from the levels of restraint (quotas), and visa and ELVIS requirements if they are properly certified, prior to the shipment leaving Thailand.

Other Provisions:

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $250 or less do not require a visa or ELVIS transmission for entry and shall not be charged to agreement levels.

Any shipment which is not accompanied by a valid and correct visa with an ELVIS transmission or exempt certification in accordance with the foregoing provisions shall be denied entry by the Government of the United States unless the Government of Thailand authorizes the entry and any charges to the agreement levels.

The actions taken concerning the Government of Thailand with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register**.

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Annex A

Part Categories (Descriptions below are for general reference only.)

301–P	Chief weight cotton combed yarn, less than 85 percent cotton: only HTS numbers 5206.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000 and 5206.45.0000.
301–O	Chief weight cotton combed yarn, 85 percent or more cotton: only HTS numbers 5205.21.0020, 5205.21.0090, 5205.22.0020, 5205.22.0090, 5205.23.0020, 5205.23.0090, 5205.24.0020, 5205.24.0090, 5205.26.0020, 5205.26.0090, 5205.27.0020, 5205.27.0090, 5205.28.0020, 5205.28.0090, 5205.41.0020, 5205.41.0090, 5205.42.0020, 5205.42.0090, 5205.43.0020, 5205.43.0090, 5205.44.0020, 5205.44.0090, 5205.46.0020, 5205.46.0090, 5205.47.0020, 5205.47.0090, 5205.48.0020 and 5205.48.0090.
359–H	Cotton headwear: only HTS numbers 6505.90.1540 and 6505.90.2060.
359–O	Other cotton apparel, not elsewhere specified: all HTS numbers except those in Category 359–H.
369–D	Cotton dish towels: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.
369–S	Cotton shop towels: only HTS number 6307.10.2005.
369–O	Other cotton made-ups, not elsewhere specified: all HTS numbers except those in Category 369–D and Category 369–S.
604–A	Piled acrylic spun yarn: only HTS number 5509.32.0000.
604–O	Other staple fiber yarn, 85 percent or more synthetic: all HTS numbers except those in Category 604–A.
659–H	Man-made fiber headwear: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.
659–O	Other man-made fiber apparel, not elsewhere specified: all HTS numbers except those in Category 659–H.
669–P	Man-made fiber bags: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.
669–O	Other man-made fiber manufactures, NSPF: all HTS numbers except those in Category 669–P.

Merged Categories and Subcategories

317/326
331/631
334/634
335/635/835
336/636
338/339
341/641
342/642
347/348/847
351/651
359–H/659–H
613/614/615 (Subcategories 614 and 613/615)
625/626/627/628/629 (Subcategory 625)
638/639
645/646
647/648

[FR Doc. 97–29780 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Futures Contracts in Corn and Soybeans; Order To Change and To Supplement Delivery Specifications

AGENCY: Commodity Futures Trading Commission.

ACTION: Final order to Chicago Board of Trade to change and to supplement delivery specifications.

SUMMARY: The Commodity Futures Trading Commission (Commission) is issuing an 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 the delivery terms of the CBT corn and soybean futures contracts. The CBT submitted proposed changes to the delivery specifications of its corn and soybean futures contracts 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 Order changes and supplements the CBT proposal for its soybean futures contract by making all changes to such CBT rules 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 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 changes and supplements the CBT proposal for its corn futures contracts by making 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 is ordering that the proposed CBT contingency plan for alternative delivery procedures when traffic on the northern Illinois River is obstructed be changed and supplemented and is ordering that the $40 million minimum net worth eligibility requirement for issuers of shipping certificates be eliminated. Finally, the Commission is disapproving the proposed terms for the March, July and December 1999 corn futures contracts and the January, July and November 1999 soybean futures contracts. Such contract months and any other 1999 contract months are hereby authorized to trade under the existing contract terms. The terms of the corn and soybean futures contracts proposed by the CBT as changed and supplemented herein will apply beginning with the January 2000 soybean futures contract and the March 2000 corn futures contract.

The Commission has determined that publication of the Order is in the public interest, will provide the public with notice of its action, and is consistent with the purposes of the Commodity Exchange Act.

DATES: This Order became effective on November 7, 1997.

ADDRESSES: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

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 November 7, 1997, issued an Order under section 5a(a)(10) of the Act to change and to supplement the delivery specifications proposed by the CBT for its 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 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: November 7, 1997.

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 orders changes and supplements to the Board of Trade of the City of Chicago (CBT) proposed rules relating to its futures contracts in corn and soybeans as shown in attachment 1 to this Order. Under this Order, the Commission takes the following actions:

(1) changes and supplements under section 5a(a)(10) of the Commodity Exchange Act (Act) the proposed delivery specifications of the CBT's soybean futures contract by making all changes to such rules 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) changes and supplements under section 5a(a)(10) of the Act the proposed delivery specifications of CBT's corn futures contract by making all changes to such rules 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) changes and supplements under section 5a(a)(10) of the Act the proposed CBT contingency plan for alternative delivery when river traffic is obstructed by reducing the continuous period of such an obstruction 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 obstruction must have been given six-months prior to such an obstruction, by making the contingency plan applicable whenever a majority of shipping stations within the northern Illinois River delivery area is affected by an obstruction and by changing the differential from 100 percent of the Waterways Freight Bureau Tariff No. 7 rate as proposed to 150 percent;

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

(5) disapproves under sections 5a(a)(10), 5a(a)(12), and 15 of the Act and Commission rule 1.41(b) CBT's proposed terms for the March, July, and December 1999 corn futures contracts and the January, July, and November 1999 soybean futures contracts. Such contract months and any other 1999 contract months are hereby authorized to trade under the existing contract terms or, if the CBT so elects, under the contract terms proposed by the CBT as changed and supplemented by this Order;

(6) orders that the terms of the corn and soybean futures contracts proposed by the CBT as changed and supplemented by this Order shall apply to contract months beginning with and subsequent to the January 2000 soybean futures contract month and the March 2000 corn futures contract month, whenever such contract months are listed for trading.

Nothing in this Order precludes the CBT from submitting for Commission review and approval under sections 5a(a)(10) and 5a(a)(12) of the Act any alternative proposed delivery specifications for its corn or soybean futures contracts.

The Commission, as discussed below, bases these actions on its finding that the CBT proposal in response to the Commission's section 5a(a)(10) notification relating to the CBT's corn and soybean futures contracts does not meet the requirements, or accomplish the statutory objectives, of that section and also violates sections 8a(7) and 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 by the CBT; (2) the failure of the CBT's proposed corn and soybean contracts to include required locational differentials; (3) the failure of the CBT's 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 CBT's proposed $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 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 an adequate level on a significant number of occasions during the past 11 years which the Commission has examined. Moreover, on those occasions when the gross amount of potentially deliverable supplies did reach that 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 demonstrated when required downward adjustments are made to reflect only that portion of gross deliverable supplies 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 so inadequate under section 5a(a)(10) as to require additional delivery points. However, changes and supplements to other aspects of the CBT's proposal as to its corn contracts are required to meet the objectives of section 5a(a)(10), as discussed below. Moreover, the adequacy of corn supplies cannot be accurately and fully ascertained until after there is a history of deliveries occurring under the CBT's proposal, as changed and supplemented by this Order. If 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 does not meet the objectives of section 5a(a)(10). By requiring lengthy advance notice of a river traffic obstruction before the contingency plan applies, by limiting the contingency plan only to instances of river traffic obstructions south of the delivery area, by limiting the relevant river traffic obstructions to lock closures, by requiring unduly lengthy obstructions, and by specifying a differential that does not conform to the locational differentials found to be appropriate by the Commission, the CBT's proposed plan fails to diminish the potential for price manipulation, market congestion, or the abnormal movement of the commodities in interstate commerce arising from foreseeable river traffic obstructions.

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

[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, adopted by the Commission at its meeting of May 3, 1977 (Powers Memorandum).

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 create and tend to preserve a high level of concentration among issuers.

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 both prior to and in response to the Commission's issuance of the proposed order. 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 prior to its issuance of the proposed order. The CBT was also heard by the Commission at a public hearing convened subsequent to issuance of the proposed order. The written and oral comments of the CBT received in connection with that hearing, along with comments filed by the public on the proposed order and written exceptions filed by the CBT, were reviewed by the Commission and were considered by it in arriving at its conclusions and in adopting this final Order.

The CBT and a number of commenters raised objections to the Commission's proposed order. In response to some of these points, the Commission has made a number of changes from the order as proposed in adopting this Order as final. These changes include revisions to the calculation of some of the data in the Order. These revisions were made in response to suggestions and questions raised by the CBT at its hearing and in its various filings and in informal discussions with the CBT staff. They reflect corrections of calculations and of the formatting of certain data submitted to the Commission by the CBT. In addition, at the suggestion of the CBT in its oral and written statements filed at the hearing and in its written exceptions filed thereafter, the Commission has modified its estimate of September corn and soybean production.

The final Order clarifies two provisions in attachment 1 by deleting several references to ''warehouse receipts'' which appeared in attachment 1 to the proposed order because they are surplusage.

In addition, as explained in greater detail below, the Commission has determined to authorize for trading the 1999 contract months in the CBT's corn and soybean futures contracts under the current terms of those contracts, while disapproving the CBT's proposed terms for those contracts. In doing so, the Commission is responding to many commenters who requested that the Commission authorize the listing of these trading months in order to permit trading without delays or interruption. The Commission recognizes the urgent need to have certainty with respect to the terms of those contracts and the legality of their listing.

This action by the Commission permits the continuation of trading in the corn and soybean contracts under the current terms, which are familiar to the CBT, its members, and the agricultural users of these contracts, until contract months for the year 2000, which would be governed by the new terms of the contracts as contained in this Order. In the interim the CBT will continue to be free to propose revisions of the new terms to the Commission for its consideration under sections 5a(a)(10) and 5a(a)(12) or to submit a petition to the Commission to reconsider or to amend this Order. If the CBT believes that an alternative to the new terms and to its original proposal would better serve its business interests and would also meet the statutory requirements, the CBT should submit such a proposed rule revision or petition.

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 the contracts. Id. at 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.* at 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 substantially exceeded the total amount of soybeans that could be delivered at the contract's delivery points. By 1991 several major studies had been completed demonstrating the inadequacy of the CBT's delivery points. Nevertheless, the CBT's response to these problems was limited. *Id.* at 68006. As the Commission noted in the section 5a(a)(10) notification, when the Commission approved certain changes proposed by the CBT to address these problems in 1992, it cautioned that the CBT's response was merely a short-term palliative and urged the CBT actively to consider more significant contract changes. *Id.* at 68007.

Only three years later, three of the existing six Chicago warehouses regular for delivery under the futures contracts 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 spent 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, 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 on December 19, 1996. 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.

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 CBT's 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 F.R. 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]

On September 15, 1997, the Commission issued a proposed order, publishing its text in the **Federal Register** with a request for public comment.[7] 62 FR 49474 (September 22, 1997). It should be noted that problems under the current corn and soybean contracts have continued to the present. For example, the September 1997 soybean contract experienced significant price distortions during September apparently due in part to shortness of available deliverable supplies.

The comment period on the proposed order expired on October 22, 1997. Over 230 commenters submitted comments to the Commission on the proposed order.[8] In addition, the Commission held a public hearing on October 15, 1997, at which the CBT was afforded the opportunity mandated under section 5a(a)(10) of the Act to appear before the Commission and to be heard. In addition to its oral presentations, the CBT submitted written statements and documentary evidence. A transcript of the hearing and all attendant written statements and documents have been included in the public comment file of this proceeding.[9] The CBT was also provided with an opportunity to file exceptions to the proposed order by October 22, 1997, and the CBT did so.

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.[10] 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. It also modified and supplemented its analysis supporting its proposal during the meeting of June 12, 1997, during the hearing of October 15, 1997, and in its various written submissions and comments.

The CBT's proposal would replace the existing delivery system involving delivery of warehouse receipts representing stocks of grain stored at terminal elevators in Chicago, Toledo, and St. Louis with delivery of shipping certificates.[11] A shipping certificate

[2] While the CBT labeled its submission of the proposed rule amendments as having been made pursuant to section 5a(a)(12) of the Act as well as section 5a(a)(10), the Commission is applying its 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 [exchange] 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 proposal. Nevertheless, the Commission, for the reasons discussed in this Order, 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 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 almost 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] Written statements in connection with the meeting were submitted to the Commission for inclusion in the record and, along with a transcript of the meeting, have been entered into the Commission's comment file. Participants included a United States Senator, a United States Representative and a state government representative from the state of Ohio, (transcript at 69–75, 29–35, 19–26); a United States Representative and a state government representative from the state of Michigan, (transcript at 9–14, 14–19); 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] Subsequently, the Commission also published for public comment notice that it was proposing to disapprove application of the terms proposed by the CBT to the January 1999 soybean futures contract and the March 1999 corn futures contract. 62 FR 5108 (September 30, 1997). The CBT purportedly listed those futures contracts for trading after issuance of the September 15, 1997, proposed order. The comment period on that notice also ended on October 22, 1997.

[8] Comments were received by the Commission offering a wide range of opinion. Many took issue with the philosophy underlying the section 5a(a)(10) statutory authority which permits the Commission to order an exchange to change or to supplement contract terms that in its opinion do not accomplish the objectives of providing for delivery at such point or points and at such price differentials as will tend to prevent or to diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce. Others took issue with the Commission's proposed order for not going far enough, particularly with respect to its failure to order the retention of Toledo and St. Louis as delivery points for the CBT corn contract. As discussed above, the Commission has considered carefully all of the comments submitted and has made several changes or modifications to the final Order in response to them.

[9] Testimony given by CBT spokespersons during the October 15, 1997, public hearing, as reflected in the hearing transcript, is cited hereinafter by using the abbreviation ''tr.'' followed by the relevant page number(s). Citations to the CBT letter of exceptions dated October 22, 1997, use the abbreviation ''October 22, 1997 exceptions'' followed by the relevant page number(s).

[10] In this regard, the Act, Guideline No. 1, and Commission rule 1.41 provide that an 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.

[11] A shipping certificate is a negotiable instrument that represents a commitment by the

Continued

would provide for corn or soybeans to be loaded into a barge at one of the shipping stations located along a 153-mile segment of the Illinois River from Chicago (including Burns Harbor, Indiana) to Pekin, Illinois. (See map below.) Delivery in Chicago would also be permitted by rail or vessel. Delivery at all eligible locations would be at par. The CBT's proposal would eliminate the current delivery points on its corn and soybean futures contracts at Toledo, Ohio, and St. Louis, Missouri.

In addition to having a shipping station located along the specified segment of the Illinois River 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 under all of its futures contracts for agricultural products. The CBT 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 issued by an issuer. These limitations would be: (a) for northern Illinois River locations, 30 times the registered daily barge loading rate of each shipping station; (b) a value no greater than 25% of the issuer's net worth; and (c) for Chicago locations only, the registered storage capacity of the facility.

In addition, the proposal would impose requirements regarding an issuer's rate of loading barges.[12] Once a shipping certificate was 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 were 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 were surrendered.[13] 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.)

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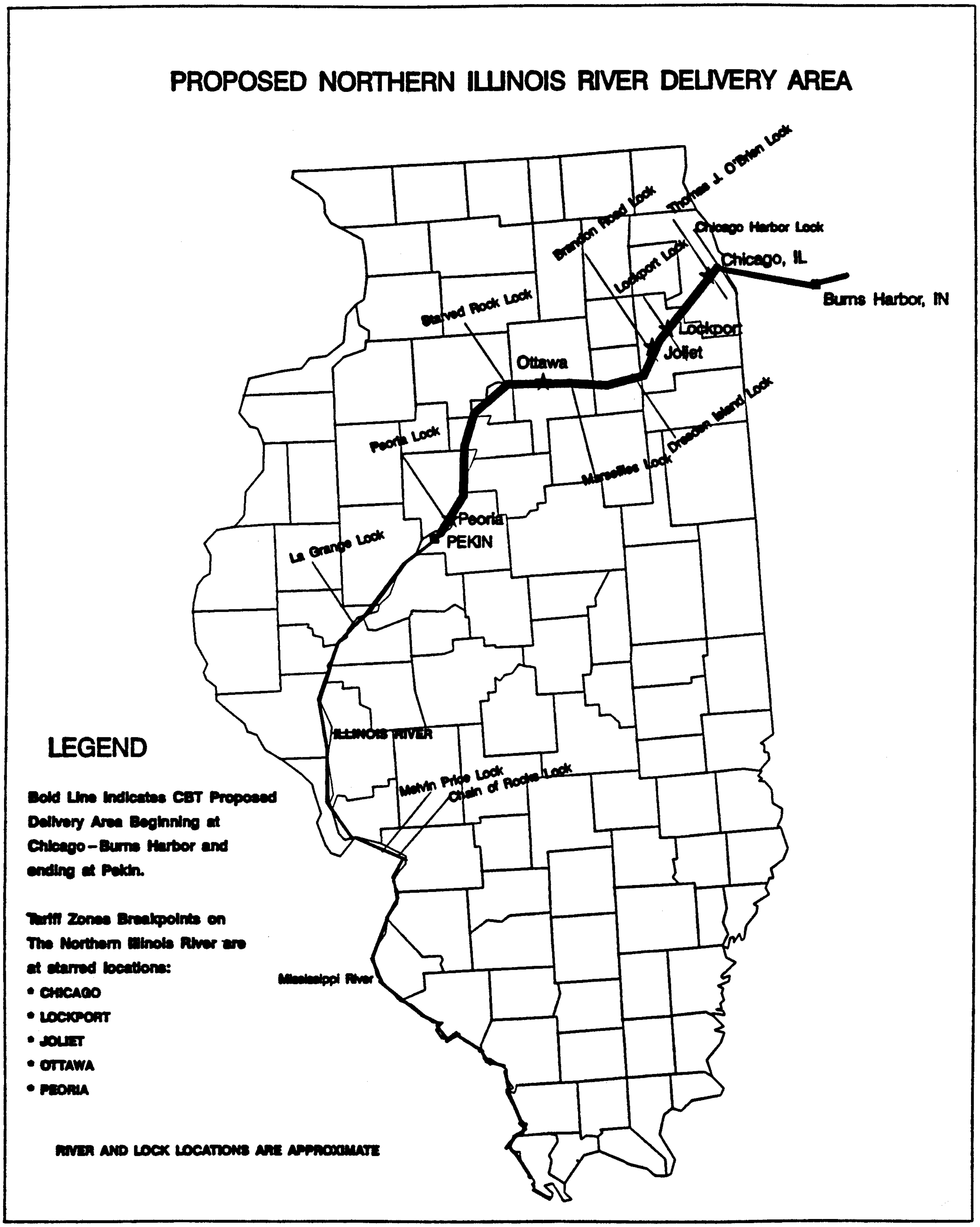
issuer to deliver (e.g., load into a barge) corn or soybeans to the certificate holder, pursuant to terms specified by the CBT, whenever the holder decides to surrender the certificate to the issuer. Unlike an issuer of a corn or soybean warehouse receipt, which must have the product in storage to back 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.

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

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



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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 tend to prevent or to diminish price 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 or to diminish price 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 deliverable supplies that will not be conducive to price manipulation or distortion, and that such supplies reasonably can be expected to be available to the short trader and saleable by the long trader at their market value in normal cash market channels.[14]

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 finding that the delivery provisions of the current contracts do not meet the standards of section 5a(a)(10) of the Act, and the Commission must decide whether the CBT's proposal goes far enough to cure that failure.

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 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), particularly when traders hold large positions.[15]

For soybeans, the Commission's staff analysis demonstrated a positive relationship between price inverses and deliverable supplies of less than 12 million bushels (2,400 contracts). Price inversions occurred in 12 of the 17 expirations of the CBT's soybean futures contracts when deliverable supplies were less than 12 million bushels or 2,400 contracts. Furthermore, such inversions occurred in 10 of the 11 such expirations when a trader's position exceeded 600 contracts, a relatively common occurrence in the soybean futures market. In contrast, when deliverable supplies exceeded 2,400 contracts, regardless of the size of large traders' positions, there was only a single instance of price inversion. The 2,400-contract level of deliverable supplies constitutes four times the speculative position limit for the contract, a benchmark historically used by the Commission's staff in analyzing the adequacy of deliverable supplies for new contracts.

The analysis for the corn market found a comparable relationship between price inverses and deliverable supplies at the level of 15 million bushels or 3,000 contracts. Price inverses occurred in seven of the ten corn expirations when deliverable supplies were less than 3,000 contracts.[16] This analysis supports using as a measure of an inadequate level of deliverable supplies under section 5a(a)(10) a level below 2,400 contracts for soybeans and a level below 3,000 contracts for corn.

However, the history of these contracts demonstrates that a higher level of deliverable supplies may, in fact, be necessary to protect against price manipulation. Therefore, the Commission also has decided to consider an additional measure based on historic experience with manipulation and price distortion in these contracts. During the July 1989 soybean futures contract expiration, the Commission exercised its surveillance powers to force the reduction of the long futures position of the Ferruzzi group of

[14] This Commission standard addresses concerns over manipulation from both the long and short side. Availability of adequate deliverable supplies tends to prevent price manipulation by the longs on a futures contract by ensuring that the shorts on the futures contract can obtain the commodity to make delivery on the futures contract without artificial constraints at a price reflecting fundamental demand and supply conditions in the cash market. The ready saleability in the cash market of the commodity received through delivery on the futures contract by contract longs tends to prevent price manipulation by the shorts on the futures contract. The Commission has considered both short-side and long-side manipulations in making its determinations in this Order.

The CBT has attempted to justify its proposal by arguing that restricting available deliverable supplies through contract delivery terms is an appropriate method of reducing the likelihood of short-side price manipulation. The Commission disagrees with this argument. Such restrictions in supplies render a contract highly vulnerable to price manipulation by the longs and are unnecessary if the contract is designed so as to permit the saleability of the commodity received by the takers of delivery at the normal cash market price.

[15] Of course, price inverses in futures contracts can occur as a normal result of short supplies in the cash market and can thus accurately reflect the cash market. However, when the available deliverable supplies under a futures contract have been so limited by the contract terms as to create such a shortage artificially, then the resultant susceptibility to price manipulation and price distortion are exactly the results forbidden by section 5a(a)(10). The CBT proposal's contract terms would cause such a limitation in available deliverable supplies, as discussed below.

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

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.[17] Just prior to the CBT emergency action, Ferruzzi's long position in the July 1989 soybean future was about 20 million bushels or 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 under its proposal. 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

> * * * 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 total corn and soybean production and handling in the areas near the delivery points are not an adequate measure of deliverable supplies under the proposed 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 proposed 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 required in the CBT proposal. Therefore, the proper measure of available supplies must be based on historical barge shipment data. Such data are the best measure of that portion of the stocks in the vicinity of the northern Illinois River delivery points which is realistically available for delivery onto barges on the river as required by the CBT proposal.[18]

To rely on additional supplies destined for domestic processing and other uses would be to assume that the futures contract would divert those supplies to the export market which barge delivery largely constitutes, thus causing an abnormal movement in interstate commerce forbidden by section 5a(a)(10). The CBT has suggested that an appropriate measure of deliverable supplies is the amount of commodity that would be made available for futures deliveries in response to price increases on the futures markets resulting from manipulation attempts and other causes—its ''elasticity of supply'' argument. CBT October 22, 1997 exceptions at p. 19. However, diversions of a commodity from its normal movement and uses in the cash market in response to rising prices on futures markets which are not reflective of price increases in the cash market are precisely the prohibited effects which section 5a(a)(10) seeks to prevent.

The CBT also argued that deliverable supplies are adequate based on 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.[19] (CBT April 16, 1997, submission, attachment 4.) However, the CBT's reliance on the loading capacity of firms in the delivery area as an indicator of adequacy of deliverable supplies 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 loading 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 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 the CBT's proposed $40 million minimum net worth requirement to qualify as shipping certificate issuers under the contracts. In doing so, the CBT 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 initial submission, also provided inflated data on barge shipments. These data significantly overstated the amount of barge shipments by including shipments from part of the Illinois River outside of the CBT's proposed delivery area of the contracts. The CBT's data also included barge shipments by all shippers, including three shippers not meeting the eligibility requirements to be issuers of certificates under the contracts, and thus overstated the deliverable supplies available in that respect as well.

C. The CBT Proposal Fails to Provide Adequate Deliverable Supplies 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 U.S. 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

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

[18] At the October 15, 1997 hearing (tr. at pp. 34–35) and in its October 22, 1997 exceptions at pp. 29–30, the CBT introduced new arguments relating to corn and soybean stocks based upon data provided to the CBT by the Commission. Those data consisted of a survey of data for one year estimating September stocks within the vicinity of the northern Illinois River and extrapolations from that data for additional years. The Commission placed little weight on these data not only because they rely upon only one year's actual observation, but more importantly because they provide no guidance in determining the proportion of such stocks which form part of the proposed contracts' deliverable supplies.

The CBT argued that *all* stocks of soybeans within twenty-five miles (or more) of the northern Illinois River should be included in deliverable supplies. However, only that relatively small portion of the stocks available for barge shipment is properly considered as available for delivery under the terms of the contract proposed by the CBT. Stocks destined for other uses, such as the larger domestic processing market, cannot be considered to be available.

[19] 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.)

essentially designed to reflect the export market price 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 is destined for export markets. While Chicago rail shipments play some role in the domestic market, that role has diminished so as to be very small.

The potentially available gross deliverable stocks along the northern Illinois River delivery area for each delivery month were estimated by summing barge shipments from the CBT's proposed delivery 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.[20] 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 near the river at the beginning of the month, this summing procedure provides an estimate of the gross corn and soybean supplies potentially available for delivery from the proposed delivery points during each delivery month.[21]

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 reflecting the quantity of these commodities that was potentially available to the proposed northern Illinois River delivery points at prevailing cash market supply and demand conditions. While other supplies of corn and soybeans are in the vicinity, they historically moved to other demand centers rather than moving into the flow of product via barge shipment down the northern Illinois River primarily destined for the export market. 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.

For Chicago, potentially available gross 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 estimates of potentially available gross deliverable supplies were adjusted to reflect the effect of the CBT's proposed minimum net worth requirement 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 CBT proposal restricts eligibility of issuers of shipping certificates to firms meeting a $40 million minimum net worth requirement. This eligibility

[20] Corn and soybeans are both harvested beginning in mid-September or October, the start 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 during the summer, until the next harvest replenishes the supply.

[21] The amount of barge shipments for September was reduced by 50% prior to its inclusion in the sum for earlier old crop months. This 50% reduction is an amount suggested by trade sources to reflect the likelihood that September barge shipments consisted, in part, of new crop supplies which were not available for shipment during the old crop year. The full amount of September shipments was included, however, in determining September supplies. This calculation has been adjusted in response to the CBT's suggestions. Generally, September new crop production occurs late in the month.

requirement would eliminate barge shipments made by ineligible firms among those firms which currently operate loading facilities along the northern Illinois River delivery area 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 some portion of the supplies that normally are shipped by the firms not meeting that eligibility requirement—although certainly not all those supplies—would become available for futures delivery by diversion of the supplies to the four eligible firms. Accordingly, the Commission calculated two separate estimates of potentially available gross deliverable supplies: one excluding shipments by firms not eligible to issue shipping certificates under the CBT's proposal 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.[22]

[22] The procedure to determine the amount of this adjustment was to sum the observed stocks and receipts of corn and soybeans in Chicago plus stocks of wheat. Whenever such a sum would have exceeded current total registered storage capacity, the estimated supplies of corn and soybeans were reduced proportionately by share of stocks. The result clearly overstates potential gross deliverable supplies of corn and soybeans in Chicago because it assumes that the facilities eligible for delivery of such commodities would be operating at full capacity, while Chicago facilities have historically operated at a fraction of capacity and continue to do so, as shown on a chart below. The numbers in the final Order are adjusted from those in the proposed order to reflect corrections in computation and in the CBT data on stocks of grain and soybeans in Chicago.

Through this analysis, the Commission arrived at potentially available gross deliverable supplies, as discussed below. As is also described in more detail below, those gross amounts do not constitute a basis for determining whether deliverable supplies under the CBT proposal are adequate to meet the requirements of section 5a(a)(10). Instead, those amounts are only the beginning point for an analysis of deliverable supplies and must be reduced because of various additional factors limiting the available deliverable supplies, as discussed below.

2. Potentially Available Gross Deliverable Soybean Supplies

Delivery months under the CBT proposed soybean futures contract include July, August, and September, *inter alia.* These months are at the end of the crop year and therefore historically reflect the lowest available supplies. As shown in the following charts for soybean supplies attributable to the four firms which would be eligible to issue shipping certificates, potentially available gross deliverable supplies under the CBT proposal for July, August, and September do not meet an adequate level considered by the Commission to be required by section 5a(a)(10) of the Act. Specifically, for July, the gross deliverable supplies of soybeans were less than the 2,400-contract level in three of the 11 years covered by the analysis, while the 4,000-contract level was not reached in eight of the 11 years. For August, gross deliverable soybean supplies fell below 2,400 contracts in four years, and the 4,000-contract level was not reached in any of the 11 years. Gross deliverable supplies 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.[23] 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.

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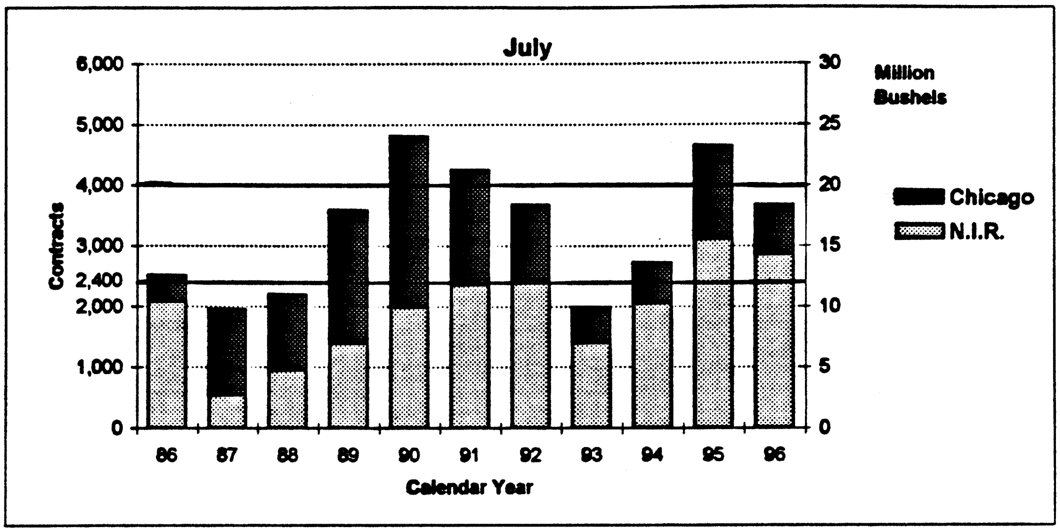
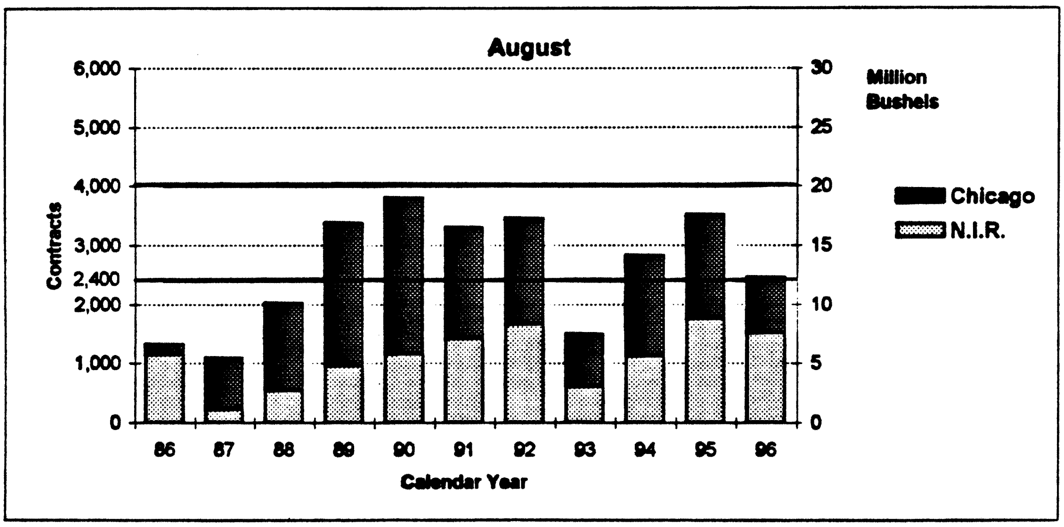
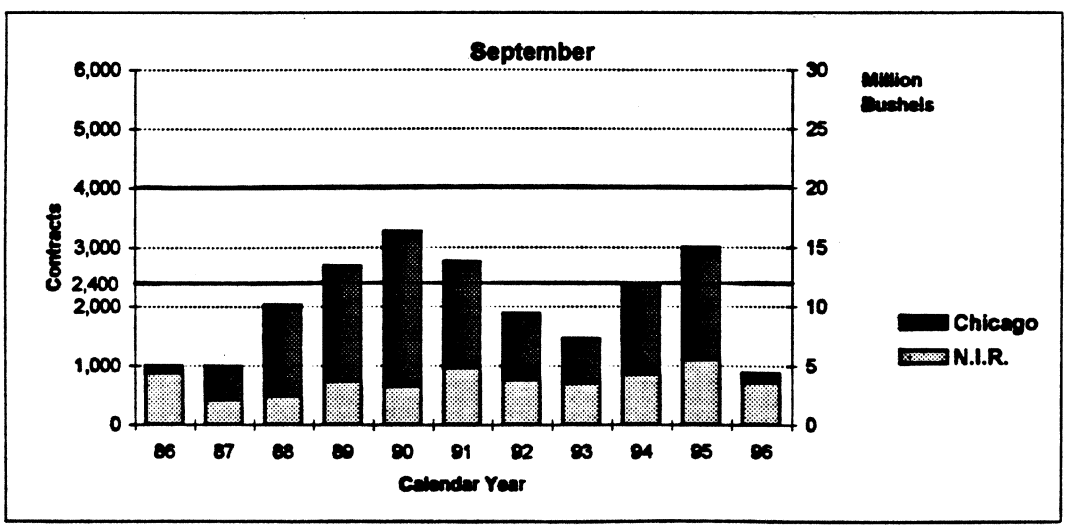
[23] As shown in the charts for shipments by all firms, including those firms that would be ineligible to issue certificates under the CBT proposal, the proposal improved marginally in that gross deliverable supplies for all firms were less than 2,400 contracts in six rather than seven years for September.

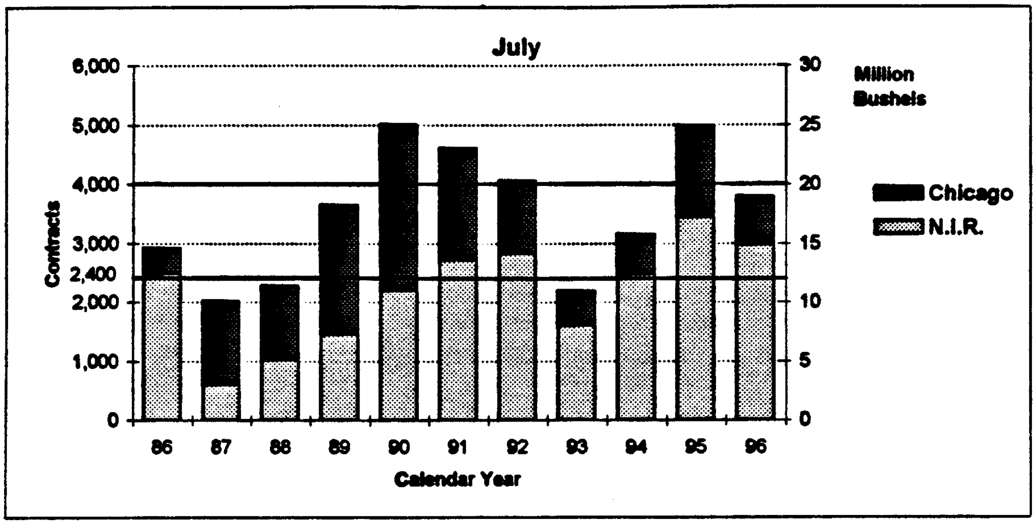
Soybeans -- Gross Deliverable Supplies for July, August and September for the Eligible Four Firms

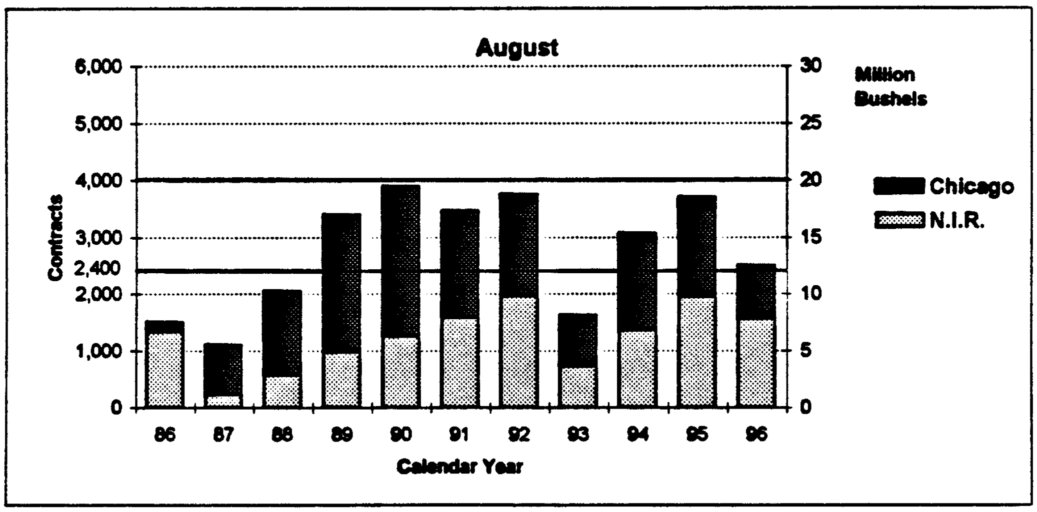


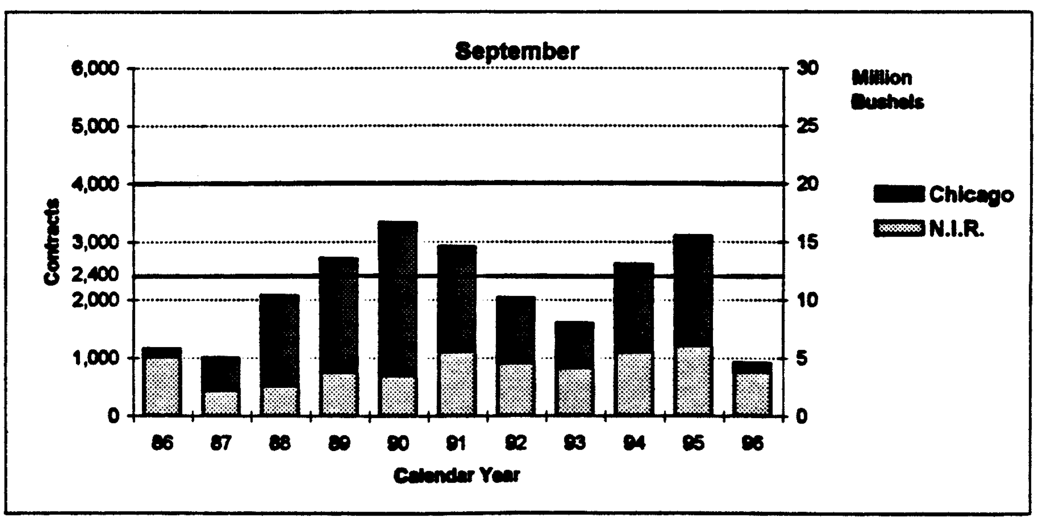




Soybeans -- Gross Deliverable Supplies for July, August and September for All Firms







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3. Potentially Available Gross Deliverable Corn Supplies

The CBT's proposed corn contract would include the contract months of July and September, *inter alia*.[24] In the case of corn, the potentially available estimated gross deliverable supplies for July attributable to the four eligible firms reached or exceeded the 3,000 and 4,000 contract levels in all years. However, gross deliverable supplies of corn for the four eligible firms in September fell below the 3,000-contract level in seven of the 11 years 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.

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

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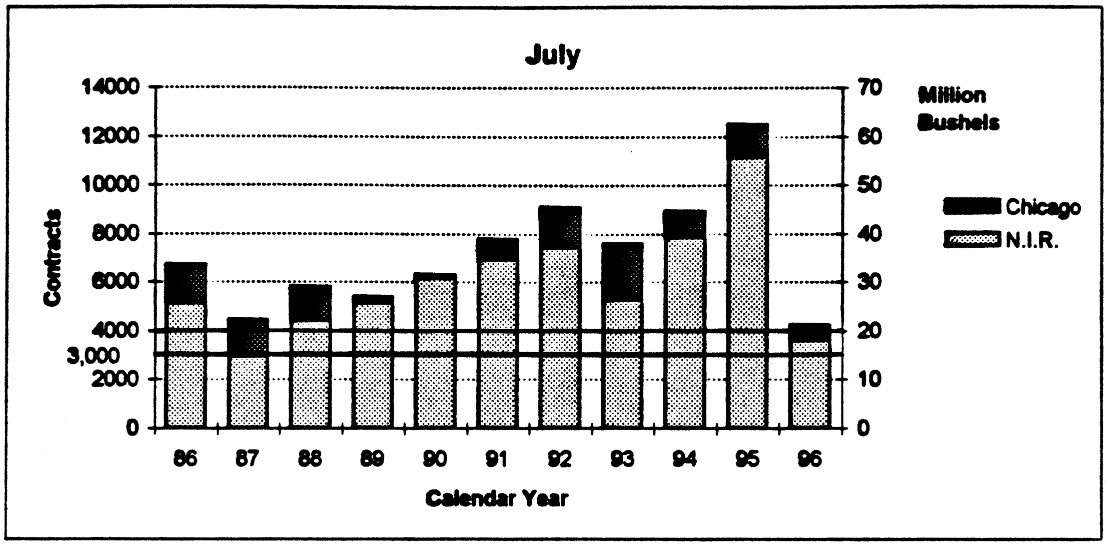
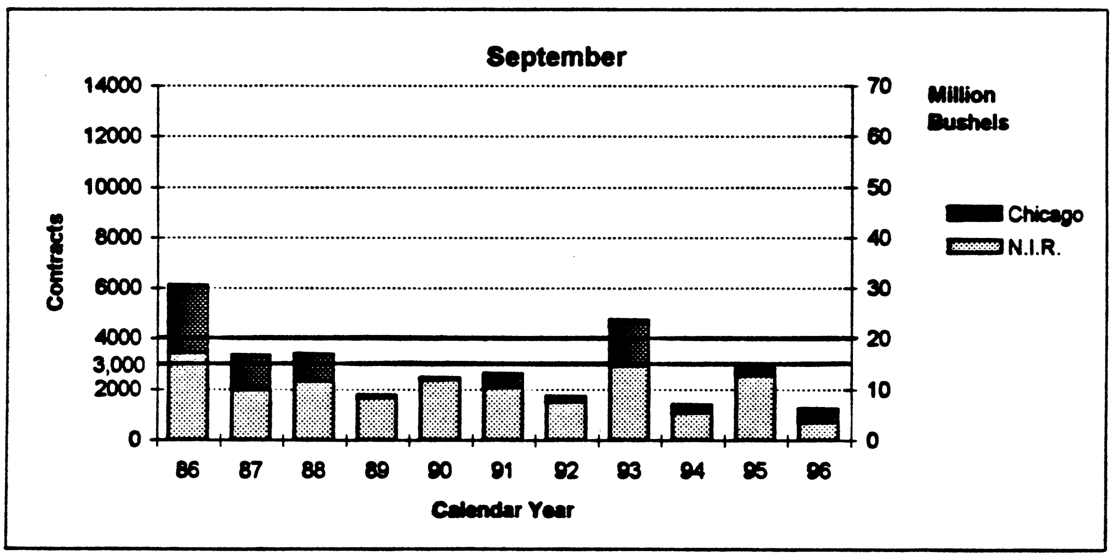
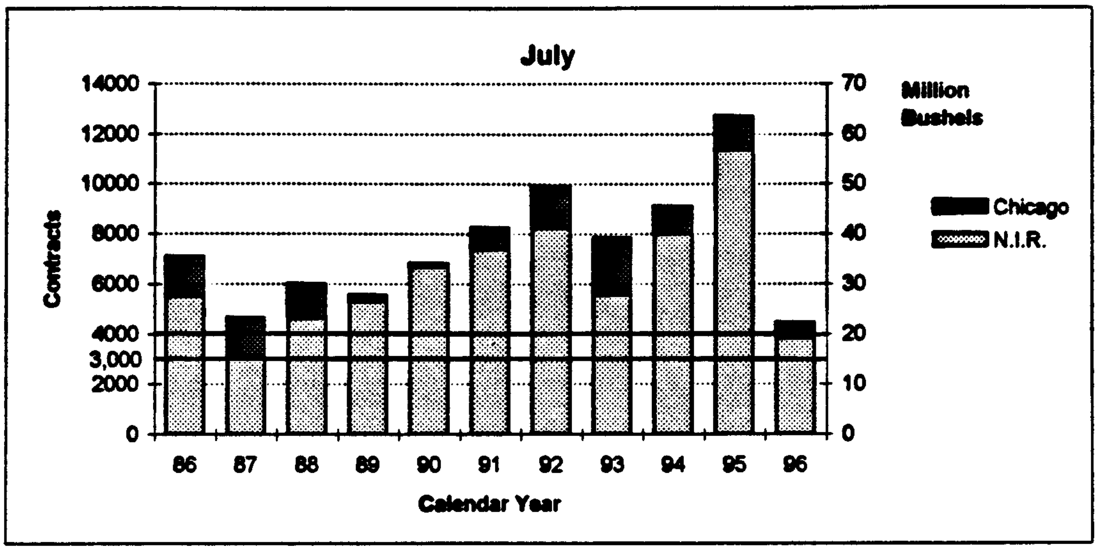
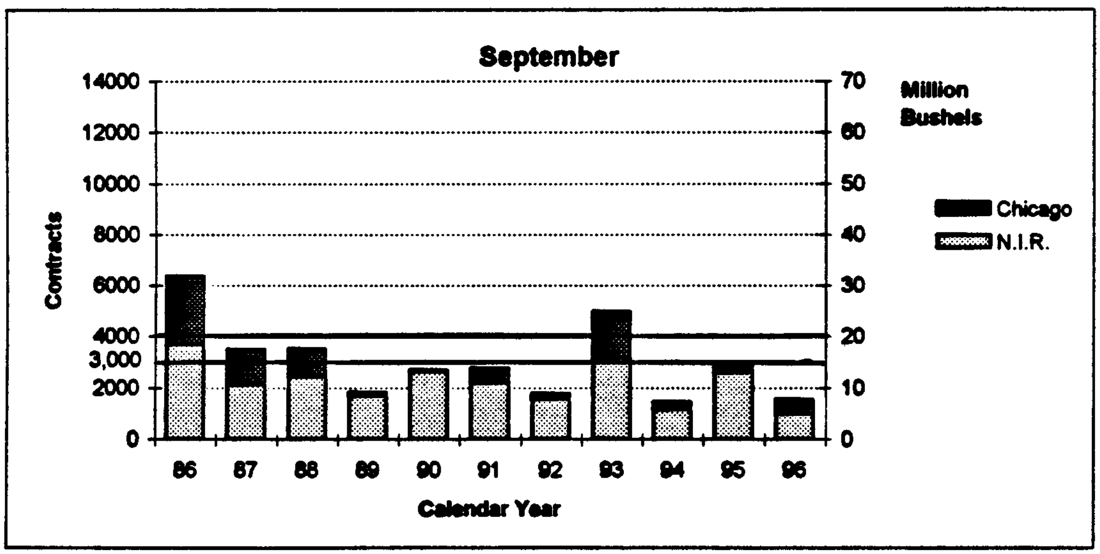
Corn -- Gross Deliverable Supplies for July and September for the Eligible Four Firms





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





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4. September New Crop Production

Neither corn nor soybeans reached adequate levels of potentially available gross deliverable supplies for September. However, because September is a transition month between the old crop and the new crop, deliverable supplies estimates based upon barge shipments data for September may understate September potentially available gross deliverable supplies. The harvest of the new crops of corn and soybeans generally begins sometime in mid to late 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. Those estimates, however, are less reliable than the barge shipment data discussed above.

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 U.S. Department of Agriculture data submitted to the Commission by the CBT.[25] Some portion of this new crop production might have been available for delivery during September. However, the Commission has already assumed that half of the September northern Illinois River shipment data shown above constitutes new crop supplies, based on discussions with trade sources. Furthermore, a substantial portion of the new crop production historically has been destined for uses other than barge shipments, such as domestic processing.

A significant amount of corn was produced during September and possibly might augment to some extent the potentially available gross deliverable supplies discussed above. September soybean production has generally been considerably smaller than September corn production. Moreover, September soybean production does not overcome the inadequate potentially available gross deliverable supplies of soybeans in July and August.

The likelihood of price manipulation in September may be somewhat less than in July or August 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, the harvest of the new crop replenishes supplies and 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 remaining old crop supplies might 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.

Nonetheless, it should be noted that a significant price distortion was experienced in connection with the expiration of the September 1997 soybean futures contract. Under the CBT proposal, the use of shipping certificates rather than warehouse receipts to effect delivery might 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 would allow the issuance of shipping certificates for locations closer to the production area and for up to 30 days of loading capacity and thus would give issuers more opportunity to deliver some new crop production. Issuers might issue some shipping certificates on the basis that new crop supplies which were not immediately in hand might be available by the time loading was required under the shipping certificates.

The Commission considers the low level of potentially available gross deliverable supplies of corn, which is limited to September, to be of less regulatory concern than the low levels of such supplies of soybeans which extend throughout the three summer months. The shortage of corn supplies is apparently of brief duration, and the expectation of abundant supplies of new crop production of corn by October reduces the likelihood that the corn shortage in September 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]

Crop year	Estimated September production*	
	Corn	Soybeans
1986	15,218	3,109
1987	26,784	6,056
1988	12,955	5,749
1989	10,169	6,143
1990	9,305	2,491
1991	41,663	8,729
1992	2,884	3,536
1993	6,513	1,670
1994	13,299	10,417
1995	12,359	5,646
1996	5,271	1,013

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

5. The CBT's Objections on Gross Deliverable Supplies

At the October 15, 1997 hearing and in its October 22, 1997 letter of exceptions, the CBT raised various objections to the Commission's evaluation of potentially available gross deliverable supplies of soybeans. In doing so, the CBT failed to recognize that the estimate of such supplies is merely the starting point for the Commission's analysis of available deliverable supplies, which can be arrived at only after taking into consideration various factors reducing the availability of supplies, as is discussed below. Furthermore, the CBT focused solely on the 2,400 contract measure for soybeans and virtually ignores the other important measure of 4,000 contracts.

The CBT objected to the Commission's consideration of 1987 and 1993 river shipment data because floods and lock closings occurred during those years. For example, the CBT objected that the gross deliverable supplies for 1993 obtained from barge shipment data should be augmented because in that year the upper Midwest experienced severe floods. CBT October 22, 1997 exceptions at p. 38, tr. at pp. 22–28. The CBT argued that the Commission should assume that the CBT would have responded by declaring a market emergency and requiring use of alternate delivery areas with additional deliverable supplies. However, U.S. Army Corps of Engineer data show that barge shipments continued to move down the Illinois River throughout this period despite the flooding and the area

[25] The table has been modified to reflect corrections to the CBT-supplied data noted by the CBT at the October 15, 1997, hearing.

from which the CBT argued it would have required deliveries may have experienced even greater flooding than the regular delivery area. Whether the CBT would have taken any action under such circumstances and, if so, what action it would have taken are in the realm of pure speculation. Similarly, the CBT argued that the deliverable supplies for 1987 should be augmented because certain locks were closed, which arguably would have triggered the CBT's contingency plan.[26] While the CBT's argument does underscore the need for an effective contingency plan because of foreseeable periods of river traffic obstruction, it does not justify ignoring historical data concerning gross deliverable supplies.

The CBT also sought to bolster the potentially available gross deliverable supplies for the August and September soybean futures contracts by relying on new crop production. *See*, tr. at pp. 17–22 and October 22, 1997 exceptions at pp. 29–30. As noted above, the Commission has considered the availability of some new crop production for the September futures contract. Although the ability to issue shipping certificates would give issuers some flexibility to effect deliveries from potential new crop production during September, new crop production would not realistically be available for delivery on the August futures contract, and the CBT has grossly overstated the amount of new crop production available for delivery on the September futures contract.

It is not realistic to assume that issuers would issue certificates representing their full 30-day capacity and would choose to load out at least one barge per day over a six-week period. Shipments on the northern Illinois River in the August-September period have never approached such a large volume during the eleven years studied. Shipments from any one shipping station on the northern Illinois River at a rate as high as one barge per day per month have been observed only once in July and once in September and only three times in August during the entire eleven year period analyzed. Moreover, shipments from a shipping station at a daily rate of one barge for one month would have exceeded by five times the monthly average number of barges of soybeans shipped from individual shipping stations during July, August, and September over that period.

Furthermore, it is extremely unlikely that an issuer would undertake the risk involved in the CBT's hypothetical scenario. An issuer would have to have a very large amount of old crop supplies available to deliver until significant supplies from the harvest became available, and the timing of the harvest is extremely variable and difficult to predict.

6. Necessary Reductions From Gross Deliverable Supplies

Additional factors must be considered which necessarily reduce the above estimates of potentially available gross deliverable supplies. These factors include: (a) the CBT proposal's reliance on Chicago as a source of deliverable supplies; (b) the CBT's proposed three-day barge queuing and priority load-out requirements; 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 and foreseeable disruptions in barge transportation on the Illinois River. As discussed above, the CBT's proposed $40 million minimum net worth requirement for issuers of shipping certificates also reduces gross deliverable supplies. These additional factors are analyzed separately in later sections of this Order.

a. Reliance on Chicago. To the extent that potentially available 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, under the CBT proposal gross 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, under the CBT proposal gross deliverable supplies of soybeans 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 gross deliverable supplies of soybeans under the CBT proposal in any year in the July, August, or September delivery months. Thus, to the very limited extent that potentially available gross deliverable supplies in the past would have reached an adequate level before consideration of necessary reductions, they would have done so because of 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 the cash market in 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 Chicago in the future. Chicago elevators for many years have held stocks well below their maximum capacity levels, particularly in the critical summer months. The following chart demonstrates that significant underutilization of the remaining capacity in Chicago is continuing despite the dramatic contraction in available capacity and is highly likely to continue to do so in the future. Indeed, stocks in Chicago in the recent past have been at less than half of capacity. Thus, Chicago supplies will most likely be reduced significantly in the future and would not be available in significant quantities under the CBT proposal.[27]

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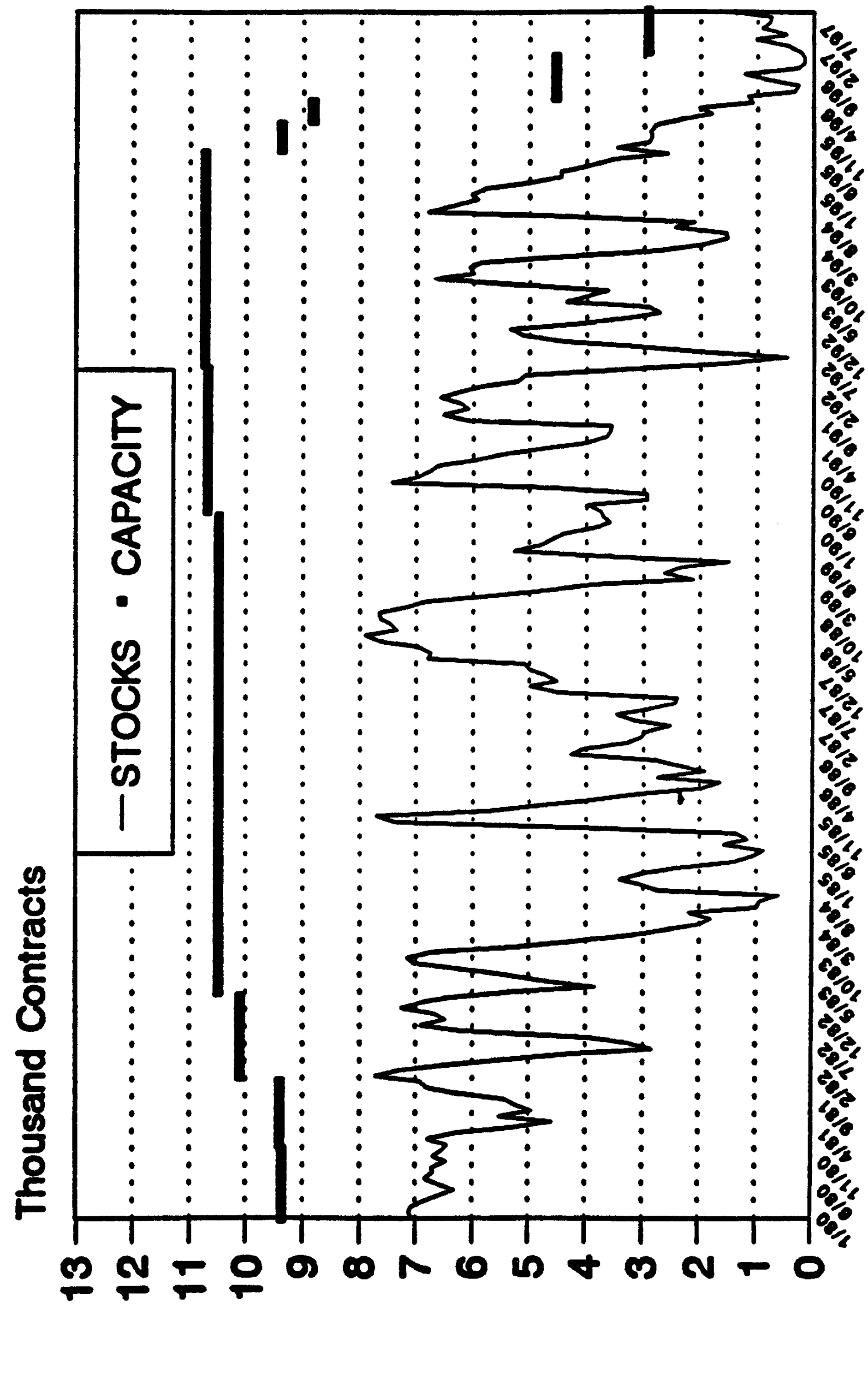
[26] In addition to being speculative, the CBT's approach improperly over-counts gross deliverable supplies during this period. The CBT apparently uses as a base amount the deliverable supplies shown by the Commission's analysis for those months and then adds to that base an additional amount based on shipments for those same months from areas eligible for delivery under the proposed contingency rule. However, the contingency plan would be triggered only during such period as shipment on the northern Illinois River was obstructed. Hence, even if the Commission were to accept the CBT's assumptions, the shipments shown in the Commission's analysis should not be included in the CBT's calculation.

[27] Moreover, there is no reason to believe, as the CBT argued in its October 22, 1997 exceptions at p. 39, that any significant amount, much less 20%, of the soybeans that previously flowed to Chicago would be redirected to flow down the northern Illinois River on barges to the Gulf. There has not been a notable increase in barge shipments from the shipping stations on the northern Illinois River closest to Chicago during the recent closures of elevators in Chicago, demonstrating that such a redirection has probably not occurred and is not likely in the future.

Total Chicago Stocks vs. Capacity

Soybeans, Corn & Wheat - January 1980 Through October 1997



Source: CBOT Stocks of Grain
Month-End Fridays. October 1997 is as of 10/24/97.

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b. The Three-Day Barge Queuing and Priority Load-Out Requirements. The CBT proposal includes a provision requiring a shipping certificate issuer to begin loading onto the certificate holder's barges within three business days after it receives loading instructions and the holder'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 and 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 customers are generally 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 issuers would be able and willing to obtain labor for a 24-hour day, to procure additional transportation and supplies quickly, and to move the supplies to the waiting barges efficiently.

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

c. Prior Commercial Commitments of Stocks for Shipment. An additional factor which would reduce the above estimates of gross deliverable supplies is prior commitment of stocks for shipment. 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 northern Illinois River is not irrevocably committed at the time of the shipment's origination, the ability of firms economically to obtain supplies to meet existing commitments for shipment from alternative sources would certainly 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, a result that section 5a(a)(10) is intended to prevent. 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.

7. Conclusion

In summary, the proposed delivery provisions of the soybean contract clearly fail to meet the statutory requirement for adequate 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 adjustments required by such 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 the 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. Gross deliverable supplies for September as estimated by the Commission may be further supplemented to some extent by new crop production in September, and the September corn contract would be somewhat 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. The Commission's action in changing and supplementing the CBT's proposed corn contract to add locational differentials, to eliminate the $40 million minimum 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. In light of those changes and supplements, the Commission does not find that the available deliverable supplies of corn under the revised CBT proposal are so inadequate under section 5a(a)(10) 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 based on section 5a(a)(10) requirements. As discussed above, Guideline No. 1 requires that futures contract terms and conditions provide for deliverable supplies that will not be conducive to price manipulation or distortion and that such supplies reasonably can be expected to be available to the short trader and saleable by the long trader at their market value in normal cash market channels. 17 CFR Part 5, Appendix A(a)(2)(i). 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 represented by cash price differences * * *'' Powers Memorandum, *supra* note 1, at p.15. When cash market price differences are unstable or where the product flow in the cash market is not relevant to the futures delivery points, the Commission's policy requires that differentials must be set at levels which fall within the range of values that 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 at the proposed delivery points which have a stable relationship with one another. 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 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 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 FOB barge at the loading facilities.[28] Currently, the cash market for such products prices them at the CIF New Orleans price, which is uniform and widely known.[29] 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 publicly. While they vary to some extent, they are expressed 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 commodities 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 supplies from one delivery point to another.[30]

Where as here, futures contracts provide for multiple delivery points 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 contracts 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).

The CBT argued 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.'' CBT June 16, 1997 submission, at 40. However, this is not the appropriate 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, as discussed above. Furthermore, even if it were the appropriate standard, we find that a lack of price differentials is not commonly observed in the cash market, for the reasons discussed above.

The CBT's argument erroneously relies on bid prices to farmers at various delivery points rather than prices FOB barge, the prices that the CBT's proposed contracts are designed to reflect. The CBT also relies on information that suggests that the cash market value of corn and soybeans loaded onto vessels and rail cars at Chicago may at times equal or exceed the value of corn or soybeans loaded onto 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 play a small role in the cash market and should not be a significant factor in setting locational differentials under the CBT's proposal. The prices for barges loaded on the northern Illinois River at Chicago and at delivery points south of Chicago reflect the differences in freight costs on which the Commission bases it price differentials for those delivery points.

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.

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[28] 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 (barge, rail car, vessel, etc.) at a designated location.

[29] 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 the products 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.

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

There has been a 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 U.S. 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 way south to New Orleans.[31] 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 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 south of the delivery area from early June through the middle of August in 1993.[32]

The CBT proposal's heavy reliance on barge delivery would disadvantage delivery takers during those periods when barge traffic is negatively impacted by weather conditions or lock maintenance and repair. Prolonged obstruction of transportation on 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 foreseeable disruptions to the operation of contract terms.[33] In response to repeated requests by the Commission staff, the CBT, by submission dated August 22, 1997, sought to cure this defect in its proposal 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 lock allowing river movement) 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 taker 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, similar problems could be caused 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 lock at a time, having the potential to increase the impact of the disruption within the delivery area from such projects. Thus, although the same foreseeable situation rendering the contracts vulnerable to price manipulation and 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 that situation. Furthermore, obstructions and disruptions to river traffic other than lock closures—such as those caused by flooding—are foreseeable, would render the proposed contracts vulnerable to price manipulation and market congestion and should be addressed in the contingency plan.

Secondly, when a sustained river traffic obstruction of less than 45 days is announced, vulnerability to price manipulation and market congestion is foreseeable. This is also true when there has been less than the six-month advance 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 traffic obstruction 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 was obstructed and that, once the obstruction to river movement was ended, the issuer could only be required to deliver on the certificates over an entire-month period.

In this connection, it should be noted that closures for lock repairs generally are scheduled for the summer months, the time when deliverable supplies are lowest and futures contracts are most susceptible to manipulation. (Indeed, a prolonged closure extending to the arrival of the new crop could allow futures deliverers to depress the price of an old crop futures month to levels reflecting new crop values at a time when the broader cash market was reflecting the usual old crop/new crop price differences based on 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 to be applicable by the

[31] 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. The CBT, in its October 22, 1997 exceptions at p. 38, agrees that these disruptions have in the past (in 1987, for example) been severe and prolonged enough to curtail the ability to take delivery within the northern Illinois River delivery area. *See also,* tr. at 22–24.

[32] In addition to weather 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.

[33] 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 delivery 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 and market congestion arising from delayed delivery in such circumstances, a different and more effective contingency plan is required under section 5a(a)(10).

Commission, as discussed below. The application of different 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.[34]

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 futures contracts, the CBT has proposed to require that firms eligible to issue shipping certificates under its soybean and corn contracts must also meet a minimum net worth standard of $40 million. As discussed above, this requirement has the effect of reducing the amount of deliverable supplies by making ineligible for delivery certain existing loading facilities in the delivery areas owned by otherwise eligible firms. In addition, the requirement 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 issuing 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.[35] Therefore, the CBT proposal's possible anticompetitive effects must be evaluated against its potential effectiveness in achieving the policies and purposes of the Act.

All existing futures contracts that provide for delivery using 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 minimum 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 minimum net worth requirement would be to limit issuance of shipping certificates to four large grain firms among the seven firms with shipping stations along the northern Illinois River delivery area. At least three firms which currently operate shipping stations on the designated segment of the northern Illinois River and have participated in the cash market by loading barges of corn and soybeans would be excluded from issuing shipping certificates for delivery on the CBT's proposed futures contracts. The Commission does not believe that 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 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 would be approximately 3,300.[36] This increase in concentration as compared with the current delivery system—530 points in the HHI—would likely create or enhance market power or facilitate its exercise in an already highly concentrated market.

The CBT has failed to demonstrate a need for this particular requirement. Accordingly, the Commission finds that the $40 million minimum net worth requirement would be an unjustified barrier to entry into a highly concentrated market and its approval by the Commission would be contrary to section 15 of the Act.[37]

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 the 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 under the CBT's proposal should be increased through the retention of those delivery points under the CBT's current contracts which the CBT has proposed to eliminate and that appropriate locational differentials should be

[34] Even if such differing differentials would not have such adverse results, it would be nonetheless ''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.

[35] *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).

[36] The HHI is calculated by summing the squares of the individual market share of each of a market's participants. The 3,300 figure is 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) which, 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 (and indeed less than under the current delivery system).

[37] Concerns about concentration among those firms eligible to issue shipping certificates under the CBT's proposal are compounded by the sizeable ownership interests some of the firms have in barge fleets operating on the northern Illinois River and in Gulf export and processing facilities. Several commenters expressed concern that this vertical integration increases their opportunity for price manipulation.

applied to such delivery points. In addition, the Commission has determined for both the corn and soybean contracts to revise the CBT's proposal to impose appropriate locational differentials for northern 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 minimum net worth requirement of $40 million, which is an unnecessary barrier to entry. The Commission also has determined to revise the river traffic obstruction contingency rule by reducing the continuous period of obstruction 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 obstruction of river traffic, by making it applicable to all announced obstructions 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.

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 advantage of having transportation ties to both the export market 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 an important delivery point under the current contract, it likely would become one under the contract's revised shipping certificate format.[38]

These two delivery points have the strong advantage of having been chosen by the CBT as appropriate delivery points for its soybean contract and having been used as delivery points for the contract for a number of 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.[39]

The retention of Toledo and St. Louis as delivery points provides a substantial increase in the available deliverable supplies of soybeans and in the number of potential shipping certificate issuers on the contract. When Toledo and St. Louis are included as delivery points on the soybean futures contract, the number of entities eligible as issuers increases by three, significantly reducing the degree of concentration among potential shipping certificate issuers. 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 and from the elimination of the $40 million minimum net worth requirement for eligibility as shipping certificate issuers, as discussed in section D, below. Pursuant to these changes ordered by the Commission, potentially available gross deliverable supplies of soybeans are at or above the 2,400-contract level in both July and August during each of the past 11 years and in September during all but one of the 11 years. Indeed, the gross deliverable supplies are also at or above the 4,000-contract level for 25 of the 33 months examined.

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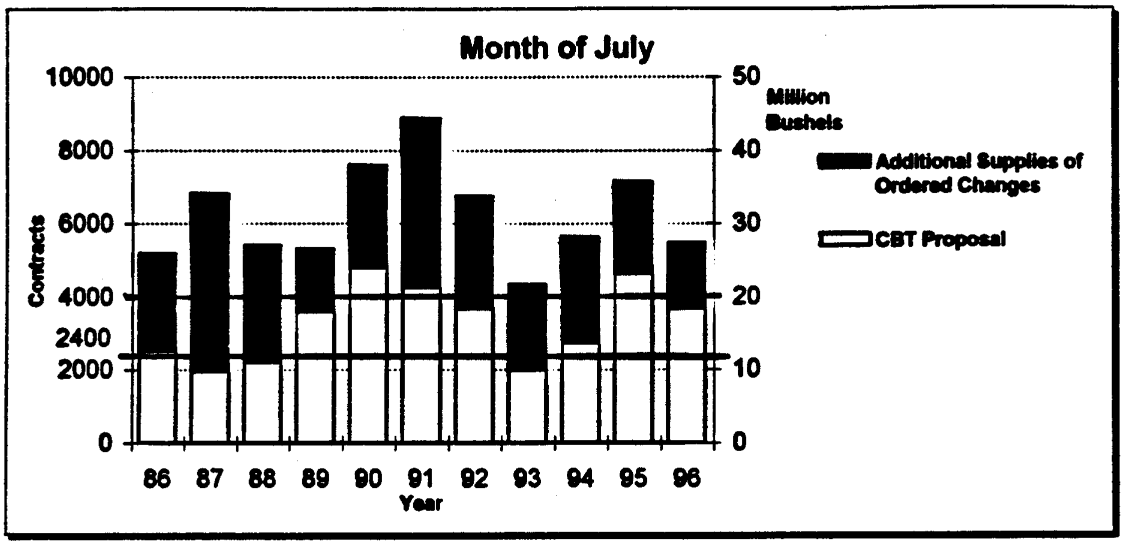
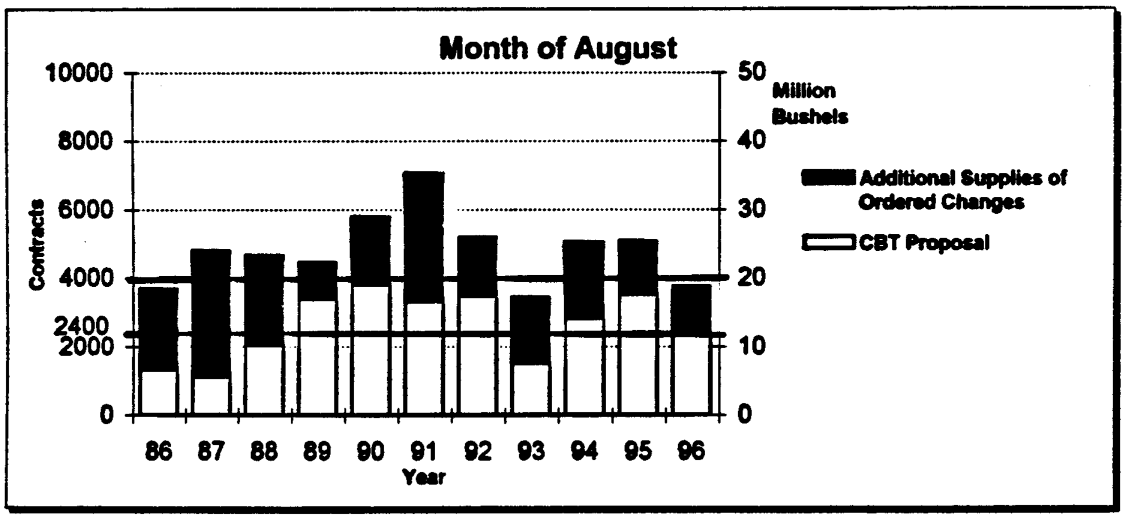
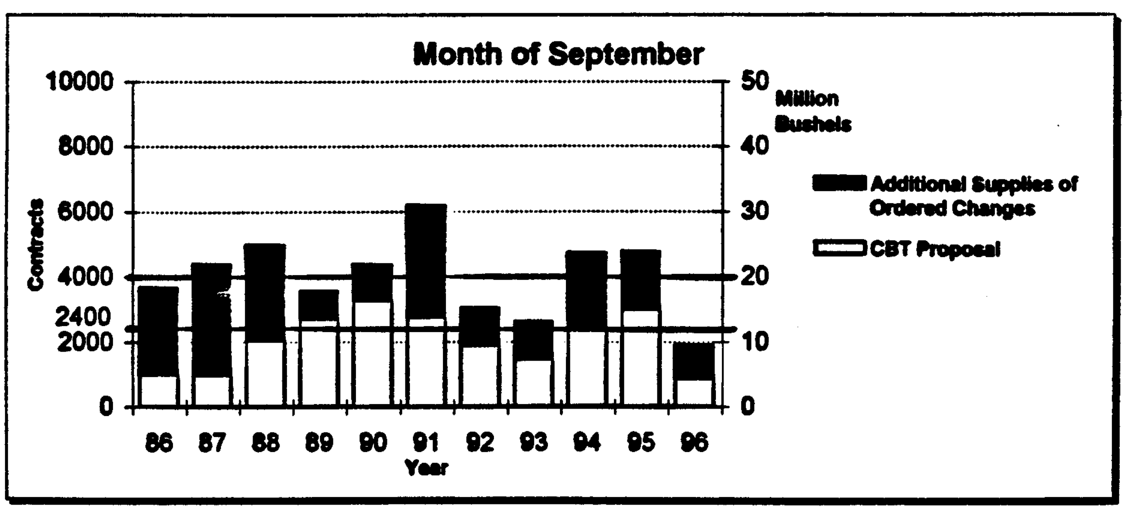
[38] Some commenters advocated the addition of new and completely untried delivery points, such as locations in the interior of Iowa, or delivery points that have been used for other contracts, such as Minneapolis, Minnesota. Although those suggestions may have merit, the Commission has decided that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

[39] The CBT argues that the Commission should not determine to order the CBT to retain Toledo and St. Louis as delivery points because their retention would permit multiple delivery locations on the soybean futures contracts and because selection of delivery points is the responsibility of the contract market alone. However, the current contract has included Toledo and St. Louis as delivery points for many years with no apparent ill effects. Moreover, section 5a(a)(10) directs the Commission to act when the contract market's proposed contract terms fail to accomplish the objectives of that section of the Act, and additional delivery points are necessary to assure adequate deliverable supplies under section 5a(a)(10) in this instance. By beginning its analysis with the CBT's proposed delivery specifications and next considering delivery points already chosen and used by the exchange as existing delivery points, the Commission has sought to achieve the most conservative means of reaching the required levels of deliverable supplies. Of course, the CBT continues to be free to indicate by proposed rule or petition that its business preference for delivery locations is otherwise, and the Commission would consider such a new proposal under the standards for review provided under the Act.

Soybeans: Comparison of Gross Deliverable Supplies under the CBT Proposal and the Ordered Changes







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Accordingly, the retention of Toledo and St. Louis as delivery points is appropriate to provide adequate levels of gross deliverable supplies of soybeans for the July and August futures contracts. Although the retention of Toledo and St. Louis does not yield gross deliverable supplies which meet the 2,400-contract level in one 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 if September gross deliverable supplies might on rare 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 significant amounts of 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. If 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.[40]

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

B. Differentials

Section 5a(a)(10) requires that, where more than one delivery point is specified in a futures contract, the contract terms must provide for 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 price differentials in the cash market among the proposed delivery locations, the CBT's par delivery proposal for all proposed corn and soybean delivery locations would reduce the level of economically available deliverable supplies 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 provides an appropriate basis for the differential. The difference between that rate as applicable to the delivery location and that rate as applicable to Chicago, Illinois, constitutes an appropriate differential reflecting cash market price differences.

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 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. 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 for St. Louis on 150 percent of the freight tariff as well. Most commenters agreed that this approach is the appropriate measure of such cash market price differences.

The differential applicable to Toledo, which is also 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 locational differentials provides that such differentials must fall within the range of commonly observed cash market price 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 delivery 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. For corn, Chicago should be at contract price with all other delivery 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.

C. Disruptions to River Traffic

The CBT proposal's heavy reliance on a single mode of transportation to effect delivery renders the contract susceptible to significant 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 for alternate delivery procedures to address 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 or other river traffic obstructions 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 also exists when an obstruction to river

[40] Should actual trading experience reveal that September supplies must be supplemented, one means of accomplishing that objective would be to expand the delivery area to include a greater segment of the northern Illinois River. With the specification of appropriate locational differentials, such a change could probably be made at a later time with little disruption to the contract.

traffic has occurred with less than six-months notice. Accordingly, 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 all obstructions to movement on the river arising either inside or outside of the delivery area.

In determining the length of an announced obstruction which should give rise to a contingency plan, the Commission analyzed information on past lock closures by the U.S. 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 obstructions 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 plan.

In addition, as discussed above, the application of different differentials to the futures contracts depending upon whether the delivery is subject to the contingency rule might also contribute to price manipulation or 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 deliveries made on the contracts at non-par locations.

Accordingly, the Commission under section 5a(a)(10) of the Act changes and supplements the provisions of this part of the CBT proposal by reducing the continuous period of river traffic obstruction from 45 days as proposed to 15 days, by making the rule applicable to any obstruction which affects shipments from a majority of shipping stations within the northern Illinois River delivery area, by making the rule applicable to all announced obstructions 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

The $40 million minimum net worth requirement for eligibility of shipping certificate issuers restricts deliverable supplies of corn and soybeans by eliminating several firms and potentially barring new entrants. 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 the CBT's proposed 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 minimum 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 eliminates the requirement under sections 5a(a)(10) and 15 of the Act.

E. 1999 Contract Months

The Commission's section 5a(a)(10) notification advised the CBT that the terms of its corn and soybean futures contracts did not meet the objectives of that provision of the Act. In light of that determination, the Commission advised the CBT that ''the CBT should refrain from listing additional months of trading in those contracts during the pendency of these proceedings.'' 61 FR at 67999. Nevertheless, 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.[41]

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.'' On September 15, 1997, the Commission issued its proposed Order which, in part, proposed to disapprove the application of the CBT's proposed delivery terms to the July 1999 and November 1999 soybean contracts and the July 1999 and December 1999 corn contracts. Four days later, the CBT notified its members of its intent to list for trading the January 1999 soybean futures contract and the December 1999 corn futures contract under the same proposed terms as the Commission had proposed to disapprove. The Commission then notified the CBT that it proposed to disapprove the listing for trading of these two contract months and to disapprove, to change and to supplement the terms proposed by the CBT for these two trading months on the same basis and for the same reasons as it previously determined in its proposed order to disapprove, to change and to supplement the terms of the July 1999 and November 1999 soybean contracts and the July 1999 and December 1999 corn contracts. 62 FR 51087 (Sept. 30, 1997).

A number of commenters on the proposed order requested that the Commission authorize the listing of these trading months. They suggested that having these trading months available to them without delay or interruption was important for their ability to use the markets for hedging purposes. Other commenters suggested that authorizing the trading of these contract months under the current contract terms rather than the CBT's proposed contract terms would provide the CBT with a period of time in which to propose alternative amendments to the delivery specifications of the corn and soybean futures contracts terms. The Commission, in response to these comments, hereby authorizes the listing of the January, July and November 1999 soybean futures contract and the March, July and December 1999 corn futures contracts under their current terms, while disapproving the application of the terms contained in the CBT's proposal to these contract months.[42] The

[41] 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.

[42] The CBT in the October 15, 1997, hearing and in its October 22, 1997 letter of exceptions argued that these trading months were approved for listing subject to previously approved listing procedures. The Commission rejects these arguments. The four contract months cited in the proposed Order were listed initially (December and July 1999 corn futures contracts)—or relisted after having been previously delisted (July and November 1999 soybean futures contracts)—at a time and in a manner other than specified in a previously approved rule, thus requiring the prior approval of the Commission, which was never granted. Moreover, all of the futures contract months at issue, including the January 1999 soybean futures contract and the March 1999 corn futures, were not eligible for automatic listing procedures. A condition in such automatic listing procedures is that the contract terms or their listing not violate legal requirements. *See, e.g.*, 1.41(l). The Commission's finding in the December section 5a(a)(10) notification that the corn and soybean futures contracts are not in compliance with section

Continued

Commission also authorizes the listing of other 1999 corn and soybean futures contracts under their current terms. However, the CBT may propose to list the 1999 corn and soybean contracts incorporating the changes and supplements contained in this Order, and the Commission would approve such listing.

In approving the 1999 contract months for trading under their current terms, the Commission is responding to the views of numerous agricultural interests that there is a need for certainty and clarity about the legality and terms of these contracts and for their immediate availability for trading for hedging purposes. It also responds to arguments of the CBT urging that the Commission allow listing of the 1999 contract months pursuant to the current contract terms in the event that the Commission disapproves the CBT's proposal, as it has done in this Order. The Commission's action in this regard obviates the need to address a difficult legal issue of the interpretation of section 5a(a)(10) as to contracts which have been illegally listed by an exchange but have nonetheless been trading. Finally, the Commission's action permits all 1999 contract months to trade on identical terms and establishes a clear point at which the new terms ordered by the Commission will be applicable.

For the reasons discussed herein, the Commission in this Order is changing and supplementing the amendments to the CBT corn and soybean futures contracts which the CBT has proposed and is directing that they be made effective for all contract months, whenever listed for trading, beginning with and subsequent to the January 2000 soybean futures contract and the March 2000 corn futures contract. In so ordering, the Commission finds that the amendments proposed by the CBT to its corn and soybean futures contract are not consistent with section 5a(a)(10) and that their approval by the Commission would violate section 15 of the Act. Accordingly, the Commission under sections 5a(a)(10), 5a(a)(12), 8a(7), and 15 of the Act is disapproving application of those proposed terms to the CBT's corn and soybean contracts, including the 1999 contracts.

Dated: November 7, 1997.

By the Commission (Chairperson Born, Commissioner Dial, Commissioner Spears; Commissioners Tull and Holum Concurring in Part and Dissenting in Part with Opinion)

Edward W. Colbert,

Deputy Secretary of the Commission.

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, Opinion of Commissioner John E. Tull, Jr., Concurring in Part and Dissenting in Part, Joined by Commissioner Barbara Pedersen Holum.

I concur in that part of the order which provides that the CBOT may continue to trade the 1999 contracts under the existing contract terms. I also concur in that part of the order which provides that the CBOT may submit alternative proposed delivery specifications for those two contracts.

I strongly disagree with the majority's decision to issue this order which changes and supplements the CBOT's proposed amendments to the delivery specifications to their corn and soybean contracts.

As I noted in my earlier dissent, 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.'' Based on my review of the data available at the time of the Commission's proposed order and as supplemented by the CBOT on October 15, 1997, I remain convinced that the proposed terms for both contracts as submitted by the CBOT meet these statutory requirements.

In conclusion, both of these contracts will have a tremendous effect on the world marketplace. For both markets, the price discovery process and the published prices determine the price, through basis, to every soybean and corn farmer in the United States; actually every oil seed and corn farmer and end user throughout the world. While it is my serious hope that the contracts designed by the Commission will work, I believe we could have had better contracts and I sincerely hope that the Exchange will take advantage of the opportunity to resubmit proposed terms for both contracts and that the majority will approve such resubmission if it satisfies the requirements of the Act.

Attachment 1

For the reasons explained in the ''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 changing and supplementing under section 5a(a)(10) of the Commodity Exchange Act proposed rules of the Board of Trade of the City of Chicago. The Commission hereby makes the following changes:[43]

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.

* 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

5a(a)(10) of the Act rendered further automatic listings unavailable, as did the Commission's explicit direction to the CBT to refrain from any such further listings.

[43] Bold-face type denotes the Commission's proposed changes or supplements to the CBT proposal. Underlinings denote changes proposed by the CBT. Deletions to proposed CBT language are not shown.

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 shipping certificates 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 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 Order will provide notice to interested members of the public of its action, is consistent with the Commodity Exchange Act and is in the public interest.

Issued in Washington, D.C., this 7th day of November 1997, by the Commodity Futures Trading Commission.

Edward W. Colbert,

Deputy Secretary of the Commission.

[FR Doc. 97–29895 Filed 11–12–97; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Petition for Exemptions From the Dual Trading Prohibition Set Forth in Section 4j(a) of the Commodity Exchange Act and Commission Regulation 155.5

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of intent to condition and proposed order granting conditional exemptions from the prohibition on dual trading in seven affected contract markets.

SUMMARY: For the reasons set forth in the Proposed Order Granting Conditional Dual Trading Exemptions (''proposed Order''), the Commodity Futures Trading Commission (''Commission'') intends to grant, subject to a stated condition, the petition of the Chicago Mercantile Exchange (''CME'' or ''Exchange'') for exemptions from the dual trading prohibition in Section 4j(a) of the Commodity Exchange Act (''Act'') and Commission Regulation 155.5 for its Live Cattle, Deutsche Mark, Japanese Yen, Swiss Franc and Eurodollar futures contracts and the option contracts on Eurodollar and S&P 500 futures.[1] Pursuant to the Act and Commission Regulation 155.5(d)(8)(C)(iii), CME may submit written supplemental data, views or arguments and will have the opportunity to make an oral presentation to the Commission before the Commission makes its final determination.

DATES: If CME intends to make an oral presentation, it must submit its request in writing no later than ten days after receipt of this proposed Order. CME must submit any written supplemental data, views or arguments within 30 days of receipt of this proposed Order.

ADDRESSES: CME's requests for oral presentation and submission of written supplements are to be sent to the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Special Counsel, or Rachel Fanaroff Berdansky, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION: A floor broker engages in dual trading when he or she executes a customer's order during the same trading session in which he or she executes, directly or indirectly, a trade in the same contract for his or her own account or an account in which he or she has an interest. Dual trading can afford floor brokers the opportunity to abuse customer orders if audit trail information and surveillance are insufficient to permit the detection of such abuses. Specifically, a dual trading floor broker can directly commit abuses of customer orders such as trading ahead or against those orders and also has an informational advantage for his or her personal trading.[2] Section 4j(a) of the Act and Regulation 155.5 prohibit dual trading and establish trade monitoring standards that must be met in order for contract markets to be exempted from the prohibition.

The Commission intends to issue the following proposed Order granting CME conditional dual trading exemptions pursuant to Section 4j(a) of the Act and Commission Regulation 155.5. In accordance with Regulation 155.5(d)(8), CME may submit to the Commission in writing any supplemental data, views or arguments within 30 days of receipt of this Notice and proposed Order. In addition, CME may request, in writing within ten days of receipt of this Notice and proposed Order, an opportunity to make an oral presentation to the Commission. If CME submits a request for an oral presentation, the Exchange will be notified by the Commission of the date and the terms under which CME may make such presentation. Public notice of such an oral presentation also will be provided in accordance with the requirements of the Government in the Sunshine Act, 5 U.S.C. 552b (Supp. I 1995).

Proposed Order Granting Conditional Dual Trading Exemptions

On October 20, 1993, CME submitted a Petition for Exemption from the Dual Trading Prohibition contained in Section 4j of the Act and Commission Regulation 155.5 in CME's Live Cattle, Deutsche Mark, Japanese Yen, Swiss Franc, British Pound, Eurodollar and S&P 500 futures contracts and the option contracts on the Deutsche Mark, Eurodollar and S&P 500 futures. The Exchange corrected that petition on December 1, 1993. Subsequently, the Exchange amended its petition on January 21, 1994. CME updated its petition on January 21, 1997, with respect to eight affected contract markets.[3] Notice of the public availability of the CME's updated exemption petition was published in the **Federal Register** on February 20, 1997.[4]

Upon consideration of CME's petition, as supplemented, and other data and analysis, including, but not limited to:

Exchange audit trail test results reconciling imputed times to

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[1] The Commission is granting CME an unconditional exemption from the dual trading prohibition for its S&P 500 futures contract. An Order granting such exemption is being submitted for publication together with this Notice.

[2] The Commission has previously discussed in several instances, including its November 28, 1994 *Report to Congress on Futures Exchange Audit Trails*, the possible abuses attendant to dual trading. *See also* the Commission's Proposed Regulation Prohibiting Dual Trading by Floor Brokers, 56 FR 13025 (March 9, 1993).

[3] *Affected contract market* means a contract market with an average daily volume equal to or in excess of 8,000 contracts for each of four quarters during the most recent volume year. Commission Regulation 155.5(a)(9). *See* Section 4j(a)(4) of the Act. As noted by the Commission in promulgating Regulation 155.5, a contract market trading on an exchange floor will be considered separate from a contract market in the same commodity trading a screen-based trading system. The Commission further stated that, while not excluding electronic trading from the dual trading prohibition, the Commission was retaining the flexibility to consider the matter further. *See* 58 FR 40335 (July 28, 1993). The Commission is not addressing screen-based trading in this proposed Order.

Two contract markets included in the original petition, British Pound futures and options on Deutsche Mark futures, no longer are affected contract markets as defined in the Act and regulations. This proposed Order is not applicable to those two contract markets. As previously noted, this proposed Order also is not applicable to the S&P 500 futures contract market.

[4] 62 FR 7755 (February 20, 1997). The Commission did not address the Exchange's dual trading exemption petition in 1994 in large part because of the Exchange's prior representation that it intended to automate the entry of trade execution times by developing a handheld electronic trading terminal. In June 1994, the Commission was informed that the proposed handheld terminal would not be in place by the October 1995 deadline for compliance with the heightened audit trail standards set forth in Section 5a(b)(3) of the Act. Because CME had not sufficiently demonstrated that its existing audit trail system met current and future standards, the Commission required the Exchange to demonstrate its ability to meet the audit trail requirements using Commission-designed tests and, thus, deferred consideration of the Exchange's petition. Subsequent to evaluating the results of the tests, the Commission offered CME the opportunity to supplement its petition.