

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 34-15979]

Requests for Confidential Treatment of Information Filed by Institutional Investment Managers

AGENCY: Securities and Exchange
Commission.

ACTION: Amendment of instructions to
form.

SUMMARY: The Commission announces amendment of a form governing the reporting requirements of institutional investment managers exercising investment discretion over accounts having in the aggregate more than \$100,000,000 in exchange-traded or NASDAQ-quoted equity securities. Only the instruction in the form pertaining to requests for confidential treatment is being amended. The amendment is intended to clarify the procedural and substantive criteria such requests must satisfy before they may be granted. This action is being taken because a review of the requests for confidential treatment received so far suggests that there is uncertainty on the part of many institutional investment managers about the applicable standards.

EFFECTIVE DATE: June 28, 1979.

FOR FURTHER INFORMATION CONTACT:
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Management, Securities and Exchange
Commission, 500 North Capitol Street,
Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On June 15, 1978, the Securities and Exchange Commission (the "Commission") announced the adoption of Securities Exchange Act Rule 13f-1 [17 CFR 240.13f-1] and related Form 13F [17 CFR 249.325], pursuant to Section 13(f) of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq. as amended by Pub. L. No. 94-29 [June 4, 1975]] (the "Exchange Act").¹ Under the rule, as amended effective February 5, 1979,² an institutional investment manager exercising investment discretion (as defined in Section 3(a)(35) of the Exchange Act [15 U.S.C. 78(c)(a)(35)]) with respect to accounts having \$100,000,000 or more in exchange-traded or NASDAQ-quoted equity securities on the last trading day of any of the twelve months of a calendar year must file five copies of Form 13F with the Commission

and, if a bank, with the appropriate agency. The form must be filed within 45 days after the last day of such calendar year and within 45 days after the last day of the first three calendar quarters of the subsequent year. The form requires the reporting of the name of the issuer, and the title of class, CUSIP number, number of shares or principal amount in the case of convertible debt, and aggregate fair market value of each such equity security held. The form also requires information concerning the nature of investment discretion and voting authority possessed. The rule implemented the institutional disclosure program mandated by Congress in Section 13(f) of the Exchange Act.

Section 13(f)(3) of the Exchange Act requires that in general the Commission make the information in reports on Form 13F promptly available to the public, but further provides that:

The Commission, as it determines to be necessary or appropriate in the public interest or for the protection of investors, may delay or prevent public disclosure of any such information in accordance with section 552 of title 5, United States Code [the Freedom of Information Act]. Notwithstanding the preceding sentence, any such information identifying the securities held by the account of a natural person or an estate or trust (other than a business trust or investment company) shall not be disclosed to the public.

General Instruction D of Form 13F provides:

D. *Confidentiality.* Pursuant to section 13(f)(3) of the Act [15 U.S.C. 78m(f)(3)], the Commission shall not disclose to the public information identifying the securities held by the account of a natural person or an estate or trust (other than a business trust or investment company). Therefore, a Manager filing a report on Form 13F which includes such information shall submit a separate statement clearly identifying that information with reference to the appropriate Item and name of issuer, title of class and CUSIP number, including suffix and check digit.

In addition, the Commission may, as it determines necessary or appropriate in the public interest, delay or prevent public disclosure of any information filed under section 13(f) of the Act, in accordance with section 552 of Title 5, United States Code [5 U.S.C. 552]. Requests for delay or prevention of public disclosure should identify clearly the information for which the request is made, as well as the provision(s) of section 552 of Title 5, United States Code, upon which the request is based and should include a statement setting forth the request and the reasons for the applicability of such provision(s).

In addition to these general instructions, Rule 24b-2 under the Exchange Act [17 CFR 240.24b-2] establishes procedures which apply to

any person who requests confidential treatment of information filed with the Commission under the Exchange Act. However, a review of the requests for confidential treatment received so far suggests that the absence of a specific reference to Rule 24b-2 in General Instruction D may have created an ambiguity as to the requirements applicable to requests for confidential treatment of information contained in Form 13F. Some of the requests received for confidential treatment, especially those seeking confidential treatment "in accordance with the Freedom of Information Act," were broad in scope and conclusory in nature. Since the purpose of Section 13(f) is to require extensive disclosure of the investment activities of institutions, confidential treatment can be granted only to managers who can make an affirmative showing that they satisfy the standards of Section 13(f)(3). In the case of information about natural persons, estates, or trusts, meeting the standard requires only an adequate showing that such information would in fact be revealed. Other types of information may not be granted confidential treatment unless the manager demonstrates that an exemption from the Freedom of Information Act is available, and the Commission should exercise its discretion to assert such exemption. Moreover, any grant of confidential treatment would have to be limited in scope and duration to what the manager had shown a need for. Accordingly, managers seeking confidential treatment must provide sufficient factual information to enable the Commission to make an informed independent decision.

To clarify the requirements applicable to requests for confidential treatment, and to assist managers in determining what points to address, the Commission is amending General Instruction D to Form 13F. The amendment makes clear that requests for confidential treatment must be made in accordance with Rule 24b-2 under the Exchange Act and sets forth factors which should, among others, be addressed by persons making certain types of requests for confidential treatment.

Consistent with Section 23(a)(2) of the Exchange Act [15 U.S.C. 78w(a)(2)], the Commission has determined that this action would have no significant effect on competition since it is intended only to provide guidance on how to comply with existing legal standards. As required by Section 13(f)(4) of the Exchange Act the Commission has determined that this action is necessary or appropriate in the public interest and

¹ Exchange Act Release No. 14852 dated June 15, 1978 [43 FR 26700, June 22, 1978].

² Exchange Act Release No. 15461 dated January 5, 1979 [44 FR 3033, January 15, 1979].

for the protection of investors, and to maintain fair and orderly markets.

Authority; Effective Date; Amendment.

The Commission hereby amends Form 13F, effective immediately, pursuant to the authority set forth in Sections 3(b), 13(f) and 23 of the Exchange Act [15 U.S.C. 78c(b), 78m(f) and 78w]. The Commission finds that the changes in the form are technical in nature and do no more than clarify existing requirements, so that notice and public procedure are not necessary and the amendments may be made effective immediately [5 U.S.C. 553(b), (d)].

Accordingly, General Instruction D of the form prescribed in Section 249.325 of Title 17 of the Code of Federal Regulations is amended to provide as follows:

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

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General Instructions

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D. Pursuant to section 13(f)(3) of the Act [15 U.S.C. 78m(f)(3)], the Commission (1) may prevent or delay public disclosure of information on this form in accordance with section 552 of Title 5 United States Code, the Freedom of Information Act [5 U.S.C. 552], and (2) shall not disclose information on this form identifying securities held by the account of a natural person or an estate or trust (other than a business trust or investment company). Requests for confidential treatment of information on this form should be made in accordance with Rule 24b-2 under the Exchange Act [17 CFR 240.24b-2], except that requests seeking to prevent disclosure of information identifying the securities held by the account of a natural person or an estate or trust (other than a business trust or investment company) need not, in complying with paragraph b(2)(ii) of Rule 24b-2, include an analysis of any applicable exemptions from disclosure under the Commission's rules and regulations adopted under the Freedom of Information Act [17 CFR 200.80].

A manager requesting confidential treatment in accordance with the Freedom of Information Act must provide enough factual support for its request to enable the Commission to make an informed judgment as to the merits of the request. The request should address all pertinent factors, including such of the following as may be relevant:

1. If confidential treatment is requested as to more than one holding of securities, discuss each holding separately unless class or classes of holdings can be identified as to which the nature of the factual circumstances and the legal analysis are substantially the same;

2. If a request for confidential treatment is based upon a claim that the subject information is confidential commercial or financial information:

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

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

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

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

3. If the Commission grants a request for confidential treatment, it may delete details which would identify the manager and use the information in tabulations required by Section 13(f)(3) absent separate showing that such use of information could be harmful.

By the Commission.

Dated: June 28, 1979.

George A. Fitzsimmons,
Secretary.

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**DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE**

Food and Drug Administration

21 CFR Parts 522 and 558

[Docket No. 76N-0002]

**Diethylstilbestrol (DES) in Edible
Tissues of Cattle and Sheep;
Revocations**

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking the animal drug regulations that provide information about new animal drug applications (NADA's) for the use of DES in cattle and sheep as an additive to animal feed and as a subcutaneous implant. This action is based on the withdrawal of approval of NADA's following an evidentiary hearing.

Elsewhere in this issue of the **Federal Register**, FDA announces withdrawal of the NADA's.

DATES: This action is effective with respect to the manufacture and shipment of DES animal drugs on July 13, 1979; it is effective with respect to the use of DES animal drugs and the manufacture, shipment, and use of feed containing DES on July 20, 1979; it will not be made effective with respect to the edible products of animals treated with DES solely before the effective date for use of DES animal drugs and DES-treated animal feeds.

FOR FURTHER INFORMATION CONTACT: Constantine Zervos, Scientific Liaison and Intelligence Staff (HFY-31), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4490.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, FDA announces the withdrawal, after an evidentiary hearing, of the approval of NADA's 10421, 10964, 11295, 11485, 12553, 15274, 31446, 34916, 44344, 45981, and 45982. These NADA's are for DES implants and liquid and dry feed premixes for use in cattle and sheep.

21 CFR 522.640 and 558.225 provide information concerning the NADA's whose approval has been withdrawn. FDA is at this time revoking those regulations, and their cross-references, pursuant to 21 U.S.C. 360b(i).

§ 522.640 [Revoked]

§ 558.76 [Amended]

§ 558.78 [Amended]

§ 558.225 [Revoked]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343-351 [21 U.S.C. 360b]) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Chapter I of Title 21 of the Code of Federal Regulations is amended in Part 522 by revoking § 522.640 *Diethylstilbestrol*; and in Part 558 by deleting paragraph (e)(3)(v) in § 558.76 *Bacitracin methylene disalicylate*; by deleting paragraph (e)(3)(iv) in § 558.78 *Bacitracin, zinc*; and by revoking § 558.225 *Diethylstilbestrol*.

EFFECTIVE DATE: This rule is effective with respect to the manufacture and shipment of DES animal drugs on July 13, 1979; it is effective with respect to the use of DES animal drugs and the manufacture, shipment, and use of feed containing DES on July 20, 1979; it will not be made effective with respect to the