DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 234

[Docket No. 44827; Amdt. No. 234-4]

Airline Service Quality Performance; Editorial Amendment

AGENCY: Department of Transportation/ Office of the Secretary.

ACTION: Final rule; editorial amendment.

SUMMARY: Under a rule issued September 2, 1987, the Department of Transportation (DOT or Department) required 14 air carriers to submit certain flight data to the Department for public dissemination, and to vendors of computerized reservations systems (CRS) for incorporation into their CRS system displays. This amendment makes a minor editorial change to the rule.

EFFECTIVE DATE: December 29, 1987.

FOR FURTHER INFORMATION CONTACT: Gwyneth Radloff, at 400 7th Street SW., Washington, DC 20590 or by phone at (202) 366-9307.

SUPPLEMENTARY INFORMATION: On September 2, 1987, the Department issued a final rule that required 14 air carriers to submit certain data to the Department and to CRS vendors. In addition, these carriers were required to provide on-time performance data to consumers, upon request to the carriers' ticketing agents.

This amendment adds a phrase found in earlier sections that was omitted from § 234.6, which requires participating carriers to report baggage statistics. The phrase clarifies the requirement that the participating carriers comply with Reporting Directives issued by the Department's Office of Aviation Information Management.

Because this is an editorial change, the Department finds, under sections 553 (b)(3)(B) and (d)(2) of the Administrative Procedure Act, that notice and comment are not necessary and that this amendment may be made effective immediately upon publication. This action is taken under authority delegated to the General Counsel under 14 CFR 1.57(1).

List of Subjects in 14 CFR Part 234

Advertising, Air carriers, Consumer protection, Reporting requirements, Travel agents.

Issued in Washington, DC on December 22, 1987.

B. Wayne Vance,

General Counsel.

For the reasons set forth in the preamble, the Department amends Title 14, Chapter II, Subchapter A of the Code of Federal Regulations as follows:

PART 234—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS

1. The authority for Part 234 continues to read as follows:

Authority: 49 U.S.C. 1302, 1324, 1374, 1377 and 1381; 5 U.S.C. § 553(e) and 14 CFR § 302.38.

2. Section 234.6 is revised to read as follows:

§ 234.6 Baggage-handling statistics.

Each reporting carrier shall report monthly to the Department on a domestic system basis, excluding charter flights, the total number of passengers enplaned systemwide, and the total number of mishandled-baggage reports filed with that carrier. The information shall be submitted to the Department within 15 days of the end of the month to which it applies and must be submitted with the transmittal letter accompanying the data for on-time performance in the form and manner set forth in the reporting directives issued by the Director, OAIM.

[FR Doc. 87-29714 Filed 12-28-87; 8:45 am]

BILLING CODE 4910-62-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1000

Organization, Functions, and Authority Delegations; Program Management and Budget Office et al.

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission is amending its statement of organization and functions to reflect organizational changes made since the changes published December 24, 1986, 50 FR 52440. The changes are the consolidation of the functions of the former Officer of Program Management and the former Office of Budget, Program Planning and Evaluation into a new Office of Program Management and Budget and a new Office of Planning and Evaluation; the consolidation of the Commission's downtown Washington, DC offices into its Bethesda, Maryland facilities; the reorganization of the former five Regional Offices into three Regional Centers; the elimination of the Commission's Toxicological Advisory Board; additional responsibilities in the Office of the Secretary with respect to the Flammable Fabrics Act; transfer of the Commission's human factors staff from the Directorate for Engineering Sciences to the Directorate for Epidemiology; and elimination of the Office of Administrative Law Judge. Editorial revisions have also been made in the descriptions of several organizations.

EFFECTIVE DATE: December 29, 1987.

ADDRESSES: Consumer Product Safety Commission, Office of the Secretary, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone 301-492-6980.

SUPPLEMENTARY INFORMATION: Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b), notice and other public procedures are not required and it is effective immediately upon publication in the **Federal Register.** Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612, and, thus, is exempt from the provisions of the Act.

List of Subject for 16 CFR Part 1000

Organization and Functions (Government Agencies).

Dated: December 16, 1987.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Accordingly, Part 1000 is revised to read as follows:

PART 1000—COMMISSION ORGANIZATION AND FUNCTIONS

Sec.

1000.1 The Commission.
1000.2 Laws administered.
1000.3 Hotline.
1000.4 Commission addresses.
1000.5 Petitions.
1000.6 Commission decisions and records.
1000.7 Advisory opinions and interpretations of regulations.
1000.8 Meetings and hearings; public notice.
1000.9 Quorum.
1000.10 The Chairman and Vice Chairman
1000.11 Delegation of functions.
1000.12 Organizational structure.
1000.13 Directives system.
1000.14 Office of the General Counsel.
1000.15 Office of Congressional Relations.
1000.16 Office of Media Relations.
1000.17 Office of the Secretary.
1000.18 Office of Internal Audit

Sec.

1000.19 Office of Equal Employment Opportunity and Minority Enterprise.
1000.20 Office of the Executive Director.
1000.21 Office of Program Management and Budget.
1000.22 Office of Planning and Evaluation.
1000.23 Office of Information and Public Affairs.
1000.24 Directorate for Epidemiology.
1000.25 Directorate for Economic Analysis.
1000.26 Directorate for Engineering Sciences.
1000.27 Directorate for Health Sciences.
1000.28 Directorate for Compliance and Administrative Litigation.
1000.29 Directorate for Administration.
1000.30 Directorate for Field Operations.

Authority: 5 U.S.C. 552(a).

§ 1000.1 The Commission.

(a) The Consumer Product Safety Commission is an independent regulatory agency which was formed on May 14, 1973, under the provisions of the Consumer Product Safety Act (Pub. L. 92–573, 86 Stat. 1207, as amended (15 U.S.C. 2051, *et seq.*)). The purposes of the Commission under the CPSA are:

(1) To protect the public against unreasonable risks of injury associated with consumer products;

(2) To assist consumers in evaluating the comparative safety of consumer products;

(3) To develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and

(4) To promote research and investigation into the causes and prevention of product-related deaths, illnesses and injuries.

(b) The Commission is composed of five members, appointed by the President, by and with the advice and consent of the Senate, for terms of seven years.

1000.2 Laws administered.

The Commission administers five acts: (a) The Consumer Product Safety Act (Pub. L. 92–573, 86 Stat. 1207, as amended (15 U.S.C. 2051, *et seq.*)).

(b) The Flammable Fabrics Act (Pub. L. 90–189, 67 State. 111, as amended (15 U.S.C. 1191, *et seq.*)).

(c) The Federal Hazardous Substances Act (Pub. L. 86–613, 74 Stat. 380, as amended (15 U.S.C 1261, *et seq.*)).

(d) The Poison Prevention Packaging Act of 1970 (Pub. L. 91–601, 84 Stat. 1670, as amended (15 U.S.C.1471, *et seq.*)).

(e) The Refrigerator Safety Act of 1956 (Pub. L. 84–930, 70 Stat. 953, 15 U.S.C. 1211, *et seq.*)).

§ 1000.3 Hotline.

(a) The Commission operates a toll-free telephone Hotline by which the public can communicate with the Commission. The number for use in all 50 states is 1–800–638–CPSC (1–800–638–2772).

(b) The Commission also operates a toll-free Hotline by which deaf or speech-impaired persons can communicate by teletypewriter with the Commission. The teletypewriter number for use in all states except Maryland is 1–800–638–8270. The teletypewriter number for use in Maryland is 1–800–492–8104.

§ 1000.4 Commission addresses.

(a) The principal offices of the Commission are at 5401 Westbard Avenue, Bethesda, Maryland. All written communications with the Commission should be addressed to the Consumer Product Safety Commission, Washington, DC 20207, unless otherwise specifically directed.

(b) The Commission has 3 Regional Centers which are located at the following addresses and which serve the sates indicated:

(1) Central Regional Center, 230 South Dearborn St., Room 2944, Chicago, Illinois 60604; Alabama, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, and Wisconsin.

(2) Eastern Regional Center, 6 World Trade Center, Vesey Street, Room 301, New York, New York 10048; Connecticut, Delaware, District of Columbia, Florida, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, and Virgin Islands.

(3) Western Regional Center, U.S. Customs House, 555 Battery St., Room 401, San Francisco, California 94111; Alaska, American Samoa, Arizona, Arkansas, California, Colorado, Guam, Hawaii, Idaho, Louisiana, Montana Nevada, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming.

§ 1000.5 Petitions.

Any interested person may petition the Commission to issue, amend, or revoke a rule or regulation by submitting a written request to the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

§ 1000.6 Commission decisions and records.

(a) Each decision of the Commission, acting in an official capacity as a collegial body, is recorded in Minutes of Commission meetings or as a separate Record of Commission action. Copies of Minutes or of a Record of Commission action may be obtained upon written request from the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or may be examined in the public reading room at Commission headquarters. Requests should identify the subject matter of the Commission action and the approximate date of the Commission action, if known.

(b) Other records in the custody of the Commission may be requested in writing from the Office of the Secretary pursuant to the Commission's Procedures for Disclosure or Production of Information under the Freedom of Information Act (16 CFR Part 1015).

§ 1000.7 Advisory opinions and interpretations of regulations.

(a) *Advisory opinions.* Upon written request, the General Counsel provides written advisory opinions interpreting the acts the Commission administers. Advisory opinions represent the legal opinions of the General Counsel and may be changed or superseded by the Commission. Requests for issuance of advisory opinions should be sent to the General Counsel, Consumer Product Safety Commission, Washington, DC 20207. Requests for copies of particular previously issued advisory opinions or a copy of an index of such opinions should be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

(b) *Interpretations of regulations.* Upon written request, the Associate Executive Director for Compliance and Administrative Litigation will issue written interpretations of Commission regulations pertaining to the safety standards and the enforcement of those standards. Requests for such interpretations should be sent to the Associate Executive director for Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207. Requests for interpretations of administrative regulations (e.g., Freedom of Information Act regulations) should be sent to the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

§ 1000.8 Meetings and hearings; public notice.

(a) The Commission may meet and exercise all its powers in any place.

(b) Meetings of the Commission are held as ordered by the Commission and, unless otherwise ordered, are held at the principal office of the Commission at 5401 Westbard Avenue, Bethesda, Maryland. Meetings of the Commission for the purpose of jointly conducting the

formal business of the agency, including the rendering of official decisions, are generally announced in advance and open to the public, as provided by the Government in the Sunshine Act (5 U.S.C. 552b) and the Commission's Meetings Policy (16 CFR Part 1012).

(c) The Commission may conduct any hearing or other inquiry necessary or appropriate to its functions anywhere in the United States. It will publish notice of any proposed hearing in the **Federal Register** and will afford a reasonable opportunity for interested persons to present relevant testimony and data.

(d) Notices of Commission meetings, Commission hearings, and other Commission activities are published in a Public Calendar, as provided in the Commission's Meetings Policy (16 CFR Part 1012).

§ 1000.9 Quorum.

Three members of the Commission constitute a quorum for the transaction of business.

§ 1000.10 The Chairman and Vice Chairman.

(a) The Chairman is the principal executive officer of the Commission and, subject to the general policies of the Commission and to such regulatory decisions, findings, and determinations as the Commission is by law authorized to make, he or she exercises all of the executive and administrative functions of the Commission.

(b) The Commission annually elects a Vice Chairman to act in the absence or disability of the Chairman or in case of a vacancy in the Office of the Chairman.

§ 1000.11 Delegation of functions.

Section 27(b)(9) of the Consumer Product Safety Act (15 U.S.C. 2076(b)(9)) authorizes the Commission to delegate any of its functions and powers, other than the power to issue subpoenas, to any officer or employee of the Commission. Delegations are published in the Commission's Directives System.

§ 1000.12 Organizational structure.

The Consumer Product Safety Commission is composed of the principal units listed in this section.

(a) The following units report directly to the Chairman of the Commission:

(1) Office of the General Counsel;
(2) Office of Congressional Relations;
(3) Office of Media Relations;
(4) Office of the Secretary;
(5) Office of Internal Audit;
(6) Office of Equal Employment Opportunity and Minority Enterprise;
(7) Office of the Executive Director.

(b) The following units report directly to the Executive Director of the Commission:

(1) Office of Program Management and Budget;
(2) Office of Planning and Evaluation;
(3) Office of Information and Public Affairs;
(4) Directorate for Epidemiology;
(5) Directorate for Economic Analysis;
(6) Directorate for Engineering Sciences;
(7) Directorate for Health Sciences;
(8) Directorate for Compliance and Administrative Litigation;
(9) Directorate for Field Operations.

§ 1000.13 Directives system.

The Commission maintains a Directives System which contains delegations of authority and descriptions of Commission programs, policies, and procedures. A complete set of directives is available for inspection in the public reading room at Commission headquarters.

§ 1000.14 Office of the General Counsel.

The Office of the General Counsel provides advice and counsel to the Commissioners and organizational components of the Commission on matters of law arising from operations of the Commission. It prepares the Commission's legislative program and comments on relevant legislative proposals originating elsewhere. The Office, in conjunction with the Department of Justice, is responsible for the conduct of all Federal court litigation to which the Commission is a party. The Office also advises the Commission on administrative litigation matters. The Office provides final legal review of and makes recommendations to the Commission on proposed product safety standards, rules, regulations, petition actions, and substantial hazard actions. It also provides legal review of certain procurement, personnel, and administrative actions and drafts documents for publication in the **Federal Register.**

§ 1000.15 Office of Congressional Relations.

The Office of Congressional Relations is the principal contact with the committees and members of Congress. It performs liaison duties for the Commission, provides information and assistance to Congress on matters of Commission policy, and coordinates testimony and appearances by Commissioners and agency personnel before Congress.

§ 1000.16 Office of Media Relations.

The Office of Media Relations is responsible for implementing the Commission's media relations program nationwide. The Office serves as the Commission's spokesperson to the national print and broadcast media, develops and disseminates the Commission's news releases, and organizes Commission news conferences.

§ 1000.17 Office of the Secretary.

The Office of the Secretary prepares the Commission's agenda, schedules and coordinates Commission business at offical meetings, and records, issues, and stores the official records of Commission actions. The Office prepares and publishes the Public Calendar under the Commission's Meetings Policy. The Office exercises joint responsibility with the Office of the General Counsel for the interpretation and application of the Privacy Act, Freedom of Information Act, and the Government in the Sunshine Act, and prepares reports required by these acts. It issues Commission decisions, orders, rules, and other offical documents, including **Federal Register** notices, for and on behalf of the Commission and controls the use of the Commission seal. The Office supervises and administers the dockets of adjudicative proceedings before the Commission. The Office maintains the records of continuing guaranties of compliance with applicable standards of flammability issued under the Flammable Fabrics Act (FFA) which are filed with the Commission in accordance with provisions of section 8(a) of the FFA (15 U.S.C. 1197(a)). Upon request, the Office of the Secretary provides appropriate forms to persons and firms desiring to execute continuing guaranties under the FFA. The Office also supervises and administers the public reading room.

§ 1000.18 Office of Internal Audit.

This Office reviews, analyzes, and reports on Commission programs and organization to assess compliance with relevant laws, regulations, and principles of efficency, effectiveness, and economy.

§ 1000.19 Office of Equal Employment Opportunity and Minority Enterprise.

The Office of Equal Employment Opportunity and Minority Enterprise assures the agency complies with all laws, regulations, rules and internal policies relating to equal employment opportunity. It assures compliance with the Small Business Act as it relates to small and disadvantaged business utilization. The Office also conducts the Upward Mobility Program.

§ 1000.20 Office of the Executive Director.

The Executive Director with the assistance of the Deputy Executive Director, under the broad direction of

the Chairman and in accordance with Commission policy, acts as the chief operating manager of the agency, supporting the development of the agency's budget and operating plan before and after Commission approval, and managing the execution of those plans. The Executive Director has direct line authority over the following directorates and offices: Epidemiology, Economic Analysis, Engineering Sciences, Health Sciences, Compliance and Administrative Litigation, Administration, and Field Operations; the Office of Program Management and Budget; the Office of Planning and Evaluation; and the Office of Information and Public Affairs.

§ 1000.21 Office of Program Management and Budget.

(a) The Office of Program Management and Budget is responsible for overseeing the development of the Commission's budget, program goals and objectives, and hazard program plans. The Office, in consultation with other offices and directorates, prepares, for the Commission's approval, the annual budget requests to Congress and the Office of Management and Budget and the operating plan for each fiscal year. It manages the execution of the Commission's budget. The Office recommends to the Office of the Executive Director actions to enhance effectiveness of the Commission's programs and activities.

(b) The Office of Program Management and Budget is also responsible for managing the hazard-releated programs contained in the Commission's operating plan and carries out other tasks assigned by the Executive Director. The Office is responsible for Information Resources Management activities and for international standards coordination and liaison. As an extension of the Office of the Executive Director, it is responsible for assuring the implementation of Commission decisions. Program Managers assigned to the Office provide overall direction to all hazard program projects, including those involving voluntary standards, petitions, and emerging hazards. This is especially true where functional responsibility extends across the organizational lines of other offices and directorates. The Program Managers' authority complements the functional authority vested in the Associate Executive Directors and other Office Directors to assure that relevant legal, technical, environmental, economic, and social impacts of projects are comprehensively and objectively presented to the Commission for decision. The Office carries out regular program reviews assessing the progress of projects to reach goals established by the Commission. The Office consults with the other staff directorates and offices in developing strategies to meet these goals. It is responsible for resolving issues that arise among the directorates and other offices in carrying out hazard program goals.

§ 1000.22 Office of Planning and Evaluation.

The Office of Planning and Evaluation reports to the Executive Director and is responsible for the Commission's planning and evaluation activities. It develops integrated short and long range plans for achieving the Commission's goals and objectives. The office is responsible for the development and analysis of both major policy and operational issues. Evaluation studies are conducted to determine how well the Commission fulfills it mission. These studies include impact and process evaluations of Commission programs, projects, functions, and activities. Recommendations are made to the Executive Director for changes to improve their efficiency and effectiveness. Management analyses and special studies are also conducted. These cover, but are not limited to, internal controls, organizational performance, structure, and productivity measurement. Recommendations are made to the Executive Director for improving management efficiency and effectiveness.

§ 1000.23 Office of Information and Public Affairs.

The Office of Information and Public Affairs is responsible for the development, implementation, and evaluation of a comprehensive national information and public affairs program designed to promote product safety. This includes responsibility for developing and maintaining relations with a wide range of national groups such as consumer organizations; business groups; trade associations; state and local government entities; labor organizations; medical, legal, scientific and other professional associations; and other Federal health, safety and consumer agencies. The Office also manages the Commission's Hotline, described in § 1000.3 of this chapter.

§ 1000.24 Directorate for Epidemiology.

The Directorate for Epidemiology, which is managed by the Associate Executive Director for Epidemiology, is responsible for injury data analysis to identify hazards or hazard patterns. The Directorate collects data on consumer product-related hazards and potential hazards, determines the frequency, severity, and distribution of the various types of injuries, and investigates their causes. It assesses the effects of product safety standards and programs on consumer injuries and conducts epidemiological and human factors studies and research in the fields of consumer product-related injuries. It maintains an injury data clearinghouse and manages the National Electronic Injury Surveillance System (NEISS).

§ 1000.25 Directorate for Economic Analysis.

The Directorate for Economic Analysis, which is managed by the Associate Executive Director for Economic Analysis, is responsible for providing the Commission with advice and information on economic and environmental matters and on the economic, social and environmental effects of Commission actions. It analyzes the potential effects of CPSC actions on consumers and on industries, including effects on competitive structure and commercial practices. The Directorate acquires, compiles, and maintains economic data on movements and trends in the general economy and on the production, distribution, and sales of consumer products and their components to assist in the analysis of CPSC priorities, policies, actions, and rules. It plans and carries out economic surveys of consumers and industries. It studies the costs of accidents and injuries. It evaluates the economic, societal, and environmental impact of product safety rules and standards. It performs such regulatory analyses and such studies of costs and benefits of CPSC actions as are required by the Consumer Product Safety Act, the National Environmental Policy Act, the Regulatory Flexibility Act and other Acts, and by policies established by the Consumer Product Safety Commission.

§ 1000.26 Directorate for Engineering Sciences.

The Directorate for Engineering Sciences, which is managed by the Associate Executive Director for Engineering Sciences, is responsible for developing technical policy and implementing the Commission's engineering programs. The Directorate's functional responsibility includes development and evaluation of product safety standards and test methods based on engineering and other physical sciences and the conduct and relevant evaluation of specific product testing to support general agency regulatory activities. The Directorate develops and

evaluates performance criteria, design specifications, and quality control standards for certain consumer products and provides scientific and technical expertise to the Commission. It conducts and evaluates engineering tests and test-methods, participates in the engineering development of product safety standards, and provides advice on proposed mandatory standards and industry voluntary standard efforts. It performs or monitors research in the engineering sciences and manages the Commission's engineering laboratory and engineering test facility and provides analytical services in support of the Commission's enforcement activities. The Directorate for Engineering Sciences conducts studies of the safety of consumer products. It coordinates engineering research testing and evaluation activities with the National Bureau of Standards and other Federal agencies, private industry, and consumer interest groups. The Directorate gives statistical support for the engineering aspects of standards development, certification programs, and sampling for field inspection programs. The Directorate provides technical supervision and direction of all engineering activities including tests and analyses conducted in the field. The Directorate provides engineering technical support to all Commission organizations, activities and programs. The Directorate analyzes accident data, develops accident scenarios, and recommends solutions. This information is applied to develop standards and corrective action plans. The Directorate provides appropriate analytical representation to the Office of Program Management and Budget.

§ 1000.27 Directorate for Health Sciences.

The Directorate for Health Sciences, which is managed by the Associate Executive Director for Health Sciences, is responsible for developing science policy and implementing the Commission's Health Sciences program. The Directorate's functional responsibilities include development and evaluation of the scientific content of product safety standards and test methods based on the chemical, biological and medical sciences, and the conduct and evaluation of specific product testing to support general agency regulatory activity. The Directorate also provides scientific and medical expertise to the Commission and it develops and evaluates performance criteria, design specifications, and quality control standards for certain consumer products. It conducts and evaluates scientific tests and test methods, participates in the scientific development of product safety standards, and provides advice on proposed standards. It collects scientific and medical data, reviews and evaluates toxicological, medical, and chemical hazards, and determines exposure, uptake and metabolism, including identification of the toxicological and physiological bases which cause some population segments to be at special risk. It performs risk assessments for chemical and physical hazards in consumer products. It performs or monitors research, and conducts studies of the safety of or of improving the safety of consumer products. It provides the Commission's primary source of technical expertise for implementation of the Poison Prevention Packaging Act. It provides the Commission's expertise on manufacturing practices and quality assurance for chemical consumer products and it provides scientific and laboratory support to the Commission's and other laboratories and other chemical or toxicological testing facilities. It provides scientific and medical support to all commission organizations, activities, and programs. The Directorate provides scientific liaison with tne National Toxicological Program, the National Cancer Institute, the Environmental Protection Agency, other federal agencies and programs, and organizations concerned with reducing the risks to consumers from exposure to chemical hazards. It also manages activities of the Commission's advisory committees such as Chronic Hazard Advisory Panels.

§ 1000.28 Directorate for Compliance and Administrative Litigation.

The Directorate for Compliance and Administrative Litigation, which is managed by the Associate Executive Director for Compliance and Administrative Litigation, conducts or supervises the conduct of compliance and administrative enforcement activity under all administered acts, provides advice and guidance to regulated industries on complying with all administered acts and reviews proposed standards and rules with respect to their enforceability. The Directorate's responsibility also includes identifying and acting on safety hazards in consumer products already in distribution, promoting industry compliance with existing safety rules, and conducting litigation before an administrative law judge relative to administrative complaints. It provides advice and case guidance to field offices and participation in the development of standards before their promulgation to assure enforceability of the final product. It enforces the Consumer Product Safety Act requirement that firms identify and report product defects which could present possible substantial hazards. It reviews consumer complaints, in-depth investigations, and other data to identify those consumer products containing such hazards or which do not comply with existing safety requirements. The Directorate negotiates and subsequently monitors corrective action plans designed to recall defective or non-complying products and gives public warning to consumers where appropriate. It gathers information on generic product hazards which may lead to subsequent initiation of safety standard setting procedures. The Directorate develops surveillance strategies and programs designed to assure compliance with Commission standards and regulations. It originates instructions to field offices and provides subsequent interpretations or guidance for field surveillance and enforcement activities.

§ 1000.29 Directorate for Administration.

The Directorate of Administration, which is managed by the Associate Executive Director for Administration, is responsible for general administrative policy; maintenance of timeliness, quality, and efficiency of services; planning input, review; and administrative control within his or her functional area of responsibility. The Directorate's functional responsibility includes all general and delegated administrative functions supporting the Commission in the areas of financial management, management and organizational analysis, personnel, training, automated data systems, telecommunications, the reference library, and the physical plant. The Directorate is responsible for the execution of payment, financial control, accounting, and reporting of all expenditures within the Commission. It is responsible for all aspects of personnel management for the Commission, including recruitment and placement, classification standards and policies, and employee and labor-management relations. It evaluates the need for, develops, and implements all training programs for the Commission, including employee training, executive development, and training programs involving outside parties. The Directorate designs, implements, and operates all automated data systems and telecommunications. It provides support services for space management, supply and property management, security, printing and reproduction,

records management, transportation, warehousing, utilities, and mail. It is responsible for all CPSC contracts and procurement of services and supplies. It develops, implements, and maintains management information systems and distributes summary reports on data accumulated by those systems. The Directorate also maintains and updates the reference library, performs data and bibliographic research for the agency and its constituency, and administers the ordering, receiving, and distribution of all publications requested by or for CPSC personnel.

§ 1000.30 Directorate for Field Operations.

(a) The Directorate for Field Operations, which is managed by the Associate Executive Director for Field Operations, has direct line authority over all Commission field operations; develops, issues, approves, or clears proposals and instructions affecting the field activities; and provides a central point within the Commission from which Headquarters officials can obtain field support services. The Directorate provides direction and leadership to the Regional Center Directors and promulgates policies and operational guidelines which form the framework for management of Commission field operations. The Directorate works closely with the other Headquarters functional units, the Regional Centers, and other field offices to assure effective Headquarters-field relationships, proper allocation of resources to support Commission priorities in the field, and effective performance of field tasks. It represents the field and prepares field program documents. It coordinates direct contact procedures between Headquarter's offices and Regional Centers. The Directorate is also responsible for liaison with State, local, and other Federal agencies on product safety programs in the field.

(b) Regional Centers are responsible for carrying out investigative and compliance activities within their areas. They encourage voluntary industry compliance with the laws and regulations administered by the Commission and implement wide-ranging public information and education programs designed to reduce consumer product injuries. They also provide support and maintain liaison with components of the Commission, other Regional Centers, and appropriate Federal, State, and local government offices.

[FR Doc. 87-29726 Filed 12-28-87; 8:45 am]

BILLING CODE 6335-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Activities of Self-Regulatory Organization Governing Members Who Possess Material, Non-Public Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted final Regulation 1.59(c), which requires self-regulatory organizations to adopt rules prohibiting, in accordance with the standards contained in the regulation, disclosure or other improper use of material, non-public information by members of self-regulatory organization governing boards and committees.

EFFECTIVE DATE: New Regulation 1.59(c) becomes effective March 28, 1988.

FOR FURTHER INFORMATION CONTACT: De'Ana Hamilton-Brown, Attorney/Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 11, 1985, the Commission published proposed Regulation 1.59 relating to the activities of self-regulatory organization ("SRO") employees and governing members who possess material, non-public information. 50 FR 24533. The Commission's proposal was designed to eliminate or minimize the potential misuse of material, non-public information by employees and governing members of SROs with possession of or access to material, non-public information, given that such conduct could undermine the concept of industry self-regulation and diminish public confidence in SROs. 50 FR 24533-34.

On November 25, 1986, the Commission adopted, as final, the provisions of Regulation 1.59 applicable to SRO employees. The rule prohibits the disclosure of material, non-public information obtained as a result of employment by an SRO. Furthermore, the rule requires SROs to adopt rules proscribing such disclosures and barring employees from trading in commodity interests on the employing contract market, in related commodity interests, or in commodity interests traded on other exchanges as to which the employee has access to material, non-public information.

Concurrently with the Commission's adoption of the final rules pertaining to SRO employees, the Commission deleted the portion of the rule pertaining to governing members. Generally, Regulation 1.59(c) would have prohibited governing members having knowledge of certain final or imminent decisions of a governing board or committee from trading the contract affected by such decisions or related contracts, and from disclosing information concerning the decisions, prior to publication. In addition, the proposed governing members provision would have required each contract market and clearing organization to adopt rules requiring that final decisions of governing boards or committees be announced publicly before the opening of the next trading session in the affected contract. These provisions were intended to prevent the misuse of information concerning decisions which could not be appealed to another body within the SRO and which, without further action, could alter materially the futures trading environment, such as decisions to revise margin levels substantially, limit trading to liquidation only, compel liquidation of positions held by major market participants, and other rule changes that could affect the prices of particular futures or option contracts. 51 FR at 44868 (December 12, 1986).

Objections to the proposal included concerns relating to the scope and operation of the proposed trading prohibition, which some commenters claimed would prohibit far more trading than necessary to preserve the integrity of contract markets and could impair the ability, or diminish the willingness, of knowledgeable SRO members who are also active traders to serve on an SRO board of directors or its major policy and disciplinary committees. Based upon its review of these and other comments, the Commission determined that the proposed restrictions upon the activities of governing members merited further consideration and possible amendment, deleted the governing members provision from Regulation 1.59, as adopted, and by **Federal Register** release of December 12, 1986, invited comment "on how best to revise the governing members provision" to address the concerns raised by the comments previously received.[1] 51 FR 44866, 44868.

[1] The Commission received nine comment letters in response to its December 12, 1986 request for

Continued

The commenters generally supported the view that governing members must maintain the confidentiality of sensitive information received in the performance of their official duties. However, some commenters questioned the necessity for Commission rulemaking to achieve that end, and a substantial number questioned the specific formulation of the previously proposed rule. In light of these and earlier comments, the Commission revised the proposed rule, and on August 28, 1987, the Commission published the new proposed governing members rule for comment. 52 FR 32568.

II. Activities of Self-Regulatory Organization Governing Members Who Possess Material Non-Public Information

The proposed Regulation 1.59(c), published in August, 1987, would have required SROs to adopt rules providing that no member of an SRO governing board or committee shall use or disclose, for any purpose other than the performance of such member's official duties as a governing member, material, non-public information obtained as a result of such member's participation on any committee or governing board of an SRO.[2] Proposed Regulation 1.59(c) also would have required contract markets and clearing organizations to adopt rules requiring the publication, except for good cause shown, of final decisions of contract market and clearing organization governing boards and committees prior to the opening of the next trading session in the affected contract on that contract market, and prior to the opening of the next trading session in a contract based on the same commodity as that contract traded on any linked exchange.

The recently proposed Regulation 1.59(c) differed significantly from the previous proposal. First, Regulation 1.59(c), as revised, would have encompassed the misuse of a potentially broader category of material, non-public information[3] than the original proposal, which would have addressed only those situations in which a governing member had knowledge of a final or imminent board or committee decision. Second, in contrast to the original proposal, which would have created a prohibition against trading by governing members who possessed or had access to material, non-public information, the revised proposal would have required case-by-case enforcement by the SROs. In this regard, the Commission anticipated that SROs would incorporate into their existing affirmative rule enforcement program, the surveillance of the trading activity of governing members where there was a potential nexus to knowledge of material, non-public information in their capacity as such, and other affirmative enforcement measures designed to detect and deter trading based upon such information and other misuse of such information. Finally, the proposed immediate publication provision, which previously would have included certain stringent procedural requirements, as revised, would have permitted delayed publication of a final decision for good cause shown, provided the Commission received prompt, written notification of such decision.

The Commission received six comment letters in response to its August 28, 1987 request for comments on revised Regulation 1.59(c).[4] Generally, the comments supported the provisions which would have required SROs to prohibit the disclosure or misuse of material, non-public information obtained by governing members as a result of their participation on SRO governing boards or committees, but opposed the immediate publication requirement with respect to final decisions of governing boards and committees.

The commenters agreed that the revised version of Regulation 1.59(c), excluding the immediate publication requirement, represented a significant improvement over the rule as previously proposed. One commenter acknowledged the need to maintain public confidence in the market and supported the Commission's proposal to adopt a performance standard. Another commenter stated that the "performance standard" approach would allow SROs to discipline members who abuse their trust and responsibilities by using or disclosing material, non-public information. The commenter stated further that the flexibility and focused restraint of the proposal, would avoid the loss of services on governing boards and committees by industry volunteers who might fear the restrictions on their trading activity contained in the 1985 proposal. Other commenters stated that the revised proposed regulation demonstrated the Commission's confidence in effective exchange rulemaking by leaving the responsibility for the specific terms to the exchanges, which are uniquely able to tailor their rules to fit their particular circumstance.

As noted, however, the commenters strongly opposed the immediate publication requirement as proposed in Regulation 1.59(c)(2). Most of the commenters agreed that certain board decisions should be announced promptly and publicly, but believed that mandating such disclosure by Commission rule is unnecessary and unduly burdensome. In this regard, several commenters stated that the immediate publication requirement is unnecessary in light of the provisions of proposed § 1.59(c)(1). Specifically, one commenter explained that governing members have a duty to disclose material, non-public information at the appropriate time, and if they breach that duty and make improper use of the information prior to public dissemination, they would be in violation of the exchange rules to be adopted pursuant to § 1.59(c)(1).

The commenters noted further that the immediate publication requirement, as proposed, often would be operationally impossible, particularly with the current

---

comment: (1) Chicago Board of Trade; (2) Coffee, Sugar & Cocoa Exchange, Inc.; (3) Comex Clearing Association; (4) Commodity Exchange, Inc.; (5) Minneapolis Grain Exchange; (6) National Futures Association; (7) National Grain Trade Council; (8) National Grain and Feed Association; and (9) New York Mercantile Exchange. For an in-depth discussion of the comments received and the Commission's response, *See* 52 FR 32568 (August 28, 1987).

[2] The initially proposed governing members rule would have applied only to contract markets and clearing organizations. As revised, proposed Regulation 1.59(c)(1) would have applied to SROs, as defined in § 1.59(a)(1), thereby including the National Futures Association ("NFA"). That change reflects reformulation of the rule to apply to the use of material, non-public information as opposed to trading activities in the context of knowledge of final or imminent decisions relevant to such trading. NFA commented that revised Regulation 1.59(c) should not apply to NFA because "the applicability of § 1.59(c) to information obtained and decisions made by NFA board or committee members is remote." The Commission disagrees. NFA governing members have access to information concerning the financial condition of its members which the Commission believes could provide an unfair trading advantage, if used for that purpose.

[3] "For purposes of this section: * * * 'Material information' means information which would be considered important by a reasonable person in deciding whether to trade a particular commodity interest on a contract market, including, but not limited to, information relating to present or anticipated cash, futures or option positions, trading strategies, the financial condition of members of [SROs] or their customers, or the regulatory actions or proposed regulatory actions of [SROs]. 'Nonpublic information' means information which has not been disseminated in a manner which makes it generally available to the trading public through recognized channels of distribution." Regulations 1.59(a) (3) and (4). The Commission expects SROs, under the revised rule, to determine the application of the material, non-public information standard in specific factual contexts, a process that will refine the definition of the information that may not be misused or disclosed.

[4] This request elicited formal comment from: (1) Chicago Mercantile Exchange; (2) Coffee, Sugar & Cocoa Exchange, Inc.; (3) Chicago Board of Trade; (4) National Grain and Feed Association; (5) National Futures Association; and (6) National Grain Trade Council.

trend toward linkages between foreign and domestic exchanges, and most recently, the commencement of evening trading sessions. Several commenters opposed the inclusion of routine margin changes and member responsibility actions in the class of final decisions which would have been subject to the immediate publication requirement, because such decisions most often would not have a material impact on the market. Lastly, one exchange noted that some final decisions should not be published immediately to avoid possible market disruption, for example, a decision to order a firm to liquidate its positions within a specified period of time.

The Commission has considered the concerns raised by the commenters with respect to the immediate publication requirement, and agrees that the current proposal may not be the best approach. However, the Commission believes that the principle underlying the proposed immediate publication requirement should be preserved. Indeed, several commenters agreed that board and committee decisions which may have a material impact on the markets should be published promptly, and took issue only with the method proposed for accomplishing this end.

Accordingly, although the Commission has determined to delete the provisions which would have required exchanges to adopt rules requiring publication of final decisions before the next trading session, the Commission expects each SRO to review in its affirmative rule enforcement program the consistency with which final decisions are published promptly, as well as the justification provided when a potentially market-sensitive decision is not published promptly. In this regard, SRO boards and committees should document their reasons for delaying publication of a final decision which may constitute material, non-public information. If circumstances indicate an unjustified delay in publication of a final decision, the SRO should take that information into consideration in determining which members and decisions to focus upon in surveilling for possible violations of Regulation 1.59(c).

As the Commission stated in the previous **Federal Register** release concerning Regulation 1.59(c), "each [SRO] must develop and administer a program for detecting possible violations of its rule that is sufficient to deter and detect violations, so as to provide a meaningful foundation for public confidence in the fairness of the futures markets." 52 FR 32568, 32571. The Commission noted that such a program would entail, at a minimum, adequate access to governing members' trading records, review and investigation of complaints of improper trading, and review of trading by governing members and their affiliates.

While acknowledging the obligation of SROs to enforce the rules promulgated in accordance with Regulation 1.59(c), several commenters stated that a special affirmative compliance program aimed solely at the misuse and disclosure of material, non-public information by governing members would be an inefficient and unnecessary use of resources that would produce no meaningful result. Moreover, the commenters stated that their existing rules and procedures are sufficient to satisfy the rule enforcement obligations anticipated under Regulation 1.59(c).[5]

The Commission continues to believe that effective, affirmative SRO compliance programs designed to detect and deter violations of rules adopted in accordance with Regulation 1.59(c) are essential. However, the Commission is not proposing to require SROs to develop and implement a separate or unique affirmative compliance program aimed solely at detecting abuses of material, non-public information by governing members. Instead, the Commission expects SROs to expand their existing compliance programs to conduct surveillance in this area not unlike the manner in which they conduct surveillance programs to detect other rule violations. Such a program must be reasonably calculated to detect and deter abuses, but need not address the substantial portion of governing board and committee activities in which no material, non-public information is involved. For those instances where material, non-public information is involved, an SRO program, for example, could include surveillance of selected trading by governing members (including their affiliates) having access to material, non-public information. That surveillance could be limited to the commodities to which the information relates and the time period during which misuse of such information reasonably could be expected to occur. The Commission understands that the compliance programs used will vary among the SROs based upon, *inter alia*, the size of the market and the organizational structure of the governing boards and committees of each SRO.

The Commission is relying upon the individual SROs to define an effective program most suitable to their particular markets, and to devote the necessary resources to enforce their rules to be adopted pursuant to § 1.59(c). The Commission intends to review SRO activities in this area in the ordinary course of its oversight of the futures markets, most notably in the conduct of rule enforcement reviews.

[5] The Commission invited comment on whether effective enforcement of SRO rules implemented pursuant to proposed Regulation 1.59(c) would require that the Commission adopt rules designed to facilitate self-regulatory enforcement efforts. For example, the Commission suggested a requirement that SROs adopt rules permitting them to obtain documents related to trading in affected commodities or a requirement that specific disclosures be made by board or committee members of open positions in the contract market under discussion held by the governing member and such member's affiliated firm. All of the commenters who responded on this point stated emphatically that such rulemaking would be unnecessary, and reiterated that existing SRO rules and procedures are sufficient.

III. Implementation Time of Regulation 1.59(c)

Commission Regulation 1.59(c) will not become effective until ninety days after the date of publication of the final rule. The delayed effective date should provide ample time for SROs to adopt and submit to the Commission, pursuant to section 5a(12) of the Commodity Exchange Act, rules consistent with the requirements of Regulation 1.59(c), and to comply therewith. The Commission expects the SROs to act expeditiously in submitting appropriate rules.

Regulatory Flexibility Act

The Commission has determined previously that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act (5 U.S.C. 605) and that the requirements of the Act do not, therefore, apply to contract markets. 47 FR 18618 (April 30, 1982). Furthermore, the Chairman of the Commission has certified previously on behalf of the Commission that comparable rule proposals, if adopted, would not have a significant economic impact on a substantial number of small entities. *See, e.g.*, 48 FR 32835, 32836 (July 19, 1983). For the reasons set forth above, and pursuant to Section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman hereby certifies, on behalf of the Commission, that the following § 1.59(c) will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act ("PRA") of 1980, 44 U.S.C. 3501 *et. seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information

as defined by the PRA. In compliance with the PRA, the Commission previously submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget ("OMB"), stating that Rule 1.59 does not impose any additional paperwork on the public, but that SROs may be required to submit new or altered rules to the Commission pursuant to Regulation 1.41. Rule 1.41 was assigned previously OMB Control No. 3038–0022.

Copies of the OMB approved information collection package associated with this rule may be obtained from Bob Neal, Office of Management and Budget, Room 3220, NEOB, Washington, DC 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 1

SROS, Contract markets, Clearing organizations, Registered futures associations, Contract market members, Exchange employees, Directors of contract markets and clearing organizations.

In consideration of the foregoing, and based on the authority contained in the Commodity Exchange Act and, in particular, sections 3, 4b, 5, 5a, 6, 6b, 8, 8a, 9, 17, and 23(b) thereof, 7 U.S.C. 5, 6b, 7, 7a, 8, 13a, 12, 12a, 13, 21 and 26(b) the Commission is proposing to amend Title 17, Chapter I, Part 1 of the Code of Federal Regulations by adopting new § 1.59(c) as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. Section 1.59 is amended by revising the section heading and by adding paragraph (c) to read as follows:

§ 1.59 Activities of self-regulatory organization employees and governing members who possess material, non-public information.

* * * * *

(c) *Members of self-regulatory organization governing boards and committees.* Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to section 5a(12) of the Act and Commission Regulation 1.41 (or pursuant to section 17(j) of the Act in the case of a registered futures association) which provide that no member of such self-regulatory organization governing board or of a committee of such self-regulatory organization shall use or disclose, for any purpose other than the performance of such member's official duties as a governing board or committee member, material, non-public information obtained as a result of such member's participation on any committee or governing board of such self-regulatory organization.

Issued in Washington, DC on December 22, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–29721 Filed 12–28–87; 8:45 am]

BILLING CODE 6351–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 240 and 270

[Release Nos. 34–25217; IC–16181; File No. S7–19–87]

Proxy Rules; Amendments To Eliminate Filing Requirements for Certain Preliminary Proxy Material; Amendments With Regard to Rule 14a–8, Shareholder Proposals

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission today announced the adoption of amendments to the proxy rules to eliminate the filing of preliminary proxy and information statements under certain circumstances. To accommodate the changes in filing requirements, related amendments to Rules 14a–3, 14a–8, and 14c–3, Schedule 14C, the filing fee rules and Item 401 of Regulation S–K also are being adopted. In addition, the Commission is adopting an amendment to Rule 14a–8 to delete the limitation on inclusion of a shareholder proposal in the registrant's proxy material where the proponent delivers written proxy materials to holders of more than 25% of a class of the registrant's securities. Other amendments to Rule 14a–8 relating to requests for documentary support of a proponent's beneficial ownership claim require that a registrant make any request for documentary support within 14 calendar days, extend from 14 to 21 calendar days the time period in which such documentation must be furnished, and require that a registrant accept, under certain circumstances, a copy of certain Commission filings, together with a proponent's affidavit, as sufficient documentation of a proponent's beneficial ownership claim. Technical and clarifying amendments to Schedule 14A also are being adopted.

EFFECTIVE DATE: All amendments are effective February 1, 1988, except for the deletion of Rule 14a–8(a)(1)(ii), which is effective December 29, 1987. Refer to the supplementary information section below for a detailed explanation of how the effective date will affect the operation of Rules 14a–6(a), 14a–8(a)(1), 14a–8(d), 14a–8(e), 14c–5(a), and Schedule 14C.

FOR FURTHER INFORMATION CONTACT: Barbara J. Green or Elizabeth M. Murphy, (202) 272–2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. After the effective date, contact Cecilia D. Blye, (202) 272–2573, Office of Chief Counsel, Division of Corporation Finance. With respect to investment companies, contact Dorothy M. Donohue, (202) 272–2107, Ofice of Disclosure and Adviser Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to Regulation 14A [1] (Rules 14a–3 [2], 14a–6 [3] and 14a–8 [4] and Schedule 14A [5]) and to Regulation 14C [6] (Rules 14c–3 [7] and 14c–5 [8] and Schedule 14C [9]) under the Securities Exchange Act of 1934 ("Exchange Act").[10] The Commission also is adopting amendments to Rule 20a–1 [11] under the Investment Company Act of 1940 ("Investment Company Act") [12] and to Item 401 [13] of Regulation S–K. [14]

The deletion of Rule 14a–8(a)(1)(ii) [15] is effective upon publication in the **Federal Register.** The effective date for all other amendments is February 1, 1988. The following outline indicates how the effective dates will affect the operation of Rules 14a–6(a),[16] 14a–8(a)(1),[17] 14a–8(d),[18] 14a–8(e),[19] 14c–5(a),[20] and Schedule 14C:

---

[1] 17 CFR 240.14a–1 through 240.14b–2.
[2] 17 CFR 240.14a–3.
[3] 17 CFR 240.14a–6.
[4] 17 CFR 240.14a–8.
[5] 17 CFR 240.14a–101
[6] 17 CFR 240.14c–1 through 240.14c–101
[7] 17 CFR 240.14c–3.
[8] 17 CFR 240.14c–5.
[9] 17 CFR 240.14c–101
[10] 15 U.S.C. 78a–78kk.
[11] 17 CFR 270.20a–1
[12] 15 U.S.C. 80a–1 *et seq.*
[13] 17 CFR 229.401
[14] 17 CFR 229.1 *et seq.*
[15] 17 CFR 240.14a–8(a)(1)(ii).
[16] 17 CFR 240.14a–6(a).
[17] 17 CFR 240.14a–8(a)(1).
[18] 17 CFR 240.14a–8(b).
[19] 17 CFR 240.14a–8(e).
[20] 17 CFR 240.14c–5(a).

A. Rule 14a–6(a)

Registrants filing proxy statements on or after February 1, 1988, should comply with Rule 14a–6(a), as amended.

B. Rule 14a–8(a)(1)

1. Registrants receiving security holder proposals on or after February 1, 1988, should comply with the time restrictions imposed by Rule 14a–8(a)(1), as amended, in requesting documentation of beneficial ownership.

2. Security holder proponents furnishing documentation of beneficial ownership to registrants on or after February 1, 1988, should provide documentation considered acceptable under Rule 14a–8(a)(1), as amended. Similarly, registrants should accept such documentation received from security holder proponents on or after February 1, 1988. Further, the staff will not grant no-action letter requests to registrants where a proponent furnishes such documentation prior to February 1, 1988.

3. Security holder proponents responding to requests for documentation received on or after February 1, 1988, should comply with the time restrictions imposed by Rule 14a–8(a)(1), as amended.

4. Effective upon publication in the **Federal Register**, Rule 14a–8(a)(1)(ii) will not restrict the distribution of written proxy materials by security holder proponents because it has been deleted from Rule 14a–8(a)(1), as amended.

C. Rule 14a–8(d)

Registrants asserting to the Commission, on or after February 1, 1988, that security holder proposals may be omitted from their proxy materials, should comply with Rule 14a–8(d), as amended.

D. Rule 14a–8(e)

Registrants forwarding proponents copies of their statements in opposition on or after February 1, 1988, should comply with Rule 14a–8(e), as amended. Proponents informing the Commission on or after February 1, 1988, that a registrant's statement in opposition is false and misleading should comply with Rule 14a–8(e), as amended.

E. Rule 14c–5(a)

Registrants filing information statements on or after February 1, 1988, should comply with Rule 14c–5(a), as amended.

F. Schedule 14C

Registrants advising the Commission of an intent to rule a security holder proposal out of order on or after February 1, 1988, should comply with Instruction 2 to Item 4 of Schedule 14C, as amended.

I. Executive Summary

A. Exclusion from Filing Preliminary Proxy Material and Related Amendments

On June 4, 1987, the Commission proposed for public comment amendments to the proxy rules [21] to eliminate the filing by registrants of preliminary proxy and information statements with the Commission under certain circumstances.[22] The proposal was intended to relieve registrants and the Commission of unnecessary administrative burdens and preparation and processing costs associated with the filing and processing of proxy material that is currently subject to selective review procedures, but ordinarily is not selected for review in preliminary form. The Commission today is adopting the proposal with some modifications.

The exclusion affects only filing requirements; the amendments will not affect disclosure requirements or change the likelihood of review. As under current practice, definitive material still will be subject to being selected for review. Currently, definitive material may be reviewed, for example, when full review of a Form 10–K [23] is undertaken, material deficiencies in definitive materials come to the staff's attention, or an opposing solicitation is commenced after definitive material is filed. The rule amendments are not intended to change the current practice.

Related amendments to Rule 14a–3, Rule 14a–8, Rule 14c–3, Schedule 14C, filing fee rules and Item 401 of Regulation S–K also are being adopted by the Commission. These amendments base certain timing and filing requirements on the filing of definitive, rather than preliminary, proxy material. In addition, technical and clarifying amendments to Schedule 14A are being adopted.

B. Amendments to the Shareholder Proposal Rule

Since 1983, Rule 14a–8(a)(1)(ii) has provided that a shareholder proposal may be omitted from the registrant's proxy material if the proponent delivers written proxy material to holders of more than 25% of a class of the registrant's securities. In the June Release, the Commission sought comment on eliminating this provision. The commentators were divided on the issue, with shareholder proponents generally favoring and registrants generally opposing the elimination. The Commission also solicited comment on alternative amendments to Rule 14a–8(a)(1)(ii), either to modify the 25% limitation to permit inclusion of shareholder proposals in the registrant's proxy material even when the proponent is conducting a solicitation more widespread than that permitted under the present rule, or to retain the 25% limitation and clarify its applicability to exclusion of the proposal from the registrant's material for the current meeting of shareholders as well as the meetings held in the following two years.

In view of the recent increase in shareholder activism on corporate governance issues, the Commission is amending Rule 14a–8 to delete the 25% limitation contained in Rule 14a–8(a)(1)(ii). Amendments to Rule 14a–8 relating to requests for documentary support of a proponent's beneficial ownership claim also are being adopted

II. Discussion of the Amendments

A. Exclusion From Filing Preliminary Proxy Material and Related Amendments

1. Scope

The exclusion from filing preliminary material [24] applied to a proxy or information statement distributed in connection with an annual meeting, or special meeting in lieu of an annual meeting, at which the only matters to be acted upon are the election of directors, the election, approval or ratification of auditors and/or shareholder proposals.[25] With respect to investment companies registered under the Investment Company Act and business development companies, the exclusion applies to any meeting (annual or special) at which the matters to be acted upon include those noted above as well as certain additional matters discussed in detail below. Where the exclusion applies, the Commission will not process preliminary proxy material.[26]

---

[21] 17 CFR 240.14a–1 through 240.14c–101.

[22] Release No. 34–24552 (June 4, 1987) [52 FR 22334] (the "June Release"). The June Release generated letters from 43 commentators. These letters, as well as the comment summary prepared by the staff, are available for public inspection and copying at the Commission's Public Reference Room (*see* File No. S7–19–87). Three additional comment letters received after completion of the comment summary are not discussed in the comment summary but are available in File No. S7–19–87

[23] 17 CFR 249.310.

[24] *See* Rules 14a–6(a) and 14c–5(a), as amended.

[25] The shareholder proposals referred to are those included in a proxy statement pursuant to Rule 14a–8 or identified in an information statement pursuant to Item 4 of Schedule 14C.

[26] Paragraph (b) of Rule 14a–6 [17 CFR 240.14a–6(b)], which requires copies of any additional

Continued

Neither submission nor inclusion of a shareholder proposal in a registrant's proxy material will make the exclusion inapplicable and require the filing of preliminary material. Rule 14a–8 provides procedures for the review of shareholder proposals separate from the review of preliminary proxy materials. Under the amendments, as in the past, the staff will handle questions and disputes about the inclusion and characterization of shareholder proposals, as well as objections to statements in opposition, independently of the preliminary filing process.

The exclusion does not apply if the registrant comments on or refers to a solicitation in opposition in connection with the forthcoming meeting in its proxy material.[27] A note defines "solicitation in opposition" as any solicitation opposing a proposal supported by the registrant and any solicitation supporting a proposal that the registrant does not expressly support, other than a shareholder proposal included in a registrant's proxy material.[28] The note also clarifies that the inclusion of a shareholder proposal in a registrant's proxy material does not constitute a "solicitation in opposition," even if the registrant opposes the proposal or includes a statement in opposition to the proposal.[29]

a. *Treatment of Investment Companies.* The amendments require that investment companies and business development companies file only definitive material where the matters to be acted upon at any meeting, in addition to any discussed above, are a proposal to continue, without change, an advisory or other contract or agreement that previously has been the subject of a proxy solicitation for which proxy material was filed with the Commission and/or, in the case of an open-end investment company, a proposal to increase the number of shares authorized to be issued. The exclusion from filing preliminary proxy material applies to any meeting of investment company shareholders, rather than only an annual or special meeting in lieu of an annual meeting as proposed, because state law does not always require investment companies to hold annual meetings. The exclusion has been expanded to include business development companies (although they are not afforded the same favorable treatment with respect to annual meetings that investment companies are afforded under state law), because they deserve comparable treatment for the routine proxy issues discussed above.

Investment companies will not file preliminary proxy material in connection with an advisory or other contract only where the contract or agreement that is the subject of the vote already has been voted upon (either when initially adopted or subsequently continued) by the public shareholders. The phrase "without change" nonetheless allows, for example, for changes in the date of the agreement, new signatures or correction of any typographical errors.

The exclusion from filing preliminary material dealing with an increase in shares is limited to open-end companies. Dilution of control (the primary issue that arises in connection with a proposal to authorize new shares) is rarely an important consideration for open-end investment company shareholders. Thus, such proposals tend to be routine and staff review ordinarily is not essential.

b. *Proposal Relating to Solicitations in Opposition and Notice.* The June proposal was designed to require the filing of preliminary material where a solicitation in opposition in connection with the forthcoming meeting had been or was about to be undertaken. At the same time, the proposal recognized that a registrant could have its printing, distribution and meeting schedule disrupted if it learned of a solicitation in opposition shortly before definitive material was to be filed. Accordingly, the proposal contained provisions that would have required the filing of preliminary material if a party had commenced a solicitation in opposition or if the registrant had received notice of the intention of a party to commence such a solicitation, unless the solicitation was commenced or notice was first received during the 45 calendar days prior to the registrant's scheduled meeting date, and the registrant did not comment on or refer to such solicitation in its proxy material.

After considering the feasibility of the proposed provisions, the Commission has decided not to adopt them as proposed. Even where a solicitation in opposition has been or is about to be commenced, there is no reason to preclude reliance upon the exclusion from filing in preliminary form where the proxy material addresses only those matters triggering the exclusion, and does not comment on or refer to the opposing solicitation.

The Commission therefore has determined that proxy material otherwise meeting the requirements for the exclusion needs to be filed in preliminary form only if the registrant comments on or refers to a solicitation in opposition. This modification is consistent generally with the current review practice and effectuates more fully the original objective of the proposed amendments, which was to decrease burdens on registrants associated with the filing of preliminary material that deals with ordinary matters and is unlikely to be selected for review by the staff. The modification also obviates the need to resolve practical problems with the proposed notice provisions, which were identified by commentators, including potential disputes over whether or when notice was given and the inadequacy of the proposed 45 calendar day period for the printing and distribution of proxy materials.

2. Related Amendments to Rule 14a–8, Shareholder Proposal Rule

To accommodate the changes in filing requirements, it is necessary to amend paragraphs (d) and (e) of Rule 14a–8. The time periods in these provisions now will be based on the filing of definitive, rather than preliminary material. Paragraph (d), as amended, requires that the registrant notify the Commission and the proponent of its assertion that a proposal may be omitted at least 80 calendar days prior to the date of filing the definitive proxy material, rather than 60 calendar days prior to the date of filing preliminary material. Similarly, Instruction 2 of Item 4 of Schedule 14C is amended to require that, if the registrant intends to rule a shareholder proposal out of order, it should so advise the Commission 20 calendar days prior to the date that definitive copies of the information statement are to be filed, rather than at the time it files the preliminary copies of its information statement.

---

soliciting material to be filed in preliminary form at least two business days prior to furnishing such material to shareholders, is not affected by the amendments. Rule 14a–11 [17 CFR 240.14a–11], which contains special provisions for election contests, and Rule 14a–12 [17 CFR 240.14a–12], which governs solicitations prior to furnishing required proxy statements, also are not affected by the amendments.

[27] A note has been added to Rule 14a–6(a) and 14c–5(a) stating that a registrant that is filing proxy material or an information statement in preliminary form only because it has commented on or referred to an opposing solicitation should so state in a transmittal letter when filing the preliminary material with the Commission.

[28] Accordingly, solicitations in opposition are not limited to those involving election contests and governed by Rule 14a–11.

[29] Where the registrant opposes a shareholder proposal included in the registrant's proxy material or comments on or refers to a solicitation in support of that shareholder proposal, the comments or references to the proposal or such solicitation will be considered a part of the registrant's statement in opposition and will be treated as such under Rule 14a–8, even if they appear elsewhere in the registrant's materials.

Paragraph (e) of Rule 14a–8 is amended to require that, not later than 30 calendar days prior to the filing of definitive proxy material with the Commission, the registrant forward to a shareholder proponent a copy of any statement in opposition to the proponent's resolution that the registrant intends to include in the proxy statement. Previously, this time period was 10 calendar days prior to the filing of preliminary material.

In addition, the Commission is amending the last paragraph of Rule 14a–8(e) to require that a proponent who believes that the registrant's statement in opposition is false and misleading, and so informs the Commission, provide a copy of the statement in opposition to the Commission along with his letter. The amendment will help prevent delays in review where the Commission has not been furnished with a copy of the statement in opposition.

3. Filing Fees and Other Related Amendments

To accommodate the change in filing requirements, the Commission is amending the filing fee requirements in Rules 14a–6(j) and 14c–5(g), [30] and in Rule 20a–1 under the Investment Company Act. The amendments require that where preliminary material is not required to be filed, a filing fee be paid when definitive material is filed.[31]

Additional technical revisions are being adopted to make Rule 14a–3(c),[32] Note 2 to Rule 14a–6(a), and Rules 14a–6(j) and 14c–3(b)[33] consistent with the elimination of the filing of certain preliminary proxy material. Rules 14a–3(c) and 14c–3(b) are being revised to add that, if preliminary filing is not required, copies of annual reports shall be mailed to the Commission not later than the date on which such reports are first sent or given to security holders or the date on which definitive material is filed. The word "proxy" is being substituted for the word "preliminary" in the first sentence of Note 2 to Rule 14a–6(a). Rule 14a–6(j) is being amended to eliminate a reference to "preliminary material" in introductory language and a reference to the solicitation of proxies for the "election of directors" with regard to preliminary material.[34]

B. Amendments to Rule 14a–8

1. Deletion of the 25% limitation in Rule 14a–8(a)(1)(ii)

Shareholder activism has increased in recent years. In the past proxy season, votes favoring shareholder proposals concerning corporate governance issues reached historically high levels.[35] In view of this increased shareholder interest in matters of corporate governance,[36] the Commission is adopting amendments to delete the 25% limitation in Rule 14a–8.[37] The deletion permits shareholder proposals that are included in registrant's proxy material to be accompanied by more widespread independent solicitations.[38] Such independent solicitations may increase shareholder participation and broaden the opportunities for shareholders to receive information on corporate governance issues, as well as foster debate on these issues. The Commission intends to monitor the practical effects of the deletion of the 25% limitation.

The deletion of the 25% limitation does not and is not intended to permit access to registrants' proxy materials for a party in an election contest. Shareholder proposals that relate to an election contest and/or are counter to a proposal to be submitted by the registrant at the meeting continue to be subject to exclusion from registrants' proxy materials under Rule 14a–8(c) (8) and (9).[39]

2. Requests for Documentary Support of Beneficial Ownership

Rules 14a–8(a) (1) and (2) set forth eligibility and other requirements for shareholder proposals. At the time of a proposal is submitted, the proponent must be a record holder or beneficial owner of at least 1% or $1,000 in market value of securities entitled to be voted on the proposal at the meeting and have held the securities for at least one year.[40] At that time, the proponent also must provide the registrant in writing with his or her name, address, the number of the registraint's voting securities held of record or beneficially, the dates on which the securities were acquired, and, in the case of beneficial ownership, documentary support for such a claim.[41] If the proponent fails initially to furnish documentary support for a claim of beneficial ownership, the registrant must request such support before the proposal is excludable under the Rule. Prior to these amendments, that request could have been made at any time.

In the June Release, the Commission proposed that a registrant be required to make any such request promptly. Alternatively, the Commission solicited comment on a fixed time period, such as 10, 14 or 21 calendar days. The Commission is amending Rule 14a–8(a)(1) to require that a registrant's request for documentation of a proponent's beneficial ownership be made within 14 calendar days after receipt of the shareholder proposal, where the proponent has failed to provide such documentation as required.[42] This amendment provides an early time period in the Rule for resolving issues of documentary

[30] 17 CFR 240.14a–6(j) and 17 CFR 240.14c–5(g).

[31] To facilitate processing by the Commission staff, a note has been added to Rules 14a–6(c) [17 CFR 240.14a–5(b)] and 14c–6(b) [17 CFR 240.14c–5(b)] stating that a registrant that is filing definitive proxy material or a definitive information statement without payment of a fee should state in the first paragraph of the transmittal letter that no fee is being paid because a fee was paid upon filing preliminary material.

[32] 17 CFR 240.14a–3(c).

[33] 17 CFR 240.14c–3(b).

[34] Minor conforming language revisions also have been made to Instruction 2 to Item 401(f) of Regulation S-K [17 CFR 229.401(f)]. Additional language has been added to the instruction to state that if any event specified in paragraph (f) has occurred and information in regard thereto is omitted on the grounds that it is not material, the registrant may furnish as supplemental information, ten days before definitive materials are filed (if preliminary filing is not required) materials to which the omission relates, a description of the event and a statement of the reasons for the omission of the information.

[35] For example, in the past proxy season of 32 votes on anti-poison pill shareholder proposals 14 drew more than 30% of the shares voted and at least three reached or surpassed 40%. Also, a shareholder proposal to require shareholder ratification of auditors received 61% of the vote, and at two companies shareholder proposals to reduce the supermajority required by fair price amendments received over 30% of the shares voted. *See* Investor Responsibility Research Center Inc. ("IRRC"), Voting by Institutional Investors on Corporate Governance Issues in the 1987 Proxy Season, October 1987, at 5–18; IRRC Corporate Governance Bulletin, Vol. IV, No. 4, July/August 1987, at 112–113; No. 3, May/June 1987, at 66–67, 90, 96.

[36] Bills are pending in Congress that address shareholder access to registrants' proxy machinery *See* H.R. 2172, 100th Cong., 1st Sess. (1987); H.R. 2668, 100th Cong., 1st Sess. (1987); S. 1323, 100th Cong., 1st Sess. (1987).

[37] In the June Release, the Commission proposed adding a note that would have stated that where a proponent requests to a copy of the registrant's shareholder list in order to be able to limit appropriately his delivery of written proxy materials to shareholders and the registrant refuses to provide the list, Rule 14a–8(a)(1)(ii) would not bar the shareholder proposal even if the proponent exceeded the limit contained in the Rule. The note is not being adopted because the 25% limitation is being deleted.

[38] Proponents that undertake independent solicitations must comply with the filing and disclosure requirements of the applicable proxy rules. *See, e.g.*, Rules 14a–3, 14a–6 and 14a–12.

[39] 17 CFR 240.14a–8(c) (8) and (9).

[40] Rule 14a–8(a)(1)(i) [17 CFR 240.14a–8(a)(1)(i)].

[41] Rule 14a–8(a)(2) [17 CFR 240.14a–8(a)(2)].

[42] A technical amendment is being made to the second sentence of Rule 14a–8(a)(1) to refer to documentation of beneficial ownership of at least 1% of the securities entitled to be voted on the proposal, as well as the alternative beneficial ownership requirement of at least $1,000 in market value.

support.[43] A fixed time period is being adopted to avoid any dispute or interpretive questions over the meaning of "promptly."

Further, the Commission is amending Rule 14a–8(a)(1) to change from 14 to 21 calendar days the time period within which a proponent must furnish appropriate documentation beneficial ownership after being requested to do so by a registrant. Since documentary support frequently is obtained from independent third parties, the Commission believes additional response time is warranted. Commentators noted difficulty in obtaining the necessary documentary support from record holders within the 14 calendar day period currently provided.

The Commission also is amending Rule 14a–8(a)(1) to codify its interpretive position that a written statement by a record owner or an independent third party, such as a depository or broker-dealer holding the securities in street name, of the proponent's holding of the registrant's securities for the relevant one year time period is appropriate documentation for a proponent's beneficial ownership claim. In addition, the Commission is amending the Rule to require that a registrant accept, as appropriate documentation of a proponent's beneficial ownership, a copy of ownership reports or amendments to such reports filed by the proponent with the Commission that indicate the proponent's beneficial ownership as of or prior to the date on which the relevant one year period commences, if supported by a copy of all subsequent amendments reporting a change in ownership level and the proponent's affidavit [44] attesting that the proponent has continued beneficial ownership of such securities throughout the required one year period and as of the date of the affidavit, the filings that a registrant is required to accept for these purposes are Schedule 13D,[45] Schedule 13G,[46] Form 13F,[47] Form 3 [48] and Form 4 [49] and any amendments thereto.

Regardless of the form of documentation utilized, the proponent is required to submit a written statement that he intends to continue beneficial ownership through the meeting date. Continuous beneficial ownership already is required by Rule 14a–8(a)(1); the Commission is amending the Rule to highlight this requirement.

As noted in the June Release, requests by registrants for documentation of ownership from record holders who submit shareholder proposals are neither appropriate nor consistent with Rule 14a–8. A record holder's proposal may not be omitted from the registrant's proxy material on the grounds that the record holder failed to provide documentation of ownership.

In addition, some registrants have conditioned the voting of proxies received with respect to a Rule 14a–8 shareholder proposal on the proposal being "seconded" at the meeting. Because Rule 14a–8(2)(2) does not require a "second," the voting of proxies received with respect to a shareholder proposal included in a registrant's proxy material pursuant to Rule 14a–8 may not be conditioned upon the proposal being seconded at the meeting, absent a second being required by state law or by the registrant's governing instruments.[50] If a second is required, it would be appropriate for the registrant to so advise the proponent a reasonable time before the meeting.

C. Other Technical and Clarifying Amendments

The Commission also is adopting technical and clarifying amendments to Schedule 14A. An amendment to Item 4, Persons Making the Solicitation, of Schedule 14A restores a sentence that was dropped inadvertently when Item 4 was revised in November 1986. The sentence clarifies that any person who would be a participant in a solicitation for purposes of Rule 14a–11, as defined in paragraphs (b)(3), (4), (5) and (6) of that Rule, is deemed to be a person on whose behalf the solicitation is made for purposes of paragraph (a) of Item 4.

Technical amendments to Item 10, Compensation Plans, of Schedule 14A are being adopted to provide, consistent with staff interpretation, that Item 10(a)(2)(iii), Item 10(a)(3)(iii) and Item 10(b)(2)(ii)(C) do not require separate disclosure with regard to current officers who are not executive officers. Rather, information regarding those officers will be included in the disclosure for "all employees as a group" in Item 10(a)(2)(iv), Item 10(a)(3)(iv) and Item 10(b)(2)(ii)(G).[51]

III. Cost-Benefit Analysis

In the June Release, the Commission requested commentators to provide views and data as to the costs and benefits associated with amending the filing requirements for proxy and information statements. The Commission noted that the elimination of the requirements to file preliminary proxy and information statements in certain circumstances should reduce some costs for those registrants who meet the requirements of the amendments.

Fourteen commentators expressed views and/or provided data as to the costs and benefits associated with the proposed amendments to the filing requirements. Eight commentators stated that elimination of the requirement to file proxy materials in preliminary form would result in time and cost savings to both the Commission and registrants. Seven commentators expressed concern that certain aspects of the proposed amendments potentially could increase costs to registrants. Four of these commentators expressed concerns about potential costs where definitive material is reviewed by the staff. Clarification of the Commission's intent with respect to review of definitive material has been included in this release. Three of the commentators expressed cost-related concerns regarding the brevity of the proposed 45 calendar day period. The Commission is not adopting the notice provisions related to the proposed 45 calendar day period.

The Commission also requested commentators to provide views and data concerning the costs and benefits of amending the shareholder proposal rule and filing fee requirements. In this regard, the Commission stated that the deletion or modification of Rule 14a–8(a)(1)(ii) might impose some costs on registrants and reduce some costs for

[43] In light of the fact that registrants will need to review incoming proposals to address this issue shortly after receipt, registrants also might consider making objections to proposals believed to be excludable under Rule 14a–8 at the same time. In this regard, the staff has taken the position that Rule 14a–8(a)(4) [17 CFR 240.14a–8(a)(4)] would prohibit the submission by a proponent of a second proposal for a particular shareholder meeting if one proposal has already been submited and the staff has taken a no-action position permitting its exclusion in response to a request by the registrant pursuant to Rule 14a–8(d). This position would apply even thought the time for submission of proposals under Rule 14a–8(a)(3) [CFR 240.14a–8(a)(3)] had not expired. *See* No-Action Letter regarding *The Firestone Tire & Rubber Company* (available December 16, 1987).

[44] As an alternative to an affidavit, the Rule also would permit the use of a declaration, affirmation or similar document provided for by applicable state law.

[45] 17 CFR 240.13d–101.

[46] 17 CFR 240.13d–102.

[47] 17 CFR 249.325.

[48] 17 CFR 249.103.

[49] 17 CFR 249.104.

[50] *See* No-Action Letter regarding *Motorola, Inc. (available October 8, 1987).*

[51] The Item 10 amendments are consistent with changes made to the Item in the November 1986 comprehensive proxy amendments (*see* Release No. 33–6676 (November 10, 1986) [F1 FR 42048]). The May 1987 modifications (*see* Release No. 33–6715 (May 27, 1987) [52 FR 21934]) created unintended logistical difficulties for registrants in tabulating the required information.

proponents of shareholder proposals, but that the other proposed amendments to the shareholder proposal rule should not increase or decrease significantly costs for registrants or proponents.

Twenty-two commentators expressed views and/or provided data concerning the costs and benefits of amending the shareholder proposal rule. Eleven of these commentators stated that the benefits to shareholder proponents of eliminating Rule 14a-8(a)(1)(ii) would outweigh the costs to registrants. These commentators asserted that the costs of conducting independent solicitations are prohibitively high and suggested that registrants would not incur appreciably greater costs due to the increase in the number of shareholder proposals that might result from elimination of the rule. Ten commentators stated that registrants should not be required to bear the additional expense of including shareholder proposals in their proxies were the proponent undertakes the costs of communicating with other shareholders. One commentator expressed concerns about the costs of amending the shareholder proposal rule during the 1988 proxy season. The Commission has included in the release detailed information regarding the effectiveness of the amendments.

Comments also were requested on the effects of the proposals on the costs to small entities. No comments on this subject were received.

IV. Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604 has been prepared regarding the amendments to Exchange Act Rules 14a-3, 14a-6, 14a-8, 14c-3, 14c-5, Schedule 14A, Schedule 14C, to Investment Company Act Rule 20a-1 and to Item 401 of Regulation S-K. Members of the public who wish to obtain a copy of the Final Regulatory Flexibility Analysis should contact Barbara J. Green or Elizabeth M. Murphy, (202) 727-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission , 450 Fifth Street NW., Washington, DC 20549. The corresponding Initial Regulatory Flexibility Analysis appears at 52 FR 22334 (Release No. 34-24552).

V. Statutory Basis

The amendments to the proxy rules are being adopted by the Commission pursuant to Sections 14 and 23(a) of the Securities Exchange Act of 1934. The Commission finds good cause under 5 U.S.C. 553(d) to make the deletion of paragraph (a)(1)(ii) from Rule 14a-8 effective immediately upon publication in the **Federal Register**. Before amendment, Rule 14a-8(a)(1)(ii) provided that proponents who delivered written proxy materials to holders of more than 25% of a class of the registrant's outstanding securities entitled to vote with respect to the same meeting of shareholders would be ineligible to use Rule 14a-8 for the inclusion of a proposal in the registrant's proxy materials. The Rule also set forth further restrictions to be imposed upon proponents who exceeded the 25% limit. The Commission is rescinding Rule 14a-8(a)(1)(ii) upon publication in the **Federal Register** in order to facilitate communications between shareholders, foster corporate democracy and alleviate the significant burdens it imposes upon shareholders proponents. Also, immediate effectiveness of the amendment will eliminate the need to draw an arbitrary line for effectiveness during the current proxy season, thus providing the benefit of the change to a greater number of shareholder proponents during this proxy season.

List of Subjects in CFR Parts 229, 240 and 270

Reporting and recordkeeping requirements, Securities.

VI. Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

1. The authority citation for Part 229 continues to read, in part, as follows:

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d) 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565-568, 569, 570-574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78*l*, 78m, 78n, 78*l*(d), 78w(a) * * *

2. By amending § 229.401 by revising Instruction 2 to paragraph (f) to read as follows:

§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

Instructions to paragraph (f) of Item 401.

* ** * *

2. If any event specified in this paragraph (f) has occurred and information in regard thereto is omitted on the grounds that it is not material, the registrant may furnish to the Commission, at time of filing (or at the time preliminary materials are filed, or ten days before definitive materials are filed in preliminary filing is not required, pursuant to Rule 14a-6 or 14c-5 under the Exchange Act (§§ 240.14a-6 and 240-14c-5 of this chapter)), as supplemental information and not as part of the registration statement, report, or proxy or information statement, materials to which the omission relates, a description of the event and a statement of the reasons for the omission of information in regard thereto.

* * * * *

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

3. The authority citation for Part 240 continues to read, in part, as follows:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) * * *

4. By amending § 240.14a-3 by revising the first sentence of paragraph (c) to read as follows:

§ 240.14a-3 Information to be furnished to security holders.

* * * * *

(c) Seven copies of the report sent to security holders pursuant to this rule shall be mailed to the Commission, solely for its information, not later than the date on which such report is first sent or given to security holders or the date on which preliminary copies, or definitive copies, if preliminary filing was not required, of solicitation material are filed with the Commission pursuant to Rule 14a-6, whichever date is later. * * *

* * * * *

5. By amending § 240.14a-6 by adding two sentences at the end of paragraph (a), revising the first sentence of note 2 to paragraph (a), adding new notes 3 and 4 to the end of paragraph (a), adding a new note to the end of paragraph (c), revising the first phrase of the introductory text of paragraph (j), revising paragraphs (j)(1), (2) and (3) and redesignating them as paragraphs (j)(2), (3) and (4) and adding new paragraph (j)(1) to read as follows:

§ 240. 14a-6 Filing requirements.

* * * * *

(a) * * * A registrant, however, shall not file with the Commission a preliminary proxy statement, form of proxy or other soliciting material to be furnished to security holders concurrently therewith if the solicitation relate to an annual (or special meeting in lieu of the annual) meeting, or for an

investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or a business development company, if the solicitation relates to any meeting or security holders at which the only matter to be acted upon are:

(1) The election of directors;

(2) The election, approval or ratification of accountant(s);

(3) A security holder proposal included pursuant to Rule 14a–8 (§ 240.14a–8 of this chapter);

(4) With respect to an investment company registered under the Investment Company Act of 1940 or a business development company, a proposal to continue, without change, any advisory or other contract or agreement that previously has been the subject of a proxy solicitation for which proxy material was filed with the Commission pursuant to this rule; and/or

(5) With respect to an open-end investment company registered under the Investment Company Act of 1940, a proposal to increase the number of shares authorized to be issued.

This exclusion from filing preliminary proxy material does not apply if the registrant comments upon or refers to a solicitation in opposition in connection with the meeting in its proxy material.

* * * * *

Note 2. The official responsible for the preparation of the proxy material should make every effort to verify the accuracy and completeness of the information required by the applicable rules.* * *

Note 3. Solicitation in Opposition. For purposes of the exclusion from filing preliminary proxy material, a "solicitation in opposition" includes: (a) Any solicitation opposing a proposal supported by the registrant; and (b) any solicitation supporting a proposal that the registrant does not expressly support, other than a security holder proposal included in the registrant's proxy material pursuant to Rule 14a–8 (§ 240.14a–8 of this chapter). The inclusion of a security holder proposal in the registrant's proxy material pursuant to Rule 14a–8 does not constitute a "solicitation in opposition," even if the registrant opposes the proposal and/or includes a statement in opposition to the proposal.

Note 4. A registrant that is filing proxy material in preliminary form only because the registrant has commented on or referred to a solicitation in opposition should indicate that fact in a transmittal letter when filing the preliminary material with the Commission.

* * * * *

(c) * * *

Note. A registrant that is filing definitive proxy material without payment of a fee should state in the first paragraph of the transmittal letter that no fee is being paid because a fee was paid upon filing of preliminary proxy material.

* * * * *

(j) *Fees.* At the time of filing the proxy solicitation material,* * *

(1) For definitive proxy material relating to a solicitation for which the registrant does not file preliminary proxy material, a fee of $125;

(2) For preliminary proxy material that solicits proxies for business for which a stockholder vote is necessary, but apparently no controversy is involved, a fee of $125;

(3) For preliminary proxy material where a contest as set forth in Rule 14a–11 is involved, a fee of $500 from each party to the controversy; and

(4) For preliminary proxy material involving acquisitions, mergers, spinoffs, consolidations or proposed sales or other dispositions of substantially all the assets of the company, a fee established in accordance with Rule 0–11 [§ 240.0–11 of this chapter] shall be paid.

No refund shall be given.

* * * * *

6. By amending § 240.14a–8 by removing paragraph (a)(1)(ii) and redesignating paragraph (a)(1)(i) as (a)(1), revising the second sentence of paragraph (a)(1), the introductory text of paragraph (d) and paragraph (e), and adding a new sentence including new (a)(1) (i) and (ii), to follow the second sentence of paragraph (a)(1).

§ 240.14a–8 Proposals of security holders.

(a) * * *

(1) *Eligibility.* * * * If the registrant requests documentary support for a proponent's claim that he is the beneficial owner of at least 1% or $1000 in market value of such voting securities of the registrant or that he has been a beneficial owner of the securities for one or more years, the registrant shall make such request within 14 calendar days after receiving the security holder proposal and the proponent shall furnish appropriate documentation within 21 calendar days after receiving the request. Appropriate documentation of the proponent's claim of beneficial ownership shall include:

(i) A written statement by a record owner or an independent third party, accompanied by the proponent's written statement that the proponent intends to continue ownership of such securities through the date on which the meeting is held; or

(ii) A copy of a Schedule 13D (§ 240.13d–101 of this chapter), Schedule 13G (§ 240.13d–102 of this chapter), Form 13F (§ 249.325 of this chapter), Form 3 (§ 249.103 of this chapter) and/or Form 4 (§ 249.104 of this chapter), or amendments thereto, filed with the Commission and furnished to the registrant by the proponent, provided that such filings indicate the proponent's beneficial ownership as of or prior to the date on which the relevant one year period commences, and are supported by

(A) A copy of all subsequent amendments reporting a change in ownership level,

(B) The proponent's affidavit, declaration, affirmation or other similar document provided for under applicable state law attesting that the proponent continued to be the beneficial owner of at least 1% or $1000 in market value of such voting securities of the registrant throughout the required one year period and as of the date of the affidavit, declaration, affirmation or other similar document provided for under applicable state law, and

(C) The proponent's written statement that the proponent intends to continue ownership of such securities through the date on which the meeting is held. * * *

* * * * *

(d) Whenever the registrant asserts, for any reason, that a proposal and any statement in support thereof received from a proponent may properly be omitted from its proxy statement and form of proxy, it shall file with the Commission, not later than 80 calendar days prior to the date the definitive copies of the proxy statement and form of proxy are filed pursuant to Rule 14a–6 (§ 240.14a–6 of this chapter), or such shorter period prior to such date as the Commission or its staff may permit, six copies of the following items:

* * * * *

(e) If the registrant intends to include in the proxy statement a statement in opposition to a proposal received from a proponent, it shall, not later than 30 calendar days prior to the date the definitive copies of the proxy statement and form of proxy are filed pursuant to Rule 14a–6, or, in the event that the proposal must be revised to be includable, not later than five calendar days after receipt by the registrant of the revised proposal, promptly forward to the proponent a copy of the statement in opposition to the proposal. In the event the proponent believes that the statement in opposition contains materially false or misleading statements within the meaning of Rule 14a–9 and the proponent wishes to bring this matter to the attention of the Commission, the proponent promptly should provide the staff with a letter setting forth the reasons for this view

and a copy of the statement in opposition and at the same time promptly provide the registrant with a copy of his letter.

7. By amending § 240.14a–101 by adding a second sentence to paragraph (a)(2) of Item 4 and revising paragraphs (a)(2), (a)(3) and (b)(2)(ii) (C) and (G) of Item 10 as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 4. Persons Making the Solicitation—(a) * * *

(2) * * * Any person who would be a participant in a solicitation for purposes of Rule 14a–11 (§ 240.14a–11 of this chapter) as defined in paragraph (b) (3), (4), (5) and (6) thereof shall be deemed a person on whose behalf the solicitation is made for purposes of this paragraph (a).

* * * * *

Item 10. Compensation Plans. * * * (a) * * *

(2) State the benefits or amounts which will be received by or allocated to each of the following under the plan being acted upon, if such benefits or amounts are determinable: (i) Each person (stating name and position) specified in paragraph (a)(1)(i) of Item 402 of Regulation S–K (§ 229.402 of this chapter); (ii) all current executive officers as a group; (iii) all current directors who are not executive officers as a group; and (iv) all employees, including all current officers who are not executive officers, as a group. If such benefits or amounts are not determinable, state the benefits or amounts which would have been received by or allocated to each of the following for the last fiscal year if the plan had been in effect, if such benefits or amounts may be determined: (i) Each person (stating name and position) specified in paragraph (a)(1)(i) of Item 402 of Regulation S–K (§ 229.402 of this chapter); (ii) all current exeuctive officers as a group; (iii) all current directors who are not executive officers as a group; and (iv) all employees, including all current officers who are not executive officers, as a group.

(3) Furnish the information called for by Item 402(b) of Regulation S–K (§ 229.402 of this chapter) with respect to all compensation plans now in effect or in effect during the last three years except that information called for in paragraphs (b)(1) (vi) and (vii) and (b)(4) of Item 402(b) of Regulation S–K (§ 229.402 of this chapter) should be furnished with respect to the last three fiscal years for the following: (i) Each person (stating name and position) specified in Item 402(a)(1)(i) of Regulation S–K (§ 229.402 of this chapter); (ii) all current executive officers as a group; (iii) all current directors who are not executive officers as a group, if such persons may participate in the plan; and (iv) all employees who may participate in the plan, including all current officers who are not executive officers, as a group.

(b) * * *

(2) * * *

(ii) * * *

(C) All current directors who are not executive officers as a group;

* * * * *

(G) All employees, including all current officers who are not executive officers, as a group.

* * * * *

8. By amending § 240.14c–3 by revising the first sentence of paragraph (b) to read as follows:

§ 240.14c–3 Annual report to be furnished security holders.

* * * * *

(b) Seven copies of the report sent to security holders pursuant to this rule shall be mailed to the Commission, solely for its information, not later than the date on which such report is first sent or given to security holders or the date on which preliminary copies, or definitive copies, if preliminary filing was not required, of the information statement are filed with the Commission pursuant to Rule 14c–5, whichever date is later. * * *

* * * * *

9. By amending § 240.14c-5 by adding two new sentences following the second sentence in paragraph (a), new notes 3 and 4 to the end of paragraph (a), a new note to the end of paragraph (b), and revising paragraph (g) to read as follows:

§ 240.14c-5 Filing requirements.

* * * * *

(a) * * * A registrant, however, shall not file with the Commission a preliminary information statement if it relates to an annual (or special meeting in lieu of the annual) meeting, of security holders at which the only matters to be acted upon are:

(1) The election of directors;

(2) The election, approval or ratification of accountant(s); and/or

(3) A security holder proposal identified in the registrant's information statement pursuant to Item 4 of Schedule 14C (§ 240.14c-101 of this chapter).

This exclusion from filing a preliminary information statement does not apply if the registrant comments upon or refers to a solicitation in opposition in connection with the meeting in its information statement.

* * * * *

Note 3.—Solicitation in Opposition—For purposes of the exclusion from filing a preliminary information statement, a "solicitation in opposition" includes: (a) Any solicitation opposing a proposal supported by the registrant; and (b) any solicitation supporting a proposal that the registrant does not expressly support, other than a security holder proposal identified in the registrant's information statement pursuant to Item 4 of Schedule 14C (§ 240.14c–101 of this chapter). The identification of a security holder proposal in the registrant's information statement does not constitute a "solicitation in opposition," even if the registrant opposes the proposal and/or includes a statement in opposition to the proposal.

Note 4.—A registrant that is filing an information statement in preliminary form only because the registrant has commented on or referred to an opposing solicitation should indicate that fact in a transmittal letter when filing the preliminary material with the Commission.

(b) * * *

Note.—A registrant that is filing a definitive information statement without payment of a fee should state in the first paragraph of the transmittal letter that no fee is being paid because a fee was paid upon filing of the preliminary information statement.

* * * * *

(g) *Fees.* At the time of filing the preliminary information statement, or the definitive information statement if no preliminary information statement is filed, the registrant shall pay to the Commission a fee, no part of which shall be refunded, of $125. However, when filing a preliminary information statement regarding an acquisition, merger, spinoff, consolidation or proposed sale or other disposition of substantially all the asserts of the company, the registrant shall pay the Commission a fee, no part of which shall be refunded, established in accordance with Rule 0–11 (§ 240.0–11 of this chapter). 10. By amending § 240.14c–101 by revising Instruction 2 to Item 4 as follows:

§ 240.14c–101 Schedule 14C. Information required in information statement.

* * * * *

Item 4. Proposals by security holders.

* * * *Instructions.* * * *

2. If the registrant intends to rule a proposal out of order, the Commission shall be so advised 20 calendar days prior to the date the definitive copies of the information statement are filed with the Commission, together with a statement of the reasons why the proposal is not deemed to be a proper subject for action by security holders.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

11. The authority citation for Part 270 continues to read, in part, as follows:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a-37, 80c-89 * * *

12. By amending § 270.20a–1 by revising paragraph (c) to read as follows:

§ 270.20a–1 Solicitation of proxies, consents and authorizations.

* * * * *

(c) In lieu of the fees specified in Rule 14a-6 of the general rules and regulations under the Securities Exchange Act of 1934, at the time of filing the preliminary solicitation material or, if no preliminary solicitation material is filed, at the time of filing the definitive solicitation material, the person upon whose behalf the solicitation is made shall pay to the Commission a fee of $125, no part of which shall be refunded.

By the Commission.

Jonathan G. Katz,

Secretary.

December 21, 1987.

[FR Doc. 87–29707 Filed 12–28–87; 8:45 am]

BILLING CODE 8010–01–M

---

17 CFR Part 250

[Release No. 35–24536; File No. S7–21–87]

Exemption From Requirement of a Declaration With Respect to Certain Agreements by Parent Companies in a Registered Holding Company System Concerning the Obligations of Their Subsidiary Companies

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rule amendment.

SUMMARY: The Commission has amended an existing rule to exempt from the requirement of a declaration certain routine agreements in the nature of guarantees by parent companies in a registered holding company system of the obligations of their subsidiary companies.

EFFECTIVE DATE: December 29, 1987.

FOR FURTHER INFORMATION CONTACT: Stanley B. Judd, Senior Special Counsel, Office of the Deputy Director (202–272–2079), or Martha Cathey Baker, Attorney (202–272–2073), Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today has amended Rule 45(b) (17 CFR 250.45) under the Public Utility Holding Company Act of 1935 ("Act") (15 U.S.C. 79 *et seq*). Rule 45(b) exempts certain transactions from the requirement of Rule 45(a) (17 CFR 250.45) that transactions subject to Section 12(b) (15 U.S.C. 791(b)) of the Act must be authorized by order of the Commission pursuant to a declaration. Section 12(b) prohibits registered holding companies and their subsidiaries from lending to, extending credit in any manner to, or indemnifying any company in the same holding company system, whether directly or indirectly, in contravention of the rules, regulations or orders which the Commission deems necessary or appropriate in the public interest to protect investors or consumers or to prevent the circumvention of the Act and rules, regulations and orders thereunder.

The amendment, which was proposed on June 16, 1987 (Holding Company Act Release No. 24406) ("Proposing Release") [1] exempts from the requirement of a declaration certain routine agreements whereby a parent company in a registered holding company system guarantees, assumes joint liability upon, or acts as surety or indemnitor for the obligations of its subsidiary. The purpose of the rule amendment is to eliminate the time and expense required to prepare and submit declarations with respect to the agreements, and to eliminate the administrative burden of reviewing such filings.

The background and reasons for the amendment are summarized in this release. The Proposing Release contains a more detailed discussion.

Background

Sections 12 and 13 of the Act were intended to provide complete regulation of intercompany transactions within holding company systems. The purpose of Section 12(b) was to regulate downstream loans, whether on an open book account or otherwise. The declaration requirement with respect to transactions subject to Section 12(b) is intended to ensure that such transactions are fair, that they benefit rather than harm the operating subsidiary companies, and that they are based upon sound financial policies.

On March 19, 1987, The Columbia Gas System, Inc. ("Columbia"), a registered holding company, filed a rulemaking petition concerning the agreements which are the subject of the proposed amendment. The rulemaking petition, as amended, was the basis for the Proposing Release.

Discussion

1. *Summary of Comments*

The Commission received three comment letters on the proposed amendment. All of the commentators supported the new exemption. They agreed that the rule contained well-defined limitations and safeguards and that it would result in significant time and cost savings.

One commentator suggested a revision to modify the valuation of par value securities for purposes of the amendment. As proposed, the amendment provides that the aggregate amount of contingent liability assumed by a parent company shall not exceed the greater of $50,000,000 or 5 percent of the aggregate principal amount and par value of securities previously issued by the parent company. For securities having no par value, the fair market value of such securities on the date of issuance is to be used. The commentator believes that this approach undervalues par value stock, and suggests that such stock should be valued instead at its fair market value as of the date of issuance. The commentator states that the cap on the aggregate amount of contingent liability will otherwise be fixed at too low a level for parent companies which have a large amount of par value securities outstanding.

2. *Response to the Comments*

The commentators' concern can be illustrated by a hypothetical. If two companies have issued securities of the same type and with the same market value, but one has issued par value stock and the other no par value stock, the amount of contingent liability which the former can assume pursuant to the 5 percent provision is likely to be less than that which the latter can assume. This is because the value assigned to par value stock upon initial sale is generally lower than market value at the date of issuance. Thus, the approach to the valuation of par value and no par value stock contained in the Proposing Release could produce a discriminatory effect among companies relying upon the 5 percent limitation.

Conclusion

The purpose of the amendment is to reduce the administrative burdens of the Act by allowing parent companies in registered holding companies to enter into the agreements encompassed by the exemptive rule without prior authorization by the Commission, as required by the existing rule. The 5 percent provision, along with the alternative $50,000,000 limitation, is intended to mark a boundary between transactions which should require prior authorization and those which should not.[2] It should not result in different

[1] 52 FR 23679 (June 24, 1987).

[2] A declaration pursuant to Rule 45(a) will continue to be required for agreements which do not come within the exemption.