested solicitation to file with the Commission a Schedule 14B containing specified information about the persons conducting the solicitation. Shareholders of the affected issuer must receive a summary of this information.[12] Rule 13e-3[13] prescribes the filing, disclosure and dissemination requirements in connection with a going private transaction by an issuer or an affiliate. The Schedule 13E-3 is the primary disclosure document that must be filed with the Commission. The information presented in the Schedule 13E-3 must be disseminated to security holders.[14]

While the specific requirements of each of these disclosure schemes differ, each serves to provide material information to the marketplace, the sharholders, and to the issuer. This information includes the identity and background of the participants, the purpose of the acquisition or solicitation, any future plans or proposals for the company, the source and the amount of funds, and any borrowing to acquire the securities or engage in the solicitation.

Instruction C to Schedule 13D specifies the persons for whom information must be provided when making a required filing:

> If the statment is filed by a general or limited partnership, syndicate, or other group, the information called for by items 2-6 shall be given with respect to (i) each partner of such general partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a corporation, the information called for by the above-referenced items shall

[1] 17 CFR 240.13d-101.

[2] 17 CFR 14d-100.

[3] 17 CFR 240.14a-102.

[4] 17 CFR 240.13e-100.

[5] 15 U.S.C. 78a *et seq.*

[6] Sections 13(d) [15 U.S.C. 78m(d)], 13(e) [15 U.S.C. 78m(e)], 14(d) [15 U.S.C. 78n(e)], 14(e) [15 U.S.C. 78n(e)] and 14(f) [15 U.S.C. 78n(f)] of the Exchange Act.

[7] 17 CFR 240.14a-1 *et seq.*

[8] 17 CFR 240.13d-101.

[9] A beneficial owner of a security is defined in Rule 13d-3 as including any person who, directly or indirectly, through any contract, arrangement, understanding or otherwise has or shares voting power, which includes the power to vote or to direct the voting of such security, and/or investment power, which includes the power to dispose or to direct the disposition of the security. 17 CFR 240.13d-3.

[10] Acquisitions of equity securities that would have been registered under section 12 except for the insurance company exemption in section 12(g)(2)(G) [15 U.S.C. 78*l*(g)(2)(G)], or are issued by a closed-end investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 to 80a-52], also are subject to the beneficial ownership reporting requirements. In addition, if a person has the right to acquire beneficial ownership of a subject security within 60 days (A) through the exercise of any warrant, option, or right, (B) through the conversion of a security, (C) pursuant to the power to revoke a trust, discretionary account, or similar arrangement, such person shall be deemed to be the beneficial owner of the subject securities which may be acquired through the exercise or conversion of such security or power. If a security or power specified by (A), (B), or (C) is acquired with the purpose or effect of changing or influencing control, the person is deemed a beneficial owner of the subject security upon acquisition. Rule 13d-3(d)(1)(i) [17 CFR 240.13d-3(d)(1)(i)].

[11] Rules 14d-4 and 14d-6 [17 CFR 240.14d-4 and 14d-6].

[12] Item 5(b), Schedule 14A [17 CFR 240.14a-101].

[13] 17 CFR 240.13e-3.

[14] Rules 13e-3(e) and (f) [17 CFR 240.13e-3(e) and (f)].

be given with respect to (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of such corporation.

The language of Instruction C to Schedules 14D-1 and 13E-3 is identical in all relevant respects. Instruction 2 to Schedule 14B specifies that the information shall be given for each partner, officer, and director of a partnership, corporation or other business entity, and each person controlling such entity who is not a participant. Although this instruction does not distinguish between general and limited partners, the instruction has been construed consistently with Instruction C of the other schedules.

III. Discussion of Proposals

It has become a common practice to use limited partnerships, similar closely-held entities, or groups of such entities [15] to raise the capital to finance and conduct the acquisition of corporate control. Under the current regulatory framework, the acquiring entity is the person required to comply with the applicable disclosure provisions rather than the persons actually financing, benefiting from and, in some instances, structuring the transaction.[16] These persons (collectively, "substantial equity participants") directly or indirectly may contribute significant capital or be entitled to receive a significant interest in the profits or assets, including shares of the acquired entity, upon liquidation or dissolution of the filing entity. The items to the schedules, however, do not require discolsure concerning substantial equity participants, as such, because the current regulations elicit disclosure only from persons acting in an express or *de facto* control relationship with the acquiring entity.

Limited partnerships and similar closely-held entities are often used in hostile takeovers. In fiscal year 1988, approximately 27 percent of the hostile tender offers commenced used limited partnerships as a source of financing for the transaction.[17] In some cases, the bidder or purchaser is a newly formed entity with no operations and whose single purpose is to acquire control of the subject company. The controlling persons of the bidder may be identified as limited partnerships or similar closely-held entities for which information is reported only for the general partners, as is required by current Instruction C to the Schedule 14D-1. In many instances, related limited partnerships or other entities provide financing to the entity identified as the bidder.

Similar issues may arise in proxy contests. The identity and control exercised by the limited partners financing the proxy contest for Gillette Co., Inc., conducted by The Coniston Group,[18] became a central issue in the proxy contest subsequent litigation between the parties. Even after The Coniston Group amended its Schedule 13D to reveal the identify of limited partners of the filing persons, the amendment merely revealed another level of limited partnerships.[19] No information was provided about the limited partners, other than that capital contributions provided a source of funds for the acquisition of securities.

Although absent an actual control relationship additional disclosure may not be required under the current rules, information about significant equity participants and the terms and conditions of their participation may be material to shareholders and the market.[20] In many instances, the mere agreement to provide a significant equity contribution to a transaction may provide a form of implicit control or potential influence that may be difficult to quantify, describe, or define. Moreover, upon liquidation or dissolution of the filing entity or group, equity participants could become beneficial owners of a significant block of the acquired issuer's stock, without any prior disclosure of these persons' identities, backgrounds, or plans and proposals for the issuer. Information concerning equity participants also may be particularly material where the investor is participating in the transaction in another capacity, because without full disclosure of the entire interest of that person, investors may be misled as to the actual nature of that person's interest.[21] The continuing use of limited partnerships and similar entities to shield persons engaging in or otherwise benefiting from control transactions raises questions about the access of shareholders and of the marketplace to this important information.

In light of its experience in administering its disclosure requirements under the Williams Act and the proxy rules, the Commission has concluded that additional disclosure concerning significant equity participants in control transactions may be necessary in order to assure that security holder receive complete information about the persons participating in a control transaction. The proposed revisions to the current form of Instruction C would serve to assure that material information about significant equity participants would be disclosed. In addition, a person whose equity participation in the acquiring entity could provide an indirect form of influence over management, which may be difficult factually to prove, also would be identified.

The Commission proposes amendments to Instruction C of Schedules 13D, 14D-1, and 13E-3. Instruction 2 to the Schedule 14B also would be revised to conform to Instruction C. The proposals would apply a uniform standard of disclosure for schedules filed in connection with

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[15] Such entities include, but are not limited to, corporations, trusts or other vehicles that are not subject to the reporting provisions of the Exchange Act.

[16] *See, e.g., City Capital Associates Ltd v. Interco, Inc.*, 860 F.2d 60, 64 (3d Cir. 1988).

[17] *See, e.g.*, Schedules 14D-1 filed during FY 1988 relating to the tender offers for Telex Corp. (10/9/87); Singer Co., (11/13/87); Duratest (11/12/87); Wherehouse Entertainment, Inc. (11/24/87); High Voltage Engineering Corp. (1/6/88); Stop & Shop companies, Inc. (2/1/88); USG Corp. (2/1/88); J.P. Stevens (3/25/88); Wm. Carter Cos. (4/7/88); Arkansas Best Corp. (5/6/88); MacMillan & Co. (7/18/88); Interco (8/15/88); MacMillan & Co. (9/19/88); Damon Corp. (8/18/88); Polaroid Corp. (9/9/88).

[18] On February 1, 1988, RB Partners, a Bahamian limited partnership, the principal limited partner of which is Coniston Partners, and RB Associates of New Jersey, a New Jersey limited partnership, filed, and thereafter amended on several occasions, a Schedule 13D. The general partner of RB Partners and RB Associates is Gollust, Tierney and Oliver, a New Jersey general partnership. All three partnerships and related entities are known collectively as "The Coniston Groups."

[19] Amendment No. 4 to Schedule 13D filed April 11, 1988.

[20] The concept of control is intended to require disclosure regardless of whether the person otherwise falls within one of the enumerated categories in the instructions. Control, however, is a question of fact, difficult to verify absent extensive inquiry. As the Federal Trade Commission ("FTC") found in an analogous context, at the very least, it seems unlikely that an entity would continue to exist if it operated in a way that was adverse to the interests of a significant equity participant. *See* Adopting Release, 52 FR 20058, 20061 (May 29, 1987) (amending § 801.1(b) [16 CFR 801.1(b)] to define 50 percent ownership as "control" with respect to partnerships and other entities that do not have voting securities). The proposed amendments to the Schedules 13D, 14D-1, 14B and 13E-3 differ from the FTC rule because the revisions would not create a presumption of control.

[21] Failure to disclose the full nature of the equity participation of investment banking firms that also provide financial advice and arrange financing has been held to be a material omission. *MAI Basic Four, Inc.* v. *Prime Computer, Inc.*, No. 88-2512-MA (Mass. Dist. Ct. Dec. 29, 1988); *Koppers Co. Inc.* v. *American Express Co.*, 689 F. Supp. 1371 (W.D. Pa. 1988); and *Arkansas Best Corp.* v. *Pearlman*, 688 F. Supp. 976 (D. Del. 1988). *See also Polaroid Corp.* v. *Disney*, No. 88-3676, slip op. at n. 2 (3d Cir. Nov. 23, 1988); *City Capital Associates Limited Partnership* v. *Interco Inc.*, 860 F.2d 60.

change of control transactions. The proposed amendments would require disclosure concerning any person who contributes more than 10 percent of the equity capital of the filing person, or who, directly or indirectly, has a right to receive, through an ownership interest, capital contribution or otherwise, more than 10 percent of the profits or the assets (upon liquidation or dissolution) of the filing person, where the filing person does not have a class of equity securities registered with the Commission under section 12 of the Exchange Act. If the filing person is a group, disclosure would be required from persons contributing 10 percent or more of the group's capital or entitled to receive 10 percent or more in profits or assets upon liquidation or dissolution of the group. The instructions would focus on the assets and profits of the group rather than each individual filing person in order to limit the number of equity participants about whom disclosure would be required.

The instruction would apply to capital contributions to prevent evasion of the disclosure requirements by using special allocations to avoid a 10 percent interest in profits or assets upon liquidation or dissolution. The proposed instructions also would require aggregation of interests to determine whether disclosure is required. Thus, if a person contributes capital through a series of limited partnerships or closely-held entities, no one of which exceeds a 10 percent interest, ownership would be disclosed only on an aggregate basis, if the total interest in profits or assets of the filing person or group (upon liquidation or dissolution) exceeds 10 percent.

The Commission recognizes that application of the instructions to complicated financing schemes will, in many instances, present difficult interpretive issues. The Commission intends that the instructions be interpreted to require disclosure if information about a significant participant in the transaction would otherwise be omitted.

The revised instructions would not require disclosure of substantial participants in filing persons that are reporting entities with a class of equity securities registered under section 12 of the Act. Information concerning substantial equity participants is otherwise required to be disclosed under the beneficial ownership reporting requirements of sections 13(d) and 13(g) [22] of the Exchange Act, as well as in periodic reports and proxy materials filed by the issuer.[23]

The information called for by the revised instructions would be required regardless of whether the entity participant otherwise would be deemed a controlling person of the entity engaged in the control transaction. Controlling persons of a filing entity would continue to be disclosed as under the current instructions. The Commission also is proposing to revise Instruction C to Schedules 13D, 13E–3, 14D–1, and Instruction 2 to Schedule 14B to clarify that the instruction applies to any person who controls a limited partnership or other non-corporate entity. This revision is consistent with the application of the instruction to corporations and staff interpretation.

Commentators should address whether 10 percent is an appropriate level of participation at which to require disclosure, or whether a lower or higher threshold, *e.g.*, 5 percent, 15 percent, or 20 percent, should apply. The Commission also observes that more complex formulations can be used. For example, if there are two 25 percent participants, two 20 percent participants, and a 10 percent participant in a limited partnership, it is unlikely that the 10 percent participant will be able to assert significant equity-like influence in comparison with the influence asserted by the 20 percent participants. In order to focus disclosure requirements on persons most likely to assert direct or indirect influence, the disclosure requirement could be made to apply only to a specified number of the filing entity's largest participants, provided that each holds at least a 10 percent interest. For example, the amended rule could require disclosure from the four largest participants, provided that each has at least a 10 percent interest. The number of participants required to be disclosed by such a formulation can be increased or decreased, and the minimum threshold for disclosure can also be increased (to 15 percent or 20 percent) or decreased (to 7 percent or 5 percent). The Commission requests comment as to whether such more complex threshold reporting requirements are desirable, the appropriate parameters for such requirements, and the costs and benefits of relying on such more intricate threshold reporting criteria.

The Commission also requests comments on whether additional criteria should be considered in imposing a disclosure obligation, such as whether the acquiring entity was formed generally for acquisition purposes or solely for the acquisition of a single issuer. In addition, the Commission requests comments on the additional costs the revised instructions would impose on reporting persons and whether the proposals would result in duplicative or unnecessary disclosure of equity participation in the transaction. Specific cost data should be provided. Conversely, comment is required on whether the proposals, as drafted, would benefit shareholders and the marketplace, and whether the proposals would be subject to evasion.

The proposed revisions would neither subject additional persons to individual reporting requirements, nor amend the existing items of the relevant schedules to broaden the type of disclosure required.[24] Rather, the information required from the reporting person would be increased solely because information would be required concerning additional significant equity participants in the transaction. The information required by these items in most cases will have to be requested by the filing person from its equity participants. The filing person must certify that after reasonable inquiry and to the best of its knowledge and belief, the information provided concerning the equity participants is true, complete and correct.[25]

The information required by Instruction C to the Schedule 13D would apply only to Items 2–6, inclusive, as under the current instruction. Item 2 would require that the identity and background of the significant equity participants be provided. The revision also would require, under Item 3, a description of the terms under which the

[22] 15 U.S.C. 78m(d) and 78m(g).

[23] *See, e.g.*, Form 10–K, Item 12 (17 CFR 249.310) and Schedule 14A, Item 6(d).

[24] The identification of significant equity participants and certain additional information currently may be required under circumstances pursuant to specific items of the schedules. For example, Item 6 to the Schedule 13D requires the filing person to describe "any contracts, arrangements, understandings or relationships (legal or otherwise) among the persons named in Item 2 and between such persons and any person with respect to any securities of the issuer . . . naming the persons with whom such contracts, arrangements, understandings or relationships have been entered into." Item 7 requires that there be filed as an exhibit copies of all written agreements, contracts, arrangements, understandings, plans or proposals relating to the borrowing of funds or the acquisition, liquidation, sale of assets, merger, or change in business or corporate structure of the issuer. This item would require the filing, as an exhibit, of limited partnership agreements and any offering memoranda used to syndicate limited partnership interests in the filing person if the memoranda constitute a plan or proposal relating to these matters. Items 7 and 11, respectively, elicit similar disclosure in the Schedule 14D–1.

[25] *See generally* signature requirements with respect to the affected schedules.

equity contribution was made, and the terms of any financing arrangements to fund the contributions.[26] In response to Item 4, "Purpose of the Transaction," the filing person would be required to describe the purpose and any plans or proposals of a significant equity investor. Any interest in the securities of the issuer held by any significant equity participant would be described in response to Item 5, and any understandings or relationships with the filing person or other equity participants would be identified in Item 6. Similar responses would be required from the filing person responding to Items 2–7 of the Schedule 14D–1.

The proposed revisions would not necessarily require the disclosure of financial information from a significant equity participant. As under current rules,[27] if the interest and the control exercised by the equity participant were sufficient to render it a bidder,[28] financial information, if material, would be required. Item 9 of Schedule 14D–1 provides that adequate financial information concerning the bidder must be provided, where a bidder is other than a natural person and the bidder's financial condition is material to a decision by a security holder on whether to sell, tender, or hold the securities being sought.[29] In addition, Item 9 provides that entities controlling a bidder formed for the sole purpose of making a tender offer may have to provide adequate financial information.

The required disclosure in the Schedule 14B would be restricted to the information called for by Items 2, 3, 4(b), and 4(c). Those items require disclosure of the person's identity and background, interests in the securities of the issuer, transactions with management and others,[30] and any arrangements or understandings with respect to future employment or future transactions with the issuer or its affiliates. Revised Instruction C to the Schedule 13E–3 would apply only to Items 2, 3, 5, 6, 10 and 11, as under the current instruction. Items 7, 8 and 9, requiring, respectively, a discussion of the purpose, alternatives, reasons and effects of the transaction, a statement of belief as to the fairness of the transaction, and the identification and summary of any reports, opinions, appraisals and certain negotiations, would continue to affect only the issuer or affiliate engaging in the transaction.

IV. Cost-Benefit Analysis

To evaluate the benefits and costs associated with the proposed revisions to Schedules 13D, 14D–1, 14B and 13E–3, the Commission requests commentators to provide views and data as to the costs and benefits associated with amending the disclosure requirements. The proposed revisions would not subject additional persons to the reporting requirements, but could require that filing persons gather and disclose additional data, and could lead to additional information being disclosed about substantial investors in filing entities. Only the information required by the filer would be increased.

V. Initial Regulatory Flexibility Analysis

The Initial Regulatory Flexibility Analysis concerns the proposed amendments to Instruction C to Schedules 13D, 14D–1 and 13E–3 and Instruction 2 to Schedule 14B. The analysis has been prepared by the Commission in accordance with 5 U.S.C. 604.

The analysis notes that the proposed amendments would not increase the number of small entities required to file Schedules 13D, 14D–1, 13E–3 and 14B. Although a person otherwise required to file may incur an increased reporting obligation, the Commission does not believe that there will be a significant economic impact on a substantial number of small entities.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Richard E. Baltz in the Office of Tender Offers, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

VI. Request for Comments

Any interested persons wishing to submit written comments on the proposals, to suggest additional changes, or to submit comments on other matters that might have an impact on the proposals, are requested to do so. In addition to the specific inquiries made throughout this release, the Commission solicits comments on the usefulness of the proposed revisions to Instruction 2 to Schedule 14B and Instruction C to Schedules 13D, 14D–1, and 13E–3 to reporting persons, registrants and the marketplace at large. The Commission also requests comment on whether the proposed rule, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.[31]

The Commission also encourages the submission of written comments with respect to any aspect of the initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis if the proposed rules are adopted.

Persons wishing to submit written comments should file three copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7–9–89. All comments received will be available for public inspection and coying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

VII. Statutory Basis and Text of Amendments

The amendments are being proposed pursuant to the authority set forth in sections 3(b), 13, 14 and 23 of the Securities Exchange Act of 1934.

List of Subjects in 17 CFR Part 240

Reporting and Recordkeeping Requirements, Securities.

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[26] Item 3 provides that "if any part of the purchase price is or will be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, trading or voting the securities, [provide] a description of the transaction and the names of the parties thereto." When capital is furnished by a limited partnership, disclosure of the source of funds often is restricted to stating that funds are derived from the working capital of the partnership. One court, addressing the question of whether the identities of limited partners must be provided in response to Item 3 on Schedule 13D, concluded that the "specific instruction, requiring information only from the general partner in a limited partnership controls over the more general instruction in Item 3 * * *." *HUBCO Inc.* v. *Rappaport*, 628 F. Supp. 345, 357–58 (D.N.J. 1985). To the extent that the court suggested that Instruction C does not require disclosure of limited partners even if control is demonstrated, the Commission disagrees and is proposing to revise the instruction to eliminate any confusion on that point. *See* Securities Exchange Act Release No. 13787 (July 21, 1987) (42 FR 38348).

[27] *See* Schedule 14D–1, Item 9; Rule 14d–6(e) [17 CFR 14d–6(e)].

[28] *See generally* cases cited *supra* n. 22.

[29] Courts also have required natural persons who aer bidders in a transaction to provide financial information. *See, e.g., Riggs National Bank of Washington, D.C. v. Allbritton*, 516 F. Supp. 164 (D.D.C. 1981). *But see Simon v. Culverhouse*, 609 F. Supp. 1050 (D. Fla. 1985) (in order for a natural person to be subject to the financial disclosure requirement of Item 9, special circumstances must be present).

[30] Item 401(a), Regulation S–K [17 CFR 229.401(a)].

[31] 15 U.S.C. 78w(a)(2).

VIII. Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended 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: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) * * *

2. By amending § 240.13d–101 by revising General Instruction C as follows:

§ 240.13d–101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d–1(a) and amendments thereto filed pursuant to § 240.13d–2(a).

* * * * *

General Instructions.

* * * * *

C. If the statement is filed by a general or limited partnership, syndicate, or other group, the information called for by Items 2–6, inclusive, shall be given with respect to: (i) Each partner of such general partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such general or limited partnership, syndicate or other group or any partner or member thereof. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a corporation, the information called for by the above-referenced items shall be given with respect to (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of such corporation. If the person filing the statement is other than a natural person and does not have a class of equity securities registered under Section 12 of the Act, or if the statement is filed by a group that includes such entities, in addition to the information required above, information for Items 2–6, inclusive, shall be provided for each person who contributes more than 10 percent of the equity capital, or has a right to receive in the aggregate, directly or indirectly, more than 10 percent of the profits, or upon dissolution or liquidation, 10 percent of the assets of that person or group. Such disclosure shall be required notwithstanding the absence of a control relationship.

* * * * *

3. By amending § 240.13e–100 by revising General Instruction C as follows:

§ 240.13e–100 Schedule 13E–3 [240.13e–3], Rule 13e–3 transaction statement pursuant to section 13(e) of the Securities Exchange Act of 1934 and rule 13e–3 [240.13e–3] thereunder.

* * * * *

General Instructions

* * * * *

C. If the statement if filed by a general or limited partnership, syndicate, or other group, the information called for by Items 2, 3, 5, 6, 10, and 11, inclusive, shall be given with respect to: (i) each partner of such general partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such general or limited partnership, syndicate or other group or any partner or member thereof. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii), or (iv) of this Instruction is a corporation, the information called for by the above-referenced items shall be given with respect to (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation or other person utimately in control of such corporation. If the person filing the statement is other than a natural person and does not have a class of equity securities registered under section 12 of the Act, or if the statement is filed by a group that includes such entities, in addition to the information required above, information for Items 2, 3, 5, 6, 10, and 11, inclusive, shall be provided for each person who contributes more than 10 percent of the equity capital, or has a right to receive in the aggregate, directly or indirectly, more than 10 percent of the profits, or upon dissolution or liquidation, 10 percent of the assets of that person or group. Such disclosure shall be required notwithstanding the absence of a control relationship.

* * * * *

4. By amending 240.14a–102 by revising Instruction 2 as follows:

§ 240.14a–102 Schedule 14B. Information to be included in statements filed by or on behalf of a participant (other than the issuer) pursuant to 240.14a–11(c) (Rule 14a–11(c)).

Instructions. * * *

2. If the participant filing the statement is a general or limited partnership, syndicate, or other group, the information called for by Items 2, 3, and 4(b) and (c), inclusive, shall be given with respect to: (i) each partner of such general partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such general or limited partnership, syndicate or other group, or any partner or member thereof, who is not a participant. If the participant filing the statement is a corporation or if a person referred to in (i), (ii), (iii), or (iv) of this Instruction is a corporation, the information called for by the above-referenced items shall be given with respect to (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of such corporation, who is not a participant. If the participant filing the statement is other than a natural person and does not have a class of equity securities registered under section 12 of the Act, or if the statement is filed by a group that includes such entities, in addition to the information required above, information for Items 2, 3, and 4(b) and (c), inclusive, shall be provided for each person who contributes more than 10 percent of the equity capital, or has a right to receive in the aggregate, directly or indirectly, more than 10 percent of the profits, or upon dissolution or liquidation, 10 percent of the assets of that person or group. Such disclosure shall be required notwithstanding the absence of a control relationship.

* * * * *

5. By amending § 240.14d–100 by revising General Instruction C as follows:

§ 240.14d–100 Schedule 14D–1. Tender offer statement pursuant to section 14(d)(1) of the Securities Exchange Act of 1934.

* * * * *

General Instruction. * * *

C. If the statement is filed by a general or limited partnership, syndicate, or other group, the information called for by Items 2–7, inclusive, shall be given with respect to (i) each partner of such general partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such general or limited partnership, syndicate or other group or any partner or member thereof. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii), or (iv) of this Instruction is a corporation, the information called for by the above-referenced items shall be given with respect to (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of such corporation. If the person filing the statement is other than a natural person and does not have a class of equity securities registered under section 12 of the Act, or if the statement is filed by a group that includes such entities, in addition to the information required above, information for Items 2–7, inclusive, shall be provided for each person who contributes more than 10 percent of the equity capital, or has a right to receive in the aggregate, directly or indirecty, more than 10 percent of the profits, or upon dissolution or liquidation, 10 percent of the assets of that person or group. Such disclosure shall be required notwithstanding the absence of a control relationship.

* * * * *

By the Commission

March 6, 1989.
Jonathan G. Katz,
Secretary.
[FR Doc. 89-5672 Filed 3-10-89; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 235, 240, 245, and 248

Indorsement and Payment of Checks Drawn on the United States Treasury

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Proposed rule.

SUMMARY: The proposed rule invites comments on changes to existing regulations governing the indorsement and payment of checks drawn on the United States Treasury and the processing of claims on Treasury checks. The changes are required by Title X of the Competitive Equality Banking Act of 1987 which (1) provides that Treasury may decline payment on a Treasury check unless it is negotiated within one year, (2) provides for the cancellation of Treasury checks outstanding after one year, and (3) decreases the time limit for claims on Treasury checks to be brought by or against the United States.

DATE: Comments must be received no later than May 12, 1989.

ADDRESSES: Send comments on the proposed rule to Joan Pesata, Director, Limited Payability Project, Financial Management Service, Room 816-C, Prince Georges Center II Building, 3700 East-West Highway, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Joan Pesata, Director, Limited Payability Project, Financial Management Service, Room 816-C, Prince Georges Center II Building, 3700 East-West Highway, Hyattsville, Maryland 20782; telephone (301) 436-7172, (FTS) 436-7172.

SUPPLEMENTARY INFORMATION: On August 10, 1987, Congress enacted the Competitive Equality Banking Act of 1987 (CEBA), Pub. L. No. 100-86, 101 Stat. 552, 659. Title X of CEBA changes the existing laws with respect to the indorsement and payment of checks drawn on the United States Treasury. At present, Treasury checks may be negotiated at any time after they are issued. Under CEBA, Treasury is not required to pay a Treasury check issued on or after the effective date of the legislation unless it is negotiated to a financial institution within 12 months after the date of issuance of the check. Treasury is not required to pay a Treasury check issued before the effective date of the legislation unless it is negotiated to a financial institution within 12 months after the effective date. The legislation provides for the cancellation of Treasury checks which are outstanding for more than one year.

Title X of CEBA changes the existing laws concerning the filing of claims on account of Treasury checks. Under existing law, a claimant may bring a claim on a Treasury check for 6 years from the date of issuance. Under CEBA, a claim is barred unless presented to the agency that authorized the issuance of the check within one year after the date of issuance of the check. Claims on checks issued before the effective date of the legislation must be filed within one year after the effective date. The new law also reduces the time period during which Treasury may reclaim the amount of a check which has been paid over a forged or unauthorized indorsement.

Congress provided that the amendments contained in Sections 1002, 1003, and 1004 of Title X of CEBA would become effective 6 months after enactment or on such later date as the Secretary of the Treasury may prescribe. On February 8, 1988, Treasury published a Policy statement in the **Federal Register** (53 FR 3584) which extended the effective date of the statute to October 1, 1989. Section 1005 of Title X of CEBA authorizes the Secretary of the Treasury to prescribe rules, regulations and procedures as he deems necessary to implement the amendments made by Sections 1002, 1003 and 1004, including the recertification of Treasury checks which have been cancelled or for which a claim has been asserted or barred. In the proposed rule, Treasury amends the existing regulations concerning the payment of checks and check claims to implement the changes required by the statute. The proposed rule also provides explicit authority for agency recertification of payments. It is anticipated that the Final rule will be effective on October 1, 1989, which is the same date that the statutory provisions become effective.

Summary of Proposed Rule

Part 235

Part 235 governs the issuance of settlement checks for checks drawn on the United States Treasury and drawn on designated depositaries that have been negotiated and paid on a forged or unauthorized indorsement. Title X of CEBA addresses Treasury checks only and is silent on the subject of depositary checks. Therefore, the regulation preserves the existing authority in Part 235 for the issuance of settlement checks for checks drawn on depositaries. The authority to issue replacement checks for forged Treasury checks is found in Part 245 of the proposed rule.

Part 240

Part 240 governs the payment and indorsement of Treasury checks. Both § 240.3—*Limitations on payments* and § 240.4—*Cancellation and distribution of the proceeds of checks* are new. The time limitations on the payment of Treasury checks are contained in § 240.3. The regulation requires all Treasury checks issued after October 1, 1989 to bear the legend, "VOID AFTER ONE YEAR." Sections 240.3(c), (d) and (e) restate Treasury's existing rights with respect to Treasury checks: (1) Treasury has the right to examine checks and refuse payment of any check; (2) Treasury checks are deemed paid only after first examination by Treasury has been completed; and (3) If Treasury has notice of a question of law of fact about whether a check is properly payable, Treasury may defer payment until the Comptroller General settles the question.

Section 240.4 provides for the cancellation of checks which have been outstanding more than one year. The proceeds of checks issued on or after October 1, 1989 which are subsequently cancelled shall be returned to the agency which authorized the issuance of the check. The proceeds of checks issued before October 1, 1989 which are subsequently cancelled shall be applied as provided in Title X of CEBA (31 U.S.C. 3334) to eliminate the balances in accounts that represent uncollectible accounts receivable and other costs associated with the payment of checks and check claims by the Department of Treasury on behalf of all payment certifying agencies. Any remaining proceeds shall be deposited to the miscellaneous receipts of the Treasury.

Section 240.6 is renamed *Reclamation of amounts of paid checks* to reflect the usage of the term "reclamation" by Treasury for an action by Treasury to recover from the presenting bank or other endorser the amount of a check that has been paid over a forged or unauthorized endorsement. Section 240.6(d) contains the new time limits on reclamation actions. Treasury may reclaim within one year after the date of payment. The date of payment to the date on which the Federal Reserve Bank gives provisional credit for the item to the member bank or clearing bank. The one year period for reclamations is