

RURAL TELEPHONE PROGRAM BULLETINS

- 344-2; January 1977 (Replacing January 1975). List of Materials acceptable to REA for use in the construction of borrowers' telephone systems.
- 345-26; July 1976 (Replacing September 1974). REA specification for buried plant housings.
- 345-45; October 1976 (Replacing December 1964). REA specification for field trials of telephone construction materials and equipment.
- 345-50; May 1975 (Supplement). A revised page 13 to the bulletin dated September 1976 providing new requirements to cover low density trunk carrier equipment.
- 345-52; September 1975 (Supplement). A supplement dated January 1977 concerning station installation on mobile homes or trailers, and the accessibility of pay stations to the handicapped.
- 345-67; November 1976 (Replacing December 1972). REA specification for filled telephone cables.
- 345-73; November 1976 (New).... REA specification for all-weather pressure sensitive vinyl tape.
- 345-74; February 1977 (New).... REA specification for type A telephone sets.
- 345-75; February 1977 (New).... REA specification for electronic trunk circuits.
- 380-1; July 1956 (Supplement).... A supplement dated January 1977 modifying REA requirements concerning title insurance.

Dated: May 19, 1977.

DAVID A. HAMIL,
Administrator.

[FR Doc. 77-1514 Filed 5-26-77; 8:45 am]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER D—EXPORTATION AND IMPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Commuted Traveltime Allowances

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends administrative instructions prescribing commuted traveltime. This amendment establishes commuted traveltime periods as nearly as may be practicable to cover the time necessarily spent in reporting to and returning from the place at which an employee of Veterinary Services performs overtime or holiday duty when such travel is performed solely on account of overtime or holiday duty. Such establishment depends upon facts within the knowledge of the Animal and Plant Health Inspection Service.

EFFECTIVE DATE: May 27, 1977.

FOR FURTHER INFORMATION CONTACT:

Dr. E. R. Mackery, USDA, APHIS, Veterinary Service, Room 868, Federal Building, Hyattsville, Md. 20782 (301-436-8685).

Therefore, pursuant to the authority conferred upon the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service by § 97.1 of the regulations concerning overtime services relating to imports and exports (9 CFR 97.1), administrative instructions 9 CFR 97.2 (1976 ed.), as amended January 21, 1976 (41 FR 3074), April 16, 1976 (41 FR 16145), July 23, 1976 (41 FR 30321), November 30, 1976 (41 FR 52433),

and April 26, 1977 (42 FR 21269), prescribing the commuted traveltime that shall be included in each period of overtime or holiday duty, are hereby amended by adding to the respective list therein as follows:

§ 97.2 Administrative instructions prescribing the commuted traveltime.

OUTSIDE METROPOLITAN AREA

TWO HOURS

Add: Oakfield, Wisconsin (served from Madison or Markesan, Wisconsin).

THREE HOURS

Add: Harrisburg, Pennsylvania (served from Shippensburg, Pennsylvania). (64 Stat. 561 (7 U.S.C. 2260).)

It is to the benefit of the public that these instructions be made effective at the earliest practicable date. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to 5 U.S.C., it is found upon good cause that notice and public procedure on this instruction are impracticable, unnecessary, and contrary to the public interest and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 19th day of May 1977.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

PIERRE A. CHALOUX,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc. 77-14910 Filed 5-26-77; 8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER A—ORGANIZATION, PROCEDURES AND RULES OF PRACTICE

PART O—ORGANIZATION

Honolulu, Hawaii Field Station; Change of Address

AGENCY: Federal Trade Commission.

ACTION: Amendment of § 0.18(b) (9).

SUMMARY: The address of the Commission's Honolulu, Hawaii, field station set out in § 0.18(b) (9) is changed to Room 6324, 300 Ala Moana, Honolulu, HI 96850.

DATE: Effective May 4, 1977.

FOR FURTHER INFORMATION CONTACT:

Joseph N. Kuzew, Chief, Rules and Publications Branch, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, D.C. 20580 (202-724-1185).

By direction of the Commission.

JOHN P. DUGAN,
Acting Secretary.

[FR Doc. 77-15205 Filed 5-26-77; 8:45 am]

[Docket C-2885]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Sears, Roebuck and Co.

AGENCY: Federal Trade Commission.

ACTION: Order to cease and desist.

SUMMARY: This consent order, among other things, requires a Chicago, Ill., department store chain, in its capacity of shopping center developer and/or major tenant, to cease entering into and enforcing agreements which exclude particular classes of occupants; control tenants' advertising, goods and prices; or otherwise restrict competitive trade. Additionally, to ensure compliance with the terms of the order, respondent is prohibited from using the same officers and employees in its separate capacities as tenant or shopping center developer.

DATES: Complaint and order issued April 20, 1977.

FOR FURTHER INFORMATION CONTACT:

Michael J. Vitale, Director, Washington Regional Office, Federal Trade Commission, 600-C Gelman Bldg., 2120 L St., NW., Washington, D.C. 20017, 202-254-7700.

SUPPLEMENTARY INFORMATION: In the Matter of Sears, Roebuck and Co., a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR 13, are as follows:

Subpart-Combining or Conspiring: § 13.388 To control allocation and solicitation of customers; § 13.395 To control

marketing practices and conditions; § 13.405 To discriminate unfairly or restrictively in general; § 13.410 To eliminate competition in conspirators' goods; § 13.430 To enhance, maintain or unify prices; § 13.450 To limit distribution or dealing to regular, established or acceptable channels or classes; § 13.470 To restrain or monopolize trade. Subpart-Cutting off Access to Customers or Market; § 13.560 Interfering with distributive outlets. Subpart-Interfering with Competitors or their Goods; § 13.1080 Interfering with competitors or their goods.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719 as amended; 15 U.S.C. 45.)

The order to cease and desist, including further order requiring report of compliance therewith, and the dissenting statement of Commissioner Clanton, is as follows:

DISSENTING STATEMENT OF COMMISSIONER CLANTON

I continue to adhere to my belief that the order, in its present form, should be rejected. Paragraph III E.5.(d) permits Sears to enter into agreements with shopping center developers that inter alia designate the layout of a shopping center, including "the usage by square footage of leasable floor area * * * of each type of merchandise or service to be handled or offered for sale for which the developer will use his best efforts to obtain tenants * * *." This exemption from the proscriptions of the order comes perilously close to conferring the kind of prior approval rights which the Commission struck down by its decision in *The Matter of Tysons Corner Regional Shopping Center et al.*, 85 F.T.C. 970 (1975). While not authorizing the exclusion of identified prospective tenants, paragraph III E.5.(d) may achieve a similar effect by enabling Sears to exercise veto power over various types of retail product lines and services (and thereby, perhaps, excluding certain classes of retailers) through the designation of allowable floor space. As the Commission noted in *Tysons Corner*:

It is almost self-evident, and the administrative law judge so found, that floor space is a crucial element in the ability of a store to compete (citation omitted). The inability to expand beyond a certain size can effectively preclude a retailer from offering a particular product line or services that would render it a more viable competitor for consumers' patronage. (Id. at 1013).

The interests of a tenant in the viability of a shopping center can be met, as the Commission pointed out in *Tysons Corner*, by spelling out in lease agreements "specific and legitimate considerations which a tenant may insist that developers consider in admitting new entrants, without creating the massive potential for price-fixing and anti-competitive exclusionary activity inherent in agreements conferring blanket approval rights * * *." Id. at 1012. (Footnote omitted). The Commission there distinguished between lease provisions giving a tenant broad rights of prior approval over other prospective entrants and those provisions setting forth well-defined entry criteria that are unlikely to constitute a cover for price-fixing and other price-controlling activities. In the latter situation, the burden would be on the tenant to demonstrate that the developer failed to give proper consideration to the relevant standards in the lease, a showing the Commission observed as "unlikely to be made or ever attempted if

pricing policy is the main reason for the objection to the new competitor." Id. at 1018. By contrast, the Sears order permits major tenant participation in the design and layout of shopping centers in a way that renders effective enforcement of the order difficult if not impossible.

To the extent that appropriate consideration may be given to the economic viability of a proposed shopping center, the pending order contains several provisions outlining permissible lease arrangements similar to those incorporated in the *Tysons Corner* order; in fact, the order here would go further by permitting Sears to spell out in its lease agreement with a developer "reasonable categories of retailers" from which the developer would select tenants for location within the immediate proximity (150 feet) of Sears' store. (Paragraph III E.3.). To go beyond that, as provided in paragraph III E.5.(d), creates an unnecessary risk of anti-competitive exclusionary conduct.

For the above reasons, the order should not be approved.

ORDER

I

For the purpose of this Order the following definitions shall apply:

(a) The term "Respondent" refers to Sears, Roebuck and Co., its operating divisions, its subsidiaries including but not limited to Homart Development Co., and their respective officers, agents, representatives, or employees.

(b) The term "shopping center" refers to a group of retail outlets in the United States of America planned, developed and managed as a unit containing (1) a total floor area designed for retail occupancy of 200,000 square feet or more, of which at least 50,000 square feet are for occupancy by tenants other than Respondent, (2) at least two tenants other than Respondent, (3) at least one major tenant other than Respondent, and (4) on-site parking.

(c) The term "tenant" refers to any retail occupant or potential occupant of floor area in a shopping center, whether as a lessee or owner of such space, but the term does not refer to an occupant of space within the store or other area occupied by Respondent, which occupant operates as a department for Respondent pursuant to a license from Respondent.

(d) The term "major tenant" refers to a tenant providing primary drawing power in a shopping center. A tenant which occupies at least 50,000 square feet of floor area will be deemed to provide primary drawing power.

(e) The term "retailer" refers to a tenant which sells merchandise or services to the consuming public.

(f) The terms "range of prices," "range of fashions" and "range of quality" refer to, "popular priced," "medium priced," and "high priced;" "low popular fashion," and "high fashion;" "low or popular quality," "medium quality" and "high quality," which identify a tenant as a member of a class of merchants which sell their merchandise within a generally identifiable range of prices.

(g) The term "radius restriction" refers to a limitation which precludes a tenant, directly or indirectly, from engaging in, owning, or operating any busi-

ness within a specified radius or distance from a shopping center.

(h) The term "developer" means any business entity which plans, constructs, or operates a shopping center and negotiates and executes lease agreements with tenants.

(i) The term "shopping center joint venturer" or "joint venturer" means any shopping center developer who enters into an agreement with Sears, Roebuck and Co. through its subsidiary Homart Development Co. to develop, construct, or operate a shopping center.

(j) The term "Agreement" refers to any Operating Agreement, Reciprocal Easement Agreement (R.E.A.), lease, or other contract of any kind, oral or written, which sets forth a relationship between the parties relating to the occupancy of floor area in a shopping center.

II

A. It is ordered That respondent Sears, Roebuck and Co., a corporation, its successors and assigns, and its officers, and Respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in its capacity as a tenant in a shopping center, cease and desist from making, carrying out or enforcing, directly or indirectly, an Agreement or provision of an Agreement, which:

1. Prohibits the admission into a shopping center of any particular tenant or class of tenants, including, for purposes of illustration:
 - (a) Other department stores,
 - (b) Junior department stores,
 - (c) Discount stores, or
 - (d) Variety stores;
2. Grants Respondent the right to approve or disapprove the entry into a shopping center of any other tenant;
3. Provides for the formulation or circulation of lists of approved tenants;
4. Grants Respondent the right to approve or disapprove the amount of floor space that any other tenant may occupy or use in a shopping center;
5. Specifies that any tenant in a shopping center shall or shall not sell its merchandise or services at any particular price, or within any range of prices, or within any range of fashions, or within any range of quality, when such descriptions identify tenants as members of a class of merchants which sell their merchandise within a generally identifiable range of prices;
6. Limits discount advertising, discount pricing, or discount selling;
7. Grants Respondent the right to approve or disapprove the amount of floor space that any other tenant may choose to allocate for specific use in a shopping center;
8. Limits the types of merchandise or services which any named tenant other than Respondent in a shopping center may offer for sale;
9. Limits other tenants in a shopping center from conducting bona fide sales;
10. Prescribes the minimum hours of business operation of other tenants in a shopping center;

11. Grants Respondent the right to approve or disapprove the location in a shopping center of any other tenant;

12. Provides for radius restrictions upon any tenant in a shopping center; or

13. Authorizes a major tenant to limit the types of merchandise or services which Respondent may offer for sale in a shopping center.

B. *It is further ordered* That Respondent, in its capacity as a tenant in a shopping center, shall not enter into or carry out any conspiracy, combination, or arrangement with any other tenant or developer to exclude any tenant from a shopping center or to achieve the results which Respondent is prohibited from undertaking by Paragraph IIA of this order.

III

A. *It is further ordered* That Respondent, in its capacity as a shopping center developer, cease and desist from making, carrying out, or enforcing, directly or indirectly, an Agreement or provision of an Agreement, which:

1. Specifies that any tenant in any shopping center shall or shall not sell merchandise or services at any price, or within any range of prices, or within any range of fashions, or within any range of quality, when such descriptions identify tenants as members of a class of merchants which sell their merchandise within a generally identifiable range of prices;

2. Specifies that any tenant in any shopping center shall not be a discount or sell merchandise or services at discount prices;

3. Specifies that any tenant in any shopping center shall be subject to a radius restriction; or

4. Specifically conditions the approval of tenant entry into one of its shopping centers upon the tenant's agreement to occupy space in another of its shopping centers.

B. *It is further ordered* That Respondent, in its capacity as a shopping center developer, cease and desist from entering into any Agreement or provision of an Agreement with any tenant that said tenant may:

1. Specify or control or may require Respondent to specify or control prices, price ranges, fashion ranges, quality ranges, which identify tenants as members of a class of merchants which sell their merchandise within a generally identifiable range of prices; or

2. Control or may require Respondent to control discounting by any other retailer; or

3. Exclude any retailer from any of Respondent's shopping centers by reason of such retailer's discount selling or discount advertising.

C. *It is further ordered* That Respondent cease and desist from using the same officers or other employees in Respondent's separate capacities as a tenant in or as a developer of shopping centers.

D. *It is further ordered* That this Order shall not prohibit Respondent, in its capacity as a tenant in a shopping center, from including a provision in an

Agreement which identifies in designated buildings Respondent and those other major tenants which enter into such an Agreement.

E. *It is further ordered* That this Order shall not prohibit Respondent, in its capacity as a tenant in a shopping center, from negotiating to include, including, carrying out or enforcing an Agreement or provision in any Agreement which:

1. Requires that in regard to the selection of other tenants in the shopping center by the joint venturer or developer the following objective shall be considered—maintaining a balanced and diversified grouping of financially sound retail stores, merchandise and services;

2. Prohibits occupancy of space in a shopping center by clearly objectionable types of tenants, including, for purposes of illustration, establishments selling or exhibiting pornographic materials, massage parlors, and body and fender shops;

3. Permits Respondent to establish reasonable categories of retailers from which the developer or the landlord may select tenants to be located in the area immediately proximate to Respondent's store; provided that such categories shall not include specification of (a) price ranges, (b) price lines, (c) trade names, (d) store names, (e) trademarks, brands or lines of merchandise of retailers, or (f) identity of particular retailers, including the listing of particular retailers as examples of a category; and further, provided that such area shall not exceed 150 lineal feet on each level of the center;

4. Requires that reasonable standards of appearance, signs, maintenance and housekeeping be maintained in a shopping center;

5. Establishes a layout of a shopping center which layout may designate: (a) Respondent's store and stores of other major tenants, (b) the location, size and height of all structures (including any structure that is to be occupied by only one tenant) but not the amount of floor area that any other tenant may occupy in the shopping center, (c) the use of all structures of a non-merchandising nature, (d) the usage by square footage of leasable floor area in the shopping center (excluding floor area occupied by major tenants) of each type of merchandise or service to be handled or offered for sale, for which the developer will use his best efforts to obtain tenants, and (e) parking areas, roadways, utilities, entrances, exits, walkways, malls, landscaped areas and other common areas, and (f) expansion areas and may within such areas establish a layout incorporating items (a) through (e) of this subsection 5; or

6. Requires that any expansion of the shopping center not provided for in the initial layout:

(a) Shall not interfere with efficient automobile and pedestrian traffic flow into and out of the shopping center and between Respondent's store and perimeter and access roads, parking areas, malls and other common areas of the shopping center;

(b) Shall not interfere with the efficient operation of Respondent's store, including its utilities or its visibility from within the shopping center or from public highways adjacent thereto;

(c) Shall not result in a change of (i) the shopping center's parking ratio, (ii) the location of a number of parking spaces reasonably accessible to Respondent's store determined by the application of such parking ratio to the number of square feet of floor area of Respondent's store, (iii) the entrances and exits to and from Respondent's store and any malls, and (iv) those parking area mall entrances and exits which substantially serve Respondent's store; or

(d) Shall be accomplished only after any and all covenants, obligations and standards (for example, construction, architecture, operation, maintenance, repair, alteration, restoration, parking ratio, and easements) of the shopping center, exclusive of the expansion area (i) shall be made applicable to the expansion area and (ii) shall be made prior in right to any and all mortgages, deeds of trust, liens, encumbrances, and restrictions applicable to the expansion area, and (iii) shall be made prior in right to any and all other covenants, obligations and standards applicable to the expansion area.

F. *It is further ordered* That Respondent, in its capacity as a shopping center developer, will within thirty (30) days after service of this order mail a copy of this order and a copy of Letter "A", attached hereto, by registered or certified mail, to all tenants in its Homart shopping centers.

G. *It is further ordered* That Respondent, in its capacity as a shopping center developer, advise the Commission in writing within sixty (60) days after Respondent has knowledge of any occasion that:

1. A tenant disapproves the admission into any of Respondent's shopping centers of any other retailer;

2. A tenant refuses to approve the renewal of another retailer's lease in any of Respondent's shopping centers;

3. A tenant approves the admission of another retailer into any of Respondent's shopping centers subject to conditions imposed by the tenant relating to the pricing, price ranges, fashion ranges, quality ranges, trade names, store names, trademarks, brands or lines of merchandise or the discounting practices or methods of such other retailer; or

4. A tenant enters into an Agreement or provision of an Agreement with Respondent to become a tenant in any of Respondent's shopping centers on condition that Respondent refuse to renew the lease of another retailer.

IV

A. *It is further ordered* That Respondent shall within thirty (30) days after service of this order upon Respondent distribute a copy of this order to each of its operating divisions.

B. *It is further ordered* That Respondent, in its capacity as a tenant, shall within thirty (30) days after service of this order upon Respondent, distribute a copy thereof by registered or certified mail to each major tenant, shopping

center joint venturer and developer in every shopping center in which Respondent is a major tenant.

C. It is further ordered That Respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent or in its subsidiary Homart such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of the order.

D. It is further ordered That Respondent shall within sixty (60) days after service of this order upon Respondent file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Commissioner Dole abstained, not having participated in the decision to provisionally accept this agreement. Commissioner Clanton dissented.

JOHN P. DUGAN,
Acting Secretary.

[FR Doc. 77-15088 Filed 5-26-77; 8:45 am]

Title 17—Commodity and Securities
Exchanges

CHAPTER II—SECURITIES AND
EXCHANGE COMMISSION

[Release No. 34-13565]

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

Uniform Net Capital Rule and Customer
Protection Rule

AGENCY: Securities and Exchange
Commission.

ACTION: Final rules and interpretations.

SUMMARY: These amendments require brokers and dealers to reflect in their capital computations the exposure resulting from certain short security positions, to enable net capital computations to take into account more completely the risks associated with transactions in options and to effect certain technical adjustments to these rules.

The interpretations in this release relate to the definition of the term "bearer form" for purposes of Rule 15c3-1d and the treatment of the consolidated computation of net capital by affiliates and subsidiary corporations and are designed to resolve questions raised by the application of these provisions of the rule to specific factual situations. These amendments and interpretations arise from the Commission's ongoing review of its financial responsibility requirements.

DATE: Effective date: July 15, 1977.

FOR FURTHER INFORMATION CONTACT:

Daniel J. Piliro II, Associate Director,
Division of Market Regulation, Securities
and Exchange Commission, Wash-
ington, D.C. 20549 (202-755-1390).

SUPPLEMENTARY INFORMATION:
The Securities and Exchange Commission announced today the adoption of certain amendments and interpretations

to Rule 15c3-1 (17 CFR 240.15c3-1) ("Rule 15c3-1"), the uniform net capital rule, and Rule 15c3-3 (17 CFR 240.15c3-3) ("Rule 15c3-3"), the customer protection rule. The amendments are essentially those proposed in Securities Exchange Act Release No. 11969 (January 2, 1976) (41 FR 5299 (Feb. 5, 1976)) ("Release No. 11969"), modified in light of suggestions received in response to the Commission's solicitation of public comment upon the proposals. The amendments, which become effective on July 15, 1977, are intended to require brokers and dealers to reflect in their capital computations the exposure resulting from certain short security positions, to enable net capital computations to take into account more completely the risks associated with transactions in options and to effect certain technical adjustments to Rules 15c3-1 and 15c3-3.

In addition, the Commission issued today certain interpretations of Rule 15c3-1 designed to resolve questions raised by the application of certain provisions of the rule to specific factual situations. These interpretations, set forth below, are made with respect to Rule 15c3-1c ("Appendix C") and Rule 15c3-1d ("Appendix D"). Rule 15c3-1c sets forth the requirements which must be met to consolidate in a single net capital computation the assets and liabilities of affiliates in order to obtain the flow-through capital benefits for a parent broker or dealer. The interpretation of Rule 15c3-1c concerns the general applicability of flow-through benefits, the minimum net capital requirement of the consolidated entity and the treatment under Rule 15c3-1(c)(2)(vi) and (f)(3) of consolidated security positions. The interpretation of Rule 15c3-1d clarifies the definition of "bearer form" as used therein with respect to securities collateralizing a secured demand note. The Commission believes that these interpretations are necessary and in the public interest to resolve questions raised by the application of these provisions of the rule to particular factual situations.

BACKGROUND

Section 15(c)(3) of the Securities Exchange Act of 1934 ("the Act") requires the Commission to regulate brokers and dealers respecting, inter alia, the custody, carrying and use of customers' funds and securities, and the maintenance of reserves against customers' deposits or credit balances. In 1972,¹ the Commission, acting under section 15(c)(3), adopted Rule 15c3-3,² a customer protection rule. Rule 15c3-3 obliges brokers and dealers to obtain possession or control over fully paid or excess margin customers' securities and, through the Formula for Determination of Reserve

Requirements of Brokers and Dealers ("the Reserve Formula"),³ requires brokers and dealers to maintain reserves with respect to customers' funds and funds realized through the utilization of customers' securities.

The Securities Acts Amendments of 1975 amended section 15(c)(3)⁴ to require the Commission to adopt minimum financial responsibility standards for all brokers and dealers. In response to this directive, the Commission adopted amendments to Rule 15c3-1 on June 26, 1975.⁵ Rule 15c3-1 requires substantially all brokers and dealers to maintain specified levels of net capital computed in accordance with the rule's provisions, which are intended to provide safeguards with respect to the financial responsibility of brokers and dealers. As amended, Rule 15c3-1 preserves the traditional aggregate indebtedness concept and also provides an alternative capital requirement based on aggregate debit items in the Reserve Formula.

The Commission has determined that amendments to Rule 15c3-1 and the Reserve Formula of Rule 15c3-3 are necessary and appropriate for the protection of investors. First, the recent experience of certain brokers and dealers demonstrates the desirability of reducing the exposure of customers' funds and securities which arises when a broker or dealer regularly maintains for extended periods short security positions in fail to receive or stock loan accounts, as well as in special omnibus accounts established under section 4(b) of Regulation T of the Federal Reserve Board (12 CFR 220.4(b)) or otherwise. Accordingly, in Securities Exchange Act Release No. 11969 (Jan. 2, 1976) ("Release No. 11969") the Commission proposed amendments to Rule 15c3-1 and the Reserve Formula which effectively would require brokers and dealers to reflect such exposure in their computation of net capital or mark to the market these short positions.⁶ Second, experience with the rapidly developing options marketplace suggests the necessity of certain amendments to these rules to reflect more appropriately the risks associated with transactions in options.

Therefore, in Release No. 11969 the Commission proposed to raise to fifty percent the deduction on long positions in listed options not offset by a short position in securities,⁷ and to require recognition in the Reserve Formula of certain methods of financing brokers' and

¹ The Reserve Formula constitutes Exhibit A to Rule 15c3-3, 17 CFR 240.15c3-3a (1976).

² Act of June 4, 1975, Pub. L. No. 94-29, § 11(3), 89 Stat. 126.

³ Securities Exchange Act Release No. 11497 (June 26, 1975), 40 FR 29795 (July 16, 1975).

⁴ Securities Exchange Act Release No. 11969 (Jan. 2, 1976), 41 FR 5299, 5300 (Feb. 5, 1976).

⁵ Id. at 11, 41 FR at 5302.

⁶ Securities Exchange Act Release No. 9856 (Nov. 10, 1972) (37 FR 25224 (Nov. 29, 1972)).

⁷ 17 CFR 240.15c3-3 (1975). Rule 15c3-3 was adopted pursuant to section 15(c)(3) as it existed prior to the Securities Act Amendments of 1975. See 15 U.S.C. 78o(c)(3) (1970), as amended, 15 U.S.C. 78o(c)(3) (Supp. V, 1975).

dealers' margin requirements at the clearing corporation level.⁸ Finally, the need for certain other amendments to Rule 15c3-1 and the Reserve Formula became apparent during efforts on the part of the Commission and self-regulatory organizations to assist brokers and dealers in understanding and implementing Rule 15c3-1. The Commission's response to this need consisted of proposed amendments to Rule 15c3-1(b)(2),⁹ the alternative financial responsibility standard for floor brokers, as well as proposed amendments to the undue concentration provisions of Rule 15c3-1(c)(2)(vi)(M) and (f)(3)(iii)¹⁰ and proposed amendments constituting clarifications of certain other provisions of Rule 15c3-1.¹¹

Generally, public comment concerning these proposals has been favorable. The Commission has determined that it is appropriate to adopt the amendments to Rule 15c3-1 and the Reserve Formula of Rule 15c3-3 in substantially the form proposed in Release No. 11969. However, several thoughtful comments received from the public did suggest the advisability of certain changes to these proposed amendments. Additionally, later amendments to Rule 15c3-1 have rendered obsolete certain of the proposals announced in Release No. 11969, necessitating their withdrawal at this time.

The modifications to the amendments proposed in Release No. 11969 may be summarized as follows:

(1) The Commission has determined not to adopt the amendment to Rule 15c3-1(c)(13) proposed in Release No. 11969. In its original form, Rule 15c3-1(c)(13) provided that, for purposes of the deductions from net worth specified in Rule 15c3-1(c)(2)(x) relative to certain positions in listed options, equity shall be computed by adding the credit balance in an options specialist's account to the current market value of the long positions in the account, and deducting the debit balance and the current market value of the short positions in the account. In Release No. 11969, the Commission proposed an amendment to this provision to clarify that all securities positions (including options positions) in such an account must be haircut pursuant to Rule 15c3-1(c)(2)(vi),

⁸ Id. at 12-15, 41 FR at 5300. Since the issuance of Release No. 11969, the Commission has adopted additional amendments to Rule 15c3-1 which are intended to enable net capital computations to reflect more directly the credit and market risks assumed by brokers and dealers who clear, guarantee, or endorse transactions by specialists in listed options. Securities Exchange Act Release No. 12766 (Sept. 2, 1976), 41 FR 39014 (Sept. 14, 1976) and letters from the Division of Market Regulation to the various options exchanges March 28, 1977 and April 8, 1977. See note 13 infra and accompanying text.

⁹ Release No. 11969, supra note 6, at 7-8, 41 FR at 5300.

¹⁰ Id. at 8-10, 41 FR at 5300.

¹¹ Id. at 10, 41 FR at 5301 (adjustment to net worth for indebtedness collateralized by exempted securities); id. at 10-11, 41 FR at 5301 (definition of "equity").

(c)(2)(x), or Appendix A to the rule, as appropriate.¹² Subsequently, the Commission adopted amendments to Rule 15c3-1(c)(2)(x) which incorporated a definition of "equity" into Rule 15c3-1(c)(2)(x) and deleted Rule 15c3-1(c)(13) thereby rendering the proposed amendment to Rule 15c3-1(c)(13) unnecessary.

(2) With respect to the amendments to the Reserve Formula (Rule 15c3-3a) proposed in Release No. 11969, interested members of the public suggested two modifications which the Commission has determined are appropriate for the protection of investors. First, the amount of restricted letters of credit obtained by a clearing member of Options Clearing Corp. ("OCC") and collateralized by customers' securities will be includable as a credit item only¹³ to the extent of the member's OCC margin requirement. Second, the amount of margin deposited with OCC and represented by a restricted letter of credit collateralized by customers' securities will be includable as a debit item even though the customers' securities are margin securities. Also we have further clarified Note A with respect to an overdraft in any account balance of a broker or dealer.

In all other respects, the Commission has determined to adopt in their original form the amendments to Rule 15c3-1 and the Reserve Formula proposed in Release No. 11969. The full text of the amendments to these rules adopted herein is set forth below.

STATUTORY BASIS, COMPETITIVE CONSIDERATIONS AND EFFECTIVE DATE

The amendments and interpretations set forth below with respect to §§ 240.15c3-1 and 240.15c3-3 in Part 240 of Chapter II of Title 17 of the Code of Federal Regulations, are adopted, effective July 15, 1977, pursuant to the Securities Exchange Act of 1934 and particularly sections 15(c)(3) and 23(a) thereof, 15 U.S.C. 78o(c)(3), w(a). The Commission finds that any burden imposed upon competition by the proposed amendments is necessary and appropriate in furtherance of the purposes of the Act, and particularly to implement the Commission's continuing mandate under section 15(c)(3) thereof, 15 U.S.C. 78o(c)(3), to provide minimum safeguards with respect to the financial responsibility of brokers and dealers.

INTERPRETATIONS OF RULE 15c3-1

The Commission has determined to issue the following interpretations to Rule 15c3-1:

A. Section 240.15c3-1c Consolidated Computations of Net Capital and Aggregate Indebtedness for Certain Subsidiaries and Affiliates (Appendix C to 17 CFR 240.15c3-1). Appendix C (17 CFR 240.15c3-1c) to Rule 15c3-1 sets forth the requirements which must be

met to consolidate in a single net capital computation the assets and liabilities of subsidiaries and affiliates in order to obtain flow-through capital benefits for a parent broker or dealer.

Paragraph (b)(2) of Appendix C provides that a broker or dealer may claim flow-through capital benefits only if it possesses majority ownership and control over its consolidated subsidiary or affiliate, and there exists a satisfactory opinion of counsel essentially stating that at least the portion of the subsidiary's or affiliate's net asset values related to the parent's ownership interest therein may be distributed to the parent (or its SIPC trustee) within thirty days, at the instance of the distributee.

The Division of Market Regulation has received inquiries from certain interested members of the public raising questions of general applicability concerning flow-through benefits, the minimum net capital requirement of the consolidated entity, and the treatment under Rule 15c3-1(c)(2)(vi) and (f)(3) of consolidated securities positions. The following interpretations are intended to respond to these inquiries.

(a) *Flow-through capital benefits.* A subsidiary or affiliate broker or dealer included within a consolidated computation pursuant to Appendix C must comply, in its own right, with all applicable provisions of Rule 15c3-1 as if the consolidation did not exist. For purposes of its computations under the rule, the consolidated subsidiary or affiliate may not derive from such consolidation, directly or indirectly, any decrease in its aggregate indebtedness, increase in its net capital, or decrease in its required minimum net capital.

(b) *Minimum net capital requirement of the consolidated entity.* (1) The minimum dollar net capital requirement of the consolidated entity is determined by adding the amount of net capital required for compliance by each consolidated subsidiary subject to Rule 15c3-1 to the minimum dollar net capital requirement of the parent broker or dealer.

(2) If the parent computes its capital requirement under the alternative net capital requirement set forth in Rule 15c3-1(f), the net capital of the consolidated entity must equal at least the greater of the minimum dollar net capital requirement described in (1) above or 4 percent of the combined aggregate Reserve Formula debit items.

(3) If the parent computes capital under the aggregate indebtedness method set forth in Rule 15c3-1(a), the net capital of the consolidated entity must equal at least the minimum dollar net capital requirement described in (1) above and, in addition, the aggregate indebtedness of the consolidated entity may not exceed 1500 percent of the net capital of the consolidated entity.

(c) *Deductions on consolidated security positions.* For purposes of computing the net capital of the consolidated entity, the parent corporation shall apply the deductions set forth in Rule 15c3-1(c)(2)(vi), (f)(3) and Appendix A to all

¹² Release No. 11969 at 10-11, 41 FR at 5301.

¹³ As proposed, the value of the face amount of the letter of credit might have been considered as includable.

the securities held by the parent and by the subsidiary or affiliate as if all such positions were the positions of the parent. Therefore, deductions applicable to the consolidated positions are those required by the parent's method of computing capital under Rule 15c3-1.

B. Section 240.15c3-1d *Satisfactory Subordination Agreements* (Appendix D to 17 CFR 240.15c3-1). Rule 15c3-1d (c) (4) provides that all securities collateralizing a secured demand note must be in bearer form, or registered in the name of the borrowing broker or dealer, or his nominee or custodian. The Commission wishes to clarify that this term, as used in Rule 15c3-1d(c) (4), possesses no specialized definition; a security is in bearer form for purposes of Appendix D when it runs to bearer according to its terms and not by reason of any endorsement.⁴

TEXT OF AMENDMENTS

Accordingly, 17 CFR Part 240 is amended as follows:

§ 240.15c3-1 Net capital requirements for brokers or dealers.

(b) * * *

(2) A member in good standing of a national securities exchange who acts as a floor broker (and whose activities do not require compliance with other provisions of this rule), may elect to comply, in lieu of the other provisions of this section, with the following financial responsibility standard: The value of the exchange membership of the member (based on the lesser of the most recent sale price or current bid price for an exchange membership) is not less than \$15,000, or an amount equal to the excess of \$15,000 over the value of the exchange membership held by an independent agent in escrow: *Provided*, That the rules of such exchange require that the proceeds from the sale of the exchange membership of the member and the amount held in escrow pursuant to this paragraph shall be subject to the prior claims of the exchange and its clearing corporation and those arising directly from the closing out of contracts entered into on the floor of such exchanges.

(c) * * *

(2) * * *

(iv) * * *

(B) *Certain unsecured and partly secured receivables*. All unsecured advances and loans; deficits in customers' and non-customers' unsecured and partly secured notes; deficits in special omnibus accounts maintained in compliance with the requirements of 12 CFR 220.4(b) of Regulation T under the Securities Exchange Act of 1934, or similar accounts carried on behalf of another broker or dealer, after application of calls for margin, marks to the market or other required deposits which are outstanding 5 business days or less; deficits in cus-

tomers' and non-customers' unsecured and partly secured accounts after application of calls for margin, marks to the market or other required deposits which are outstanding 5 business days or less, except deficits in cash accounts as defined in 12 CFR 220.4(c) of Regulation T under the Securities Exchange Act of 1934 for which not more than one extension respecting a specified securities transaction has been requested and granted, and deducting for securities carried in any of such accounts the percentages specified in paragraphs (c) (2) (vi) or (f) of this section or Appendix (A) (17 CFR 240.15c3-1a); the market value of stock loaned in excess of the value of any collateral received therefor; receivables arising out of free shipments of securities (other than mutual fund redemptions) in excess of \$5,000 per shipment and all free shipments (including mutual fund redemptions) outstanding more than 7 business days; any collateral deficiencies in secured demand notes as defined in Appendix (D) (17 CFR 240.15c3-1d);

(E) *Other deductions*. All other unsecured receivables; all assets doubtful of collection less any reserves established therefor; the amount by which the market value of securities failed to receive outstanding longer than thirty (30) calendar days exceeds the contract value of such fails to receive, and the funds on deposit in a "segregated trust account" in accordance with 17 CFR 270.27d-1 under the Investment Company Act of 1940, but only to the extent that the amount on deposit in such segregated trust account exceeds the amount of liability reserves established and maintained for refunds of charges required by sections 27(d) and 27(f) of the Investment Company Act of 1940: *Provided*, That any amount deposited in the "Special Reserve Bank Account for the Exclusive Benefit of Customers" established pursuant to 17 CFR 240.15c3-3 and clearing deposits shall not be so deducted.

(vi) * * *

(M) *Undue concentration*. In the case of money market instruments or securities of a single class or series of an issuer, including any option written, endorsed or held to purchase or sell securities of such a single class or series of an issuer (other than "exempted securities" and redeemable securities of an investment company registered pursuant to the Investment Company Act of 1940), which are long or short in the proprietary or other accounts of a broker or dealer, including securities which are collateral to secured demand notes defined in Appendix (D) (17 CFR 240.15c3-1d), for more than 11 business days and which have a market value of more than 10 percent of the "net capital" of a broker or dealer before the application of paragraph (c) (2) (vi) of this section or Appendix (A) (17 CFR 240.15c3-1a), there shall be an additional deduction from net worth and/or the Collateral Value for securities collateralizing a se-

cured demand note defined in Appendix (D) (17 CFR 240.15c3-1d), equal to 50 percent of the percentage deduction otherwise provided by this paragraph (c) (2) (vi) of this section or Appendix (A) (17 CFR 240.15c3-1a), on that portion of the securities position in excess of 10 percent of the "net capital" of the broker or dealer before the application of paragraph (c) (2) (vi) of this section and Appendix (A) (17 CFR 240.15c3-1a).

This provision shall apply notwithstanding any long or short position exemption provided for in (I) or (J) of this subdivision (except for long or short position exemptions arising out of the first proviso to paragraph (c) (2) (vi) (J) of this section) and the deduction on any such exempted position shall be 15 percent of that portion of the securities position in excess of 10 percent of net capital before the application of paragraph (c) (2) (vi) of this section and Appendix (A) (17 CFR 240.15c3-1a). *Provided*, That such additional deduction shall be applied in the case of equity securities only on the market value in excess of \$10,000 or the market value of 500 shares, whichever is greater, or \$25,000 in the case of a debt security. *Provided, further*, That any specialist which is subject to a deduction required by this (M), respecting his specialty stock, who can demonstrate to the satisfaction of the Examining Authority for such broker or dealer that there is sufficient liquidity for such specialists' specialty stock and that such deduction need not be applied in the public interest for the protection of investors, may upon a proper showing to such Examining Authority have such undue concentration deduction appropriately decreased, but in no case shall the deduction prescribed in (J) of this subparagraph be reduced. Each such Examining Authority shall make and preserve for a period of not less than 3 years a record of each application granted pursuant to this subdivision, which shall contain a summary of the justification for the granting of the application. *Provided, further*, That until August 1, 1977, this paragraph shall not apply to municipal securities.

(xii) *Deduction from net worth for certain undermargined accounts*. Deducting the amount of cash required in each customer's or non-customer's account to meet the maintenance margin requirements of the Examining Authority for the broker or dealer, after application of calls for margin, marks to the market or other required deposits which are outstanding 5 business days or less.

(xiii) *Deduction from net worth for indebtedness collateralized by exempted securities*. Deducting, at the option of the broker or dealer, in lieu of including such amounts in aggregate indebtedness, 4 percent of the amount of any indebtedness secured by exempted securities or municipal securities if such indebtedness would otherwise be includable in aggregate indebtedness.

(f) * * *

(3) * * *

⁴ Accord, Uniform Commercial Code § 8-102(1) (d). See also id. § 8-310, Comment 1.

(iii) *Undue concentrations.* In the case of money market instruments, or securities of a single class or series of an issuer, including any option written, endorsed or held to purchase or sell securities of such a single class or series of an issuer (other than "exempted securities" and redeemable securities of an investment company registered pursuant to the Investment Company Act of 1940), and securities underwritten (in which case the deduction provided for herein shall be applied after 11 business days) which are long or short in the proprietary or other accounts of a broker or dealer, including securities which are collateral to secured demand notes defined in Appendix (D) (17 CFR 240.15c3-1d), and which have a market value of more than 10 percent of the "net capital" of a broker or dealer before the application of paragraphs (c) (2) (vi) of this section, (f) (3) or Appendix (A) (17 CFR 240.15c3-1a) there shall be an additional deduction from net worth and/or the Collateral Value of securities collateralizing a secured demand note defined in Appendix (D) (17 CFR 240.15c3-1d), equal to 50 percent of the percentage deduction otherwise provided by this section or Appendix (A) (17 CFR 240.15c3-1a) (in the case of securities described in paragraph (f) (3) (i) of this section which receive a 30 percent deduction or securities described in paragraph (f) (3) (ii) of this section the deduction required by this paragraph (f) (3) (iii) of this section shall be 15 percent) on that portion of the securities position in excess of 10 percent of the "net capital" of the broker or dealer before the application of paragraphs (c) (2) (vi), (f) (3) (i) and (ii) of this section and Appendix (A) (17 CFR 240.15c3-1a). This provision shall apply notwithstanding any long or short position exemption provided for in paragraph (c) (2) (vi) (I) or (f) (3) (ii) of this section (except for a long or short position exemption arising out of the first proviso to paragraph (f) (3) (ii) of this section) and the deduction on any such exemption position shall be 15 percent of that portion of the position in excess of 10 percent of net capital before the application of paragraph (c) (2) (vi), paragraphs (f) (3) (i) and (ii) of this section and Appendix (A) (17 CFR 240.15c3-1a).

Provided. That such additional deductions shall be applied in the case of equity securities only on the market value in excess of \$10,000 or the market value of 500 shares, whichever is greater, or \$25,000 in the case of a debt security. *Provided further.* That any specialist who is subject to a deduction required by this paragraph (f) (3) (iii) of this section respecting his specialty stock, who can demonstrate to the satisfaction of the Examining Authority for such broker or dealer that there is sufficient liquidity for such specialist's specialty stock and that such deduction need not be applied in the public interest for the protection of investors may on a proper showing to such Examining Authority have such undue concentration deduction ap-

propriately decreased but in no case shall the deduction prescribed in paragraph (f) (3) (ii) of this section be reduced. Each such Examining Authority shall make and preserve for a period of not less than 3 years a record of each application granted pursuant to this subdivision, which shall contain a summary of the justification for the granting of the application. *Provided further.* That until August 1, 1977, this paragraph shall not apply to municipal securities.

§ 240.15c3-1a Options (Appendix A to 17 CFR 240.15c3-1).

(c) * * *

(8) *Listed Options.* Where a broker or dealer is long listed options and there is no offsetting security position, deducting 50 percent of the market value of any net long positions in options in the same underlying security, with the same exercise price and the same expiration date. Where a broker or dealer has a net short position in an option in the same underlying security, with the same exercise price and the same expiration date and for which the broker or dealer does not have a related position in the underlying security or an option position otherwise provided for in this Appendix (A), the deduction shall be determined as provided in subparagraph (c) (1) or (2) of this Appendix (A).

§ 240.15c3-3a Exhibit A—formula for determination of reserve requirement of brokers and dealers under § 240.15c3-3.

	In dollars—	
	Credits	Debits
1 Free credit balances and other credit balances in customers' security accounts. (See note A.)	XXX	.....
2 Monies borrowed collateralized by securities carried for the account of customers. (See note B.)	XXX	.....
3 Monies payable against customers' securities loaned. (See note C.)	XXX	.....
4 Customers' securities failed to receive. (See note D.)	XXX	.....
5 Credit balances in firm accounts which are attributable to principal sales to customers.	XXX	.....
6 Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days.	XXX	.....
7 Market value of short security count differences over 30 calendar days old.	XXX	.....
8 Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days.	XXX	.....
9 Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the last 40 days.	XXX	.....
10 Debit balances in customers' cash and margin accounts excluding unsecured accounts and accounts doubtful of collection. (See note E.)	XXX	.....
11 Securities borrowed to effectuate short sales by customers and securities borrowed to make delivery on customers' securities failed to deliver.	XXX	.....
12 Failed to deliver of customers' securities not older than 30 calendar days.	XXX	.....

	In dollars—	
	Credits	Debits
13 Margin required and on deposit with the Options Clearing Corp. for all option contracts written or purchased in customer accounts. (See note F.)		XXX
Total credits	
Total debits	
14 Excess of total credits (sum of items 1-9) over total debits (sum of items 10-13) required to be on deposit in the "Reserve Bank Account" (§ 240.15c3-3(e)). If the computation is made monthly as permitted by this section, the deposit shall be not less than 100 pct of the excess of total credits over total debits.		XXX

Note A.—Item 1 shall include all outstanding drafts payable to customers which have been applied against free credit balances or other credit balances and shall also include checks drawn in excess of a bank balance per the records of the broker or dealer.

Note B.—Item 2 shall include the amount of Letters of Credit obtained by a member of Options Clearing Corporation which are collateralized by customers' securities, to the extent of the member's margin requirement at Options Clearing Corp.

Note C.—Item 3 shall include in addition to monies payable against customers' securities loaned the amount by which the market value of securities loaned exceeds the collateral value received from the lending of such securities.

Note D.—Item 4 shall include in addition to customers' securities failed to receive the amount by which the market value of securities failed to receive and outstanding more than thirty (30) calendar days exceeds their contract value.

Note E.—(1) Debit balances in margin accounts shall be reduced by the amount by which a specific security (other than an exempted security) which is collateral for margin accounts exceeds in aggregate value 15 percent of the aggregate value of all securities which collateralize all margin accounts receivable; provided, however, the required reduction shall not be in excess of the amount of the debit balance required to be excluded because of this concentration rule. A specified security is deemed to be collateral for a margin account only to the extent it represents in value not more than 140 percent of the customer debit balance in a margin account.

(2) Debit balances in special omnibus accounts, maintained in compliance with the requirements of section 4(b) of Regulation T under the Act (12 CFR 220.4(b) or similar accounts carried on behalf of another broker or dealer, shall be reduced by any deficits in such accounts (or if a credit, such credit shall be increased) less any calls for margin, marks to the market, or other required deposits which are outstanding 5 business days or less.

(3) Debit balances in customers' cash and margin accounts included in the formula under item 10 shall be reduced by an amount equal to 1 percent of their aggregate value.

Note F.—Item 13 shall include the amount of margin required and on deposit with Options Clearing Corporation to the extent such margin is represented by cash, proprietary qualified securities, and letters of credit collateralized by customers' securities.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

MAY 23, 1977.

[FR Doc. 77-15260 Filed 5-26-77; 8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER A—GENERAL

[Docket No. 76C-0426]

PART 8—COLOR ADDITIVES

PART 9—COLOR CERTIFICATION

D&C Red No. 17; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The agency is confirming the effective date of December 20, 1976, of an order concerning the use of D&C Red No. 17 in externally applied drugs and cosmetics. The Commissioner of Food and Drugs, in response to an objection to the order, is also revising one of the specifications for the certification of D&C Red No. 17.

DATES: Effective date confirmed: December 20, 1976. Revision effective date: May 27, 1977.

FOR FURTHER INFORMATION CONTACT:

Gerard McCowin, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204 (202-472-5740).

SUPPLEMENTARY INFORMATION: An order was published in the FEDERAL REGISTER of November 19, 1976 (41 FR 51005), that added §§ 74.1317 and 74.2317 (21 CFR 74.1317 and 74.2317) (formerly §§ 8.4116 and 8.7179, prior to recodification published in the FEDERAL REGISTER of March 22, 1977 (42 FR 15553)), to provide for safe use of D&C Red No. 17 in externally applied drugs and cosmetics and amended § 81.1 (21 CFR 81.1) (formerly § 8.501) by deleting D&C Red No. 17 from the provisionally listed colors in paragraph (b). The order of November 19, 1976, also amended the identity nomenclature and specifications for the certification of D&C Red No. 17 under § 82.1317 (21 CFR 82.1317) (formerly § 9.162) to reference § 74.1317.

One objection to the order was filed by a co-petitioner for the listing of D&C Red No. 17. A hearing was not requested. The objection concerned the specification in the order (§ 74.1317(b)) that limited matter insoluble in both toluene and water to not more than 0.5 percent. The objection noted that D&C Red No. 17 is an oil soluble, water insoluble color and could not be properly certified under this limitation without including in the specification a description of the procedure needed to solubilize the color. The objection further noted that "what is meant is the dye should be dissolved in toluene and the residue then slurried with water and the resultant insoluble matter be less than 0.5 percent."

The Commissioner agrees that the specification regarding "Matter insoluble in both toluene and water" in § 74.

1317(b) should be clarified. Accordingly, the regulations set forth below add a parenthetical phrase similar to that suggested by the co-petitioner. The Commissioner concludes that there is no need to provide for further public comment on this change in the regulation because it represents an editorial change for clarification rather than a substantive amendment.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376 (b), (c), and (d))) and under authority delegated to the Commissioner (21 CFR 5.1):

1. There being no other objections and no requests for a hearing in response to the order of November 19, 1976, the amendments promulgated thereby became effective on December 20, 1976.

2. Part 74 is amended in the listing in § 74.1317(b) by adding after the specification for "Matter insoluble in both toluene and water" a parenthetical expression; the revised entry in the listing reads as follows:

§ 74.1317 D&C Red No. 17.

(b) Specifications. * * *

Matter insoluble in both toluene and water (color additive mixed in toluene and the resultant residue isolated and mixed with water to obtain the matter insoluble in both toluene and water), not more than 0.5 percent.

Effective dates: (1) This amendment was effective December 20, 1976; (2) The revision to this amendment as set forth above is effective May 27, 1977.

Dated: May 20, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner
for Compliance.

[FR Doc. 77-18094 Filed 5-26-77; 8:45 am]

PART 101—FOOD LABELING

Foods That Are Not Meaningful Sources of Nutrients; Establishment of Effective Date

CROSS REFERENCE: In the FEDERAL REGISTER of March 6, 1974 (39 FR 8621), the Commissioner of FDA proposed to exempt certain foods of negligible nutritional value from the labeling requirements of 21 CFR 1.17 (later recodified as 21 CFR 101.9). An FDA document (FR Doc. 77-14806) in the proposed rules section of this FEDERAL REGISTER terminates this proceeding and establishes an effective date of July 1, 1979 by which these foods must comply with the nutritional labeling requirements in 21 CFR 101.9.

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 77N-0066]

PART 101—FOOD LABELING

Declaration of Amounts of Protein, Fat, and Carbohydrate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Commissioner of Food and Drugs is allowing for the declaration of protein content, carbohydrate content, and fat content in nutrition labeling of foods in terms of "less than one gram" when a serving of a food contains less than 1 gram. The regulation, based on a proposal resulting from petitions to allow exemptions from the complete labeling format, will facilitate labeling of such items by providing for this declaration as a permissible alternative.

EFFECTIVE DATE: June 27, 1977.

FOR FURTHER INFORMATION CONTACT:

Howard Pippin, Bureau of Foods (HFF-312), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204 (202-345-3092).

SUPPLEMENTARY INFORMATION: The Commissioner issued a proposal in the FEDERAL REGISTER of March 6, 1974 (39 FR 8620) to amend § 1.17 (21 CFR 1.17, recodified as § 101.9 in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)) to allow for the declaration of protein content, carbohydrate content, and fat content by the statement "contains less than one gram" whenever such a statement is appropriate.

Eight comments were received in response to the proposal. Three comments did not address the proposal, but commented on other aspects of nutrition labeling. The points raised in the remaining comments and the Commissioner's responses are discussed below:

1. Three comments recommended that the declaration "contains less than one gram" or "less than one gram" be a permissible alternative to the declaration of these constituents to the nearest gram.

The Commissioner advises that the proposal was intended to provide for the declaration of these constituents to the nearest gram or, where appropriate, "less than one gram." The Commissioner is revising the regulation to clearly provide for such declaration as a permissible alternative.

2. One comment said that the wording of labels would appear redundant if, for example, protein were required to be declared, "Protein content: Contains less than one gram." The same comment questioned the necessity of "contains" in the phrase "contains less than one gram."

The Commissioner advises that use of the term "content" is optional. "Contains" is not required for the numerical gram designations, and the Commissioner agrees that it is also unnecessary for the "less than one gram" declaration.

3. One comment questioned the value of attempting to differentiate between 0.5 gram of protein and 0.0 gram because of variation in analytical methodology.

The Commissioner advises that products containing less than 1 gram per serving (portion) of protein, fat, or carbohydrate need only declare "less than

one gram" as indicated in the amendments to § 101.9(c) (4), (5), and (6). Therefore, manufacturers need only be able to distinguish analytically between those products that contain less than 1 gram of protein and those products that contain 1 gram of protein or more.

The issue of labeling increments for calories, protein, fat, and carbohydrates has been discussed in paragraphs 20 and 36 of the preamble to the nutrition labeling regulations published in the FEDERAL REGISTER of March 14, 1973 (38 FR 6951).

The Commissioner has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 403, 701(a), 52 Stat. 1040-1042 as amended, 1047, 1055 (21 U.S.C. 321, 343, 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1), Part 101 is amended in § 101.9 by revising paragraphs (c) (4), (5), and (6) to read as follows:

§ 101.9 Nutrition labeling of food.

(c) * * *

(4) "Protein content" or "Protein": A statement of the number of grams of protein in a serving (portion) expressed to the nearest gram except that if a serving (portion) contains less than one gram, the statement "Contains less than one gram" or "less than one gram" may be used as an alternative. Protein content may be calculated on the basis of the factor of 6.25 times the nitrogen content of the food as determined by the appropriate method of analysis of the Association of Official Analytical Chemists, 12th edition, 1975,¹ except when the official procedure for a specific food requires another factor.

(5) "Carbohydrate content" or "Carbohydrate": A statement of the number of grams of carbohydrate in a serving (portion) expressed to the nearest gram except that if a serving (portion) contains less than one gram, by the statement "Contains less than one gram" or "less than one gram" may be used as an alternative.

(6) "Fat content" or "Fat": A statement of the number of grams of fat in a serving (portion) expressed to the nearest gram, except that if a serving (portion) contains less than one gram, the statement "Contains less than one gram" or "less than one gram" may be used as an alternative. Fatty acid composition, cholesterol content, and sodium content may also be declared in compliance with §§ 101.25 and 105.69 of this chapter.

Effective date: This regulation shall become effective June 27, 1977.

(Secs. 201, 403, 701(a), 52 Stat. 1040-1042 as amended, 1047, 1055 (21 U.S.C. 321, 323, 371(a)).)

Dated: May 18, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner
for Compliance.

NOTE.—Incorporation by reference provisions approved by the Director of the Office of the Federal Register March 11, 1975, and on file in the Federal Register Office library.

[FR Doc. 77-14805 Filed 5-26-77; 8:45 am]

SUBCHAPTER C—DRUGS: GENERAL

[Docket No. 77N-0103]

PART 201—LABELING

Information Commonly Known

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document deletes from the regulations certain prescription drugs that were reviewed in the FDA Drug Efficacy Study and were formerly listed as being exempt from the requirement of "full disclosure" labeling. The agency is taking this action because new information about the directions, hazards, warnings, and use of those drugs may not be commonly known. This final regulation will require that those drugs bear "full disclosure" labeling in their dispensing packages.

EFFECTIVE DATE: November 23, 1977.

FOR FURTHER INFORMATION CONTACT:

Michael C. McGrane, Bureau of Drugs (HFD-30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857 (301-443-5220)

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of January 24, 1975 (40 FR 3783), the Commissioner of Food and Drugs proposed to amend § 201.160 (21 CFR 201.160) by deleting from the list of drugs exempted from the labeling requirements of § 201.100 (c) (1) (i.e., full disclosure information on or within the package from which the drug is dispensed) those drugs for which such exemptions have been superseded by Drug Efficacy Study Implementation (DESI) notices. The Commissioner also proposed that the reference to nitroglycerin in § 201.160(b) specify the sublingual dosage form, which was the intent of the original exemption.

Two comments were received in response to the proposal. A summary of the comments and the Commissioner's conclusions regarding them follows:

1. One manufacturer stated that the DESI notice cited as superseding the exemptions from full disclosure for barbiturates (DESI 793, published in the FEDERAL REGISTER of July 28, 1972 (37 FR 15186)), affected only seven oral or parenteral forms of specified short-to-

intermediate-acting barbiturates, and the manufacturer also stated that there is no DESI notice applicable to the remaining single-entity oral barbiturate preparations such as phenobarbital, the second oldest and most widely used member of its class. The comment further pointed out that the use of phenobarbital not in excess of 100 milligrams per dosage unit is well known and accepted and should not require full disclosure information.

The Commissioner agrees that phenobarbital as a single-entity drug is not covered by any DESI notice. Accordingly, in § 201.160(b) the entry "Barbiturates" will be replaced by the following entries: "Phenobarbital. For oral use, not in excess of 100 milligrams per dosage unit" and "Phenobarbital sodium. For oral use, not in excess of 100 milligrams per dosage unit."

The Commissioner believes, however, that an exemption from "full disclosure" labeling for any prescription drug can no longer be justified. Elsewhere in this issue of the FEDERAL REGISTER he is proposing to revoke the provision in § 201.100(c) (2) of the drug labeling regulations permitting the "full disclosure" labeling to be omitted from the dispensing package of certain prescription drugs for which the directions, hazards, warnings, and use information are commonly known to physicians. That proposal also includes the proposed revocation of § 201.160, which is amended by this final regulation.

2. The other comment stated that the final regulation should allow not less than 6 months from the date of publication for the labeling of affected drug products to be brought into compliance with its requirements.

The Commissioner agrees with this comment. Accordingly, this regulation will be effective on November 23, 1977. After that date, FDA will regard as misbranded prescription drugs that do not carry "full disclosure" labeling, except those prescription drugs listed in § 201.160(b); no person after that date will be permitted to introduce or deliver for introduction into interstate commerce, or to hold for sale after shipment in interstate commerce, any such prescription drug product without "full disclosure" labeling. This prohibition, however, will not apply to any drug product received prior to the effective date by any distributor (other than an own-label distributor) or retailer. The purpose of the prohibition is to prevent the further distribution of such products after the effective date by any person involved in the production of prescription drug products who has responsibility for the content of the labeling.

The requirements thus exempt those who merely distribute or sell products whose labeling is the responsibility of others. It will allow distributors (but not own-label distributors) and retailers to exhaust supplies on hand on the effective date.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 701, 52 Stat. 1050-1053, 1055-1056, as amended (21 U.S.C. 352, 355, 371)) and under authority delegated to the Com-

¹ Copies may be obtained from: Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, D.C. 20044.