statutory disqualification under section 8a(3) of the Act and, therefore, who does not qualify for a temporary license may nonetheless be registered as an associated person following investigation and consideration by the Commission. In this regard, the Commission reminds applicants and their sponsors that if the applicant answers "Yes" to any question in the Disciplinary History portion of the Form 8–R, copies of all relevant documents must be submitted with the application. The failure to include such documents will only delay a decision with respect to the applicant.

The Commission is aware that when the rules implementing the temporary licensing program become effective, a number of applications for registration as an associated person will be pending at the Commission. In order to afford these applicants the same benefits as new applicants, the Commission, in conjunction with the letter notifying sponsoring registrants of the effective date of the temporary licensing program, has sent to each futures commission merchant ("FCM") a list of all individuals sponsored by such FCM registered as associated persons or whose applications as such are pending with the Commission. The FCM has been asked to certify which applicants qualify for a temporary license in accordance with the provisions of § 3.40. Upon receipt of such certification, the Commission will issue qualifying applicants a temporary license.

Similar lists have not been sent to commodity trading advisors and commodity pool operators. However, these entities have been advised by letter that, upon receipt of the appropriate certification, temporary licenses will also be issued to qualifying applicants sponsored by such firms. The Commission also wishes to note that all associated person applications received by the Commission on and after May 14, 1984 which meet the requirements of § 3.40 will be processed as if the regulations relating to temporary licensing were in effect. Upon the effective date of these regulations, these applicants will be issued a temporary license.

Finally, the Commission wishes to remind sponsoring registrants that §§ 3.12(c)(2) and 3.16(c)(2), which formerly permitted sponsors to submit the required sponsor's certification after the applicant's application has been submitted, have been amended. Effective May 31, 1984, the sponsor's certification must be filed with the applicant's Form 8–R and fingerprint card, even if the applicant does not qualify for a temporary license. As the Commission noted in the **Federal Register** release adopting these amendments, the Commission believes that requiring applicants for associated person registration to submit fully completed registration applications will enhance the Commission's ability to process such applications in a timely fashion and avoid unnecessary delays.

Issued by the Commission on May 9, 1984, in Washington, D.C.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 84–13082 Filed 5–14–84; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 45

[Docket No. RM83-34-000; Order No. 374]

Application for Authority To Hold Interlocking Positions Requiring Approval Under Section 305(b) of the Federal Power Act

Issued: May 10, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending 18 CFR 45.8, the application for authority to hold interlocking positions under section 305(b) of the Federal Power Act. The rule reduces compliance burdens on applicants by removing certain filing requirements from the application and revising filing requirements in the application.

EFFECTIVE DATE: June 14, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph H. Long, Federal Energy Regulatory Commission, Office of the General Counsel, Rulemaking and Legislative Analysis Division, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357–8033.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, J. David Hughes, A. G. Sousa and Oliver G. Richard III.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending 18 CFR 45.8, which prescribes the reporting requirements for application for authority to hold interlocking positions that require Commission approval under section 305(b) of the Federal Power Act (FPA).[1] As part of its ongoing program of reviewing its filing requirements to eliminate the burden of reporting information that is not used in decisionmaking in the regulatory process, the Commission is amending § 45.8 in three ways. First, the rule removes several reporting requirements as unnecessary in the regulatory decisionmaking process. Second, the rule removes other reporting requirements because this information is supplied to the Commission in other filings. Third, the rule revises several reporting requirements to reduce the burden on applicants, while still supplying the Commission with all the information necessary to act on applications.

II. Background

Section 305(b) of the FPA requires persons to apply to the Commission for authority to hold an "interlocking position". An "interlocking position" is one held by any person who holds the position of officer or director of more than one public utility, or the position of officer or director of a public utility and the position of officer or director of any bank, trust company, banking association, or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility ("securities firm"), or the position of officer or director of any company supplying electrical equipment ("electrical equipment supplier") to such public utility. In an application for authority, an applicant must show the Commission that neither public nor private interests will be adversely affected by holding the applied-for positions.

The Commission issued Part 45 of its regulations to implement the provisions of section 305(b) of the FPA. Specifically, § 45.8 of the Commission's regulations prescribes the information that an applicant for authority to hold interlocking positions must submit to the Commission. As a result of reevaluating the reporting requirements of § 45.8, on July 11, 1983, the Commission issued a Notice of Proposed Rulemaking (NOPR)[2] in which the Commission proposed to delete certain reporting requirements and to revise other reporting requirements.

The Commission received 12 comments in response to the NOPR. All the commenters are public utilities or represent public utilities. All the commenters assert that the current application requires unnecessary

[1] 16 U.S.C. 825d(b) (1976).

[2] 48 FR 32,604 (July 18, 1983).

reporting by applicants, and they generally support the Commission's effort to reduce the filing burdens of § 45.8. However, in addition to comments about § 45.8, several commenters recommend that the Commission change regulations other than § 45.8, which govern authority to hold interlocking positions, and Part 46 that prescribes certain annual information reporting requirements for public utilities. These recommendations include the streamlining of procedures for obtaining authority to hold interlocking positions within a public utility holding company system, the streamlining of procedures for obtaining authority to change positions within the same company, and the elimination of reporting requirements that are said to be redundant in both Part 45 and Part 46. These recommended changes are outside the scope of this proceeding. The Commission has proposed only to amend § 45.8 at this time. Therefore, the Commission will consider such ideas in a later rulemaking.

III. Amendments to the Application and Analysis of Comments

A. Changes Proposed and Adopted

All the commenters support each of the changes proposed in the NOPR. Therefore, the Commission continues to believe that its proposed changes will reduce applicant's filing burdens while providing the Commission with sufficient information to analyze and act on applications for authority to hold interlocking positions. The Commission is amending § 45.8 in the following ways.

1. *Unused Information.* In evaluating whether an applicant's holding of the applied-for interlocking positions would adversely affect public or private interests, the Commission either does not typically use some of the information now required under § 45.8, or uses this information so seldom that the information need not to be required from all applicants on a generic basis. If the Commission finds that it needs this information to review an individual application, it can request the information under § 45.5.

Therefore, this rulemaking removes from § 45.8 the following unnecessary filing requirements: (1) The reasons why an application was not filed on a timely basis;[3] (2) any bankruptcy within the past five years of a public utility or any affiliate thereof, with which an interlocking position would be held;[4] (3) the states and dates of incorporation of a company with which an interlocking position would be held;[5] and (4) the states in which a securities firm, with which an interlocking position would be held, is doing business or is qualified to do business.[6]

2. *Information Available Elsewhere.* If an applicant already holds interlocking positions, the applicant is required under Part 46 to file annually a report containing information about all other corporations with which the applicant serves as a director or an officer.[7] Because the Commission already has this information, this rule allows such an applicant not to include this information in his application.

3. *Additional Reductions in Reporting Requirements.* This rulemaking revises certain reporting requirements to reduce the burden on an applicant, while still supplying the necessary information to the Commission. The rule revises the reporting requirements in three additional ways. First, § 45.8 is amended to provide that when an application is filed for an interlocking position as a director, the applicant is required to disclose the percentage of the directors meetings that the applicant attended as a director for other companies during the past 12 months. Under the existing rule, the applicant is required to disclose detailed information on when and where all such meetings were held, listing the ones that the applicant attended.

Second, § 45.8 is amended to provide, that when an application is for interlocking positions with a public utility and a securities firm, an applicant is required to disclose past dealings that occurred between the public utility and the securities firm while the applicant served as a director or an officer with the securities firm, for only the most recent 36 months. Under the existing rule, the applicant is required to disclose all past dealings that occurred between the public utility and the securities firm, while the applicant served as a director or an officer with the securities firm.[8]

Third, § 45.8 is amended to provide that, when an applicant is required to disclose an individual's address, the applicant is required to disclose only the individual's state of residence. Under the existing rule, the applicant is required to disclose the individual's full address.[9]

B. Changes in Response to Comment Recommendations

The Commission received several recommendations for additional changes to § 45.8. These comments and the Commission's responses are as follows:

1. *Compensation Received.* The Commission requires applicants to report "all money or property received by applicant * * * during the past 12 months, whether for services, reimbursement for expenses, or otherwise"[10] from the public utility, securities firm, electrical equipment supplier or holding company, with which an interlocking position would be held. Commenters recommend that the Commission change this requirement in four ways. First, commenters recommend that the Commission allow applicants to report remuneration on the fiscal year basis of the company from which it is received, because companies already prepare such reports on a fiscal year basis. The Commission agrees that use of fiscal years will meet its needs. Also, several applicants have been reporting their compensation on a calendar year basis. The Commission finds that any of these time periods will meet its needs. Therefore, the Commission is amending § 45.8 to allow applicants to report compensation received for the past and ensuing 12 months, the past and current calendar years, or the past and current fiscal years of the payor.

Second, commenters recommend that the Commission remove the requirement of reporting compensation "expected during the ensuing 12 months," as being too speculative to be relevant to reviewing an application. The Commission agrees that applicants should not have to report purely speculative future compensation. However, the Commission interprets its current regulations to require only a good faith effort by an applicant to use past experience and current knowledge to make a reasonable estimate of compensation likely to be received from these sources within the ensuing year. Therefore, the Commission is not deleting this reporting requirement.

Third, commenters recommend that the Commission limit reporting of compensation to payments not common to all officers or directors, because payments common to all (*e.g.*, directors' fees) would not influence an officer or a director. And fourth, commenters

[3] 18 CFR 45.8(a)(4).

[4] 18 CFR 45 8(c)(11).

[5] 18 CFR 45.8 (d)(1), (e)(1) and (f)(1).

[6] 18 CFR 45.8(d)(2).

[7] Applicants that already hold interlocking positions annually report this information in form FERC-561, pursuant to § 46.6.

[8] 18 CFR 45.8(d)(9). The Commission believes that 36 months is a sufficiently long period to determine the relationship between the securities firm and the public utility.

[9] 18 CFR 45.8 (a)(1), (d)(7) and (e)(4).

[10] 18 CFR 45.8 (c)(8), (d)(6), (e)(8), and (f)(4).

recommend also that the Commission remove the requirement of reporting reimbursement of expenses, because such payments also would not influence an officer or a director. The Commission does not agree with these last two recommendations. The Commission considers all compensation received by an applicant from these sources to be relevant to an application, whatever the description given to the compensation. Therefore, the Commission is not amending this reporting requirement.

2. *Companies Rendering Services.* The Commission requires applicants to report "the name and address of principle place of business of any corporation which renders management, construction or other service to the public utility pursuant to contract or other continuing arrangement."[11] Two commenters argue that this reporting requirement is overly broad, that only such companies with which the applicant is affiliated should be reported. They also argue that strict compliance with this provision requires them to list hundreds of companies. A third commenter recommends that the Commission delete this reporting requirement altogether, as being irrelevant to the consideration of an application. The Commission uses the information only to determine whether an applicant might be unduly influenced by holding positions with service, management or construction companies that have long-term contracts with the utility. Therefore, the Commission agrees with the commenters that the Commission needs only a list of service companies with which the applicant is affiliated. Because § 45.8(g) already requires applicants to report all companies with which the applicant serves in any position, the Commission is removing the requirement that service companies be listed in an application.

3. *Information About Other Officers and Directors.* One commenter recommends that the Commission delete, as irrelevant to consideration of an application, the requirement of listing the "(n)ames of officers and directors; number of vacancies, if any, on Board of Directors" of the utility.[12] The Commission uses this information to determine the number of common directors among interlocking companies; the concentration of influence on a board resulting from common interlocks; and the relative voting power of each individual director. Therefore, the Commission is not deleting this reporting requirement.

[11] 18 CFR 45.8(c)(9).

[12] 18 CFR 45.8(c)(3).

4. *Defining Concepts.* One commenter requests the Commission to clarify the application's instructions by defining certain key concepts, such as "underwriting or participation in the marketing of the securities of a public utility." The Commission has attempted to do this on a case-by-case basis. However, the Commission does not believe that at this time it should attempt to generically define these concepts.

5. *Electrical Equipment Suppliers.* One commenter recommends that the Commission establish a *de minimis* test to determine whether an interlocking position with a company supplying a utility with electrical equipment requires authorization under section 305(b). Under this proposed *de minimis* test, the Commission would not require application for authorization to hold interlocking positions with a utility and a company supplying it with electrical equipment, if past equipment sales were below some set percentage of the utility's annual purchases.

The Commission has previously rejected such a proposal. In its decision, the Commission stated: "Section 305(b) speaks quite simply of a company supplying electrical equipment to the utility; the section contains no quantitative jurisdictional limitation, express or implied. So long as the company has been supplying electrical equipment to the utility, the volume of past or potential sales is not determinative—of the *jurisdictional* matter."[13] The Commission continues to reject adoption of a *de minimis* test, for the same reasons.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires agencies to prepare certain statements, descriptions and analyses of rules that will have "a significant economic impact on a substantial number of small entities." The Commission is not required to make such analyses if a rule will not have such an impact.

Applicants for authorization to hold interlocking positions under section 305(b) of the Federal Power Act submit an application for such authorization under § 45.8 of the Commission's regulations. The Commission does not believe that the burden to the applicants in preparing and submitting an application causes applicants to incur significant economic burdens. The changes being made to the application pursuant to this rulemaking reduce that burden. Therefore, pursuant to section 605(b) of the RFA, the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

[13] Charles T. Fisher III, 9 FERC ¶ 61,096 (1979).

V. Paperwork Reduction Act Statement and Effective Date

The information collection provisions of this rule have been submitted to and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (Supp. V 1981), and OMB's regulations, 46 FR 13666, 13694 (Mar. 32, 1983) (to be codified at 5 CFR Part 1320). Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 (Attention: Joseph H. Long, (202) 357–8033). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer of the Federal Energy Regulatory Commission). This rule will become effective June 14, 1984.

List of Subjects in 18 CFR Part 45

Electric utilities.

In consideration of the foregoing, the Commission amends Part 45 of Chapter I, Title 18 of the Code of Federal Regulations as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 45—[AMENDED]

1. The authority citation for Part 45 is revised to read as follows:

Authority: Federal Power Act, 16 U.S.C. 792–828c; Department of Energy Organization Act, 42 U.S.C. 7701–7352; Exec. Order No. 12,009, 3 CFR 142 (1978).

§ 45.8 [Amended]

2. Section 45.8 is amended by removing paragraphs (a)(4), (c)(9), (c)(11), and (d)(2).

3. Section 45.8 is amended by redesignating paragraph (c)(10) as (c)(9) and paragraphs (d)(3) through (d)(14) as (d)(2) through (d)(13).

4. Section 45.8 is amended by revising newly redesignated paragraphs (a)(1), (c)(1), (c)(4), (c)(8), (d)(1), (d)(3), (d)(5), (d)(6), (d)(8), (d)(9), (d)(10), (d)(11), (d)(12), (e)(1), (e)(3), (e)(4), (e)(8), (f)(1), (f)(4), and the introductory text of paragraph (g), as follows;

§ 45.8 Contents of Application: Filing fee.

* * * * *

(a) *Identification of applicant.* (1) Full name, business address and state of residence.

* * * * *

(c) * * *

(1) Name of utility.

* * * * *

(4) Description of applicant's duties: Approximate amount of time devoted thereto; and, if applicant seeks authorization as a director, the percentage of directors meetings held during the past 12 months that were attended by the applicant.

* * * * *

(8) All money or property received by applicant from the public utility or any affiliate (i) during the past 12 months, and expected during the ensuing 12 months, or (ii) during the public utility's most recently ended fiscal year, and expected during the public utility's current fiscal year, or (iii) during the past and current calendar years, whether for services, reimbursement for expenses, or otherwise. Specify in detail the amount thereof and the basis therefor. If applicant's compensation for services to the public utility is not paid directly by the public utility, give name of the corporation that does pay same, the amount allocated or allocable to the public utility or any affiliate, and the basis or reason for such allocation.

* * * * *

(d) * * *

(1) Name of corporation and address of principal place of business.

* * * * *

(3) Description of applicant's duties in each position and the approximate amount of time devoted thereto, and, if applicant seeks authorization as director, the percentage of directors meetings held during the past 12 months that were attended by the applicant.

* * * * *

(5) All money or property received by applicant from the company (i) during the past 12 months, and expected during the ensuing 12 months, or (ii) during the company's most recently ended fiscal year, and expected during the company's current fiscal year, or (iii) during the past and current calendar years, whether for services, reimbursement for expenses, or otherwise. Specify in detail the amount thereof and the basis therefor.

(6) Names and titles of directors, officers, or partners.

* * * * *

(8) Whether the corporation, during applicant's connection therewith, has underwritten or participated in the marketing of the security issue of any public utility with which applicant was also connected; if so, the details with respect to every such transaction that occurred during the past 36 months.

(9) (If the answer to paragraph (d)(7) of this section is in the negative.) Give excerpts from the charter, declaration of trust, or articles of partnership that authorize the underwriting or participating in the marketing of securities of a public utility.

(10) (If the answer to paragraph (d)(7) of this section is in the negative.) Give general requirements of and appropriate reference to, the laws of the State of organization and of States in which corporation is doing business or has qualified to do business, with which it must comply in order to engage in the business of underwriting or participating in the marketing of the securities of a public utility.

(11) What steps, if any, have been taken to comply with laws mentioned in paragraph (d)(10) of this section.

(12) In lieu of paragraphs (d)(9), (10), and (11) of this section, an opinion by counsel to the same effect and including the information in respect thereto may be filed with the application.

* * * * *

(e) * * *

(1) Name of company and address of principal place of business.

* * * * *

(3) Description of applicant's duties in each position and approximate amounts of time devoted thereto, and, if applicant seeks authorization as director, the percentage of directors meetings held during the past 12 months that were attended by the applicant.

(4) Names and titles of directors or partners.

* * * * *

(8) All money or property received by applicant from the company (i) during the past 12 months, and expected during the ensuing 12 months, or (ii) during the company's most recently ended fiscal year, and expected during the company's current fiscal year, or (iii) during the past and current calendar years, whether for services, reimbursement for expenses, or otherwise. Specify in detail the amount thereof and the basis therefor.

(f) * * *

(1) Name of holding company and address of principal place of business.

* * * * *

(4) All money or property received by applicant from the holding company (i) during the past 12 months, and expected during the ensuing 12 months, or (ii) during the holding company's most recently ended fiscal year, and expected during the holding company's current fiscal year, or (iii) during the past and current calendar years, whether for services, reimbursement for expenses, or otherwise. Specify in detail the amount thereof and the basis therefor.

(g) *Positions with all other corporations.* (Do not include here data that have been filed within the past 12 months in FERC-561, pursuant to Part 46 of this chapter, or data as to any corporations listed in paragraph (b) or (f) of this section.)

* * * * *

[FR Doc. 84-13046 Filed 5-14-84; 8:45 am]

BILLING CODE 6717-01-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1302

Nondiscrimination in Federally Assisted Programs of TVA; Effectuation of Title VI of the Civil Rights Act of 1964

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: This final rule amends Part 1302 of TVA's regulations, as redesignated by 44 FR 30682. Part 1302 implements the requirements of Title VI of the Civil Rights Act of 1964, as amended, insofar as that title applies to programs which receive financial assistance from TVA. The amendments adopt suggestions from the Department of Justice and the Office of Management and Budget which clarify and improve the regulation. Other sections are revised to remove unnecessary gender-specific language, pursuant to TVA's commitment to the Task Force on Sex Discrimination. The addition of "program or activity" language in various parts of the regulation is intended to conform the regulation to the language of Title VI. Title VI reads "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any *program or activity receiving Federal financial assistance.* 42 U.S.C. 2000d (emphasis supplied). *See also North Haven Bd. of Educ.* v. *Bell,* 456 U.S. 512, 535-40 (1982).

EFFECTIVE DATE: June 14, 1984.

FOR FURTHER INFORMATION CONTACT: William L. Osteen, Jr., Associate General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11B37, Knoxville, Tennessee 37902 (615) 632-4142.

SUPPLEMENTARY INFORMATION: TVA has determined that this rule will not be a "major" rule under Executive Order No. 12291 and will not have a significant economic impact on a substantial number of "small entities"as defined by the Regulatory Flexibility Act (5 U.S.C. 601(6)). The amended regulation does impose paperwork requirements subject to the Paperwork Reduction Act of 1980. These requirements will be submitted to the Office of Management and Budget for clearance under the applicable procedures.

TVA published the proposed rulemaking in the **Federal Register** on December 9, 1983 (48 FR 55140–43), and invited comments through January 27, 1984. No comments were received.

List of Subjects in 18 CFR Part 1302

Civil rights.

Accordingly, TVA is promulgating this final rule as proposed.

Dated: April 30, 1984.

W. F. Willis,

General Manager.

PART 1302—[AMENDED]

18 CFR Part 1302 is amended as follows:

1. By revising the authority statement to read as follows:

Authority: TVA Act, 48 Stat. 58 (1933) as amended, 16 U.S.C. 831–831dd, and section 602 of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d–1.

2. By revising paragraph (d) of § 1302.2 to read as follows:

§1302.2 Application of this part.

* * * * *

(d) Any employment practice, under any such program, of any employer, employment agency, or labor organization, unless such practice exists in a program where a primary objective of the TVA financial assistance is to provide employment; or where such practice subjects persons to discrimination in the provision of services and benefits on the grounds of race, color, or national origin in a program or activity receiving Federal financial assistance from TVA.

3. By adding a new § 1302.13 to read as follows:

§1302.13 Definitions

(a) TVA, as used in these regulations, refers to the Tennessee Valley Authority, as created by the Tennessee Valley Authority Act of 1933, 48 Stat. 58, *as amended*, 16 U.S.C. 831–831dd. *See also* paragraph (e) of § 1302.6.

(b) Recipient refers to any person, group, or other entity which either receives financial assistance from TVA, or which has been denied such assistance.

(c) Assistant Attorney General refers to the Assistant Attorney General, Civil Rights Division, Department of Justice.

(d) Title VI refers to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*

§ 1302.3 [Redesignated as § 1302.4]

4. By redesignating § 1302.3 as § 1303.4 and by revising paragraphs (a) and (b)(1) introductory text (iii), (v), and (vi) of the newly redesignated § 1302.4 to read as follows:

§ 1302.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from TVA. For the purposes of this part, the following definitions of race and ethnic group apply:

(1) *Black, not of Hispanic origin.* A person having origins in any of the black racial groups of Africa;

(2) *Hispanic.* A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

(3) *Asian or Pacific Islander.* A person having origin in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa;

(4) *American Indian or Alaskan Native.* A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition;

(5) *White, not of Hispanic origin.* A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Additional subcategories based on national origin or primary language spoken may be used where appropriate.

(b) *Specific discriminatory actions prohibited.*

(1) A recipient under any program or activity receiving Federal financial assistance from TVA may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

* * * * *

(iii) Subject an individual to segregation or separate treatment in any manner related to that individual's receipt of any service, financial aid, or other benefit under the program;

* * * * *

(v) Treat an individual differently from others in determining whether any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program has been satisfied.

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford that individual an opportunity to do so which is different from that afforded others under the program.

§ 1302.4 [Redesignated as § 1302.5]

5. By redesignating § 1302.4 as § 1302.5 and by revising the first and the third sentences of paragraph (a) of the newly redesignated § 1302.5 to read as follows:

§ 1302.5 Assurances required.

(a) TVA contributes financial assistance only under agreements which contain a provision which specifically requires compliance with this part in programs or activities receiving Federal financial assistance from TVA. * * * Where the financial assistance involves the furnishing of personal property, the agreement shall obligate the recipient for the period during which the recipient retains ownership or possession of the property.

* * * * *

§ 1302.5 [Redesignated as § 1302.6]

6. By redesignating § 1302.5 as § 1302.6.

§ 1302.6 [Redesignated as § 1302.7]

7. By redesignating § 1302.6 as § 1302.7] and by revising it to read as follows:

§ 1302.7 Compliance reviews and conduct of investigations.

(a) *Preaward compliance reviews.* (1) Prior to approval of financial assistance, TVA will make a determination as to whether the proposed recipient is in compliance with Title VI and the requirements of this part with respect to a program or activity for which it is seeking Federal financial assistance from TVA. The basis for such a determination shall be submission of an assurance of compliance and a review of the data and information submitted by the proposed recipient, any relevant compliance review reports on file with TVA, and any other information available to TVA. Where a determination cannot be made from this data, TVA will require the submission of necessary additional information and may take additional steps. Such additional steps may include, for example, communicating with local government officials, protected class organizations, and onsite reviews.

(2) No proposed recipient shall be approved unless it is determined that the proposed recipient is in compliance with Title VI and this part or has agreed in writing to take necessary specified steps within a stated period of time to come into compliance with Title VI and this part. Such an agreement must be approved by TVA and made a part of the conditions of the agreement under which the financial assistance is provided.

(3)(i) Where TVA finds that a proposed recipient may not be in compliance with Title VI and this part, TVA shall notify the proposed recipient and the Assistant Attorney General for Civil Rights in writing of:

(A) The preliminary findings setting forth the alleged noncompliance;

(B) Suggested actions for correcting the alleged noncompliance; and

(C) The fact that the proposed recipient has 10 days to correct the alleged noncompliance or to provide during this time a written submission responding to or rebutting the preliminary findings or suggested corrective actions set forth in the notice.

(ii) If within this 10-day period the proposed recipient has not agreed to the suggested actions set forth or to other actions that would correct the alleged noncompliance under paragraph (a)(3)(i)(B) of this section, or the preliminary findings set forth in paragraph (a)(3)(i)(A) of this section have not been rebutted to TVA's satisfaction, or voluntary compliance has not been otherwise secured, TVA shall make a formal determination of compliance or noncompliance, notify the proposed recipient, and the Assistant Attorney General for Civil Rights and institute proceedings (including provision of an opportunity for a hearing) under § 1302.8 of this part.

(b) *Postaward compliance reviews.* (1) TVA may periodically conduct compliance reviews of selected recipients in their programs or activities receiving TVA financial assistance, including the request of data and information, and may conduct onsite reviews where it has reason to believe that discrimination may be occurring in such programs or activities.

(2) Selection for review shall be made on the basis of the following criteria among others:

(i) The number and nature of discrimination complaints filed against a recipient with TVA or other Federal agencies;

(ii) The scope of the problem revealed by an investigation commenced on the basis of a complaint filed with TVA against a recipient; and

(iii) The amount of assistance provided to the recipient.

(3) Within 15 days after selection of a recipient for review, TVA shall inform the recipient that it has been selected for review. The review will ordinarily be initiated by a letter requesting data pertinent to the review and advising the recipient of:

(i) The practices to be reviewed;

(ii) The program or activities affected by the review;

(iii) The opportunity to make, at any time prior to receipt of the final TVA findings with respect to the review pursuant to paragraph (b)(5) of this section, a documentary submission responding to TVA which explains, validates, or otherwise addresses the practices under review; and

(iv) The schedule under which the review will be conducted and a determination of compliance or noncompliance made.

(4) Within 180 days of initiation of a review, TVA shall advise the recipient, in writing of:

(i) Its preliminary findings;

(ii) Where appropriate, recommendations for achieving voluntary compliance;

(iii) The opportunity to request TVA to engage in voluntary compliance negotiations prior to TVA's final determination of compliance or noncompliance. TVA shall notify the Assistant Attorney General at the time it notifies the recipient of any matter where recommendations for achieving voluntary compliance are made; and

(iv) TVA's General Manager may extend the 180-day period for good cause shown.

(5) If, within 50 days of the recipient's notification under paragraph (b)(4) of this section, TVA's recommendations for compliance are not met or voluntary compliance is not secured, and the preliminary findings have not been rebutted to TVA's satisfaction, TVA shall make a final determination of compliance or noncompliance. The determination is to be made no later than 14 days after the conclusion of the 50-day negotiation period. TVA's General Manager may extend the 14-day period for good cause shown.

(6) Where TVA makes a formal determination of noncompliance on a postaward review, the recipient and the Assistant Attorney General shall be immediately notified in writing of the determination and of the fact that the recipient has an additional 10 days in which to come into voluntary compliance. If voluntary compliance has not been achieved within the 10 days, TVA shall institute proceedings under §1302.8 of this part.

(7) All agreements to come into voluntary compliance shall be in writing and signed by TVA and an official who has authority to legally bind the recipient.

(c) *Complaint investigation.* (1) TVA shall investigate complaints of discrimination in a program or activity receiving Federal financial assistance from TVA that allege a violation of Title VI or this part.

(2) No complaint will be investigated if it is received by TVA more than 180 days after the date of the alleged discrimination unless the time for filing is extended by TVA for good cause shown. Where a complaint is accepted for investigation, TVA will initiate an investigation. The complainant shall be notified in writing as to whether the complaint has been accepted or rejected.

(3) TVA shall conduct investigations of complaints as follows:

(i) Within 10 days of receipt of a complaint, the Director of Equal Opportunity Compliance shall:

(A) Determine whether TVA has jurisdiction under paragraphs (c) (1) and (2) of this section;

(B) If jurisdiction is not found, wherever possible refer the complaint to the Federal agency with such jurisdiction and advise the complainant;

(C) If jurisdiction is found, notify the recipient alleged to be in violation of the receipt and acceptance of the complaint; and

(D) Initiate the investigation.

(ii) The investigation will ordinarily be initiated by a letter to the recipient requesting data pertinent to the complaint and informing the recipient of:

(A) The nature of the complaint, and with the written consent of the complainant, the identity of the complainant;

(B) The program or activities affected by the complaint;

(C) The opportunity to make, at any time prior to receipt of TVA's final findings under paragraph (c)(5) of this section, a documentary submission, responding to, rebutting, or denying the allegations made in the complaint; and

(D) The schedule under which the complaint will be investigated and a determination of compliance or noncompliance made.

(iii) Within 180 days of the initiation of a complaint investigation, TVA shall advise the recipient, in writing, of:

(A) Preliminary findings;

(B) Where appropriate, recommendations for achieving voluntary compliance; and

(C) The opportunity to request TVA to engage in voluntary compliance negotiations prior to TVA's final determination of compliance or noncompliance. TVA shall notify the Assistant Attorney General at the time the recipient is notified of any matter where recommendations for achieving voluntary compliance are made.

(4) If, within 50 days of the recipient's notification under paragraph (c) of this section, TVA's recommendations for compliance are not met, or voluntary compliance is not secured, and the preliminary findings have not been rebutted to TVA's satisfaction, TVA shall make a formal determination of compliance or noncompliance. The determination is to be made no later than 14 days after conclusion of a 50-day negotiation period, whenever possible.

(5) Where TVA makes a formal determination of noncompliance, the complainant, the recipient, and the Assistant Attorney General shall be immediately notified in writing of the determination and of the fact that the recipient has an additional 10 days in which to come into compliance. If voluntary compliance has not been achieved within the 10 days, TVA shall institute proceedings under § 1302.8 of this part. The complainant shall also be notified of any action taken including the closing of the complaint or the achievement of voluntary compliance. All agreements to come into voluntary compliance shall be in writing and signed by TVA and an official who has authority to legally bind the recipient and shall be made available to the complainant on request.

(6) If the complainant or party other than TVA has filed suit in Federal or State court alleging the same discrimination as alleged in a complaint pending before TVA, and if during TVA's investigation the trial of that suit would be in progress, TVA will consult with the Assistant Attorney General and court records to determine the need to continue or suspend the investigation and will monitor the litigation through the court docket and contacts with the complainant. Upon receipt of notice that the court has made a finding of discrimination against a recipient that would constitute a violation of this part, TVA shall institute proceedings as specified in § 1302.8 of this part. All agreements to come into voluntary compliance shall be in writing and signed by TVA and an official who has authority to legally bind the recipient.

(7) The time limits listed in paragraphs (c)(3) through (c)(5) of this section shall be appropriately adjusted where TVA requests another Federal agency to act on the complaint. TVA shall monitor the progress of the matter through liaison with the other agency. Where the request to act does not result in timely resolution of the matter, TVA shall institute appropriate proceedings as required by this part.

(d) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of Title VI or this part, or because such individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this regulation, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

(e) *Enforcement authority.* TVA's Director of Equal Opportunity Compliance, or a successor as designated by TVA's Board of Directors, will be responsible for all decisions about initiating compliance reviews and complaint investigations. TVA's General Manager, or a successor as designated by TVA's Board of Directors, shall be responsible for all decisions about initiating compliance actions under § 1302.8(a) of this part.

§ 1302.7 [Redesignated as § 1302.8]

8. By redesignating § 1302.7 as § 1302.8, adding a new sentence to the end of paragraph (a) and amending the first sentence of paragraph (b) of the newly redesignated § 1302.8. The new sentence in paragraph (a) and the amended sentence in paragraph (b) read as follows:

§ 1302.8 Procedure for effecting compliance.

(a) * * * The Assistant Attorney General, Civil Rights Division, Department of Justice, will be notified of all findings of probable noncompliance at the same time the recipient or applicant is notified.

(b) If anyone requesting financial assistance declines to furnish the assurance required under § 1302.5 of this part, or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, financial assistance may be refused in accordance with the procedures of paragraph (c) of this section.

* * * * *

§ 1302.8 [Redesignated as § 1302.9.

9. By redesignating § 1302.8 as § 1302.9.

§ 1302.9 [Redesignated as § 1302.10]

10. By redesignating § 1302.9 as § 1302.10 and by revising paragraphs (a) and (g) of the newly redesignated § 1302.10 to read as follows:

§ 1302.10 Decisions and notices.

(a) *Decision by a member of the TVA Board or a hearing examiner.* A member of the TVA Board or a hearing examiner who holds the hearing shall either make an initial decision or certify the entire record, including the Board member's or examiner's recommended findings and proposed decision, to the TVA Board for a final decision. A copy of such initial decision or certification shall be mailed to the recipient. Where the initial decision is made by a member of the TVA Board or a hearing examiner, the recipient may file exceptions to the initial decision, together with a statement of reasons therefor. Such exceptions and statement shall be filed with the TVA Board within 30 days of the date the notice of initial decision was mailed to the recipient. In the absence of exceptions, the TVA Board may on its own motion within 45 days after the initial decision serve on the recipient a notice that the TVA Board will review the decision. Upon the filing of such exceptions or of such notice of review, the TVA Board shall review the initial decision and issue its own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review, the initial decision shall constitute the final decision of the TVA Board.

* * * * *

(g) *Posttermination proceedings.* (1) A recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation.

(2) Any recipient or proposed recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request TVA to restore fully the recipient's eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the recipient has met the requirements of paragraph (g)(1) of this section. If TVA determines that those requirements have been satisfied, TVA shall restore such eligibility.

(3) If TVA denies any such request, the recipient may submit a written request for a hearing specifying why it

believes TVA to have been in error. The recipient shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by TVA. The recipient will be restored to such eligibility if the recipient proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 1302.11 [Redesignated as § 1302.12]

11. By redesignating § 1302.11 as § 1302.12 and by revising paragraph (a)(1) of the newly redesignated § 1302.12 to read as follows:

§ 1302.12 Effect on other regulations; supervision and coordination.

(a) * * *

(1) Executive Order 12250 and regulations issued thereunder.

* * * * *

[FR Doc. 84-12967 Filed 5-14-84; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 122

[Docket No. 82N-0285]

Smoked and Smoke-Flavored Fish; Current Good Manufacturing Practice

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking the current good manufacturing practice (CGMP) regulation for smoked and smoke-flavored fish. The action was proposed because the United States Court of Appeals for the Second Circuit held that, with respect to smoked whitefish, the regulation was promulgated in an arbitrary manner and is invalid.

EFFECTIVE DATE: May 15, 1984.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF-214), Food and Drug Administration, 200 C St. SW., Washingtion, DC 20204, 202-485-0107.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 21, 1983 (48 FR 48836), FDA published a proposal to revoke the CGMP regulation for smoked and smoke-flavored fish, codified as 21 CFR Part 122. The action was proposed because the United States Court of Appeals for the Second Circuit held that, with respect to smoked whitefish, the regulation was promulgated in an arbitrary manner and is invalid.

Interested persons were given until December 20, 1983, to comment on the proposal. One comment in support of the proposal was received from a trade association. Therefore, for the reasons stated in the proposal, the agency is revoking the final regulation.

Because the regulations have not been enforced since the 1977 court ruling, the revocation of the regulations will have little or no economic impact. Therefore, FDA has determined that this final rule to revoke the regulations has no economic effects and therefore is not a major rule under Executive Order 12291. For the same reason, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities will derive from this action.

List of Subjects in 21 CFR Part 122

Fish, Good manufacturing practices, Smoked fish.

PART 122—[REMOVED]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 402(a)(4), 701(a), 52 Stat. 1046, 1055 (21 U.S.C. 342(a)(4), 371(a))) and under 21 CFR 5.11, Chapter I of Title 21 of the Code of Federal Regulations is amended by removing Part 122—Smoked and Smoke-Flavored Fish.

Effective date. May 15, 1984.

(Sec. 402(a)(4), 701(a), 52 Stat. 1046, 1055 (21 U.S.C. 342(a)(4), 371(a)))

Dated: May 1, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 84-12955 Filed 5-14-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Fenbendazole Powder

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Ralston-Purina Co., providing for the safe and effective use of 1.5 percent fenbendazole powder in swine feed as an anthelmintic.

EFFECTIVE DATE: May 15, 1984.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (formerly Bureau of Veterinary Medicine) (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: Ralston-Purina Co., Checkerboard Square, St. Louis, MO 63164, filed NADA 136-116 providing for the safe and effective use of 1.5 percent (1.7 grams per 4-ounce packet) fenbendazole powder in swine feed as an anthelmintic. The NADA is approved and the regulations are amended to reflect the approval.

Approval of this NADA relies on data and information in American Hoechst's NADA 131-675 for use of a similar product—4 percent (2.27 grams per 2-ounce packet) fenbendazole powder. NADA 131-675 identifies Ralston-Purina as an alternate manufacturer of Hoechst's fenbendazole products. Hoechst supplies the fenbendazole used by Ralston-Purina. Hoechst has authorized referencing of safety, effectiveness, and manufacturing data and information in NADA in 131-675 to support approval of Ralston-Purina's NADA. Accordingly, the freedom of information summary for the Hoechst approval which published in the **Federal Register** of January 31, 1984 (49 FR 3845) also applies to this approval.

Although this approval is for an original NADA, for review purposes, it is considered equivalent to a Category II supplemental NADA (42 FR 63467; December 23, 1977). This approval provides for use of a less concentrated product without changing the conditions of use approved for Hoechst's product. Consequently, approval of this NADA does not increase human risk from exposure to residues of the new animal drug, nor does it alter the approved safe and effective use in swine. Therefore, this approval did not require reevaluation of the safety and effectiveness data in the parent application.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.