refer to File No. SR–OCC–98–08 and should be submitted by November 20, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–OCC–98–08) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29118 Filed 10–29–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40598; File No. SR–PCX–97–48]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to Proposed Rule Change Relating to Market Maker Participation in the Pacific Exchange's Automatic Execution System for Options (''Auto-Ex'')

October 23, 1998.

I. Introduction

On December 18, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change which amended its rules relating to market maker participation in the Exchange's automatic execution system for options (''Auto-Ex''). On February 27, 1998, the Exchange submitted Amendment No. 1 to the proposed rule change.[3]

A notice of the proposed rule change appeared in the **Federal Register** on March 10, 1998.[4] The Commission received no comment letters addressing the proposed rule change. On October 7, 1998, the Exchange submitted Amendment No. 2 to the proposed rule change.[5] This order approves the proposed rule change. Also, Amendment No. 2 is approved on an accelerated basis.

II. Description of the Proposal

Rules 6.87, 10.13, and 10.14 pertain to the Exchange's market maker eligibility standards for participation in the Auto-Ex system. PCX has proposed that a provision addressing joint accounts be added to Rule 6.87(d)(1) stating that participants in a joint account may log onto Auto-Ex in a trading crowd outside of their primary appointment zones, but only if they are substituting for another participant in the same joint account, where participation in Auto-Ex trades at such station would have been appropriate for the substituted party, and they have obtained the approval of two Floor Officials.[6] Moreover, the Exchange is proposing to clarify this rule by stating that market makers who have not been assigned a primary appointment zone may not participate on the Auto-Ex system, and further, that all Auto-Ex transactions will count toward a market maker's in person and primary appointment zone requirements.

Rule 6.87(d)(3), as proposed, will require that, unless exempted by two Floor Officials, market makers may log onto Auto-Ex only in person and may continue on the system only so long as they are present in that trading crowd. Moreover, absent an exemption from the foregoing limitation, market makers may not remain on Auto-Ex, and must log off when they have left the trading crowd, unless the departure is for a brief interval (*i.e.,* no longer than 15 minutes, under normal circumstances).[7]

Proposed Rule 6.87(d)(4) will eliminate language which currently states that if a market maker logs onto Auto-Ex during Expiration Week, then he is required to remain on the system for the duration of that Expiration Week. When the Auto-Ex rule was initially adopted, there was some concern that there might be inadequate market maker participation on Auto-Ex during Expiration Week. Based on several years' experience, the Exchange now believes that there is no lack of market maker participation on the Options Floor that justifies a need for the Expiration Week requirement. If there is inadequate Auto-Ex participation in a particular options issue,[8] however, Floor Officials have the authority to require market makers to log onto Auto-Ex.[9]

There are two limited situations, however, in which participation in the Auto-Ex system is mandatory—both are proposed to be codified in the rule. Under section (d)(4) of Rule 6.87, a market maker who has logged onto Auto-Ex at any time during a trading day must participate on the Auto-Ex system in that option issue whenever present in that trading crowd during that trading day. Under subsection (d)(5), market makers may not log off the Auto-Ex wheel during the first ten minutes of a ''fast market''[10] that has been declared in an issue traded ''on that wheel,''[11] in the absence of an exemption from two Floor Officials.

PCX proposes that subsection (e) of Rule 6.87 be amended by adding a provision specifically prohibiting market makers from ''directed trading''[12] of option contracts resulting

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[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Mignon McLemore, Attorney, SEC, dated February 26, 1998 (''Amendment No. 1''). In Amendment No. 1, PCX explains the disciplinary procedure under both the Minor Rule Plan (''MRP'') and the Summary Sanction Procedure (''SSP'') and how ''the wheel'' rotation operates.

[4] Securities Exchange Act Rel. No. 39707 (March 3, 1998), 63 FR 11700.

[5] *See* letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Mignon McLemore, Attorney, SEC, dated October 6, 1998 (''Amendment No. 2''). In Amendment No. 2, PCX: deletes a proposal made in the initial rule submission that would have removed rule language stating that a market maker logged onto Auto-Ex but who leaves the trading crowd is responsible for trades allocated to him during his absence; provides PCX with the authority to log a market maker off Auto-Ex if he has left the trading crowd for more than a brief interval; and makes certain minor clarifications regarding the operation of the proposal.

[6] Floor Officials may exercise their discretion in determining whether one market maker may substitute for another. Substitution is usually only allowed when a market maker is on vacation or out sick. However, there may be cases when the market maker being substituted for may actually be on the floor but not in the joint account crowd. Telephone call between Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX and Mignon McLemore, Attorney, SEC, August 24, 1998.

[7] *Compare* Securities Exchange Act Rel. No. 38881 (July 28, 1997), 62 FR 41987 (August 4, 1997). The Philadelphia Stock Exchange, Inc. amended Advice F–24 to state that Registered Options Traders must sign-off the Wheel when leaving the Wheel assignment area for more than a brief interval, which means five minutes or less, or in matters of a dispute, the amount of time it takes to call in a Floor Official and inform him of the issue at hand. *Compare* CBOE Rules 24.16(c)(iii) (stating that any member of the joint account that has been logged onto RAES must log off whenever he leaves the SPX trading crowd for other than a brief interval) and 24.17(a)(iv) (stating that an individual member who is logged onto RAES must log off whenever he leaves the trading crowd).

[8] In PCX Rules 6.87(d)(1), (2), (4), and (6) the term ''issue'' or ''option issue'' is used instead of or replaces the term ''class.'' The Exchange believes that ''class'' does not encompass all options of the underlying stock. Thus, for purposes of this proposal, the term ''issue'' or ''option issue'' refers to all types of option contracts (puts and calls) of the same class of options covering the same underlying security. *See* Amendment No. 2, note 5 *supra.*

[9] PCX Rule 6.87(d)(6).

[10] PCX Rule 6.28.

[11] *See* note 33 *infra.*

[12] ''Directed trading'' is a violation of Rule 6.73 (''Manner of Bidding and Offering''), which provides in part: ''All bids and offers shall be

Continued

from recent executions over Auto-Ex. The rule states that market makers who receive an execution through Auto-Ex may not re-direct the option contracts from that trade to another market maker without first giving the other Members in the trading crowd an opportunity to participate.

Subsection (f) of Rule 6.87, as proposed, adds a provision on price adjustments to codify procedures outlined in the Exchange's initial proposal to conduct the POETS pilot.[13] The Commission permanently approved the pilot in 1993.[14] The provision states that due to instantaneous execution, an incorrect quote appearing on the screen may result in an Auto-Ex trade at an incorrect price, and that an Auto-Ex trade executed at an erroneous quote should be treated as a trade reported at an erroneous price. It also states that the price of the Auto-Ex trade should be adjusted to reflect accurately the market quote at the time of execution, and that this will result in public customers and market makers receiving correct files at prevailing market quotes through Auto-Ex. It further states that the determination as to whether an Auto-Ex trade was executed at an erroneous price is to be made by two Floor Officials, and that in making their determination, the Floor Officials should consider such factors as: (1) The length of time the allegedly incorrect quote was displayed; (2) whether any non-Auto-Ex trades were effected at the same price as the Auto-Ex transaction; and (3) whether any members of the trading crowd were aware of orders actively being represented in the trading crowd that appear to have been ''printed through'' by the Auto-Ex trade.[15]

Finally, Rules 10.13 and 10.14 have been amended to expressly outline the fines to be levied and disciplinary measures to be taken in the event of noncompliance with the log-off requirement established in Rule 6.87(d)(3). A market maker who fails to comply with the log-off requirement will be subject to the following fines under the Exchange's MRP.[16] If the number of failures is between one and two during a twelve-month period, the fine is $100 per violation; for between three and five failures in a twelve-month period, the fine is $250 per violation; and for six or more failures in a twelve-month period, the fine is $500 per violation.[17] The Exchange's SSP[18] has also been amended to incorporate violations of the log-off requirement. Under the relevant procedures, two Floor Officials may summarily fine a Member for a designated rule violation if certain procedures are followed.

III. Discussion

The Commission believes that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder. Specifically, the Commission believes that approval of the proposed rule change is consistent with Section 6(b)(5)[19] of the Act.[20] Pursuant to Section 6(b)(5), the proposed rule change benefits the public because refining the eligibility criteria to reflect the actual trading environment of the Exchange should improve the operation of the POETS system, thereby contributing to the maintenance of fair and orderly markets and the protection of investors. The Commission believes that the proposal should help to ensure adequate market maker participation in Auto-Ex, which should, in turn, contribute to the effective and efficient execution of public investor orders at the best available price.

The Commission believes the proposed joint account provision will provide more continuity and depth to the Auto-Ex system as the eligibility criteria have been expanded to allow a market maker to participate outside his appointment zone under the limited circumstance where he is substituting for another market maker in the same joint account. The Commission understands that the purpose of this rule is to allow a market maker to participate in a joint account that may be outside his primary appointment zone when the other joint account participant is unavailable to participate. For example, if the market maker is on vacation or out sick, he would be deemed unavailable and substitution, in these cases, would be allowed.[21]

The Commission believes that PCX's proposed codification of Auto-Ex log-on and log-off procedures should clarify the responsibilities and duties of market makers and Floor Officials. The Commission notes that the proposal should prevent inequities that can occur in the system if wheel-assigned trades are allocated to market makers, who are logged on the system, but not in the trading crowd. While current market maker participation levels appear to make the mandatory log-on requirement during Expiration Week obsolete, the Commission suggests that the Exchange monitor participation levels, especially during market declines and if necessary, exercise its authority to ensure substantial participation.

The Commission believes extending the ''directed trading''[22] prohibition to transactions executed over Auto-Ex will promote just and equitable principles of trade, as every member in the trading crowd will be given an opportunity to participate in the transactions. Moreover, extending the prohibition of directed trading to Auto-Ex transactions should serve as a deterrent to price collusion as a market maker cannot designate one member in the trading crowd to accept certain bids and offers.

The Commission believes the addition of the provision on price adjustments provides the Exchange with the flexibility to quickly correct an Auto-Ex trade, if two Floor Officials determine that it was executed at an incorrect price. The rule's procedures protect the public customer and market maker by ensuring that once an erroneous quote has been detected, their orders are filled according to prevailing market quotes through Auto-Ex. Moreover, the rule provides objective criteria for the Floor Officials to use in determining whether an Auto-Ex trade was executed at an erroneous price, which should assist them in determining if and when price adjustments should be made. Furthermore, this provision codifies similar procedures originally outlined in the POETS pilot,[23] which was subsequently approved in 1993.[24]

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general ones and shall not be specified for acceptance by particular members.''

[13] Securities Exchange Act Rel. No. 27423 (November 6, 1989), 54 FR 47434 (November 14, 1989) (notice proposing to conduct POETS pilot) at Exhibit 4.

[14] Securities Exchange Act Rel. No. 32703 (July 30, 1993), 58 FR 42117 (August 6, 1993).

[15] *Compare* CBOE Rule 24.15 (a)(ii) (stating that a trade executed on RAES at an erroneous quote should be treated as a trade reported at an erroneous price and adjusted to reflect the accurate market after receiving a Floor Official's approval).

[16] PCX Rule 10.13.

[17] *Compare* CBOE Rules 24.16(h) and 24.17(g) and Phlx Rule 970 and Floor Procedure Advice F–24 (fee schedules for failure to adhere to log on and off requirements).

[18] PCX Rule 10.14.

[19] Section 6(b)(5) requires the Commission to determine that a registered national securities exchange's rules are designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

[20] Pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. The changes made to the eligibility criteria should provide depth to the market by ensuring that a contra-party is available to interact with the customers' orders. This added depth should result in faster customer trade executions, thus improving efficiency in the marketplace. This added depth to the Auto-Ex system should also promote competition. As these trades are executed at the NBBO, the market maker receives the spread on these transactions, which should provide incentive for market makers to participate in the system. 15 U.S.C. 78c(f).

[21] Telephone call between Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX and Mignon McLemore, Attorney, SEC, August 24, 1998.

[22] PCX Rule 6.73.

[23] *See* note 13 *supra*.

[24] *See* note 14 *supra*.

The Commission believes that the Exchange's proposed changes to its minor rule plan are reasonable and provide fair procedures for appropriately disciplining members and member organizations for minor rule violations that warrant some type of punitive measure, but for which a full disciplinary hearing would be an inappropriate waste of resources in light of the minor nature of the violation. The Commission notes that violations of the Exchange's log-off requirement are objective and easily verifiable, and thus, lend themselves to the use of expedited proceedings. Specifically, the issue of whether a market maker has left the trading crowd for more than the fifteen minute interval may be determined objectively and adjudicated quickly without complicated evidentiary and interpretive inquiries. The Commission believes that the proposed fine schedule and the SSP should serve to encourage consistent market maker participation in Auto-Ex and to deter repeated violations of the Exchange's rules.

The Commission was initially concerned, however, that the Exchange's amended fine schedules and disciplinary procedures might cause a member to be found in violation of Rule 6.87(d)(3) and fined under both the MRP and the SSP. In response, the Exchange states that its Department of Options Compliance coordinates the processing of all violations committed on the Options Floor under both the MRP and the SSP.[25] Amendment No. 1 further states that before any summary sanction is issued, Floor Officials must contact Options Compliance to determine whether the Member has previously violated the rule, so that the amount of the sanction may be assessed. Options Compliance therefore, will have been notified of the action taken. In addition, if Floor Officials issue a sanction under the SSP, the floor citation must contain an indication of the amount of the fine pursuant to Rule 10.14(a)(3). This indication will serve to notify Options Compliance that the matter has been resolved.

IV. Commission's Findings and Order Granting Accelerated Approval of Amendment No. 2

The Commission has reviewed carefully the Exchange's Amendment No. 2 and believes, for reasons set forth below, the amendment is consistent with the requirements of Section 6 of the Act,[26] and the rules and regulations thereunder applicable to a national securities exchange.[27] Specifically, the Commission believes the amendment is consistent with Section 6(b)(5)[28] of the Act, because it will facilitate the operation of the Auto-Ex system, which will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing and settling, and processing information with respect to facilitating transactions in securities.

The joint account provision in Rule 6.87(d)(1) attempted to clarify that *all* Auto-Ex transactions would count toward a market maker's in-person and primary appointment zone requirements. (emphasis added) The Commission believed this language could have been misinterpreted to mean all Auto-Ex transactions, including those in joint accounts, would count toward the primary appointment zone requirement, even those transactions in options issues[29] which were not assigned to the market maker's primary appointment zone. Amendment No. 2 clarifies that if an option issue is included in a market maker's primary appointment zone, then Auto-Ex transactions in that issue that are made on behalf of the market maker will count towards the market maker's primary appointment zone requirement.[30]

In the originally submitted proposed rule change, the Exchange proposed eliminating language in Rule 6.87(d)(3) that holds market makers responsible for trades executed through Auto-Ex during their absence from the trading crowd as well as for all Auto-Ex-eligible issues assigned to the particular wheel.[31] The Exchange failed to provide any written justification for this proposed change. Upon the request of Commission staff, PCX agreed to withdraw this proposed change.

In Amendment No. 2, the Exchange proposed giving itself the authority to log a market maker off Auto-Ex if a market maker has left the trading crowd or floor for more than a brief interval.[32] This provision is consistent with the requirement that only market makers physically present in the trading crowd are entitled to trade on Auto-Ex. It may also help reduce unintended position exposure that can be incurred by a market maker who mistakenly forgets to log off Auto-Ex.

The proposed requirement in Rule 6.87(d)(3) that the market maker be obligated to honor trades executed through Auto-Ex for all Auto-Ex eligible issues assigned to the particular wheel has been removed, because the wheel no longer operates as it did when this requirement was initially promulgated. According to Amendment No. 2, each morning before the opening, the system will ''shuffle'' the order of market makers on an issue-by-issue basis. For example, the order of the market makers may be A, B, C for issue no. 1 and A, B, C for issue no. 2, etc. The first Auto-Ex trade of the day will be assigned at random for each issue (*e.g.*, in issue no. 1, the first trade may be assigned to C), but each subsequent trade will be assigned in order, on a rotating basis (*e.g.*, A, B, C, A, B, C, etc.). The same procedure is followed for each issue, so in effect, the number of issues assigned to a post determines the number of ''wheels'' at that post. Each wheel rotates separately from the others and trades in one issue will have no impact on the order in which trades are assigned in another issue at the same post.[33]

Furthermore, the Auto-Ex system also allow issues at a trading post to be split up among the crowd.[34] For example, A may only be on Auto-Ex for issues 1 and 2, while B and C may be on the system for issues 3 through 10.[35] Therefore, because a market maker may not be assigned all of the issues at a particular trading post, the language obligating market makers ''to honor trades for all Auto-Ex eligible issues assigned to a particular wheel'' is inaccurate and misleading, given how the wheel operates. Thus, the language has been removed.[36]

The Commission finds good cause for approving proposed Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 addresses a Commission concern that a market maker will not be able to circumvent the primary appointment zone requirements by using transactions in a joint account not in his primary appointment zone to meet his participation requirements. Thus, the joint account must be in the substituting market maker's primary appointment zone for the transactions to count toward his appointment zone requirements. The Commission was also concerned that the proposed rule change did not address the possibility of

[25] *See* Amendment No. 1, note 3 *supra*.

[26] 15 U.S.C. 78f.

[27] *See* note 20 *supra*.

[28] 15 U.S.C. 78f(b)(5).

[29] *See* note 8 *supra*.

[30] *See* Amendment No. 2, note 5 *supra*.

[31] *See* note 33 *infra*.

[32] *See* Amendment No. 2, p. 1, note 5 *supra*.

[33] *Id*. at p. 2. This explanation supersedes the previous explanation provided in Amendment No. 1. *See* Amendment No. 1, note 3 *supra*.

[34] *See* Amendment No. 2, p. 2, note 5 *supra*.

[35] *Id*.

[36] *Id*.

collusion or manipulation of a security if both participants were simultaneously logged-on and trading in the joint account. PCX Rule 6.40(b)(1), however, addresses this concern because it prevents a market maker who has a financial arrangement with another member from trading in the same trading crowd at the same time.

The Commission believes that PCX's removal of originally proposed rule language that held market makers accountable for their failure to follow established procedures was antithetical to its investor protection mandate. The Commission understands the Exchange's desire to address potential inequitable benefits and system disruptions that could occur if a market maker fails to follow procedure. However, removing existing language that could arguably serve as a deterrent to these violations was, in the Commission's view, inappropriate. Amendment No. 2 was responsive to this concern by retracting the proposed elimination of the cited language. The Exchange proposed an alternate provision that allows it to log a market maker off the system when a failure to follow the required log-off procedure occurs. This proposal strengthens the ability of PCX to enforce compliance with Auto-Ex procedures and, accordingly, the Commission finds good cause for accelerating approval of the proposed amendment.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to the file number in the caption above and should be submitted by November 20, 1998.

V. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 6(b)(5).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–PCX–97–48), including Amendment No. 2, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29119 Filed 10–29–98; 8:45 am]

BILLING CODE 8010–01–M

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster # 3143]

State of Kansas (Amendment # 1)

In accordance with information received from the Federal Emergency Management Agency, the above-numbered Declaration is hereby amended to include Douglas and Leavenworth Counties in the State of Kansas as a disaster area due to damages caused by severe storms, flooding, and tornadoes which occurred October 1 through October 8, 1998.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Atchison, Jefferson, Osage, and Shawnee in the State of Kansas. Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is December 13, 1998 and for economic injury the termination date is July 14, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated October 23, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–29115 Filed 10–29–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster # 3139]

State of Mississippi (Amendment # 3)

In accordance with information received from the Federal Emergency Management Agency, the above-numbered Declaration is hereby amended to include Jasper County, Mississippi as a disaster area due to damages caused by Hurricane Georges beginning on September 25, 1998 and continuing through October 5, 1998.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Lauderdale, Newton, and Scott in the State of Mississippi. Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is November 30, 1998 and for economic injury the termination date is July 1, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 22, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–29114 Filed 10–29–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Index to Approved SBA Reporting and Record Keeping Requirements

This revision is administrative in nature and is intended to comply with the requirements of the Paperwork Reduction Act of 1995 as implemented by 5 CFR part 1320 that agencies display a current OMB control number assigned by the Director, OMB on each agency information collection requirement and, unless OMB determines it to be inappropriate, an expiration date. Where the information collection requirement exists as a document separate from the regulations, the Small Business Administration will also display the current OMB number in the document. Because this a nonsubstantive revision dealing with procedural matters, it is not subject to the provisions of the Administrative Procedure Act (5 U.S.C 551 et seq) requiring advance notice and comment.