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OPEN SYSTEM IN NAME ONLY?

Industry traditionally has been depicted as rather conservative regarding disclosure and release of information. This approach of "holding one's cards close to the chest" is characteristic of industry in general and not just the drug industry. Trade secrets, competition, and an ingrained concern about disclosure have all contributed to this general attitude.

Government agencies, on the other hand, have not assumed a comparable public image. On the contrary, most citizens have felt that the democratic process in itself assures an openness toward the availability of information.

However, those who have had direct dealings with government, and who have felt the need to obtain information from government agencies, have often found that these agencies can be as difficult and uncooperative in releasing information as the most obstinate of industrial concerns. It was such experiences that cumulatively motivated Congress to pass the Freedom of Information Act. While this legislation has now been on the books for a couple of years, the regulations pertaining to just how it is to be implemented have dribbled along in a painfully slow process.

The concept of freedom of information covers both written documents as well as meetings at which positions and data would be considered as a basis for formulating policy.

The *Federal Register* is the daily chronicle whereby all of the various agencies within the executive branch of the federal government announce various proposed rules, issue notices, and proclaim finalized rules and regulations. The difficulty with which various agencies adapted to the new approaches brought about by the Freedom of Information Act was typified by the meeting announcements which appeared during the first few months of this new practice. Very few such announcements appeared as much as a week before the date of the meeting itself, and frequently they were not announced until after the meeting had actually been held. Probably as a result of the criticism which ensued, it appears that this problem has been largely eliminated, and from our observation, most meetings are now adequately announced in advance, to enable interested persons to attend.

All too often, however, significant proposed regulations are put forward by federal agencies with unduly brief time permitted the public, or interested parties, to consider the proposal and to submit comments. Indeed, the time allowed is occasionally completely absurd to the point where issuance in "proposed rule" form is nothing more than a sham.

For example, the *Federal Register* of Monday, May 6, contained in the proposed rules portion of the *Federal Register* a statement entitled, "Benzathine Phenoxymethyl Penicillin: Proposed Recodification, Technical Changes, and Updating." Many of the changes included in this document are of a rather substantial nature and would affect many different groups, organizations, and individuals. The document's concluding paragraph states: "Interested persons may, on or before May 6, 1974, file with the Hearing Clerk, Food and Drug Administration . . . written comments . . . regarding this proposal." In view of the fact that most recipients of the *Federal Register* would not even receive the publication until after the deadline had passed, this announcement is virtually *fait accompli*.

The use of such tactics by government agencies is no less reprehensible than comparable efforts on the part of industry to manipulate matters of interest to the industrial sector—which is a frequently heard criticism of industry. Moreover, such transparent maneuvering to ramrod through new regulations simply invites needless and unnecessary court challenges which introduce even greater delays, besides frustrating all parties involved. We urge that the agencies involved give due consideration to a realistic timetable, in order that the public can truly have the opportunity to participate in the governmental process as Congress has intended.

Edward G. Feldmann