avoid the weakness of the case by confiding that fact in secret to the Commission. At most, they might conceal the weakness for a time, a result that ultimately would be wasteful of both government and private resources. Regardless of when during an adjudicative proceeding complaint counsel or the Commission itself discovers a possible weakness in the case, the Commission should base its decision whether to continue the proceeding on publicly available information.

The new rule may lend itself to a public perception that the staff of the Commission has an advantage over targets of enforcement actions because the staff has the secret ear of the Commission. If the staff is permitted secret access to the Commission, a decision to continue an adjudication, particularly one that, based on publicly available information, appears weak, likely would suggest that complaint counsel were able to persuade the commission to proceed only by ''hiding the ball'' form the respondents. Such a message hardly is consistent with fairness to the respondent or with the role of the Commission as an unbiased decisionmaker.[10]

A third scenario is that the case is weak, respondents move to withdraw the matter from adjudication, and complaint counsel file nothing in support of the complaint.[11] In such an instance, the Commission may agree with the respondents and dismiss the adjudication, or it may disagree and order that the proceeding continue. There seems no good reason not to have this occur on the public record. Again, private discussions between the Commission and its staff can create a public perception of unfairness to the respondents arising from apparent complicity the prosecuting attorneys and the purportedly impartial adjudicators—the very danger the separation of functions requirements of the Administrative Procedure Act and the Commission's *ex parte* rule are designed to avoid.[12]

In addition to undermining the separation of functions at the Commission, the new rule limits the Commission's discretion to decide when individual cases should be in adjudication and remain on the public record. The exercise of discretion in an adjudicative matter is a responsibility of the Commission, not an occasion for apology. This responsibility, which must be carried out consistent with the law and with fundamental fairness, should not be ceded without a reason for doing so. Here, I see none. Both the policy to maintain the separation of deliberative and prosecutorial functions and the appearance of having done so are enhanced when the Commission retains its discretion to determine the appropriate disposition of a motion to withdraw from adjudication. The shifting of a portion of that discretion in favor of the respondents may appear open-minded, but, in the long term, it will disserve the Commission and the public interest.

On balance, the Commission and the public would be better served if the Commission retained its discretion to decide which, if any, cases should be withdrawn from adjudication following denial of a preliminary injunction. The new rule is likely to undermine the integrity of the Commission and its adjudicative process by breaking down the wall between the Commission's prosecutorial and adjudicatory roles in a manner inconsistent with the separation of functions requirement of the Administrative Procedure Act and its own *ex parte* rule.

I dissent.

[FR Doc. 95–19109 Filed 8–2–95; 8:45 am]

BILLING CODE 6750–01–M

[10] Off-the-record discussions with the respondents, followed by dismissal of the complaint, also may create misperceptions of unfairness and favoritism, with the implication that nonpublic communications that could not bear the light of day influenced the Commission's decision.

[11] This assumes that complaint counsel find themselves unable to make a principled argument in support of the complaint. *See* Jose Calimlim, M.D., Dkt. No. 9199 (June 24, 1986) (''complaint counsel represent the Commission's prosecutorial decision as embodied in the allegations of the complaint and in the notice of contemplated relief''); *accord* R.J. Reynolds Tobacco Co., Dkt. No. 9206 (interlocutory order, Dec. 1, 1986); *see also* R.J. Reynolds Tobacco Co. (interlocutory order, Dec. 10, 1986) (purpose of adjudication is ''to subject the Commission's complaint to an adversarial test'').

[12] *See* 5 U.S.C. 552(d); 16 CFR 4.7.

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 200

[Release No. 34–36031]

Establishment of Office and Delegation of Authority to Administer Functions

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is amending its Rules of Organization and Program Management to establish the Office of Compliance Inspections and Examinations (''OCIE'') and to delegate authority to administer its functions to the Director of OCIE. This reorganization is designed to improve efficiency and allow for an enhanced integration of functions by combining the inspection and examination operations of the Division of Market Regulation and the Division of Investment Management.

EFFECTIVE DATE: September 5, 1995.

FOR FURTHER INFORMATION CONTACT: James A. Chan, 202/942–0742; Matthew O'Toole, 202/942–0694; or Philip H. Oettinger, 202/942–0784.

SUPPLEMENTARY INFORMATION: On March 22, 1995, the Chairman of the Securities and Exchange Commission announced the creation of a new office, OCIE, that would combine the inspections and examinations functions of the Division of Market Regulation and the Division of Investment Management. The goal of OCIE is to increase the efficiency of the inspection and examination process by integrating the functions and personnel of both Divisions. The Commission today is adopting Rules 19c and 30–18 of its Rules of Organization and Program Management to delegate responsibility for the examination and inspection of brokers, dealers, transfer agents, self-regulatory organizations, investment companies, and investment advisers to OCIE, and to establish the administrative and substantive responsibilities of the Office.

The Commission has determined that this addition to its rules relates solely to the agency's organization, procedure or practice. Therefore, the provisions of the Administrative Procedure Act (''APA'') regarding notice of proposed rulemaking and opportunities for public participation,[1] are not applicable. Similarly, the provisions of the Regulatory Flexibility Act,[2] which apply only when notice and comment are required by the APA or other law, are not applicable.

In the rare instances involving close questions or cases that may be potentially controversial, the staff would either consult with the Commission, or seek Commission authorization before acting.[3] The staff believes that its experience with the issues that may arise in this area

[1] 5 U.S.C. 553.

[2] 5 U.S.C. 601 *et seq.*

[3] Rule 30–18(i) states that ''[n]otwithstanding anything in the foregoing [delegations], in any case in which the Director of the Office of Compliance Inspections and Examinations believes it appropriate, the Director may submit the matter to the Commission.''

reduces the need for day-to-day review by the Commission.

Effects on Competition

Section 23(a)(2) of the Securities Exchange Act of 1934 (''Exchange Act'')[4] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered the additions to its rules announced in this release in light of the standards cited in section 23(a)(2) and believes that their adoption would not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

Statutory Basis of Rule

The amendments to the Commission's rules are adopted pursuant to the authorities set forth herein.

List of Subjects in 17 CFR Part 200

Administrative practices and procedures, Authority delegations (Government agencies), Organizations and functions (Government agencies).

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for Part 200, Subpart A continues, in part, to read as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.19c is added to read as follows:

§ 200.19c Director of the Office of Compliance Inspections and Examinations.

The Director of the Office of Compliance Inspections and Examinations (''OCIE'') is responsible for the compliance inspections and examinations relating to the regulation of exchanges, national securities associations, clearing agencies, securities information processors, the Municipal Securities Rulemaking Board, brokers and dealers, municipal securities dealers, transfer agents, investment companies, and investment advisers, under Sections 15C(d)(1) and 17(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(d)(1) and 78q(b)), Section 31(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–30(b)), and Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4).

3. Section 200.30–18 is added to read as follows:

§ 200.30–18 Delegation of authority to Director of the Office of Compliance Inspections and Examinations.

Pursuant to the provisions of Pub. L. 100–181, 101 Stat. 1254, 1255 (15 U.S.C. 78d–1, 78d–2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following authority to the Director of the Office of Compliance Inspections and Examinations (''OCIE'') to be performed by the Director or by such other person or persons as may be designated from time to time by the Chairman of the Commission:

(a) To administer the provisions of § 240.24c–1 of this chapter; provided that access to nonpublic information as defined in such Section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(b) Pursuant to the Securities Exchange Act of 1934 (''the Exchange Act'') (15 U.S.C. 78a, *et seq.*):

(1) To grant and deny applications for confidential treatment filed pursuant to Section 24(b) of the Exchange Act (15 U.S.C. 78x(b)) and Rule 24b–2 thereunder (§ 240.24b–2 of this chapter); and

(2) To revoke a grant of confidential treatment for any such application.

(c) Pursuant to Section 17(b) of the Exchange Act (15 U.S.C. 78q(b)), prior to any examination of a registered clearing agency, registered transfer agent, or registered municipal securities dealer whose appropriate regulatory agency is not the Commission, to notify and consult with the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer.

(d) Pursuant to Section 17(c)(3) of the Exchange Act (15 U.S.C. 78q(c)(3)), in regard to clearing agencies, transfer agents and municipal securities dealers for which the Commission is not the appropriate regulatory agency:

(1) To notify the appropriate regulatory agency of any examination conducted by the Commission of any such clearing agency, transfer agent, or municipal securities dealer;

(2) To request from the appropriate regulatory agency a copy of the report of any examination of any such clearing agency, transfer agent, or municipal securities dealer conducted by such appropriate regulatory agency and any data supplied to it in connection with such examination; and

(3) To furnish to the appropriate regulatory agency on request a copy of the report of any examination of any such clearing agency, transfer agent, or municipal securities dealer conducted by the Commission and any data supplied to it in connection with such examination.

(e) To administer the provisions of Section 24(d) of the Exchange Act (15 U.S.C. 78x(d)).

(f) To notify the Securities Investor Protection Corporation (''SIPC'') of facts concerning the activities and the operational and financial condition of any registered broker or dealer which is or appears to be a member of SIPC and which is in or approaching financial difficulty within the meaning of Section 5 of the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. 78aa, *et seq.*

(g) Pursuant to Section 15(b)(2)(C) of the Exchange Act (15 U.S.C. 78o(b)(2)(C)):

(1) To delay until the second six month period from registration with the Commission the inspection of newly registered broker-dealers that have not commenced actual operations within six months of their registration with the Commission; and

(2) To delay until the second six month period from registration with the Commission the inspection of newly registered broker-dealers to determine whether they are in compliance with applicable provisions of the Exchange Act and rules thereunder, other than financial responsibility rules.

(h) With respect to the Investment Advisers Act of 1940 (''Advisers Act'') (15 U.S.C. 80b–1, *et seq.*):

(1) Pursuant to Section 203(h) of the Advisers Act (15 U.S.C.80b–3(h)), to authorize the issuance of orders cancelling registration of investment advisers, or applications for registration, if such investment advisers or applicants for registration are no longer in existence or are not engaged in business as investment advisers; and

(2) Pursuant to Rule 204–2(j)(3)(ii) (§ 275.204–2(j)(3)(ii) of this chapter), to make written demands upon non-resident investment advisers subject to the provisions of such rule to furnish to the Commission true, correct, complete, and current copies of any or all books and records which such non-resident investment advisers are required to make, keep current, or preserve pursuant to any provision of any rule or regulation of the Commission adopted

[4] 15 U.S.C. 78w(a)(2).

under the Advisers Act, or any part of such books and records which may be specified in any such demand.

(i) Notwithstanding anything in the foregoing, in any case in which the Director of the OCIE believes it appropriate, the Director may submit the matter to the Commission.

By the Commission.

Dated: July 28, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19160 Filed 8–2–95; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 94F–0090]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide broadened specifications for congealing point and oil content for synthetic paraffinic waxes produced by the Fischer-Tropsch process so that the specifications for synthetic paraffin waxes more closely resemble specifications for other synthetic waxes permitted for use in food packaging under other regulations. This action is in response to a petition filed by Shell Oil Co.

DATES: Effective August 3, 1995; written objections and requests for a hearing September 5, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 18, 1994 (59 FR 18412), FDA announced that a food additive petition (FAP 4B4416) had been filed by Shell Oil Co., One Shell Plaza, P.O. Box 4320, Houston, TX 77210. The petition proposed to amend the food additive regulations in § 175.250 *Paraffin (synthetic)* (21 CFR 175.250) to incorporate broadened specifications for congealing point and oil content for synthetic paraffinic waxes produced by the Fischer-Tropsch process, so that the specifications for synthetic paraffin waxes more closely resemble specifications for other synthetic paraffin waxes permitted for use in food packaging under other regulations.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe and that § 175.250 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before September 5, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

§ 175.250 [Amended]

2. Section 175.250 *Paraffin (synthetic)* is amended in paragraph (a) in the third sentence by adding the words ''may be'' after the word ''and'', in paragraph (b)(1) in the first sentence by removing ''93 °C'' and adding in its place ''50 °C'', and in paragraph (b)(2) in the first sentence by removing ''0.5 percent'' and adding in its place ''2.5 percent.''

Dated: July 22, 1995.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–19152 Filed 8–2–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 176

[Docket No. 92F–0504]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of perfluoroalkyl substituted phosphate ester acids, ammonium salts formed by the reaction of 2,2-bis[(γ,ω-perfluoroC_{4-20}alkylthio)methyl]-1,3-propanediol, polyphosphoric acid and ammonium hydroxide as an oil and water repellant for paper and