

because it serves to relieve a restriction that would otherwise be imposed on affected licensees of the Commission on November 1, 1979.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of title 5 of the United States Code, the following amendment to Title 10 Chapter I, Code of Federal Regulations, Part 73 is published as a document subject to codification.

**§ 73.55 [Amended]**

1. Section 73.55 of 10 CFR Part 73 is amended to change the date of November 1, 1979 to November 1, 1980, in the second to last sentence of the unnumbered prefatory paragraph of this section.

Effective date: November 16, 1979.

(Sec. 1611, Pub. L. 83-703, 68 Stat. 948, Pub. L. 93-377, 88 Stat. 475; Sec. 201, Pub. L. 93-438, 88 Stat. 1242-1243, Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 2201, 5841).)

Dated at Washington, D.C., this 13th day of November 1979.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 79-35619 Filed 11-15-79; 8:45 am]

BILLING CODE 7590-01-M

**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Parts 1, 145, and 147**

**General Regulations Under the Commodity Exchange Act, Freedom of Information Act, and Government in the Sunshine Act; Financial Reporting Requirements for Futures Commission Merchants**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is adopting amendments to its financial reporting requirements for futures commission merchants (FCMs). The amendments to §§ 1.10, 1.12, 1.16, 1.18 and 1.52 of the regulations will allow those FCMs, or applicants therefor, which are registered with the Securities and Exchange Commission ("SEC") as securities brokers or dealers to comply with the Commission's financial reporting requirements by filing copies of the SEC's FOCUS Report, Part II, in

lieu of the Commission's Form 1-FR. The amendments will also allow FCM/broker-dealers to use the FOCUS Report, Part II, when computing adjusted net capital for purposes of the required monthly capital computations. In addition, the Commission is amending its rules under the Freedom of Information Act ("FOIA") (5 U.S.C. 552) concerning those portions of the FOCUS Report, Part II, that generally will not be made public or released. Finally, the Commission is amending its rules under the Government in the Sunshine Act (5 U.S.C. 552b) with respect to closing Commission meetings to the public and withholding from the public certain information concerning the portions of the FOCUS Report, Part II, that generally will not be made public or released.

**EFFECTIVE DATE:** November 16, 1979.

**FOR FURTHER INFORMATION CONTACT:** Daniel A. Driscoll, Chief Accountant, Division of Trading and Markets, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-8955.

**SUPPLEMENTARY INFORMATION:** The Commission adopted new minimum financial requirements on August 29, 1978,<sup>2</sup> which, among other things, amended the reporting requirements for FCMs and changed the criteria used to determine whether an FCM meets the Commission's minimum financial requirements. To implement the provisions of the revised minimum financial regulations, the Commission adopted a revised Form 1-FR, the basic financial reporting form for FCMs, on March 6, 1979.<sup>3</sup>

When the Commission adopted the new minimum financial requirements, it stated that the Commission staff and representatives of the SEC had initiated cooperative efforts in connection with their respective financial regulations to eliminate duplicative financial regulation of FCMs which are also registered brokers or dealers.<sup>4</sup> When the Commission adopted the revised Form 1-FR, it noted that the SEC had proposed for comment<sup>5</sup> amendments to its uniform net capital rule (17 CFR 240.15c3-1). The Commission also stated

<sup>2</sup> The regulations were published on September 8, 1978 at 43 FR 39956.

<sup>3</sup> The revised Form 1-FR was published on March 12, 1979 at 44 FR 13435. At the same time, the Commission amended its regulations under the FOIA and Government in the Sunshine Act to reflect the changes being made in Form 1-FR and to give nonpublic treatment to certain portions thereof.

<sup>4</sup> 43 FR 39956, at 39957-39958 (September 8, 1978). The Commission had also publicly announced this cooperation in its Federal Register releases proposing changes in the minimum financial requirements. 42 FR 27166, at 27168 (May 26, 1977) and 43 FR 15072, at 15076 (April 10, 1978).

<sup>5</sup> 44 FR 1754 (January 8, 1979).

that the SEC amendments, if adopted as proposed, could provide the requisite uniformity to permit the Commission to allow those FCMs which are also registered with the SEC as securities broker-dealers to comply with the Commission's financial reporting requirements by simply filing copies of the SEC's FOCUS report with self-regulatory organizations and the Commission.<sup>6</sup>

On June 5, 1979, the SEC adopted the amendments to its uniform net capital rule in substantially the same form as they were proposed.<sup>7</sup> The effect of the amendments is to conform the SEC's uniform net capital rule to the provisions of the Commission's minimum financial requirements relating to various aspects of the commodities business of an FCM (or applicant therefor) which is also a registered broker or dealer.

The few computational differences that remain between the Commission's minimum financial rules and the SEC's net capital rule impact primarily on those FCM/broker-dealers which are also cash commodity merchants, cooperatives, or manufacturers. Very few FCM/broker-dealers engage in these types of businesses. In the case of each such computational difference of which the Commission is aware, the SEC's net capital treatment is more stringent than that of the Commission. Therefore, an FCM/broker-dealer's adjusted net capital computed pursuant to the Commission's rules would always be the same as or greater than its net capital computed in accordance with the SEC Rule.<sup>8</sup> If an FCM wishes to use the Commission's computational criteria, it must utilize Form 1-FR. If an FCM/broker-dealer chooses to file a copy of its FOCUS Report, Part II, in lieu of Form 1-FR, it must use the SEC's computational criteria when preparing such report.

In addition to adopting the proposed amendments to its uniform net capital rule, the SEC also added on June 5, 1979 another schedule to its FOCUS Report entitled "Schedule of Segregation Requirements and Funds in Segregation."<sup>9</sup> This schedule is identical to the Schedule with the same title

<sup>6</sup> 44 FR 13435, at 13436.

<sup>7</sup> The amended rule was published on June 15, 1979 at 44 FR 34884 and became effective on July 23, 1979.

<sup>8</sup> FCM/broker-dealers should, however, be aware that the SEC's rule sets lower minimum capital requirements for certain classes of broker-dealers than the Commission has set for FCM's. Consequently an FCM broker-dealer could meet the SEC requirements but fail to meet the Commission's minimum capital requirements.

<sup>9</sup> 44 FR 34889 (June 15, 1979). This addition to the FOCUS reporting system was proposed at 44 FR 1759 (January 8, 1979).

<sup>1</sup> Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934. A copy of the FOCUS Report, Part II can be found at 3 Fed. Sec. L. Rep. (CCH) ¶33,928.

contained in Form 1-FR. With this additional Schedule, Part II of the FOCUS Report provides, with one exception, substantively identical information to that provided on Form 1-FR.<sup>10</sup> For those FCM/broker-dealers which carry commodity options accounts for customers, the information set forth in the Schedule in footnote 10 must be provided along with Part II of the FOCUS Report (the required information need not necessarily be furnished in exactly the form set out in footnote 10). All FCM/broker-dealers are reminded of their continuing obligation under § 1.16(c)(5) of the Commission's regulations (17 CFR 1.16(c)(5)) to file the independent accountant's supplemental report on material inadequacies concurrently with the annual audit report.

Consistent with current practice regarding such schedules filed as part of the Form 1-FR, information regarding segregated funds submitted as part of the FOCUS Report, Part II will be treated as public information under the FOIA, and the Government in the Sunshine Act and Commission regulations promulgated thereunder.

At present, the only information included on the Form 1-FR which is not included on the FOCUS Report, Part II is in the schedule set forth in footnote 10.<sup>11</sup>

To take into account the possibility that the Commission might in the future require additional information in Form 1-FR and the SEC did not amend its financial reporting system accordingly, the amended regulations will be worded so that an FCM/broker-dealer will be permitted to file a copy of the FOCUS Report, Part II, in lieu of Form 1-FR, so long as such filing provides the Commission with the same information that would be furnished if a Form 1-FR were to be filed.

<sup>10</sup>The one exception is the "Schedule of Segregation Requirements and Funds in Segregation" which is as follows:

FCM: \_\_\_\_\_ / Firm Employer Id. No. \_\_\_\_\_

**FORM 1-FR.—Schedule of Segregation Requirements and Funds in Segregation as of**

*Commodity Options Accounts*

1. Amount required to be segregated in accordance with Commission regulation 32.6	\$ _____
2. Funds in Segregation:	
A. Cash	\$ _____
B. Securities (at market)	_____
C. Total of A and B	_____
3. Excess funds in segregation (2 minus 1)	\$ _____

<sup>11</sup> There are three other schedules which are part of the FOCUS Report but which have no equivalent in the Form 1-FR. These schedules are discussed below.

**Amendments to Commission Rule 145.5**

The Freedom of Information Act ("FOIA"), 5 U.S.C. 552, basically requires that upon request, the Commission must make its records available to the public unless the records fall within the exemptions set forth in the FOIA. Section 552(b)(4) of the FOIA provides that "trade secrets and commercial or financial information obtained from a person and privileged or confidential" are exempt from mandatory public disclosure. Section 145.5(d)(1)(i) of the Commission's regulations under the FOIA, 17 CFR 145.5(d)(1)(i), provides that certain of the information submitted to the Commission on and with Form 1-FR is to be treated as nonpublic. The Commission is now amending Section 145.5(d)(1)(i) to take account of the change in the regulations which will permit those FCMs, or applicants thereof, which are registered broker-dealers to file copies of the FOCUS Report, Part II.<sup>12</sup>

Under 145.5(d)(1)(i)(C) of the amended rule, the following portions, and related footnote disclosures thereof, of the FOCUS Report, Part II which an FCM/broker-dealer may file in lieu of Form 1-FR pursuant to § 1.10(h) of the Commission's regulations will be treated as nonpublic provided that the procedure set forth in 1.10(g)<sup>13</sup> of the Commission's regulations is followed: the Statement of Income (Loss), the Statement of Changes in Financial Position, the Computation for Determination of Reserve Requirements for Broker-Dealers under [SEC] Rule 15c3-3, the Statement of Ownership Equity and Subordinated Liabilities maturing or proposed to be withdrawn within the next six months and accruals, which have not been deducted in the computation of net capital, and the Recap thereof, the Statement of Changes in Ownership Equity, the Statement of

<sup>12</sup> In certain instances, some of the information on the nonpublic portions of the FOCUS Report, Part II, may also be subject to general protection from public disclosure under Section 8(a) of the Commodity Exchange Act if it "would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." As such, that information would be entitled to be withheld from disclosure under the FOIA pursuant to the exemption for matters specifically exempted from disclosure by a statute which requires withholding from the public. See Section 552(b)(3) of the FOIA, 5 U.S.C. 552(b)(3), and Section 145.5(c) of the Commission's regulations thereunder, 17 CFR 145.5(c).

<sup>13</sup> Section 1.10(g) requires that the other portions of the Form 1-FR be bound separately in order that nonpublic treatment be accorded to the portions listed in Section 145.5(d)(1)(i)(B). Section 1.10(g) is being amended to add a similar requirement regarding nonpublic treatment of the portions of the FOCUS Report, Part II, listed in the text.

Changes in Liabilities Subordinated to the Claims of General Creditors, the Statement of Financial and Operational Data, and the accountant's report on material inadequacies filed under § 1.16(c)(5) of the Commission's regulations.

The Commission will, therefore, generally make available under the FOIA the Statement of Financial Condition, the Computation of Net Capital, and the Schedule of Segregation Requirements and Funds in Segregation of the FOCUS Report, Part II. By doing so, the Commission will preserve parity of treatment for all FCMs, since the Commission generally makes available comparable portions of the Form 1-FR. The SEC generally treats as nonpublic all of the FOCUS Report, Part II, except for the Statement of Financial Condition, and accompanying footnotes, from the certified report filed as of the fiscal year-end. One of those footnotes reports the firm's net capital position; thus, the release of the Computation of Net Capital will merely serve to give the details of that reported position. The Schedule of Segregation Requirements and Funds in Segregation on the FOCUS Report, Part II is identical to the schedule with the same name on the Form 1-FR. The Commission generally has made that schedule available under the FOIA, and it will do the same regarding that schedule on the FOCUS Report, Part II. The above considerations will also be reflected in the Commission's treatment of the FOCUS Report, Part II under the Government in the Sunshine Act.

The schedules Computation for Determination of Reserve Requirements for Broker-Dealers under [SEC] Rule 15c3-3 and Statement of Financial and Operational Data reflect information about the business of FCM/broker-dealers which relates principally to their securities-related activities. Therefore, there are no corresponding schedules on the Form 1-FR, since such information is not applicable to FCMs which are not broker-dealers. The schedule Statement of Ownership Equity and Subordinated Liabilities maturing or proposed to be withdrawn within the next six months and accruals, which have not been deducted in the computation of net capital, and the Recap thereof, compiles in tabular form information which is currently contained in the Commission's records and generally accorded nonpublic treatment, although there is no similar schedule filed with Form 1-FR.

The instructions to Form 1-FR inform the applicant or registrant of his rights and the Commission's responsibilities

under the FOIA and the Commission's regulations promulgated thereunder,<sup>14</sup> and every FCM or applicant therefor which is a registered broker-dealer should be familiar with those instructions. The Commission's policy is that exempt records generally will be withheld from disclosure under the FOIA; however, irrespective of this policy and of whether a person petitions the Commission for confidential treatment, the Commission has an obligation to determine whether its records are publicly available. A person who has submitted information and has accompanied the submission with a petition for confidential treatment has the right to notice and appeal of a decision by the Commission staff and the Commission itself as to the disclosure or withholding of materials pursuant to the FOIA. See 17 CFR 145.9.<sup>15</sup> Those considering filing a petition for confidential treatment are reminded of the requirement in Rule 145.9(i) that a petitioner intend in good faith to aid the Commission in any proceeding that might be brought to compel the Commission to disclose the information.

#### Amendments to Commission Rule 147.3

The Government in the Sunshine Act, 5 U.S.C. 552b, basically requires that Commission meetings be open to public observation and certain information pertaining to meetings be disclosed to the public unless a meeting is likely to focus on a specifically exempted matter. One such exemption is provided in Section 552b(c)(4) of that Act which provides that Commission meetings or portions of meetings which are likely to "disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential" may be closed and that certain information with respect thereto may be withheld from the public.

Section 147.3(b)(4)(i)(A) of the Commission's regulations under that Act, 17 CFR 147.3(b)(4)(i)(A), permits the closing of Commission meetings or portions of meetings and the withholding from the public of certain information with respect thereto when such meetings or portions of meetings are likely to involve discussions of certain nonpublic information submitted to the Commission with Form 1-FR's. The Commission is now amending Rule

147.3(b)(4)(i)(A) to take account of the change in the regulations which will permit those FCMs, or applicants therefor, which are registered broker-dealers to file copies of the FOCUS Report, Part II.<sup>16</sup>

Under § 147.3(b)(4)(i)(A)(3) of the amended rule, the following portions, and related footnote disclosures thereof, of the FOCUS Report, Part II which an FCM/broker-dealer may file in lieu of Form 1-FR pursuant to 1.10(h) of the Commission's regulations will constitute a basis for closing Commission meetings or portions of meetings and withholding from the public information pertaining thereto provided that the procedure set forth in § 1.10(g) of the Commission's regulations<sup>17</sup> is followed: the Statement of Income (Loss), the Statement of Changes in Financial Position, the Computation for Determination of Reserve Requirements for Broker-Dealers under [SEC] Rule 15c3-3, the Statement of Ownership Equity and Subordinated Liabilities maturing or proposed to be withdrawn within the next six months and accruals which have not been deducted in the computation of net capital, and the Recap thereof, the Statement of Changes in Ownership Equity, the Statement of Changes in Liabilities Subordinated to the Claims of General Creditors, the Statement of Financial and Operational Data, and the accountant's report on material inadequacies filed under § 1.16(c)(5) of the Commission's regulations.

#### Effective Date

The foregoing rule amendments shall be effective immediately. The Commission finds that the amendments are merely interpretive of existing practice and procedure of which the public has previously been informed and that these rule changes will not have a

<sup>16</sup>In certain instances, some of the information on the nonpublic portions of the FOCUS Report, Part II, may also be subject to general protection from public disclosure under Section 8(a) of the Commodity Exchange Act if it "would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." As such, that information would constitute a basis for closing Commission meetings or portions of meetings and withholding from the public certain information with respect thereto pursuant to the exemption for matters specifically exempted from disclosure by a statute which requires withholding from the public. See Section 552b(c)(3) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(3), and Section 147.3(b)(3) of the Commission's regulations thereunder, 17 CFR 147.3(b)(3).

<sup>17</sup>A conforming amendment to Section 1.10(g) is being made to make clear that nonpublic treatment will generally be accorded to appropriate portions of the Form 1-FR and the FOCUS Report, Part II under the Government in the Sunshine Act, as well as FOIA, provided the separate binding procedure is followed.

substantial impact on the public. Therefore, any further public procedures and publication prior to the effective date of the rules, in accordance with the Administrative Procedure Act, as codified, 5 U.S.C. 553, are not required. The amendments to Sections 1.10, 1.12, 1.16, 1.18 and 1.52 of the Commission's regulations are procedural in nature and do not affect any substantive rights since they merely provide those FCMs, or applicants therefor, which are registered as brokers or dealers with the option of filing copies of the FOCUS Report, Part II, in lieu of Form 1-FR.<sup>18</sup> The conforming amendment in § 1.10(g) to reference the Government in the Sunshine Act is also a matter of procedure.

The amendments to Parts 145 and 147 are also being made effective immediately to provide that nonpublic treatment now accorded to certain information required to be contained on the Form 1-FR is accorded to the same information if provided on the FOCUS Report, Part II. This merely carries over existing procedures.

In consideration of the foregoing and pursuant to the authority in 5 U.S.C. 552, 5 U.S.C. 552b, and Sections 2(a)(11), 4b, 4f, 4g, 5a, 8a, and 17 of the Commodity Exchange Act, 7 U.S.C. 4a(j), 6b, 6f, 6g, 7a, 12a, and 21, as amended, 92 Stat. 865 *et seq.*, the Commission hereby amends Parts 1, 145 and 147 of Chapter I of Title 17 of the Code of Federal Regulations as follows (> < indicate additions, [] indicate deletions):

#### PART I—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. Section 1.10 is amended by adding the following sentence in paragraph (g) thereof and a new paragraph (h) thereto:

##### § 1.10 Application for registration and financial reports of Futures Commission Merchants.

\* \* \* \* \*

(g) *Nonpublic treatment of reports.* All of the forms 1-FR filed pursuant to this

<sup>18</sup>In anticipation of the changes made by the SEC, the Commission's Division of Trading and Markets issued a "no-action" letter on December 22, 1978 to permit FCM/broker-dealers to file copies of the FOCUS Report, Part II, in lieu of Form 1-FR. That no-action position was subsequently extended in letters dated March 26, 1979, May 3, 1979, and August 6, 1979. It should, therefore, be unnecessary for any firm to change its present practices solely as a result of the instant rule changes. Those first three "no-action" letters also extended to FCM/broker-dealers who failed to meet the Commission's minimum financial requirements if they could affirmatively demonstrate that they met the SEC's net capital rule. That portion of the "no-action" position expired on July 15, 1979. All FCM/broker-dealers were required to meet the Commission's minimum financial requirements beginning July 16, 1979.

<sup>14</sup>17 CFR Part 145.

<sup>15</sup>The Commission has recently proposed an amendment to 17 CFR 145.9 which would require that a copy of a petition for confidential treatment be filed with the division or office of the Commission to which the information subject to the petition is submitted, as well as the Office of Public Information. 44 FR 51232 (August 31, 1979).

section will be public: *Provided, however,* That if the statement of financial condition, the computation of the minimum capital requirements pursuant to § 1.17, and the schedule of segregation requirements and funds on deposit in segregation are bound separately from the other financial statements (including the statement of income (loss)), footnote disclosures and schedules of form 1-FR, trade secrets and certain other commercial or financial information on such other statements and schedules will be treated as nonpublic for purposes of the Freedom of Information Act [and the Government in the Sunshine Act] and part[s] 145 [and 147] of this chapter. [All of the copies of the FOCUS Report, Part II, filed pursuant to paragraph (h) of this section will be public: *Provided, however,* That if the statement of financial condition, the computation of net capital, and the schedule of segregation requirements and funds on deposit in segregation are bound separately from the other financial statements (including the statement of income (loss)), footnote disclosures and schedules of the FOCUS Report, Part II, trade secrets and certain other commercial or financial information on such other statements and schedules will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and parts 145 and 147 of this chapter.] All information on such other statements, footnote disclosures and schedules will, however, be available for official use by any official or employee of the United States or any State, by any self-regulatory organization of which the person filing such report is a member, and by any other person to whom the Commission believes disclosure of such information is in the public interest. Nothing in this paragraph (g) will limit the authority of any self-regulatory organization to request or receive any information relative to its members' financial condition. The independent accountant's opinion filed pursuant to this § 1.10 will be deemed public information.

[(h) *FCM/broker-dealer filing option.* Any applicant or registrant which is registered with the Securities and Exchange Commission as a securities broker or dealer may comply with the requirements of this section by filing (in accordance with subparagraph (a)(2) and paragraphs (b) and (c) of this section) a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, in lieu of Form 1-FR; *Provided, however,* That all information

which is required to be furnished on and submitted with Form 1-FR is provided with such Report.]

2. In § 1.12, paragraph (b) is amended to read as follows:

**§ 1.12 Maintenance of minimum financial requirements by Futures Commission Merchants.**

\* \* \* \* \*

(b) \* \* \* Such applicant or registrant must also file a Form 1-FR [(or, if such applicant or registrant is registered with the Securities and Exchange Commission as a securities broker or dealer, it may file (in accordance with § 1.10(h)) a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, in lieu of Form 1-FR)] or such other financial statement designated by the Commission and/or the designated self-regulatory organization, if any, as of the close of business for the month during which such event takes place and as of the close of business for each month thereafter until three (3) successive months have elapsed during which the applicant's or registrant's adjusted net capital is at all times equal to or in excess of the minimums set forth in this paragraph (b) which are applicable to such applicant or registrant. Each financial statement required by this paragraph (b) must be filed within 30 calendar days after the end of the month for which such report is being made.

\* \* \* \* \*

3. In § 1.16, paragraph (c) is amended to read as follows:

**§ 1.16 Qualifications and Reports of Accountants.**

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \* An applicant must file concurrently with the audit report a supplemental report by the accountant describing any material inadequacies found to exist as of the date of the form 1-FR being filed[.] [*Provided, however,* that if such applicant is registered with the Securities and Exchange Commission as a securities broker or dealer, and it files (in accordance with § 1.10(h)) a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, in lieu of Form 1-FR, the accountant's supplemental report must be made as of the date of such report.] The supplemental report must indicate any corrective action taken or proposed by the applicant or registrant in regard thereto. If the audit did not disclose any

material inadequacies, the supplemental report must so state.

\* \* \* \* \*

4. In § 1.18, paragraphs (a) and (b) are amended to read as follows:

**§ 1.18 Records for and relating to financial reporting and monthly computation.**

(a) No person shall be registered as a futures commission merchant under the Act unless, commencing on the date his application for such registration is filed, he prepares and keeps current ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting his asset, liability, income, expense and capital accounts, and in which (except as otherwise permitted in writing by the Commission) all his asset, liability and capital accounts are classified into either the account classification subdivisions specified on Form 1-FR [(or, if such person is registered with the Securities and Exchange Commission as a securities broker or dealer and he files (in accordance with § 1.10(h)) a copy of his Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, in lieu of Form 1-FR, the account classification subdivisions specified on such Report,] or categories that are in accord with generally accepted accounting principles. Each person so registered shall prepare and keep current such records.

(b) Each applicant or registrant must make and keep as a record in accordance with § 1.31, formal computations of its adjusted net capital and of its minimum financial requirements pursuant to § 1.17 or the requirements of the designated self-regulatory organization to which it is subject as of the close of business each month. [An applicant or registrant which is also registered as a securities broker or dealer with the Securities and Exchange Commission may meet the computation requirements of this paragraph by completing the Statement of Financial Condition and Computation of Net Capital portions of the Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II.] \* \* \*

\* \* \* \* \*

5. In § 1.52, paragraph (a) is amended to read as follows:

**§ 1.52 Self-regulatory organization adoption and surveillance of minimum financial requirements.**

(a) \* \* \* Such requirements must be the same as, or more stringent than, those contained in §§ 1.10 and 1.17, and

the definition of adjusted net capital must be the same as that prescribed in § 1.17(c): *Provided, however*, A designated self-regulatory organization may determine the number of form 1-FR's it receives from its member registrants so long as it requires at least semiannual Form 1-FR's, one of which must be certified in accordance with § 1.16 for each such registrant [.] [.] *Provided, further*, A designated self-regulatory organization may permit its member registrants which are registered with the Securities and Exchange Commission as securities brokers or dealers to file (in accordance with Section 1.10(h)) a copy of their Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, in lieu of Form 1-FR.]

#### PART 145—COMMISSION RECORDS AND INFORMATION

6. In § 145.5, paragraph (d)(1)(i) is amended to read as follows:

##### § 145.5 Nonpublic matters.

- (d) \* \* \*  
(l) \* \* \*  
(i) \* \* \*

[(C) The following portions, and footnote disclosures thereof, of the Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, filed pursuant to 17 CFR 1.10(h): *Provided*, The procedure set forth in 17 CFR 1.10(g) is followed: The Statement of Income (Loss), the Statement of Changes in Financial Position, the Computation for Determination of Reserve Requirements for Broker-Dealers under [SEC] Rule 15c3-3, the Statement of Ownership Equity and Subordinated Liabilities maturing or proposed to be withdrawn within the next six months and accruals, which have not been deducted in the computation of net capital, and the Recap thereof, the Statement of Changes in Ownership Equity, the Statement of Changes in Liabilities Subordinated to the Claims of General Creditors, the Statement of Financial and Operational Data, and the accountant's report on material inadequacies filed under 17 CFR 1.16(c)(5);]

#### PART 147—OPEN COMMISSION MEETINGS

7. In § 147.3, paragraph (b)(4)(i)(A) is amended to read as follows:

##### § 147.3 General requirements of open meetings; grounds upon which meetings may be closed.

- (b) \* \* \*  
(4) \* \* \*  
(i) \* \* \*  
(A) \* \* \*

[(3) The following portions, and footnote disclosures thereof, of the Financial and Operational Combined Uniform Single Report under the Securities and Exchange Act of 1934, Part II, filed pursuant to 17 CFR 1.10(a): *Provided*, The procedure set forth in 17 CFR 1.10(g) is followed: The Statement of Income (Loss), the Statement of Changes in Financial Position, the Computation for Determination of Reserve Requirements for Broker-Dealers under [SEC] Rule 15c3-3, the Statement of Ownership Equity and Subordinated Liabilities maturing or proposed to be withdrawn within the next six months and accruals, which have not been deducted in the computation of net capital, and the Recap thereof, the Statement of Changes in Ownership Equity, the Statement of Changes in Liabilities Subordinated to the Claims of General Creditors, the Statement of Financial and Operational Data, and the accountant's report on material inadequacies filed under 17 CFR 1.16(c)(5);]

Issued in Washington, D.C. on November 6, 1979 by the Commission.

Jane K. Stuckey,  
Secretary of the Commission.

[FR Doc. 79-34725 Filed 11-15-79; 8:45 am]  
BILLING CODE 6351-01-M

#### DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

##### Food and Drug Administration

##### 21 CFR Part 73

[Docket No. 78C-0041]

##### Silver; Listing of Color Additives Exempt From Certification

**AGENCY:** Food and Drug Administration.  
**ACTION:** Final rule.

**SUMMARY:** This document "permanently" lists silver for use in externally applied cosmetics and exempts that color additive from certification. Kirker Chemical Co. filed a petition for such use.

**DATES:** Effective December 17, 1979; objections by December 17, 1979.

**ADDRESS:** Written objections to the Hearing Clerk (HFA-305), Food and

Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Gerard L. McCowin, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** A petition (CAP 8C0137) to provide for the safe use of crystalline silver metal (silver) as a color additive in fingernail polish was filed by Kirker Chemical Co., 1 East 11th St., P.O. Box 365, River Street Station, Paterson, NJ 07524. A notice of filing was published in the *Federal Register* of March 17, 1978 (43 FR 11268). The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376).

The Food and Drug Administration has evaluated the data in the petition and other relevant material and concludes that silver is safe, under the conditions set forth below, for use in coloring fingernail polish and that certification is not necessary for the protection of the public health. The agency also concludes that the name silver is preferable to the name given in the filing notice.

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), Part 73 is amended in Subpart C by adding new § 73.2500 to read as follows:

##### § 73.2500 Silver.

(a) *Identity.* (1) The color additive, silver, is a crystalline powder of high purity silver prepared by the reaction of silver nitrate with ferrous sulfate in the presence of nitric, phosphoric and sulfuric acids. Polyvinyl alcohol is used to prevent the agglomeration of crystals and the formation of amorphous silver.

(2) Color additive mixtures of silver may contain only those diluents listed in § 73.1001(b) and, in addition, nitrocellulose.

(b) *Specifications.* Silver shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

Lead (as Pb), not more than 10 parts per million.  
Arsenic (as As), not more than 5 parts per million.  
Mercury (as Hg), not more than 1 part per million.  
Silver (as Ag), not less than 99.9 percent.

(c) *Uses and restrictions.* The color additive silver may be safely used for

coloring fingernail polish at a level not to exceed 1 percent of the final product.

(d) *Labeling.* The color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any other information required by law, labeling in accordance with the provisions of § 70.25 of this chapter.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 706(c) of the act.

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 17, 1979 file written objections with the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. Objections should show how the person filing them will be adversely affected by the regulation, specify with particularity the provisions of the regulation thought to be objectionable, and state the grounds for each objection. Objections are to be filed in accordance with the requirements of § 71.30 (21 CFR 71.30). If a hearing is requested, the objections must state the issues for the hearing, be supported by grounds factually and legally sufficient to justify the relief sought, and include a detailed description and analysis of the factual information intended to be presented in support of each objection in the event that a hearing is held. Four copies of all documents should be filed and identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the office of the Hearing Clerk, between 9 a.m. and 4 p.m., Monday through Friday.

*Effective date:* This regulation shall become effective December 17, 1979, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the Federal Register.

(Sec. 706 (b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376 (b), (c), and (d)))

Dated: November 7, 1979.

William F. Randolph,  
Acting Associate Commissioner for  
Regulatory Affairs.

[FR Doc. 79-35002 Filed 11-15-79; 8:45 am]

BILLING CODE 4110-03-M

**21 CFR Part 510**

**New Animal Drugs; Federal Pharmacal, Inc.; Change of Sponsor**

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The regulations are amended to reflect the change of sponsor for chloramphenicol capsules and tetracycline hydrochloride capsules from Pielrel America, Inc., to Federal Pharmacal, Inc. Two supplemental new animal drug applications (NADA's) filed by Federal Pharmacal, Inc., provide for this change.

**EFFECTIVE DATE:** November 16, 1979.

**FOR FURTHER INFORMATION CONTACT:** Henry C. Hewitt, Bureau of Veterinary Medicine (HFV-114), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

**SUPPLEMENTARY INFORMATION:** Federal Pharmacal, Inc., filed supplemental new animal drug applications (NADA 65-345 and 65-467) providing for the change of sponsor for chloramphenicol capsules and tetracycline hydrochloride capsules, respectively.

This intercorporate transfer of NADA's does not involve changes in facilities, equipment, procedures, or production personnel. Under the bureau's supplemental approval policy (42 FR 64367, December 23, 1977), this is a category I change; therefore, this action does not require a reevaluation of the safety and effectiveness data in the parent applications.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), § 510.600 is amended in paragraph (c)(1) by deleting the entry for "Pielrel America, Inc.," and by alphabetically adding a new sponsor entry, and in paragraph (c)(2) by deleting the sponsor entry for "000345" and by numerically adding a new sponsor entry to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

Firm name and address	Drug labeler code
* * * * *	
(c) * * *	
(1) * * *	
* * * * *	
Federal Pharmacal, Inc., P.O. Box Q, Kingshill, St. Croix, U.S. Virgin Islands 00850.....	000345
* * * * *	

(2) \* \* \*

Drug labeler code	Firm name and address
* * * * *	
000345	Federal Pharmacal, Inc., P.O. Box Q, Kingshill, St. Croix, U.S. Virgin Islands 00850.
* * * * *	

*Effective date.* This regulation is effective November 16, 1979.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: November 7, 1979.

Lester M. Crawford,  
Director, Bureau of Veterinary Medicine.

[FR Doc. 79-35000 Filed 11-15-79; 8:45 am]

BILLING CODE 4110-03-M

**21 CFR Parts 520 and 522**

**Sulfadimethoxine Tablets and Injection; Change of Sponsor**

**AGENCY:** Food and Drug Administration.  
**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) amends the regulations to reflect the change of sponsor for two sulfadimethoxine products from Affiliated Laboratories, Division of Whitmoyer Laboratories, Inc., to Beecham Laboratories, Division of Beecham, Inc. Supplemental new animal drug applications (NADA's) filed by Beecham Laboratories provide for this change.

**EFFECTIVE DATE:** November 16, 1979.

**FOR FURTHER INFORMATION CONTACT:** Andrew J. Beaulieu, Bureau of Veterinary Medicine (HFV-216), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

**SUPPLEMENTARY INFORMATION:** Beecham Laboratories, Division of Beecham, Inc., Bristol, TN 37620, filed supplemental NADA's 13-526 and 13-527 providing for the change of sponsor for sulfadimethoxine tablets and sulfadimethoxine injection, respectively.

Approval of these supplemental applications does not adversely affect the safety or effectiveness of the products because it provides only for an intercorporate transfer of NADA's, and no changes in manufacturing, packaging, or quality control. Accordingly, the Director of the Bureau of Veterinary Medicine concludes that these approvals do not require a reevaluation of the safety and effectiveness data in the parent applications.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))), under authority delegated to the Commissioner