amended schedule of dues, fees and charges is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Sections 6(b)(4) [8] and 6(b)(5) [9] of the Act in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members and is designed to perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve such rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2004–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2004–39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2004–39 and should be submitted on or before August 27, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18002 Filed 8–5–04; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

National Environmental Policy Act Procedures

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of proposed change in procedures.

SUMMARY: SBA seeks comment on its proposed revisions to its procedures implementing the National Environmental Policy Act specifically relating to loans made under these business loan assistance programs. SBA also seeks comments on a proposed assessment of the effects of the Agency's 7(a) business loan program and 504 certified development company program upon the environment. These changes are necessary to reflect changes in SBA's loan programs.

DATES: Comments on both the revised procedures and the PEA must be received on or before October 5, 2004.

ADDRESSES: Comments should be addressed to Eric S. Benderson, Associate General Counsel, Office of General Counsel, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Eric S. Benderson, Associate General Counsel (202) 205–6636; *eric.benderson@sba.gov*.

SUPPLEMENTARY INFORMATION: SBA has prepared a Programmatic Environmental Assessment (''PEA'') to evaluate the effects of the Agency's 7(a) business loan and 504 certified development company programs (''small business loan assistance programs'') on various environmental resources. The PEA finds that the cumulative effects of these business loan assistance programs do not have a significant adverse impact on these resources. To obtain a copy of this PEA, you may send a request to *gary.fox@sba.gov* or visit SBA's Web site at *http://www.sba.gov/library/reportsroom.html*. Interested parties may submit comments on this PEA to the above address.

Under the National Environmental Policy Act (''NEPA''), 42 U.S.C. 4321 *et. seq.,* and the implementing regulations promulgated by the Council on Environmental Quality (''CEQ''), 40 CFR part 1500, agencies must adopt procedures for determining the environmental effects of major Federal actions. SBA's procedures implementing NEPA are set forth in SBA Standard Operating Procedure (''SOP'') 90–57. These procedures were originally published in 45 FR 7358, February 1, 1980, and are available for review at *http://www.sba.gov/library/soproom.html*.

SBA's two primary business loan assistance programs are the 7(a) Guaranteed Loan Program (''7(a) Program''), implemented pursuant to the Small Business Act, 15 U.S.C. 636(a), and the 504 Certified Development Company Program (''504 Program''), implemented pursuant to Title V of the Small Business Investment Act of 1958, as amended, 15 U.S.C. 695. Under the 7(a) Program, SBA guarantees up to 85 percent of loan amount (depending upon loan size) to encourage commercial lenders to make loans to eligible and creditworthy small businesses that cannot obtain financing on reasonable terms through normal

private lending channels. SBA does not use any of its own funds unless there is a default by the borrower in paying the loan. If a default occurs, SBA pays its guaranty obligation to the lender. Lenders then undertake the liquidation of collateral given by the borrower to secure the loan, and appropriate debt collection actions against the borrower, to recover any loss on the loan.

Under the 504 Program, which is a jobs-creation program, SBA assists small businesses seeking long-term, fixed-rate financing to acquire or improve capital assets. SBA implements the program through 268 Certified Development Companies (''CDCs''), which are private, mostly non-profit corporations licensed to promote local and community economic development. Typically, a 504 project is funded by three sources: (1) A loan, secured with a senior lien, from a private-sector lender for 50 percent of the project cost; (2) an equity contribution from the borrower of at least 10 percent of the project cost; and (3) a loan covering up to 40 percent of the total cost, which is funded from proceeds from the sale to investors of a debenture issued by a CDC, payment of which is guaranteed by the SBA. (Although SBA does not actually guarantee the payment of a 504 loan, but rather the debenture which funds the loan, these loans are referred to below as guaranteed loans for the sake of convenience.) SBA does not use any of its own funds unless there is a default by the borrower in paying the debenture-funded loan, in which case the Agency pays the outstanding balance owed on the debenture to the investors. After a default, liquidation of collateral given by the borrower to secure the loan, and appropriate debt collection actions against the borrower, are undertaken to recover any loss on the loan.

Under SOP 90–57, SBA's issuance of guaranties, given in connection with loans made under the 7(a) Program and in connection with debentures for local and community development loans under the 504 Program, are categorically excluded from NEPA except that an environmental assessment may be required in those cases where loan proceeds used for construction and/or purchase of land exceed $300,000. SOP 90–57, ¶¶ 7h, 7k. SBA's NEPA procedures, which have not been revised since their adoption in 1980 despite significant changes in SBA's small business loan assistance programs, are outdated. For the reasons discussed below, SBA proposes to revise its NEPA procedures.

Background

Small businesses make up a major sector of the American economy and play an essential role in maintaining the Nation's system of private enterprise. The Small Business Act, which created the SBA, provides as follows:

> The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, * * * and to maintain and strengthen the overall economy of the Nation.

15 U.S.C. 631, *et seq.*

According to a report published by the SBA Office of Advocacy, *Small Business by the Numbers* (May 2003), America's 22.9 million small businesses employ more than 50 percent of the private work force, generate more than 50 percent of the nation's non-farm private gross domestic product, and generate 60 to 80 percent of net new jobs annually. Small businesses create opportunities for women, minorities, veterans and the handicapped to enter the economic mainstream, and play an important role in technological innovation, helping the U.S. to achieve a high standard of living, and providing a diversity of products and services.

One of the many ways that Congress has empowered SBA to fulfill the Agency's statutory mission to ''aid, counsel and assist small businesses,'' 15 U.S.C. 631, is through the SBA small business loan assistance programs—the 7(a) and 504 Programs. These programs allow SBA to assist small businesses, including many minority and women-owned businesses, as well as those owned by veterans and those with disabilities, by encouraging lenders to provide loans to small businesses that would not otherwise qualify for financial assistance from private sources.

Several features of SBA's loan assistance programs bear emphasis:

(1) In over 60 percent of loans stemming from the Agency's 7(a) and 504 small business loan assistance programs, the lender approves the loan and funds it without SBA's prior review and approval. In fact, based upon current trends to streamline these programs, most of SBA's business loan guaranties likely will be made in this way in the near future.

(2) It is of paramount importance that loan approval be accomplished as quickly as possible given the needs of the small businesses applying for the loans and the timeframes for loan approval sought by our participating lenders.

(3) In the vast majority of cases the loan applicant comes to the lender with an existing business that is in need of specific funding, or with a definite business plan, both as to the business location and the use of proceeds. SBA plays no role in determining either. In this regard, SBA is asked for its guaranty at the end of the process, after the small business owner has determined the purpose and amount of the financing.

(4) It is the lender that applies for the guaranty, not the small business, and SBA generally has little or no contact with the small business during the loan approval process.

(5) An SBA-guaranteed loan, though quite significant to a small business borrower, when viewed as a Federal expenditure, is relatively small. Approximately three-quarters of all guaranteed loans provided by SBA in Fiscal Year 2002 pertained to loans of less than $300,000. In fact, the average size of an SBA-guaranteed loan in FY 2002 was $237,907.

(6) In addition, approximately 75 percent of all 7(a) loans, and 70 percent of all 504 loans, are made to borrowers involved in wholesale or retail businesses, or the service industry.

(7) Further, less than 13 percent of 7(a) or 504 borrowers are located in rural areas, and the vast majority of SBA loans do not finance new construction.

Accordingly, the nature of SBA's small business loan assistance programs, in which SBA's role is secondary to that of the lenders, expedited loan approval is required, guaranteed loans of relatively low dollar value are involved, and existing site locations or ones that have already been planned, makes a loan-by-loan assessment under NEPA impractical and unnecessary. As discussed above, SBA has undertaken a PEA to determine the extent of any environmental impact of its programs. A primary focus of this assessment was to determine any possible impact SBA small business loan assistance programs may have on urban sprawl, since that question has been raised by certain environmental groups. As discussed in the PEA, SBA has determined that the Agency's small business loan assistance programs do not promote urban sprawl. Such a

conclusion is not surprising in light of the fact that small business follows economic development because of the need for customers or clients. But even if this were not the case, the Agency's small business loan assistance programs prohibit the use of loan proceeds for speculative real estate ventures or for real estate development. *See* 13 CFR 120.130.

In the absence of any other known controversy regarding the impact of the business loan programs other than an alleged contribution to urban sprawl, the PEA also undertakes a generalized review of the impacts of the small business loan assistance programs upon other components of the environment. As discussed therein, SBA has determined that the cumulative effects of these programs upon the environment are very limited.

Legal Analysis

Having reviewed SBA's existing NEPA procedures as they relate to the Agency's small business loan assistance programs, and having carefully considered the provisions of NEPA, applicable regulations, the relevant case law developed during the twenty-three years since SBA's rules were first promulgated, and the current nature of SBA's various small business loan assistance programs, SBA has concluded that its current NEPA procedures should be modified. The Agency has determined that NEPA reviews pertaining to individual business loan guaranties need not be undertaken because an SBA guaranty of a business loan does not constitute a major Federal action significantly affecting the quality of the environment and, thus, does not come within the purview of NEPA. However, because of questions raised as to the programmatic impact of those loan guaranties, particularly as they may relate to urban sprawl, the Agency has reviewed its small business loan assistance programs to determine what cumulative impact, if any, they may have on the environment. As set forth in SBA's PEA, the Agency's small business loan assistance programs do not have a significant effect upon urban sprawl or the environment.

Under NEPA, 42 U.S.C. 4332(2)(C), all agencies of the Federal Government are directed to include in every recommendation or report on ''major Federal actions significantly affecting the quality of the human environment,'' a detailed statement setting forth the environmental impact of the proposed action, any unavoidable adverse environmental effects of the proposed action, alternatives to the proposed action, and certain other data. From the outset, however, the proper interpretation of the critical words just quoted, and, thus, the actual scope of NEPA's applicability, has been subject to each federal agency's interpretation in the context of particular proposed programs and actions, informed by numerous judicial decisions.

NEPA's procedural requirements bind only the Federal government. NEPA does not apply to the actions of state, local, or private entities unless the Federal government has, in some manner, become sufficiently involved in a particular undertaking of the state, local, or private entity so as to ''federalize'' that project for purposes of NEPA. The CEQ regulations implementing the procedural provisions of NEPA and numerous judicial decisions provide guidance for determining what level of Federal involvement is necessary before the requirements of NEPA must be met—*i.e.*, before the Federal involvement will be deemed sufficient to qualify the subject project as a ''major Federal action.'' The CEQ regulations define ''major Federal action'' as actions ''with effects that may be major which are potentially subject to Federal control and responsibility.''

Case law has articulated the meaning of this standard in a number of different factual contexts. It is clear that there are Federal activities and actions that will not be deemed sufficiently significant as to amount to ''major Federal action'' under the provisions of NEPA. *Ka Makani 'O Kohala Ohana Inc.* v. *Water Supply*, 295 F.3d 955, 960 (9th Cir. 2002); *Atlanta Coalition on the Transportation Crisis, Inc.* v. *Atlanta Regional Commission*, 599 F.2d 1333, 1347 (5th Cir. 1979). According to the *Ka Makani* Court, in order to determine whether a particular Federal action is sufficiently major so as to trigger NEPA's requirements, one must ''look 'to the nature of the federal funds used and the extent of federal involvement.' '' 295 F.3d at 960 (quoting *Sierra Club* v. *Penfold*, 857 F.2d 1307, 1314 (9th Cir. 1988). Another court stated that ''Whether a particular federal action is 'major' depends on the amount of federal funds expended, the number of people affected, the length of time consumed, and the extent of government planning involved.'' *Como-Falcon Coalition, Inc.* v. *United States Department of Labor*, 465 F. Supp. 850, 857 (D. Minn. 1978), *aff'd*, 609 F.2d 342 (8th Cir. 1979), *cert. denied*, 446 U.S. 936 (1980). And one case, *Township of Ridley* v. *Blanchette,* 421 F. Supp. 435 (E.D. Pa. 1976) observed:

> Those cases which have found the existence of major federal action have ordinarily involved highway extensions, large structures which alter the neighborhood, major dams or river projects, and other projects which can generally be characterized as involving sizable federal funding (over one-half million dollars, and usually well over one million), large increments of time for the planning and construction stages, the displacement of many people or animals, or the reshaping of large areas of topography.

Id. at 446.

With respect to the funding of a project by a Federal agency, the courts have recognized that significant Federal funding can transform a non-federal project into a ''major Federal action.'' *Ka Makani*, 295 F.3d at 960; *Sierra Club* v. *U.S. Fish and Wildlife Service*, 235 F. Supp. 2d 1109, 1121 (D. Ore. 2002) (''Given the overwhelming percentage of federal dollars involved, and the fact that the amount itself, regardless of the percentage it represents, is more than $3 million, the federal funding contribution alone is probably sufficient to 'federalize' the project.''). But regardless of the amount of Federal money involved in a specific Federal project, the key test for determining the presence of a ''major Federal action'' is whether there is a significant degree of Federal involvement with, and control over, the subject project. *See, e.g.*, *The Environmental Rights Coalition, Inc.* v. *Austin*, 780 F. Supp. 584, 600–01 (S.D. Ind. 1991).

As noted by the Fifth Circuit,

> Determining whether a program is sufficiently ''federal'' to render it subject to NEPA will often entail analysis of the amount and significance of federal aid. * * * And in some circumstances, perhaps, the federal character of a state or local project can be established merely by the presence of substantial federal assistance. * * * But we think the presence of federal financial assistance is generally just one factor in the analysis of whether there is sufficient federal control over, responsibility for, or involvement with an action to require preparation of an EIS.

Atlanta Coalition, 599 F.2d at 1347. And the need for Federal control over a project before it will be deemed a ''major Federal action'' is reflected in numerous cases pertaining to NEPA. *Ka Makani*, 295 F.3d 955, 960 and 961(''The USGS and HUD * * * lacked the degree of decision-making power, authority, or control over the [project] needed to render it a major federal action.'' *Id.* at 960; ''Because the final decision-making power remained at all times with [the state agency], we conclude that the USGS involvement was not sufficient to constitute 'major federal action.' '' *Id.* at 961); *Mayaguezanos Por La Salud Y El*

Ambiente v. *U.S.,* 198 F.3d 297, 302 (1st Cir. 1999) (''Like the Fourth Circuit, we look to whether federal approval is the prerequisite to the action taken by the private actors and whether the federal agency possesses some form of authority over the outcome.''); *United States* v. *Southern Florida Water Management District*, 28 F.3d 1563, 1572 (11th Cir. 1994), *cert. denied sub nom. Western Palm Beach County Farm Bureau, Inc.* v. *U.S.,* 514 U.S. 1107 (1995) (''The touchstone of major federal activity constitutes a federal agency's authority to influence nonfederal activity. '[T]he federal agency must possess actual power to control the nonfederal activity.' *Sierra Club* [v. *Hodel*, 848 F.2d 1068, 1089 (10th Cir. 1988)].''); *Sugarloaf Citizens Association* v. *FERC,* 959 F.2d 508, 512 (4th Cir. 1992) (''As stated by the Tenth Circuit, 'the federal agency must possess actual power to control the non-federal activity.' Sierra Club v. Hodel, 848 F.2d 1068, 1089 (10th Cir. 1988).''); *Save Barton Creek Association* v. *Federal Highway Administration*, 950 F.2d 1129, 1134–35 (5th Cir.), *cert. denied*, 505 U.S. 1220 (1992). Indeed, in one recent case, *Riverfront Garden District Association, Inc.* v. *City of New Orleans*, 2000 WL 1789952 (E.D. La. Dec. 6, 2000), although the Federal Highway Administration paid $15,500,000 of the $88,000,000 cost of the subject project, the Court nonetheless concluded,

> While the amount of federal money is not insignificant, the Fifth Circuit's focus on the ability to influence or control the outcome in material respects in determining whether a major federal action exists convinces this Court that the [project] is not a ''major federal action.'' * * * The federal government could not exercise discretion and control over the design, location or choice of alternatives for the nonfederally funded portions.

p. 6.

As noted above, SBA does not provide loan proceeds directly to borrowers. It provides guaranties to lenders, in order to encourage them to provide loans to small businesses. Proceeds from these loans are used by the borrowing businesses for working capital, to purchase inventory, machinery, or equipment, or to purchase real estate for use in the business or fund the cost of business expansion. And, regardless of how the loan proceeds are used by borrowers benefiting from SBA's small business loan assistance programs, the amount of the federal guaranteed-loan remains relatively low, as already noted, averaging only approximately $237,907 in amount. Accordingly, SBA has concluded that the size of the guaranties which it extends (or which are placed on loans by lenders authorized to do so without prior SBA consent) are not of sufficient magnitude to constitute major Federal actions under NEPA.

Even more significant, however, is the clear and irrefutable fact that SBA does not have control over the business activities of the private borrower, has no responsibility for the borrower's business activities, and has no authority over the outcome of the borrower's efforts. Thus, SBA borrowers approach lenders with business plans which they have formulated without SBA direction; they have chosen, or choose, the location of their businesses without directives from SBA; SBA does not direct or even supervise the efforts of borrowers to operate, modify, or expand their businesses; SBA has no role whatsoever in the day-to-day activities of the borrowers; and SBA does not control a borrower's ability to succeed in its business activities. Thus, SBA has concluded that the absence of a significant degree of Agency involvement with, or control over, borrowers' projects compels a determination that SBA's role with regard to those projects does not constitute a ''major Federal action'' for purposes of NEPA.

Given the relatively small magnitude of the dollar amount of SBA-guaranteed loan funds received by individual borrowers, and in light of the fact that SBA does not have a significant degree of involvement with, or control over, the projects of the borrowers, it is quite appropriate that SBA's actions with regard to any particular loan should not be deemed major Federal actions for purposes of NEPA, and that SBA should not be subject to the requirements of NEPA in connection with individual loans made in connection with its small business loan assistance programs. As has been observed by the District Court for the Southern District of New York, ''* * * it would make no sense to require federal agencies to assess the environmental impact of private actions over which they have no control, solely on the basis of the incidental effects of federal action on the private action.'' *Landmark West!* v. *United States Postal Service,* 840 F. Supp. 994, 1009 (S.D.N.Y. 1993), *aff'd,* 41 F.3d 1500 (2d Cir. 1994) (Table). Further, as noted by the Fourth Circuit in *Sugarloaf Citizens Association,*

> Only proposals for a ''major'' federal action * * * require review by an agency under NEPA. ''Requiring an EIS for anything less would needlessly hinder the Government's ability to carry on its myriad programs and responsibilities in which it assists, informs, monitors, and reacts to activities of individuals, organizations, and states, but in which Government plays an insubstantial role.'' *NAACP* v. *Medical Center, Inc.,* 584 F.2d 619, 634 (3d Cir. 1978).

959 F.2d at 512. Finally, the observation of the Court in Township of Ridley is of particular significance:

> In sum, ''major'' is a term of reasonable connotation, and serves to differentiate between projects which do not involve sufficiently serious effects to justify the costs of completing an impact statement, and those projects with potential effects which appear to offset the costs in time and resources of preparing a statement. 421 F. Supp. at 446.

For loans made under the Preferred Lender (''PL'') or Premier Certified Lender (PCL) Programs, there is an additional reason that such loans would not come within the purview of NEPA. Under the PL Program, pursuant to the Small Business Act, SBA delegates responsibility to experienced and qualified lenders (generally larger lending institutions) to issue an SBA guaranty on a loan without prior approval by SBA. Under Section 7(a)(2)(C) of the Small Business Act, 15 U.S.C. 636(a)(2)(C), Congress has defined the PL Program as a ''program established by the Administrator * * * under which a written agreement between the lender and the Administration delegates to the lender * * * complete authority to make and close guaranteed loans with a guaranty from the Administration without obtaining the prior specific approval of the Administration * * *'' (emphasis added). PL Program lenders, thus, have delegated authority to make SBA-guaranteed loans without any approval from SBA.

Under the PCL Program, pursuant to the Small Business Investment Act of 1958, as amended, SBA delegates the responsibility to experienced and qualified CDCs to issue an SBA guaranty on a loan without prior approval by SBA. 15 U.S.C. 697e. As to the PCL Program, Congress has mandated that guaranteed loans made by PCLs shall not include SBA ''review of the decisions by the lender involving creditworthiness, loan closing, or compliance with legal requirements imposed by law or regulation.'' 15 U.S.C. 697e.

Thus, the guaranteed loans made under SBA's PL and PCL Programs are extended without prior SBA review or consent. Those guaranteed loans involve decisions by private sector borrowers to apply for guaranteed loans from private commercial lenders, and unilateral determinations by those lenders to loan their own money, subject to an SBA guaranty pertaining to a 7(a) loan or 504 debenture.

The legislative history of NEPA reflects congressional intent that the

statute not apply if ''the existing law applicable to such agency's operations expressly prohibits or makes full compliance with one of the directives impossible.'' H. Conf. Rep. No. 765, 91st Cong., 1st Sess. (1969), reprinted in 1969 U.S.C.C.A.N. 2767, 2770 (as quoted by *Douglas County, Or.* v. *Babbitt,* 48 F.3d 1495, 1502 (9th Cir. 1995), *cert. denied,* 516 U.S. 1042 (1996)). In interpreting this legislative history, the Supreme Court concluded that ''where a clear and unavoidable conflict in statutory authority exists, NEPA must give way.'' *Flint Ridge Dev. Co.* v. *Scenic Rivers Ass'n,* 426 U.S. 776, 791 (1976). Such a conflict exists with respect to the PL and PCL programs. It would not be possible for SBA to perform an environmental assessment or environmental impact statement under NEPA for PL and PCL Program guaranteed loans when Congress has directed that these guaranteed loans are to be made without any prior approval by SBA. SBA has, thus, determined that the statutory authority for these programs constitutes a clear and unavoidable conflict which compels the conclusion that they are not subject to NEPA.

Because of questions as to the possible cumulative impact of SBA's business loan programs upon the environment, SBA has undertaken a PEA to determine what impact, if any, the small business loan assistance programs themselves have on the environment.

Discussion of Alternatives

This Section describes the alternatives considered in revising SBA's NEPA procedures, and provides a basis for the choice of the preferred alternative. The ''No Action Alternative'' is described first. The ''Preferred Alternative'' is then described. Finally, there is a comparison of the environmental and socioeconomic consequences of the No Action Alternative compared to the Preferred Alternative.

No Action Alternative

Under the ''No Action Alternative'', SBA would retain its existing NEPA procedures. Under SBA's SOP 90–57, all SBA-guaranteed loans made under the 7(a) Program, and local and community development loans and guaranties (which would include guaranteed loans made under the 504 Program), are categorically excluded from NEPA, except that an environmental assessment may be required in those cases where guaranteed loan proceeds in excess of $300,000 are used for construction under the 7(a) and 504 Programs, and where proceeds in excess of $300,000 are used for the purchase of land under the 7(a) Program. SOP 90–57, ¶¶ 7h, 7k. As discussed above, SOP 90–57 also provides that an environmental assessment may be required if ''the loan is in response to a government regulation which pertains to the environmental impact of the business operation,'' but SBA has not provided such financing for many years. Thus, under the ''No Action Alternative,'' SBA would, when appropriate, perform environmental assessments on individual guaranties of loans or debentures meeting one of these $300,000 thresholds.

Preferred Alternative

Under the Preferred Alternative, SBA would not perform a NEPA review on individual guaranteed loans made under the 7(a) and 504 Programs for the reasons discussed earlier, but would undertake programmatic reviews as deemed appropriate to determine the cumulative impacts of these programs. In addition, as part of its programmatic responsibilities, SBA would make information resources available to participants in these programs regarding matters of environmental concern. SBA would host this ''Environmental Classroom'' on its website and would provide information on such environmental topics as ''Smart Growth,'' decreasing pollution in the workplace, environmental regulatory compliance and permitting assistance, Superfund, Brownfields and environmental audits.

Environmental/Socio-Economic Consequences

This section discusses the environmental and socio-economic consequences of the No-Action Alternative as compared to the Preferred Alternative. The discussion of environmental and socio-economic consequences is necessarily generalized given the programmatic nature of these alternatives.

As discussed above, SBA has concluded that individual loans made under SBA's small business loan assistance programs are not major federal actions that are subject to NEPA. Under the No-Action Alternative, environmental assessments may be required if proceeds in excess of $300,000 from a guaranteed loan are used for construction under the 7(a) and 504 Programs, or the purchase of land under the 7(a) Program. However, given the Agency's conclusions that the effects of guaranteed business loans over $300,000 do not have a significant impact on the environment, set forth in SBA's PEA, requiring individual environmental assessments of loans in excess of $300,000 that involve construction or the purchase of land would not, therefore, likely result in significantly greater protection of the environment.

As discussed above, Congress has directed that certain lenders have considerable independence to approve loan guaranties with virtually no involvement from SBA. Lender approval of loans without significant SBA involvement accounts for over sixty percent of all 7(a) and 504 loans. Moreover, of the limited number of guaranties that are actually approved by SBA, it is of paramount importance that determinations regarding the issuance of guaranteed loans be accomplished as quickly as possible given the needs of the small businesses applying for the loans and the timeframes for loan approval sought by our participating lenders. Further, although SBA assists a large number of small businesses, including firms owned by minorities, women and veterans, the average loan size is under $240,000, and more than three quarters of all loans are under $300,000.

The Preferred Alternative will most effectively facilitate the prompt issuance of loans, while continuing to ensure that the business loan programs do not negatively impact the environment. Under the Preferred Alternative, SBA would perform programmatic assessments of the effects of the small business loan assistance programs as deemed appropriate. Through the performance of programmatic assessments, SBA could effectively monitor the overall cumulative effects of the small business loan assistance programs. In addition, under the Preferred Alternative, SBA would provide through its website an environmental classroom, which will post relevant information for program participants in order to promote awareness of matters of environmental concern.

On balance, therefore, SBA believes that the consideration of the comparative effects of these alternatives favors the adoption of the Preferred Alternative.

Proposed Revision of NEPA Procedures for the 7(A) and 504 Programs

As discussed above, SBA has determined that there is no legal requirement to perform a NEPA analysis on individual loan guarantees under the 7(a) and 504 Programs. SBA has also conducted a PEA, which has found that the 7(a) and 504 Programs, as a whole, do not have a significant impact on the environment. Therefore, SBA proposes

to revise the SOP provisions relating to these programs, Paragraphs 7h and 7k of SOP 90–57, as set forth below.

As a housekeeping matter, SBA is consolidating NEPA procedures for the 7(a) and 504 Programs into Paragraph 7k of SOP 90–57. Therefore, the title of Paragraph 7h will be revised so that it does not apply to 7(a) loans or 504 loans.

In addition, SBA is revising its NEPA procedures for loans made under the 7(a) and 504 Programs to clarify that a loan-by-loan analysis is not required, and that programmatic assessments will be performed when deemed appropriate. Therefore, SBA proposes to revise paragraph 7k to read as follows:

k. *Loans made under the 7(a) and 504 Programs*

SBA will conduct programmatic analyses of the 7(a) and 504 Programs when it deems appropriate, but the analysis of individual loans is not required. A programmatic analysis may be appropriate when: (1) SBA proposes a major programmatic change to either the 7(a) or the 504 Programs, and there are substantiated indications that either such Program, as changed, would have a significant impact upon the environment; or (2) an outside party brings to SBA's attention specific factual evidence that the 7(a) or 504 Program is having a significant impact upon the environment. SBA will also provide information through its Web site regarding matters of environmental concern to participants in these programs.

(Authority: 40 CFR 1507.3)

Ronald E. Bew,

Associate Deputy Administrator.

[FR Doc. 04–18086 Filed 8–5–04; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Proposed New Routine Use Disclosure

AGENCY: Social Security Administration (SSA).

ACTION: Proposed new routine use disclosure.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), we are issuing public notice of our intent to establish a new routine use disclosure applicable to the SSA system of records entitled, *Master Files of Social Security Number (SSN) Holders and SSN Applications, 60–0058.* The proposed new routine use will allow SSA to verify the name, date of birth and the last four digits of the SSN for state voter registration purposes under section 205(r)(8) of the Social Security Act, as amended by section 303 of the Help America Vote Act (HAVA), Public Law (Pub. L.) 107–252. The proposed new routine use disclosure is discussed in the Supplementary Information section below. We invite public comment on this proposal.

DATES: We filed a report of the proposed new routine use disclosure with the Chairman of the Senate Committee on Governmental Affairs, the Chairman of the House Government Reform Committee, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on July 28, 2004. The proposed routine use will become effective on September 5, 2004, unless we receive comments warranting it not to become effective.

ADDRESSES: Interested individuals may comment on this publication by writing to the Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Carlotta B. Davis, Social Insurance Specialist, Disclosure Policy Team, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, in Room 3–C–2 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, e-mail address at *Carlotta.Davis@ssa.gov* or by telephone at (410) 965–8028.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed New Routine Use Disclosure

A. General Background

On October 29, 2002, the President signed into law Public Law 107–252, the Help America Vote Act (HAVA) of 2002. Section 303 of HAVA amended section 205(r) of the Social Security Act by adding paragraph (8) which requires the Commissioner of Social Security to enter into agreements with the states and designated territories to assist in verifying information in the voter registration process for elections for federal office. More specifically, this provision of law requires the Commissioner of Social Security to enter into agreement with state officials for the purpose of verifying the following information about voter registrant applicants for whom the last four digits of a SSN are provided instead of a driver's license number:

- Name (including the first name and any family forename or surname),
- Date of birth (DOB) (including the month, day and year), and
- The last four digits of the Social Security number (SSN)).

The verification process will involve the American Association of Motor Vehicle Administrators (AAMVA), State motor vehicle agencies (MVA), and SSA. Under this process, State MVAs will input voter registrants' names, dates of birth, and the last four digits of their SSNs into AAMVA's AAMVAnet system, which in turn will forward the information to SSA for matching with SSA records. After matching the input data with data in SSA records, SSA will return one response code indicating results of the verification, including whether death information is recorded in SSA records, as appropriate.

B. Proposed New Routine Use Disclosure of Data Maintained in the Master Files of Social Security Number (SSN) Holders and SSN Applications, 60–0058

To implement the provisions of section 205(r)(8) of the Social Security Act (42 U.S.C. 405(r)(8)), SSA must comply with the Privacy Act (5 U.S.C. 552a(b)(3)). To this end, we are proposing to establish the following new routine use providing for disclosure:

To State and Territory Motor Vehicle Administration officials (or agents or contractors on their behalf) and State and Territory chief election officials to verify the accuracy of information provided by the State agency with respect to applications for voter registration, for whom the last four digits of the Social Security number are provided instead of a driver's license number.

The proposed new routine use will appear as routine use numbered 41 in the *Master Files of Social Security Number (SSN) Holders and SSN Applications, 60–0058* system of records. We are not republishing the notice of this system of records in its entirety at this time. This system of records was last published in its entirety in the **Federal Register** at 63 F.R. 14165, 03/24/98.

II. Compatibility of Proposed Routine Use

The Privacy Act (5 U.S.C. 552a(a)(7) and (b)(3)) and SSA's disclosure regulation (20 CFR part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. Section 401.150(c) of the regulations permits us to disclose information under a routine use where necessary to carry out SSA programs or assist other