aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–32.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Prairie Du Chien, WI, to accommodate aircraft executing the proposed GPS Rwy 29 Prairie Du Chien Municipal Airport by increasing the radius of the existing controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be defected on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Prairie Du Chien, WI [Revised]

Prairie Du Chien Municipal Airport, WI
(lat. 43° 01′ 49″N, long. 91° 32′ 14″W)
Waukon VORTAC
(lat. 43° 16′ 49″N, long. 91° 32′ 14″W)

That airspace extending upward from 700 feet above the surface within a 9.3-mile radius of Prairie Du Chien Municipal Airport, and within 3.9 miles each side of the 130° radial of the Waukon VORTAC extending from the 9.3-mile radius to 16.1 miles southeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on May 7, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–14174 Filed 5–27–98; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–7541; S7–14–98]

RIN 3235–AH35

Revision of Rule 504 of Regulation D, the ''Seed Capital'' Exemption

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: Rule 504 of Regulation D provides an exemption from Securities Act registration when non-reporting issuers make securities offerings that do not exceed an aggregate annual amount of $1 million. These offerings are not reviewed by the Commission. Instead, state securities regulation plays an important role in the oversight of these transactions. Securities sold under Rule 504 are generally freely tradable except by affiliates. Based on recent reports from the Commission's examination and enforcement programs, it appears that the freely tradable nature of these securities may have facilitated some later fraudulent secondary transactions in the over-the-counter markets for securities of ''microcap'' companies. In light of this use, Rule 504 may need to be strengthened. Therefore, we are publishing for comment proposed amendments to eliminate the freely tradable nature of securities issued under Rule 504.

DATES: Comments should be received on or before July 27, 1998.

ADDRESSES: Please send three copies of the comment letter to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically to the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–14–98; this file number should be included on the subject line if e-mail is used. Anyone can inspect and copy the comment letters in our public reference room at 450 Fifth

Street, N.W., Washington, D.C. 20549. We will post comment letters submitted electronically on our Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or Barbara C. Jacobs, Office of Small Business, Division of Corporation Finance, at (202) 942–2950.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Over the years, Congress has passed significant legislation to aid small businesses in raising capital in the private and public securities markets. The Small Business Investment Incentive Act of 1980, for example, was designed to reduce the regulatory restraints on small business capital formation.[1] In response to that Act, the Commission adopted Regulation D[2] under the Securities Act of 1933 (''Securities Act'')[3] in 1982.[4] Rule 504 of Regulation D is the limited offering exemption designed to aid small businesses raising ''seed capital.'' Currently, it allows a non-reporting issuer[5] to offer and sell securities to an unlimited number of persons. The exemption is not conditioned on the sophistication or experience of the investors or on delivery of any specific information to them. General solicitation and general advertising are permitted for all Rule 504 offerings. However, the offering price for a Rule 504 offering, aggregated with certain other offerings, may not exceed $1 million within a 12-month period.[6] Securities sold under the exemption may be resold freely by non-affiliates of the issuer.[7]

Issuers using Regulation D must find exemptions or register in every state in which they offer the securities. The vast majority of states require registration of Rule 504 offerings.[8] In enacting Rule 504, the Commission tacitly deferred primary regulatory responsibility to state securities administrators because the size and local nature of these small offerings did not appear to warrant the imposition of extensive federal regulation.[9] These offerings continue, however, to be subject to federal antifraud and other civil liability provisions.

Despite the protective limitations built into the exemption by the Commission, it appears that securities issued under Rule 504 have been used to facilitate a number of fraudulent secondary transactions through the OTC Bulletin Board operated by the National Association of Securities Dealers, Inc. (''NASD'') or the ''pink sheets'' published by the National Quotation Bureau, Inc.[10] These offerings have generally involved the securities of ''microcap'' companies, *i.e.*, those characterized by thin capitalization, low share prices, and little or no analyst coverage. While we believe that the scope of abuse is small in relation to the actual usage of the exemption,[11] we also believe that a regulatory response may be necessary.[12] Therefore, we are proposing to implement the same resale restrictions on securities issued in a Rule 504 transaction as apply to transactions under the other Regulation D exemptions.[13] In this way, we believe that unscrupulous stock promoters will be less likely to use Rule 504 as the source of the freely tradable securities they need to facilitate their fraudulent activities in the secondary markets.

While this change also will have some impact upon small businesses trying to raise ''seed capital'' in bona fide transactions, we believe that effect is justified in light of the circumstances. Without action to hinder the use of securities issued under Rule 504 for fraudulent purposes, small businesses could be unfairly impacted by the taint that might attach to Rule 504 offerings. Moreover, to minimize the impact, we would continue to allow public solicitation and unrestricted use of public advertising to aid small businesses in their search for investors.

II. Background of Rule 504

Before the 1992 amendments, Rule 504 provided a different exemptive scheme than the current rule does. Former Rule 504 exempted public offerings if sales did not exceed $1 million[14] in a 12-month period and if the offering was registered with one or more states that required the preparation and delivery of a disclosure document to investors before sale.[15]

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[1] Pub. L. No. 96–477, 94 Stat. 2275. That Act amended the Securities Act by adding Section 4(6) [15 U.S.C. 77(d)(6)] which, among other matters, exempts from registration offers or sales of securities in the aggregate amount of $5 million or less if solely made to ''accredited investors.''

[2] 17 CFR 230.501 *et seq.* Regulation D provides three separate securities offering exemptions from Securities Act registration: Rules 504, 505 and 506. Rule 505 is a limited offering exemption for non-public offerings of up to $5 million. It is designed to help small businesses because it permits sales to a small number of nonaccredited, unsophisticated investors. It also was created to coordinate with the North American Securities Administrators Association, Inc. (''NASAA'') Uniform Limited Offering Exemption (''ULOE''). Rule 506 is the Commission's safe harbor rule promulgated under the ''non-public'' offering exemption of Section 4(2) [15 U.S.C. 77d(2)]. It permits private sales only to accredited investors and a limited number of sophisticated investors.

[3] 15 U.S.C. 77a *et seq.*

[4] See Release No. 33–6389 (March 8, 1982) [47 FR 11251].

[5] A non-reporting issuer is an issuer that is not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*]. Other issuers that are ineligible to use Rule 504 include investment companies and development stage companies that either have no specific business plan or purpose or have indicated that the business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person. See Rule 504(a) of Regulation D.

[6] Rule 504 offerings are aggregated for this purpose with all other offerings exempt pursuant to Section 3(b) (*e.g.*, Rule 504 or 505 offerings) and all offerings made in violation of Section 5(a) of the Securities Act [15 U.S.C. 77e(a)].

[7] See interpretive letter to Mr. E.H. Hawkins (June 26, 1997), setting forth the views of the Division of Corporation Finance that affiliates who receive securities in a Rule 504 offering are subject to resale restrictions.

[8] Rule 504 is not a part of ULOE. Connecticut, Delaware and Oklahoma have exemptions that directly coordinate with Rule 504. See J.W. Hicks, 7A *Exempted Transactions under the Securities Act of 1933,* Section 7.09[3](1997).

[9] As with all Regulation D offerings, a Form D is required to be filed with the Commission no later than 15 days after the first sale in the Rule 504 offering. See Rule 503 [17 CFR 230.503]. Filing a Form D is not, however, a condition to the exemption.

[10] See, e.g., Schroeder, ''Penny Stock Fraud is Again on a Resurgence, Bolstered by Loopholes and New Technology,'' Wall St. J., September 4, 1997, at 12.

[11] The Commission's records indicate that approximately 1500 Forms D have been filed under Rule 504 in each of the past several years. NASD officials believe that between 300 to 500 applications for OTC Bulletin Board quotations were based upon the Rule 504 exemption in each of those years.

[12] These proposals are part of the our comprehensive agenda to deter registration and trading abuses, particularly by ''microcap'' issuers. The Commission has developed a four-pronged approach to minimize ''microcap fraud': enforcement, investor education, compliance examinations, and regulation.

The Commission issued three releases on February 17, 1998 to address this abuse. See Securities Act Release No. 7505, adopting amendments to Regulation S [17 CFR 230.901 *et seq.*]; Securities Act Release No. 7506, proposing amendments to restrict the use of Form S–8 for sales to consultants and advisors; and Exchange Act Release No. 39670, proposing amendments to Exchange Act Rule 15c2–11 [17 CFR 240.15c2–11] to require all broker-dealers to obtain and review enhanced information about certain issuers when they first publish (or resume publishing) a quotation for a security.

[13] Securities issued in a Rule 504 transaction would be defined as ''restricted securities'' as the term is defined in Rule 144(a)(3) [17 CFR 230.144(a)(3)]. The Commission has not observed the same level of fraudulent secondary trading in securities issued pursuant to Rules 505 and 506, which are restricted. This observation suggests that restricting resale may deter abuse. The Commission requests data and analysis from commenters on whether these rules are being abused.

[14] As originally adopted in 1982, the exemption was subject to a $500,000 limitation. In 1988, the ceiling for public offerings was increased to $1 million. *See* Release No. 33–6758 (March 3, 1988) [53 FR 7866].

[15] Form U–7 (also referenced as ULOR, uniform limited offering registration, or SCOR, small corporate offering registration), which was developed by NASAA and the American Bar Association, is a special registration format for

Continued

Private offerings, in which general solicitation and general advertising were prohibited, were exempted if sales did not exceed $500,000. State registration was not a condition to the exemption in the private context.

In July 1992, the Commission adopted revisions to its rules and forms to further facilitate capital raising by small businesses.[16] The amendments eliminated all restrictions on the manner of offering and on resales under Rule 504. As a result, a non-reporting company could offer up to $1 million of securities in a 12-month period and be subject only to the antifraud and other civil liability provisions of the federal securities laws. General solicitation and general advertising were permitted for all Rule 504 offerings. Further, securities sold under Rule 504 were not deemed ''restricted securities'' and thus were available for immediate resale by non-affiliates of the issuer, as long as the non-affiliates were not ''underwriters'' [17] of the offering.[18]

In revising the exemption in 1992, the Commission sought to balance the needs of investors and the needs of small business. In the years that have elapsed since Rule 504 was revised, the capital markets have experienced unprecedented growth.[19] The strong markets have given rise to more widespread trading of securities in non-reporting companies in interdealer quotation systems such as the OTC Bulletin Board. Moreover, since 1992, market innovations and technological changes—most notably, the Internet—have created the possibility of nationwide markets for these exempt securities that were once thought to be sold only locally. The combination of these factors, the lack of widely-distributed public information about companies making Rule 504 offerings and the freely tradable nature of Rule 504 securities may have exacerbated the opportunities for microcap fraud.

There have been a significant number of recent Commission examinations of broker/dealers and enforcement investigations with allegations of fraud involving microcap companies.[20] Some of these matters involve transactions where a company sold securities in reliance upon Rule 504 to certain persons who then manipulated the price of the securities to defraud unknowing investors. While the initial Rule 504 sales have not necessarily been fraudulent, the Commission is concerned that the current Rule's flexibility, which permits general solicitation of investors, contains no disclosure requirements, and allows free transferability of issued securities, is being abused by perpetrators of microcap fraud.

In some cases, those who prey on investors through fraudulent schemes make prearranged ''sales'' of securities under Rule 504 to nominees in states that do not have registration or prospectus delivery requirements. As a part of this arrangement, these securities are subsequently placed with broker-dealers who use cold-calling techniques to sell the securities at ever-escalating prices to unsuspecting investors. When their inventory of shares has been exhausted, these firms permit the artificial market demand they have created to collapse, causing investors to lose much, if not all, of their investment.[21]

While Rule 504 is not essential to such a microcap fraud, its limited compliance requirements provide an attractive device for stock manipulators to generate a large pool of securities for use in manipulation schemes. If the microcap market, or offerings under Rule 504, become stigmatized as unsavory, legitimate small businesses may become less able to raise money as investors lose confidence in the market and in the integrity of those making such offerings. To prevent that from happening, the Commission is reevaluating the Rule and the revisions to it adopted in 1992.

III. Proposed Revisions

In order to discourage abuse of those provisions of the Rule 504 exemption that unscrupulous stock promoters apparently find attractive and yet preserve the usefulness of the exemption for small business, the Commission proposes to impose resale restrictions on securities issued pursuant to the provision. Under the proposal, all securities issued under Rule 504 would constitute ''restricted securities'' as the term is used in Rule 144. Consequently, these securities could only be resold: (1) After the one-year holding period imposed by Rule 144, (2) through registration, or (3) through another exemption (such as Regulation A[22]), if available.

This approach would be consistent with the other Regulation D exemptions and other types of offerings not registered with us. While it typically prevents investors from reselling the securities in less than a year, it also discourages the use of the securities as a part of a fraud or manipulation during the same period. It encourages longer term investment and may provide the necessary time for the market to learn more about the small issuer, which are beneficial factors for the investor and the issuer as well.

The Commission requests comments on the effect of this proposal upon the abuses we have described in the microcap market. If commenters believe that the proposal will not have the desired prophylactic impact, they should explain the bases for their views and indicate their views of the problem, the appropriate manner of rectifying it and data supporting their views.

In developing our recommendations, we always try to determine whether the proposed regulatory actions will unduly burden legitimate small businesses. We keep in regular contact with small business representatives. Based upon our ongoing dialogue, we believe that today's proposals are sufficiently measured so that the most useful aspects of Rule 504 would be preserved. We have found that small business representatives share our concern about the harmful presence of those who would taint the microcap market and therefore raise the cost of raising capital for legitimate small businesses. We specifically seek the views of the small business community on the proposals.[23]

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companies registering securities under state securities laws when relying upon Rule 504. *See* Harris, Keller, Stakias & Liles, Financing the ''American Dream,'' 43 Business Lawyer 757 (1988). As of October 1997, Form U–7 has been either formally adopted or recognized and accepted by 40 states.

[16] See Release No. 33–6949 (July 30, 1992) [57 FR 36442]. On April 28, l993, the Commission adopted additional revisions to facilitate still further financings by small business issuers. See Release No. 33–6996 (April 28, 1993) [58 FR 26509].

[17] Section 2(a)(11) of the Securities Act [15 U.S.C. 77b(a)(11)].

[18] Regulation D exemptions are available only to the issuer of the securities. None of these exemptions can be used by any other person. Preliminary Note 4 to Regulation D.

[19] In 1992, the Dow Jones Industrial Average, a price-weighted average of 30 actively-traded stocks listed on the New York Stock Exchange, was at 3000; it recently passed the 9000 mark. Other indicators similarly demonstrate the overall growth of the securities markets. For example, during the same period, the Russell 2000 small stock index, a measure of the stock performance of small company stocks, moved from 200 to a recent close of over 490.

[20] The National Association of Securities Dealers, Inc. (NASD) also has recently proposed a series of measures to address microcap fraud. See, e.g., OTC Bulletin Board Quotations Rule Amendments (NASD Notice to Members 98–14) (Rule 6530 and Rule 6540).

[21] This technique is sometimes colloquially referred to as ''pump and dump.''

[22] 17 CFR 230.251 *et seq.*

[23] The Commission hosts town hall meetings across the country from time to time for small business to discuss issues like the Commission's capital formation rules. These meetings are instructive about the current concerns and problems facing small businesses in raising capital

IV. Other Possible Approaches to Rule 504 Reform

The Commission seeks comments on whether it should adopt other amendments to Rule 504, in addition to or in lieu of those discussed in this release, to discourage its abuse while preserving its utility for small businesses.

The Commission is particularly interested in hearing from commenters about whether general solicitation and advertising should continue to be permitted in Rule 504 offerings, and whether the lack of restrictions in this area have been a source of abuse, particularly in finding investors or generating market interest in issuer securities. If general solicitation and general advertising is thought to be connected to abusive situations, commenters should recommend how these abuses might be deterred. For example, should the Commission reintroduce the requirement that general solicitation and general advertising of securities offered under Rule 504 be conditioned in some way? Under one model, public offerings under the Rule 504 exemption might be limited to where the issuer complies with state registration processes that require the preparation and delivery of a disclosure document to investors prior to sale of the securities. Should general solicitation and general advertising be contingent upon state registration and prospectus delivery to all investors before sale? Would adding these requirements further discourage fraudulent secondary market activity as well as fraudulent offerings under Rule 504? If so, would the cost to small businesses of restricting the solicitation methods permitted by Rule 504 be outweighed by the benefits from avoiding a taint to Rule 504? How should offerings made pursuant to certain state exemptions, such as the one recently developed for sales to ''accredited investors,'' [24] be treated? Under this model (which was the rule before 1992), private offerings would continue to be permitted without compliance with this particular type of state registration procedure. Should all provisions of the previous version of the rule be reinstituted, *i.e.*, should publicly offered securities issued under the exemption be unrestricted?

The Commission also is particularly interested in hearing from commenters about the absence of specific disclosure requirements under Rule 504, as contrasted to offerings under Rules 505 and 506, which must satisfy the information requirements of Rule 502(b) of Regulation D.[25] Should the Commission require that a disclosure document satisfying those information requirements be delivered to non-accredited investors before sale in Rule 504 offerings? To ensure easy access for all investors, should disclosure documents and other sales materials be required to be provided as an exhibit to the Form D? Since Forms D are not currently filed electronically with the Commission, should a change be made requiring electronic filing? Should these documents be provided to the Commission for its information only? What issues would this type of procedure raise under the Freedom of Information Act [26]? Should a confidential treatment process be developed to protect some of the information contained in these documents?

V. Solicitation of Comment—Other Rule 504 Improvements

The Commission seeks comment with respect to each of the other facets of the current Rule 504 regulatory compliance scheme. Specifically, does the current Rule serve investors' interests? If not, how could this Rule be further strengthened? Should a lower aggregate dollar amount, such as $500,000, be implemented with different requirements in order to provide a more effective compliance system? Should the current 12-month measuring period be lengthened to 2 years, with or without a change in the aggregate dollar limitation?

Should the types of issuers eligible to use the exemption be changed? For example, should particular types of ''penny stock'' issues be excluded, *e.g.*, offerings for less than $1 per share? Should issuers with total assets or market capitalization below a minimum amount be precluded from using the rule, *e.g.*, $1 million? Would such a limit be consistent with a stated purpose of the exemption: for raising ''seed capital''?

Does the current rule serve issuers' needs? At the same time we are proposing to tighten the rule, are there other areas of the Rule that we can modify to provide small businesses with flexibility without compromising investor protection? For example, should the measuring period for determining the scope of an offering be shortened to six months? Should the dollar limitation in the Rule be increased to $5 million or some higher dollar amount if accompanied with additional compliance requirements such as specified disclosure requirements or state registration requirements? [27]

Do differences in state registration schemes affect the utility of Rule 504? Do those differences affect the incidence of fraudulent secondary trading? If so, how? Has reliance on state regulation achieved the goals set out by the Commission when it amended Rule 504 in 1992? [28] Although improving, has the lack of uniformity of state securities regulation in this area had any impact on Rule 504 offerings? Should Rule 504 be revised to impose greater uniformity nationwide in disclosures provided to investors under Rule 504? Should public offerings under Rule 504 be limited to only those offerings registered in and made in states participating in NASAA's regional review program? [29]

Should the Commission take a more active role in monitoring Rule 504 transactions to ensure compliance with the antifraud requirements of the federal securities laws? Should additional information be mandated in Form D?

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in the securities markets, and permit us to design programs that will meet their needs consistent with the protection of investors. In future sessions, we intend to discuss our proposals with attendees and encourage them to submit their views as a part of this rulemaking proceeding. In addition, the University of Southern California recently sponsored a forum at which a number of issues important to small business, including alleged abuses that are the basis for our proposal, were discussed and considered by a group of small business representatives and Commission staff.

[24] State exemptions of this nature include those based upon the ''Model Accredited Investor Exemption,'' which was adopted by NASAA in 1997. CCH NASAA Reporter Paragraph 361. Generally, the rule exempts offers and sales of securities from state registration requirements, if among other matters, the securities are sold only to persons who are, or are reasonably believed to be, ''accredited investors'' as defined in Rule 501(a) of Regulation D. Written solicitations under that provision are generally limited to a type of ''tombstone'' ad. To date, 11 states have adopted the exemption.

[25] 17 CFR 230.502(b).

[26] 5 U.S.C. 552.

[27] See NASAA's Report of the Task Force on the Future of Shared State and Federal Securities Regulation (October 1997). The Task Force, among other matters, recommended that the Commission raise the offering amount in Rule 504 offerings to $10 million pursuant to its new authority under Section 28 of the Securities Act [15 U.S.C. 77z–3]. It also recommended that offerings made in an amount over $1 million be required to be registered in the states where the offering is made.

[28] See note 16 above.

[29] NASAA and a number of states have developed regional review procedures that permit an issuer to file in each state, but to indicate with the filing that regional review is requested. Under those circumstances, the issuer will receive only one set of comments, and the filing can become effective simultaneously in all states in the region in which filings have been made. To date, the regional system has been set up in the following areas: Western States (Alaska, Arizona, California, Colorado, Idaho, Oregon, Utah and Washington); New England States (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont); and Midwestern States (Illinois, Indiana, Iowa, Kansas, Michigan, Missouri, and Wisconsin).

For example, should Form D be required to indicate the state(s) where the offering was made? Or, should Form D filers be required to amend their filings periodically (whether quarterly, annually or some other increment of time) to disclose: (1) Whether they have prepared or provided information to facilitate trading such as the NASD's Form 211, which is required prior to inclusion on the OTC Bulletin Board; and (2) whether they have provided other information to potential or existing market makers for their securities?

Before the adoption of Rule 701,[30] the Rule 504 exemption was used by a number of foreign private issuers in order to compensate their U.S. employees by issuing them company securities. Many of these issuers had substantial market capitalizations and were listed on foreign exchanges. Comment is requested concerning the impact of the proposed revisions upon these companies. Specifically, is the Rule 504 exemption still being used by these issuers? If so, for what purposes is Rule 504 used? If these foreign private issuers still use the exemption, should the Commission treat their Rule 504 issuances differently, *i.e.*, not as ''restricted securities'' if they are not microcap companies, and file periodic public reports in their home or other countries?

VI. General Request for Comment

Any interested persons wishing to submit written comment on any of the issues set forth in this release are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–14–98; this file number should be included on the subject line if e-mail is used. Comments received will be available for public inspection and copying in the Commission's public reference room at 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov). Comments on this proposal will be considered by us in complying with our responsibilities under Section 19(a) of the Securities Act.[31] We further request comment on any competitive burdens that may result from adoption of the proposals. Comments are solicited from the point of view of, among others, issuers, underwriters, broker/dealers and the investing public.

VII. Summary of Initial Regulatory Flexibility Analysis

We have prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with the Regulatory Flexibility Act[32] regarding the proposed amendments.

The analysis notes that the amendments to Rule 504 are a result of our view—and that of representatives of other regulators—that the current configuration of the exemption may be leading to abuse. The purpose of the proposals is to reduce the potential for abuse and yet maintain the utility of the exemption for small businesses. We believe that the proposed amendments will enhance the protection of the investing public.

In calendar year 1997, 1,505 Forms D were filed by 1,397 companies with the Commission claiming the Rule 504 exemption. Rule 504 only affects non-reporting companies. The Commission has sought to minimize the reporting burden on small businesses. However, we do not collect data to determine how many of the non-reporting companies filing Form D are small businesses. Therefore, we are unable to determine exactly how many small businesses will be affected by the proposed amendments.

While it is not possible to know with certainty, it is believed that most Rule 504 offerings were done by small businesses. The rule changes would restrict the resale of all securities issued pursuant to Rule 504. Officials at the NASD estimate that between 300 and 500 applications for quotation on the OTC Bulletin Board annually have been based on the Rule 504 exemption. We presume, therefore, that the proposal would affect at least some of the small businesses currently using Rule 504. The proposal, if adopted, could cause these issuers to offer higher discounts in the sales of their securities, which may increase their overall cost for capital. The Commission has insufficient data to reliably quantify the impact on small entities offering such a discount, and requests comment, supported by data and analysis regarding the nature and size of any discount.

As discussed more fully in the IRFA, several possible significant alternatives to the proposals were considered. These included: establishing different compliance or reporting requirements for small entities, clarifying, consolidating or simplifying the compliance and reporting requirements for small entities, using performance rather than design standards, exempting small entities from all or part of the proposed requirements, or requiring them to provide more disclosure, such as the same disclosure required for the other Regulation D exemptions. The IRFA also indicates that there are no current federal rules that duplicate, overlap, or conflict with the proposed amendments.

We encourage written comments on any aspect of the IRFA. In particular, we seek comment on: (i) the number of small entities that would be affected by the proposed amendments; and (ii) whether the proposed amendments would affect the reporting, recordkeeping and other compliance requirements for small entities and, if so, how. If you believe the proposals will significantly impact a substantial number of small entities, please describe the nature of the impact and estimate the extent of the impact with specific data.

For purposes of making determinations required by the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[33] we also are requesting data regarding the potential impact of the proposed amendments on the economy on an annual basis. Your comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted. A copy of the Initial Regulatory Flexibility Act Analysis may be obtained from Twanna M. Young, Office of Small Business, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

VIII. Cost-Benefit Analysis

The current version of Rule 504 was adopted in 1992. At that time it was believed to contain adequate compliance standards, including: the limits on the amount of money permitted to be raised and the types of issuers eligible to use the exemption; the filing of the Form D notification with the Commission to aid in its monitoring of the exemption; the federal antifraud provisions; and, perhaps most importantly, state regulation of these transactions. Since that time, however, securities issued pursuant to Rule 504 have been used in fraudulent secondary trading.

[30] 17 CFR 230.701.

[31] 15 U.S.C. 77s(a).

[32] 5 U.S.C. 603.

[33] Pub. L. 104–121, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601).

The proposed amendments would address these problems by restricting the resale of securities; generally this change would require investors to hold them for at least one year following purchase. The Commission believes these proposed amendments, if adopted, would benefit issuers and investors by curbing some of the abuses in the secondary market, safeguarding investors, and preserving the utility of the exemption for legitimate transactions.

In calendar year 1997, 1,505 Forms D were filed by 1,397 companies with the Commission claiming a Rule 504 exemption. Officials at the NASD estimate that between 300 and 500 applications for quotation on the OTC Bulletin Board annually have been based on the Rule 504 exemption. The Commission cannot estimate the costs of the proposed amendments with certainty. Some issuers may be required to offer discounts or other incentives to sell their securities in order to compensate for the restriction on resale. However, because the exemption is designed to raise ''seed'' capital, most of the issuers and the type of transaction the rule is designed to reach are in the early stages of their development. These issuers are interested in attracting patient investors who are committed to remaining with the business for some period of time. As such, it seems reasonable that these investors and the companies would expect the securities to be held for some period of time; certainly for at least one year. Our experience shows that many of the active trading markets that develop shortly after securities are issued under Rule 504 are artificial. While liquidity is an important feature with any securities investment, whether it is sufficiently significant in connection with a ''seed'' capital offering to require a substantial discount in the offering price is debatable. Nonetheless the Commission is seeking specific comments on this issue and empirical data. While the amendments will probably impact mostly small entities, the changes are necessary to curb fraud in the market for the securities of small issuers. The Commission does not have sufficient data to reliably estimate this cost and requests data and analysis from commenters.

As an aid in the evaluation of the costs and benefits of these proposals, we request the views and other supporting information of the public. It appears to us that the proposed amendments, if adopted, would continue to provide the significant cost savings originally envisioned for small issuers making offerings under Rule 504 without compromising investor protection.

We request your comment on whether the proposed amendments would be a ''major rule'' for purposes of the SBREFA. We request comments on whether the proposed amendments are likely to have an annual effect on the economy of $100 million or more. Your comments should provide empirical data to support your views.

Section 2(b) of the Securities Act requires the Commission, when engaged in rulemaking that requires a public interest finding, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.[34] The Commission's preliminary view is that the proposed amendments would not have any effect on competition. Moreover, the proposed amendments are designed to curb fraud in the market for the securities of small issuers, and therefore are likely overall to improve efficiency and capital formation for legitimate small businesses. The Commission is aware, however, that restricting the resale of securities may have some impact on the cost of capital formation. The Commission requests data and analysis on what effect the proposed changes may have on efficiency, competition and capital formation.

IX. Paperwork Reduction Act

Our staff has submitted the proposals for review to the Office of Management and Budget (''OMB'') in accordance with the Paperwork Reduction Act of 1995 (''the Act''). [35] The title to the affected information collection is: ''Form D.'' The specific information that must be included in Form D is explained in the form itself, and relates to the issuer, its principals and the amount of money proposed to be raised along with proposed applications of the proceeds. The information is needed for monitoring use of the exemption as well as evaluating its usefulness to issuers.

The collection of information in Form D will continue to be required in order for companies to use the rule for sales of their securities. The likely respondents to the rule are those companies that have previously used the rule and other small entities. While we cannot estimate the number of respondents that may use revised Rule 504, there were 1,505 Form D filings by 1,397 companies under Rule 504 during calendar year 1997. We expect that approximately 1500 companies each year will be relying on the exemption. If the revisions to Rule 504 are adopted, the estimated burden for responding to the collection of information in Form D would not increase for most companies because the information required has not been changed. The number of eligible transactions, however, may decrease. We estimate that the average burden hours per filing will be 16. Therefore, we estimate an aggregate of 24,000 burden hours per year. The Commission does not know how many issuers may be affected by this proposal, whether they will decide to rely on another exemption, or how much, if any, the information collection burden would be.

The information collection requirements imposed by Form D are mandatory to the extent that a company elects to use the Rule 504 exemption. The information is disclosed to the public. 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 control number.

In accordance with the Act,[36] we solicit comment on: (1) whether the collection of information is necessary; (2) the accuracy of our estimate of the burden of the collection of information; (3) the quality, utility and clarity of the information to be collected; and (4) whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Persons desiring to submit comments on the collection of information requirement should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, with reference to File No. S7–14 –98. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

X. Statutory Basis for the Proposals

The amendments are proposed pursuant to Sections 2, 3(b), 6, 7, 8, 10, 19(a), 19(c) and 28 of the Securities Act.

[34] 15 U.S.C. 77b(b).

[35] 44 U.S.C. 3501 *et seq.*

[36] 44 U.S.C. 3506(c)(2)(B).

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Proposals

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

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

1. The citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78l, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 230.502 [Amended]

2. By amending the introductory text of paragraph (d) of § 230.502 by revising the words ''Except as provided in § 230.504(b)(1), securities'' to read ''Securities''.

3. By revising § 230.504(b)(1) to read as follows:

§ 230.504 Exemption for limited offerings and sales of securities not exceeding $1,000,000.

* * * * *

(b) *Conditions to be met.*—(1) *General conditions.* To qualify for exemption under this § 230.504, offers and sales must satisfy the terms and conditions of §§ 230.501 and 230.502(a) and (d).

* * * * *

Dated: May 21, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14024 Filed 5–27–98; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 809 and 864

[Docket No. 97N–0135]

Medical Devices; Hematology and Pathology Devices; Reclassification; Restricted Devices; OTC Test Sample Collection Systems for Drugs of Abuse Testing; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of public hearing on proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing on a proposed rule to reclassify over-the-counter (OTC) test sample collection systems for drugs of abuse testing. The purpose of the public hearing is to solicit input on the proposed rule in addition to comments being submitted to the docket. The information obtained at the hearing will assist FDA in its preparation of a final rule.

DATES: The public hearing will be held on June 19, 1998, from 9 a.m. to 5 p.m. Written notices of participation should be filed by June 8, 1998. Submit written comments by July 5, 1998.

ADDRESSES: The public hearing will be held at the Food and Drug Administration, 5600 Fishers Lane, conference rooms D and E, Rockville, MD 20857. Submit written notices of participation and written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Steven I. Gutman, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–3084.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 5, 1998 (63 FR 10792), FDA published a proposed rule to reclassify OTC test sample collection systems for drugs of abuse testing. FDA has determined that a public hearing on the proposed rule is warranted. The hearing will be directed by William B. Schultz, Deputy Commissioner for Policy, FDA. To the extent possible, oral testimony should address the issues identified in the proposed rule (63 FR 10792). The procedures governing the hearing are those applicable to a public hearing before the Commissioner of Food and Drugs under 21 CFR part 15.

Interested persons who wish to participate may, on or before June 8, 1998, submit a notice of participation to the Dockets Management Branch (address above). All notices submitted should be identified with the docket number found in brackets in the heading of this document and should contain the name, address, telephone number, business affiliation of the person requesting to make a presentation, a brief summary of the presentation, and the approximate time requested for the presentation.

Individuals or groups having similar interests are requested to consolidate their comments and present them through a single representative. FDA will allocate the time available for the hearing among the persons who properly file a notice of appearance.

After reviewing the notice of participation and accompanying information, FDA will schedule each appearance and notify each participant by mail or telephone of the time allotted to the person and the approximate time the person's presentation is scheduled to begin. FDA may require joint presentations by persons with common interests. The schedule of the public hearing will be available at the hearing and it will be placed on file in the Dockets Management Branch following the hearing.

The administrative record of the proposed regulation will be open for 15 days after the hearing to allow comments on matters raised at the hearing. Persons who wish to provide additional materials for consideration are to file these materials with the Dockets Management Branch (address above) during that period.

The hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officers and panel members may question any person during or at the conclusion of their presentation.

Dated: May 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–14048 Filed 5–27–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–022–FOR]

Oklahoma Regulatory Program

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

ACTION: Proposed Rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions and additional explanatory information pertaining to a previously proposed amendment to the Oklahoma regulatory program (hereinafter referred to as the ''Oklahoma program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions and additional explanatory information pertain to normal