

**Title 17—Commodity and Securities Exchanges**

**CHAPTER II—SECURITIES AND EXCHANGE COMMISSION**

[Release Nos. 34-12993, 35-19771, IC-9539]

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

**Adoption of Amendments Relating to Proposals by Security Holders**

The Securities and Exchange Commission today announced that it has adopted certain amendments to Rule 14a-8 (17 CFR 240.14a-8) under Section 14(a) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)). Rule 14a-8 is the provision in the Commission's proxy rules which sets forth the requirements applicable to proposals submitted by security holders for inclusion in the proxy soliciting materials of issuers. The proxy rules are promulgated under the Exchange Act but also are applicable to the solicitation of proxies under the Public Utility Holding Company Act of 1934 (15 U.S.C. 79a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)) and the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)).

Notice of the proposed amendments to Rule 14a-8 was published on July 7, 1976 in Securities Exchange Act Release No. 34-12598 (41 FR 29982).<sup>1</sup> A number of helpful comments were received from the public and were given careful consideration in connection with the preparation of the final revisions. In addition to the public commentary, the amendments adopted today also reflect the past experience of the Commission and its staff in administering Rule 14a-8.

The Commission wishes to emphasize that the amendments which it has adopted are not intended as a final resolution of the questions and issues relating to shareholder participation in corporate governance and, more generally, shareholder democracy. The Commission intends to study these issues on a broader basis and the staff is presently formulating proposals for such a study. In the interim the staff will monitor the operation of these shareholder proposal provisions to assess their impact on the proxy soliciting process.

The Commission believes the amendments discussed herein will benefit both issuers and their security holders. Among other things, the amendments clarify the procedural requirements applicable to proponents and managements in connection with stockholder proposals and codify certain prior interpretative positions taken by the Commission's staff. The amendments are discussed below in

<sup>1</sup> A companion release also was issued on July 7, 1976 discussing the informal procedures for the rendering of advice by the Commission's staff with respect to stockholder proposals. See Release No. 34-12599 (41 FR 29980).

the order in which they appear in the rule.

**PROCEDURAL REQUIREMENTS FOR PROPOSERS—RULE 14a-8(a) (17 CFR 240.14a-8(a))**

Paragraph (a), as amended, contains four subparagraphs, each dealing with a specific procedural requirement that must be complied with by proponents.

(1) *Eligibility.* Subparagraph (a)(1) sets forth the requirements that a proponent must satisfy in order to be eligible to submit proposals. The subparagraph, which is unchanged from the form in which it was proposed for comment, retains the traditional requirement that a proponent must be a security holder entitled to vote at the meeting at which he intends to present his proposal for action. In addition, the provision codifies certain interpretative positions expressed by the Commission's staff in the past with respect to beneficial ownership, voting rights, and continuous ownership of the issuer's securities.

As revised, the subparagraph states that a proposal may be submitted not only by a record owner of a security of the issuer, but also by a beneficial owner as well. However, if a proponent claims to have a beneficial ownership interest, he must be prepared to document that interest within 10 business days after receiving a request for appropriate documentation from the management. The term "business days," as used in subparagraph (a)(1) and in other provisions of the revised rule, is intended to mean all calendar days except Saturdays, Sundays and national holidays.

The subparagraph further provides that the security owned by the proponent must be one which would enable him to vote on his proposal at the meeting of security holders. Thus, under this provision a proponent could not submit a proposal that goes beyond the scope of his voting rights. For example, a proponent who owned a security that could be voted on the election of some of the issuer's directors but on no other matters could not submit a proposal relating to the issuer's business activities, since he would not be able to vote on it personally.

Finally, the subparagraph states that the proponent must own a voting security at the time he submits his proposal and he must continue to own that security through the date on which the meeting is held. In this regard, the amended rule provides that in the event the management included a proponent's proposal in its proxy materials for a particular meeting and the proponent failed to comply with the requirement that he continuously own his security through the meeting date, the management could then exclude from its proxy materials for any meeting held in the following two calendar years any proposals submitted by that proponent. The purpose of this latter provision is to assure that the proponent will maintain an investment interest in the issuer through the meeting date.

It also should be noted that several commentators urged the Commission to adopt additional eligibility requirements. Among such recommendations were that the proponent be required to have been a security holder of the issuer for a minimum period of time (e.g., six months or one year) prior to the submission of his proposal, or that the proponent be required to own at the time of submission a minimum investment interest in the issuer, either in terms of a minimum number of shares or a minimum dollar amount according to the market value of the securities. The Commission has carefully considered these comments and determined that there is not sufficient justification for implementing them. In arriving at this position, the Commission has noted, among other things, that the current eligibility requirements have been in operation for many years and generally have not been abused.

(2) *Notice.* Subparagraph (a)(2) of the amended rule retains the requirement of the former rule that the proponent must provide written notice to the management of his intention to appear personally at the meeting to present his proposal for action. Some commentators criticized the requirement of personal attendance at the meeting on the ground that, in reality, the proposal is "presented" to most security holders for their action when it is included in the proxy statement. While the Commission does not disagree with the significance these commentators have assigned to the proxy statement, it nevertheless believes that the notice requirement serves a useful purpose. That is, it provides some degree of assurance that the proposal not only will be presented for action at the meeting (the management has no responsibility to do so), but also that someone will be present to knowledgeably discuss the matter proposed for action and answer any questions which may arise from the shareholders attending the meeting.

The subparagraph also contains a provision which has been adopted in recognition of the fact that many proponents are unaware of the notice requirement at the time they submit their proposals and therefore unintentionally fail to comply with it. Specifically, the subparagraph permits a proponent who is unaware of the notice requirement at the time of submission to furnish the requisite notice within 10 business days after being made aware of the requirement by the management. The specific time deadline of 10 business days was substituted in the subparagraph at the suggestion of several commentators, who expressed the view that the "reasonable time" deadline proposed in Release No. 34-12598 for the furnishing of the requisite notice was unnecessarily vague.

The Commission also has amended the subparagraph to make it clear that a proponent who furnishes the requisite notice in good faith but subsequently determines that he will be unable to appear at the meeting may arrange to have another security holder of the issuer pre-

sent his proposal on his behalf at the meeting. The revision is in accord with existing practice and is intended, again, to provide some assurance that a proponent's proposal will indeed be presented for action at the meeting.

Finally, subparagraph (a) (2) contains a sentence at the end thereof which will have essentially the same effect as subparagraph (c) (3) of the former rule. That is, the sentence provides that in the event the proponent or his proxy fails without cause to present the proponent's proposal at the meeting the management need not include any proposals submitted by the proponent in its proxy materials for any meeting held in the following two calendar years. This provision is in keeping with the overall purpose of the notice requirement, which is to avoid putting the issuer and its security holders to considerable expense for no valid purpose.

(3) *Timeliness.* Prior to the current amendments, Rule 14a-8 provided that a proposal to be presented at an annual meeting had to be received by the management no later than 70 days in advance of the anniversary of the mailing date for the previous year's proxy materials, except that if the date of the annual meeting were changed as a result of a change in the fiscal year the proposal had to be received by the management a reasonable time before the solicitation was made. Proposals submitted for other meetings were required to be submitted sufficiently far in advance of the meeting to be received by the management a reasonable time before the solicitation was made.

Under the revised rule, the timeliness deadline for annual meetings will be extended from 70 to 90 days. In addition, the provision relating to a change in the annual meeting date due to a change in the fiscal year has been deleted and replaced by a provision that will be applicable to all changes in annual meeting dates of 30 days or more. The timeliness requirement for meetings other than annual meetings, however, has not been changed.

The 20-day advance in the deadline for annual meetings is being adopted by the Commission in conjunction with a similar 20-day advance in the deadline date under paragraph (d) of the rule for the filing by managements of the reasons why they believe specific proposals may properly be excluded from their proxy materials. Formerly, paragraph (d) required that the management file such reasons, as well as any related materials, at least 30 days prior to the filing of its preliminary proxy materials, unless the Commission permitted them to be filed within a shorter period.

The Commission believes that the changes outlined above will benefit both managements and proponents. With respect to managements, the Commission's past experience indicates that advancing the filing requirement under paragraph (d) from 30 to 50 days will eliminate the disruptions in the printing schedules for their proxy materials that occasionally

resulted under the 30-day filing requirement. Such disruptions generally occurred when the staff of the Commission was unable, due to its workload, to express within the 30-day period its informal enforcement views on the management's reasons for omitting a proposal. Although there is no requirement that managements adhere to the staff's comments, the Commission is aware that most managements are interested in those comments and will delay their printing schedules, if necessary, in order to consider them. Based on past experience, the Commission believes the 50-day filing requirement will eliminate almost all such delays.

Insofar as proponents are concerned, the Commission is aware that advancing the deadline for submitting proposals from 70 to 90 days may be inconvenient to some. However, on the basis of its past experience and the public comments, it believes that the inconvenience will be minimal and is outweighed by the fact that the new timeliness deadlines will provide an additional 20 days for proponents to explore all possible alternatives in connection with a management's intention to omit their proposals. One of these alternatives is to institute an action in a U.S. District Court to compel the management to include the proposals in the issuer's proxy materials, and the changes in the timeliness deadlines will provide an additional 20 days to prepare for and institute such a suit.

As previously indicated, the Commission has made one further change in the timeliness requirements applicable to proponents. Until now, the rule has provided that the 70-day filing deadline applied to all annual meetings, except those in which the date of the meeting had been changed as a result of a change in the fiscal year. In the latter instance, the proposal was required to be received by the management a "reasonable time" before the solicitation was made. One of the public commentators pointed out that changes in the meeting date due to a change in the fiscal year are relatively rare but that changes for other reasons, such as unavoidable postponement, are much more frequent. The commentator indicated that some provision for these other situations should perhaps be made in the rule.

The Commission has determined to implement the above suggestion, since it does not seem meaningful, where the current year's meeting date is to be substantially different from the preceding year's date, to measure timeliness from a date connected with the prior year's meeting. Accordingly, the rule has been amended to provide that where there has been a change of more than 30 calendar days from the previous year's annual meeting the proposal must be received by the management a reasonable time in advance of the current year's solicitation. It is important to note that this revision will apply only to those special situations in which the change in the meeting date is substantial and will not affect the vast majority of issuers

which hold an annual meeting each year at approximately the same time as the previous year.

In adopting the new timeliness deadlines discussed above, the Commission realizes that many proponents and managements may be adversely affected by them unless there is a reasonably lengthy transition period prior to their effectiveness that will allow all interested persons adequate time to familiarize themselves with the requirements and comply with them. Accordingly, while all of the other amendments to Rule 14a-8 adopted today shall be applicable to proposals submitted to issuers who will be filing their preliminary proxy materials with the Commission on or after February 1, 1977, the effectiveness of the new timeliness deadlines set forth in subparagraph (a) (3) and paragraph (d) of the revised rule shall be deferred an additional three months. Thus, the new timeliness requirements shall apply only to those proposals submitted to issuers who will be filing their preliminary proxy materials with the Commission on or after May 1, 1977.

As a final note to the discussion of the timeliness requirements, the Commission wishes to reiterate a view that its staff has expressed informally on many occasions in the past. That is, changes to a timely submitted proposal or supporting statement may be made by the proponent after the timeliness deadline has passed, provided the changes are minor in nature and do not alter the substance of the proposal. Examples of such changes would be a change in the form of the proposal to bring it into accord with the requirements of the applicable state law, or a change in the proposal or supporting statement to revise or delete misleading statements contained therein.

The above position has been taken by the Commission and its staff in recognition of the fact that most proponents are not sophisticated in matters of securities law such as Rule 14a-8. Because of their lack of sophistication, such persons frequently are apt to submit proposals that generally comply with the substantive requirements of Rule 14a-8 but nevertheless contain some relatively minor defects that are easily correctable. In such circumstances, the Commission believes the concept of corporate democracy underlying section 14(a) of the Exchange Act is best served by affording such persons the opportunity to correct the defects that have been pointed out to them. Thus, under this view, a proponent may make non-substantive changes to his original submission after the timeliness deadline has passed without being considered to have submitted an entirely new proposal that would be excludable under the timeliness provisions of subparagraph (a) (3).

(4) *Number and length of proposals.* Prior to the current amendments, Rule 14a-8 did not contain any limitation on either the number of proposals which a proponent could submit to an issuer or the length of such proposals. The Commission, however, has noted that in re-

cent years several proponents have exceeded the bounds of reasonableness either by submitting excessive numbers of proposals to issuers or by submitting proposals that are extreme in their length. Such practices are inappropriate under Rule 14a-8 not only because they constitute an unreasonable exercise of the right to submit proposals at the expense of other shareholders but also because they tend to obscure other material matters in the proxy statements of issuers, thereby reducing the effectiveness of such documents. Accordingly, the Commission has added a new subparagraph (a) (4) to the rule limiting a proponent to a maximum of two proposals of not more than 300 words each to an issuer. These limitations will apply collectively to all persons having an interest in the same securities (e.g., the record owner and the beneficial owner, and joint tenants).

In connection with the above, the Commission is aware of the possibility that some proponents may attempt to evade the new limitations through various maneuvers, such as having other persons whose securities they control submit two proposals each in their own names. The Commission wishes to make it clear that such tactics may result in measures such as the granting of requests by the affected managements for a "no-action" letter concerning the omission from their proxy materials of the proposals at issue.

Subparagraph (a) (4) also provides that in those instances in which a proponent fails to comply with either of the new limitations or with the 200-word limit on statements in support of a proposal the management shall so notify the proponent and provide him with 10 business days within which to reduce the items submitted by him to the limits set forth in the rule. This provision has been inserted in the interest of fairness because the Commission recognizes that many proponents, due to lack of awareness of the limitations, may inadvertently exceed them at the time they submit their proposals.

#### SUPPORTING STATEMENTS FOR PROPOSALS— RULE 14a-8(b)

Paragraph (b) of the revised rule deals with statements that may be submitted by proponents in support of their proposals. This provision, which differs in only two minor respects from paragraph (b) of the former rule, has been adopted in the same form in which it was proposed for comment.

The first change made by the Commission in the former paragraph is the deletion of the following sentence therefrom:

Any statements in the text of a proposal, such as a preamble or "whereas" clauses,

A "no-action" letter is one in which the staff of the Commission indicates that, on the basis of the facts presented to it, it will not recommend that the Commission institute any enforcement action with respect to the matter discussed in the incoming correspondence.

which are in effect arguments in support of the proposal, shall be deemed part of the supporting statement and subject to the 200-word limitation thereon.

The above sentence was intended to curtail the tendency of proponents to evade the 200-word limitation on supporting statements by submitting lengthy proposals which contained supporting argumentation within the text of the proposals themselves. However, since the Commission has now placed a limit on the length of proposals that would encompass any introductory preambles or "whereas" clauses, it does not believe a need exists to police the length of supporting statements in the manner envisioned by the above sentence.

The second change relates to the last two sentences of the former paragraph. Those sentences, which provided, respectively, that the proponent shall furnish his supporting statement to the management at the time the proposal is furnished, and that neither the management nor the issuer shall be responsible for such statement, often have been overlooked by the proponents. Accordingly, in order to highlight them, they have been combined into a single sentence and repositioned in the paragraph.

#### Substantive Bases for Omission of Proposals—Rule 14a-8(c)

Paragraph (c) of the revised rule sets forth various substantive grounds for excluding a proposal from an issuer's proxy materials. As amended, paragraph (c) contains 13 separate grounds for omitting a proposal. Each of these grounds is discussed below in the order in which it appears in the revised paragraph.

(1) *State law.* Subparagraph (c) (1) of the former rule allowed the management to omit a proposal "If the proposal as submitted is, under the laws of the issuer's domicile, not a proper subject for action by security holders." This provision has been based on the theory that no purpose is served by including in an issuer's proxy materials proposals which the issuer's security holders cannot properly act upon. With one exception, the provision has been carried forward intact in the amended rule.

The one exception is that the words "as submitted" have been omitted from the revised subparagraph. The deletion of these two words is intended to make clear the Commission's belief, previously alluded to in the discussion concerning subparagraph (a) (3), that a proponent is not always bound by the original text of his proposal under this provision but may revise the proposal in those instances in which a non-substantive change (such as a change in form) will bring it into compliance with the applicable state law.

The Commission also has added a Note to subparagraph (c) (1) of the rule alerting proponents to the fact that the propriety of their proposals under the applicable state law may depend upon the form in which the proposal appears. Thus, the Note states that "A proposal that may be improper under the applicable state law when framed as a man-

date or directive may be proper when framed as a recommendation or request."

The text of the above Note is in accord with the long-standing interpretative view of the Commission and its staff under subparagraph (c) (1). In this regard, it is the Commission's understanding that the laws of most states do not, for the most part, explicitly indicate those matters which are proper for security holders to act upon but instead provide only that "the business and affairs of every corporation organized under this law shall be managed by its board of directors," or words to that effect. Under such a statute, the board may be considered to have exclusive discretion in corporate matters, absent a specific provision to the contrary in the statute itself, or the corporation's charter or by-laws. Accordingly, proposals by security holders that mandate or direct the board to take certain action may constitute an unlawful intrusion on the board's discretionary authority under the typical statute. On the other hand, however, proposals that merely recommend or request that the board take certain action would not appear to be contrary to the typical state statute, since such proposals are merely advisory in nature and would not be binding on the board even if adopted by a majority of the security holders. The Note will serve the purpose of alerting proponents to these distinctions and to the importance of framing their proposals in a form that is acceptable under the applicable state law.

(2) *Other Applicable Federal and State Laws.* As originally proposed in Release No. 34-12598, subparagraph (c) (2) would have provided that a proposal could be omitted by the management "if the proposal is contrary to a federal law of the United States." In this connection, it was stated in the textual portion of the release that the proposed subparagraph was intended to formalize a view that the Commission's staff had expressed on numerous occasions. That is, a proposal by a security holder that would, if implemented, be violative of a federal law of the United States may properly be excluded from an issuer's proxy materials.

Several comments were received indicating that the language contained in the text of the release provided more clarity than the proposed subparagraph itself, and that the provision should be revised to make clear that it deals with the implementation of the proposal. The commentators further suggested that the Commission expand the subparagraph to allow the omission of any proposal whose implementation would violate not only federal law, but also any other applicable law (including foreign law) or governmental regulation to which the issuer is subject.

The Commission believes that the above comments have merit, since it does not appear appropriate to allow the inclusion in proxy materials of any proposal which, if implemented, would violate an applicable law. Accordingly, subparagraph (c) (2), as adopted, will allow

an issuer to omit any proposal which "would, if implemented, require the issuer to violate any state law or federal law of the United States, or any law of any foreign jurisdiction, to which the issuer is subject."

The subparagraph was further amended to include a proviso to make it clear that, while this exclusion will apply to both foreign and domestic law, state law or the federal law of the United States will supersede the law of foreign jurisdictions. Accordingly, where a proposal would call for an action by the issuer to bring it into compliance with state or federal law, the fact that such action might be violative of a particular foreign law to which the issuer is also subject would not cause the proposal to be excluded under subparagraph (c) (2).

It should be noted that under this provision, or any other provision of Rule 14a-8 for that matter, the management has the burden of demonstrating the validity of its view that a proposal may properly be omitted in reliance upon it. Further, issuers should be aware that paragraph (d) of Rule 14a-8 requires that they furnish an opinion of counsel both to the proponent and to the Commission whenever they assert that a proposal can be omitted for reasons based on matters of law. Thus, should a management take the position that this subparagraph is applicable to a particular proposal, it would be incumbent upon it to furnish an opinion of counsel on the legal aspects of its view.

(3) *Proxy Rules and Regulations.* The Commission is aware that on many occasions in the past proponents have submitted proposals and/or supporting statements that contravene one or more of its proxy rules and regulations. Most often, this situation has occurred when proponents have submitted items that contain false or misleading statements. Statements of that nature are prohibited from inclusion in proxy soliciting materials by Rule 14a-9 of the proxy rules.

In light of the foregoing, the Commission has adopted a new subparagraph (c) (3) to Rule 14a-8 expressly providing that a proposal or supporting statement may not be contrary to any of the Commission's proxy rules and regulations, including Rule 14a-9. This provision simply formalizes a ground for omission that the Commission believes has been inherent in the proxy rules.

(4) *Personal Claim or Grievance.* Subparagraph (c) (4) of the amended rule permits a proposal to be excluded from an issuer's proxy materials if it "relates to the enforcement of a personal claim or the redress of a personal grievance against the issuer, its management, or any other person." This provision is identical to subparagraph (c) (2) (i) of the former rule and has been carried forward intact because the Commission does not believe an issuer's proxy materials are a proper forum for airing personal claims or grievances.

(5) *Insignificant Matters.* Subparagraph (c) (2) (ii) of the former rule allowed an issuer to omit a proposal if it consisted of a "recommendation, request

or mandate that action be taken with respect to any matter, including a general economic, political, racial, religious, social or similar cause, that is not significantly related to the business of the issuer \* \* \*". The Commission has retained the substance of this provision in subparagraph (c) (5) of the revised rule. However, the reference in the former rule to the form in which proposals appear and the illustrative reference to various general causes have been deleted on the ground they are superfluous and unnecessary. These deletions, however, should not be construed as an implication that a different standard from that set forth in the former subparagraph (c) (2) (i) will be utilized under subparagraph (c) (5) of the amended rule.

A number of commentators expressed the view that the Commission should revise the subparagraph to allow the omission of a proposal whenever the matter involved therein does not bear a significant economic relation to the issuer's business. In this regard, the Commission does not believe that subparagraph (c) (5) should be hinged solely on the economic relativity of a proposal, since there are many instances in which the matter involved in a proposal is significant to an issuer's business, even though such significance is not apparent from an economic viewpoint. For example, proposals dealing with cumulative voting rights or the ratification of auditors in a sense may not be economically significant to an issuer's business but they nevertheless have a significance to security holders that would preclude their being omitted under this provision. And proposals relating to ethical issues such as political contributions also may be significant to the issuer's business, when viewed from a standpoint other than a purely economic one.

Notwithstanding the foregoing, the Commission recognizes that there are circumstances in which economic data may indicate a valid basis for omitting a proposal under this provision. The Commission wishes to emphasize, however, that the significance of a particular matter to an issuer's present or prospective business depends upon that issuer's individual circumstances, and that there is no specific quantitative standard that is applicable in all instances. Moreover, as previously indicated, the burden is on the issuer to demonstrate that this or any other provision of Rule 14a-8 may properly be relied upon to omit a proposal.

Finally, it should be noted that none of the public commentators recommended the replacement of this subparagraph by the proposed alternative provision described in Release No. 34-12598. That provision would have allowed the omission of any proposals dealing with matters that the governing body of the issuer was not required to act upon pursuant to either the applicable state law or the governing instruments of the issuer. The alternative provision is more fully discussed in the section of this release immediately following the discussion of subparagraph (c) (7) of the amended rule.

(6) *Matters Beyond Issuer's Power.* Subparagraph (c) (6) of the amended rule provides that a proposal may be omitted from an issuer's proxy materials if it deals with a matter that is "beyond the issuer's power to effectuate." This provision is derived from that part of subparagraph (c) (2) (ii) of the current rule and the Note thereto that allow a proposal to be omitted if it deals with a matter that is not within the control of the issuer. In terms of scope and effect, the provision is unchanged from the former rule and Note. However, since the Note did nothing more than define the term used in the subparagraph, it has been incorporated into the subparagraph itself.

(7) *Routine Matters.* Subparagraph (c) (5) of the former rule permitted an issuer to omit a proposal from its proxy materials if the proposal consisted of a "recommendation or request that the management take action with respect to a matter relating to the conduct of the ordinary business operations of the issuer." The Commission proposed in Release No. 34-12598 to replace this provision with one that would have allowed the omission of a proposal if it dealt with a "routine, day-to-day matter relating to the conduct of the ordinary business operations of the issuer." The proposed new provision, which would have been more restrictive than the former one, was considered at the time to be appropriate for possible adoption because the former provision occasionally had been relied upon to exclude proposals of considerable importance to the issuer and its security holders. The Commission hoped that the new provision would produce results that were more in accord with the concept of shareholder democracy underlying section 14(a) of the Exchange Act.

A large majority of the commentators who addressed themselves to the proposed new standard objected to it on the ground that it would produce many undesirable results. Among other things, they pointed out that many of the shareholder proposals under the new provision would necessarily deal with ordinary business matters of a complex nature that shareholders, as a group, would not be qualified to make an informed judgment on, due to their lack of business expertise and their lack of intimate knowledge of the issuer's business. In the view of these commentators, it would not be practicable in most instances for stockholders to decide management problems at corporate meetings. Further, they stated that the proposed new provision would be difficult to administer because of the subjective judgments that necessarily would be required in interpreting it.

After consideration of the above comments, the Commission has determined not to adopt proposed subparagraph (c) (7) in the form in which it was proposed for comment. The Commission is taking this course of action for two reasons: (1) It believes the difficulties that are likely to arise from the proposed standard

would exceed any benefits to security holders that might accrue from its adoption; and (2) the former standard appears to be a workable one if it is interpreted in a somewhat more flexible manner than in the past.

The Commission's determination not to adopt proposed subparagraph (c) (7) is based to a large extent on the fact that there does not appear to be any reasonable means for distinguishing between routine and important business matters. The Commission suggested in Release No. 34-12598 that a possible standard for making such distinctions was whether it would be necessary for the board of directors to act on the matter involved in the proposal. If no action were necessary, the matter would be considered routine. The commentators pointed out, however, that board practices relating to the delegation of authority to management personnel vary greatly, and there would, therefore, be no consistency in applying such a standard. The potential lack of consistency of the proposed standard is a fatal drawback, in the Commission's view. And, since no other reasonable standard for making the requisite distinctions is readily apparent, the Commission believes that the provision would be difficult, if not impossible, to administer on a satisfactory basis.

In lieu of the subparagraph proposed in Release No. 34-12598, the Commission has decided to adopt a provision that essentially is the same as subparagraph (c) (5) of the former rule. That is, a proposal will be excludable if it "deals with a matter relating to the conduct of the ordinary business operations of the issuer." The Commission recognizes that this standard for omission has created some difficulties in the past, and that, on occasion, it has been relied upon to omit proposals of considerable importance to security holders. Nevertheless, the Commission believes that the provision is a workable one, as evidenced by the fact that it has been in operation for over 22 years and has not, until the past year or so, generated a significant amount of controversy.

The Commission is of the view that the provision adopted today can be effective in the future if it is interpreted somewhat more flexibly than in the past. Specifically, the term "ordinary business operations" has been deemed on occasion to include certain matters which have significant policy, economic or other implications inherent in them. For instance, a proposal that a utility company not construct a proposed nuclear power plant has in the past been considered excludable under former subparagraph (c) (5). In retrospect, however, it seems apparent that the economic and safety considerations attendant to nuclear power plants are of such magnitude that a determination whether to construct one is not an "ordinary" business matter. Accordingly, proposals of that nature, as well as others that have major implications, will in the future be considered beyond the realm of an issuer's ordinary

business operations, and future interpretative letters of the Commission's staff will reflect that view.

Although subparagraph (c) (7) will be subject to a more restrictive interpretation in the future than its predecessor, former subparagraph (c) (5), this should not be construed to mean that the provision will not be available for the omission of proposals that deal with truly "ordinary" business matters. Thus, where proposals involve business matters that are mundane in nature and do not involve any substantial policy or other considerations, the subparagraph may be relied upon to omit them.

#### PROPOSED ALTERNATE TO SUBPARAGRAPHS (c) (5) AND (c) (7)

At the time subparagraphs (c) (5) and (c) (7) were proposed for comment, the Commission also asked for the public's views on the following questions:

(1) Whether it would be more beneficial to issuers and their security holders not to adopt either or both of those subparagraphs, or

(2) Whether it would be more beneficial to replace or supplement them with a provision which would allow the omission of a proposal if it

deals with a matter that the governing body of the issuer (such as the Board of Directors) is not required to act upon pursuant to the applicable State law or the issuer's governing instruments (such as the Charter or By-Laws).

The prevailing view of those commentators who responded to the above questions was that both subparagraphs (c) (5) and (c) (7) should be retained but that the alternative provision quoted above should be discarded. With respect to the retention of subparagraphs (c) (5) and (c) (7), it was noted that both provisions contain separate and justifiable grounds for the omission of a proposal and that there often are instances in which one is applicable to a proposal while the other is not. The Commission concurs in this view and therefore has determined to retain both of them in the form already discussed herein.

In regard to the alternative provision, it was pointed out by the commentators that most state statutes and corporate governing instruments specify relatively few instances where director action is required but simply mandate that the business and affairs of the corporation be managed by or under the direction of the board of directors. Consequently, the application of the proposed "board-action" standard would turn upon the issues of delegation of authority and proper board practices. Since the resolution of these issues would involve complex and often conflicting matters of law and interpretation, the Commission does not believe that the standard would provide a useful or workable ground for omission under the rule. Therefore, it has not been adopted.

(8) *Elections to Office.* The last sentence of paragraph (a) of the former rule stated that Rule 14a-8 does not apply to elections to office or to counter proposals

to matters to be submitted by the management. The two grounds for omission mentioned in that sentence have been restated in subparagraphs (c) (8) and (c) (9) of the amended rule.

In its adopted form, subparagraph (c) (8) states simply that a proposal can be omitted if it "relates to an election to office." As originally proposed in Release No. 34-12598, the subparagraph would have allowed the omission of any proposal which related to a "corporate, political or other election to office." However, the Commission has deleted the words "corporate, political or other" from the adopted provision, since it is apparent that the inclusion of those words in the proposed version led many commentators to the erroneous belief that the Commission intended to expand the scope of the existing exclusion to cover proposals dealing with matters previously held not excludable by the Commission, such as cumulative voting rights, general qualifications for directors, and political contributions by the issuer. To dispel this misunderstanding, the Commission has revised the language of the adopted provision to read substantially as its predecessor under the former rule.

(9) *Counter Proposals.* As noted above, subparagraph (c) (9) of the revised rule merely restates a ground for omission already set forth in the existing rule. That is, a proposal that is counter to a proposal to be presented by the management may be omitted from an issuer's proxy materials.

(10) *Moot Proposals.* The Commission has set forth in subparagraph (c) (10) of the amended rule a ground for omission that has not been formally stated in Rule 14a-8 in the past but which has informally been deemed to exist. The new subparagraph provides that a proposal which has been rendered moot may be omitted from the issuer's proxy materials.

As originally proposed by the Commission, this subparagraph would have allowed the omission of only those proposals rendered moot "by the actions of management." However, it was brought to the attention of the Commission by several commentators that mootness can be caused for reasons other than the actions of management, such as statutory enactments, court decisions, business changes and supervening corporate events. Therefore, since the Commission believes that a proposal which has been rendered moot for whatever reason should properly be excludable from an issuer's proxy materials, it has deleted the qualifying phrase "by the actions of the management" from the adopted form of the subparagraph.

(11) *Similar Proposals in Current Year.* As with subparagraph (c) (10) above, subparagraph (c) (11) formalizes a ground for omission that has existed solely on an informal basis in the past. Specifically, the new subparagraph provides that the management may omit a proposal that is substantially duplicative of a proposal submitted by another

proponent which the management intends to include in its proxy materials. The purpose of the provision is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other.

(12) *Similar Proposals in Prior Years.* In Release No. 34-12598, the Commission proposed to broaden the provision in the former rule (viz., subparagraph (c)(4)) which allowed the omission of any proposal that was "substantially the same" as a prior proposal that failed to receive the percentage of votes on its latest submission specified in the rule. This would have been accomplished by revising the provision to state that it would apply to any proposal that dealt with "substantially the same subject matter" as a prior proposal that had failed to attract the requisite number of votes.

Several commentators urged the Commission not to make the proposed change. These persons pointed out: (1) That abuses of the existing provision have been rare and do not justify the type of radical revision proposed; (2) that the new standard would be almost impossible to administer because of the subjective determinations that would be required under it; and (3) that it would unduly constrain shareholder suffrage because of its possible "umbrella" effect (i.e., it could be used to omit proposals that had only a vague relation to the subject matter of a prior proposal that received little shareholder support).

After consideration of the above comments, the Commission has determined not to make the changes in the subparagraph previously proposed by it. This action is being taken because the potential drawbacks of the new provision appear to outweigh the prospective benefits. As a result, the Commission has adopted subparagraph (c)(12) in a form that is identical to that of former subparagraph (c)(4).

Notwithstanding the above action, the Commission is concerned about potential abuses of this provision. It therefore has instructed the staff to monitor closely the operation of subparagraph (c)(12) and to take appropriate action, such as issuing a no-action letter to an affected management, where it is apparent that an effort is being made to present essentially the same proposal to an issuer's security holders year-after-year, even though the proposal has not attracted the support required by the rule. In connection with the foregoing, it should be noted that this provision will be considered to be available in the future for the omission of a proposal which, although not substantially the same as any one proposal submitted in a prior year, is composed essentially of the elements of two or more proposals that were submitted for a vote in prior years and failed to receive the percentage of the total vote specified in the rule.

(13) *Specific Dividend Amounts.* The Commission proposed in Release No. 34-

12598 to adopt a new subparagraph (c)(13) which would permit issuers to omit from their proxy materials any proposals relating to "specific amounts of cash or stock dividends." The purpose of the provision was to prevent security holders from being burdened with a multitude of conflicting proposals on such matters. Specifically, the Commission was concerned over the possibility that several proponents might independently submit to an issuer proposals asking that differing amounts of dividends be paid.

In the past it has been the position of the Commission and its staff that dividend matters were within the realm of an issuer's ordinary business operations and precatory proposals dealing with such matters were therefore excludable under the provision of Rule 14a-8 dealing with such operations (viz., former subparagraph (c)(5)). Although the Commission has carried forward into the revised rule an exclusion for matters relating to an issuer's ordinary business operations (see the discussion of subparagraph (c)(7)), it is now of the view that because dividend matters are extremely important to most security holders, and because they involve significant economic and policy considerations, they are not "ordinary" business matters in the strictest sense. Therefore, proposals relating to dividend matters will not be excludable under subparagraph (c)(7), with the result that the reasons for which subparagraph (c)(13) was proposed are still valid. Accordingly, the Commission has adopted the subparagraph in the form in which it was proposed for comment.

In connection with the foregoing, the Commission has noted the view of some commentators that dividend matters are not appropriate for discussion by security holders. These persons have indicated that decisions on dividends traditionally have been within the exclusive province of the board of directors under most state laws and that it would not be proper for shareholders to submit proposals on such matters. The Commission, however, is not persuaded that these reasons provide a valid basis for excluding all dividend proposals. In this regard, it is noted that mandatory dividend proposals would continue to be excludable under subparagraph (c)(1) of the revised rule, to the extent that they would intrude on the board's exclusive discretionary authority under the applicable state law to make decisions on dividends. But to the extent that such proposals are advisory in nature, and therefore non-binding on the board even if adopted, the Commission is unable to agree that proponents should be denied the opportunity to present them, within the limits of this provision, to their fellow security holders for consideration.

PROCEDURAL REQUIREMENTS FOR MANagements—RULE 14a-8(d)

Paragraph (d) of the revised rule discusses the procedural requirements applicable to managements who intend to omit stockholder proposals from their proxy materials. The paragraph has

been adopted by the Commission in precisely the same form in which it was proposed for comment.

As revised, the paragraph provides that the management must file five copies of the following documents with the Commission whenever it asserts, for any reason, that a proposal and any statement in support thereof can properly be omitted from its proxy materials: (1) The proposal; (2) The supporting statement, if any; (3) A statement of its reasons for omission; and (4) where such reasons are based on matters of law, a supporting opinion of counsel. A copy of the statement of reasons and the opinion of counsel, if any, must also be furnished to the proponent at the same time they are filed with the Commission.

The principal change in paragraph (d) from the former rule is the requirement that the management file the documents specified above with the Commission at least 50 days prior to the date on which it files its preliminary proxy materials. Formerly, such documents were required to be filed 30 days in advance of the date the preliminary proxy materials were filed. As previously noted in the discussion of subparagraph (a)(3) relating to the timeliness requirements for proponents, this change is being made in conjunction with a corresponding 20-day advance in the deadline date for the submission of proposals by proponents.

Other changes in the paragraph include the requirement that five copies of all materials required under the paragraph be filed with the Commission (rather than one, as required under the former rule) and the addition of certain words to clarify: (1) That either the Commission or its staff may waive part or all of the 50-day filing requirement (the former rule mentioned only the Commission), and (2) That the filing requirements of the paragraph must be complied with in all instances in which the management asserts that a proposal can properly be omitted (some managements have erroneously believed that they need not comply with those requirements when a proposal is clearly excludable for a procedural reason, such as timeliness).

COST DATA

In Release No. 34-12598 the Commission expressed an interest in obtaining information about the costs to issuers of including stockholder proposals in their proxy soliciting materials. The Commission continues to be interested in obtaining such information with respect to proposals that are included in proxy materials through June 30, 1977. Any issuers willing to furnish such information to the Commission are requested to indicate not only the total cost of including each proposal in their proxy materials but also the amount of each component part of the overall cost (such as printing, postage and legal expenses). This information should be submitted to William E. Morley, Special Counsel, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549.

## DATE OF EFFECTIVENESS

As previously indicated, all of the amendments to Rule 14a-8 adopted today, with the exception of the changes to the timeliness provisions of subparagraph (a)(3) and paragraph (d), shall be applicable to proposals submitted to issuers who will be filing their preliminary proxy materials with the Commission on or after February 1, 1977. The effectiveness of the new timeliness requirements set forth in subparagraph (a)(3) and paragraph (d) shall be deferred an additional three months. Accordingly, they shall apply only to proposals submitted to issuers who will be filing their preliminary proxy materials with the Commission on or after May 1, 1977.

**Authority.** The Commission has adopted the amendments to Rule 14a-8 that are discussed herein pursuant to sections 14(a) and 23(a) of the Securities Exchange Act of 1934, sections 12(e) and 20(a) of the Public Utility Holding Company Act of 1935, and sections 20(a) and 38(a) of the Investment Company Act of 1940.

## TEXT OF REVISED RULE 14a-8

Rule 14a-8 is revised to read as follows:

## § 240.14a-8 Proposals of security holders.

(a) If any security holder of an issuer notifies the management of the issuer of his intention to present a proposal for action at a forthcoming meeting of the issuer's security holders, the management shall set forth the proposal in its proxy statement and identify it in its form of proxy and provide means by which security holders can make the specification required by Rule 14a-4(b) (17 CFR 240.14a-4(b)). Notwithstanding the foregoing, the management shall not be required to include the proposal in its proxy statement or form of proxy unless the security holder (hereinafter, the "proponent") has complied with the requirements of this paragraph and paragraphs (b) and (c) of this section:

(1) **Eligibility.** At the time he submits the proposal, the proponent shall be a record or beneficial owner of a security entitled to be voted at the meeting on his proposal, and he shall continue to own such security through the date on which the meeting is held. If the management requests documentary support for a proponent's claim that he is a beneficial owner of a voting security of the issuer, the proponent shall furnish appropriate documentation within 10 business days after receiving the request. In the event the management includes the proponent's proposal in its proxy soliciting materials for the meeting and the proponent fails to comply with the requirement that he continuously be a voting security holder through the meeting date, the management shall not be required to include any proposals submitted by the proponent in its proxy solicit-

ing materials for any meeting held in the following two calendar years.

(2) **Notice.** The proponent shall notify the management in writing of his intention to appear personally at the meeting to present his proposal for action. The proponent shall furnish the requisite notice at the time he submits the proposal, except that if he was unaware of the notice requirement at that time he shall comply with it within 10 business days after being informed of it by the management. If the proponent, after furnishing in good faith the notice required by this provision, subsequently determines that he will be unable to appear personally at the meeting, he shall arrange to have another security holder of the issuer present his proposal on his behalf at the meeting. In the event the proponent or his proxy fails, without good cause, to present the proposal for action at the meeting, the management shall not be required to include any proposals submitted by the proponent in its proxy soliciting materials for any meeting held in the following two calendar years.

(3) **Timeliness.** The proponent shall submit his proposal sufficiently far in advance of the meeting so that it is received by the management within the following time periods:

(i) **Annual Meetings.** A proposal to be presented at an annual meeting shall be received by the management at the issuer's principal executive offices not less than 90 days in advance of a date corresponding to the date set forth on the management's proxy statement released to security holders in connection with the previous year's annual meeting of security holders, except that if no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than 30 calendar days from the date of the previous year's annual meeting a proposal shall be received by the management a reasonable time before the solicitation is made.

(ii) **Other Meetings.** A proposal to be presented at any meeting other than an annual meeting shall be received a reasonable time before the solicitation is made.

**NOTE.**—In order to curtail controversy as to the date on which a proposal was received by the management, it is suggested that proponents submit their proposals by Certified Mail-Return Receipt Requested.

(4) **Number and Length of Proposals.** The proponent may submit a maximum of two proposals of not more than 300 words each for inclusion in the management's proxy materials for a meeting of security holders. If the proponent fails to comply with either of these requirements, or if he fails to comply with the 200-word limit on supporting statements mentioned in paragraph (b) of this section, he shall be provided the opportunity by the management to reduce, within 10 business days, the items submitted by him to the limits required by this rule.

(b) If the management opposes any proposal received from a proponent, it shall also, at the request of the propo-

nent, include in its proxy statement a statement of the proponent of not more than 200 words in support of the proposal, which statement shall not include the name and address of the proponent. The statement and request of the proponent shall be furnished to the management at the time that the proposal is furnished, and neither the management nor the issuer shall be responsible for such statement. The proxy statement shall also include either the name and address of the proponent or a statement that such information will be furnished by the issuer or by the Commission to any person, orally or in writing as requested, promptly upon the receipt of any oral or written request therefor. If the name and address of the proponent are omitted from the proxy statement, they shall be furnished to the Commission at the time of filing the management's preliminary proxy material pursuant to Rule 14a-6(a) (17 CFR 240.14a-6(a)).

(c) The management may omit a proposal and any statement in support thereof from its proxy statement and form of proxy under any of the following circumstances:

(1) The proposal is, under the laws of the issuer's domicile, not a proper subject for action by security holders;

**NOTE.**—A proposal that may be improper under the applicable state law when framed as a mandate or directive may be proper when framed as a recommendation or request.

(2) If the proposal would, if implemented, require the issuer to violate any state law or federal law of the United States, or any law of any foreign jurisdiction, to which the issuer is subject, except that this provision shall not apply with respect to any foreign law compliance with which would be violative of any state law or federal law of the United States;

(3) If the proposal or the supporting statement is contrary to any of the Commission's proxy rules and regulations, including Rule 14a-9 (17 CFR 240.14a-9), which prohibits false or misleading statements in proxy soliciting materials;

(4) If the proposal relates to the enforcement of a personal claim or the redress of a personal grievance against the issuer, its management, or any other person;

(5) If the proposal deals with a matter that is not significantly related to the issuer's business;

(6) If the proposal deals with a matter that is beyond the issuer's power to effectuate;

(7) If the proposal deals with a matter relating to the conduct of the ordinary business operations of the issuer;

(8) If the proposal relates to an election to office;

(9) If the proposal is counter to a proposal to be submitted by the management at the meeting;

(10) If the proposal has been rendered moot;

(11) If the proposal is substantially duplicative of a proposal previously submitted to the management by another

proponent, which proposal will be included in the management's proxy materials for the meeting;

(12) If substantially the same proposal has previously been submitted to security holders in the management's proxy statement and form of proxy relating to any annual or special meeting of security holders held within the preceding 5 calendar years, it may be omitted from the management's proxy materials relating to any meeting of security holders held within 3 calendar years after the latest such previous submission:

*Provided, That—*(i) If the proposal was submitted at only one meeting during such preceding period, it received less than 3 percent of the total number of votes cast in regard thereto; or

(ii) If the proposal was submitted at only two meetings during such preceding period, it received at the time of its second submission less than 6 percent of the total number of votes cast in regard thereto; or

(iii) If the proposal was submitted at three or more meetings during such preceding period, it received at the time of its latest submission less than 10 percent of the total number of votes cast in regard thereto; and

(13) If the proposal relates to specific amounts of cash or stock dividends.

(d) Whenever the management 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 50 days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to Rule 14a-6(a), or such shorter period prior to such date as the Commission or its staff may permit, five copies of the following items: (1) The proposal; (2) any statement in support thereof as received from the proponent; (3) a statement of the reasons why the management deems such omission to be proper in the particular case; and (4) where such reasons are based on matters of law, a supporting opinion of counsel. The management shall at the same time, if it has not already done so, notify the proponent of its intention to omit the proposal from its proxy statement and form of proxy and shall forward to him a copy of the statement of reasons why the management deems the omission of the proposal to be proper and a copy of such supporting opinion of counsel.

(Secs. 14(a), 23(a), 48 Stat. 895, 901; sec. 203(a), 49 Stat. 704; sec. 3, 49 Stat. 1379; sec. 3, 78 Stat. 569, 570; sec. 18, 89 Stat. 133 (15 U.S.C. 78n(a), 78w(a)); secs. 12(e), 20(a), 49 Stat. 823, 833 (15 U.S.C. 79l(e), 79t(a)); secs. 20(a), 38(a), 54 Stat. 822, 841 (15 U.S.C. 80a-20(a), 80a-37(a)).)

By the Commission.

GEORGE A. FITZSIMMONS,  
Secretary.

NOVEMBER 22, 1976.

[FR Doc.76-35557 Filed 12-2-76;8:45 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE

[T.D. 76-329]

PART 111—CUSTOMHOUSE BROKERS

License Examination

On June 21, 1976, a notice of proposed rulemaking was published in the FEDERAL REGISTER (41 FR 24889), which proposed to amend paragraph (b) of § 111.13 of the Customs Regulations (19 CFR 111.13 (b)) to provide that the customhouse broker's license examination will be given at each district office on the first Monday in April and October of each year.

Section 111.13(b) presently provides that the customhouse broker's license examination will be given at each district office on the first Monday in February, June, and October of each year. A review of the statistics maintained regarding past examinations reveals that if the examinations were given only twice a year, all districts could easily accommodate the expected increased number of applicants at each examination and that a cost saving to the Government would result. Moreover, the expected increase in administration of special examinations under § 111.13(c) of the Customs Regulations (19 CFR 111.13(c)) would be slight.

Interested persons were given 30 days from the date of publication of the notice to submit data, views, or arguments with respect to the proposed amendment. No comments were received.

Accordingly, the proposed amendment is adopted as set forth below.

Effective date: This amendment shall become effective January 3, 1977.

VERNON D. ACREE,

Commissioner of Customs.

Approved: November 24, 1976.

JERRY THOMAS,

Under Secretary of the Treasury.

The first sentence of paragraph (b) of § 111.13 is amended to read as follows:

§ 111.13 Examination of applicant for individual license.

(b) *Date and place of examination.*

Examinations will be given at each district office on the first Monday in April and October. \* \* \*

(R.S. 251, as amended, secs. 824, 841, 46 Stat. 759, as amended (19 U.S.C. 66, 1624, 1641.) 1641.)

[FR Doc.76-35609 Filed 12-2-76;8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

[Docket No. 76F-0440]

PART 121—FOOD ADDITIVES

Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food, Sanitizing Solutions

The Food and Drug Administration is amending the food additive regulations to provide for the safe use of a certain aqueous solution as a sanitizing solution; effective December 3, 1976; objections by January 3, 1977.

A notice published in the FEDERAL REGISTER of April 25, 1975 (40 FR 18206) announced that a petition (FAP 5H3037) had been filed by Vestal Laboratories, 4963 Manchester Ave., St. Louis, MO 63110, proposing that § 121.2547 Sanitizing solutions (21 CFR 121.2547) be amended to provide for the safe use of an aqueous solution containing *ortho*-phenylphenol, *ortho*-benzyl-*para*-chlorophenol, *para*-tertiaryamylphenol, sodium - *alpha* - alkyl(C<sub>12</sub>-C<sub>15</sub>) - *omega*-hydroxypoly(oxyethylene) sulfate with the poly(oxyethylene) content averaging one mole, potassium coconut oil soap, and isopropyl alcohol or hexylene glycol as a sanitizing solution for food-processing equipment and utensils.

The Commissioner of Food and Drugs, having evaluated data in the petition and other relevant material, is amending the regulation as set forth below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (Sec. 409(c) (1), 72 Stat. 1786 (21 U.S.C. 348(c) (1))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Part 121 is amended in § 121.2547 by adding new paragraphs (b) (20) and (c) (15) to read as follows:

§ 121.2547 Sanitizing solutions.

(b) \* \* \*

(20) An aqueous solution containing *ortho*-phenylphenol, *ortho*-benzyl-*para*-chlorophenol, *para*-tertiaryamylphenol, sodium - *alpha* - alkyl(C<sub>12</sub>-C<sub>15</sub>) - *omega*-hydroxypoly(oxyethylene) sulfate with the poly(oxyethylene) content averaging one mole, potassium salts of coconut oil fatty acids, and isopropyl alcohol or hexylene glycol.

(c) \* \* \*

(15) Solutions identified in paragraph (b) (20) of this section are for single use applications only and shall provide, when ready to use, a level of 800 parts per million of total active phenols consisting of 400 parts per million *ortho*-phenylphenol, 320 parts per million *ortho*-benzyl-*para*-chlorophenol and 80 parts per million *para*-tertiaryamylphenol.