of insufficient number of participants.

(g) Unless the tour participant files a claim with the tour operator or foreign tour operator within sixty (60) days after completion of the tour, the surety shall be released from all liability under the bond to such tour participant (see § 378.16(d)).

5. Amend § 378.18 to read as follows:

§ 378.18 Disbursements from depository account.

No tour operator or foreign tour operator shall cause its agents or the depository bank to make disbursements or payments from tour-participant deposits except in accordance with the provisions of this part.

6. Amend §§ 378.19 and 378.20 to read as follows:

§ 378.19 Inclusive tours operated by U.S. supplemental carriers for foreign tour operators.

(a) At last 90 days in advance of the date of departure of the proposed tour or series of tours to be operated by a U.S. supplemental air carrier for a foreign tour operator as defined in § 378.2 (d-1)(i), the supplemental carrier shall file with the Civil Aeronautics Board (Director, Bureau of Operating Rights) a Tour Prospectus which shall contain the following information:

(1) Name and address of the foreign tour operator;

(2) The proposed date and time of each flight;

(3) Equipment to be used, including the aggregate number of each type of aircraft and capacity;

(4) The tour itinerary, including hotels (name and length of stay at each), and sightseeing or other arrangements, if any;

(5) The tour price per passenger;

(6) The number of persons expected to participate in the tour;

(7) Charter price of the aircraft;

(8) The individually ticketed air fare, computed as provided in § 378.2(b)(4).

(b) A U.S. supplemental air carrier operating an inclusive tour for a foreign tour operator shall require full payment of the total charter price prior to commencement of the air transportation.

§ 378.20 Posttour reporting.

(a) Within 30 days after completion of a tour or series of tours, the supplemental air carrier and tour operator or foreign tour operator shall jointly file with the Board (Supplementary Services Division, Bureau of Operating Rights) a posttour report: *Provided,* That in the case of a series of tours which exceeds 6 months between commencement of the first tour and departure of the last tour, the supplemental air carrier and tour operator or foreign tour operator shall file a joint interim report within 30 days after the expiration of 6 months from commencement of the first tour, covering tours completed during such 6 months. The posttour and interim report shall indicate whether or not the tours authorized hereunder were, in fact, performed. To the extent that the operations differed from those described in the prospectus filed under § 378.10, such differences shall be fully detailed including the reasons therefor. However, the making of such an explanation shall not of itself operate as authority for or excuse any such deviation.

(b) The supplemental air carrier shall promptly notify the Board regarding any tours covered by a prospectus filed under § 378.10 that are later canceled.

(Secs. 204(a), 401, and 402 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 754 (as amended), 757; 49 U.S.C. 1324, 1371, 1372)

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK, *Secretary.*

[FR Doc.71-6615 Filed 5-11-71;8:49 am]

[Reg. SPR-48; Amdt. 5]

PART 378a—BULK INCLUSIVE TOURS BY TOUR OPERATORS

Definition of Foreign Tour Operators

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 7th day of May 1971.

For the reasons set forth in SPR-47, issued contemporaneously, the definition of "foreign tour operator" in § 378a.2 is being amended to include persons holding permits authorizing them to engage in U.S. originated tours. In addition Part 378a is being amended to add such foreign tour operators to the provisions of §§ 378a.10 (Procedure), 378a.11 (Discrimination), 378a.12 (Methods of competition), 378a.13 (Surety bond), 378a.14 (Contract between tour operators and tour participants), and 378a.20 (Waiver).

Since the amendments herein are interpretive and clarifying in character, notice and public procedure thereon are unnecessary, and the rule will be made effective on less than 30 days' notice.

Accordingly, the Civil Aeronautics Board amends Part 378a of its Special Regulations (14 CFR Part 378a), effective on May 8, 1971, as follows:

1. Amend the table of contents to revise the title of § 378a.14. As amended the table of contents will read in pertinent part:

Sec.

* * * * *

378a.14 Contract between tour operators or foreign tour operators and tour participants.

* * * * *

2. Amend 378a.2 to read as follows:

§ 378a.2 Definitions.

As used in this part, unless the context otherwise requires:

* * * * *

(b) "Foreign tour operator" means any person who is not a U.S. citizen (other than a direct foreign air carrier):

(1) Who is engaged in the formation of groups for transportation on bulk inclusive tours which originate in a foreign country and over whom the Board by § 378a.8 has declined to exercise its jurisdiction; and/or

(2) Who is engaged in the formation of groups for transportation on bulk inclusive tours which originate in the United States and who holds a permit issued pursuant to section 402 of the Act authorizing such transportation. "Foreign tour operator" as used in §§ 378a.10–378a.14 and 378a.20, is confined to the meaning set forth in this subparagraph.

3. Amend §§ 378a.10 through 378a.14 and 378a.20, including the title of § 378a.14, to read as follows:

§ 378a.10 Procedure.

No bulk inclusive tour or series of tours shall be operated, nor shall any tour operator or foreign tour operator sell or offer to sell, solicit, or advertise such tour or tours, unless there is on file with the Board the form of contract between the tour operator or foreign tour operator and tour participants, the tour operator's or foreign tour operator's surety bond and, where applicable, a copy of the depository agreement with a bank as provided in § 378a.13(b)(2). These documents shall be filed at least 60 days before commencement of the tour or tours and late filing will not be permitted except for good cause shown.

§ 378a.11 Discrimination.

No tour operator or foreign tour operator shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

§ 378a.12 Methods of competition.

No tour operator or foreign tour operator shall engage in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. Advertising by tour operators or foreign tour operators of tour prices involving bulk fares shall be limited to the total tour price without a breakdown into component parts, except that additional charges for optional services or facilities may be reflected.

§ 378a.13 Surety bond.

(a) Except as provided in paragraph (b) of this section, the tour operator or foreign tour operator shall furnish a surety bond in an amount of not less than twice the amount of the contract bulk price for the air transportation to be furnished in connection with such tour: *Provided, however,* That the liability of the surety to any tour participant shall not exceed the tour price.

(b) The prospective tour operator or foreign tour operator may elect, in lieu of furnishing a surety bond as provided under paragraph (a) of this section, to comply with the requirements of subparagraphs (1) and (2) of this paragraph as follows:

(1) The tour operator or foreign tour operator shall furnish a surety bond in a minimum amount of $10,000 per flight up to a maximum amount of $100,000 for a series of 10 or more flights, for the protection of the tour participants, the bond to continue in effect until completion of the tour or series of tours: *Provided, however*, That the liability of the surety to any tour participant shall not exceed the tour price.

(2) The direct air carrier and tour operator or foreign tour operator shall enter into an ageement with a designated bank, the terms of which shall include the following:

(i) Each tour participant shall pay for his deposit and subsequent payments comprising the tour price only by check or money order payable to such bank which shall maintain a separate account for each tour: *Provided, however*, That if the tour participant makes a cash deposit, the tour operator, foreign tour operator, or travel agent who receives such cash deposit shall forthwith remit to the designated bank a check for the full amount of the deposit without deduction of commission;

(ii) The bank shall not pay the direct air carrier the price for the transportation earlier than 30 days (including day of departure) prior to the scheduled day of departure of the originating or returning flight, upon certification of the departure date by the direct air carrier;

(iii) The bank shall reimburse the tour operator or foreign tour operator for refunds made by the latter to the tour participant upon written notification from the tour operator or foreign tour operator;

(iv) If the tour operator, foreign tour operator or the direct air carrier notifies the bank that a tour has been canceled, the bank shall make the applicable refunds directly to the tour participants; and

(v) Except as provided in subdivision (iii) of the subparagraph, the bank shall not pay any funds from the account to the tour operator or foreign tour operator prior to 2 banking days after completion of each tour, when the balance in the account shall be paid to the tour operator or foreign tour operator upon certification of the completion date by the direct air carrier. As used in this subparagraph, the term "bank" includes a bank, savings and loan association, or other financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(c) The bond required under paragraphs (a) and (b)(1) of this section shall insure the financial responsibility of the tour operator or foreign tour operator and the supplying of the transportation and all other accommodations, services, and facilities in accordance with the contract between the tour operator or foreign tour operator and the tour participants, and shall be in the form set forth in the appendix to this Part 378a.[1] Such bond shall be issued by a reputable and financially responsible bonding or surety company which is legally authorized to issue bonds of that type in the State in which the tour originates. For purposes of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia. The Board will consider that a bonding or surety company is prima facie qualified under this section if such company's surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6, and if such company is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the direct air carrier and the tour operator or foreign tour operator, by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time set forth in such notification, the subject tour or tours shall in no event be operated.

(d) The bond required by this section shall provide that unless the tour participant files a claim with the tour operator or foreign tour operator within sixty (60) days after completion of the tour, the surety shall be released from all liability under the bond to such tour participant. The contract between the tour operator or foreign tour operator and the tour participant shall contain notice of this provision.

[1] Appendix filed as part of original issuance (SPR-32).

§ 378a.14 Contract between tour operators or foreign tour operators and tour participants.

Where each participant in a tour receives the same accommodation, land tours, etc., the contract between the tour operator or foreign tour operator and the tour participants shall be the same. Contracts between tour operators or foreign tour operators and tour participants shall include provisions concerning the following matters:

(a) Method of payment, e.g., installment payments;

(b) Refunds in the event of the tour's cancellation or the passenger's change in plans;

(c) Carriers' liability limitations for passengers' baggage.

(d) Nonperformance of tour because of insufficient number of participants; and

(e) Unless the tour participant files a claim with the tour operator or foreign tour operator within sixty (60) days after completion of the tour, the surety shall be released from all liability under the bond to such tour participant (see § 378a.13(d)).

§ 378a.20 Waiver.

A waiver of any of the provisions of this regulation may be granted by the Board upon its own initiative, or upon the submission by a tour operator or foreign tour operator of a written request therefor: *Provided*, That such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended; 72 Stat. 743; 49 U.S.C. 1324)

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK, *Secretary*.

[FR Doc.71-6616 Filed 5-11-71;8:49 am]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release No. IC-6440]

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

PART 271—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND RULE AND REGULATIONS THEREUNDER

Repeal of Certain Exemptions; Pyramiding of Investment Companies; Regulation of Fund Holding Companies

Changes in the Investment Company Act of 1940 made by the Investment Company Amendments Act of 1970 (Public Law 91-547) relating to the repeal and modification of exemptions for certain companies; the pyramiding of investment companies and the regulation of fund holding companies; and rescission of Rule 11b-1 under the Investment Company Act.

This is the fourth in a series of releases on problems arising under the Investment Company Amendments Act of 1970 (1970 Act) (Public Law 91-547 (84 Stat. 1413)), enacted December 14, 1970.[1] The purpose of the release is to call to the attention of registered investment companies and other interested persons some important amendments relating to the repeal and modification of certain exemptions in the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) and to the pyramiding of investment companies and the regulation of fund holding companies under the Investment Company Act. The release also confirms that Rule 11b-1 (17 CFR 270.11b-1) under the Investment Company Act is superseded and thus is hereby rescinded by the Commission.

[1] See Investment Company Act Releases Nos. 6336 (36 F.R. 2867), 6392 (36 F.R. 2867), and 6430 (36 F.R. 7896).

Repeal of exemptions for certain companies. The 1970 Act (84 Stat. 1414) deletes the exception formerly provided by section 3(c)(8) of the Investment Company Act (15 U.S.C. 80a-3(c)(8)) for a company 90 percent or more of the value of whose investment securities were represented by securities of a single issuer which is a bank, insurance company or other person enumerated in paragraphs (4), (5), or (6) of section 3(c), as amended (formerly paragraphs (5), (6), (7)), (84 Stat. 1414-1415.)

The 1970 Act (84 Stat. 1415) also modifies the exclusion provided by section 3(c)(5) of the Investment Company Act (formerly section 3(c)(6)) (15 U.S.C. 80a-3(c)(6)) to make such exclusion unavailable to real estate, factoring and other specified financing companies otherwise falling within the definition of investment company in section 3(a) of the Act (15 U.S.C. 80a-3(a)), if they issue redeemable securities.[2]

Companies which had relied upon the exception provided by section 3(c)(8) and companies issuing redeemable securities which had relied upon section 3(c)(6) before the enactment of the 1970 Act must therefore promptly register under the Investment Company Act. Also, registered investment companies should ascertain whether they have any securities of investment companies, now required to register by the above amendments, in their portfolios in order to avoid the percentage limitations on the acquisition of investment company securities provided in section 12(d)(1), as amended by the 1970 Act (84 Stat. 1417), discussed below.

Limitations on the creation and operation of fund holding companies. The 1970 Act amends section 12(d)(1) of the Investment Company Act to impose greater limitations on the pyramiding of investment companies and on the creation and operation of fund holding companies.[3]

New Subparagraph (A) (84 Stat. 1417) of section 12(d)(1) makes it unlawful for any registered investment company[4] and the companies it controls[5] to purchase or otherwise acquire any security issued by any other investment company[6] if, as a result of such transaction, the limitations in that subparagraph would be exceeded. In addition, subparagraph (A) makes it unlawful for any investment company[7] and the companies it controls to purchase or otherwise acquire any security issued by any registered investment company if, as a result of such transaction, the limitations contained in that paragraph would be exceeded.[8]

Open-end investment companies and persons selling the shares of such companies should give special attention to new subparagraph (B) of section 12(d)(1). In addition to the prohibitions imposed by subparagraph (A) on registered investment companies and the companies they control on purchases of securities issued by other investment companies, subparagraph (B) (Public Law 91-547; 84 Stat. 1417) makes it unlawful for any registered investment company, its principal underwriter, or any broker-dealer registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) knowingly to sell or otherwise to dispose of a security issued by such registered company to any other investment company if, as a result of such transactions, the limitations contained in that subparagraph would be exceeded.[9] In order to comply with this provision it will be necessary for registered open-end companies to maintain accurate and up-to-date records on all of its shareholders known to be investment companies and companies controlled by investment companies,[10] and such records must be made available to their principal underwriters. Relevant information on these matters should be made available to dealers who sell their securities. It would also be advisable for registered open-end companies, their underwriters and dealers to adopt procedures to ascertain the identity of the ultimate purchaser when any person places an order for shares in an unusually large amount.

New subparagraph (C) (84 Stat. 1417) imposes limitations, in addition to those contained in subparagraph (A), on purchases by registered and other investment companies of securities issued by registered closed-end investment companies. Since the stock of closed-end companies is usually bought and sold in secondary trading markets rather than through the issuance of new shares as in the case of open-end companies, it would be much more difficult for a seller to know how much of a closed-end company's stock is owned by investment companies generally. Therefore, subparagraph (C) makes it unlawful for any investment company and the companies it controls to purchase or otherwise acquire any security issued by a registered closed-end investment company if, as a result of the transaction, the acquiring investment company, and other investment companies having the same investment adviser, and companies controlled by such investment companies[11] own more than 10 percent of the total outstanding voting stock of such closed-end company.

Subparagraph (D) (84 Stat. 1418) retains the exceptions provided in section 12(d)(1) before enactment of the 1970 Act from the prohibitions against transfer of investment company interests for securities received as a dividend or as a result of exchange offers under section 11 and plans of reorganization other than a plan devised for the purpose of evading subparagraphs (A) through (C).

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[2] "Redeemable security" is defined by section 2(a)(32) of the Investment Company Act (84 Stat. 1413), formerly section 2(a)(31) (15 U.S.C. 80a-2(a)(31)).

[3] A fund holding company is an investment company which invests in securities issued by other investment companies.

[4] "Registered investment company" for these purposes includes a company coming within the definition of "investment company" in section 3(a) of the (Investment Company) Act, which is not excluded by section 3(b) or section 3(c) of the Act, and which is actually registered or required to register under the Act. (See S.E.C. v. Fifth Avenue Coach Lines, Inc. et al., 289 F. Supp. 3 (S.D.N.Y. 1968), aff'd C.A. 2, Nos. 137-140 80a-2(a)(9)).

[5] "Control" is defined in section 2(a)(9) of the Investment Company Act (15 U.S.C. 80a-2(a)(9)).

[6] "Any other investment company" for these purposes refers to both registered and unregistered investment companies (see footnote 4, supra) including foreign-based or offshore investment companies which are not subject to the registration requirements of the Investment Company Act.

[7] See footnote 6, supra.

[8] The limitations would be exceeded and subparagraph (A) would be violated if, immediately after such purchase or acquisition, the acquiring investment company and the companies it controls will own in the aggregate (1) more than 3 percent of the total outstanding stock of the acquired investment company; or (2) securities issued by the acquired investment company having an aggregate value in excess of 5 percent of the value of the total assets of the acquiring investment company; or (3) securities issued by the acquired investment company and all other investment companies (other than treasury stock of the acquiring investment company) having an aggregate value in excess of 10 percent of the value of the total assets of the acquiring investment company. Limitations (1) and (2) are not by their terms applicable to purchases or acquisitions by an investment company, which is not registered or required to be registered under the Investment Company Act, of a security issued by another such investment company, but only to a purchase or acquisition of a security issued by a registered investment company. However, limitation (3) would be exceeded by an investment company which is not registered or required to be registered under the Investment Company Act if, as a result of a transaction in which it or a company it controls purchases a security issued by a registered investment company, it and the companies it controls own securities issued by any investment companies which have an aggregate value in excess of 10 percent of the value of its total assets. In other words, securities of other investment companies not registered under the Act are considered for the purpose of determining whether the 10 percent limitation would be exceeded.

[9] The limitations would be exceeded and subparagraph (B) would be violated if, immediately after such sale or disposition (i) more than 3 percent of the total outstanding voting stock of the registered investment company would be owned by the acquiring investment company and any company or companies it controls; or (ii) more than 10 percent of the total outstanding voting stock of the registered investment company would be owned by the acquiring investment company and other investment companies and companies controlled by them.

[10] Section 2(a)(8) (15 U.S.C. 80a-2(a)(8)) defines "company" as a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any organized group of persons whether incorporated or not; or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing.

[11] "Companies controlled by such investment companies" includes companies controlled by the acquiring company.

Subparagraph (E) (84 Stat. 1418) continues the exceptions provided in section 12(d)(1) for registered unit trusts issuing periodic payment plan certificates.[12] This subparagraph also extends the exception from prohibitions of amended section 12(d)(1) to an investment company security purchased or acquired by an investment company, if the depositor of or principal underwriter for such acquiring investment company is a broker or dealer registered under the Securities Exchange Act of 1934, or is a person controlled by such a broker or dealer and the investment portfolio of the acquiring company consists only of such security. In order to avail itself of the exception provided by subparagraph (E), an unregistered investment company (e.g., a foreign unit trust) must make an arrangement with underlying portfolio investment companies or such companies' principal underwriters to afford to such unregistered investment company's shareholders certain rights specified in the subparagraph regarding the voting of proxies and the substitution of other securities for the underlying securities.

Subparagraph (G) (84 Stat. 1418) provides that, for the purpose of section 12(d)(1), the value of an investment company's total assets shall be computed as of the time of purchase or acquisition, or as closely thereto as is reasonably possible.

Under the statutory pattern provided by the amendments to section 12(d)(1), subparagraphs (A), (B), and (C) impose substantial restrictions on the creation and operation of fund holding companies. However, the 1970 Act also adds a new subparagraph (F) (84 Stat. 1418) to section 12(d)(1) which would make it possible to continue to create and to operate registered fund holding companies subject to the conditions specified in that subparagraph. This new provision raises a number of problems. Also, one portion of subparagraph (F) deals with the relationship fund holding companies with their portfolio companies. Therefore, persons interested in forming fund holding companies, as well as registered investment companies which are or may become portfolio companies of fund holding companies, should be aware of the following comments which the Commission's Division of Corporate Regulation has given to existing registered fund holding companies:

1. A registered fund holding company may not offer or sell any security issued by it at a public offering price which includes a sales load of more than 1½ percent.

2. A fund holding company together with all of its affiliated persons cannot purchase or acquire in the aggregate more than 3 percent of the total outstanding stock of any other investment company. Under prior law, a holding company could purchase 5 percent of the total outstanding stock of an investment company which had a policy of concentration, or 3 percent of an investment company which did not have a policy of concentration. Since a fund holding company's ability to purchase shares of any investment company is now dependent upon the action of a broad class of persons—affiliated persons as defined in section 2(a)(3) of the Investment Company Act (15 U.S.C. 80a–2(a)(3))—procedures should be instituted to assure that a fund will be able to determine prior to making an investment the eligibility of the particular security for the fund holding company's portfolio under this restriction.

3. No investment company whose securities are owned by a fund holding company is required to redeem more than 1 percent of the former's securities during any period of less than 30 days. Previously a fund holding company had the same redemption rights as any other holder of securities issued by a registered open-end company—that is, except during those emergency periods specified in section 22(e) (15 U.S.C. 80a–22(e))—payment or satisfaction within 7 days after tender for redemption. The effect of this redemption limitation must be considered together with the obligation of the fund holding company itself to redeem its securities within 7 days as specified in section 22(e) of the Investment Company Act. Thus, while a fund holding company may purchase more than 1 percent of the total outstanding securities of the investment company, such a purchase may, unless the fund holding company contemplates redemptions in kind, impair its liquidity, substantially affecting its ability to comply wth section 22(e).

Further, investment commitments above the 1 percent limitation could result in a situation where a fund holding company would not be able to redeem a portfolio security at such time as it appears to management to be in the fund holding company's best interest to do so.

4. Investment company securities held by a fund holding company may be voted by such company only either (a) after seeking instructions from its security holders with regard to such security and then in accordance with such instructions, or (b) in the same proportion as the vote of all other holders of such security. If alternative (a) is followed, the Investment Company Act, in effect, requires the fund holding company to make an arrangement with the issuer or principal underwriter of the issuer whereby sufficient proxy solicitation or other material may be transmitted to the fund holding company's security holders so that their instructions may be obtained.

Each fund holding company's prospectus should make adequate disclosure concerning the foregoing. For example, if the company, pursuant to its investment policy, retains the freedom to purchase more than 1 percent of the total outstanding shares of one or more investment companies, the appropriate prospectus disclosure should include a discussion of the effect of any such holding on the fund holding company's liquidity and ability to change investments.

Sales charge in exchange of series shares and rescission of rule 11b–1 under the Investment Company Act. The 1970 Act (84 Stat. 1417) deletes paragraph (2) of section 11(b) of the Investment Company Act (15 U.S.C. 80a–11(b))[13] which formerly permitted registered investment companies which issue series shares or the principal underwriters of such companies to charge an additional sales load when shareholders in one series exchange their shares for shares in another series. This amendment is effective immediately and supersedes rule 11b–1, which is hereby rescinded. Series companies are therefore subject to the same treatment as other open-end investment companies with respect to offers of exchange as provided under section 11(a) of the Investment Company Act (15 U.S.C. 80a–11(a)).

Commission action. Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended by rescinding § 270.11b–1 thereunder, effective April 6, 1971.

The Commission finds that the provisions of 17 CFR 270.11b–1 have been made obsolete by deletion of the provisions of former paragraph (2) of section 11(b) of the Act (15 U.S.C. 80a–11(b)(2)) by the provisions of section 6 of Public Law 91–547 (84 Stat. 1417), and that notice and procedures under 5 U.S.C. are unnecessary. Accordingly, the foregoing recission shall be effective on April 6, 1971.

(Secs. 6(c), 11(b), 38(a); 54 Stat. 800, 808, 841; 15 U.S.C. 80a–6(c), 80a–11(b), 80a–37(a))

By the Commission, April 6, 1971.

[SEAL] THEODORE L. HUMES, *Associate Secretary.*

[FR Doc.71–6602 Filed 5–11–71;8:48 am]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 71–123]

PART 174—PROTESTS

Criteria for Further Review

MAY 3, 1971.

In formulating the circumstances in which further review of protests which the district director would otherwise deny shall be accorded, three criteria were set forth in § 174.24 of the Customs Regulations. One of these provided that further

[12] This amendment also makes it clear that the exception covers the acquisition of securities issued by two or more investment companies by a registered unit investment trust that issues two or more classes of securcurties each of which provides for the accumulation of shares of a different investment company.

[13] Note the conforming technical amendment made by the 1970 Act (84 Stat. 1413) in sec. 22(d) of the Investment Company Act (15 U.S.C. 80a–22(d)) which deletes the reference to clause (2) of sec. 11(b).

review would be accorded when the decision against which the protest was filed is alleged to be inconsistent with a prior published ruling. It now appears that this limitation is unnecessarily restrictive.

Accordingly, paragraph (a) of § 174.24 is hereby amended to read:

§ 174.24 Criteria for further review.

* * * * *

(a) Is alleged to be inconsistent with a ruling of the Commissioner of Customs or his designee, or with a decision made in any district with respect to the same or substantially similar merchandise;

* * * * *

(R.S. 251, as amended, secs. 515, 624, 46 Stat. 734, as amended; 759; 19 U.S.C. 66, 1515, 1624)

Since this amendment to § 174.24 expands the right of a party filing a protest to obtain further review, notice and public proceedings thereon are found unnecessary, and the amendment shall be effective upon publication in the FEDERAL REGISTER (5-12-71).

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

Approved: May 3, 1971.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.71-6578 Filed 5-11-71;8:46 am]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Sulfadimethoxine

Correction

In F.R. Doc. 71-5498 appearing at page 7650 in the issue for Friday, April 23, 1971, the percentage under "Grams per gallon" for the first entry of Table 1 in § 135c.13(e), now reading "0.03%", should read "0.05%".

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

SUBCHAPTER A—GENERAL

[CGFR 71-30]

PART 1—GENERAL PROVISIONS

Testimony by Coast Guard Personnel in Legal Proceedings

This amendment revises the regulations applicable to testimony of Coast Guard personnel in legal proceedings to make them consistent with the regulations of the Department of Transportation in Part 9 of Title 49, Code of Federal Regulations. This amendment also delegates the authority of the Chief Counsel of the Coast Guard as the "appropriate counsel of the operating administration concerned" to the District Legal Officers.

Since this amendment relates to agency management, procedure, and practice, it is exempt from the notice and public procedure provisions of 5 U.S.C. 553 and may be made effective upon publication in the FEDERAL REGISTER.

Accordingly, Subpart 1.20 is revised to read as follows:

Subpart 1.20—Testimony by Coast Guard Personnel and Production of Records in Legal Proceedings

§ 1.20-1 Testimony by Coast Guard personnel and production of records.

(a) The regulations in 49 CFR Part 9 apply to the testimony of Coast Guard personnel, production of Coast Guard records, and service of process in legal proceedings.

(b) Except for the acceptance of service of process or pleading, the District Legal Officer of each Coast Guard District, with respect to matters arising within his District, is delegated the functions of the "appropriate counsel of the operating administration concerned" described in 49 CFR Part 9.

(c) A request for a member or employee of the Coast Guard to testify or for permission to interview a member or employee of the Coast Guard District must be made to the District Legal Officer of the Coast Guard District in which the member or employee is serving or if the member or employee is serving at Coast Guard Headquarters, to the Chief Counsel, U.S. Coast Guard.

(d) Process or pleadings in any legal proceeding concerning the Coast Guard may be served, at the option of the server, on the Chief Counsel or the Deputy Chief Counsel of the Coast Guard with the same effect as if served on the Commandant of the Coast Guard. The official accepting the service under this section acknowledges the service and takes further action as appropriate.

(80 Stat. 383, as amended, sec. 1, 33 Stat. 1022, as amended, sec. 9, 80 Stat. 944; 5 U.S.C. 552, 14 U.S.C. 632, 633, 46 U.S.C. 375, 416, 49 U.S.C. 1657 (a) and (e); 49 CFR 1.46, 49 CFR Part 9)

Effective date. This amendment is effective upon publication in the FEDERAL REGISTER (5-12-71).

Dated: May 3, 1971.

C. R. BENDER,
Admiral, U.S. Coast Guard, Commandant.

[FR Doc.71-6587 Filed 5-11-71;8:46 am]

Title 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

Chapter I—Patent Office, Department of Commerce

PART 1—RULES OF PRACTICE IN PATENT CASES

Discovery During Interference Proceedings

These rule changes are intended to provide for: (1) Consideration of action sought by a party to a patent interference proceeding outside the period prescribed therefor where the delay in seeking such action is justified; (2) the designation of a specific period for discovery and the preparation for the taking of testimony; (3) specified discovery upon request (a) during the period for preparation for testimony as to evidence and testimony to be offered by junior parties and (b) after completion of testimony in chief of the junior parties, as to evidence and testimony to be offered by senior parties; (4) the ordering of additional discovery upon motion by a party where the interest of justice so requires; and (5) sanctions by the Board of Patent Interferences where there is noncompliance with a requirement of a rule or an order by the Board.

The proposal to amend Title 37, Code of Federal Regulations, by revising §§ 1.245 and 1.251 and by adding a new § 1.287 was published in the December 31, 1970, issue of the FEDERAL REGISTER (35 F.R. 20011).

All interested persons were given an opportunity to participate in the rulemaking process by submission of comments in writing and in person at an oral hearing held on February 19, 1971. The rules are being adopted after full and careful consideration of all the material submitted. The departures from the published text reflect certain of the views expressed in the submitted material.

Effective Date. This amendment shall become effective 30 days after publication in the FEDERAL REGISTER and shall apply only to those interferences in which the times for taking testimony are set on or after such effective date.

In consideration of the comments received and pursuant to the authority contained in section 6 of the Act of July 19, 1952 (66 Stat. 793; 35 U.S.C. 6), Part 1 of Title 37, Code of Federal Regulations is hereby amended as follows:

1. Section 1.245 is revised to read as follows:

§ 1.245 Extension of time.

Extensions of time in any case not otherwise provided for may be had by stipulation of the parties, subject to approval, or on motion duly brought, sufficient cause being shown for such extension. A motion not timely made may be considered upon a showing of sufficient cause as to why such motion was not timely presented.

2. Section 1.251, paragraphs (a), (b), (c), and (d) are revised, and a new paragraph (e) is added as follows:

§ 1.251 Assignment of times for discovery and taking testimony.

(a) A period for preparation for testimony will be set in which all parties should complete discovery and other preparatory activities.

(b) Times will be assigned in which the junior party shall complete his testimony in chief, and in which the other party shall complete the testimony on his side, and a further time in which the junior party may take rebutting testimony, but he shall take no other testimony. If there be more than two parties to the interference, the times for taking testimony will be so arranged that each shall have an opportunity to prove his case against prior parties and to rebut their evidence, and also to meet the evidence of junior parties.

(c) Times for preparation of testimony, for compliance with § 1.287(a) and for taking of testimony will ordinarily be assigned in notices sent to the parties after motions under § 1.231 have been disposed of or, if no such motions have been filed, after the close of the motion period (§ 1.231).

(d) Testimony shall be taken during the times assigned in accordance with §§ 1.271 to 1.286.

(e) The date for final hearing will ordinarily be set in separate notices.

3. A new § 1.287 is added as follows:

§ 1.287 Discovery.

(a)(1) Each party who expects to take testimony must serve on each opposing party who requests service the following:

(i) A copy of each document in his possession, custody, or control and upon which he intends to rely,

(ii) A list of and a proffer of reasonable access to things in his possession, custody, or control and upon which he intends to rely, and

(iii) A list giving the names and addresses of all persons whom he intends to call as witnesses and indicating the relationship of each person to the invention in issue.

(2) Dates for compliance with subparagraph (1) of this paragraph will be set in accordance with the following:

(i) The date by which all parties may request service shall be not less than 10 days from the date of the order setting testimony times;

(ii) The date for service by all junior parties shall be not less than 30 days from the date of the order setting such times;

(iii) The date for service by the senior party shall be not less than 10 days from the date set for the close of testimony in chief of all junior parties.

(3) Where more than two parties are involved and one of the junior parties is not entitled to take testimony as to a more senior party, the requirements of subparagraphs (1) and (2) of this paragraph shall not be applicable as between such parties.

(b) The provisions of paragraph (a) of this section are without prejudice to the right of a party, where appropriate, to obtain production of documents or things during cross-examination of an opponent's witness or during his own period for rebuttal testimony.

(c) Upon motion (§ 1.243) brought by a party during the period for preparation for testimony, or thereafter as authorized under § 1.245, and upon a showing that the interest of justice so requires, the Board of Patent Interferences may order additional discovery as to matters under the control of a party within the scope of the discovery rules of the Federal Rules of Civil Procedure, specifying the terms and conditions of such additional discovery. An order by the Board granting or denying a motion under this paragraph shall not be subject to review prior to a decision awarding priority.

(d) (1) A party will not be permitted to rely on any document or thing in his possession, custody, or control, or on any witness, not listed and served by that party as required by paragraph (a) of this section, except upon a promptly filed motion accompanied by the proposed additional documents or lists together with a showing of sufficient cause as to why they were not served by the date set pursuant to paragraph (a) of this section.

(2) Any failure to comply with an order under the provisions of paragraph (c) of this section may be considered by the Board of Patent Interferences as basis for applying appropriate restrictions against the party failing to comply, for holding certain facts to have been established, and in an appropriate case for awarding priority against him, or for taking such other action as may be deemed appropriate.

(e) The parties may by agreement among themselves modify any of the foregoing requirements consistent with the schedule of times for taking testimony and filing the record. In the absence of such agreement, discovery will not be permitted prior to the period set for the preparation for testimony.

Dated: May 6, 1971.

WILLIAM E. SCHUYLER, Jr.,
Commissioner of Patents.

Approved:

JAMES H. WAKELIN, Jr.,
Assistant Secretary for Science and Technology.

[FR Doc.71-6617 Filed 5-11-71;8:49 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 16979]

PART 0—COMMISSION ORGANIZATION

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Order Extending Time for Filing Responsive Pleadings

In the matter of regulatory and policy problems presented by the interdependence of computer and communication services and facilities.

1. The Chief, Common Carrier Bureau has under consideration a "Motion for Extension of Time to File Responsive Pleadings to Pleadings Requesting Reconsideration and Clarification" in the above-captioned proceeding (36 F.R. 8450). The request is based on the allegation that Western Union was not served with copies of many of the petitions and that it has only recently obtained such copies.

2. It appears that good cause has been shown for the extension requested and that such an extension will not unduly delay resolution of this proceeding.

3. *Accordingly, it is ordered,* That the time for filing responsive pleadings to pleadings requesting reconsideration and clarification herein is extended to May 18, 1971.

Adopted: April 30, 1971.

Released: May 3, 1971.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WILLIAM M. LESHER,
Acting Chief, Domestic Rates Division for Chief, Common Carrier Bureau.

[FR Doc.71-6585 Filed 5-11-71;8:46 am]

Title 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation

[OST Docket No. 1; Amdt. 1-48]

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

Delegation of Authority With Respect to Aircraft Emission Standards

The purpose of this amendment is to delegate, to the Federal Aviation Administrator, the authority vested in the Secretary of Transportation by section 11(a) of the Clean Air Amendments of 1970 (Public Law 91-604; 84 Stat. 1703) which added Part B—"Aircraft Emission Standards" to title II of the Clean Air Act (42 U.S.C. 1857 et seq.).

Since this amendment relates only to the internal management of the Department, notice and public procedure thereon are not required and the amendment may be made effective in less than 30 days.

In consideration of the foregoing, effective May 6, 1971, § 1.47 of Title 49, Code of Federal Regulations, is amended by adding the following paragraph at the end thereof:

§ 1.47 Delegations to Federal Aviation Administrator.

* * * * *

(j) Carry out the functions vested in the Secretary by part B of title II of the Clean Air Act, as amended (84 Stat. 1703).

(Sec. 9, Department of Transportation Act, 49 U.S.C. 1657)