(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: January 19, 1984.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 84–1972 Filed 1–24–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83–AWA–34]

Alteration of VOR Federal Airway V–450; Muskegon, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action removes the 10,000 to 18,000 feet mean sea level (MSL) airspace exclusion on VOR Federal Airway V–450 that exists when the Minnow Military Operations Area (MOA), WI, is activated. This action is taken to preclude the potential for misapplication of Part 91 flight rules on Federal Airways.

DATES: Effective date—March 15, 1984.

Comments must be received on or before March 12, 1984.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 83–AWA–34, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Boyd V. Archer, Airspace and Air Traffic Rules Branch (AAT–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8626.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves removing the restriction on VOR Federal Airway V–450 when the Minnow MOA, WI, is activated and, thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to remove the 10,000 to 18,000 feet MSL airspace exclusion on VOR Federal Airway V–450 that exists when the Minnow MOA, WI, is activated. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70–3A dated January 3, 1983.

The FAA has determined that there is an immediate need to remove the unnecessary airspace exclusion from VOR Federal Airway V–450 that exists when the Minnow MOA, WI, is activated. This action is taken to preclude the potential for misapplication of Part 91 flight rules on Federal Airways. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary and that good cause exists for making this amendment effective on the next charting date.

List of Subjects in 14 CFR Part 71

VOR Federal Airways, Aviation safety.

Adoption of the Amendment

§ 71.123 [Amended]

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., March 15, 1984, as follows:

V–450—[Amended]

By deleting the words "The airspace at and above 10,000 feet MSL from 35 NM southeast of Green Bay to 33 NM northwest of Muskegon is excluded during the time that the Minnow MOA is activated by NOTAM."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on January 18, 1984.

B. Keith Potts,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84–1959 Filed 1–24–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 371, 373, 376, 378, 379, 385, and 399

Extension of Foreign Policy Export Controls

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of continuation of foreign policy controls without change.

SUMMARY: As required by section 6 of the Export Administration Act of 1979, as amended, the Secretaries of Commerce and State have reviewed foreign policy export controls and have determined that they should be continued without change at this time.

DATE: This rule is effective January 21, 1984.

FOR FURTHER INFORMATION CONTACT: James Noble, Policy Planning Division, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (telephone (202) 377–5622).

SUPPLEMENTARY INFORMATION:

Regulatory Changes

Under the authority granted by section 6 of the Export Administration Act of 1979, the Secretary of Commerce, in consultation with the Secretary of State, has determined that the foreign policy controls that have been in effect will be extended through January 20, 1985.

Regulations concerning foreign policy export controls remain unchanged. These regulations relate to human rights; South Africa and Namidia; anti-terrorism; Libya; regional stability; North Korea, Vietnam, Kampuchea and Cuba; and the U.S.S.R. and Afghanistan. Nuclear non-proliferation controls are maintained primarily pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978, and do not require annual extension.

Under section 6 of the Export Administration Act of 1979 as amended, the following consultation with the Department of State, it has been determined that this rule is necessary to further significantly the foreign policy of the United States or to fulfill its international obligations. The criteria set forth in section 6(b) of the Act have been considered.

Under section 4(c), it has been determined that, notwithstanding foreign availability, failure to take this action would be detrimental to the foreign policy of the United States.

Under section 6(d), it has been determined that there are no feasible alternative means of achieving the purpose of this action. As provided in section 6(g), efforts are being made to obtain cooperation of countries that produce comparable items.

In the **Federal Register** of October 27, 1983 (48 FR 49659), the Department invited public comments on how foreign policy controls imposed or extended effective January 20, 1983, had affected exporters and the general public. Eight responses were received, all from companies and other private sector organizations. Each commenter was critical of some aspects of the controls. These comments were considered in the course of the review.

The public record concerning these controls will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4001–B, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C., 20230. Records in this facility including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

Accordingly, the foreign policy controls are extended as indicated above.

Authority: Secs. 6, 13 and 15, Pub. L. 96–72, 93 Stat. 503, as amended (50 U.S.C. app 2401 *et seq.*), E.O. 12214 (45 FR 29783, May 6, 1980); E.O. 12451 of December 20, 1983 (48 FR 56563, December 22, 1983).

Dated: January 20, 1984.

John K. Boidock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 84–2067 Filed 1–23–84; 9:43 am]

BILLING CODE 3510–DT–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1615 and 1616

Standards for the Flammability of Children's Sleepwear; Sizes 0 Through 6X (FF 3–71) and Sizes 7 Through 14 (FF 5–74); Requirements for Labeling of Children's Sleepwear

AGENCY: Consumer Product Safety Commission.

ACTION: Final rules.

SUMMARY: The Commission issues final rules to amend labeling requirements for instructions about care of children's sleepwear in sizes that are subject to the Standards for the Flammability of Children's Sleepwear. These amendments prescribe the circumstances in which those instructions may appear on the reverse side of a label. They also make the labeling requirements of both Standards similar for sleepwear that is offered for sale at retail in packages. The Commission concludes that the amended labeling requirements are adequate to ensure that consumers will be able to determine the measures necessary to preserve the flame-resistant characteristics of children's sleepwear before purchasing such sleepwear and, at the same time, will permit manufacturers to have the economic benefit of placing precautionary care instructions on the reverse side of a label under prescribed conditions.

EFFECTIVE DATE: The amendments will become effective on February 24, 1984.

FOR FURTHER INFORMATION CONTACT: Elizabeth Gomilla, Division of Regulatory Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6400.

SUPPLEMENTARY INFORMATION: The Standards for the Flammability of Children's Sleepwear: Sizes 0 Through 6X (16 CFR Part 1615) and Sizes 7 Through 14 (16 CFR Part 1616) prescribe sampling and testing requirements for children's sleepwear items in sizes 0 throught 14 to assure that those items have the flame resistant characteristics required by those Standards. Sections 1615.5(a) and 1616.6(a) provide that all items of children's sleepwear that are subject to the Standards must be permanently labeled with precautionary instructions to advise consumers of any agents or treatments that are known to cause deterioration of the flame resistance of those items.

Regulations applicable to labeling of children's sleepwear at §§ 1615.31(b)(1) and 1616.31(b)(1) specify that items of sleepwear must be prominently, permanently, conspicuously, and legibly labeled with precautionary care instructions.

The Commission began this proceeding when it became aware that some manufacturers of children's sleepwear in sizes 0 through 14 were placing precautionary care instructions on the reverse side of a label (that is, on the side of the label that faces the fabric to which the label is sewn) in such a manner that the label must be lifted before those instructions can be seen and read. Some of these manufacturers asserted that placement of precautionary care instructions on the reverse side of labels should not, by itself, result in a violation of the standards and the regulations at §§ 1615.31(b)(1), 1616.31(b)(1), and 1616.31(b)(4)(i). They stated that placing care instructions on the reverse side of labels was less costly than having them on the front side and that consumers would not be harmed by such placements on the reverse side.

Proposed Amendments

In the **Federal Register** of October 5, 1976 (41 FR 43917 and 43919), the Commission expressed the position that existing labeling requirements for children's sleepwear in sizes 0 though 14 prohibit the placement of precautionary care instructions on the reverse side of a label which must be lifted before the instructions can be seen and read. At the same time, the Commission concluded that consumers could continue to have the benefit of care instructions and that manufacturers could have the economic benefit of placing such instructions on the reverse side of labels under conditions prescribed if amendments were proposed to the labeling rules to allow care instructions to be printed on the reverse side of a label under certain conditions.

The proposed amendments set forth the following conditions that must be met in order to place precautionary care instructions on the reverse side of labels for children's sleepwear:

A. The label bearing the precautionary care instructions is permanent, readily visible and accessible to the prospective retail purchaser, and

B. That portion of the label which faces the prospective retail purchaser bears the signal words "CARE INSTRUCTIONS ON REVERSE" or the equivalent in lettering which is permanent, prominent, conspicuous, and legible, and

C. The item is displayed for sale to the prospective retail purchaser in such a manner that the prospective retail purchaser can manipulate the label so that the entire text of the precautionary care instructions can be seen and read.

The proposed amendment provided further that if the label bearing the precautionary care instructions cannot be manipulated at the point of sale by the prospective retail purchaser so that the precautionary care instructions can be seen and read, the care instructions must also appear on the package, or on a hang tag attached to the item, in a manner such that the instructions can be seen and read by the prospective retail purchaser.

Additionally, in the proposal, the Commission observed that the labeling regulations for sizes 7 through 14 specify at § 1616.31(b)(1) that the precautionary care instructions must be readily visible to prospective purchasers when items of children's sleepwear in those sizes are offered for sale at retail in packages. The care labeling regulations for sizes 0 through 6X at § 1615.31(b)(1) have no similar requirement. Therefore, to afford prospective purchasers of children's sleepwear in sizes 0 through 6X an opportunity to consider precautionary care instructions when deciding to purchase items sold in packages, and to make the labeling provisions of both Standards similar for sleepwear sold in packages, the Commission also proposed to amend the provisions of § 1615.31(b)(1) to require that when items of children's sleepwear in sizes 0 through 6X are sold in packages at retail, any precautionary instructions necessary to prevent deterioration of the flame resistance must be readily visible to prospective purchasers, or the packages must be prominently, conspicuously, and legibly labeled with the required information.

Comments

In response to the proposal of October 5, 1976, the Commission received written comments from two trade associations, on manufacturer, and eighteen members of the general public. Comments from two trade associations, one manufacturer, and thirteen members of the general public favored issuance of final amendments based on the proposal. The manufacturer also suggested clarification of terminology used in the preamble of the proposal. Comments from five members of the general public opposed issuance of final amendments.

One trade association requests that the amendments be promulgated in the same form in which they were proposed. Comment from the second association supports the amendments because they are a practical and economical means of making precautionary care instructions available to consumers both before sale and during use of the product.

In addition to supporting the amendments, comment from one manufacturer proposed that the term "loop label," used in the preamble of the proposal, should be clarified. The comment observes that the term "loop label" usually means a label printed on one side, folded in half, and sewn into a garment across the top so that the printing appears on two sides. The manufacturer added that it usually uses a nonfolded label that is printed on both sides and sewn across the top only—a two-sided flat label. In response, the Commission observes that the term "loop label" does not appear in the text of the proposed amendments. For this reason, the amended requirements will permit the use of labels—flat or loop—with printing on both sides so long as the prescribed conditions are met.

Comment from one member of the general public, who formerly sold children's sleepwear in a retail store, urges adoption of the amendments as beneficial to consumers generally and particularly to shopping consumers because of time that will be saved in searching for and examining care instructions. Another comment from the general public noted two-sided labeling will save time and money for both the manufacturer and the consumer. A third comment urges that long labels be prohibited because they are a nuisance and have to be cut out and, further, that plastic labels be banned because they are uncomfortable and must also be cut out. Several comments in favor of the proposal hope that any reduction in expense, time, or labor will be passed on to consumers. All comments for and against the amendments stress that care instructions must be visible and accessible.

Two comments opposed to the amendments advocate separate labels for care instructions even if children's sleepwear becomes more expensive because there are some people who will not take time to flip a label and read its reverse side. While the Commission acknowledges the possibility that some persons may react in the manner suggested by these comments, the Commission concludes that withdrawal of the proposed amendments is not warranted in view of the support for the proposal in comments from both consumers and industry representatives.

Three comments opposed to the proposal appear to be based on the misapprehension that the required care instructions could be printed on the top of a label in a space no larger than that required for the signal words "CARE INSTRUCTIONS ON REVERSE". Lastly, some of the comments for and against the amendments apparently make the incorrect assumptions that no labeling requirements for children's sleepwear are currently in effect, or that Commission regulations do not now permit care instruction labels.

Environmental Considerations

The Commission's procedures for environmental review provide at 16 CFR 1021.5(c)(2) that issuance, amendment, revision, or revocation of rules relating to product labeling normally has little or no potential for affecting the human environment.

The Commission does not foresee any special or unusual circumstances surrounding the rules issued below. For this reason, neither an environmental assessment or an environmental impact statement is required.

List of Subjects in 16 CFR Parts 1615 and 1616

Clothing, Consumer protection, Flammable materials, Infants and children, Labeling, Textiles.

Conclusion and Promulgation

After consideration of written comments on the proposed amendments to labeling requirements for items subject to Children's Sleepwear Standards, analysis of those comments by the Commission staff, and other relevant information, the Commission concludes that the proposed amendments to 16 CFR 1615.31(b)(1) and 1616.31(b)(1) and (4)(i) should be issued on a final basis to become effective February 24, 1984.

Therefore, in accordance with the provisions of the Flammable Fabrics Act (sec. 5, Pub. L. 90–139, 81 Stat. 569 (15 U.S.C. 1194)) and the Consumer Product Safety Act (sec. 30, Pub. L. 92–573, 86 Stat. 1231 (15 U.S.C. 2079)), the

Commission hereby amends the Code of Federal Regulations, Title 16, Chapter II, Subchapter D, as follows:

PART 1615—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 0 THROUGH 6X (FF 3-71)

Part 1615, Subpart B is amended by revising § 1615.31(b)(1) to read as follows:

§ 1615.31 Labeling, recordkeeping, advertising, retail display, and guaranties.

* * * * *

(b) *Labeling.* (1) Where any agent or treatment is known to cause deterioration of flame resistance or otherwise enhances the flammability characteristics of an item, such item shall be prominently, permanently, conspicuously, and legibly labeled with precautionary care and treatment instructions to protect the item from such agent or treatment: Provided:

(i) Where items required to be labeled in accordance with this paragraph are marketed at retail in packages, and the required label is not readily visible to the prospective purchaser, the packages must also be prominently, conspicuously, and legibly labeled with the required information, and

(ii) Where items are required to be labeled in accordance with this paragraph, the precautionary care and treatment instructions may appear on the reverse side of the permanent label if

(A) The precautionary care and treatment instructions are legible, prominent and conspicuous, and

(B) The phrase "CARE INSTRUCTIONS ON REVERSE" or the equivalent appears permanently, prominently, conspicuously, and legibly on the side of the permanent label that is visible to the prospective purchaser when the item is marketed at retail, and

(C) The item which is so labeled is marketed at retail in such a manner that the prospective purchaser is able to manipulate the label so the entire text of the precautionary care and treatment instructions is visible and legible; however, where the label cannot be manipulated so the instructions are visible to the prospective purchaser and legible, the packages must also be prominently, conspicuously and legibly labeled with the required precautionary care and treatment information or such information must appear prominently, conspicuously and legibly on a hang tag attached to the item.

PART 1616—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 7 THROUGH 14 (FF 5-74)

Part 1616, Subpart B is amended by revising § 1616.31(b) (1) and (4) to read as follows:

§ 1616.31 Labeling, recordkeeping, retail display, and guaranties.

* * * * *

(b) *Labeling.* (1) Where any agent or treatment is known to cause deterioration of flame resistance or otherwise causes an item to be less flame resistant, such item shall be prominently, permanently, conspicuously, and legibly labeled with precautionary care and treatment instructions to protect the item from such agent or treatment; Provided:

(i) Where items required to be labeled in accordance with this paragraph are marketed at retail in packages, and the required label is not readily visible to the prospective purchaser, the packages must also be prominently, conspicuously, and legibly labeled with the required information, and

(ii) Where items are required to be labeled in accordance with this paragraph, the precautionary care and treatment instructions may appear on the reverse side of the permanent label if

(A) The precautionary care and treatment instructions are legible, prominent and conspicuous, and

(B) The phrase "Care Instructions On Reverse" or the equivalent appears permanently, prominently, conspicuously, and legibly on the side of the permanent label that is visible to the prospective purchaser when the item is marketed at retail, and

(C) The item which is so labeled is marketed at retail in such a manner that the prospective purchaser is able to manipulate the label so the entire text of the precautionary care and treatment instructions is visible and legible; however, where the label cannot be manipulated so the instructions are visible to the prospective purchaser and legible, the package must also be prominently, conspicuously and legibly labeled with the required precautionary care and treatment information or such information must appear prominently, conspicuously and legibly on a hang tag attached to the item.

* * * * *

(4)(i) Where items required to be labeled in accordance with paragraphs (b)(2), and/or, (b)(3) of this section and fabrics required to be labeled or stamped in accordance with paragraph (b)(7) of this section are marketed at retail in packages, and the required label or stamp is not readily visible to the prospective purchaser, the packages must also be prominently, conspicuously, and legibly labeled with the required information.

* * * * *

(Sec. 5, Pub. L. 90-189, 81 Stat. 569, 15 U.S.C. 1194; sec. 30, Pub. L. 92-573, 86 Stat. 1231, 15 U.S.C. 2079)

Dated: January 19, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-2084 Filed 1-24-84; 8:45 am]

BILLING CODE 6355-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 240

[Release No. 34-20581, File No. S7-969]

Processing of Tender Offers Within the National Clearance and Settlement System

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting Rule 17Ad-14 under the Securities Exchange Act of 1934 (the "Act"). The rule requires transfer agents acting on behalf of bidders as tender agents to establish and maintain special accounts with all qualified registered securities depositories holding the subject company's securities. These accounts will permit depository participants to move securities to and from the tender agent by book-entry. The rule is intended to reduce substantially processing costs and trading market inefficiencies that have occurred when tender and exchange offers have been processed in a physical-certificate environment.

EFFECTIVE DATE: March 1, 1984.

FOR FURTHER INFORMATION CONTACT: Thomas V. Sjoblom, Esq., at (202) 272-7379, or Stuart J. Kaswell, Esq., at (202) 272-2378, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On April 15, 1983, the Commission issued Securities Exchange Act Release No. 19678 (the "Proposing Release"),[1] in

[1] 27 SEC Docket 1158 (May 3, 1983), 48 FR 17603 (April 25, 1983).

which the Commission solicited comments on: (i) The causes and effects of clearance and settlement and secondary trading market inefficiencies that occur when tender offers are not processed by book-entry; and (ii) proposed Rule 17Ad–14. The Commission received 36 comment letters from banks, broker-dealers, industry associations, clearing agencies (including securities depositories), corporations that have participated in tender offers, transfer agents, and individuals.[2] Virtually all commentators favored prompt adoption of the proposed rule. As discussed in more detail below, many of these letters included thoughtful suggestions about technical aspects of the rule as well as discussions of the securities processing problems generally associated with tender offers and related issues. The Commission has addressed all of the commenters' principal concerns in this release.

I. Background

As discussed in detail in the Proposing Release,[3] when a bidder's depository [4] fails to establish an account with a securities depository, all of the subject company's securities must be tendered in physical certificate form, rather than by book-entry, causing a number of problems for securityholders, broker-dealers, bidders, tender agents, and others. For example, securityholders often have great difficulty obtaining properly denominated physical certificates for tender to the bidder's depository prior to the offer's expiration date.[5] In addition, inventory management problems at securities depositories can compel those depositories to declare the subject company's securities ineligible for deposit. That declaration forces buyers and sellers of securities in the secondary market to settle individual trades by delivering physical certificates and deprives broker-dealers of the tremendous cost savings and enhanced efficiencies available through settling net obligations by book-entry.[6] Further, the unavailability of book-entry settlement processing results in a substantially higher number of fails to deliver between broker-dealers. Consequently, broker-dealers that are unable to obtain certificates to satisfy tender or other obligations must buy securities in the cash market (for same day delivery),[7] often creating significant disparities between the cash-market price and the regular-way market price of the target company's securities.

Many of these securities processing problems and market distortions can be avoided when the subject company's securities remain eligible for automated clearing agency processing during the tender offer. The Depository Trust Company ("DTC"), a securities depository registered with the Commission as a clearing agency, operates a system—called the Voluntary Offering Program ("VOP")—that allows tender offers to be handled by centralized book-entry, rather than by universal delivery of physical certificates.[8] In general, each bidder, its depositary (or exchange agent), and DTC agree on the procedures to be followed in processing each tender offer. By permitting participants to tender securities to the bidder's agent through DTC by book-entry, the VOP mitigates many of the problems discussed above.[9]

In the Proposing Release, the Commission expressed its view that bidders and their agents should be encouraged voluntarily to use depository tender offer programs, such as the VOP, so that bidders, depositaries, registered transfer agents, and the investing public could enjoy the benefits of such programs.[10] The Commission recognized, however, that because of the one-time transactional nature of tender offers, bidders may decide not to have their agents use automated book-entry processing for those offers. Accordingly, for this and other reasons,[11] the Commission proposed Rule 17Ad–14.

Rule 17Ad–14 would require a registered transfer agent,[12] acting as a tender agent for a bidder (*i.e.*, as a depositary, in connection with a cash tender offer, or as an exchange agent, in connection with a registered exchange offer), to establish with all qualified registered securities depositories [13] special accounts for the book-entry movement of tendered securities between that agent and depository participants.[14] The tender agent would have to establish the account within two business days after the offer is commenced.[15]

As indicated above, virtually all of the commenters supported adoption of Rule 17Ad–14 at this time.[16] In addition, the Commission's Advisory Committee on Tender Offers reviewed Proposed Rule 17Ad–14 and stated that it:

> supports the use of book-entry delivery of tendered securities to the extent practicable and in concept favors (without commenting on the technical aspects of the proposal) proposed Rule 17Ad–14 that would require bidders' tender agents to establish during tender offers an account with qualified registered securities depositories to permit financial institutions participating in such depository systems to use the services of the depository to tender shares, if desired.[17]

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[2] *See* File No. S7–989.

[3] For a thorough discussion of tender offer and trade processing problems that arise when depository book-entry services are not used during tender offers, *see* Proposing Release, *supra* note 1, at 17605–09.

[4] For a description of services performed by the bidder's depository, *see* Proposing Release, *supra* note 1, at n. 13.

[5] *See* 48 FR at 17605–17609. For example, securities depositories hold large denomination certificates ("jumbo certificates") in their vaults representing aggregated participants' positions. The securities depository may not be able to accommodate a participant's withdrawal request for a certificate of a specified denomination until a jumbo certificate has been presented to the transfer agent for breakdown and reissued in smaller denominations. These processing delays may impair a participant's ability to tender securities before the offer expires. *Id.* at n. 16.

[6] Additional problems result from the inability of institutions to settle transactions with their brokers at the securities depository. *See* Proposing Release, *supra* note 1, at 17607.

[7] For a description of the cash market, *see* Proposing Release, *supra* note 1, at n. 43.

[8] *See* Proposing Release, *supra* note 1, at 17609–11 for a detailed description of the VOP.

[9] The VOP also accommodates special needs of the parties involved in the tender offer, such as preventing the bidder's depositary from withdrawing physical certificates representing tendered stock until participants' withdrawal rights have expired. *Id.* at 17609.

[10] 48 FR at 17611.

[11] *Id.*

[12] *See* Sections 3(a)(25) and 17A(c) of the Act.

[13] A "qualified" registered securities depository under proposed Rule 17Ad–14 is a registered clearing agency that, at the time a tender offer is commenced under Rule 14d–2 of the Act [17 CFR 240.14d–2], has an automated tender offer processing program approved by the Commission pursuant to Section 19(b) of the Act. The program must provide for book-entry delivery and any needed return of the subject company's securities. Currently, only one securities depository, DTC, would be deemed a qualified registered securities depository under Rule 17Ad–14. *See* Proposing Release, *supra* note 1, at n. 44. Ultimately, the Commission hopes that all registered securities depositories will provide book-entry tender and delivery services during tender offers.

[14] Despite the rule, depository participants will choose in some circumstances to tender physical certificates directly to the tender agent. Moreover, persons who are not participants in securities depositories may continue to tender their securities directly to the bidder's tender agent. The rule would permit these direct tenders.

[15] Unless the context otherwise requires, "commencement" of an offer will be determined under Rule 14d–2 [17 CFR 240.14d–2].

[16] Notably, the Stock Transfer Association, Inc. ("STA"), the major industry association for transfer agents, strongly endorsed adoption and implementation of proposed Rule 17Ad–14. *See* letter to Dan W. Schneider, Division of Market Regulation, SEC, from Nicholas G. Baldino, President, STA, December 8, 1983.

[17] *Securities and Exchange Commission Advisory Committee on Tender Offers, Report of Recommendations*, at 50–51 (July 8, 1983) (hereinafter cited as "Advisory Committee").

II. The Need for Rule 17Ad–14

A. Problems Resulting From Use of Physical Certificates

As discussed more fully in the Proposing Release, when a bidder's agent does not establish an account with a securities depository for the book-entry delivery of securities and the depository thereafter declares the securities ineligible, tender offer and trade processing problems often result.[18] Many commenters indicated that processing physical certificates outside the book-entry environment is risky and inefficient. They noted their loss experience in offers in which they could not obtain properly denominated certificates in time to deliver them to the tender agent before the end of the "protect period".[19] They emphasized that such problems are exacerbated in competing offers, when tenderors attempt to withdraw securities from the agent for one bidder and submit them to the agent for the other bidder.[20]

In addition, commenters stated that when a bidder or its agent fails to establish an account with a securities depository and the depository thereafter declares the securities ineligible, trade processing problems occur that make it more difficult to settle secondary market transactions on time. In particular, the unavailability of modern automated clearance and settlement systems results in a substantial increase in the number of fails to deliver between broker-dealers. This, in turn, forces firms to incur substantial financing costs. In addition, because of the absence of an adequate supply of physical certificates during competing offers, it becomes increasingly difficult to settle secondary market transactions and options exercises in a timely manner. Commenters explained that fewer physical certificates generally are available because, among other reasons, many have been tendered by securityholders to the tender agent. At the same time, the demand for certificates multiplies as certificates are needed to settle the increased number of trades, including options exercises, and to cover buy-ins. Under these circumstances, the number of persons who cannot obtain certificates to satisfy their settlement obligations may rise dramatically.[21] The inability to obtain certificates during competing tender offers became so severe in one instance, that OCC resorted to its extraordinary cash settlement procedures to eliminate participants' obligations to obtain certificates.[22]

B. Benefits of Rule 17Ad–14

Every commenter stated that the processing of tender offers by book-entry would afford significant benefits to the securities industry and to the investing public. For example, the Securities Industry Association ("SIA") Operations Committee stated that "it has always been a strong advocate of the expansion of book-entry systems * * *. Requiring [tender] agents to accept [securities by] book-entry, would in our opinion, be a major step in eliminating many of the operational problems associated with tendering securities."[23]

Commenters generally noted that DTC's existing VOP greatly simplifies tender offer and trade processing. Some commenters also discussed specific significant or additional benefits afforded to the financial community by using the VOP. For example, several commenters indicated that, during competing bids, depository processing of tendered securities by book-entry permitted return and re-tender of withdrawn securities almost simultaneously and without the inefficiencies and delays associated with receiving physical certificates from the tender agent and redelivering them to another bidder.[24] Another commenter indicated that the VOP permits bidders to pay tendering depository participants more quickly[25] which, in turn, enables participants to pay their customers faster.[26] These comments support the views stated in the Proposing Release regarding the cost savings, enhanced safety, and tender offer and trade processing efficiencies afforded by the VOP.[27] Accordingly, the Commission

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[18] For a detailed discussion of these problems, *see* Proposing Release, *supra* note 1, at 17605–09.

[19] A "protect period" or "Protection period" refers to that period of time after expiration of an offer during which securities of the subject company may be delivered to the bidder's depositary in accordance with letters of transmittal, guarantees of delivery or other documentation (*e.g.*, telegrams, facsimile transmissions, or letters from eligible institutions) submitted prior to expiration. During large tender offers, bidders commonly provide for a protection period of eight days.

[20] *See, e.g.*, letter from W. Gresham O'Malley, III, Sr. Vice President & Secretary, Janney Montgomery Scott, Inc., to George A. Fitzsimmons, Secretary, SEC, May 10, 1983, at 1. *See generally*, letter from Marc L. Berman, Executive Vice President and General Counsel, The Options Clearing Corporation ("OCC"), to George A. Fitzsimmons, Secretary, SEC, May 26, 1983, at 2 (hereinafter cited as "OCC Letter").

[21] When certificates are not available for settlement, tendering securityholders also may have difficulty meeting timely tender offer deposit requirements. As OCC stated, failures to deliver or failures to receive securities "anywhere in the settlement process can trigger a chain reaction that ultimately prevents purchasers who lawfully tendered from promptly depositing certificates." OCC Letter, at 2.

[22] *Id. See generally* Proposing Release, *supra* note 1, at n. 41.

[23] Letter from Gerard P. Lynch, Chairman, SIA Operations Committee, to George A. Fitzsimmons, Secretary, SEC, dated May 10, 1983.

[24] One commenter suggested, however, that book-entry withdrawal of securities could be simplified further. This commenter believed that tenderors should be able to submit withdrawal instructions directly to the securities depository, rather than to the tender agent which, in turn, must forward them to the depository. *See* letter from William C. Ries, Vice President, Mellon Bank, N.A., to George A. Fitzsimmons, Secretary, SEC, May 26, 1983. Under DTC's procedures, a participant withdrawing tendered securities submits withdrawal instructions directly to the tender agent, which then determines whether the instructions have been timely submitted and are in proper form. If the tender agent accepts the withdrawal instructions, it submits appropriate instructions to DTC, which returns the securities to the tendering participant by book-entry movement. DTC has no obligation under its procedures to examine the withdrawal instructions. *See* DTC, Participant Operating Procedures, Voluntary Offering, (Dec. 1977), at 6–8 (hereinafter cited as "VOP Procedures"). While the tender agent is required to respect tenderers' withdrawal rights, *see* note 57 *infra*, the Commission believes that the tender agent should remain the person responsible for overseeing the withdrawal of securities. The Commission also believes that, as in the case of the letters of transmittal (*see* Proposing Release, *supra* note 1, at n. 13), examination of the withdrawal instructions should be the tender agent's responsibility. Further, consistent with Rule 14d–7(d) [17 CFR 240. 14d–7(d)], the Commission believes that the timeliness of the withdrawal instructions should be determined by reference to the tender agent's receipt. Accordingly, the Commission believes that withdrawal instructions should continue to be directed to the tender agent.

[25] Proposing Release, *supra* note 1, at 17610–11.

[26] Two commenters indicated, however, that under some circumstances, payment may be one day slower when tenders are made by book-entry than by physical certificate delivery to the tender agent. These commenters suggested that when a bidder pays for tendered securities after the end of the withdrawal period, a tenderor who delivered physical certificates will receive payment on that day, whereas tenderors who delivered securities by book-entry would not be credited with funds until the following day. The Commission notes that a securityholder tendering certificates would be paid more quickly only if the tender agent pays in immediately available funds (*e.g.*, through the Federal Reserve wire system ("Fed Funds")). The Commission believes, however, that payment to tenderors outside of the book-entry environment in Fed Funds is relatively rare. Conversely, DTC customarily receives payment from the tender agent in Fed Funds and credits those funds to tendering participants in DTC's clearinghouse (next day) funds settlement system. DTC invests those funds overnight and allocates the income among the tendering participants' accounts. Accordingly, the Commission believes that it would be unlikely for a tendering securityholder to obtain usable funds more quickly by tendering certificates directly to the agent. *See generally* Proposing Release, *supra* note 1, at 17610, and nn. 55 & 64.

[27] *See* Proposing Release, *supra* note 1, at 17609–11. As noted in the Proposing Release, the VOP allows securities to be tendered in a safe, central, and immobilized system that simplifies processing for both the tendering participant and the tender agent. In addition, if the subject company's securities are part of an automatic transfer program, such as the Fast Automated Securities Transfer program, the registration and reissuance of tendered certificates in the bidder's name is greatly simplified. *See* discussion *id.* at 17610 and n. 58.

believes that the VOP offers important benefits to the financial community and to the investing public and that widespread use of those programs must become routine.

C. Non-Use of Existing VOPs and Mandatory Use of Securities Depositories

Because the VOP provides a solution to the problems discussed in the Proposing Release, and because the VOP offers such substantial benefits to the financial community, the Commission's Proposing Release requested comment on why DTC's existing VOP had not been used in some tender offers. Commenters provided several explanations—some of an economic nature and some of a procedural nature. They included the following: (i) Since payment for tendered securities would be made by the bidder to the securities depository, tender agents would not be able to earn interest overnight on funds paid for those securities prior to distribution; (ii) tender agents earned less revenue by using DTC's VOP, since their fees commonly were based on the number of letters of transmittal submitted to them; (iii) some transfer agents and bidders were unfamiliar with, or did not understand the mechanics or advantages of, book-entry processing;[28] (iv) tender agents located outside of New York City may experience some delays in reconciling their books with DTC;[29] (v) bidders have been concerned that book-entry transfer at DTC would be subject to New York State's stock transfer tax;[30] and (vi) bidders and their agents had no incentive to standardize their operating procedures to be compatible with book-entry processing.

The Commission believes that the reasons offered for the failure to use the VOP suggest a degree of unfamiliarity with the VOP and its benefits and do not suggest any inherent weakness in, or substantive objection to, that program. Indeed, increased use of the VOP in recent years has demonstrated the advantages of the VOP. In addition, many responses to the Proposing Release concerned the operational details of processing particular tender offers. However, for the time being at least, the Commission believes that such particular refinements should be resolved through conversations between bidders' agents and the securities depository and not through Rule 17Ad–14. In addition, the Commission recognizes that processing tender offers outside of a depository environment creates special revenues for tender agents that may be reduced by the rule.[31] The Commission understands, however, that the principal loss of revenue will result from transferring the float from bidders' agents to tenderors through timely payment mechanisms. We further believe such prompt payment constitutes an important and appropriate public benefit associated with the use of the VOP.

The Commission acknowledges that DTC's VOP may occasionally produce minor operating problems or temporary record discrepancies for tender agents. For example, one commenter noted that tender agents located outside of New York City may be disadvantaged when examining letters of transmittal submitted by tendering participants. Since DTC does not examine letters of transmittal for accuracy and sends them to the tender agent for its examination,[32] a tender agent located outside of New York faces a brief delay in determining whether the letters are in proper form and whether the corresponding securities will be delivered by book-entry or directly.[33] Another commenter[34] suggested that similar delays and balancing problems may occur when a tender agent, located outside of New York, attempts to reconcile tendering participant's letters of transmittal and delivery instructions with the number of shares DTC reports as delivered by book-entry.[35]

The Commission believes that DTC has developed responsible procedures to minimize these problems. As noted in the Proposing Release, [36] on the day DTC receives letters of transmittal, it sends copies or originals of those letters to the tender agent for next day delivery. DTC also maintains daily and cumulative records of the number of shares successfully tendered and assists the tender agent in balancing mutual records each day. Moreover, in practice, the Commission believes that difficulties experienced using the VOP have been *de minimis*, while the benefits to tenderors and tender agents have been substantial.

In the Proposing Release, the Commission expressed its hope that if the advantages of DTC's VOP became better known and voluntary usage increased, a mandatory rule might be unnecessary. Although the Commission notes that voluntary use of DTC's VOP has increased significantly during the past several years,[37] commenters generally concurred that universal voluntary participation, while likely, would take much too long.[38] In addition, as outlined in the Proposing Release,[39] and as confirmed by the commenters,[40] processing tender offers outside of a book-entry environment has significant adverse effects on the nation's securities markets, the national clearance and settlement system,[41] and the public. Accordingly, although the commenters were able to identify several reasons why DTC's VOP has not been used in the past, the majority of commenters, including the Stock Transfer Association, urged that the Commission adopt Rule 17Ad–14 promptly because of the significant benefits it would provide.

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[28] Additional reasons of a procedural nature suggested by the commenters for the failure to use the VOP included: (i) the securities that were the subject of the tender offer were not eligible for deposit in DTC; (ii) tender agents lacked the capability to accept securities by book-entry; (iii) tender agents lacked confidence in depositories' ability properly to process tender offers; (iv) DTC allegedly is not sufficiently flexible in negotiating special arrangements with tender agents to accommodate unusual operational requirements; and (v) there could be disparities among the depositories' procedures and requirements.

[29] *See* discussion accompanying notes 33–36 *infra*.

[30] New York State imposes a tax on certain transfers of securities. *See* N.Y. Tax Law section 270 *et seq.* (McKinney 1966). This tax has been suspended, in effect, by a one hundred percent rebate of taxes paid. *Id.* at section 280–a.

[31] For example, as noted in the Proposing Release, *supra* note 1, at nn. 55 & 88, DTC's money settlement system permits a tender agent to pay tendering participants quickly for their stock. As a result, a bidder may not earn as much income on the "float" from funds paid to tendering security-holders as it would if slower conventional methods were used.

[32] *See* VOP Procedures at 5.

[33] *See* Letter from Robert E. L. Walker, Vice President and Associate General Counsel, Continental Illinois National Bank, to George A. Fitzsimmons, Secretary, SEC, May 31, 1983, at 2–3.

[34] *See* Letter from Robert J. Vondrasek, President, Midwest Stock Transfer Association, to George A. Fitzsimmons, Secretary, SEC, May 16, 1983, at 1 (hereafter cited as "MSTA Letter").

[35] For example, a tendering participant may submit a letter of transmittal for 100 shares of stock to the tender agent through DTC and may instruct DTC to deliver 100 shares by book-entry to the tender agent. If that participant's free account contains only 90 shares, DTC will not deliver the 90 shares by book-entry, but, instead, will return the instruction to the participant for modification.

[36] *See* Proposing Release, *supra* note 1, at n. 49.

[37] In 1982, DTC processed only 53% of all eligible offers. Letter from William T. Dentzer, Chairman and Chief Executive Officer, DTC, to George A. Fitzsimmons, Secretary, SEC, June 1, 1983, at 2 (hereinafter "DTC Letter"). During the first quarter of 1983, bidders or their agents used DTC to process only 57% of the offers that could have been handled at DTC. Statement of Kenneth M. Scholl, Vice President, DTC, in *DTC Newsletter*, at 8, (June 1983). In contrast, DTC has estimated that approximately 70% of all tender offers were processed through DTC's VOP for the first three financial quarters of 1983.

[38] *See, e.g.*, letter from Gerard P. Lynch, Managing Director, Morgan Stanley & Co., Inc., to George A. Fitzsimmons, Secretary, SEC, May 10, 1983.

[39] 48 FR at 17605–09.

[40] *See* discussion accompanying notes 19–22 *supra*.

[41] *See* Section 17A of the Act and Proposing Release, *supra* note 1, at 17604–05.

The Commission, therefore, believes it is appropriate to adopt Rule 17Ad–14. We believe that the benefits of book-entry processing of tender offers should be uniformly available as soon as possible to the financial industry and the public. We hope that adoption of the rule will encourage other registered depositories to develop and file programs similar to DTC's VOP,[42] which will further reduce the need for multiple physical deliveries. Accordingly, in light of the favorable comments received, the benefits that can be achieved nationwide, and the desire of depository participants and securityholders to use VOP-type programs, the Commission believes that efficient processing can best occur during tender offers when the availability of securities depositories is ensured.[43]

III. Discussion of Rule 17Ad–14

A. Tender Offers to Which Rule 17Ad–14 Should Apply

The Proposing Release asked for comment on whether depository availability should be mandatory for only certain tender offers.[44] While some commenters, including representatives of the transfer agent community, believed that the proposed limitations in paragraph (b) on the scope of Rule 17Ad–14 were appropriate, other commenters favored processing as many tender offers as possible by book-entry and recommended that the scope of the proposed rule be broadened. Only a few commenters recommended expanding the exclusions to reduce the number of tender offers for which tender agents would have to establish depository accounts.

1. Number of Securityholders and Shares Outstanding of Subject Company

As proposed, Rule 17Ad–14 would not apply to a subject company having fewer than 500 securityholders of record of the class of securities sought by the bidder and fewer than 500,000 shares of that class outstanding. Section 14(d) of the Act, one of the central provisions of the Act governing tender offers, is most commonly triggered when a tender offer is made for a class of securities registered under Section 12 of the Act. Registration is required under Section 12(g)(1)(B) of the Act when, among other things, the issuer has a class of equity securities (other than exempt securities) held of record by 500 or more persons. Thus, like Section 14(d)(1) of the Act, paragraph (b)(1) of Rule 17AD–14 uses the securityholder count contained in Section 12(g)(1)(B) as the threshold for determining when book-entry facilities must be available.

The requirement that the subject company have 500,000 shares of the target class outstanding was based on several considerations. First, the benefits of book-entry processing are needed most in tender offers for large companies that have substantial shareholder bases and actively traded issues. Second, nearly all issuers whose securities attract appreciable trading activity warrant depository services, even though some of those issuers are relatively small.[45] Moreover, most commenters favored including under Rule 17Ad–14 as many tender offers as possible, so that book-entry efficiencies in depository-eligible securities would be available on a routine basis. Accordingly, the Commission believes that the size criteria contained in Rule 17Ad–14(b)(1), which will reach tender offers for nearly all depository-eligible securities, are appropriate.

2. Odd Lot Tender Offers

Several commenters discussed the proposed exclusion in paragraph (b)(2) for odd-lot tender offers (*i.e.*, tender offers to persons holding fewer than 100 shares). Some commenters, believing that Rule 17Ad–14 should apply to tender offers for odd-lots of the subject company's securities, stated that securityholders whose odd-lots are held by banks, brokers, or other intermediaries should be able to take advantage of book-entry delivery and should not have to endure the delays and risks of missing an offer while waiting for their securities to be reissued in their names.[46] Other commenters, however, including representatives of the transfer agent community, noted the limited secondary trading market effects during odd-lot offers and argued that those limited effects justified the exclusion of odd-lot offers. Specifically, when an odd-lot tender offer occurs, there usually is very little, if any, impact on the market price of securities trading in round-lots. Indeed, the price of securities trading in odd-lots is derivatively priced from the round-lots. For those reasons, in part, DTC indicated that it generally will not make a security ineligible for depository services simply because it is subject to an odd-lot tender offer. Thus, to the extent that one of the underlying objectives of Rule 17Ad–14 is to reduce adverse effects on the secondary trading markets and on the processing of secondary market transactions during tender offers, those concerns normally are not present in odd-lot tender offers.[47] Accordingly, while the Commission encourages bidders and their agents to use VOP-type programs for odd-lot tender offers when cost effective and efficient to do so, the Commission has determined not to include odd-lot tender offers within the scope of Rule 17Ad–14 at this time.

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[42] As noted in the Proposing Release, *id.*, at n. 71, a registered securities depository must submit to the Commission for approval under Section 19(b) of the Act and Rule 19b–4 [17 CFR 240.19b–4] thereunder, any plan for the book-entry processing of tender or exchange offers. The Commission intends to review each plan carefully and to encourage appropriate uniformity among VOPs.

[43] In the Proposing Release, the Commission also asked whether depository processing of tender offers had any effect on the timing of critical events—such as accrual of voting rights by the bidder for tendered securities. *See* Proposing Release, *supra* note 1, at 17610–11. Letters of transmittal commonly provide that the purchaser controls the securities' voting rights after the purchaser pays for the securities. Under DTC's VOP procedures, agents agree to make payment to DTC at the same time similar payments are made to persons who tender their securities directly to the bidder's agent. Thus, the availability of depository processing does not alter the time when voting rights accrue under state law or when purchase payments are made under the terms of the offer, since these matters are determined largely by contract (*e.g.*, letter of transmittal) among the parties. See *generally*, Fletcher, *Cyclopedia of Corporations* section 2029.

[44] 48 FR at 17613. The Proposing Release also asked for comment on whether Rule 17Ad–14 should require the *bidder* (rather than the bidder's agent) to establish an account with a securities depository. *See id.* at 17613. This question drew comments both legal and practical in nature. While some commenters suggested that bidders should be directly responsible for establishing depository accounts so that all tender offers would be processed by book-entry, most commenters believed that imposing this obligation on the tender agent would achieve essentially the same results as imposing it on the bidder. These commenters stated that most transfer agents are likely to be more familiar than most bidders with the existence of depositories and with the mechanics of VOPs and tender offer processing. In addition, although some of these commenters correctly noted that Rule 17Ad–14, as currently drafted, would not apply to tender agents that are not registered transfer agents, nearly all tender offers are handled by tender agents that would be subject to the rule. Accordingly, the Commission believes that Rule 17Ad–14 will apply to nearly all tender offers and certainly to those tender offers that will benefit most from depository processing.

[45] *See e.g.*, DTC Rule 5; Midwest Securities Trust Co., Rule 2, Section 2; and Philadelphia Depository Trust Co., Rule 5. Only a few publicly traded companies with fewer than 500,000 shares of common stock outstanding have those shares on deposit at securities depositories.

[46] Many retail customers owning odd-lots leave those securities with their broker-dealer or bank. Many other odd-lot positions, however, are held outside securities depositories. *See generally* Proposing Release, *supra* note 1, at nn. 16 & 23.

[47] The Commission recently amended Rules 13e–3 and 13e–4 to exclude odd-lot tender offers [17 CFR 240.13e–3 and 13e–4]. Exclusion of odd-lot tender offers from Rule 17Ad–14, therefore, is consistent with the Commission's treatment of odd-lot tender offers under other rules.

B. Number of Depository Accounts

Another question posed in the Proposing Release was whether Rule 17AD–14 should require the bidder's agent to establish and maintain an account with one or more, rather than all, qualified securities depositories.[48] Many commenters who addressed this issue suggested that the rule would best promote safety and efficiency if accounts were required at all depositories, including regional depositories.[49]

Certain commenters, however, including some transfer agents, recommended that a tender agent be required to establish an account with only one securities depository. These commenters noted that establishing an account at only one securities depository could simplify several of the tender agent's tasks, such as balancing depository accounts, since it would not have to deal with several depositories.[50] Many of these commenters also suggested, however, that all depositories should be required to keep the subject company's securities eligible for depository services and that those depositories not under contract with the tender agent should be required to operate interfaces or links with the primary depository ("interfaced system").

The Commission has monitored the operation of depository and clearing corporation interfaces for several years [51] and believes that, under most circumstances, interfaces effectively link components of the national clearance and settlement system. Nonetheless, the Commission believes that depository interfaces may not be particularly well-suited to the demands of tender agents and depository participants during a tender offer. During a tender offer, a depository needs to control its participants' securities positions and certificates closely to assure that it can satisfy its participants' instructions efficiently and fairly. Requiring depositories to use interfaces to tender securities imposes an intermediary step in the process, which can create substantial liabilities for the participants, tender agents and all linked depositories. At the same time, universal dependence on interfaces could increase the risk to tenderors and bidders that securities committed by letters of transmittal will not be physically delivered on a timely basis due to fails at an interfacing depository. At the very least, in any instance in which a tender agent depends on depository interfaces, the agent will experience reduced control over interfaced depositories, and remote participants may face early cut-off times. While we recognize the difficulties associated with establishing accounts with each of the four qualified securities depositories, the Commission believes that these difficulties for tender agents are substantially outweighed by the potential for reduced control and financial exposure that could result from universal dependence on an interfaced system. Accordingly, the Commission believes that Rule 17Ad-14 should require tender agents to establish accounts at all qualified securities depositories.[52]

In addition, one commenter noted that Rule 17Ad-14 may require several registered transfer agents, each acting on behalf of a single bidder, to establish redundant accounts with qualified securities depositories. For example, if a bidder appointed one registered transfer agent as the depositary and another registered transfer agent in a different city as a forwarding agent, both would be required under paragraph (a) of Proposed Rule 17Ad-14 to establish depository accounts. Since the securities depository could then make book-entry deliveries of securities to either transfer agent, the commenter suggested that establishing two separate accounts is unnecessary and potentially confusing.[53]

The Commission agrees with this suggestion. The Commission believes that only one registered transfer agent, acting on behalf of the bidder, need establish an account with a qualified securities depository to permit book-entry tender and withdrawal of securities. That agent should be the one receiving tendered securities and making payments therefor. Those responsibilities will usually be borne by the depositary, in the case of a tender offer, and the exchange agent, in the case of an exchange offer. The Commission does not believe that duplicative accounts will afford any additional benefits to the financial community or the public. Accordingly, paragraph (a) of Rule 17Ad-14 has been modified to address this concern.[54]

C. Continued Eligibility of the Subject Company's Securities

The Proposing Release asked for comments on whether a qualified securities depository should be permitted, under any circumstances, to declare the subject company's securities ineligible for depository services after the bidder (or its agent) has established a depository account for receiving tendered securities.[55] Many commenters, including DTC, stated that once the depository and the tender agent reach agreement to establish an account, a securities depository should not be able to make the subject company's securities ineligible for depository services.

Securities depositories filing proposals for qualified programs, pursuant to Section 19 of the Act, should specify the times and circumstances under which the depository would declare as subject company's securities ineligible for depository services. In that regard, the Commission expects that securities depositories will not exit securities from their systems absent very compelling reasons.[56]

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[48] 48 FR at 17613. Currently, only DTC is a qualified securities depository. *See* notes 13 and 42 *supra*. One commenter recommended that Rule 17Ad–14 not be adopted until all depositories have approved systems in place. MSTA Letter at 1.

[49] *See, e.g.*, letter from Charles M. Viviano, First Vice President and Executive Cashier, Prudential-Bache Securities, to George A. Fitzsimmons, Secretary, SEC, May 26, 1983, at 1–2. Some of these commenters stated, however, that a linked system, described *infra*, could be an acceptable alternative under certain circumstances. *See, e.g.*, letter from Herbert I. Levitt, General Partner, Spear, Leeds & Kellogg, to George A. Fitzsimmons, Secretary, SEC, May 24, 1983, at 1.

[50] In this connection, a number of commenters noted that it can be more difficult for a tender agent located outside of New York City to balance accounts with DTC on a remote basis than with a local depository.

[51] *See* the discussion in Securities Exchange Act Release No. 20461 (December 7, 1983), 48 FR 55654 (December 14, 1983).

[52] As discussed *infra*, the Commission intends to monitor the effect of Rule 17Ad-14 on the financial community, including the requirement of establishing accounts at all qualified depositories. The Commission will consider amending paragraph (a) of Rule 17Ad-14 in the future if necessary or appropriate.

[53] *See* letter from Nicola L. Caporale, Vice President, Goldman, Sachs & Co., to George A. Fitzsimmons, Secretary, SEC, June 2, 1983, at 2.

[54] Rule 17Ad-14, as adopted, would define "depositary" as an agent of the bidder receiving securities from tendering depository participants and paying those participants for shares tendered and defines the term "exchange agent" as the agent performing like functions in connection with an exchange offer.

[55] 48 FR at 17613.

[56] *See* Section 17A(b)(3) of the Act. DTC indicated that there are two types of offers that it could not agree to process. First, DTC said it would not process offers that can be terminated at any time during a processing day on the occurrence of some event (*e.g.*, the tender of a specified percentage of shares outstanding). DTC explained that, while instructions from a participant to tender shares might be received by DTC before the offer ended, book-entry movement would not occur until after the offers expired. DTC suggested that it could accommodate even such offers if the bidder agreed to purchase all shares tendered on the last day or purchase them *pro rata*. Second, DTC said it would not process offers without any protect period (*see* note 19, *supra*). DTC explained, for example, that a participant could purchase securities on trade date ("T") three days before an offer expires, send a

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D. Withdrawal by Book-Entry

Rule 17Ad–14, as proposed, addressed only book-entry delivery and receipt of securities. In the interest of providing a complete tender offer service, however, DTC's VOP permits tender agents to return previously tendered securities, provided an appropriate withdrawal request is submitted to the tender agent within the permitted time period.[57] In addition, several commenters indicated that return of securities by book-entry in response to a demand for withdrawal during competing bids is substantially easier and more efficient than physical certificate processing ex-depository. Since commenters and the Commission believe that the benefits or book-entry processing should be available in connection with tender offers to the greatest extent possible, Rule 17Ad–14 has been changed to include the process of returning previously tendered securities that have been withdrawn.

E. Tendering Physical Certificates Directly to the Bidder's Agent

Some commenters pointed out that there may be situations in which it is necessary to deliver physical certificates directly to the bidder's agent outside of the securities depository. For example, it may be quicker to deliver directly pursuant to a guarantee as the end of the protection period approaches.[58] As a result, the Commission emphasizes that the rule does not prevent a participant from tendering physical certificates to the tender agent outside of the book-entry environment, and a tender agent is not prohibited from accepting securities so tendered.[59] Indeed, under Rule 17Ad–14, a depository participant may choose the method of tendering most appropriate to its needs.

IV. Related Matters Raised by Comments

The Proposing Release and the commenters' responses raised a variety of other issues related to tender offer processing and the national clearance and settlement system. Some of these concerns, to the extent they bear significantly on tender offer processing, are discussed below.[60] For example, some commenters believe that the Commission could foster greater use of automated clearance and settlement systems by requiring greater uniformity of procedures among all clearing agencies. Specific suggestions included: (i) Requiring clearing corporations to establish uniform buy-in and liability notice rules; [61] and (ii) requiring all securities depositories to have the same eligibility criteria for securities. Under current practice, the Commission understands that securities depositories customarily grant eligibility to a security upon a participant's request even if that security is traded infrequently. Therefore, the Commission believes that differences in depository-eligibility lists for equity securities do not raise a serious concern at this time.[62] The Commission agrees that the present differences in buy-in and letter of liability procedures substantially impair the efficiency of, and increase the risks for, the safe clearance and settlement of securities transactions during tender offers. The Commission understands, however, that the clearing agencies are actively resolving these disparities in cooperation with Commission staff members.[63]

Several commenters believed that all tender offers should require a "protection period"[64] and suggested that the Commission adopt a rule—for example, under Section 14(e) of the Act—establishing a minimum protect period.[65] While the Commission appreciates that a protection period reduces processing difficulties,[66] the Commission does not believe that at this time it should establish by rule a standard protection period. Industry custom provides an eight day protection period for almost all offers. While a rule requiring a minimum protect period may be necessary at some point if custom changes, we are not persuaded that a regulatory requirement is needed now.[67]

The Commission similarly believes that other matters raised by commenters involve business considerations to be resolved among the bidder, its agent, and the securities depository prior to processing the tender offer.[68] Accordingly, while the Commission will monitor the use of VOP programs during tender offers to determine whether these concerns warrant further attention or amendments to rules and procedures of the securities depositories, the Commission does not believe it is appropriate at this time to address these concerns in Rule 17Ad–14.[69]

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letter of guarantee directly to the tender agent on T+1, receive delivery of the securities from the seller on T+5, but be unable to have DTC deliver the shares before the end of T+3. DTC suggested that this problem can be avoided only in offers in which there is a minimum protect period sufficient to enable normal depository processing. *See* DTC Letter, *supra* note 37, at 2–3.

The Commission recognizes that there may be offers made under circumstances like those described above, in which book-entry processing may be counter-productive and inconsistent with the needs of the financial community and the public. The Commission urges bidders' agents and the depositories to work out potential difficulties before an account is required to be established.

[57] *See* Section 14(d)(5) of the Act (withdrawal permitted until expiration of seven days after giving notice of definitive offer to securityholders and at any time after sixty days of original offer) and Rule 14d–7 (withdrawal permitted until expiration of fifteen business days from the date of offer's commencement and also permitted under certain conditions until expiration of ten days following commencement of a competing offer) [17 CFR 240.14d–7].

[58] *See, e.g.*, letter from William A. Schreyer, President, Merrill Lynch & Co., Inc., to George A. Fitzsimmons, Secretary, SEC, May 27, 1983, at 2–4 (hereinafter cited as "Merrill Lynch letter").

[59] The Commission notes this result comports with the recommendation of the Advisory Committee. *See* note 17 *supra* and accompanying text.

[60] Several other comments would appear to fall outside this rulemaking proceeding. For example, one commenter suggested that the bidder's depositary should receive from the transfer agent both a list of the shoreholders of record and a stop list. The Commission believes that some of these concerns may have been addressed in Rule 14d–5(c)[17 CFR 240.14d–5(c)].

[61] *See* Proposing Release, *supra* note 1, at 17607–08.

[62] For a discussion of the clearing agency eligibility problems respecting municipal securities *see* Securities Exchange Act Release No. 20365 (November 14, 1983), 48 FR 52531 (November 18, 1983).

[63] If the clearing agencies cannot reach a consensus within a reasonable time, the Commission will consider taking further regulatory action, such as adopting a uniform rule.

[64] *See* note 19 *supra*.

[65] *See* Merrill Lynch letter, *supra* note 58, at 4–5 and letter from A. M. Ricci, Drexel Burnham Lambert, Inc., to George A. Fitzsimmons, Secretary, SEC, May 27, 1983.

[66] *See* note 56 *supra*.

[67] If it appears that the absence of uniform protect periods adversely affect secondary market trading or clearance and settlement of securities subject to a tender offer, the Commission will consider whether further regulatory action is necessary.

[68] For example, commenters suggested certain tender offer securities processing enhancements, including: (i) Synchronizing the VOP "cut-off time" (*i.e.*, the time by which depository participants must instruct, for example, DTC to deliver securities to the tender agent by book-entry) with the expiration dates in each tender offer; (ii) requiring DTC to adjust its VOP system in each offer to each tender agent's procedures; (iii) expanding the Fast Automated Securities Transfer program [*see* Proposing Release, *supra* note 1, at 17610 and n. 58) to simplify delivery of odd-lot certificates to customers; and (iv) providing that book-entry tenders be accepted even if those tenders are submitted after the offer expires. *See* Proposing Release, *supra* note 1, at n. 47. In addition, although one commenter suggested that Rule 17Ad–14 should provide that book-entry delivery of tendered securities is legally equivalent to delivery of physical certificates, we note that state law already provides that securities may be effectively transferred by book-entry delivery at a registered securities depository. *See e.g.*, N.Y. U.C.C. section 8–320 (McKinney, Supp., July 1983); Cal Com. Code §8320 (West Supp. 1983); Ill. Ann. Stat. ch. 26 section 8–320 (Smith-Hurd 1974); 13 Pa. Cons. Stat. Ann. section 8–320 (Purdon Supp. 1983).

[69] *See also* note 52, *supra*.

Furthermore, as indicated above, the Commission intends to monitor the effects of Rule 17Ad–14 generally and to modify the rule, as appropriate, to foster or accommodate further developments in tender offer processing and in the national clearance and settlement system.

V. Statutory Authority

Rule 17Ad–14 is being adopted pursuant to Section 2, 11A(a)(1)(B), 14(d)(4), 15(c)(3), 15(c)(6), 17A(a), 17A(d)(1), and 23(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78b, 78k–1(a)(1)(B), 78n(d)(4), 78o(c)(3), 78o(c)(6), 78q–1(a), 78q–1(d)(1) and 78w(a)]. The Commission believes that Rule 17Ad–14 is necessary for the protection of investors and is consistent with the public interest.

Congress, in the Securities Acts Amendments of 1975, found, among other things, that the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership, was necessary for the protection of investors and that inefficient clearance and settlement procedures imposed unnecessary costs on investors and persons facilitating transactions on behalf of investors. Congress also found that uniform standards and procedures for clearance and settlement would reduce those costs and increase protection for investors and persons facilitating transactions on behalf of investors.[70]

As part of the Securities Acts Amendments of 1975, Congress also enacted Section 17A(d)(1) of the Act, which prohibits registered transfer agents and registered clearing agencies from engaging in any activity in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. In light of the need to further the purposes of Section 17A(a)(1) of the Act in the context of tender offers and the need for increased investor protection when processing transactions in securities of the subject company during tender offers,[71] the Commission believes that it is appropriate to adopt Rule 17Ad–14.

In addition, the Commission believes that Rule 17Ad–14 will help maintain fair and orderly markets in the trading of the subject company's securities during a tender offer.[72] Because clearance and settlement mechanisms will be less strained during a tender offer, market liquidity for those securities should be enhanced.

Finally, Section 14(d)(4) authorizes the Commission to prescribe rules regarding solicitations or recommendations to accept or a reject a tender offer or requests or invitations for tenders. In soliciting tenders and acceptances of an offer, the bidder through its tender agent will need to provide for deposit and delivery of the subject company's securities at qualified registered securities depositories by establishing accounts with those depositories.

The Commission believes that the costs, if any, to bidders of complying with Rule 17Ad–14 will be minimal. Currently, bidders do not incur any DTC charges when using the voluntary offering program. Instead, costs for operating that program are allocated among DTC participants using these services. The Commission anticipates that depositories offering these programs will continue to assess tender offer service charges on participants on the basis of participant usage.[73] Moreover, the Commission believes that elimination of a substantial percentage of physical certificate tenders should actually reduce tender agent costs.

In addition, to simplify and expedite the granting of exemptions under paragraph (d) of Rule 17Ad–14, the Commission is amending its Rules Delegating Functions to Division Directors, Regional Administrators, and the Secretary of the Commission (17 CFR 200.30–1 *et seq.*) to delegate that function to the Director of the Division of Market Regulation, as provided below. The Commission is adopting this amendment pursuant to Pub. L. 87–592, 17 stat. 394, 15 U.S.C. 78d–1, d–2.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Freedom of Information, Privacy, Securities.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VI. Text of Rule

In accordance with the foregoing, the Commission hereby amends Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 200—[AMENDED]

1. By adding paragraph (a)(43) to § 200.30–3 as follows:

§ 200.30–3 Delegation of Authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(43) To grant or deny exemptions from Rule 17Ad–14 (§ 240.17Ad–14 of this chapter), pursuant to Rule 17Ad–14(d) (§ 240.17Ad–14(d) of this chapter). (Pub. L. 87–592, 76 Stat. 394, 15 U.S.C 78d–1, 78d–2).

* * * * *

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

2. By adding § 240.17Ad–14 to read as follows:

§ 240.17Ad–14 Tender agents.

(a) *Establishing book-entry depository accounts.* When securities of a subject company have been declared eligible by one or more qualified registered securities depositories for the services of those depositories at the time a tender or exchange offer is commenced, no registered transfer agent shall act on behalf of the bidder as a depositary, in the case of a tender offer, or an exchange agent, in the case of an exchange offer, in connection with a tender or exchange offer, unless that transfer agent has established, within two business days after commencement of the offer, specially designated accounts. These accounts shall be maintained throughout the duration of the offer, including protection periods, with all qualified registered securities depositories holding the subject company's securities, for purposes of receiving from depository participants securities being tendered to the bidder by book-entry delivery pursuant to transmittal letters and other documentation and for purposes of allowing tender agents to return to depository participants by book-entry movement securities withdrawn from the offer.

(b) *Exclusions.* The rule shall not apply to tender or exchange offers (1) that are made for a class of securities of a subject company that has fewer than (i) 500 security holders of record for that class, or (ii) 500,000 shares of that class outstanding; or (2) that are made

[70] *See* Section 17A(a)(1) of the Act.

[71] *See* also Section 17A(b)(3)(A) (safeguarding funds and securities), 17A(b)(3)(F) (safeguarding funds and securities and removing impediments to a national clearance and settlement system) and 17A(e) of the Act (immobilization of certificates for settlement purposes).

[72] *See* Section 2 of the Act.

[73] In order to obtain Commission approval as a qualified registered securities depository under Rule 17Ad–14, each securities depository will be required to submit to the Commission as part of its tender offer processing plan filed under Section 19 of the Act a schedule of fees to be charged participants. Any changes to those fees will have to be refiled pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder [17 CFR 240.19b–4].

exclusively to security holders of fewer than 100 shares of a class of securities.

(c) *Definitions.* For purposes of this rule, (1) the terms "subject company," "business day," "security holders," and "transmittal letter" shall be given the meanings provided in § 240.14d–1(b); (2) unless the context otherwise requires, a tender or exchange offer shall be deemed to have commenced as specified in § 240.14d–2; (3) the term "bidder" shall mean any person who makes a tender or exchange offer or on whose behalf a tender or exchange offer is made; (4) a "qualified registered securities depository" shall mean a registered clearing agency having rules and procedures approved by the Commission pursuant to Section 19 of the Securities Exchange Act of 1934 to enable book-entry delivery of the securities of the subject company to, and return of those securities from, the transfer agent through the facilities of that securities depository; and (5) the term "depositary" refers to that agent of the bidder receiving securities from tendering depository participants and paying those participants for shares tendered. The term "exchange agent" refers to the agent performing like functions in connection with an exchange offer.

(d) *Exemptions.* The Commission may exempt from the provisions of this rule, either unconditionally or on specified terms and conditions, any registered transfer agent, tender or exchange offer, or class of tender or exchange offers, if the Commission determines that an exemption is consistent with the public interest, the protection of investors, the prompt and accurate clearance and settlement of securities transactions, the maintenance of fair and orderly markets, or the removal of impediments to a national clearance and settlement system.

VII. Regulatory Flexibility Act

Pursuant to 15 U.S.C. 605(b), the Chairman of the Commission, in the Proposing Release, certified that Rule 17Ad–14, if adopted, would not have a significant economic impact on a substantial number of small entities. The Commission received no comments on that certification. Accordingly, the Commission believes that the rule, as adopted, will not have a significant impact on a substantial number of small entities.

VIII. Burden on Competition

In accordance with Section 23(a)(2) of the Act, the Commission has considered whether Rule 17Ad–14 will impose a burden on competition not necessary or appropriate in furtherance of the Act. As discussed in detail in this release, the Commission believes that Rule 17Ad–14: (i) Will reduce processing costs for the financial community and for the public; (ii) will tend to eliminate secondary market inefficiencies; and (iii) will apply equally to all registered securities depositories and registered transfer agents. Accordingly, the Commission believes that Rule 17Ad–14 will facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions, pursuant to Section 17A(a)(1)(2) of the Act, and will not impose a burden on competition that is not necessary or appropriate to further the Act.

By the Commission.

Dated: January 19, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–2040 Filed 1–24–84; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 270

[Docket No. RM80–33–001; Order No. 356]

Interpretive Rule for Btu Measurement Standard Under the Natural Gas Policy Act of 1978

Issued: January 19, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interpretive rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its Btu measurement regulations for gas sold under the Natural Gas Policy Act of 1978 (NGPA). These regulations are intended to implement the District of Columbia Circuit Court of Appeals decision in *Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission.* The Commission is amending its regulations in § 270.204 to require that the maximum lawful price for gas sold under the NGPA must be calculated based on the Btu content of gas measured under the standard test conditions defined by the Commission.

EFFECTIVE DATE: January 19, 1984.

FOR FURTHER INFORMATION CONTACT: Nancy M. Rizzo, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8033.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations for determining, for pricing purposes, the quantity of heat energy involved in a first sale of natural gas pursuant to the Natural Gas Policy Act of 1978 (NGPA). In so doing, the Commission is implementing the decision in *Interstate Natural Gas Association of America V. Federal Energy Regulatory Commission (INGAA)* [1] in which the court vacated § 270.204 of the Commission's regulations.

The Commission is amending § 270.204(c) of its regulations to specify that the number of Btu's determined under the "standard test conditions" set forth in § 270.204 (a) and (b) must be used for establishing the maximum lawful payment for gas sold in a first sale. Briefly stated, this amendment establishes that the Btu content of gas sold in a first sale under the NGPA must be determined on the basis of the natural gas being saturated with water vapor at 60 degrees Fahrenheit at a pressure of 14.73 psia, regardless of the actual delivery conditions.

II. Background

The energy value of natural gas is expressed in terms of British thermal units (Btu's), each Btu representing the amount of heat energy needed to raise the temperature of one pound of water one degree Fahrenheit.

Under the Natural Gas Act (NGA), the Commission established prices per thousand cubic feet (Mcf) for natural gas sold in the interstate market. The Commission permitted upward and downward adjustments to these rates to reflect the Btu content of the gas determined under certain "standard test conditions." [2] These adjustments were

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[1] 716 F. 2d 1 (D.C. Cir. 1983). The United States Court of Appeals for the District of Columbia Circuit issued its mandate in *INGAA* on December 8, 1983. On December 30, 1983, Chief Justice Burger denied, without prejudice, requests for stay of the mandate filed by the Commission and other parties. On January 17, 1984, the Commission filed a petition for writ of certiorari and a motion to stay the mandate with the United States Supreme Court.

[2] More specifically, the "standard test conditions" determines or inputes the number of Btu's produced by the combustion, at constant pressure, of the amount of gas which would occupy a volume of 1.0 cubic foot at a temperature of 60° Fahrenheit saturated with water vapor and under a pressure equivalent to that of 30.00 inches of mercury at 32° Fahrenheit and under standard gravitational force (980.665 centimeters per second squared) with air of the same temperature and pressure as the gas when the products of combustion are cooled to the initial temperature of the gas and air, and when the water formed by combustion is condensed to the liquid state. 18 CFR 2.56a(c)(1) and 2.56b(d)(1)(1983).