5. Provide suggestions regarding how the matter should be addressed by the PTO.

III. Guidelines for Oral Testimony

Individuals wishing to testify must adhere to the following guidelines:

1. Anyone wishing to testify at the hearings must request an opportunity to do so no later than November 3, 1997. Requests to testify may be accepted on the date of the hearing if sufficient time is available on the schedule. No one will be permitted to testify without prior approval.
2. Requests to testify must include the speaker's name, affiliation and title, mailing address, and telephone number. Facsimile number and Internet mail address, if available, should also be provided. Parties may include in their request an indication as to whether the party wishes to testify during the morning or afternoon session of the hearing.
3. Speakers will be provided between five and fifteen minutes to present their remarks. The exact amount of time allocated per speaker will be determined after the final number of parties testifying has been determined. All efforts will be made to accommodate requests for additional time for testimony presented before the day of the hearing.
4. Speakers may provide a written copy of their testimony for inclusion in the record of the proceedings. These remarks should be provided no later than November 25, 1997.
5. Speakers must adhere to guidelines established for testimony. These guidelines will be provided to all speakers on or before November 11, 1997. A schedule providing approximate times for testimony will be provided to all speakers the morning of the day of the hearing. Speakers are advised that the schedule for testimony will be subject to change during the course of the hearings.

IV. Guidelines for Written Comments

Written comments should include the following information:

1. Name and affiliation of the individual responding;
2. If applicable, an indication of whether comments offered represent views of the respondent's organization or are the respondent's personal views; and
3. If applicable, information on the respondent's organization, including the type of organization (e.g., business, trade group, university, or non-profit organization) and respondent's position, including type of experience (e.g., attorney handling prosecution and/or patent litigation, patent agent prosecuting patent applications, or judge deciding patent issues).

If possible, parties offering testimony or written comments should provide their comments in machine-readable format. Such submissions may be provided by electronic mail messages sent over the Internet, or on a 3.5'' floppy disk formatted for use in either a Macintosh or MS–DOS based computer. Machine-readable submissions should be provided as unformatted text (e.g., ASCII or plain text), or as formatted text in one of the following file formats: Microsoft Word (Macintosh, DOS, or Windows versions) or WordPerfect (Macintosh, DOS, or Windows versions).

Information that is provided pursuant to this notice will be made part of a public record and may be available via the Internet. In view of this, parties should not provide information that they do not wish to be publicly disclosed or made electronically accessible. Parties who would like to rely on confidential information to illustrate a point are requested to summarize or otherwise provide the information in a way that will permit its public disclosure.

Dated: September 16, 1997.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 97–25068 Filed 9–19–97; 8:45 am]

BILLING CODE 3510–16–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Futures Contracts in Corn and Soybeans; Proposed Order To Change and To Supplement Proposal

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of, and Request for Public Comment on, Proposed Order to Chicago Board of Trade to Change and to Supplement Chicago Board of Trade Proposal on Delivery Specifications.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') has issued a Proposed Order to the Board of Trade of the City of Chicago (''CBT''), under Section 5a(a)(10) of the Commodity Exchange Act (''Act''), 7 U.S.C. 7a(a)(10), to Change and to Supplement its Proposal regarding the delivery terms of the CBT corn and soybean futures contracts. The CBT proposal was submitted in response to a December 19, 1996, notification to the CBT by the Commission that the CBT corn and soybean futures contracts no longer accomplish the objectives of that section of the Act. The Commission in its Proposed Order, proposes to change and to supplement the CBT proposal for its soybean futures contract by: i) retaining the Toledo, Ohio, switching district as a delivery location; ii) retaining St. Louis-East St. Louis-Alton as a delivery location for shipping stations; and iii) making soybeans from the Toledo delivery location deliverable at contract price and from all other locations at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois, with Chicago at contract price. The Commission, with respect to the CBT corn contract, is proposing to make corn from shipping locations on the northern Illinois River deliverable at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois, with Chicago at contract price. With respect to both the CBT corn and soybean futures contracts, the Commission also proposes to change and to supplement the proposed contingency plan for alternative delivery procedures when traffic on the northern Illinois River is obstructed and to eliminate the $40 million minimum net worth eligibility requirement for issuers of shipping certificates. Finally, the Commission is proposing to disapprove the proposed terms of the July and December 1999 corn futures contracts and the July and November 1999 soybean futures contracts and is proposing to apply the changes and supplements described above to such contracts under sections 5a(a)(10), 5a(a)(12), and 8a(7) of the Act.

The Commission has determined that publication of the Proposed Order for public comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comment must be received by October 22, 1997.

ADDRESSES: Comments should be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, attention: Office of the Secretariat; transmitted by facsimile at (202) 418–5521; or transmitted electronically at [secretary@cftc.gov]. Reference should be made to ''Proposed Order—Corn and Soybean Delivery Points.''

FOR FURTHER INFORMATION CONTACT: John Mielke, Acting Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418–5260, or electronically, Mr. Architzel at [PArchitzel@cftc.gov].

SUPPLEMENTARY INFORMATION: Section 5a(a)(10) of the Act provides that as a condition of contract market designation, boards of trade are required to:

> Permit the delivery of any commodity, on contracts of sale thereof for future delivery, of such grade or grades, at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce. If the Commission after investigation finds that the rules and regulations adopted by a contract market permitting delivery of any commodity on contracts of sale thereof for future delivery, do not accomplish the objectives of this subsection, then the Commission shall notify the contract market of its finding and afford the contract market an opportunity to make appropriate changes in such rules and regulations. If the contact market within seventy-five days fails to make the changes which in the opinion of the Commission are necessary to accomplish the objectives of this subsection, then the Commission after granting the contract market an opportunity to be heard, may change or supplement such rules and regulations of the contract market to achieve the above objectives * * *.

The Commission, on September 15, 1997, issued a Proposed Order under section 5a(a)(10) of the Act to change and to supplement the proposal of the CBT relating to the delivery specifications of the corn and soybean futures contracts. That proposal was submitted in response to prior Commission notification to the CBT that its futures contracts for corn and soybeans no longer were in compliance with the requirements of section 5a(a)(10) of the Act. The text of the Proposed Order is set forth below.

In the Matter of the Section 5a(a)(10) Notification to the Board of Trade of the City of Chicago, Dated December 19, 1996, Regarding Delivery Point Specifications of the Corn and Soybean Futures Contracts.

Dated: September 15, 1997.

Proposed Order of the Commodity Futures Trading Commission to Change and to Supplement Proposed Rules of the Board of Trade of the City of Chicago, Submitted for Commission Approval in Response to a Section 5a(a)(10) Notice Relating to Futures Contracts in Corn and Soybeans.

The Commodity Futures Trading Commission (CFTC or Commission) hereby:

(1) proposes under section 5a(a)(10) of the Commodity Exchange Act (Act) to change and to supplement the proposed delivery specifications of the Board of Trade of the City of Chicago (CBT) soybean futures contract by making all changes to such rules and regulations as required to effect the following:

i. retaining the Toledo, Ohio, switching district as a delivery location;

ii. retaining St. Louis-East St. Louis-Alton as a delivery location for shipping stations; and

iii. making soybeans from the Toledo delivery location deliverable at contract price and making soybeans from shipping locations within the St. Louis-East St. Louis-Alton and the northern Illinois River delivery locations deliverable at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois, with Chicago at contract price;

(2) proposes under section 5a(a)(10) of the Act to change and to supplement the proposed delivery specifications of the CBT corn futures contract by making all changes to such rules and regulations as required to make corn from shipping locations on the northern Illinois River deliverable at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois, with Chicago at contract price;

(3) proposes under section 5a(a)(10) of the Act to change and to supplement the proposed CBT contingency plan for alternative delivery when river traffic is obstructed by reducing the continuous period of lock closure which triggers application of the plan's special procedures from the 45 days proposed to 15 days, by eliminating the condition which triggers the contingency plan that notice of the lock closure must have been given six-months prior to such closure, by making the contingency plan applicable whenever a majority of shipping stations within the northern Illinois River delivery area are affected by closure of any lock or locks and by changing the differential from 100 percent of the Waterways Freight Bureau Tariff No. 7 rate as proposed to 150 percent.

(4) proposes under sections 5a(a)(10) and 15 of the Act to change and to supplement the proposed CBT corn and soybean futures contracts by eliminating the $40 million minimum net worth eligibility requirement for issuers of shipping certificates; and

(5) proposes to disapprove under sections 5a(a)(10), 5a(a)(12), and 15 of the Act and Commission rule 1.41(b) the terms of the July and December 1999 corn futures contracts and the July and November 1999 soybean futures contracts and proposes to apply the changes and supplements described above to such contracts under sections 5a(a)(10), 5a(a)(12), and 8a(7).

The complete text of the revisions proposed by the Commission to the proposed CBT rules appears in attachment 1 of this Order.

The Commission, as detailed below, bases these proposed actions on its finding that the response of the CBT to the section 5a(a)(10) notification relating to its corn and soybean futures contracts does not meet the requirements, or accomplish the statutory objectives, of that section and also violates section 15 of the Act. The Commission's determination is based upon: (1) the inadequate amount of deliverable supplies of soybeans available under the proposed contract terms in the delivery area as proposed; (2) the failure of the proposed corn and soybean contracts to include necessary locational differentials; (3) the failure of the proposed corn and soybean contracts to provide an adequate rule for alternative deliveries if river transportation is obstructed; and (4) the substantial impediment to eligibility for issuing corn and soybean shipping certificates imposed by the $40 million net worth requirement.

Specifically, under the CBT proposal, the amount of deliverable supplies of soybeans during the critical summer delivery months of July, August, and September fails to meet the minimum level that, in the opinion of the Commission, is necessary to tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of soybeans in interstate commerce. The gross amount of potentially deliverable supplies historically has failed to reach the minimum level on a significant number of occasions during the past 11 years the Commission has examined. Moreover, on those occasions when the gross amount of potentially deliverable supplies did exceed that minimum level, it frequently did so only because of supplies available at the Chicago/Burns Harbor (Chicago) delivery point, the continuing decline of which precipitated the section 5a(a)(10) notification in the first instance. This inadequacy is further heightened when appropriate downward adjustments are made to reflect only that portion of the gross deliverable supply which would likely be available for futures deliveries. Thus, gross deliverable supplies would be diminished by the effects of the proposed three-day barge queuing rule, prior commercial commitments of available stocks, the lack of locational price differentials, and the unjustifiably high financial eligibility requirements. The frequent interruptions in barge transportation on the northern Illinois River due to lock closings and weather conditions also create foreseeable disruptions to deliverable supplies under the CBT proposal. The inadequacy of deliverable supplies of soybeans under the CBT proposal requires the retention of the CBT's current delivery points at Toledo and St. Louis, where additional deliverable supplies would be available.

The Commission does not find that available deliverable supplies of corn under the CBT's proposal are inadequate under section 5a(a)(10) so as to require additional delivery points. However, the adequacy of corn supplies cannot be accurately and fully ascertained until after there is a history of deliveries occurring under the proposal. To the extent that in operation the proposal results in inadequate deliverable supplies of corn, the Commission will reconsider the need to require additional delivery points for the corn contract. To that end, the Commission directs the CBT to report on the experience with deliveries and expiration performance in the corn futures contract on an annual basis for a five-year period after contract expirations begin under the revised contract terms.

Neither the CBT proposal for soybeans nor its proposal for corn provides for locational price differentials among spatially separated delivery points, as section 5a(a)(10) of the Act requires. In addition to tending to reduce deliverable supplies, the lack of locational price differentials reflecting the differentials in the underlying cash markets for corn and soybeans would render the futures contracts susceptible to price manipulation, market congestion, and the abnormal movement of the commodities in interstate commerce.[1]

In addition, the proposed contingency plan providing for alternative delivery procedures when river traffic is obstructed violates the provisions of section 5a(a)(10). By requiring lengthy advance notice of a river obstruction before the contingency plan applies, by limiting the contingency plan only to instances of river obstructions south of the delivery area, and by specifying a differential that does not conform to the differential proposed by the Commission, the proposed plan fails to diminish the potential for price manipulation, market congestion, or the abnormal movement of the commodities in interstate commerce.

Finally, in addition to its likely detrimental effect on the amount of available deliverable supplies on the contracts, the proposed $40 million net worth eligibility requirement for issuers of shipping certificates poses a significant, unnecessary, and unjustified barrier to entry to those wishing to participate as issuers of shipping certificates on the contracts in violation of section 15 of the Act. This proposed $40 million net worth requirement is in addition to other minimum financial requirements that shipping certificate issuers must meet, including minimum working capital of $2 million, a bond or other financial guarantee equal to the full market value of all outstanding shipping certificates, and a limitation on the value of outstanding certificates an issuer may issue to 25 percent of the issuer's net worth. These requirements are fully adequate to ensure the financial ability of issuers to perform their responsibilities under the contracts. The burden imposed by the additional $40 million net worth requirement on those otherwise eligible to participate in the contract as shipping certificate issuers would not only be unnecessary, but would act as a significant barrier to participation as an issuer and would preserve a high level of concentration among issuers.

Accordingly, as provided under section 5a(a)(10) of the Act, the Commission hereby notifies the CBT that it will have an opportunity to be heard on this proposed Order by the Commission. To that end, the Commission will convene a public hearing at its Washington, D.C., office, on October 15, 1997, beginning at 1:00 p.m. (or at an earlier date if the CBT requests), in order to provide the CBT with an opportunity to appear before the Commission to make an oral presentation regarding the matters raised in this proposed Order. The Commission will also accept written comments from the CBT on the proposed Order on or before the date of the hearing.

The Commission's conclusions, as discussed in greater detail below, are supported by factual analyses made by the CFTC staff and by a large number of well-informed written comments submitted to the Commission by commercial users of the corn and soybean futures contracts and by other interested persons. The Commission also analyzed the documentary evidence submitted by the CBT and other commenters in support of the CBT proposal. In addition, the CBT and other interested members of the public presented oral and written comments to the Commission during an open meeting of the Commission. Written and oral comments received were reviewed by the Commission and were considered by the Commission in arriving at its conclusions.

I. The Section 5a(a)(10) Proceeding

The Commission, by letter dated December 19, 1996, commenced this proceeding by issuing to the CBT a notification under section 5a(a)(10) of the Act finding that the delivery specifications of its corn and soybean futures contracts no longer accomplish the statutory objectives of ''permit[ting] the delivery of any commodity * * * at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce.'' Letter of December 19, 1996, to Patrick Arbor from the Commission, 61 FR 67998 (December 26, 1996) (section 5a(a)(10) notification). The section 5a(a)(10) notification detailed long-term trends in the storage, transportation and processing of corn and soybeans, related those trends to changes in cash market conditions at the CBT delivery locations, and analyzed the lack of consistency between the cash market for these commodities and the delivery provisions of these contracts. *Id.*, 68000–68004.

The section 5a(a)(10) notification also recounted the CBT's failure over the last 25 years adequately to address these structural problems with the contracts. As noted in the section 5a(a)(10) notification, section 5a(a)(10) was itself expressly added to the Act in 1974 after a number of apparent manipulations and problem liquidations involving the CBT grain contracts. *Id.* 68005. In July 1989 an emergency action was required relating to CBT's soybean contract because of a commercial trader's holding of futures positions which exceeded the total amount of soybeans that could be delivered at the contract's delivery points. By 1991 several major

[1] The lack of locational price differentials not only violates section 5a(a)(10) of the Act, but also is contrary to Commission Guideline No. 1 and the Commission's policy on differentials. *See*, CFTC Guideline No. 1, 17 CFR part 5, appendix A; and Memorandum from Mark Powers, Chief Economist to the Commission, dated March 22, 1977, (1977), adopted by the Commission at its meeting of May 3, 1977.

studies had been completed demonstrating the inadequacy of the CBT's delivery points. Nevertheless, the CBT's response to these problems was limited. *Id.* 68006. As the Commission noted in the section 5a(a)(10) notification, when in 1992 it approved certain changes proposed by the CBT to address these problems, the Commission cautioned that the CBT's response was merely a short-term palliative, and the Commission urged the CBT to consider actively more significant contract changes. *Id.* 68007.

Only three years later, three of the existing six Chicago warehouses regular for delivery ceased operations, a symptom of the serious, fundamental problems with the contracts' delivery specifications. At the urging of the Commission, the CBT formed a special task force to address the delivery problems. That task force took a year developing proposed changes to the contracts' specifications which were modified by the CBT's board of directors. The modified proposal was then defeated by a vote of the CBT membership on October 17, 1996.

Subsequently, on December 19, 1996, after an additional Chicago delivery warehouse stopped accepting soybeans and corn in late October 1996, the Commission formally commenced this proceeding under section 5a(a)(10) of the Act. The section 5a(a)(10) notification found that the CBT corn and soybean futures contracts no longer met the requirements of that section of the Act and notified the CBT that it had until March 4, 1997, the statutory period of 75 days, to submit for Commission approval proposed amendments to the contracts' delivery specifications to bring them into compliance with the Act. Neither the CBT nor the nearly 700 comments filed with the Commission regarding the CBT proposal have challenged the factual basis for the December notification, and indeed, both the CBT and many commenters have acknowledged the correctness of that Commission action.

The CBT, on April 16, 1997, submitted its response to the section 5a(a)(10) notification in the form of proposed exchange rule amendments.[2] Previously, the Commission had published the substance of the proposed amendments in the **Federal Register** for a 15-day comment period.[3] 62 FR 12156 (March 14, 1997). In response to requests for additional time to comment on the proposal, the Commission on April 24, 1997, extended the comment period until June 16, 1997. 62 FR 1992.[4]

The CBT requested the opportunity to appear before the Commission ''to address issues that have been generated during the comment period.''[5] The Commission granted the CBT's request (62 FR 29107 (May 29, 1997)), holding a public meeting on June 12, 1997, to accept oral and written statements by the CBT and interested members of the public. The participants represented a cross-section of views, both favoring and opposing the CBT proposal.[6]

II. The CBT Proposal Responding to the Section 5a(a)(10) Notification

In correspondence dated April 16, 1997, the CBT responded to the section 5a(a)(10) notification by submitting proposed amendments to the terms and conditions of its corn and soybean futures contracts for Commission review. The data submitted by the CBT to justify its proposal were inadequate to permit a determination of whether the proposal met the requirements of section 5a(a)(10) of the Act and contained certain flaws.[7] Therefore, the Commission was required independently to collect and to analyze the data necessary for a proper analysis of the CBT's proposal. The CBT supplemented its original submission on more than one occasion—most recently on August 25, 1997.

The CBT's proposal would replace the existing delivery system involving delivery of warehouse receipts representing stocks of grain in store at terminal elevators in Chicago, Toledo, and St. Louis with delivery of shipping certificates.[8] The shipping certificates would provide for corn or soybeans to be loaded into a barge at a shipping station located along a 153-mile segment of the Illinois River from Chicago (including Burns Harbor, Indiana) to Pekin, Illinois. Delivery in Chicago would also be permitted by rail or vessel. Delivery at all eligible locations would be at par. (See map below.)

In addition to being located along the defined segment of the Illinois River

---

[2] While the CBT labeled its submission of the proposed rule amendments as having been made pursuant to section 5a(a)(12), as well as section 5a(a)(10), of the Act, the Commission is applying its specific authority and procedures set forth in section 5a(a)(10) with regard to its consideration of the CBT's submission.

Section 5a(a)(12) of the Act provides that ''the Commission shall disapprove after appropriate notice and opportunity for hearing any such rule which the Commission determines at any time to be in violation of the provisions of this Act or the regulations of the Commission.'' In addition, section 8a(7) of the Act empowers the Commission to alter or to supplement exchange rules as necessary or appropriate ''to insure fair dealing in commodities traded for future delivery on such contract market.'' Such changes or alterations may address contract terms or conditions, among other matters.

The Commission is exercising its authority under section 5a(a)(10) of the Act to change and to supplement the CBT proposals. Nevertheless, the Commission, for the reasons detailed below, necessarily also finds that the CBT proposal must be disapproved under section 5a(a)(12) of the Act as being inconsistent with the requirements of sections 5a(a)(10), 8a(7) and 15 of the Act and must be altered and supplemented under section 8a(7) of the Act.

[3] On March 4, 1997, the CBT had notified the Commission that its Board had authorized the submission of the proposed amendments to the CBT membership for a formal vote. On April 15, 1997, the CBT membership voted in favor of the proposed amendments, and the CBT formally submitted them for Commission review the next day.

[4] Also on April 24, 1997, the CBT informed the Commission by letter that it would the next day list, or relist, for trading the July and December 1999 corn futures contract months and the July and November 1999 soybean futures contract months. By letter dated May 2, 1997, the Commission notified the CBT that the listing or relisting of these contract months ''is not legally authorized at the present time,'' that the Commission ''reserves all of its authority under sections 5a(a)(10), 5a(a)(12) and 8a(7) of the Act to approve, disapprove, supplement, or modify the proposed delivery specifications of the CBT corn and soybeans futures contract and to apply that determination to the[se] * * * trading months,'' and that the CBT ''must notify all market participants that the Commission has not approved the listing of these contract months.''

[5] The Commission received close to 700 comments on the CBT's proposal, the largest number of comments ever received by the Commission on any issue before it. The vast majority of the comments were opposed to the CBT proposal for a variety of reasons. Many of the comments were well reasoned and contained valuable factual information and data which were important supplements to the information provided by the CBT in its submission.

[6] Both written and oral statements in connection with the meeting were submitted to the Commission for inclusion in the record and, along with a transcription of the meeting, have been entered into the Commission's comment file. Participants included a United States Senator from the State of Ohio (transcript at 69–75) and United States Representatives from the States of Michigan (transcript at 9–14) and Ohio (transcript at 14–26); representatives of six commercial users of the contracts (transcript at 116–168); and representatives of three producer associations (transcript at 169–183). The CBT presented its views through the statements of six persons (transcript at 27–29, 36–69).

[7] In this regard, the Act, Guideline No. 1, and Commission rule 1.41 provide that the Exchange must demonstrate that its proposed rule amendments meet the requirements of the law. When exchange submissions fail to provide sufficient information to permit the Commission to make a determination, the Commission can refuse to consider a proposed amendment and can remit the proposed rule for further justification. *See,* 17 CFR 1.41(b). However, in this case the Commission chose to supplement the CBT submission with its own research and to act on the CBT proposal.

[8] A shipping certificate is a negotiable instrument that represents a commitment by the issuer to deliver (i.e., load into a barge) corn or soybeans to the certificate holder, pursuant to terms specified by the CBT, whenever the holder decides to surrender the certificate to the issuer. Unlike an issuer of a corn or soybean warehouse receipt, which must have the product in storage to back the receipt, an issuer of a shipping certificate would be able to honor its delivery obligation not only from inventories, but also from anticipated receipts or purchases of corn or soybeans after the holder surrenders the certificate.

and capable of loading barges, firms eligible to issue shipping certificates would be required to meet a minimum net worth standard of $40 million. This minimum net worth standard is not applicable to the CBT's other agricultural futures contracts and would be in addition to the CBT's existing requirement of $2 million working capital required of firms regular for delivery of all agricultural products. The proposal also would require the issuer to have a letter of credit or other guaranteed credit instrument collateralizing the full market value of the issued certificates and would establish limits on the amount of outstanding shipping certificates by firm.[9] In addition, the proposal would impose requirements regarding an issuer's rate of loading barges.[10] Once a shipping certificate has been surrendered to the issuer, the issuer would have to begin loading product within three business days of surrender and receipt of loading orders or one business day after placement of the certificate holder's barge, whichever is later. This loading would be required to take precedence over all other barge loadings for eight hours per day at the issuer's loading facility.

Shipping certificate holders would be required to pay shipping certificate issuers a daily premium charge until the certificate is surrendered.[11] The last trading day for expiring corn and soybean futures months would be the business day preceding the 15th calendar day of the delivery month, with all deliveries of shipping certificates required to be completed by the second business day following the last trading day. Currently, the last trading day is the eighth-to-last business day of the delivery month, with futures delivery of warehouse receipts continuing through the end of the month.

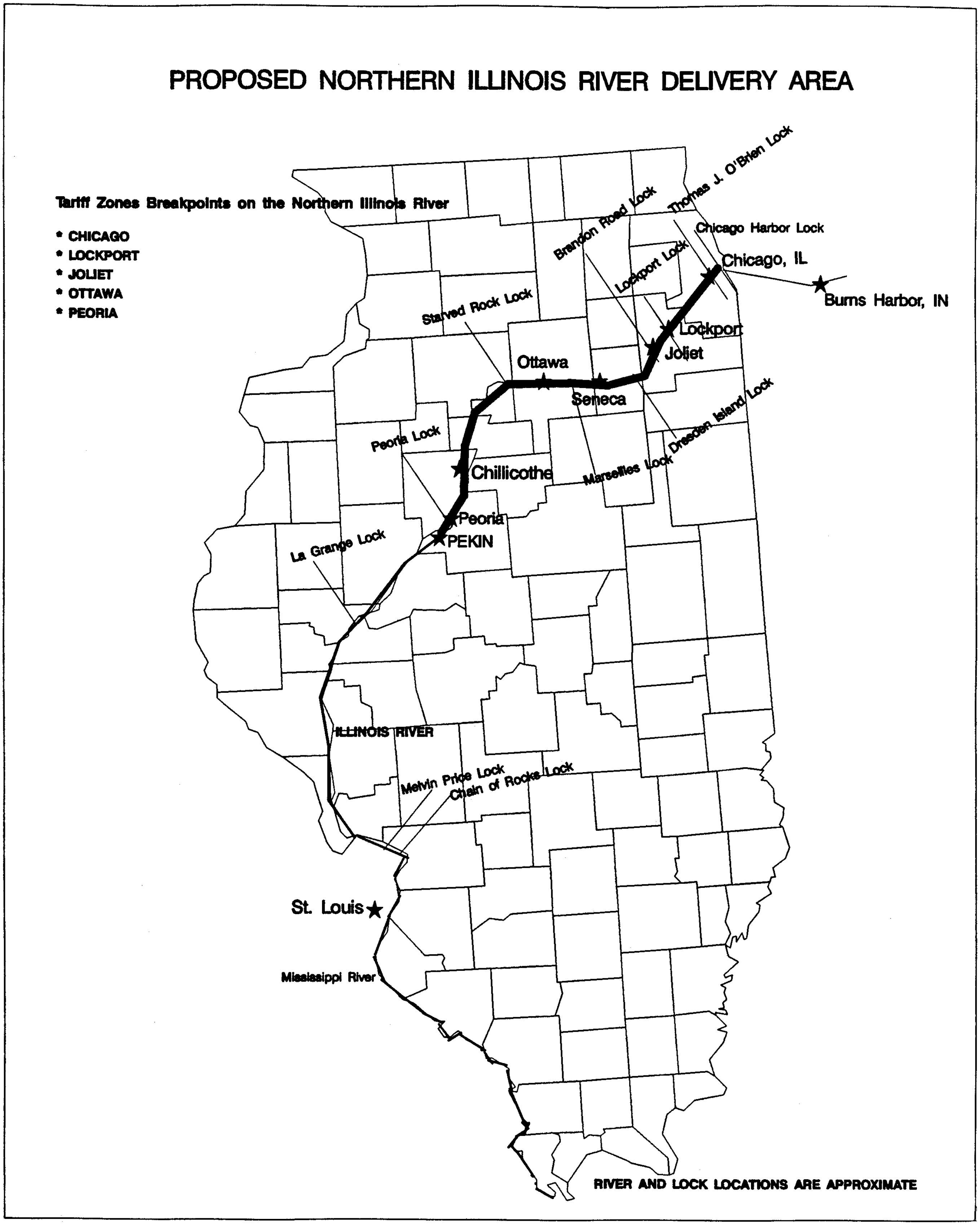
The CBT's proposal would eliminate the current delivery points on its corn and soybean futures contracts at Toledo, Ohio, and St. Louis, Missouri.

BILLING CODE 6351–01–P

[9] These limitations are: (a) for northern Illinois River locations, 30 times the registered daily barge loading rate; (b) a value no greater than 25% of the operator's net worth; and (c) for Chicago and Burns Harbor locations only, the registered storage capacity of the facility.

[10] The issuer's registered daily rate of loading shall be not less than (a) for northern Illinois River locations, one barge per day per shipping station and (b) for Chicago and Burns Harbor locations only, three barges per day per shipping station.

[11] This charge is 12/100 of one cent per bushel for Chicago and 10/100 of one cent per bushel for issuers along the northern Illinois River.



BILLING CODE 6351–01–C

III. Deliverable Supplies of Soybeans Are Inadequate Under Section 5a(a)(10)

A. The Standard for Measuring Adequacy of Deliverable Supplies

Pursuant to section 5a(a)(10), the Commission must assess whether the CBT proposal meets the standard set by that section to ''permit the delivery * * * at such point or points and at such * * * locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce.''

One criterion for whether a delivery proposal meets the standards of section 5a(a)(10) is whether the available deliverable supplies of the commodity at the delivery points specified are adequate to prevent manipulation, market congestion, and the abnormal movement of the commodity in interstate commerce. As discussed below, other aspects of a proposed futures contract may violate section 5a(a)(10) by tending to cause the prohibited results, but adequate deliverable supplies are a *sine qua non* for any contract under section 5a(a)(10).

The Commission believes that, to meet the statutory requirement of tending to prevent manipulation, market congestion, or the abnormal movement of a commodity in interstate commerce, a futures contract should have a deliverable supply that, for all delivery months on the contract, is sufficiently large and available to market participants that futures deliveries, or the credible threat thereof, can assure an appropriate convergence of cash and futures prices. To prevent unwarranted distortion of futures prices in relation to the cash market, the futures contract's delivery terms must reflect a product—in quality, form, location, mode of transportation, etc.—that is readily saleable in the cash market.

Commission Guideline No. 1 (17 CFR part 5, appendix A) provides some guidance with respect to the adequacy of the delivery terms of a futures contract. Guideline No. 1 requires that exchanges provide justification concerning significant contract terms—particularly delivery provisions—for new or amended futures contracts. This justification should provide evidence that the proposed contract terms and conditions are in conformity with practices in the underlying cash market, that those terms and conditions will provide for a deliverable supply that will not be conducive to price manipulation or distortion, and that such a supply reasonably can be expected to be available to the short trader and saleable by the long trader at its market value in normal cash market channels.

Judging the adequacy of deliverable supply in the context of a section 5a(a)(10) proceeding is more important than and significantly different from determining adequacy in the routine review of applications for new contract market designations. This section 5a(a)(10) proceeding involves contracts that are known to have very large and well-established markets, a history of large trader positions, and a decades-long history of surveillance problems. Indeed, the Commission has already made an affirmative and unchallenged finding that the delivery provisions of the current contracts violate the terms of section 5a(a)(10) of the Act, and the issue before it is whether the CBT's proposal goes far enough to cure the illegality of the contracts.

To determine an appropriate standard for measuring the adequacy of deliverable supplies under the CBT proposal, the Commission has examined separately for corn and soybeans the relationship between the level of deliverable stocks and the presence of a price premium for the expiring futures month over the next futures month (a price inverse). The presence of such a premium is an indication of tight deliverable supplies, potentially creating a price distortion. In situations where limited deliverable supplies lead to such a price inverse, futures contracts are significantly vulnerable to price manipulation, market congestion, and the abnormal movement of the commodity in interstate commerce under the terms of section 5a(a)(10).

For soybeans, the Commission's staff analysis demonstrated a consistent positive relationship between price inverses and deliverable stocks of less than 12 million bushels (2,400 contracts). Price inversions occurred in ten of the 15 expirations when deliverable stocks were less than 12 million bushels. This level of deliverable stocks constitutes four times the speculative position limit for the contract (2,400 contracts), a benchmark historically used by the Commission's staff in analyzing deliverable supplies for new contracts.[12]

The analysis for the corn market found a comparable relationship between price inverses and deliverable supplies at the stock level of 15 million bushels (3,000 contracts). Price inverses occurred in seven of the ten corn expirations when deliverable stocks were less than 3,000 contracts.[13] This analysis supports using as a measure of an inadequate level of deliverable supplies under section 5a(a)(10) a level below 12 million bushels (2,400 contracts) for soybeans and below 15 million bushels (3,000 contracts) for corn.

However, the history of these contracts may demonstrate that a higher level of supplies is, in fact, necessary to protect against manipulation. In particular, an additional measure would be based on historic experience with manipulation and price distortion in these contracts. During the July 1989 soybean expiration, the Commission exercised its surveillance powers to force the reduction of the long futures position of the Ferruzzi group of companies, and the CBT declared a market emergency and ordered the phased reduction of all positions above a specified size. Both the Commission and the CBT believed that the position of the Ferruzzi group posed a significant threat of manipulation and acted on that belief.[14] Just prior to the CBT emergency action, Ferruzzi's long position in the July 1989 soybean future was about 20 million bushels (4,000 contracts). To avoid a repetition of such a situation, deliverable supplies of at least 4,000 contracts would be necessary.

In its analysis of the adequacy of the deliverable supplies under the CBT proposal, the Commission has considered both of these measures, as well as other relevant information.

B. The CBT Submission Does Not Demonstrate That Its Proposal Meets the Statutory Standard of Adequate Deliverable Supplies

The CBT has failed to provide data that demonstrates the adequacy of available deliverable supplies. It supports its proposal by general statements about production and transactions in the cash markets in the vicinity of the delivery area, contending, for example, that its proposed delivery area

[12] The size of the largest long position in an expiring futures contract was also found to be associated with price inverses when deliverable stocks were less than 2,400 contracts. Of the five expirations in which the largest long position was 600 contracts or less, price inverses occurred only once. However, for the ten expirations in which the largest long position exceeded 600 contracts, inversions occurred nine times. At higher stock levels—that is, above the 2,400-contract level for soybeans—that relationship between position size and price inverses was not observed.

[13] In all seven expirations the largest long position exceeded 600 contracts.

[14] Although this incident involved soybean futures, it was recognized to have broader implications for CBT's grain contracts and led to an appraisal of the adequacy of the CBT's delivery terms generally for its wheat, corn, and soybean futures and to revisions to all three contracts.

* * * is located along more than 150 miles of the northern Illinois River, which is one of the world's largest and most active cash grain markets, handling over 500 million bushels of corn and soybeans per year. It substantially increases the supply of grain eligible for delivery on our futures contracts over the current delivery system, thereby minimizing the potential for price distortions and manipulation.

CBT July 1, 1997, submission, p. 2–2.

Data concerning corn and soybean production and handling in the areas near the delivery points are not an adequate measure of deliverable supplies under the contracts in light of the CBT proposal's heavy reliance on barge delivery along the northern Illinois River which involves product primarily destined for the export market. Most production and handling of corn and soybeans in the vicinity of the delivery points historically have involved product destined for the domestic market, and only a portion of that product has traditionally been loaded on barges as provided in the CBT proposal. Therefore, the proper measure of available supplies must be based on barge shipment data. To rely on additional supplies currently destined for the domestic market would be to assume that the futures contract would divert those supplies to the export market, thus causing an abnormal movement in interstate commerce forbidden by section 5a(a)(10).

The CBT argues that the supplies available for delivery along the northern Illinois River are adequate by citing the delivery capacity of firms along the river. The CBT states that there are seven firms with a cumulative daily barge loading capacity of 5.5 million bushels of grain and a 30-day loading capacity of 171.8 million bushels of grain.[15] (CBT April 16, 1997, submission at attachment 4.)

The CBT's reliance on the loading capacity of firms in the delivery area as an indicator of adequacy of deliverable supply is misplaced. As the unused delivery capacity in Chicago clearly demonstrates, delivery capacity bears little relation to the amount of deliverable supplies actually available at a particular location. The CBT's capacity measure, which is based on its proposed maximum limits on the shipping station's ability to issue shipping certificates (30 times a station's daily (8-hour) loading capacity), far exceeds the highest observed level of actual combined monthly corn and soybean barge shipments at the delivery points during the 11-year period studied, 1986 through 1996.

Moreover, the CBT overstated the loading capacity related to the contracts by including the capacity of three firms that would not meet contract requirements, particularly the $40 million net worth requirement, to qualify as shipping certificate issuers under the contracts. In doing so, it also significantly understated the level of concentration of the proposed delivery system and ignored the exclusionary effect of its $40 million net worth requirement.

The CBT, in its submission, also provided inflated data on barge shipments. These data significantly overstated the amount of barge shipments by including shipments from a certain part of the Illinois River outside of the defined delivery area of the contracts. CBT's data also included barge shipments by all shippers, including those not meeting the eligibility requirements to be issuers of certificates under the contracts and thus overstated the deliverable amounts available in that respect as well.

C. The CBT Proposal Fails to Meet the Minimum Threshold for Deliverable Supply for Soybeans

1. Methodology. The Commission staff compiled an extensive amount of data from which the Commission could estimate deliverable supplies. These data were assembled from information supplied by the United States Department of Agriculture (USDA), the Army Corps of Engineers, the Coast Guard, grain merchants, and the CBT.

The CBT proposal provides for delivery from Chicago by rail, vessel, and barge and along the northern Illinois River by barge. The contracts are essentially reflections of the export market for corn and soybeans, since the vast majority of corn and soybeans loaded on vessels and barges at Chicago and on barges along the northern Illinois River are destined for export markets. While Chicago rail shipments may play some role in the domestic market, that role has diminished so as to be very small.

The northern Illinois River's potentially available deliverable stocks for each delivery month were estimated by summing barge shipments from relevant points on the northern Illinois River for that month and all subsequent months of the same crop year to and including September, which was assumed to be the end of the crop year.[16] Since the amount shipped during a given month and in each succeeding month of the crop year must have been in transit or in storage in some location tributary to the river at the beginning of the month, this summing procedure provides an estimate of the corn and soybean stocks available to the proposed delivery points at the beginning of each delivery month.[17]

Because these stocks reflect the quantity of soybeans and corn actually shipped via the northern Illinois River, they represent a reasonable and accurate historical estimate of the quantity of these commodities that were economically available to the proposed northern Illinois River delivery points at prevailing cash market price relationships. While other supplies of corn and soybeans are in the vicinity, they historically moved to other demand centers rather than for delivery into the export market by barge shipments. If the CBT contracts under the proposed delivery terms were to draw these supplies from their usual destinations in the domestic market to futures deliveries, an abnormal movement in interstate commerce would occur. Therefore, such other supplies should not be considered in determining the adequacy of potentially available deliverable supplies.

---

[15] According to the CBT, the firms and their percentage share of loading capacity are: Archer Daniels Midland Co., 41 percent; Continental Grain Company, 23 percent; Cargill, Inc., 12 percent; Consolidated Grain and Barge, ten percent; Sours Grain Company, six percent; American Milling Company, six percent; and Garvey International, two percent. (CBT April 16, 1997, submission, attachment 14.)

[16] Corn and soybeans are both harvested beginning in September or October, the beginning of a new crop year. All deliveries of corn and soybeans throughout the year subsequent to harvest are made from stored supplies. These supplies are consumed over time, reaching their lowest level over the summer until the next harvest replenishes the supply.

[17] To account for the fact that a portion of the corn and soybeans shipped during September may include some new crop supplies that are not available earlier in the crop year, the estimated northern Illinois River deliverable stocks for delivery months preceding September were reduced in certain years to reflect the likelihood that part of the September shipments consisted of new crop supplies. The indicated reductions were made only in years where available USDA data on harvesting progress for crop-reporting districts in northern/central Illinois and Illinois production data by county indicated that significant quantities of corn and soybeans had been harvested in September. Deliverable supplies for all months of a given crop year prior to September were reduced by an amount equal to 50 percent of the September shipments (an amount suggested by trade sources) whenever the quantity of new crop supplies available in September in those counties within 25 miles of the proposed northern Illinois River and Chicago delivery area exceeded the quantity shipped during the month. The use of new crop supplies from counties within 25 miles of the revised delivery points was based on the assumption that most new crop supplies available early in the harvest period are likely to be moved to the delivery points by trucks moving relatively short distances from farms to avoid creating unnecessary delays in harvesting. In addition, trade sources indicated that most supplies that move to the proposed northern Illinois River delivery points are trucked from locations within 25 miles of these points.

For Chicago, potentially available deliverable supplies were estimated as the sum of stocks available at the beginning of each delivery month plus receipts of corn or soybeans during that month. Receipts were included because shipping certificates do not require the commodity to be in store at the delivery point. Thus, Chicago warehouse operators potentially could issue shipping certificates against stocks in store at the beginning of a delivery month and against actual and/or anticipated receipts of corn or soybeans as well.

These potentially available deliverable supply estimates were adjusted to reflect the effect of the proposed financial requirements on the number of firms that would be eligible to make delivery and, for Chicago, the proposed limits on the number of shipping certificates that could be issued by those firms. The proposal restricts eligibility of issuers of shipping certificates to firms meeting a $40 million net worth requirement. This eligibility requirement would eliminate barge shipments made by ineligible firms and likely would reduce deliverable supplies originating from the proposed northern Illinois River delivery area by an average of about five percent. However, it is possible that a portion of the supplies that normally are shipped by the three firms not meeting that eligibility requirement—although by no means all those supplies—would be made available for futures delivery by diversion of the supplies to the four eligible firms. Accordingly, the Commission calculated two separate estimates of potentially available deliverable supplies: one excluding shipments made by firms not eligible to issue shipping certificates on the contract and the second including such ineligible firms' shipments.

Another adjustment was made to reflect current capacity restraints. Because of the recent closure of four of the six elevators in Chicago, prior years' data for Chicago were adjusted to reflect current maximum capacity levels in that area.

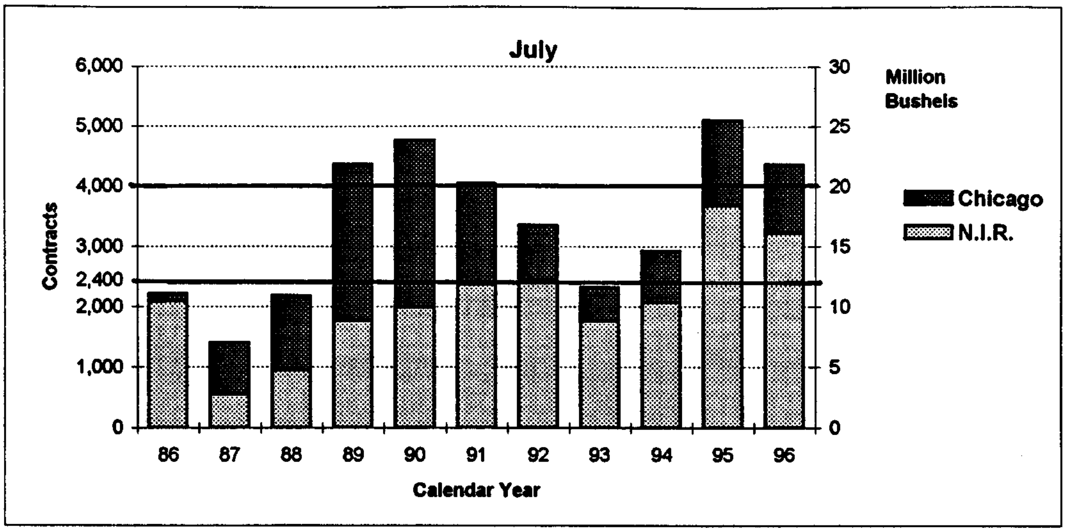
Through this analysis, the Commission arrived at potentially available gross deliverable supplies, discussed below. As is also described in more detail below, those amounts must be reduced because of various additional factors limiting the available deliverable supplies.

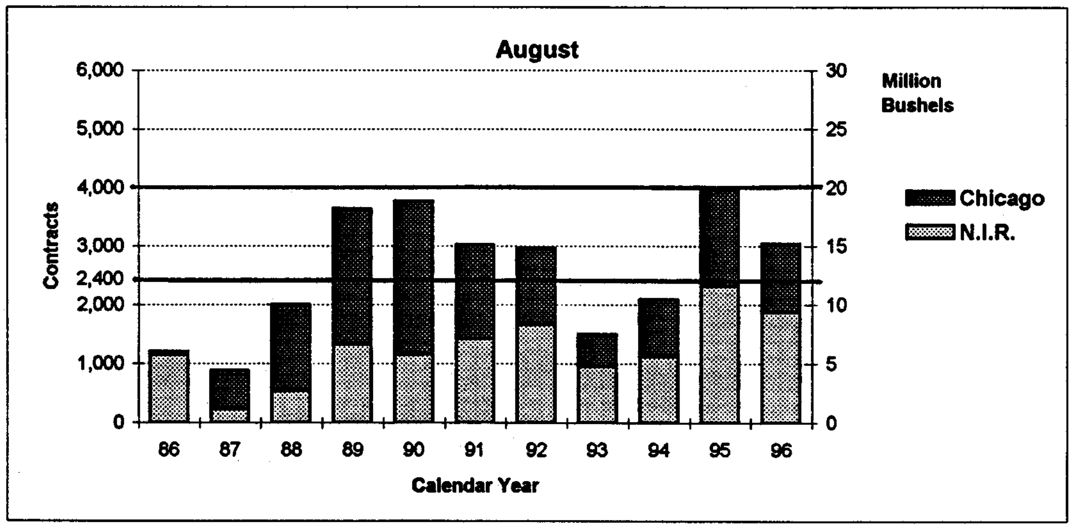
2. Gross Deliverable Soybean Supplies. Delivery months under the CBT proposed soybean futures contract include July, August, and September, months which are at the end of the crop year and which therefore historically reflect the lowest available supplies. As shown in the following charts for soybeans attributable to the four firms which would be eligible to issue shipping certificates, gross deliverable supplies under the CBT proposal (Chicago supplies plus northern Illinois River supplies) for July, August, and September do not meet the minimum level considered by the Commission to be required by section 5a(a)(10) of the Act. Specifically, for July, the total deliverable supply of soybeans was less than the 2,400-contract level in four of the 11 years covered by the analysis, while the 4,000-contract level was not reached in six of the 11 years. For August, gross deliverable soybean supplies for the four eligible firms fell below 2,400 contracts in five years, and the 4,000-contract level was not reached in any of the 11 years. Soybean deliverable supplies for the four eligible firms in September were less than the 2,400-contract level in seven of the 11 years and did not reach the 4,000-contract level on any occasion.[18] As demonstrated in the following charts, Chicago supplies played a critically important role in almost all instances in which the 2,400-contract level was reached or exceeded.

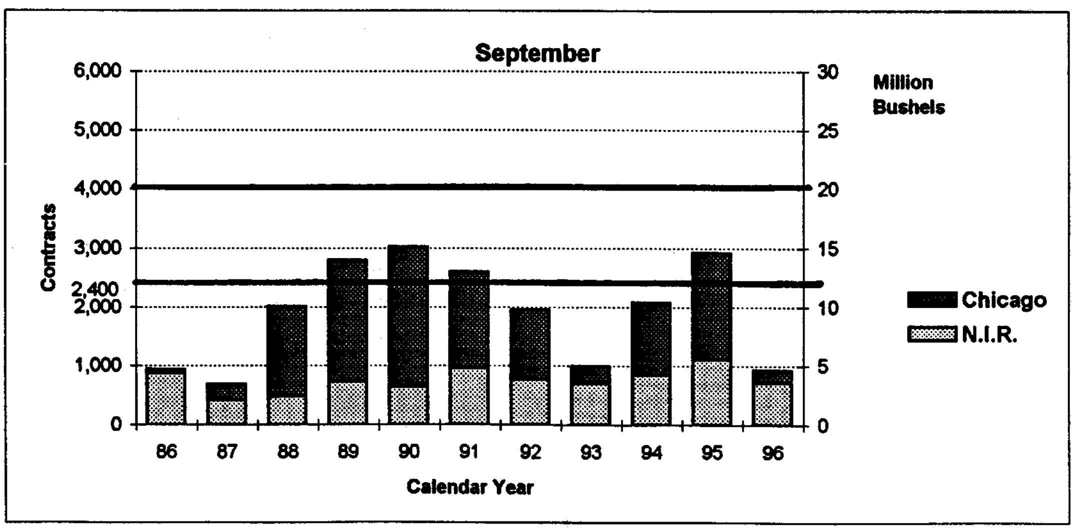
BILLING CODE 6351–01–P

[18] As shown in the charts for shipments by all firms, including those firms that would be ineligible to issue certificates under the CBT proposal, the proposal improved marginally in that gross deliverable supplies for all firms were less than 2,400 contracts in two rather than four years for July.

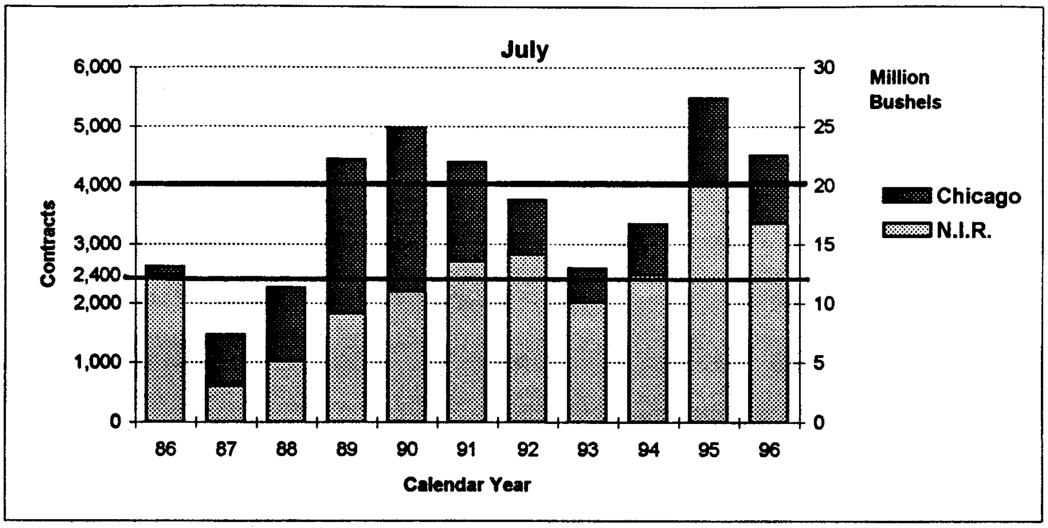
Soybeans -- Gross Deliverable Supplies for July, August and September for the Eligible Four Firms

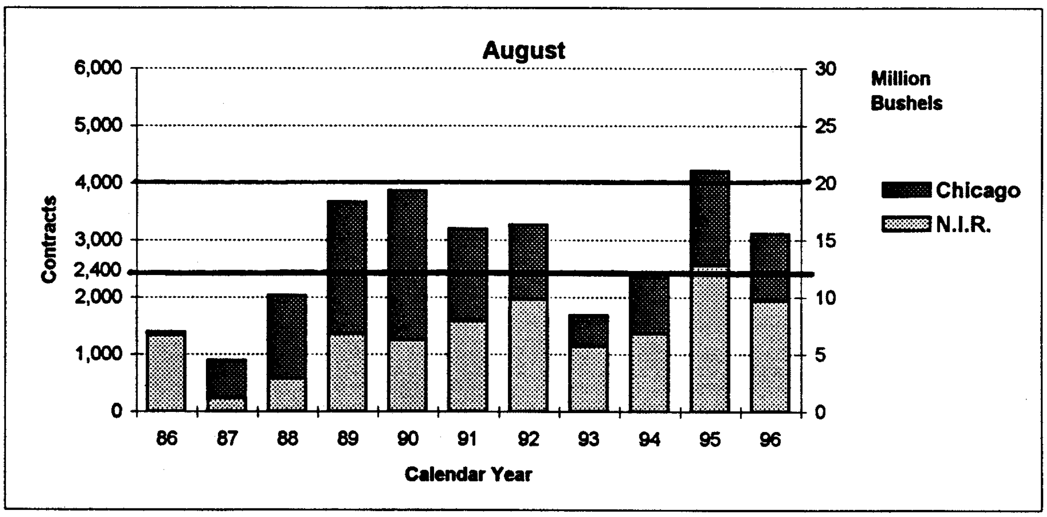


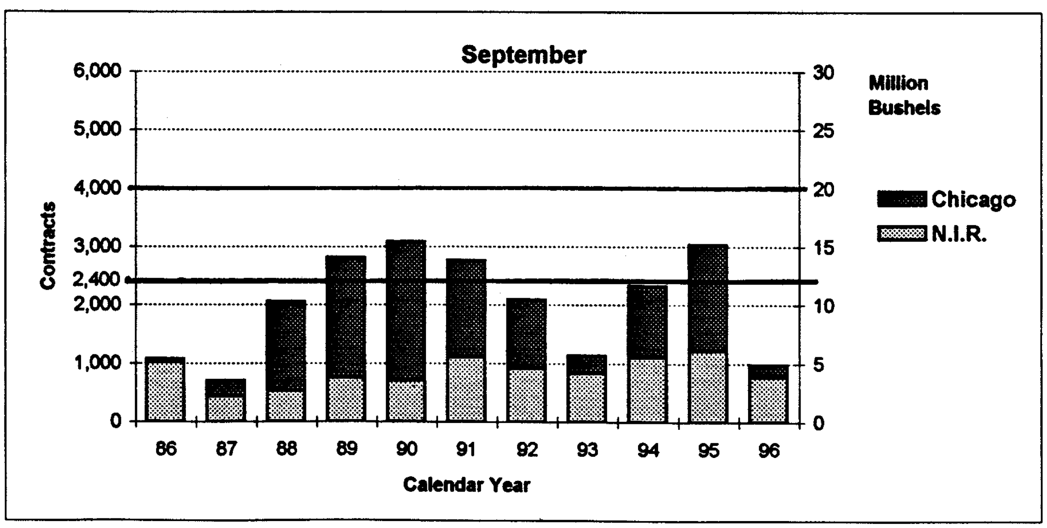




Soybeans -- Gross Deliverable Supplies for July, August and September for All Firms



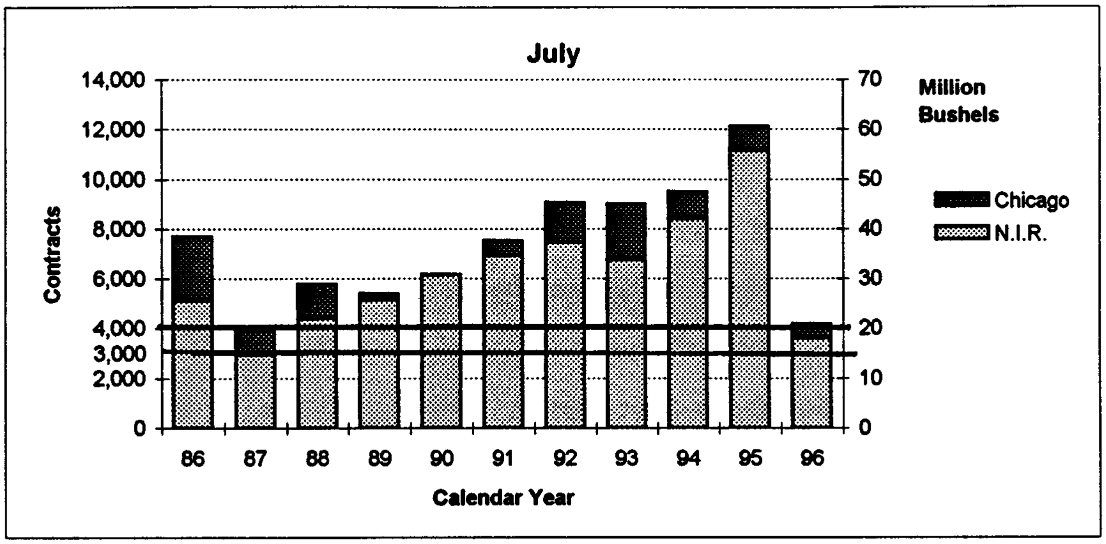


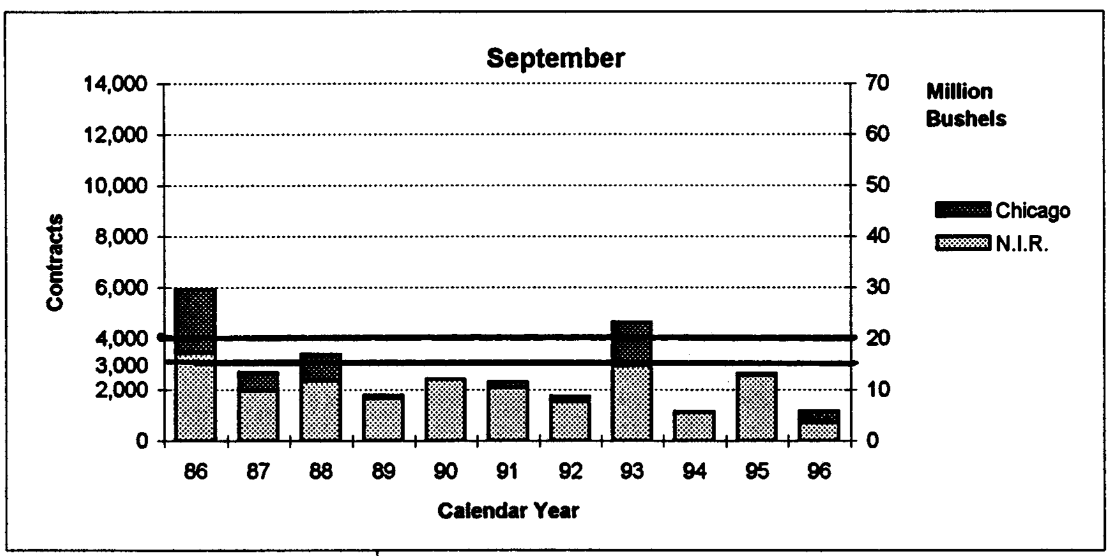


BILLING CODE 6351–01–C

3. Gross Deliverable Corn Supplies. The CBT proposed corn contract would include the contract months of July and September, *inter alia*.[19] In the case of corn, the estimated gross deliverable supplies for July attributable to the four eligible firms reached or exceeded the 3,000-contract levels in all years and the 4,000-contract level in all years but one. However, gross deliverable supplies of corn for the four eligible firms in September fell below the 3,000-contract level in eight of the 11 years in the period analyzed and were less than 4,000 contracts in nine years. The gross deliverable supply estimates for all existing firms differed only slightly from the results for the four eligible firms.

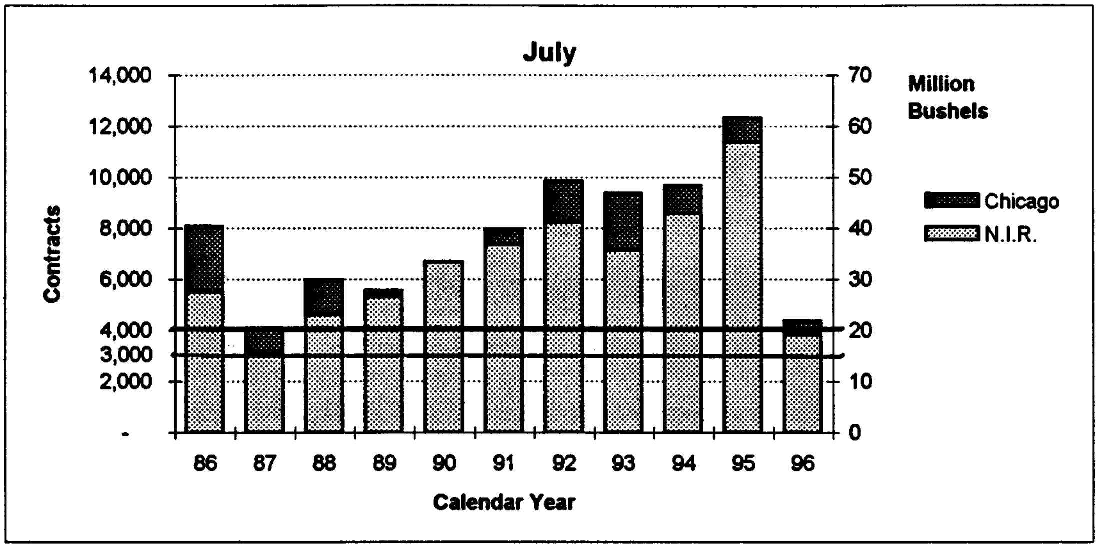
Corn -- Gross Deliverable Supplies for July and September for the Eligible Four Firms

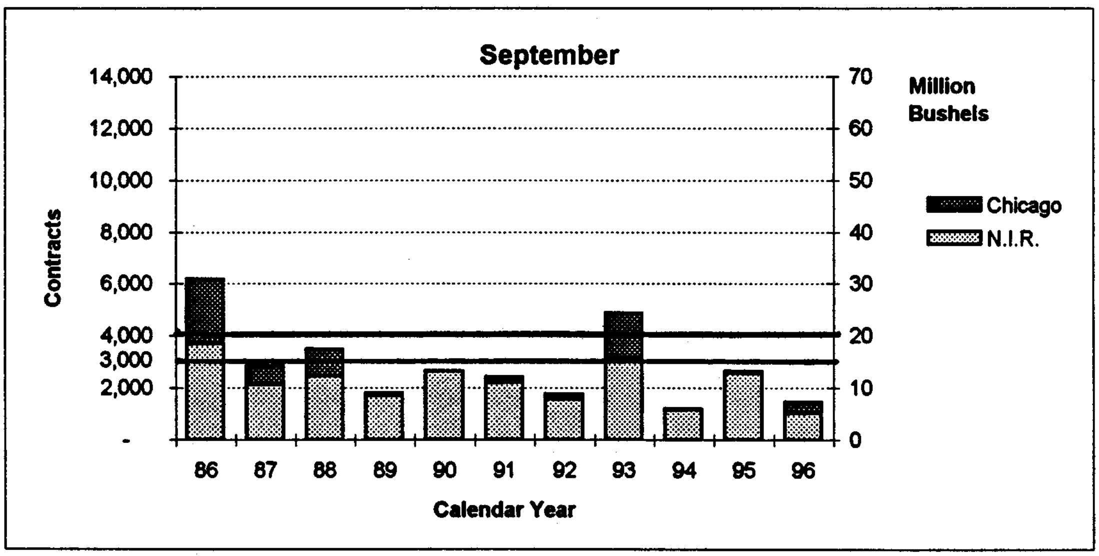




[19] Unlike the soybean futures contract, there is no August contract month listed for corn.

Corn -- Gross Deliverable Supplies for July and September for All Firms





BILLING CODE 6351–01–C

4. September New Crop Production. Although neither corn nor soybeans reached adequate minimum levels of potentially available gross deliverable supplies for September, because September is a transition month between old and new crop, deliverable supply estimates based upon barge shipments data for September may understate actual September deliverable supplies. The harvest of the new crops in corn and soybeans begins in September, and thus, new crop production may be available for delivery on the September contracts. Accordingly, the Commission also calculated estimates of new crop production of corn and soybeans that may have become available during the month of September.

The following table shows estimated September new crop production within 25 miles (trucking distance) of the proposed delivery points for corn and soybeans derived from USDA data. While these stocks might have been available for delivery during September, the extent to which this new crop production has already been included in the September Illinois River shipment data shown above or was already committed to other uses, particularly processing, cannot be ascertained.

A significant amount of corn was produced during September in most years and potentially might augment to some extent the gross deliverable supplies discussed above. However, there were very low levels of September soybean production during at least five of the 11 years analyzed, and even taking September production into account, September soybean supplies fall below a minimum adequate level. Further, September soybean production does not in any way supplement the inadequate gross deliverable supplies of soybeans in July and August.

The likelihood of price manipulation in September may be somewhat lessened because it is a transitional month between old and new crop years. The end of the crop year generally is a period of low supplies and relatively high prices. However, at harvest supplies are replenished, and the arrival of these new crop supplies frequently leads to lower prices. Significant new crop supplies usually become available in areas tributary to the northern Illinois River by mid October. The incentive to manipulate prices of the September futures contracts by attempting to corner the low remaining old crop supplies would be reduced by the potential losses that a manipulator might incur in reselling the shipping certificates or product obtained through September deliveries at lower prices after the arrival of new crop supplies.

Under the CBT proposal, the use of Illinois River shipping certificates rather than Chicago or Toledo warehouse receipts to effect delivery might also permit expanded deliveries of new crop production under the September contract. Rather than requiring movement of new crop supplies into a warehouse at a terminal market before delivery, as is necessary under current warehouse receipt delivery, the CBT proposal allows the issuance of shipping certificates for locations much closer to the production area and for up to 30 days of loading capacity and thus would give issuers more opportunity to deliver new crop production. They may issue shipping certificates on the basis that new crop supplies which are not immediately in hand will be available by the time loading is required under the shipping certificate.

The Commission considers the low levels of gross deliverable supplies of corn in September to be of less regulatory concern than the low levels of soybeans, which extend throughout the three summer months. Not only is the shortage of corn supplies of brief duration, but the fact that abundant supplies of new crop production are expected soon lessens the likelihood that corn shortage in that month would lead to the prohibited effects under section 5a(a)(10).

ESTIMATED CORN AND SOYBEAN PRODUCTION LOCATED NEAR PROPOSED DELIVERY POINTS DURING SEPTEMBER

[5,000-Bushel Contract Units]

Year	Estimated September production	
	Corn	Soybeans
1986	15,219	3,109
1987	26,78	36,056
1988	6,354	2,046
1989	2,013	583
1990	2,686	782
1991	41,663	8,729
1992	1,284	1,356
1993	644	29
1994	2,800	6,471
1995	2,574	487
1996	1,926	46

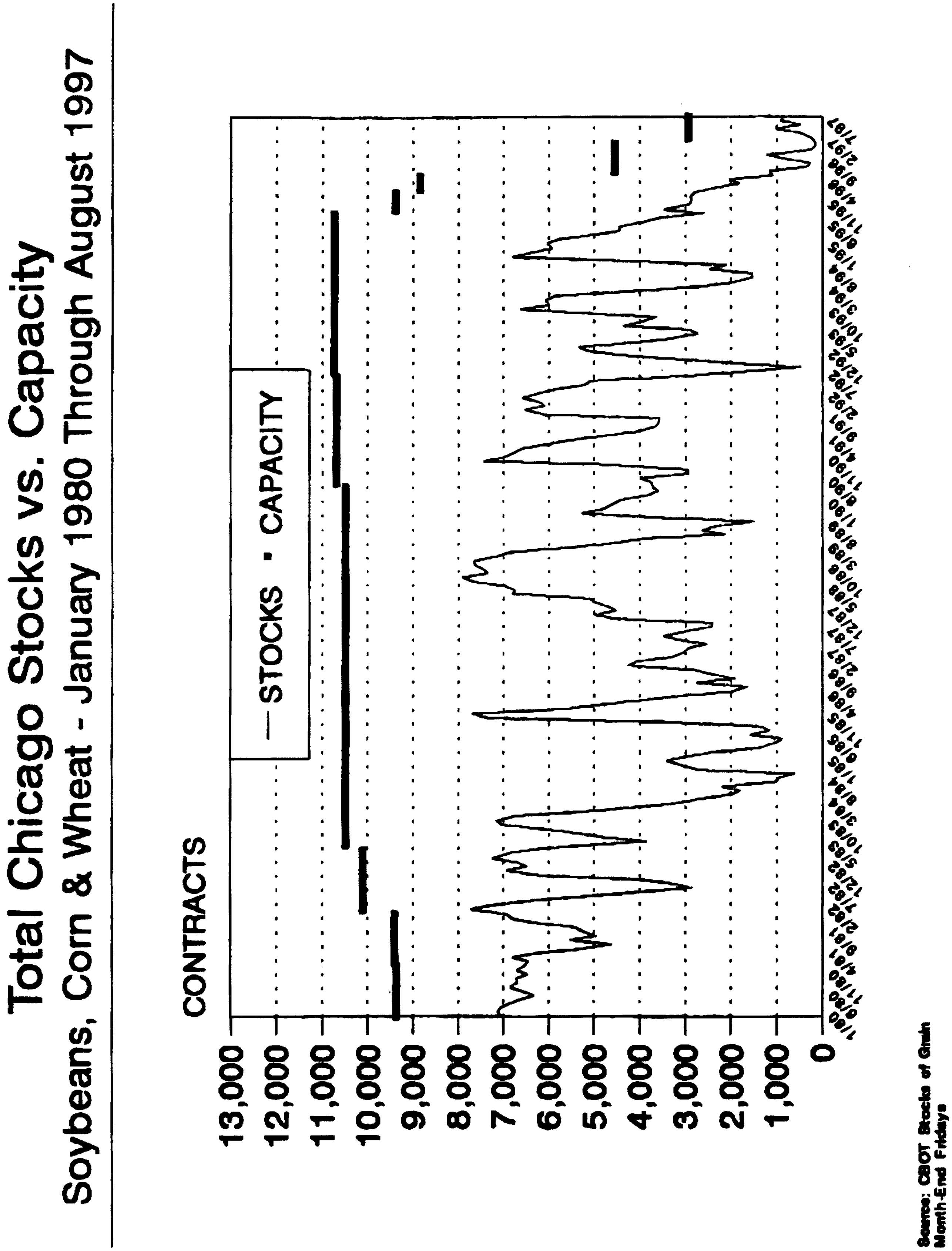
*The estimated production by September 30 of each year was calculated by multiplying USDA harvesting progress estimates for the Illinois and Indiana crop reporting districts that are adjacent to the revised delivery points by USDA production data for counties located within about 25 miles of the proposed delivery points.

5. Reductions From the Gross Deliverable Supplies. Additional factors must be considered which necessarily reduce the above estimates of gross deliverable supplies. These factors include: (a) the reliance on Chicago as a source of deliverable supplies; (b) the three-day barge queuing and priority load-out requirement; and (c) prior commercial commitments of available supplies. In addition, further reductions must be made from gross deliverable supplies resulting from the CBT proposal's lack of locational price differentials, the $40 million net worth requirement for issuers of shipping certificates, and foreseeable disruptions in barge transportation on the Illinois River; these additional factors are analyzed separately in later sections of this proposed Order.

a. Reliance on Chicago. To the extent that gross deliverable supplies of soybeans in some years have been at or above the 2,400- and 4,000-contract levels, they have generally depended on Chicago supplies to do so. For July, deliverable supplies of soybeans originating solely from the northern Illinois River delivery area reached or exceeded the 2,400-contract level in only three of the 11 years. In August and September, soybean deliverable supplies originating from the northern Illinois River alone did not exceed the 2,400-contract level on any occasion. The 4,000-contract level was not exceeded by northern Illinois River deliverable supplies of soybeans in any year in the July, August, or September delivery months. Thus, to the very limited extent that gross deliverable supplies in the past would have reached a minimum level, they would have done so because of the supplies in Chicago.

Cash market activity in Chicago is likely to continue its historical decline. While the estimation procedure for gross deliverable supplies used in this analysis tried to correct for the precipitous decline of Chicago by using 100 percent of the current capacity as a constraint on past supplies, that method certainly overstates the actual deliverable supplies that may originate from that location in the future. Chicago for many years has held stocks well below their maximum capacity levels, particularly in the critical summer months. The following chart demonstrates that underutilization of the remaining capacity in Chicago is continuing, despite the dramatic contraction in available capacity, and is most likely to continue to do so in the future. The likely result is that Chicago supplies will be reduced significantly in the future and would not be available in significant quantities under the CBT proposal.

BILLING CODE 6351–01–P



BILLING CODE 6351–01–C

b. The Three-Day Barge Loading Requirement. The CBT proposal includes a provision requiring a shipping certificate issuer to begin loading grain into the receiver's barges within three business days after it receives loading instructions and the receiver's barges are at the delivery facility ready to load. Most significantly, the issuer would be required to give preference to shipping certificate holders relative to any other customer or proprietary business for eight hours of load-out capacity per day. This requirement is contrary to the current contracts' delivery terms and to cash market practice, where new shippers are accommodated on a first-come, first-served basis. Concerns have been expressed by some commenters that, by requiring issuers to cease loading corn and soybeans in barges for their cash market business in order to meet the requirements of the shipping certificates and by requiring that only limited advance notice would have to be given to issuers, the CBT proposal would discourage potential issuers from issuing shipping certificates for futures delivery.

The CBT, on the other hand, has argued that the impact of the proposed preferential load-out requirement for futures deliveries on an issuer's willingness to issue shipping certificates would be limited because the rules would require the issuer to load out only eight hours per day, leaving the remaining 16 hours of each day to load other barges. CBT's position assumes, without providing supporting data, that labor physically and economically would be available for such a 24-hour day and that additional transportation and grain supplies could quickly be procured and coordinated to move the grain to the waiting barges.

While the effect of the proposed loading requirements on the willingness of issuers to issue shipping certificates for futures delivery is difficult to measure, it represents a significant departure from cash market practice and most likely would reduce the amount of available deliverable supplies.

c. Prior Commercial Commitments of Stocks. An additional factor which would reduce the above estimates of gross deliverable supplies is prior commitment of stocks. Determining deliverable supplies on the basis of shipment information does not make necessary deductions for that amount of the shipments which would be unavailable for futures delivery because they were otherwise committed and because no substitution was possible at an equivalent market price. While a number of commenters indicated that much of the corn and soybeans shipped on the Illinois River is not irrevocably committed, at least up to the point when the grain is loaded into a barge, the ability of firms economically to obtain supplies to meet existing commitments from alternative sources would be limited at times. This situation would be more likely to occur in those periods when supplies are limited, such as during the critical summer months of July, August, and September. The commitment of supplies of corn and soybeans under forward contracts or other marketing arrangements would at times make them unavailable to the futures delivery process until futures prices were significantly distorted relative to cash prices. Thus, it is likely that the actual available deliverable supplies for the futures contracts would be significantly less than indicated by the above gross estimates.

6. Conclusion. In summary, the proposed delivery provisions of the soybean contract clearly fail to meet the statutory requirement for minimum levels of deliverable supplies throughout the summer months of July, August, and September even before the above reductions (plus those discussed below) have been made, and the additional reductions required by these factors would further reduce the available deliverable supplies. For these reasons, price distortions and manipulation, market congestion, and abnormal movements of soybeans in interstate commerce would be likely to occur. Additional delivery points to increase the available deliverable supplies of soybeans, as well as other adjustments to CBT's proposal discussed below, are necessary to achieve the objectives of section 5a(a)(10).

As to the CBT proposal for corn, gross deliverable supplies throughout the year appear to be adequate except for September. While gross deliverable supplies for September do not meet the minimum level, they may be supplemented to some unknown extent by new crop production in September, and the September corn contract would be less likely to be subject to manipulation than other months with similar low levels because of the expectation of abundant supplies of new crop production in the immediate future. While these gross estimates of deliverable supply overstate economic deliverable supplies and must be reduced by the other factors discussed, the degree of reduction cannot be estimated with any certainty. The Commission's proposed action in changing and supplementing the proposed corn contract to add locational differentials, to eliminate the net worth eligibility requirement, and to broaden the contingency plan for river disruptions, discussed below, will have the effect of alleviating some limitations on deliverable supplies of corn under CBT's proposal. Accordingly, based on the record before it, the Commission does not find that the available deliverable corn supplies are inadequate under section 5a(a)(10) such that additional delivery points are necessary. Actual trading experience will reveal whether the level of deliverable supplies meets the requirements of section 5a(a)(10). Accordingly, the Commission directs the CBT to report on the actual delivery and contract expiration experience on an annual basis for the first five years after contract expirations begin under the revised contract terms.

IV. The Lack of Locational Price Differentials Violates Section 5a(a)(10)

Section 5a(a)(10) requires that, where more than one delivery point or commodity grade is specified, a futures contract must specify quality and locational price differentials to the extent necessary to prevent price manipulation, market congestion, or the abnormal movement of the commodity in interstate commerce. Guideline No. 1 and the Commission's policy on price differentials are predicated upon, and give further specificity to, section 5a(a)(10)'s requirements. As discussed above, Guideline No. 1 requires that futures contract terms and conditions provide for a deliverable supply that will not be conducive to price manipulation or distortion and that such a supply reasonably can be expected to be available to the short trader and saleable by the long trader at its market value in normal cash market channels. In addition, the Commission's policy on price differentials requires that, where cash market locational or quality differentials are stable, the futures contract should reflect ''normal commercial price differences as they are represented by cash price differences * * *.'' When cash market price differences are unstable or where the product flow in the cash market is not relevant to the two futures market points, the Commission's policy requires that differentials must be set at levels which fall within the range of values which are commonly observed.

The CBT's failure to specify locational price differentials violates section 5a(a)(10) as well as the requirements of Guideline No. 1 and the Commission's policy on locational price differentials. The cash market on the northern Illinois River clearly reflects a unidirectional flow of corn and soybeans and exhibits significant locational price differences, which have a stable relationship with one another, at the proposed delivery points. The failure of the CBT proposal to provide for locational price differentials reflecting the cash market not only would reduce available deliverable supplies on the contracts, but would result in price distortions and susceptibility to price manipulation, market congestion, and the abnormal movement of corn and soybeans.

Although the CBT describes its delivery system as a simple single delivery area, in fact it is a multiple delivery point system without differentials. This multiple delivery point system is comprised of physically-linked, but spatially-separated points along the northern Illinois River, which are affected by a unidirectional demand from the Gulf market across five different barge freight zones, including Chicago. Chicago may also be affected, at times, by a number of competing cash market demand pulls.

The CBT argues that section 5a(a)(10) is not violated by its proposal's lack of differentials because ''locational differentials for corn and soybeans at par fall well within the expected values of cash market differentials between the delivery points'' and that ''the differences in barge freight costs between locations on the NIR are typically * * * smallest during the summer.'' CBT June 16, 1997 submission, 40. However, this is not the appropriate review standard because the relative value of these commodities among the northern Illinois River delivery points is constant, quite transparent and based on established barge freight differences. Furthermore, even if it were, we find that a lack of price differentials is not commonly observed in the cash market.[20]

Moreover, differences in barge freight costs, while lower during the late spring and early summer months, begin to increase and are quite significant during the critical July and August period.

The value of corn and soybeans loaded into barges generally is greater at barge-loading facilities located down river relative to the value of grain loaded in barges at upriver locations, including Chicago. As indicated above, the CBT proposal essentially would price corn and soybeans when they are loaded on barges along the northern Illinois River destined for the export market centered in New Orleans. The futures contracts would be priced free on board (FOB) barge at the loading facilities.[21] Currently, the cash market for such products prices them at the CIF New Orleans price, which is uniform and widely known.[22] The cost of barge freight to New Orleans included in that price varies based on established barge freight costs that are higher at Chicago and lower as one descends the northern Illinois River and thus is closer to New Orleans. Those freight rates are transparent and widely reported. While they vary to some extent, they are expressed and reported publicly as a varying percentage of the fixed amounts found in the Waterways Freight Bureau Tariff No. 7. By backing out the freight amounts from the CIF price, one can calculate the differences in the value of the commodity FOB various Illinois River points.

During the critical summer months the price differential based on the freight rate between Chicago (the most northerly Illinois River delivery point) and Pekin (the most southerly Illinois River delivery point) has ranged in recent years between 4.1 and 5.3 cents per bushel of corn and between 4.4 and 5.7 cents per bushel of soybeans. These differences are very significant and are sufficient to distort prices, to limit deliverable supplies, and to divert them from one delivery point to another.[23]

Where, as here, a contract requires multiple delivery points in order to yield sufficient deliverable supplies and significant normal commercial price differences exist in the cash market between those locations, section 5a(a)(10) requires that the terms of the futures contract include locational price differentials. The failure to set locational price differentials reflecting normal cash market price differences has the economic effect of excluding the disadvantaged delivery point from being used for delivery. Such an exclusion may result in abnormal movement of the commodity away from the disadvantaged delivery point and to the advantaged delivery point. In order for a disadvantaged delivery point to function, the futures price has to increase above the commodity's underlying cash market value at the disadvantaged delivery point to overcome this built-in penalty. This opens the door to price distortion and price manipulation in the amount of the ''differential penalty.'' Alternatively, market congestion at the advantaged delivery point may result. These are precisely the types of market abuse that section 5a(a)(10) sought to avoid by requiring exchanges to ''permit delivery * * * at such * * * locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce.'' For these reasons, the Commission finds that the lack of locational price differentials violates section 5a(a)(10).

V. The Failure Adequately to Address Foreseeable Interruptions to Deliveries Violates Section 5a(a)(10)

An additional concern regarding the operation of the CBT proposal applicable to both the corn and soybean contracts is its reliance chiefly upon a single mode of transportation to effect delivery—Illinois River barge transportation. A large number of commenters questioned the reliability of barge transportation on the Illinois River from the standpoint of assuring that takers of futures delivery would be able to receive and to transport their grain promptly in the event of a disruption of barge transportation on the river due to weather or lock maintenance.

There has been a long history of repeated, significant interruptions in transportation along the northern Illinois River. In three of the last 13 years, one or more of the locks on this portion of the river have been closed for repair by the Army Corps of Engineers for 60 or more consecutive days during the critical summer months, with the result that no barge traffic could pass through that point on the river on its

[20] Available information suggests that the cash market value of corn and soybeans loaded into vessels and rail cars at Chicago may at times equal or exceed the value of corn or soybeans loaded into barges at locations on the northern Illinois River delivery area. However, with the precipitous decline in the available deliverable supplies in Chicago, such occasional variances from the prices loaded on barges at Chicago and along the northern Illinois River will likely play a small role in the cash market in the future and are not considered to be a significant factor in setting locational differentials under the CBT's proposal.

[21] The acronym FOB, free on board, means that, under the terms of the sale of a commodity, the price agreed between the buyer and seller includes the cost of loading the product into transportation equipment (barges, rail cars, vessel, etc.) at a designated location.

[22] CIF New Orleans means that, under the terms of the sale, the price agreed upon between the buyer and the seller includes the freight and insurance to transport the products to New Orleans and to deliver them there. This market, which calls for grain to be shipped at the cost of the seller to export points in New Orleans, is very liquid, with corn and soybeans being actively traded throughout the year.

[23] The CBT implicitly recognized these cash market value relationships and the importance of barge-freight differences in valuing the commodities in formulating its proposed plan to price alternative delivery locations in response to transportation disruptions on the Illinois River. As described below, that proposal provides that alternative localities must be priced CIF New Orleans with the delivery taker reimbursing the maker for the cost of freight to New Orleans from the original delivery location.

way south to New Orleans.[24] In addition, traffic on the Illinois River is frequently impacted by weather conditions, including wind, high water during the spring and summer, and icing during the winter. The Coast Guard, an agency of the U.S. Department of Transportation, is responsible for maintaining safe passage along the nation's waterways and, when conditions warrant, issues safety advisories or compulsory safety zones restricting transportation on certain segments of the river. Between January 1991 and June 1997 the Coast Guard issued compulsory safety zones on segments of the northern Illinois River on 21 separate occasions. The delivery area on the northern Illinois River was affected by such a safety zone for substantial portions of the river from early June through the middle of August in 1993.[25]

The CBT proposal's heavy reliance on barge delivery would disadvantage receivers during those periods when barge traffic is negatively impacted by weather conditions or lock maintenance and repair. Prolonged closure of the river would increase the susceptibility of the futures contract to manipulation by issuers, who could issue large numbers of certificates during periods when those taking delivery would be unable to transport and to sell the product at an economic value in relation to the CIF New Orleans market.

The Commission is of the view that it is not an appropriate use of exchange emergency authority to address such significant and foreseeable disruptions to the operation of contract terms.[26] In response to repeated requests by the Commission staff, the CBT, by submission dated August 22, 1997, sought to cure this defect by proposing a plan to be followed in the case of transportation disruptions. This proposed contingency plan provides that, in the event that either the Peoria or LaGrange lock on the Illinois River (the two most southerly locks without an auxiliary) is scheduled, with six-months prior notice, to be closed for a period of 45 days or more, then the delivery maker and taker may mutually agree to alternative terms, or failing such agreement, the deliverer is obligated to provide loaded barges to the receiver at a point between the lowest closed lock and St. Louis or on the mid-Mississippi River between St. Louis and Dubuque, inclusive. The loaded barges would be valued CIF New Orleans, with the delivery taker responsible for paying to the delivery maker the transportation cost between the original shipping station and New Orleans. The reimbursement in transportation cost would be computed based upon 100 percent of the Waterways Freight Bureau Tariff No. 7 barge freight rate.

This proposal falls short of achieving its apparent objective of addressing the susceptibility of the corn and soybean futures contracts to price manipulation, market congestion, or the abnormal movement of the commodity in interstate commerce resulting from disruptions to river traffic. First, the proposed rule only addresses sustained blockages due to lock closures south of the delivery area. However, a similar situation could be precipitated by closure of one or a number of locks within the delivery area sufficient to disrupt traffic at a majority of shipping stations. Repairs are often made to more than one set of locks at a time, having the potential to increase the breadth of the disruption within the delivery area from such projects. Thus, although the same foreseeable situation rendering the contracts vulnerable to price manipulation or market congestion exists when the disruption is within the delivery area as when it is south of the delivery area, the contingency plan fails to address the former situation.

Secondly, when a sustained river closure of less than 45 days is announced, vulnerability to price manipulation is foreseeable. This is also true when locks are closed on less than the six-months notice, which the CBT has proposed as a condition for triggering the contingency procedures. This vulnerability arises from the ability of shipping certificate issuers under the CBT proposal to issue certificates representing up to 30 days of their capacity. Thus, an announced river closure of between 30 and 45 days, for example, would enable eligible issuers to deliver into the market the maximum number of shipping certificates permitted, secure in the knowledge that the holders of those certificates could not accept delivery of the corn or soybeans while the river is closed and that, once the obstruction to river movement was ended, the issuer could only be required to deliver on cancelled certificates over an entire-month period. In this connection, it should be noted that closings are announced for lock repairs, which generally are scheduled for the late summer months, the time when deliverable supplies are lowest and river traffic is generally at its lowest level. Futures contracts during these months would be most susceptible to manipulation if a prolonged closure extending to the arrival of the new crop allows futures deliverers to depress the price of an old crop futures month to levels reflecting new crop values, when the broader cash market is reflecting the usual old crop-new crop supply and demand conditions.

In addition, the proposal to value alternate delivery locations using 100 percent of the Waterways Freight Bureau Tariff No. 7 rate is inconsistent with the locational price differential found by the Commission to be required, as discussed below. The application of divergent differentials to the contracts, depending upon whether deliveries were subject to the contingency rule or to normal delivery procedures, could also contribute to price manipulation, market congestion, or the abnormal movement of commodities in interstate commerce.[27]

VI. The Minimum Net Worth Eligibility Requirement for Issuers Violates Section 15

In addition to the CBT's existing requirement of $2 million working capital required of firms regular for delivery under all its agricultural contracts, the CBT has proposed to require that firms eligible to issue shipping certificates under its proposed soybean and corn contracts must also

[24] Specifically, in 1984 the Lockport and Brandon Road locks were closed for 60 days in July, August, and September; in 1987 the Peoria lock was closed for 60 days in July, August, and September; and in 1995 the Lockport, Brandon Road, Dresden Island, and Marseilles locks each were closed for between 64 days and 77 days in July, August, and September.

[25] In addition to actions taken by the Coast Guard, the U.S. Army Corps of Engineers, which has operational control over river locks, may close a lock when it determines that icing conditions so require.

[26] The CBT proposed a separate rule, regulation 1081.01(12)(G)(8), to address possible disruptions to shipping traffic within the delivery area. That proposed rule provides that, if it becomes impossible to load at a designated shipping station "because of an Act of God, fire, * * * an act of government, labor difficulties, or unavoidable mechanical breakdown, the shipper will arrange for water conveyance to be loaded at another regular shipping station * * *" and will compensate the taker for resulting transportation costs, if any. It further provides, however, that if the impossibility of delivery exists at a majority of shipping stations within the delivery area, then shipment may be delayed. Although this proposed rule addresses conditions impeding delivery at one or some locations within the delivery area, it does not offer an acceptable solution to the contingency that all or most deliveries may be rendered impossible due to disruptions of river traffic south of the delivery area or at points affecting a majority of shipping stations within the delivery area. Because of the increased likelihood of price manipulation or market congestion arising from delayed delivery in such circumstances, a different and more effective contingency plan is required under section 5a(a)(10).

[27] Even if such differing tariffs would not have such adverse results, it would be "necessary or appropriate * * * to insure fair dealing * * *" in such futures contracts to apply the same differential in both instances under section 8a(7) of the Act.

meet a minimum net worth standard of $40 million. This requirement has the effect of reducing the amount of economically deliverable supplies by making ineligible for delivery certain existing loading facilities in the delivery areas owned by otherwise eligible firms. In addition, the requirement also constitutes a barrier to entry of firms wishing to establish facilities and to become eligible to issue shipping certificates. The Commission has analyzed this requirement under the provisions of section 15 of the Act and finds that it constitutes an unjustifiable barrier to entry and leads to undue market concentration when considered in the context of the other requirements those firms must meet.

Section 15 of the Act requires the Commission, when considering exchange rule proposals or amendments, to consider the public interest to be protected by the antitrust laws and to endeavor to take the least anticompetitive means of achieving the objectives of the Act.[28] Therefore, the CBT proposal's possible anticompetitive effects must be evaluated against its potential effectiveness in achieving the policies and purposes of the Act.

Because shipping certificates for contract delivery purposes are unsecured, all existing futures contracts that use shipping certificate delivery specify certain financial requirements for certificate issuers. Consistent with this approach, the CBT proposal requires that issuers of certificates have through-loading facilities on the northern Illinois River, obtain an irrevocable letter of credit in an amount equal to the value of their delivery commitments, and maintain a minimum of two million dollars in working capital. These requirements are comparable to those imposed on shipping certificate issuers in other futures markets, including the CBT's own soybean meal, diammonium phosphate and anhydrous ammonia futures contracts, the New York Cotton Exchange's frozen concentrated orange juice futures contract and the Minneapolis Grain Exchange's white wheat futures contract. Moreover, issuers of a shipping certificate under the CBT proposal would also be limited to issuing certificates of a value no greater than 25 percent of the issuer's net worth. However, in addition to all these requirements, the CBT's proposed corn and soybean contracts would require shipping certificate issuers to have a net worth of $40 million, a requirement that is not imposed in any other futures contract involving shipping certificates.

The effect of the proposed $40 million net worth requirement would be to limit issuance of shipping certificates to four large grain firms among the seven firms with shipping stations. At least three firms which currently operate shipping stations on the designated segment of the northern Illinois River and participate in the cash market by selling barges of corn and soybeans would be excluded from issuing shipping certificates for those same commodities on the CBT futures contracts. The Commission does not believe the CBT has presented a reasonable justification for this requirement.

Although the CBT's objective of protecting the financial integrity of the delivery process is reasonable, it is adequately achieved through the working capital and letter of credit requirements, as it has been for all other shipping certificate contracts, and through the limit on the value of certificates issued to 25 percent of an issuer's net worth. Forty million dollars is a high level of net worth that excludes three of the seven existing firms with loading facilities along the northern Illinois River and would act as a barrier to other new entrants. The resulting extremely high level of concentration of the market restricted to four issuers is demonstrated by the fact that the Herfindahl-Hirschman Index (HHI) for the proposed market is approximately 3,300.[29] This increase in concentration as compared with the current delivery system—530 points in the HHI—is likely to create or enhance market power or facilitate its exercise in this already highly concentrated market.

The CBT has failed to demonstrate a need for this particular requirement. Accordingly, the Commission finds that the $40 million net worth requirement is an unjustified barrier to entry into a highly concentrated market and violates section 15 of the Act.[30]

VII. Proposed Changes and Supplements to Comply With Sections 5a(a)(10) and 15

Under the provisions of section 5a(a)(10) of the Act, the Commission, having found that the response of the CBT to the notification relating to its corn and soybean futures contracts does not accomplish the statutory objectives of that section and ''after granting the contract market an opportunity to be heard, may change or supplement such rules and regulations of the contract market to achieve the above objectives * * *'' The Commission has determined that the following changes and supplements to CBT's proposal are necessary to achieve the objectives of section 5a(a)(10) and compliance with section 15 of the Act. The Commission has determined that deliverable supplies of soybeans should be increased through the retention of the delivery points under CBT's current contracts that the CBT has proposed to eliminate and that appropriate locational differentials should be applied to such delivery points. In addition, the Commission has determined for both the corn and soybean contracts to revise the proposed rule to impose appropriate locational differentials for Illinois River delivery points. The Commission has determined to revise the proposed eligibility requirements for issuers of corn and soybean shipping certificates by eliminating the net worth requirement of $40 million, which the Commission believes is an unnecessary barrier to entry. The Commission also has determined to revise the river closure contingency rule by reducing the continuous period of lock closure from 45 days as proposed to 15 days, by making it applicable whenever a majority of shipping stations within the northern Illinois River delivery area are affected by closure of any lock or locks, by making it applicable to all announced closures with no minimum notification period specified and by changing the differential from 100 percent of the Waterways Freight Bureau Tariff No. 7 rate as proposed to 150 percent.

[28] *British American Commodity Options Corp.* v. Bagley, [1975–1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,245 at 21,334 (S.D.N.Y. 1976) *aff'd in part and rev'd in part on other grounds*, 552 F. 2d. 282 (2d. Cir. 1977, *cert. denied*, 98 S. Ct. 427 (1977).

[29] The HHI is calculated by summing the squares of the individual market share of all of a market's participants. The 3,300 figure was obtained using rated delivery capacity of the four firms currently meeting the proposed capital requirements to measure market share. Those firms and their respective market shares are Archer Daniels Midland Co. (49 percent), Continental Grain Company (22 percent), Cargill, Incorporated (19 percent), and Consolidated Grain and Barge (10 percent). Adding in the three firms (American Milling Company, Garvey International, and Sours Grain Company) who, absent the proposal's $40 million net worth requirement, also would be eligible to issue delivery certificates in the proposed markets would lower the HHI to 2,511, still a high level of concentration but substantially less than that under the CBT proposal.

[30] Concerns about this concentration among those firms eligible to issue shipping certificates are compounded by the sizeable control some of the firms have over barge ownership, Gulf exports, and processing facilities. Several commenters expressed concern that this concentration increases the opportunity for price manipulation.

A. Delivery Points

In determining how to remedy the inadequacy of deliverable supplies under the CBT soybean proposal, the Commission accepts the delivery points in the proposal itself as a starting point and believes that the most reasonable and feasible way to enhance deliverable supplies is by adding additional delivery points. To do so, the Commission has decided to retain the delivery points under which the CBT's existing contract has been operating for years. Thus, the Commission had determined to retain Toledo and St. Louis as delivery points for soybeans.

In this regard, many commenters supported retaining the delivery point at Toledo, pointing out that Toledo's effectiveness as a delivery point is proven. They also maintained that Toledo brings with it the strength of having transportation ties to both the export markets via vessels on the Great Lakes and the expanding livestock feed demand in the southeastern U.S. via rail transportation. Although St. Louis has not been a significant delivery point under the current contract, it likely would become one under the contract's revised shipping certificate format.[31]

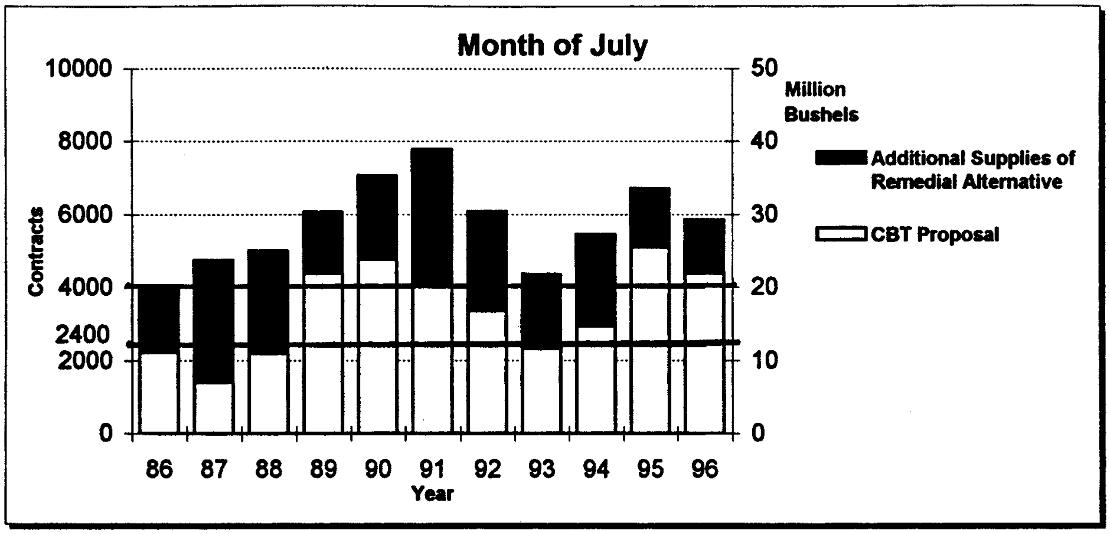
These two delivery points have the strong advantage of having been chosen by CBT as appropriate delivery points for its soybean contract and having been used as delivery points for the contract for several years. Toledo has been a delivery point on the CBT soybean contract since 1979; St. Louis has been a delivery point since 1993. The resulting experience and familiarity with these delivery points of the CBT, its members and commercial users of the soybean contract are strong indicators that the delivery points are feasible, workable and acceptable.

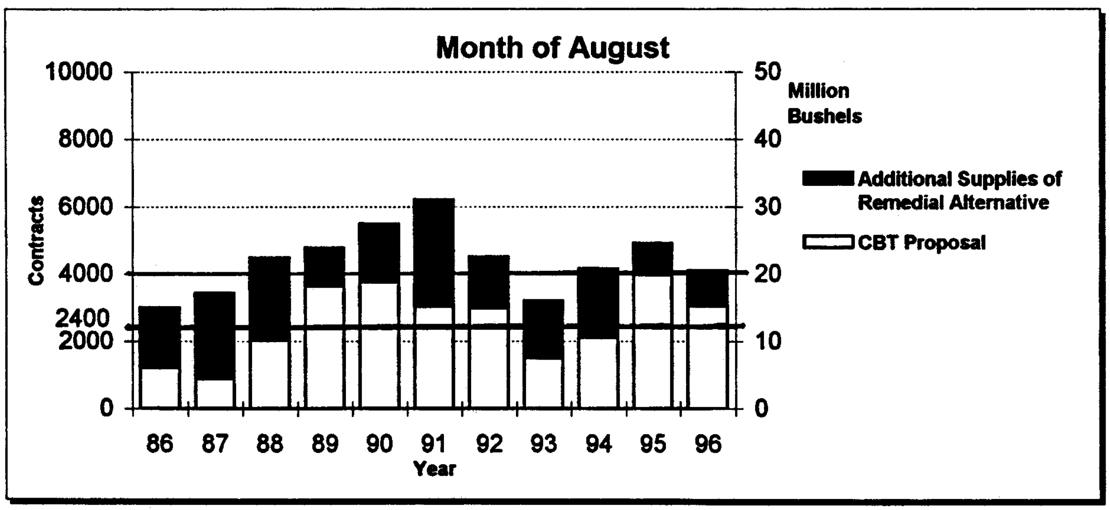
As discussed below, they also provide a substantial increase in the available deliverable supplies of soybeans. When Toledo and St. Louis are retained as delivery points, gross deliverable supplies are at or above the 2,400-contract level for all observations in both July and August during the past 11 years and in September for all but four of the last 11 years. The gross deliverable supplies are at or above the 4,000-contract level for 21 of 33 observations. The following chart shows the increases in gross deliverable supplies of soybeans which result from the retention of Toledo and St. Louis as delivery points.

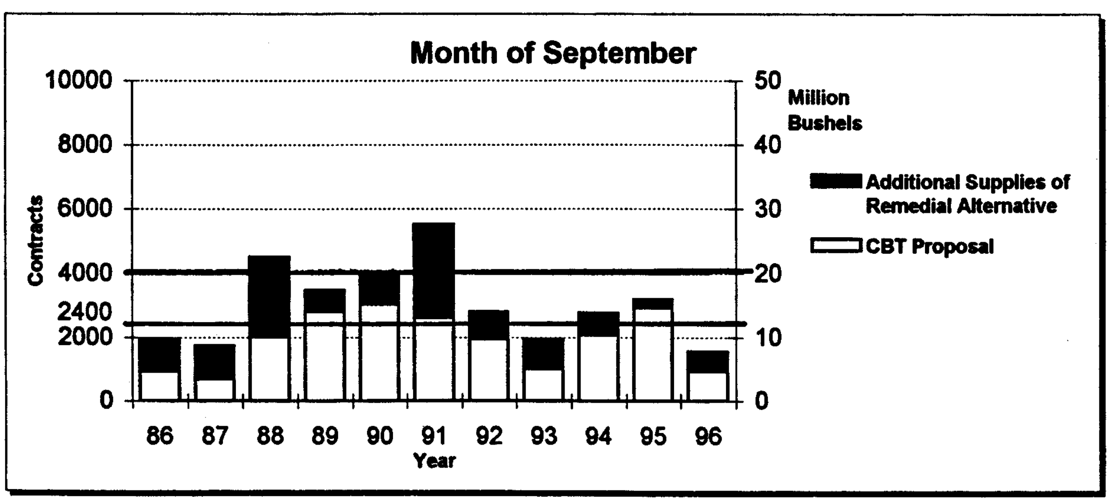
[31] Some commenters advocated the addition of new and completely untried delivery points, such as locations in the interior of Iowa, or delivery points that have been used for other contracts, such as Minneapolis, Minnesota. Although those suggestions may have merit, the Commission has decided that the experience with the current delivery points is entitled to significant weight.

BILLING CODE 6351–01–P

Soybeans: Comparison of Deliverable Supplies under the CBT Proposal and the Remedial Alternative







BILLING CODE 6351–01–C

Accordingly, the retention of Toledo and St. Louis as delivery points is necessary and appropriate to provide sufficient levels of gross deliverable supplies of soybeans for July and August. Although the retention of Toledo and St. Louis does not yield gross deliverable supplies which meet the 2,400-contract level in four of the last 11 years in September, September is a transition month between the old and new crop year, as discussed above. New crop production is in the offing. Thus, even when September supplies on occasion fall below the 2,400-contract level, the incentive to manipulate prices based on a shortfall of old crop supplies is reduced because of the likelihood of rapidly falling prices as new crop supplies become available in the near future. In light of the reduced threat of price manipulation due to the imminence of new crop production, the Commission is not ordering that additional delivery points be added to the contract beyond retention of Toledo and St. Louis. Should September deliverable supplies of soybeans appear to be inadequate once trading under the revised soybean contract begins, the Commission would take appropriate steps to provide for additional delivery locations.[32]

Accordingly, the Commission finds that retention of Toledo and St. Louis is necessary and appropriate to provide the level of economically available deliverable supplies required by section 5a(a)(10).

B. Differentials

Section 5a(a)(10) specifies that where more than one delivery point is specified, the contracts must specify locational differentials to the extent necessary to prevent price manipulation, market congestion, or the abnormal movement of the commodity in interstate commerce. As discussed above, in light of the significant locational differentials in the cash market among the proposed delivery locations, the CBT's par delivery proposal for all potential corn and soybean delivery locations would reduce the level of economically available deliverable supply and would increase the susceptibility of the contracts to the prohibited effects under section 5a(a)(10). Accordingly, to meet the objectives of section 5a(a)(10), locational differentials must be set for the delivery locations on the corn and soybean contracts.

In setting those differentials, the Commission has been guided by commonly observed cash market price differences among the delivery points. The cash market differences in the prices of corn and soybeans for delivery points on the northern Illinois River are based primarily upon the cost of barge freight—the price of the product increases as one goes down the river, and the cost of freight to New Orleans decreases. These differences in freight prices are transparent, readily available, and commonly accepted as the best measure of cash price values. An analysis of barge freight rate data indicates that 150 percent of the Waterways Freight Bureau Rate Tariff No. 7 rate relative to Chicago, Illinois, is an appropriate differential.

Barge freight rate data for the years 1990 through 1996 indicate that 150 percent of tariff is well within the range of commonly observed freight rates, and it closely approximates the average percent of tariff quoted by barge companies for Illinois River shipment during this period. These data also indicate that 150 percent of tariff approximates the average percent of tariff quoted for July, August, and September, the months when deliverable supply concerns and the need to maximize available deliverable supplies are the greatest. In addition, a majority of those commenting on the issue agreed that it was appropriate to base price differentials on barge freight cost differences, and several of the commenters that suggested a fixed rate recommended 150 percent of tariff.

St. Louis is being retained as a delivery point for soybeans. The relative price of soybeans in the cash market among the various delivery points on the northern Illinois River and St. Louis is consistently determined based on the difference in freight costs to New Orleans, and therefore the Commission has decided to base the differential of St. Louis on 150 percent of freight tariff as well. Most commenters agreed that this approach is the appropriate measure of such price differences.

The differential applicable to Toledo, which is retained as a delivery point for soybeans, cannot be set based on the differentials relating to barge freight since Toledo is not located on the Illinois River and does not tend to deliver soybeans CIF New Orleans. The Commission's policy on differentials provides that such differentials must fall within the range of commonly observed cash market differences. Available data indicate that cash price differentials between Chicago and Toledo commonly range from Chicago's being at a premium to its being at a discount to Toledo. Therefore, establishing Toledo deliveries at par with Chicago is well within the range of commonly observed cash market price differences and provides an adequate approximation of the cash market price relationship between the two delivery points. Most commenters expressing an opinion on this issue agreed that soybeans should be deliverable in Toledo at par with Chicago.

Accordingly, the Commission has determined that for soybeans Chicago and Toledo should be at contract price with all other points at a premium over contract price based on 150 percent of the Waterways Freight Bureau Tariff No. 7 rate. For corn, Chicago should be at contract price with all other points at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois.

C. Disruptions to River Traffic

The CBT proposal's reliance chiefly on a single mode of transportation to effect delivery renders the contract susceptible to significant possible disruption of the delivery process, increasing the possibility of price manipulation, market congestion, or the abnormal movement of corn and soybeans in interstate commerce. Although the CBT submitted a contingency plan to address such disruptions to river traffic, that plan only addressed long-term disruption to river traffic resulting from closure of locks south of the delivery area announced six months in advance. As the Commission discussed above, however, the threat of manipulation of prices arises from the possible inability of long position holders to take delivery from all, or a significant number, of shipping stations due to the closures of a lock or locks located either within or south of the delivery area. The longer the period of the delay before alternate delivery procedures can be invoked, the greater the potential for manipulation. Moreover, this threat exists equally when a lock or locks have been closed with less than six-months notice. Accordingly, compliance with section 5a(a)(10) of the Act requires that this threat be diminished by reducing the period during which delivery may be delayed by eliminating the six-month notice requirement and by applying the contingency delivery provision to similar circumstances caused by obstructions to movement on the river

[32] Should actual trading experience reveal that September supplies must be supplemented, one means of accomplishing that objective would be to expand the proposed definition of the northern Illinois River to include a greater segment of the river's delivery area. With the specification of appropriate locational differentials, this change can be made at a later time with little or no disruption to the contract.

arising either inside or outside of the delivery area.

In determining the length of an announced obstruction which should give rise to a contingency delivery plan, the Commission analyzed information on past lock closures by the Army Corps of Engineers and on the issuance of river advisories or safety zones by the Coast Guard. During the last 17 years for which this information could be ascertained, it appears that there have been no unplanned and unannounced river closures of greater than two weeks duration. Accordingly, obstructions lasting at least 15 days after they are announced are appropriately addressed by application of the contingency delivery plan.

In addition, as discussed above, the application of divergent differentials to the contracts depending upon whether the delivery is subject to the contingency rule might also contribute to a price manipulation or to market congestion. Since the Commission has determined that a differential based on 150 percent of the Waterways Freight Bureau Tariff No. 7 rate should be applied to the corn and soybean futures contracts, the Commission believes that the provision in the contingency plan should be conformed to that differential, which will be applicable to all other deliveries made on the contracts at non-par locations.

Accordingly, the Commission is proposing under section 5a(a)(10) of the Act to change and to supplement the provisions of this part of the CBT proposal by reducing the continuous period of lock closure from 45 days as proposed to 15 days, by making the rule applicable to the closure of any lock or locks which affects shipments from a majority of shipping stations within the northern Illinois River delivery area, by making the rule applicable to all announced closures with no minimum notification period specified and by changing the differential from 100 percent of the Waterways Freight Bureau Tariff No. 7 rate as proposed to 150 percent.

D. Net Worth

As the Commission found above, although the CBT's objective of protecting the financial integrity of the delivery process is reasonable, it would be adequately achieved through requirements on working capital, letters of credit, and the ceiling on issuance of shipping certificates to 25 percent of net worth. Contrary to the policies underlying the federal antitrust laws, the $40 million net worth requirement would operate as a significant bar to entry for entities that would be eligible in all other respects, and the resulting market concentration would be very high. The CBT has failed to demonstrate a regulatory need for the requirement. Accordingly, the Commission is proposing to eliminate it under sections 15 and 5a(a)(10) of the Act.

E. 1999 Contract Months

By letter dated April 24, 1997, to the Chairperson of the Commission, the CBT advised the Commission that it had determined to list or to relist for trading the July 1999 and November 1999 soybean contracts and the July 1999 and December 1999 corn contracts, respectively, prior to Commission review and approval of the proposed changes to the delivery specifications. In doing so, the CBT indicated that it would

> list the aforementioned contracts with a special indicator * * * denot[ing] that the Exchange's Board of Directors and Membership have approved the terms of the listed contracts; however, the terms are subject to CFTC approval.

By letter dated May 2, 1997, the Commission responded that it "will consider whether to approve the listing of these contract months as part of its ongoing proceeding pursuant to section 5a(a)(10) of the Act * * *." The Commission found that the "listing of these trading months is not consistent with Commission rule 1.41(l) and that * * * their listing for trading by the CBT is not legally authorized at the present time."

The Commission by this proposed Order announces its intention to change and to supplement the CBT's proposed amendments to those contracts on the grounds that they violate sections 5a(a)(10) and 15 of the Act. Accordingly, the Commission proposes to disapprove the terms of the 1999 corn and soybean contracts and proposes to apply the changes described above to such contracts under sections 5a(a)(10), 5a(a)(12), 8a(7), and 15 of the Act. The CBT may propose to list the 1999 corn and soybean contracts incorporating the Commission's proposed changes and supplements, and the Commission would approve such listing. The CBT should give notice to all traders that the Commission has proposed to disapprove the CBT's proposed amendments to the 1999 soybean and corn contracts.[33]

By the Commission (Chairperson Born, Commissioner Dial, Commissioner Spears; Commissioner Tull Dissenting With Opinion, Commissioner Holum Dissenting Without Opinion)

[33] The Commission notes that historically there has been very little or no open interest in delivery months for corn or soybeans that mature two years or more in the future.

CBOT Proposed Delivery Terms for Corn and Soybeans—Dissenting Opinion of Commissioner John E. Tull, Jr.

I strongly disagree with the majority's decision regarding the Chicago Board of Trade's proposed amendments to the delivery specifications to their corn and soybean contracts and vote to approve them.

Section 5a(a)(10) of the Commodity Exchange Act requires us to determine whether the delivery terms proposed by the CBOT "will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce." We must also "take into consideration the public interest to be protected by the antitrust laws in requiring or approving any rule of a contract market." With all due respect to my colleagues and our staff, based on my analysis of the data, I am convinced that the proposed terms for both contracts as submitted meet these statutory requirements.

I also note that the CBOT convened two task forces of industry experts who debated the delivery points at length and the proposal has been approved by the exchange membership. I believe it is the right of a membership organization such as the CBOT to write the specifications of its own contract, as long as those specifications satisfy the statutory requirements.

Attachment 1

For the reasons explained in the "Proposed Order of the Commodity Futures Trading Commission to Change and to Supplement Proposed Rules of the Board of Trade of the City of Chicago, Submitted For Commission Approval in Response to a Section 5a(a)(10) Notice Relating to Futures Contracts in Corn and Soybeans," the Commission is proposing under section 5a(a)(10) of the Commodity Exchange Act to change and to supplement rules and proposed rules of the Board of Trade of the City of Chicago. As provided under the Proposed Order, the Commission proposes to make the following changes:[34]

1. To change and to supplement the paragraph of Rule 1036.00 immediately following the paragraph beginning with the words "Corn Differentials," to read as follows:

In accordance with the provisions of Rule 1041.00A, corn *for shipment from* regular warehouses *or shipping stations* located within the Chicago Switching District or the Burns Harbor, Indiana Switching District may be delivered in satisfaction of corn futures contracts at contract price, subject to the differentials for class and grade outlined above. [Corn for shipment from shipping stations located on the northern Illinois River may be delivered at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois, subject to the differentials for class and grade outlined above.

[34] Bracketed type denotes the Commission's proposed changes or supplements to the CBT proposal. Italics denote changes proposed by the CBT. Deletions to proposed CBT language are not shown.

*The factor for converting the tariff rate quoted in tonnage to a bushel basis shall be 35.714 bushels per ton.]

2. To change and to supplement the paragraph of Rule 1036.00 immediately following the paragraph beginning with the words ''Soybean Differentials,'' to read as follows:

In accordance with the provisions of Rule 1041.00D, soybeans *for shipment from* regular warehouses *or shipping stations* located within the Chicago Switching District, the Burns Harbor, Indiana Switching District, [or the Toledo, Ohio Switching District] may be delivered in satisfaction of soybean futures contracts at contract price, subject to the differentials for class and grade outlined above.

[In accordance with the provisions of Rule 1041.00D, soybeans for shipment from shipping stations located on the northern Illinois River or from shipping stations within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205) may be delivered in satisfaction of soybean futures contracts at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate* applicable to that location and the rate applicable to Chicago, Illinois, subject to the differentials for class and grade outlined above.

*The factor for converting the tariff rate quoted in tonnage to a bushel basis shall be 33.333 bushels per ton.]

3. To change and to supplement Rule 1041.00A to read as follows:

Corn. Corn *for shipment from* regular warehouses *or shipping stations* located within the Chicago Switching District or the Burns Harbor, Indiana, Switching District may be delivered in satisfaction of corn futures contracts at contract price. [Corn for shipment from shipping stations located within the northern Illinois River may be delivered in satisfaction of corn futures contracts at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate* applicable to that location and the rate applicable to Chicago, Illinois, subject to the differentials for class and grade outlined above.

*The factor for converting the tariff rate quoted in tonnage to a bushel basis shall be 35.714 bushels per ton.]

4. To change and to supplement Rule 1041.00D to read as follows:

Soybeans. Soybeans *for shipment from* regular warehouses or *shipping stations* located within the Chicago Switching District, the Burns Harbor, Indiana, Switching District [or the Toledo, Ohio, Switching District] may be delivered in satisfaction of soybean futures contracts at contract price. [Soybeans for shipment from shipping stations located on the northern Illinois River or from shipping stations within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205) may be delivered in satisfaction of soybean futures contracts at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate* applicable to that location and the rate applicable to Chicago, Illinois, subject to the differentials for class and grade outlined above.

*The factor for converting the tariff rate quoted in tonnage to a bushel basis shall be 33.333 bushels per ton.]

5. To change and to supplement Regulation 1044.01 following the list of delivery locations and immediately prior to the issuer's signature block by adding, as follows:

[soybeans only:
____ St. Louis, MO, river mile marker ______
____ Toledo, OH, Switching District]

6. To change and to supplement Regulation 1056.01 by adding after the last paragraph the following:

[The premium charges on soybeans for delivery from regular shippers within the Toledo, Ohio, Switching District shall not exceed 12/100 of one cent per bushel per day.

The premium charges on soybeans for delivery from regular shippers within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205) shall not exceed 10/100 of one cent per bushel per day.]

7. To change and to supplement the second paragraph of Regulation 1081.01(1) to read as follows:

(c) and in the case of Chicago, Illinois, Burns Harbor, Indiana, [and Toledo, Ohio,] *Switching Districts only, his registered storage capacity.*

8. To change and to supplement the third paragraph of Regulation 1081.01(1)(a) to read as follows:

(a) one barge per day at each shipping station on the northern Illinois River [and within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205);] and

9. To change and to supplement Regulation 1081.01(2) to read as follows:

Except for shippers located on the northern Illinois River [and within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205),] such warehouse shall be connected by railroad tracks with one or more railway lines.

10. To change and to supplement the first sentence of Regulation 1081.01(12)A to read as follows:

A. Load-Out Procedures *for Wheat and Oats and Rail and Vessel Load-Out Procedures for Corn and Soybeans from Chicago, Illinois, Burns Harbor, Indiana,* [and Toledo, Ohio, Switching Districts] *Only* * * *.

11. To change and to supplement the first sentence of Regulation 1081.01(12)B to read as follows:

B. Load-Out Rates *for Wheat and Oats and Rail and Vessel Load-Out Rates for Corn and Soybeans from Chicago, Illinois, Burns Harbor, Indiana,* [and Toledo, Ohio, Switching Districts] *Only* * * *.

12. To change and to supplement Regulation 1081.01(12)G(7) to eliminate the words ''on the Illinois Waterway,'' to read as follows:

Any expense for making the grain available for loading will be borne by the party making delivery, provided that the taker of delivery presents barge equipment clean and ready to load within ten calendar days following the scheduled loading date of the barge. If the taker's barges are not made available within ten calendar days following the scheduled loading date, the taker shall reimburse the shipper for any expenses for making the grain available. Taker and maker of delivery have three days to agree to these expenses.

13. To change and to supplement the last sentence of Regulation 1081.10(12)(G)(8) to read as follows:

(8) * * *. *If the aforementioned condition of impossibility prevails at a majority of regular shipping stations, then shipment* [shall be made under the provisions of rule 1081.(12)(G)(9).]

14. To change and to supplement the first paragraph and paragraph 9(b)(iii) and add a new paragraph at the end of Regulation 1081.01(12)(G)(9) to read as follows:

(9). In the event that [it has been announced that river traffic will be obstructed for a period of fifteen days or longer as a result of one of the conditions of impossibility listed in regulation 1081.10(12)(G)(8) and in the event that the obstruction will affect a majority of regular shipping stations located on the northern Illinois River,] *then the following barge load-out procedures for corn and soybeans shall apply:*

(b) * * *

(iii) *The taker of delivery shall pay the maker* 150% *of the Waterways Freight Bureau Tariff Number 7 barge benchmark rate from the original delivery point stated on the Shipping Certificate to NOLA.*

[(c) In the event that the obstruction or condition of impossibility listed in regulation 1081.10(12)(G)(8) will affect a majority of regular shipping stations located on the northern Illinois River, but no announcement of the anticipated period of obstruction is made, then shipment may be delayed for the number of days that such impossibility prevails.]

15. To change and to supplement the first paragraph of Regulation 1081.01(13)A by eliminating the words ''and soybeans'' in both instances in which they appear.

16. To change and to supplement Regulation 1081.01(13)D by retaining it and changing it to read as follows:

[Soybeans. For the delivery of soybeans, regular warehouses or shipping stations may be located within the Chicago Switching District, within the Burns Harbor, Indiana, Switching District (subject to the provisions of paragraph A above), within the Toledo, Ohio, Switching District, or shipping stations may be located on the northern Illinois River (subject to the provisions of paragraph A above), or within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205).

Delivery in Toledo must be made at regular warehouses or shipping stations providing water loading facilities and maintaining water depth equal to normal seaway draft of 27 feet. However, deliveries of soybeans may be made in off-water elevators within the Toledo, Ohio, Switching District PROVIDED that the party making delivery makes the soybeans available upon call within five calendar days to load into water equipment at one water location within the Toledo, Ohio, Switching District. The party making delivery must declare within one business day after receiving warehouse receipts and loading orders the water location at which soybeans will be made available. Any additional expense incurred to move delivery soybeans from an off-water elevator into water facilities shall be borne by the party making delivery PROVIDED that the party taking delivery presents water equipment clean and ready to load within 15 calendar days from the time the soybeans have been made available. Official weights and official grades as loaded into the water equipment shall govern for delivery purposes. Delivery in the greater St. Louis river-loading area must be made at regular warehouses or shipping stations providing water loading facilities and maintaining water depth equal to the average draft of the current barge loadings in this delivery area. Official weights and official grades as loaded into the water equipment shall govern for delivery purposes.]

17. To change and to supplement Regulation 1081.01(14)E by retaining it and changing it to read as follows:

[Soybeans. The warehouseman or *shipper* is not required to furnish transit billing on soybeans represented by warehouse receipt *or shipping certificate* delivery in Toledo, Ohio. Delivery shall be flat.]

18. To change and to supplement the first paragraph of the applicant's declaration contained in Regulation 1085.01 to read as follows:

We, the ________ (hereinafter called the Warehouseman/Shipper) owner or lessee of the *warehouse* located at ________ *or shipping station located* at mile marker ________ [of the ________ River,] having a storage capacity * * *.

19. To change and to supplement appendix 4E, paragraph 2, by eliminating the sentence which reads, ''The net worth of a firm regular to deliver corn or soybeans must be greater than or equal to $40,000,000.''

The Commission has determined that publication of the Proposed Order for public comment will assist the Commission in its consideration of these issues. Accordingly, the Commission is requesting written comments from interested members of the public.

Issued in Washington, D.C., this 16th day of September, 1997, by the Commodity Futures Trading Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 97–24948 Filed 9–19–97; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, October 31, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–25193 Filed 9–18–97; 11:28 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, October 24, 1997.

PLACE: 1155 21ST ST., N.W., WASHINGTON, D.C. 9TH FL. CONFERENCE ROOM.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–25194 Filed 9–18–97; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, October 17, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–25195 Filed 9–18–97; 11:28 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, October 10, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–25196 Filed 9–18–97; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, October 3, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–25197 Filed 9–18–97; 11:28 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, October 27, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–25198 Filed 9–18–97; 11:28 am]

BILLING CODE 6351–01–M