

PART 81—LETHAL AVIAN INFLUENZA

Accordingly, 9 CFR Part 81 is removed.

(7 U.S.C. 450, 21 U.S.C. 111-113, 114a-1, 115-117, 119-126, 130, 134a, 134b, 134d, 134e, 134f; 7 CFR 2.17, 2.51, and 371.2(d))

Done at Washington, D.C., this 21st day of May 1985.

E.C. Sharman,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-12553 Filed 5-23-85; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service**9 CFR Parts 317 and 381**

[Docket No. 83-041F]

Authorization To Manufacture Brands or Other Marking Devices Containing Inspection Legend

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule requires manufacturers of brands or other marking devices containing specified official inspection legends to obtain a certificate issued by the Food Safety and Inspection Service (FSIS) that would authorize manufacture of these brands and other devices. Manufacturers are required to mark on each such brand or other device they manufacture under this authorization a permanent identifying serial number, which manufacturers would also list on the certificate. Manufacturers are to return the brands or other devices, along with a copy of the completed certificate, to the FSIS employee identified on the certificate (normally the plant inspector-in-charge). The regulations are needed to strengthen the Department's control over the manufacture and distribution of brands and other marking devices and thereby help prevent their illegal use. The rule also makes minor revisions to the regulations to clarify language, to update them, and to make certain provisions conform to statutory language of the Federal Meat Inspection Act and the Poultry Products Inspection Act that deal with authorization to make labels and devices bearing or containing official marks.

EFFECTIVE DATE: June 24, 1985.

FOR FURTHER INFORMATION CONTACT: Robert W. Gonter, Director, Compliance Division, Meat and Poultry Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7745.

SUPPLEMENTARY INFORMATION:**Executive Order 12291**

The Department has determined that this rule is not a "major rule" under Executive Order 12291. It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator, FSIS, has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). The manufacturers and the meat and poultry establishments are required to fill out sections of the authorization certificate for orders of new brands or other marking devices and to keep the certificate on file. The costs of the rule primarily result from the expense of executing and filing the authorization forms required by this regulation and from the required marking with a permanent identifying number those brands or other devices made after the effective date of the rule. These costs will be incurred by the manufacturer and/or the establishment, and although the ultimate amount and proportion of costs between the manufacturer and the establishment cannot be determined, they should not be significant. No cost is involved in obtaining authorization forms since FSIS will provide them.

The establishments will bear an additional cost of either replacing or marking with a permanent identifying number those brands or other marking devices that are not already marked with an identifying number. The establishments would have one year after the rule's effective date to mark or replace the brands or other devices.

All of the above costs have been estimated to be minimal, while the benefits from improving control over the manufacture and distribution of such devices is expected to be considerable.

Background

The Department inspects meat and poultry products, including imported products, that are subject to inspection under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). Inspections are conducted by Food

Safety and Inspection Service (FSIS) inspectors at official establishments or at official import inspection establishments at ports of entry. Products that pass inspection are identified with an official inspection legend. The legend appears on containers and certain enclosures of inspected and passed meat and poultry products and is branded directly onto meat carcasses and parts. For example, a brand for cattle carcasses inspected and passed by an FSIS inspector bears a circular legend showing "U.S. INSP'D & P'S'D" and the establishment's assigned number.

Investigations by law enforcement officials over the past 20 years have shown that illegal meat distribution activities have frequently utilized a marking device to brand or otherwise mark meat and poultry products and their containers in order to deceive prospective buyers into believing that products had been inspected and passed by Federal inspectors. During this time, FSIS developed various techniques to discover when operators were using brands or other marking devices illegally. However, the Department has statutory authority to control these devices which has not yet been exercised.

Part of the Department's statutory authority to control these devices dates from 1967. As a result of the exposure of a number of illegal meat distribution activities in the 1960's, the Wholesome Meat Act of 1967 made major revisions to Federal laws concerning meat inspection. The Act included a provision which clarified and strengthened the application of then current prohibitions against counterfeiting labels, certificates or official marks, including legends. Section 11(a) of the Federal Meat Inspection Act (21 U.S.C. 611(a)) provides, "No brand manufacturer, printer, or other person, firm, or corporation shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the Secretary." Almost identical language was later included in the Poultry Products Inspection Act by section 9 of the Wholesome Poultry Products Act of 1968 (21 U.S.C. 458).

When the Department revised the Federal meat inspection regulations to implement the statutory revisions of the Wholesome Meat Act, the Department considered regulatory changes to tighten controls over the manufacture and distribution of brands and other marking

devices containing official inspection legends. The Department determined at that time, however, that it would not exercise its authority to impose these tighter controls.

In the past few years, the Agency has found certain operators of clandestine meat distribution activities in possession of brands that were made by brand manufacturers and delivered to official establishments but never surrendered to the USDA inspector as required. A September 1983 Congressional hearing was held in Philadelphia concerning an illegal branding operation that resulted in nonfederally inspected and passed product being sold and distributed as federally inspected and passed product. At that time, the House Subcommittee on Livestock, Dairy, and Poultry recommended that the Agency improve its security over the devices used to imprint inspection legends.

Proposal

These events made it apparent that the Agency needs to expand its use of available authority and refocus its enforcement techniques regarding such illegal operations by regulating brands and other marking devices at their source.

Current meat inspection regulations require an official establishment or official import inspection establishment to supply brands or other marking devices containing an official inspection legend for marking product. The brands and devices are required to be used under the supervision of an inspector, and, while not in use, are required to be kept in the inspector's possession under lock and key (9 CFR 316.4).

The current regulations allow the manufacture of brands or other marking devices that contain the official inspection legend for a particular establishment without prior authorization if the brands or other devices are made as samples for approval by the FSIS Administrator. Once the establishment obtains initial approval of such a brand or other marking device, the regulations provide that new devices "exactly similar to" the original may be made without obtaining further approvals (9 CFR 317.3). The poultry products inspection regulations contain a similar section except that it does not refer to brands since they are not used to mark poultry (9 CFR 381.131). The provisions of §§ 317.3 and 381.131 have had the effect of allowing the manufacture of brands or other marking devices without any prior authorization.

The Agency concluded that the current regulations do not adequately

control the manufacture or distribution of brands or other marking devices containing an official inspection legend because establishments are able to order such marking devices without the knowledge of FSIS. Furthermore, there is no assurance that the brands or other devices are turned over to inspectors for custody.

On September 21, 1984, FSIS published a proposed rule in the Federal Register (49 FR 37103) to require manufacturers of brands or other marking devices bearing specified official inspection legends to have a signed authorization certificate from FSIS before manufacturing such devices. All orders for such marking devices by an establishment would have to be accompanied by the certificate.

The certificate would be identified with a certificate number and indicate the quantity and type of brands or other marking devices ordered by the establishment. An FSIS employee and the establishment would complete and sign a portion of the certificate; both would keep a copy of the certificate, and two copies would be forwarded to the brand or marking device manufacturer with the establishment's order. The manufacturer would engrave or otherwise mark each brand or other marking device ordered with a permanent, unique serial number and complete the FSIS authorization certificate by listing on it the number marked on each device. The manufacturer would keep one copy of the certificate and return the other with the device to the FSIS employee whose name and address is given on the certificate as the recipient of the device. In practice, the plant inspector-in-charge normally would be both the FSIS employee who signs the authorization and the FSIS recipient of the device, but in some instances, as when a new establishment does not yet have an inspector assigned to it, other FSIS employees may be involved.

The numbers engraved on the brands or other marking devices and listed on the certificates would allow an inspector to keep an accurate record of all such marking devices made for the establishment. If a brand or other marking device becomes worn out, destroyed, or lost, an inspector should note this on the certificate listing that device. During an investigation, if it were necessary to determine whether a brand or other marking device suspected of being used illegally was forged or illegally diverted from an establishment, the records could help trace the source of the brand or other device.

The final rule applies only to devices for applying the legend branded on

cattle, sheep, swine, and goat carcasses and parts of carcasses (9 CFR 312.2(a)); the legend stamped on burlap, muslin, cheesecloth, heavy paper, or other acceptable materials that enclose cattle, sheep, swine, and goat carcasses and parts (9 CFR 312.2(a)); the legend used on meat food products in animal casings (9 CFR 312.2(a)); the legend branded on horse carcasses and parts of such carcasses (9 CFR 312.3(a)) and other (nonhorse) equine carcasses and parts of such carcasses (9 CFR 312.3(b)); the legends branded or stamped on imported meat and meat food products or their containers (9 CFR 312.7); and the legend stamped on containers of imported poultry products (9 CFR 381.102).

The controls in the final rule will not apply to devices for applying: (1) Legends appearing on containers and labels for containers of inspected and passed products of cattle, sheep, swine, and goats shown in § 312.2 (b) since these legends must be printed by mechanical means and not by hand stamps; (2) legends appearing on containers of poultry products shown in § 381.96 since they may not be applied by rubber stamps (these legends may be applied to shipping containers by stencil, but such stencils are bulky devices not easily transported or concealed); and (3) the horse meat food product and other equine meat food products official inspection legends shown in § 312.3 since, in practice, establishments mechanically preprint such legends on containers, boxes and labels, even though the regulations do not limit the application of these equine meat food products legends to mechanical, nonhand stamp methods.

A number of minor, related changes to the regulations were also proposed. Section 317.3(b) allows the manufacture of new supplies of labels and other marking devices "of a character exactly similar to" approved labels and devices. This provision would be revised by deleting the quoted phrase since such language adds nothing to the meaning of the provision and has caused unnecessary confusion. Additionally, it was proposed to amend the language in § 317.3 and § 381.131 to more closely conform to the language in the provisions of the Federal Meat Inspection Act (21 U.S.C. 611(a)) and the Poultry Products Inspection Act (21 U.S.C. 458(b)). Furthermore, Figure 5 of § 381.102 shows an obsolete official inspection legend for marking poultry products offered for entry into the United States. The Agency no longer uses the name of the port or geographical area on the legend to

identify where the product was inspected. Instead, the number of the official establishment or official import establishment where the product was inspected is used. As was proposed, the legend currently in use will be shown.

Comments on Proposal

FSIS received five comments in response to the proposed rule—two from industry corporations and three from industry associations. All commenters supported the proposed rule, but four recommended changes. The following is a discussion of the issues raised by the commenters and FSIS's response to each:

1. Extent of regulatory application

Comment: Four commenters suggested that the proposed rule be amended to clarify that it would not apply to printed or embossed labels.

Response: The proposed rule would not apply to legends appearing on certain containers and labels on containers because the legends must be printed by mechanical means. The proposed regulatory amendments, however, inadvertently included printed and lithographed labels. Therefore, the final rule has been amended to delete references to such labels. This clarifies the Agency's intent to regulate only the manufacturer of brands and other hand devices bearing official inspection legends.

2. Identification of current brands and devices

Comment: One commenter expressed concern about FSIS procedures for recording brand identification numbers that would be applied by establishments to current brands on inventory.

Response: Establishments would place identification numbers on brands currently on inventory under the supervision of the FSIS inspector-in-charge. The inspector would then record the numbers assigned to the brands in the brand control records of FSIS currently in use, which would be a permanent record.

Final Rule

After careful consideration of the comments received on the proposed rule, the Administrator has determined that the proposed rule should be adopted as a final rule with minor changes as discussed.

Each manufacturer will be allowed to develop its own serial numbering system, as was proposed. In order to ensure that each brand or other marking device is uniquely identified, the manufacturer will indicate on the brand

or other device, perhaps as part of the serial number, that it was made by that manufacturer.

The simplest and least costly numbering system for a manufacturer to implement would presumably be to assign numbers based on the order in which it manufactures marking devices.

In the case of brands or other marking devices ordered from manufacturers before the effective date of the final rule, establishments are required to mark, under the direction of an inspector, such brands or other devices with permanent identifying numbers or obtain replacement devices within one year.

List of Subjects

9 CFR Part 317

Meat inspection, Official inspection marks and devices, Reporting and recordkeeping requirements.

9 CFR Part 381

Poultry and poultry products, Official inspection marks and devices, Reporting and recordkeeping requirements.

Part 317 of the Federal meat inspection regulations (9 CFR Part 317) and the Federal poultry products inspection regulations (9 CFR Part 381) are revised to read as follows:

1. The authority citation for Part 317 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069.

2. Section 317.3 is amended by revising paragraph (b) and by adding a new paragraph (c) to read as follows:

§ 317.3 Approval of abbreviations of marks of inspection; preparation of marking devices bearing inspection legend without advance approval prohibited; exception.

(b) Except for the purposes of preparing and submitting a sample or samples of the same to the Administrator for approval, no brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any marking device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, without the written authority therefor of the Administrator. However, when any such sample label, or other marking device, is approved by the Administrator, additional supplies of the approved label, or marking device, may be made for use in accordance with the regulations in this subchapter, without further approval by the Administrator.

The provisions of this paragraph apply only to labels, or other marking devices, bearing or containing an official inspection legend shown in § 312.2(b), § 312.3(a) (only the legend appropriate for horse meat food products) or § 312.3(b) (only the legend appropriate for other (nonhorse) equine meat food products), or any abbreviations, copy or representation thereof.

(c) No brand manufacturer or other person shall cast or otherwise make, without an official certificate issued in quadruplicate by a Program employee, a brand or other marking device containing an official inspection legend, or simulation thereof, shown in § 312.2(a), § 312.3(a) (only the legend appropriate for horse carcasses and parts of horse carcasses), § 312.3(b) (only the legend appropriate for other equine (nonhorse) carcasses and parts of other (nonhorse) equine carcasses) or § 312.7(a).

(1) The certificate is a Food Safety and Inspection Service form for signature by a Program employee and the official establishment ordering the brand or other marking device, bearing a certificate serial number and a letterhead and the seal of the United States Department of Agriculture. The certificate authorizes the making of only the brands or other marking devices of the type and quantity listed on the certificate.

(2) After signing the certificate, the Program employee and the establishment shall each keep a copy, and the remaining two copies shall be given to the brand or other marking device manufacturer.

(3) The manufacturer of the brands or other marking devices shall engrave or otherwise mark each brand or other marking device with a permanent identifying serial number unique to it. The manufacturer shall list on each of the two copies of the certificate given to the manufacturer the number of each brand or other marking device authorized by the certificate. The manufacturer shall retain one copy of the certificate for the manufacturer's records and return the remaining copy with the brands or other marking devices to the Program employee whose name and address are given on the certificate as the recipient.

(4) In order that all such brands or other marking devices bear identifying numbers, within one year after June 24, 1985, an establishment shall either replace each such brand or other marking device which does not bear an identifying number, or, under the

direction of the inspector-in-charge, mark such brand or other marking device with a permanent identifying number.

(The recordkeeping requirements under this section have been approved by the Office of Management and Budget under OMB #0583-0015.)

3. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 447, 448, as amended [21 U.S.C. 463, 468]; 76 Stat. 663.

§ 381.102 [Amended]

4. Section 381.102 (9 CFR 381.102) is amended to show the following as the new Figure 5:



FIGURE 5

and to revise footnote 2 to read as follows:

*The number "I-42" is given as an example only. The establishment number of the official establishment or official import inspection establishment where the product was inspected shall be shown on each stamp impression.

5. Section 381.131 (9 CFR 381.131) is revised to read as follows:

§ 381.131 Preparation of labeling or other devices bearing official inspection marks without advance approval prohibited; exceptions.

(a) Except for the purposes of preparing and submitting a sample or samples of the same to the Administrator for approval, no brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any marking device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, without the written authority therefor of the Administrator. However, when any such sample label, or other marking device, is approved by the Administrator, additional supplies of the approved label, or marking device, may be made for use in accordance with the regulations in this subchapter, without

further approval by the Administrator. The provisions of this paragraph do not apply to marking devices containing the official inspection legend shown in Figure 5 of § 381.102.

(b) No brand manufacturer or other person shall cast or otherwise make, without an official certificate issued in quadruplicate by a Program employee, a marking device containing the official inspection legend shown in Figure 5 of § 381.102 or any simulation of that legend.

(1) The certificate is a Food Safety and Inspection Service form for signature by a Program employee and the official establishment ordering the marking device, bearing a certificate serial number and a letterhead and the seal of the United States Department of Agriculture. The certificate authorizes the making of only the devices of the type and quantity listed on the certificate.

(2) After signing the certificate, the Program employee and the establishment shall each keep a copy, and the remaining two copies shall be given to the marking device manufacturer.

(3) The manufacturer of the marking devices shall engrave or otherwise mark each marking device with a permanent identifying serial number unique to it. The manufacturer shall list on each of the two copies of the certificate given to the manufacturer the number of each marking device authorized by the certificate. The manufacturer shall retain one copy of the certificate for the manufacturer's records and return the remaining copy with the marking devices to the Program employee whose name and address are given on the certificate as the recipient.

(4) In order that all such marking devices bear identifying numbers, within one year after June 24, 1985, an establishment shall either replace each such marking device that does not bear an identifying number, or, under the direction of the inspector-in-charge, mark such marking device with a permanent identifying number.

(The recordkeeping requirements under this section have been approved by the Office of Management and Budget under OMB #0583-0015.)

Done at Washington, DC, on: May 10, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-12618 Filed 5-23-85; 8:45 am]

BILLING CODE 3410-DM-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 34-22038]

Requests for Confidential Treatment Filed by Institutional Investment Managers

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of amendments to instructions to form.

SUMMARY: The Commission is adopting amendments to the instructions to the form that prescribes the reporting requirements for institutional investment managers exercising investment discretion over accounts having, in the aggregate, more than \$100,000,000 in exchange-traded or NASDAQ-quoted securities. The amendments simplify the procedures for requesting confidential treatment of certain risk arbitrage positions reported on the form and limit the time for which confidential treatment of commercial information may be requested.

DATE: The amendments will be effective June 24, 1985.

FOR FURTHER INFORMATION CONTACT:

For questions relating specifically to the subject of this release, contact Susan P. Hart, Esq., Office of Disclosure Policy and Adviser Regulation, (202) 272-2098; for questions relating generally to reporting requirements for institutional investment managers under Section 13(f) of the Securities Exchange Act of 1934 and rules thereunder, contact Alice R. Latimer, Technical Information Specialist, Office of Chief Counsel, (202) 272-2038, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is announcing the adoption of amendments to General Instruction D to Form 13F [17 CFR 249.325] under Section 13(f) of the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.* as amended by Pub. L. No. 94-29 (June 4, 1975)] ("the Exchange Act"), that simplify procedures for requesting confidential treatment of certain arbitrage information filed on the form and place time limitations on requests for confidential treatment of all commercial information. Under the revised procedures, the Commission will grant confidential treatment for a period not exceeding one year to information about security holdings which are open risk arbitrage positions if the reporting

manager represents in writing at the time report is filed that: (1) The security holding represents a risk arbitrage position that is open on the last day of the calendar quarter for which a report is filed; and (2) the reporting manager has a reasonable belief as of the calendar quarter end that it may not close the entire position on or before the date on which the report is required to be filed with the Commission. In addition, the amendments require managers requesting confidential treatment for any commercial information, including open risk arbitrage positions, to limit their requests to a period of one year or less. The amendments balance the public disclosure concerns of Section 13(f) with the needs of institutional investment managers to protect certain investment strategies and holdings from public disclosure under the standards established by the statute and will improve the Commission's overall administration of the Section 13(f) institutional disclosure program.

Discussion

In December, 1984, the Commission proposed amendments to General Instruction D to Form 13F under the Exchange Act that were published in Securities Exchange Act Release No. 21539 (December 5, 1984).¹ The purpose of the proposal was to simplify the procedures for requesting confidential treatment of information about open risk arbitrage positions and to limit the amount of time for which confidential treatment of commercial information required by Form 13F could be requested. Eight commentators, including the Chairman of the House Subcommittee on Telecommunications, Consumer Protection and Finance, broker-dealers and a trade association, commented on the proposal. Six commentators generally supported the proposal while two questioned the basis for granting confidential treatment to risk arbitrage information. After considering the comments received, the Commission has decided to adopt the proposed amendments to General Instruction D incorporating certain changes suggested by commentators. These changes are discussed briefly below.

1. Requests for Confidential Treatment of Open Risk Arbitrage Positions

As proposed, the amendment to paragraph 2(f) of General Instruction D required managers that request confidential treatment for information

about open risk arbitrage positions to provide two good faith representations. As set forth in the proposal, these representations were, first, that the security holding represents a risk arbitrage position that is open on the last day of the calendar quarter for which Form 13F is being filed; and, second, that the reporting manager has no present intention to close the position on or before the date the report is required to be filed with the Commission. The proposal provided that, if these representations were made, confidential treatment would be granted automatically for a period of one year.

The Commission requested specific comment on two aspects of the proposed amendment to paragraph 2(f). Since section 13(f) of the Exchange Act provides that commercial information can be granted confidential treatment only in accordance with the Freedom of Information Act ("FOIA"),² the release requested specific comment on the Commission's authority to grant confidential treatment to a class of holdings, in this case, open risk arbitrage positions. Comment was also requested on the appropriateness of one year as the initial period for which confidential treatment would be granted. Only one commentator responded to both of these requests and generally supported both aspects of the proposal. However, this commentator also suggested changes to one of the required representations and to the procedures for requesting an extension of the initial grant of confidential treatment.

With respect to the second good faith representation (*i.e.*, that the reporting manager has no present intention to close the open risk arbitrage position on or before the date Form 13F is required to be filed with the Commission), the commentator stated that the representation should be changed to specify that the manager does not intend to close the position in its entirety by the reporting date. Otherwise, the commentator argued, managers might be precluded from using the new procedures to request confidential treatment for positions that would be partially liquidated by the filing date. The commentator asserted that disclosure of a partially liquidated position could have a detrimental impact on the manager's ability to close out the remaining portion of that position.

The Commission has considered this suggestion and modified the second representation in two ways. This

representation now provides that: "the reporting manager has a reasonable belief as of calendar quarter end that it may not close the entire position on or before the date the report is required to be filed with the Commission." The word "entire" has been added to make it clear that only positions that are to be completely liquidated are excluded. In addition, the Commission has changed the requirement that the manager has no "present intention" to close the risk arbitrage position to a requirement that the manager has "a reasonable belief that it [the manager] may not close the entire position." This change is intended to cover the situation where a manager has a present intention to close the position before the filing date, but believes, due to unfavorable market conditions or other adverse circumstances, that it may not be practicable to accomplish this objective.³ This representation should reflect the manager's belief as of the end of the calendar quarter for which the report is submitted.

The commentator suggested that the procedures for requesting an extension of the initial period for which confidential treatment had been granted to risk arbitrage positions should be modified to require managers making such requests to provide only a statement reaffirming the original representations required in General Instruction D 2(f). The commentator argued that requiring managers to supply full factual support when requesting an extension serves no legitimate regulatory objective if, at the time of the extension request, the risk arbitrage event has not been consummated or terminated.

The Commission continues to believe, however, that requests for an extension of the initial grant of confidential treatment should be accompanied by full factual support and, accordingly, has adopted this portion of the amendment in the form proposed. As amended, the procedures in General Instruction D accord confidential treatment to risk arbitrage positions that are open at the calendar quarter end for a period of up to one year from the date Form 13F is required to be filed with the Commission. This is in effect a 58 week

³ In the Commission's view, use of this representation would be inappropriate where the consummation of the risk arbitrage event was expected to occur before the filing date and the manager anticipated that all of its shares would be tendered at that time. The representation also would be inappropriate where the manager had an absolute goal to dispose of the entire position before the filing date despite any unfavorable circumstances.

¹ 49 FR 48318 (December 12, 1984).

² 5 U.S.C. 552.

period of time, and it is the Commission's opinion that most open risk arbitrage positions would be closed within this period, or if not closed, may no longer be time-sensitive. In those limited circumstances where a position may remain open and sensitive after the 58-week period of time, additional factual information will assist the Commission in determining whether the standards of the FOIA have been met.

Another commentator suggested that in order to obtain confidential treatment, managers should only be required to mark positions in the portfolio as "risk arbitrage" and should not be required to make any other representations. The representations required by paragraph 2(f) of Instruction D limit the application of the new procedures to only those risk arbitrage positions which are open at the calendar quarter end and on the date on which Form 13F is required to be filed (*i.e.*, 45 days later). The required representations are designed to ensure that the new procedures will not be used more broadly and, accordingly, the Commission has not incorporated the suggestion into the amendments as adopted.

The Commission has made a minor modification regarding the time period for which confidential treatment will be granted to open risk arbitrage positions. As proposed, confidential treatment was to be granted automatically for a period of one year to those positions for which the required representations had been made. However, the Commission would like to make it possible for managers to request a shorter period of time where appropriate. Therefore, the language of General Instruction D 2(f) has been changed to indicate that the grant of confidential treatment will be accorded such positions up to one year. Thus, managers will be required to designate a specific period of time for which confidential treatment is requested. This modification also makes uniform the requirements regarding time limitations on any request for confidential treatment of commercial information. Risk arbitrage managers should therefore refer to the following section for more details regarding this aspect of the proposal.

II. Limitation on Confidential Treatment for Other Commercial Information

As proposed, the amendment to paragraph 2(e) of General Instruction D required managers to limit any request for confidential treatment of commercial information, other than open risk arbitrage positions, to a period of not more than one year. The release asked for comment on whether requests for

confidential treatment for other commercial information (in addition to risk arbitrage) should be limited to a specific time period, and, if so, whether a one-year period was reasonable. The Commission received only one comment on this part of the proposal. While generally supporting the one-year limitation, the commentator suggested that the one-year period should be determined by the filing date of the Form 13F for the calendar quarter ending one year from the calendar quarter for which the initial report was filed. As proposed, the one year period would run from the filing date of the initial report for which confidential treatment was requested. Although the commentator did not explain the reason for the suggested change, presumably, it was so that an extension request could be filed at the same time as the new 13F report. Such a procedure would be impractical, however, because it would not allow time for staff review and processing of the extension request. As proposed, General Instruction D 2(g) required managers that requested an extension of the period of confidential treatment to submit a *de novo* request at least fourteen (14) days in advance of the date on which confidential treatment was due to expire. In the Commission's view, fourteen days gives the staff a reasonable amount of time to review and rule upon the extension request. Accordingly, both paragraphs 2 (e) and (g) of General Instruction D have been adopted as proposed.

III. Other Matters

Two broker-dealers commented that the proposed amendment regarding open risk arbitrage positions would improve present procedures, but argued that the Commission should expand the applicability of the new procedure to include block positions. These commentators disagreed with the statement in the proposing release that block positions "involve transactions which are completed during a very short period of time." Rather, they asserted that block positioning can involve holding positions for more than 45 days, and that the assumption set forth in the proposing release that block positions held for that length of time would then be held for investment purposes was inaccurate. These commentators contended that broker-dealers make a significant contribution to market liquidity by acting as block positioners, in the same way that risk arbitrageurs contribute to market efficiency; and therefore, block positions should be accorded the same protection as risk arbitrage positions. They also argued that premature disclosure of a block

position could cause harm (*e.g.*, competitors could trade against the position and impede the block positioner's ability to liquidate unobtrusively and without loss), and that this likelihood of competitive harm is no less substantial than the likelihood of harm to a risk arbitrageur.

The Commission agrees that some of these arguments may have merit. However, the Commission believes, particularly given the limited number of block positions maintained for 45 days, that it can adequately address requests for confidential treatment of block position data on a case-by-case basis. Therefore, such requests must continue to be made in accordance with General Instruction D 2(a)-(e).

Lists of Subjects in 17 CFR Part 249

Reporting and recordkeeping requirements, Securities.

Text of Amendment to General Instructions to Form 13F

Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

PART 249—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citations for Part 249 continues to read as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.*

2. By revising paragraph 2 of General Instruction D of the form prescribed in § 249.325 of Title 17 of the Code of Federal Regulations to read as follows:

§ 249.325 Form 13F, report of institutional investment manager pursuant to section 13(f) of the Securities Exchange Act of 1934.

General Instructions.

D.
2. If a request for confidential treatment is based upon a claim that the subject information is confidential commercial or financial information, provide information required by paragraphs (a)-(e) except that if the subject information concerns security holdings which represent open risk arbitrage positions and no previous requests for confidential treatment of those holdings have been made, only the information required in paragraph (f) need be provided.

a. Describe the investment strategy being followed with respect to the relevant securities holdings, including the extent of any program of acquisition and disposition (note that the term "investment strategy," as used in this instruction, also includes activities such as block positioning);

b. Explain why public disclosure of the securities holdings would, in fact, be likely to reveal the investment strategy; consider this matter in light of the specific reporting requirements of Form 13F (e.g., securities holdings are reported only quarterly and may be aggregated in many cases);

c. Demonstrate that such revelation of an investment strategy would be premature; indicate whether the manager was engaged in a program of acquisition or disposition of the security both at the end of the quarter and at the time of the filing; address whether the existence of such a program may otherwise be known to the public;

d. Demonstrate that failure to grant the request for confidential treatment would be likely to cause substantial harm to the manager's competitive position; show what use competitors could make of the information and how harm to the manager could ensue.

e. State the period of time for which confidential treatment of the securities holdings is requested. The time period specified may not exceed one year from the date the report is required to be filed with the Commission.

f. For security holdings which represent open risk arbitrage positions, the request must include good faith representations that:

(1) the security holding represents a risk arbitrage position open on the last day of calendar quarter for which the report is filed; and

(2) the reporting manager has a reasonable belief as of the calendar quarter end that it may not close the entire position on or before the date the report is required to be filed with the Commission.

If the representations stated above are made in writing at the time Form 13F is filed, the subject security holdings will automatically be accorded confidential treatment for a period of up to one year from the date the report is required to be filed with the Commission.

g. At the expiration of the period for which confidential treatment has been granted pursuant to item (e) or item (f) of this paragraph ("expiration date"), the Commission, without additional notice to the reporting manager, will make such security holdings public unless a *de novo* request for confidential treatment of the information that meets the requirements of items (a)-(e) of the paragraph, is filed with the Commission at least fourteen (14) days in advance of the expiration date.

Regulatory Flexibility Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act [15 U.S.C. 605(b)], the Chairman of the Commission previously certified that adoption of the amendments to General Instruction D of Form 13F will not have a significant impact on a substantial number of small entities. No comments were received on that certification.

Statutory Basis

The Commission hereby adopts these amendments to Form 13F pursuant to the authority set forth in sections 3(b),

13(f) and 23 of the Securities Exchange Act of 1934 [15 U.S.C. 78c(b), 78m(f), and 78(78w)].

By the Commission.

John Wheeler,
Secretary.

May 14, 1985.

[FR Doc. 85-12569 Filed 5-23-85; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375

[Docket No. RM85-16-000; Order No. 421]

Delegation to the Chief Administrative Law Judge

Issued: May 23, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: For reasons of administrative efficiency, the Federal Energy Regulatory Commission (Commission) is transferring the authority to designate presiding officers for proceedings under Subpart J of Part 385 of the Commission's rules to the Chief Administrative Law Judge. All pending and future appeals of remedial orders issued by the Department of Energy will be conducted by the Commission's Chief Administrative Law Judge or his designee. This final rule amends the delegations of authority to reflect this change.

EFFECTIVE DATE: May 23, 1985.

FOR FURTHER INFORMATION CONTACT: Roland M. Frye, Jr., Producer Regulation Division, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capital Street, NE, Washington, D.C. 20426, (202) 357-8315.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is delegating to the Chief Administrative Law Judge the authority to designate presiding officers for all pending and future appeals of adjustment request denials issued by the Department of Energy.

II. Discussion

Section 504(b)(1) of the Department of Energy Organization Act¹ accords the

Commission the authority to review contested adjustment denials issued by the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) to parties who claim that the DOE's Mandatory Petroleum Price Regulations² impose upon them a special hardship, inequity or unfair distribution of burdens. These regulations were promulgated to effectuate the statutory mandates of the Emergency Petroleum Allocation Act of 1973 (EPAA).³ On January 28, 1981, President Reagan prospectively exempted the petroleum industry from these regulations, thus effectively deregulating crude oil and petroleum products.⁴ Eight months later, the enabling legislation expired.⁵

As part of its efforts to expedite the handling of the adjustment denial appeals, the Commission is delegating to the Chief Administrative Law Judge the authority to designate presiding officers to conduct all pending and future adjustment denial appeals.⁶ This final rule codifies this redelegation of authority in 18 CFR 375.304 (b) and (c) (1984). In making these revisions, the Commission is not substantively changing the way in which these proceedings are conducted. These cases are now, and will continue to be, conducted under Subpart J of the Commission's Rules of Practice and Procedure.⁷ The Commission is nevertheless amending the procedural rules governing adjustment denial appeals in an accompanying order⁸ to expedite the processing of these cases and to reduce the burdens on the parties. In addition, the Chief Administrative Law Judge is also authorized to deny or grant, in whole or in part, petitions for waiver of fees prescribed in 18 CFR 381.304 (1984) in accordance with 18 CFR 381.106 (1984).

III. Effective Date

Pursuant to section 4 of the Administrative Procedure Act, 5 U.S.C.

¹ 10 CFR Parts 210-212 (1981).

² 15 U.S.C. 751 *et seq.* (1982).

³ Executive Order No. 12,267, 46 FR 9909 (Jan. 30, 1981).

⁴ 15 U.S.C. 760(g) (1982).

⁵ Because the adjustment denial appeal of Meeker & Co., RA83-1-000, has been consolidated with the same company's remedial order appeal, RO82-85-000, that adjustment case was previously transferred to the Office of Administrative Law Judges. See Delegation to the Chief Administrative Law Judge, 50 FR 15,730 (1985) (Docket No. RM85-3-000) (Order No. 417).

⁶ 18 CFR Part 385, Subpart J (1984).

⁷ Rules of Practice and Procedure for Commission Review of DOE Adjustment Request Denials (Docket No. RM78-17-000) (Order No. 423). That rule is being issued contemporaneously with this delegation order.

⁸ 42 U.S.C. 7194(b)(1) (1982).