FEDERAL REGISTER in 38 FR 30654 on November 6, 1973. Segments or a segment of the application must address each criterion. Each criterion is weighted to show the maximum score that can be given to each specific criterion. Each criterion and the maximum points possible are as follows:

Criteria:	Score
(a) *Need and problems.*—The application should clearly define the need for the project within the specified consortium of States and should indicate responsiveness to problems rather than symptoms	20
(b) *Objectives.*—The objectives should be clearly stated, capable of being attained by the proposed procedures, and capable of being measured	10
(c) *Plan.*—The management plan should show functions to be performed and services to be provided; and the procedures for accomplishing each are delineated	20
(d) *Results.*—The proposed outcomes should be identified and described in terms of potential impact at National, State and local levels, Part I program purposes, and cost effectiveness and efficiency	20
(e) *Institutional capability.*—Application should clearly set forth current curriculum strengths and the capability of the applicant to immediately initiate and maintain liaison functions with consortium States	15
(f) *Personnel.*—The qualifications and experience of key staff should be appropriate for the requirements of the project; specific responsibilities should be identified for each of the key staff; and at least one key staff person should devote a minimum of 50 percent of his/her time to the project	10
(g) *Budget.*—The estimated cost should be reasonable in relation to anticipated results and the geographic area, scope, and duration of the project	5

[FR Doc.75-29640 Filed 11-5-75;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 75-WE-24]

FEDERAL AIRWAY

Proposed Extension

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would extend V-293 from Bryce Canyon, Utah, to Grand Canyon, Ariz., via the Page, Ariz., VOR to be established, at Lat. 36°55'41" N., Long. 111°27'00" W.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Western Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, P.O. Box 92007, Worldway Postal Center, Los Angeles, Calif. 9009. All communications received on or before December 8, 1975, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, 800 Independence Avenue, SW., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The proposed amendment would extend VOR Federal Airway No. 293 from Bryce Canyon, Utah, to Grand Canyon, Ariz., via the INT of Bryce Canyon 120°T (105°M) and the Page, Ariz., 340°T (325°M) radials and Page, Ariz.

The proposed extension of V-293 would provide continuous controlled airspace, charted radials, distance and minimum en route altitudes from Bryce Canyon, Utah, to Grand Canyon, Ariz., via Page, Ariz., for scheduled air carrier aircraft operating into Page on a regular basis. The indirect airway between Bryce Canyon and Page would permit better VOR reception and lower MEA than a direct route over higher terrain.

This amendment is proposed under the authority of Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348 (a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655 (c)).

Issued in Washington, D.C., on October 31, 1975.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.75-29797 Filed 11-5-75;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 453-1]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Proposed Revision to Idaho Implementation Plan

Pursuant to Section 110 of the Clean Air Act, as amended, the Governor of Idaho on July 28, 1975, submitted to the Administrator of the Environmental Protection Agency (EPA) a proposed revision to the Idaho Air Quality Implementation Plan. The proposed revision is a consent order for Beker Industries Corporation (formerly known as the Agricultural Products Corporation) which was adopted by the Idaho Board of Environmental and Community Services (now the Board of Health and Welfare) on October 24, 1973, after proper notice and public hearing.

The consent order replaces Regulation R—"Regulation for Control of Sulfur Oxides Emissions from Sulfuric Acid Plants" as the emission limiting regulation applying to the Beker Industries facility located in Caribou County, Idaho. The consent order contains provisions applicable to the "existing" sulfuric acid plant and the "new" sulfuric acid plant which commenced operation on March 28, 1974. Since this order was adopted by Idaho on October 24, 1973, certain of the provisions in the order dealing with start up of the new sulfuric acid plant are no longer applicable and have not been included in the following summary. The major provisions of the consent order are summarized as follows:

1. In the event the tail gas absorption unit on the new sulfuric acid plant should emit more than 6 lbs. sulfur dioxide (SO_2) per ton of 100 percent sulfuric acid produced, the Department of Environmental and Community Services (now the Department of Health and Welfare) shall have the authority to determine whether or not the new sulfuric acid plant should be immediately shut down and repaired.

2. The combined allowable SO_2 emissions from the existing and new sulfuric acid plants shall not exceed 27,000 lbs. of SO_2 per any consecutive 24-hour period. In the event ambient air SO_2 violations occur, this emission limit will be lowered.

3. Monitoring data from the continuous SO_2 recorder shall be submitted to the Department within seven days of initial start up of the new source and every seven days thereafter, or as often as required by the Department.

4. There shall be no increase in existing plant emissions after the new sulfuric acid plant is in operation. The maximum rate for existing sources is as follows:

a. Phosphate rock dryer—51.2 lbs. of particulate/hour.

b. North calciner—47.8 lbs. of particulate/hour.

c. South calciner—46.3 lbs. of particulate/hour.

d. Present sulfuric acid plant—27 lbs. SO_2/ton 100 percent sulfuric acid produced and 28 lbs. sulfur oxides/ton of 100 percent sulfuric acid produced.

5. Beker Industries shall operate two Hi-Vol filters and one continuous ambient SO_2 monitor at sites approved by the Department.

6. No process or individual source within the entire plant complex shall be operated in violation of any local, state or federal air pollution regulation or standard and nothing herein shall be construed to excuse Beker Industries from compliance with any federal, state, or local regulation or standard which requires or which may require more strict control standards than set out herein.

The Administrator is today proposing to approve the consent order as a revision to the Idaho State Implementation Plan. It should be noted that although the consent order indicates that the order may be amended at any time with the consent of the Department and Beker Industries, any such amendments will not become part of the Implementation Plan until approved by EPA. In addition to proposing to approve the consent order, the Administrator is today pro-

posing to disapprove Regulation R as it applies to the Beker Industries Corporation because it does not meet the requirements of 40 CFR 51.13 in that the control strategy contained in the regulation is not adequate for the attainment and maintenance of SO_2 national ambient air quality standards. The proposed disapproval is shown below. The Administrator also proposed disapproval of Regulation R as it applies to The J. R. Simplot Company in Pocatello, Idaho and proposed a federal regulation to apply to that facility on August 23, 1975 (40 FR 36385). Since Regulation R applies to only Beker Industries Corporation and The J. R. Simplot Company, should EPA approve the submitted consent order for Beker Industries and promulgate the proposed federal regulation for The J. R. Simplot Company, Regulation R would be disapproved in its entirety as part of the State Implementation Plan. Further, should EPA promulgate the proposed federal regulation for The J. R. Simplot Company and approve the consent order for Beker Industries as an Implementation Plan revision, the compliance schedule for sulfuric acid plants promulgated by EPA on August 23, 1973 (38 FR 22741) in 40 CFR 52.677(d) (3) and (4) would be revoked. The proposed revocation is also shown below.

All interested persons are invited to comment on the proposed revision to the Idaho State Implementation Plan. Comments should be addressed to the Regional Administrator, Region X, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Attention: K. Higley. Copies of the proposed revision and any comments received will be available for public inspection at the following addresses:

State of Idaho, Department of Health and Welfare, Statehouse, Boise, Idaho 83720
Environmental Protection Agency, Idaho Operations Office, 422 W. Washington Street, Boise, Idaho 83720
Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101
Environmental Protection Agency, Freedom of Information Center, 401 M Street SW., Washington, D.C. 20460

Relevant comments received on or before December 8, 1975, will be considered.

This notice is issued under the authority of Section 110 of the Clean Air Act, as amended (42 U.S.C. 1857c-5.)

Dated: October 28, 1975.

CLIFFORD SMITH, Jr.,
Regional Administrator.

It is proposed to amend Part 52 of Chapter I, Title 40 of the Code of Federal Regulations as follows:

Subpart N—Idaho

1. Section 52.670 is amended by revising paragraph (c) (2) to read as follows:

§ 52.670 Identification of plan.

* * * * *

(c) Supplementary information was submitted on:

* * * * *

(2) March 2, May 5 and June 9, 1972; February 15, July 23 and October 16, 1973; July 1, 1974 (Idaho Indirect Source Regulation and compliance schedules); and January 10 (Regulation C), January 24 (Regulation A) and July 28 (Consent Order) 1975.

2. Section 52.675(c) is added as follows:

§ 52.675 Control strategy: Sulfur oxides—Eastern Idaho Intrastate Region.

* * * * *

(c) Regulation R of the Rules and Regulations for the Control of Air Pollution in Idaho, which is part of the sulfur dioxide (SO_2) control strategy, is disapproved as it relates to the Beker Industries Corporation facility located in Caribou County, Idaho, in the Eastern Idaho Intrastate Air Quality Control Region, since it is inconsistent with the requirements of § 51.13 of this chapter. These requirements are not met by Regulation R in that the SO_2 control strategy contained therein is not adequate for the attainment and maintenance of SO_2 national ambient air quality standards (NAAQS). Further, the Regulation, as it applies to Beker Industries Corporation, has been superseded by a Consent Order issued by the Idaho Board of Environmental and Community Services, dated October 24, 1973.

3. Section 52.677 is amended by revoking subparagraphs (3) and (4) of paragraph (d) as follows:

§ 52.677 Compliance schedules.

* * * * *

(d) * * *

(3) [Reserved]

(4) [Reserved]

[FR Doc.75-29912 Filed 11-5-75;8:45 am]

FEDERAL ENERGY ADMINISTRATION

[10 CFR Part 212]

PROPOSALS FOR INCREASED PRICING FLEXIBILITY

Notice of Change in Hearing Dates

In its notice of proposed rulemaking and public hearing issued October 27, 1975 (40 FR 49372, October 22, 1975) the FEA stated that the public hearing in the matter of proposals for increased pricing flexibility would be held beginning at 9:30 a.m., on November 11, to be continued, if necessary, on November 12, 1975, in Room 2105, 2000 M Street, NW., Washington, D.C.

Due to scheduling problems, the hearing date has been changed to November 12, with the hearings to be continued, if necessary, on November 13, 1975. There is no change in the location or in the time the hearings will begin.

Issued in Washington, D.C., October 31, 1975.

ROBERT E. MONTGOMERY, Jr.,
General Counsel,
Federal Energy Administration.

[FR Doc.75-29784 Filed 11-3-75;9:27 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 239, 240, 249]

[Release Nos. 33-5627, 34-11733; File No. S7-593]

ENVIRONMENTAL AND SOCIAL DISCLOSURE

Notice of Commission Conclusions and Rulemaking Proposals

PRELIMINARY STATEMENT AND SUMMARY

The Securities and Exchange Commission today announced its conclusions and proposals for further rulemaking action in the proceeding announced in Securities Act Release No. 5569 (February 11, 1975) concerning possible disclosure in registration statements, reports and other documents filed with the Commission or required to be furnished to investors pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934 of environmental and other matters of social concern, including equal employment matters.

The Commission has concluded that, although it is generally not authorized to consider the promotion of social goals unrelated to the objectives of the federal securities laws, it is authorized and required by the National Environmental Policy Act of 1969 (NEPA) to consider the promotion of environmental protection as a factor in exercising its rulemaking authority under the Securities Act of 1933 and the Securities Exchange Act of 1934. In this regard, NEPA and the promotion of environmental protection which it explicitly mandates all agencies to effect are unique insofar as the Commission's disclosure requirements are concerned.

The Commission has broad discretion with regard to the promulgation of disclosure requirements under the federal securities laws, limited only by the requirement that it determine that such disclosures are necessary to discharge its statutory responsibilities or are necessary or appropriate in the public interest or for the protection of investors. In exercising this discretion, we have recognized that certain types of information are often of importance to investors generally and thus may appropriately be made the subject of specific disclosure requirements applicable to all registrants. On the other hand, certain types of information which are of importance only in certain instances have generally not been made the subject of specific disclosure requirements.

No showing has been made in this proceeding, particularly in light of the more than 100 areas of social information identified by persons responding to our request for comments, that disclosure of information describing corporate social practices should be specifically required of all registrants. This is not to say, however, that, in specific cases, some information of this type might not be required in order to make the statements in a filing not misleading or to make the filing otherwise complete with respect to information investors appropriately might

need to make informed investment or voting decisions. The Commission's rules already require, in addition to specific disclosures, the disclosure of any other material information. Indeed, at a prior stage in its consideration of environmental and social disclosure, the Commission alerted registrants to this fact. Securities Act Release No. 5170 (July 19, 1971). And, in those particular instances in which disclosures are required thereunder, the law provides remedies for noncompliance. In appropriate cases, the Commission may commence an enforcement action, and investors who believe that they have been, or are being, injured by non-disclosure of specific information have judicial remedies available to them. As the Supreme Court has recognized, these remedies constitute a necessary supplement to the Commission's own enforcement activities.

Accordingly, in light of the apparent interest among some investors and the Commission's obligation to consider promotion of environmental protection among other factors in exercising its disclosure authority, we have today proposed for comment rules which would make available to interested investors information regarding the extent to which corporations have failed to satisfy environmental standards under federal law. We have also concluded that specific disclosure requirements regarding corporate equal employment and other practices are not appropriate at this time.

Below is a topical outline of the matters considered by the Commission in this release:

I. Background

This proceeding, the most recent aspect of the Commission's consideration of environmental and social disclosure, was conducted pursuant to an order of the District Court for the District of Columbia in "Natural Resources Defense Council, Inc. v. Securities and Exchange Commission," 389 F. Supp. 689 (D.D.C., 1974). Plaintiffs in that case had sought review of the promulgation by the Commission of the environmental disclosure rules announced in Securities Act Release No. 5386 (April 20, 1973) and the related denial of plaintiffs' petition[1] for rules requiring registrants to file with the Commission information concerning both the environmental consequences of their activities, and statistics and legal proceedings regarding their equal employment practices.

The court held that the Commission had failed to satisfy the procedural requirements of the Administrative Procedure Act (APA), 5 U.S.C. 551, *et seq.*, in its informal rulemaking proceeding in three respects:

(1) By failing to state in Securities Act Release No. 5235 (February 16, 1972), announcing the Commission's proposed environmental disclosure rules, that those rules were intended fully to discharge the Commission's obligations under NEPA;

(2) By failing to state in Release No. 5386 (which adopted, with certain modifications, the disclosure rules proposed for comment in Release No. 5235), in sufficient detail to permit judicial review,

(a) The Commission's view of its obligation under the federal securities acts and NEPA,

(b) The alternatives which it considered in its rulemaking action, and[2]

(c) Its reasons for rejecting substantial alternatives; and

(3) By failing to state the reasons for its denial of the equal employment portion of plaintiffs' petition.

The court ordered the Commission to undertake "rulemaking action to bring the Commission's corporate disclosure regulations into full compliance with the letter and spirit of NEPA,"[3] and to reconsider the Commission's denial of the equal employment portion of the petition.[4] The court also suggested that the Commission resolve what it characterized as two "overriding factual issues": (1) The extent of interest among "ethical investors" in the disclosure by corporations of the environmental impact of corporate activities and of their equal employment opportunity practices and (2) the avenues open to such investors to eliminate corporate practices inimical to the environment and equal employment opportunity.[5]

Although the Commission disagreed with the ruling of the district court, on February 11, 1975, in Securities Act Release No. 5569,[6] the Commission announced the present phase of this public proceeding pursuant to the court's order. In accord with the Commission's normal practice, the release was published in the "SEC Docket"[7] and distributed to persons on the Commission's mailing list for releases issued under the Securities Act and the Securities Exchange Act. Such distribution includes all registrants under the Securities Act and all reporting companies under the Securities Exchange Act. In addition, to insure the fullest possible notice to interested persons, the Commission provided 500 copies of the release to the Natural Resources Defense Council for distribution. The Commission itself mailed copies of the release, together with letters inviting comment, to various interested governmental agencies,[8] to persons who had responded to two earlier releases requesting comment on certain matters of social significance,[9] and to persons who commented on the environmental disclosure rules proposed in Securities Act Release No. 5235, *supra*. The Commission also announced in Securities Act Release No. 5577 (April 4, 1975),[10] that it would make available a reasonable number of copies of Release No. 5569, upon request, to any other group or organization whose membership might be interested in commenting thereon.

Public hearings commenced on April 14, 1975, and continued on 19 days through May 14. Fifty-four oral presentations and 353 written comments were received. Because many of the written comments arrived after the May 14 deadline specified in Release No. 5569, the staff informally held the proceeding open and accepted comments through the end of May. A number of comments received thereafter have been placed in the public file. The entire file, which includes documents in excess of 10,000 pages, is divided into letters of comment, transcripts of testimony received at the hearing, and exhibits presented in the course of testimony. These documents are, and have been, available for public inspection at

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[1] S.E.C. File No. 4-179.

[2] 389 F. Supp. at 693. In its unreported order accompanying the opinion, the court provided that the rules promulgated in Release No. 5386 would "remain in effect pending further rulemaking action by the SEC."

[3] The Court's original order, dated December 9, 1974, directed the Commission to "take further rulemaking action" within 120 days. That order has been modified so that the Commission is now required, on or before October 14, 1975, to determine and publicly announce its conclusions respecting the proceeding announced in Securities Act Release No. 5569 (February 11, 1975), and the disclosure rules proposed as a result of that proceeding.

[4] 389 F. Supp. at 701-702.

[5] 40 "Federal Register" 7013 (February 18, 1975).

[6] 6 "SEC Docket" 257 (February 25, 1975). The "SEC Docket" is a weekly compilation of the Commission's releases and is available on a subscription basis from the Government Printing Office. The "SEC Docket" has approximately 6,500 subscribers.

[7] These were the United States Army Corps of Engineers; Council on Environmental Quality; Environmental Protection Agency; Equal Employment Opportunity Commission; Labor Relations and Civil Rights Division of the Department of Labor; and Land and Natural Resources Division of the Department of Justice.

[8] These were (1) Securities Exchange Act Release No. 9822 (October 17, 1972), which invited comment on a rulemaking petition filed by Public Citizen, Inc. and others concerning contributions to segregated funds to be used by corporations for political purposes; and (2) Securities Exchange Act Release No. 9908 (December 14, 1972), which invited comment on a rulemaking petition filed by the United Church of Christ and others concerning employment practices in the securities industry.

[9] 40 "Federal Register" 16375 (April 11, 1975).

the Commission's Public Reference Section, 1100 L Street, NW., Washington, D.C.[10]

II. THE COMMISSION'S DISCLOSURE AUTHORITY AND RESPONSIBILITIES UNDER THE FEDERAL SECURITIES LAWS

A. The Commission's disclosure authority. The provisions of the Securities Act of 1933 [11] and the Securities Exchange Act of 1934 [12] are the starting point for any analysis of the Commission's authority or obligation to require specific disclosures. Those Acts confer upon the Commission broad discretion to determine what matters, in addition to those specifically enumerated in the Acts, are appropriate for disclosure. That broad discretion is limited, as set forth immediately below, by the requirement that the Commission determine disclosure of such matters is either necessary to discharge the Commission's obligations under the Acts or is necessary or appropriate in the public interest or for the protection of investors. In addition, Congress desired that disclosure be fair as well as full.

The Commission's general rulemaking authority is contained in Section 19(a) of the Securities Act and Section 23(a) of the Securities Exchange Act, which authorize the Commission to promulgate such rules "as may be necessary to carry out the provisions of this title," and "as may be necessary or appropriate to implement the provisions of this title for which [it is] responsible or for the execution of the functions vested in [it] by this title . . .," respectively. Certain sections of those Acts also confer specific and independent grants of rulemaking authority.

Thus, Sections 7 and 10(c) of the Securities Act prescribe certain types of information to be disclosed in registration statements and prospectuses, respectively, and authorize the Commission to require disclosure therein of such other information "as [is] necessary or appropriate in the public interest or for the protection of investors." Similarly, under Section 12(b) of the Securities Exchange Act, the Commission may require, in applications for the registration of securities, such information respecting the issuer's organization, financial structure, nature of business and financial statements as it deems "necessary or appropriate in the public interest or for the protection of investors." Section 13(a) under that Act requires each issuer of a security registered under Section 12 to keep current the information in its application or registration statement and to file annual and quarterly reports in accordance with rules prescribed by the Commission "as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security." Pursuant to Section 15 (d) of the Securities Exchange Act, such reports are also required of certain companies which have filed registration statements under the Securities Act. Section 14(a) of the Securities Exchange Ace prohibits the solicitation of proxies in contravention of such rules as the Commission prescribes "as necessary or appropriate in the public interest or for the protection of investors."

The requirement that disclosure be fair as well as full arises from the preamble to the Securities Act of 1933 which sets forth the purpose of that Act:

[t]o provide full and fair disclosure of the character of securities sold in interstate and foreign commerce. . . .

Of the various purposes of the Securities Exchange Act, as set forth in its preamble and in Section 2 of the Act, the Congressional aim "to require appropriate reports" is of direct concern here.[13] The Senate Report on proposed legislation ultimately embodied in the Securities Exchange Act points out that information required under the Securities Act relates only to the time of issuance, whereas

[r]eports under this bill will provide adequate information reasonably up to date as long as the security is traded in on an exchange.[14]

An additional objective of the Act, not referred to in the preamble or in Section 2, but underlying Section 14(a), is the promotion of fair opportunity for corporate suffrage.

The Acts and the relevant legislative history also suggest that a prime expectation of the Congress was that the Commission's discloure authority would be ued to require the dissemination of information which is or may be economically significant. The Securities Act of 1933 was enacted in response to the flotation during the post-World War I decade of $25 billion of securities which proved worthless.[15] The significance of the enumerated disclosure items in Schedule A to that Act is essentially economic in nature. As the House Report which preceded the Securities Act states:

The type of information required to be disclosed is of a character comparable to that demanded by competent bankers from their borrowers, and has been worked out in the light of these and other requirements.[16]

Similarly, the items prescribed in Section 12(b) of the Securities Exchange Act for inclusion in registration statements filed thereunder are essentially of economic significance,[17] as are the specific references in Section 13(b) to the form of, and the methodology underlying, annual and quarterly reports. As the Senate Report explained:

The bill provides that . . . a condition of such registration shall be the furnishing of complete information relative to the *financial condition* of the issuer, which information shall be kept up to date by adequate periodic reports.[18]

That economic were the primary concern of the Congress in prescribing the Commission's disclosure authority appears also to be the view of the Supreme Court, given its recent emphasis on the economic nature of securities transactions in "United Housing Foundation, Inc. v. Forman," ____ U.S. ____, 95 S. Ct. 2051 (June 16, 1975). The Court rejected the contention that instruments designated as "stock" were necessarily

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[10] The public file in this phase of the proceeding consists of the following subfiles:

S7-551-1: Written comments received in response to Release No. 5569 and certain background information as described in that Release.

S7-551-1A: Witnesses' prepared statements and exhibits submitted at the public hearing.

S7-551-1C: Correspondence in connection with the proceeding other than written comments.

S7-551-1H: Transcripts of the public hearings.

Other Commission public files which contain materials relevant to the issues in this proceeding include:

S7-429: Written comment received in response to Release No. 5235, *supra*, concerning proposed environmental disclosure rules.

4-150: Written comment received in response to Release No. 9822, *supra* note 8, concerning corporate political funds.

4-160: Written comment received in response to Release No. 9908, *supra* note 8, concerning employment practices in the securities industry.

4-179: Natural Resources Defense Council rulemaking petition and materials related to the denial thereof.

[11] 15 U.S.C. 77a *et seq*. The Act appears in the United States Code as 15 U.S.C. Section 77, the sections of the Act being identified by the letters a-bb rather than by the corresponding Arabic numbers.

[12] 15 U.S.C. 78a *et seq*. The Act appears in the United States Code as 15 U.S.C. Section 78, the sections of the Act being identified by the letters a-jj rather than by the corresponding Arabic numbers. Recent amendments to the Securities Exchange Act, adopted this year in Pub. L. 94-29, have not as yet been included in this codification.

[13] The preamble to the Securities Exchange Act makes clear that the major purposes of that Act were [t]o provide for the regulation of securities exchanges and of over-the-counter markets . . . to prevent inequitable and unfair practices on such exchanges and markets, and for other purposes.

Section 2 of that Act states: For the reasons hereinafter enumerated, transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are affected with a national public interest which makes it necessary . . . to require appropriate reports. . . .

[14] S. Rep. No. 792, 73d Cong., 2d Sess. at 10 (1934). In 1964, the Securities Exchange Act was amended to extend the reporting requirements to certain issuers, the securities of which were not traded on an exchange. Public Law No. 88-467 (Aug. 20, 1964), 78 Stat. 565. See 15 U.S.C. 78l(g), 78m(a), 78n.

Such disclosure is, of course, related to the other statutory objectives of controlling speculation and insider trading and of eliminating manipulation. As the House Report made clear:

There cannot be honest markets without honest publicity. Manipulation and dishonest practices of the market place thrive upon mystery and secrecy.

H.R. Rep. No. 1383, 73d Cong., 2d Sess. at 11 (1934).

[15] H.R. Rep. No. 85, 73d Cong., 1st Sess. (1933) at 2.

[16] *Id*. at 4.

[17] The Commission's rulemaking authority under Section 12(b) is limited to information "in respect of" certain enumerated items.

[18] S. Rep. No. 792, *supra* note 14, at 10 (emphasis added).

"securities" under the federal securities laws, stating:

> Because securities transactions are economic in character Congress intended the application of these statutes to turn on the *economic realities* underlying a transaction. . . .

95 S. Ct. 2059 (emphasis added). And, in considering whether the interests in question constituted an "investment contract" or an "instrument commonly known as a security," the Court stated:

> There is no doubt that purchasers in this housing cooperative sought to obtain a decent home at an attractive price. But that type of economic interest characterizes every form of commercial dealing. What distinguishes a security transaction—and what is absent here—is an investment where one parts with his money in the hope of receiving profits from the efforts of others, and not where he purchases a commodity for personal consumption or living quarters for personal use.

Id. at 2063 (footnote omitted).[19]

It is also evident, however, that insofar as the Commission's rulemaking authority under Section 14(a) of the Securities Exchange Act is concerned, the primacy of economic matters, particularly with respect to shareholder proposals, is somewhat less. Section 14(a) provides that proxies may be solicited only in conformity with "such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors." The Congressional purpose in enacting Section 14 has been characterized as "to require fair opportunity for the operation of corporate suffrage."[20] The Senate Report on Section 14(a) indicates that Congress was concerned that shareholders be informed of the nature of the matters which would be presented at shareholder meetings and on which those soliciting proxies would cast their votes.[21] The House Report, on the other hand, appears to place somewhat greater emphasis on the prevention of injury to stockholder financial interests which could result from unregulated management proxy solicitation.[22]

B. The Commission's discretion to exercise its disclosure authority. As stated above, Congress has conferred on the Commission broad discretion to determine what disclosures, in addition to those specifically enumerated in the Securities Act and the Securities Exchange Act, should be required of all registrants. In administering the various federal securities laws,[23] the Commission was expected to become entirely familiar with the securities markets and to develop an expertise which would enable it to resolve questions such as what disclosure of information regarding securities and issuers is necessary to discharge its responsibilities under the Securities Act and the Securities Exchange Act or is "necessary or appropriate in the public interest or for the protection of investors."[24] The Commission's broad discretion to require disclosure provides necessary latitude to expand or contract disclosure rules in light of changes in the relevant context in which securities issuers conduct their businesses. Statutes, business relationships, supply conditions and a host of other factors which could not be foreseen in 1933 and 1934 may today have a significant impact on the financial condition of companies and the priorities of investors.

If the Commission had not been vested with broad discretion to review continuously and determine the appropriate content of its disclosure requirements, either periodic review and adjustment thereof by Congress would have been necessary or disclosure would have been frozen in the mold dictated by conditions perceived in 1933 and 1934. In the alternative, perhaps, Congress might have prescribed a mechanism to periodically determine the actual interests of investors. But, as discussed *infra*, Section IV(A), there appears to be no feasible, precise method to accomplish such an undertaking, short of an in-depth statistical survey.[25] Furthermore, such a survey, while superficially attractive, would at best produce results that might rapidly become outdated in light of the shifting and fluctuating nature of public opinion and the focus of popular attention from time to time.[26] Finally, some consideration would have to be given to whether interests of which investors are largely unaware might become recognized if disclosure of relevant information were to be required. It is thus apparent that the first of these alternatives would have resulted in the remedial disclosure provisions of the federal securities laws rapidly becoming outmoded, while the second would not have been workable and would have been totally unstable.

Whether particular disclosure requirements are necessary to permit the Commission to discharge its obligations under the Securities Act and the Securities Exchange Act or are necessary or appropriate in the public interest or for the protection of investors involves a balancing of competing factors. As a practical matter, it is impossible to provide every item of information that might be of interest to some investor in making investment and voting decisions. As discussed *infra*, Section V, participants in the proceeding suggested more than 100 topics concerning which they desired disclosure. A disclosure document which incorporated each of these suggestions would consist of excessive and possibly confusing detail, whether provided directly to investors or filed with the Commission for inspection by interested per-

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[19] In "National Association for the Advancement of Colored People v. Federal Power Commission," —— F. 2d ——, No. 72-1959 (C.A.D.C., February 5, 1975), the Court of Appeals for the District of Columbia observed that in 1971 this Commission had issued a release which called attention to its then-existing disclosure requirements regarding the pendency of civil rights proceedings which could affect a registrant's business activities, and stated:

> In thus acting, however, the SEC appears to us merely to have been fulfilling its proper role of seeing that investors are fully informed of circumstances which might bear on the financial prospects of securities-issuing corporations.

Slip Op. at 23-24.

On the other hand, in the action out of which this proceeding arose, Judge Richey stated:

> There are many so-called 'ethical investors' in this country who want to invest their assets in firms which are concerned about and acting on environmental problems of the nation. This attitude may be based purely upon a concern for the environment; but it may also proceed from the recognition that awareness of and sensitivity to environmental problems is the mark of intelligent management. Whatever their motive, this Court is not prepared to say that they are not rational investors and that the information they seek is not material information within the meaning of the securities laws.

389 F. Supp. at 700 (*dictum*).

[20] "Securities and Exchange Commission v. Transamerica Corp.," 163 F. 2d 511, 518 (C.A. 3, 1947) *cert. denied*, 332 U.S. 847 (1947). See also, "J. I. Case Co. v. Borak," 377 U.S. 426, 431-32 (1964).

[21] S. Rep. 792, *supra* note 14, at 12:

> In order that the stockholder may have adequate knowledge as to the manner in which his interests are being served, it is essential that he be enlightened not only as to the financial condition of the corporation, but also as to the major questions of policy, which are decided at stockholders' meetings.

[22] H.R. Rep. 1383, *supra* note 14, at 13-14:

> Fair corporate suffrage is an important right that should attach to every equity security bought on a public exchange. . . . Insiders have at times solicited proxies without fairly informing the stockholders of the purposes for which the proxies are to be used and have used such proxies to take from the stockholders for their own selfish advantage valuable property rights.

[23] The Commission's organic statutes include: Securities Act of 1933, 15 U.S.C. 77a *et seq.* Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* Public Utility Holding Company Act of 1935, 15 U.S.C. 79 *et seq.* Trust Indenture Act of 1939, 15 U.S.C. 77aaa *et seq.* Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.* Investment Advisers Act of 1940, 15 U.S.C. 80b-1 *et seq.*

[24] The courts have repeatedly recognized broad discretion in the Commission to make determinations whether to take action and the form any action should take, dependent on its expertise in securities matters. See, *e.g.*, "Securities and Exchange Commission v. Chenery Corp.," 332 U.S. 194, 209 (1974):

> The Commission's conclusion [regarding a reorganization plan under the Public Utility Holding Company Act] here rests squarely in that area where administrative judgments are entitled to the greatest amount of weight by appellate courts. It is the product of administrative experience, appreciation of the complexities of the problem, realization of the statutory policies, and responsible treatment of the uncontested facts. It is the type of judgment which administrative agencies are best equipped to make and which justifies the use of the administrative process. . . . Whether we agree or disagree with the result reached, it is an allowable judgment which we cannot disturb.

[25] There are approximately 30 million United States investors holding approximately $660 billion in common and preferred stock, exclusive of investment company shares. See notes 48 and 50, *supra*.

[26] If the Commission were required to promulgate rules by plebiscite at the behest of any member of the public, its functions would be purely ministerial, a result clearly not intended by Congress in 1934 or in 1975 when it last reviewed the workings of the Commission and the securities laws.

sons. Thus, certain types of disclosure might be so voluminous as to render disclosure documents as a whole significantly less readable and, thus, less useful to investors generally.[27] In addition, disclosure to serve the needs or desires of limited segments of the investing public, even if otherwise desirable, may be inappropriate, since the cost to registrants, which must ultimately be borne by their shareholders, would be likely to outweigh the resulting benefits to most investors.

The weighing of these factors, among others, is the mechanism by which disclosure is rendered fair as well as full. In administering the disclosure process under the Securities Act and the Securities Exchange Act, the Commission has generally resolved these various competing considerations by requiring disclosure only of such information as the Commission believes is important to the reasonable investor—"material information." 17 CFR 230.405(*l*), 230.408, 240.12b–20, and 240.14a–9(a). This limitation is believed necessary in order to insure meaningful and useful disclosure documents of benefit to most investors without unreasonable costs to registrants and their shareholders.

In arriving at our decision, we are also influenced by our view that the discretion vested in the Commission under the Securities Act and the Securities Exchange Act to require disclosure which is necessary or appropriate "in the public interest" does not generally permit the Commission to require disclosure for the sole purpose of promoting social goals unrelated to those underlying these Acts. Recently, the Court of Appeals for the District of Columbia reaffirmed this principle in a case involving the obligations of the Federal Power Commission with respect to employment discrimination.[28]

The Court stated:

> . . . Congress has not charged the [Federal Power] Commission with advancing *all* public interests, but only the public's interest in having the particular mandates of the Commission carried out, its interest, in other words, in the conservation of natural resources and the enjoyment of cheap and plentiful electricity and natural gas.

Slip Op. at 19 (emphasis in original). Significantly, the Court recognized that many of its previous decisions, as well as those of the Supreme Court, have required agencies to consider the antitrust implications of their actions, but it stated:

> These do not, however, establish that the content of the 'public interest' criterion is generally supplied by other national policies and laws. *Some* such policies and laws are surely relevant, but not simply because they exist. They are relevant because their objectives 'can be related to the objectives of the statute administered by the agency.'

Slip Op. at 19 (emphasis in original).[29]

> [w]ords like 'public interest' and the interest of 'investors or consumers,' though of wide generality, take their meaning and definition from the substantive purposes of the Act.

"Alabama Electric Cooperative, Inc. v. Securities and Exchange Commission," 353 F. 2d 905, 907 (C.A.D.C., 1965). See "City of Lafayette v. Securities and Exchange Commission," 454 F. 2d 941 (C.A.D.C., 1971). See also, "American Sumatra Tobacco Corp. v. Securities and Exchange Commission," 110 F. 2d 117, 121 (C.A.D.C., 1940) (Securities Exchange Act).

Thus, although the Commission's discretion to require disclosure is broad, its exercise of authority is limited to contexts related to the objectives of the federal securities laws. Specifically, insofar as is relevant here, the Commission may require disclosure by registrants under the Securities Act and the Securities Exchange Act if it believes that the information would be necessary or appropriate for the protection of investors or the furtherance of fair, orderly and informed securities markets or for fair opportunity for corporate suffrage. Although disclosure requirements may have some indirect effect on corporate conduct, the Commission may not require disclosure solely for this purpose.

C. The scope of judicial review. As discussed above, the scope of the Commission's discretion to determine what disclosure is appropriate to fulfill its responsibilities under the federal securities laws is extremely broad. Correspondingly, the scope of judicial review of a Commission decision regarding whether to require disclosure of a particular type of information must be limited.[30] If this were not the case, the court, rather than the Commission, would generally be responsible for making the difficult judgments regarding what information is necesary for the Commission to discharge its responsibilities under the Securities Act and the Securities Exchange Act or is necessary or appropriate in the public interest or for the protection of investors. Courts, however, are ill-equipped to make such determinations because the problems presented cannot "be resolved by 'judicial application of canons of statutory construction.'" "Hahn v. Gottlieb," 430 F. 2d 1243, 1249 (C.A. 1, 1970). This is an area "where laws are so broadly drawn that agencies have large discretion,"[31] and "there is no law [for courts] to apply."[32] In short, the proper content of disclosure requirements, or whether that content should be effected by rulemaking or *ad hoc* adjudicatory actions, are judgments "based upon public policy, . . . judgment[s] which Congress has indicated [are] type for the Commisison to make." "Securities and Exchange Commission v. Chenery Corp.," 332 U.S. 194, 209 (1947).

Finally, the substitution of judicial for Commission discretion in disclosure rulemaking would distort the Commission's overall administration of the disclosure process by permitting persons so inclined to utilize judicial review under the Administrative Procedure Act to vindicate their own value preferences, a prospect rejected by the Supreme Court in analogous, but somewhat different, contexts involving environmental consequences of agency decisionmaking in "Sierra Club v. Morton," 405 U.S. 727, 740 (1972) and "Citizens to Preserve Overton Park, Inc. v. Volpe," 401 U.S. 402, 416 (1971).

III. The National Environmental Policy Act

A. Structure of the Act. NEPA is unique in that Congress, in this single enactment, supplemented the mandate of all federal agencies to include consideration of environmental values within agency responsibility. In determining what action to take as a result of the proceeding announced in Release No. 5569, the Commission must determine what effect NEPA has on the principles discussed above which govern its disclosure authority. The pertinent provisions of NEPA are contained in Sections 101 through 105 of that Act, 42 U.S.C. 4331 through 4335.

Section 101(a) sets forth the "continuing policy" of the federal government "to use all practicable means and measures" to protect environmental values. Section 101(b) states that the substantive "responsibility" of the federal government is "to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may" achieve certain environmental goals.

Section 102 specifies methods to be followed. Section 102(1) authorizes and directs that "to the fullest extent possible . . . the policies, regulations and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in [the Act]." Section 102(2) directs that "all agencies of the Federal Government" shall, "to the fullest extent possible," follow certain procedures in conducting their activities. For example, Section 102(2)(C) requires the preparation of

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[27] For example, certain persons submitted for staff examination environmental impact statements prepared in connection with corporate projects in which there was federal involvement. These documents appeared to contain a wealth of environmentally significant information, and typically consisted of several volumes containing many thousands of pages. If comparable material were to be added to registration statements, it would dwarf the disclosure which the Commission presently requires.

[28] "National Association for the Advancement of Colored People v. Federal Power Commission," —— F. 2d —— (C.A.D.C., No. 72–1959, February 5, 1975).

[29] In this vein, in cases arising under the Public Utility Holding Company Act of 1935, the courts repeatedly have held that

> To the extent that a Commission decision on a disclosure issue is reviewable at all, review is limited to whether the decision was procedurally in conformity with the Administrative Procedure Act and whether the decision was arbitrary, capricious, or otherwise abusive of the Commission's broad discretion in this area. 5 U.S.C. 706.

[30] "Administrative Procedure Act: Legislative History," S. Doc. No. 248, 79th Cong., 2d Sess., at 275 (Report of the House Committee on the Judiciary) (1946).

[31] *Id.* at 212 (Senate Judiciary Committee Report).

environmental impact statements in connection with "major Federal actions significantly affecting the quality of the human environment."

The courts have described the difference between the mandates of Section 101 and 102 in terms of the degree of discretion permitted. Since Section 102 requires that its provisions should be carried out "to the fullest extent possible," strict adherence thereto is required. More flexibility is considered implicit, however, in the mandate of Section 101 "to use all practicable means."[33]

To date, the case law under NEPA has primarily involved the need for, the procedures regarding, and the adequacy of, environmental impact statements required by Section 102(2)(C) in connection with "major Federal actions significantly affecting the quality of the human environment." Thus, NEPA's import remains unclear where, as here, there is no major federal action significantly affecting the environment, and any environmental impact would only be indirect.[34] As was aptly put in "City of New York v. United States," 337 F. Supp. 150, 159 (E.D.N.Y., 1972), NEPA is

> a relatively new statute so broad, yet opaque, that it will take even longer than usual fully to comprehend its import.

B. The effect of the Act on the Commission's disclosure authority. NEPA's effect on the Commission's authority to require disclosure appears to turn on the meaning of Section 102(1), which requires the Commission "to the fullest extent possible" to interpret and administer the federal securities laws "in accordance with the policies set forth in [NEPA]."

One possible view is that the phrase "public interest," as it appears in certain of the statutory provisions which establish the Commission's authority to require disclosure by registrants, must be interpreted broadly with respect to environmental matters, notwithstanding its established meaning, discussed *supra*, Section II(B). The argument continues that, since the "policies" of NEPA are in effect the protection of the environment, the Commission is authorized to require comprehensive disclosure by registrants of the environmental effects of their business activities in order to promote the protection of the environment, regardless of whether such disclosure is necessary to permit the Commission to discharge its responsibilities under the Securities Act and the Securities Exchange Act or is necessary or appropriate for the protection of investors. Further, since Section 102(1) encompasses the "administration" of federal laws, as well as their interpretation, the Commission is required to exercise such authority "to the fullest extent possible," as well.

We believe that a more reasonable interpretation is that Section 102(1) was intended to permit and require agencies such as this Commission to consider environmental values in the performance of the functions authorized under their organic statutes.[35] First, in "Calvert Cliffs' Coordinating Committee v. Atomic Energy Commission," *supra*, the court explained:

> Section 101 sets forth the Act's basic substantive policy: that the federal government 'use all practicable means and measures' to protect environmental values. Congress did not establish environmental protection as an exclusive goal; rather, it desired a reordering of priorities, so that environmental costs and benefits will assume their proper place along with other considerations.
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> Thus the general substantive policy of the Act is a flexible one. It leaves room for a responsible exercise of discretion and may not require particular substantive results in particular problematic instances.
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> * * * * *
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> Perhaps the greatest importance of NEPA is to require the Atomic Energy Commission and other agencies to *consider* environmental issues just as they consider other matters within their mandates. This compulsion is most plainly stated in Section 102.

449 F. 2d at 1112 (emphasis in original).

Second, it seems extremely unlikely that Congress could have intended, without specific consideration of the consequences, indiscriminately to propel federal agencies into substantive environmental programs which might have only the most superficial connection with their activities under their organic statutes. The Conference Report on NEPA explains that

> the language in section 102 is intended to assure that all agencies of the Federal Government shall comply with the directives set out in said section 'to the fullest extent possible' *under their statutory authorizations* and that no agency shall utilize an *excessively* narrow construction of its existing statutory authorizations to avoid compliance.[36]

And, during House debates on NEPA, Representative Aspinal described the intended effect of Section 102:

> Section 102 tells the agencies to follow to the fullest extent possible *under their existing authority* the procedures required to make their operations consistent with the environmental policy established in this Act.[37]

Thus, in "Gage v. Atomic Energy Commission," 479 F. 2d 1214, 1220 n. 19 (C.A.D.C., 1973), the court stated:

> NEPA does not mandate action which goes beyond the agency's organic jurisdiction.[38]

See "Kitchen v. Federal Communications Commission," 464 F. 2d 801, 802 (C.A.D.C., 1972).[39] See also the pronouncement of Section 105 that

> [t]he policies and goals set forth in [the Act] are supplementary to those set forth in existing authorizations of Federal agencies.

The Conference Report on NEPA explains:

> The effect of this section, which is a slightly revised version of section 103 of the Senate bill, is to give recognition to the fact that the bill does not repeal existing law. This section does not, however, obviate the requirement that the Federal agencies conduct their acivities in accordance with the provisions of this bill unless to do so would clearly violate their *existing* statutory authorizations.[40]

Third, the broadest interpretation of Section 102(1) would result in disclosures which are the equivalent of comprehensive environmental impact statements by most large corporations, despite the Congressional intent reflected in Section 102(2)(C) that the preparation of such statements be required only of federal agencies, and then only those contemplating major federal action.

This raises a question having broader implications. NEPA is addressed primarily, if not wholly, to activities of the federal government which have an im-

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[33] "Calvert Cliffs' Coordinating Committee v. Atomic Energy Commission," 449 F. 2d 1109, 1112 (C.A.D.C., 1971).

[34] Some clarification will undoubtedly result when "Gifford-Hill & Co., Inc. v. Federal Trade Commission," 389 F. Supp. 167 (D.D.C., 1974), is resolved on appeal (C.A.D.C., No. 74-2024) or if the Supreme Court grants certiorari in "Scenic Rivers Association of Oklahoma v. Lynn," —— F. 2d ——, Nos. 74-1520 and 74-1750 (C.A. 10, July 30, 1975) and considers the merits of that case.

[35] We reject the proposition, advanced in this proceeding, that Section 102(2)(F) of NEPA, which directs agencies to make information publicly available which is "useful in restoring, maintaining, and enhancing the quality of the environment," requires or permits the Commission to collect such information from issuers of securities for the sole purpose of making it available to the public and other agencies. The legislative history of NEPA makes it clear that the provisions of that Section relate to information developed in the course of agency activities undertaken within organic authority. It does not, in the Commission's view, authorize the collection of corporate information unrelated to investor protection solely for the purpose of dissemination. See *e.g.*, 115 Cong. Rec. 40420 (December 20, 1969).

[36] H.R. Rep. No. 91-765, 91st Cong., 1st Sess. at 10 (1969) (emphasis added). The analysis of conference committee changes to S. 1075 (the bill which ultimately became NEPA) was inserted in the Congressional Record during Senate debate. It states that section 102 was designed to assure *consideration* of enviromnental matters by all agencies in their planning and decision making—especially those agencies who now have little or no legislative authority to take environmental considerations into account.

[37] 115 Cong. Rec. 40418 (December 20, 1969) (emphasis added).

[38] 115 Cong. Rec. 40926 (December 22, 1969) (emphasis added).

[39] In "Gage," the question involved was whether the Atomic Energy Commission has authority to preclude acquisition of land by regulatees in contemplation of power plant construction but prior to obtaining a construction permit from that agency.

[40] It is suggested in "Calvert Cliffs' coordinating Committee v. Atomic Energy Commission," 449 F. 2d 1109, 1112 (C.A.D.C., 1971), that a major impetus for the language of Section 102(1) was the holding in "State of New Hampshire v. Atomic Energy Commission," 406 F. 2d 170 (C.A. 1, 1969), that consideration by the Atomic Energy Commission of the nonradiological impact of power plants which it might license was outside the scope of its authority to consider public "health and safety." Significantly, only consideration of environmental values within the scope of that Commission's traditional licensing function was involved there.

[41] H.R. Rep. No. 91-765, *supra note* 36, at 10 (emphasis added).

pact on the environment—as is recognized in the case law.[41] Other statutes, federal and state, seek to control the environmental impact of purely private activities. It is, of course, true that federal and private activities may interact to such a degree as to bring the private activities within the scope of NEPA, as where a federal agency licenses a private corporation to engage in an activity which directly affects the environment. But something more is sought here. The Commission, of course, does nothing which directly affects the environment, nor does it license or authorize anyone else to do so. It is, however, contended that the Commission's disclosure scheme, which applies to almost all private corporations in which there are a significant number of investors, must be utilized as a weapon to influence, if not control, most of the activities in the private sector which have an impact on the environment. Nowhere in NEPA is there any suggestion of an intention to create such a wide ranging environmental control over the private sector. Such a major purpose would hardly have gone wholly unmentioned. This does not mean that NEPA has no effect on the Commission's responsibilities, but it does mean that the purpose of the disclosure scheme administered by the Commission has not been basically changed by NEPA.

Accordingly, we believe that NEPA authorizes and requires the Commission to consider the promotion of environmental protection "along with other considerations"[42] in determining whether to require affirmative disclosures by registrants under the Securities Act and the Securities Exchange Act, and, although NEPA does not require any specific disclosures, as such, we have been required to explain the alternatives which we considered in meeting our obligations under NEPA and the reasons why we have rejected substantial alternatives, in sufficient detail to permit judicial review."

C. Environmental disclosure alternatives. We have concluded, as discussed *infra* Section IV, that there is a degree of interest among some investors in corporate environmental practices. The basis for this interest is claimed to be primarily economic in nature: it is argued that non-compliance with environmental laws may result in extensive costs or liabilities; that the ability to avoid environmental problems provides a good measure of management's overall quality; and that corporate environmental responsibility will, in the long run, determine the public relations and regulatory framework in which a company operates. It also is claimed that such investors would use relevant environmental information primarily in voting rather than in investment decisions.

The major alternatives proposed in the proceeding by which the Commission could protect the interests of these investors are to require: (1) comprehensive disclosure of the environmental effects of corporate activities, (2) disclosure of corporate noncompliance with applicable environmental standards, (3) disclosure of all pending environmental litigation, (4) disclosure of general corporate environmental policy, and (5) disclosure of all capital expenditures and expenses for environmental purposes.

We reject the first of these, proposed by the Natural Resources Defense Council, for a number of reasons. First, the interest among investors that may exist appears to be primarily in whether corporations are acting in an environmentally unacceptable manner, rather than in whether, and to what extent, corporations have gone beyond what is expected of them in this area. Second, unless existing environmental standards may be used as a reference point, both the costs to registrants and the administrative burdens involved in the proposed disclosure would be excessive. There appears to be no established, uniform method by which the environmental effects of corporate practices may be comprehensively described. Nor does there appear to be scientific agreement as to the harmfulness to the environment of many activities. It appears, therefore, that the proposed disclosures would be extremely voluminous, subjective and costly to all concerned. They also would not lend themselves to comparisons of different companies, which is of great importance to investors since investment decisions essentially involve a choice between competing investment alternatives.

Moreover, there appears to be virtually no direct investor interest in voluminous information of this type. Proponents, apparently conceding this, suggest that the disclosures be contained in documents which are filed with the Commission but which are not furnished directly to investors. They claim that analysts will study the materials and report their conclusions to investors in some meaningful, understandable form. This would merely substitute the opinions of such analysts, however, for the standards established by and pursuant to federal environmental legislation. And although diversity of viewpoint may be generally desirable, we have concluded that the additional costs and burdens necessary to achieve such diversity in this area greatly outweigh resulting benefits to investors and to the environment, discused *infra*, Section IV(D).[43]

The second alternative, however, seems to hold more promise. Pursuant to federal environmental statutes, most corporations are presently required to monitor and file quantitive reports, which are publicly available, regarding many aspects of their activities which affect the environment. In addition, the types of activities subject to such requirements continue to expand.[44]

Certain types of non-compliance with applicable environmental requirements may be material within the meaning of the Commission's existing rules. 17 CFR 230.405(*1*), 230.408, 240.12b-20, and 240.14a-9(a). Disclosure of such information is already required.[45] But while

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[41] See "Movement Against Destruction v. Volpe," 361 F. Supp. 1360, 1383 (D. Md., 1973) ("Despite the breadth of the NEPA, its application is only to the decisionmaking processes of the Federal government."); "Carolina Action v. Simon," 389 F. Supp. 1244 (M.D.N.C., 1975), *affirmed*, —— F. 2d ——, No. 75-1253 (C.A. 4, June 25, 1975) (NEPA is inapplicable to federal disbursements of general revenue sharing funds despite environmental impact of state use of such funds); "Civic Improvement Committee v. Volpe," 459 F. 2d 957, 958 (C.A. 4, 1972) ("Despite the breadth of the NEPA we think there are doubtless local projects that may be destructive of environmental assets that are not within the ambit of protection of the Act."); "United States v. Stoeco Homes, Inc.," 498 F. 2d 597, 607 (C.A. 3, 1974) (NEPA does not apply to state or private activities).

[42] "Calvert Cliffs' Coordinating Committee v. Atomic Energy Commission," 449 F. 2d 1109, 1112 (C.A.D.C., 1971).

[43] "Natural Resources Defense Council, Inc. v. Securities and Exchange Commission," 389 F. Supp. 689, 701 (D.D.C., 1974). There is a recognized distinction, however, between the requirement that a "concise general statement . . . of basis and purpose" accompany rules adopted by an agency, 5 U.S.C. 553(c), and the requirement that "a brief statement of reasons" accompany the denial of a petition for rulemaking, 5 U.S.C. 555(e). The latter is, with minor exceptions, unreviewable. See "Administrative Procedure Act: Legislative History," *supra* note 32 at 201 (Senate Judiciary Committee Report).

[44] The Commission could presumably attempt to develop its own environmental guidelines and standards in order to eliminate these difficulties. As difficult as it is to accept this type of reasoning, it follows from the excessively broad and overly-literal approach urged upon us and the district court by the Natural Resources Defense Council. Of course, the costs involved in any such undertaking would be prohibitive. Moreover, in light of the Congressional delegation of responsibility in this area to the Environmental Protection Agency and the Council on Environmental Quality, any such effort on our part would be duplicative and of questionable propriety.

[45] The history of the Federal Water Pollution Control Act, 33 U.S.C. 1251, *et seq.*, provides an example of this process of expansion. The initial enactment, the Water Pollution Control Act of 1948, 62 Stat. 1155, has undergone significant enlargement through aemndments in 1956 (the Water Pollution Control Act Amendment of 1956, 70 Stat. 498), 1965 (the Water Quality Act of 1965, 79 Stat. 903), 1970 (the Water Quality Improvement Act of 1970, 84 Stat. 91) and, most comprehensively, in 1972 (the Federal Water Pollution Control Act Amendments of 1972, 86 Stat. 816).

[46] Rule 405 (*1*) under the Securities Act of 1933 provides: The term 'material,' when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before purchasing the security registered.

Rule 408 provides: In addition to the information expressly required to be included in a registration statement, there shall be added such further material information, if any, as may be necessary to make the re-

the disclosure of non-material information is generally not required for reasons discussed *supra*, Section II(B), adding the promotion of environmental protection to the other factors considered by the Commission in the administration of the disclosure process causes a different balance to be struck here.

Accordingly, we have today proposed for comment amendments to certain registration forms under the Securities Act and certain registration and reporting forms and rules 14a–3 and 14c–3 under the Securities Exchange Act which would, where applicable, require a registrant to provide as an exhibit to certain documents filed with the Commission a list of the registrant's most recently filed environmental compliance reports which indicate that the registrant has failed to satisfy, at any time within the previous twelve months, environmental standards established pursuant to a federal statute. In addition, the proposed amendments would, except for purposes of Forms 10 and 12 under the Exchange Act, require the registrant to undertake promptly to provide to investors copies of the reports listed, upon written request and the payment of a specified reasonable fee. Under the proposed amendments, investors who are interested in such information should be able to obtain it in connection with making investment or voting decisions.

The third alternative, disclosure of all pending environmental litigation, has been rejected. The existing environmental disclosure requirements, adopted in Securities Act Release No. 5386, (April 20, 1973), call for disclosure with respect to certain administrative and judicial proceedings arising under federal, state, or local provisions regulating the discharge of materials into the environment or otherwise relating to the protection of the environment. All environmental proceedings initiated by a government authority are treated as being material and are already required to be disclosed. Those proceedings which are similar in nature, however, may be grouped and described generically. Nongovernmental civil actions primarily for damages must be disclosed only if the amounts involved, individually or in the aggregate, exclusive of interest and costs, exceed 10% of the current assets of the registrant and its subsidiaries on a consolidated basis.

In Securities Act Release No. 5386 (April 20, 1973) these requirements, which go beyond those applicable to legal proceedings regarding nonenvironmental matters, were adopted pursuant to NEPA. In our view, expanding these requirements further to include all nongovernmental proceedings would not provide meaningful information to investors. Nor are we convinced that it would contribute significantly to the protection of the environment. There appears to be no method by which to screen out nongovernmental actions which are substantially without merit or to ascertain whether any damages sought have been substantially inflated. Thus, we have concluded that additional requirements are unwarranted.

We have also rejected the fourth and fifth alternatives. A requirement that registrants disclose their environmental policy would result in subjective disclosures largely incapable of vertification and highly susceptible to public-relations presentations. Similarly, we do not believe that capital expenditures and expenses for environmental purposes generally serve as a meaningful index of corporate environmental practices. To the extent they are material, they are already required to be disclosed, although some changes in our requirements have been proposed to ensure uniformity. In any event, they are a function of a number of factors, including the extent to which the corporation's activities have significant effects on the environment or have in the past been subjected to environmental controls. Moreover, we believe that the disclosures which we have proposed today would provide more meaningful and complete information in this regard. We will, however, continue to reevaluate the need for further disclosure requirements from time to time as our experience with disclosure in this area increases.

IV. Investor Interest In and Use of Social Disclosure

As discussed *supra*, Section I, two of the issues with which Judge Richey indicated concern are the extent of investor interest is disclosure by corporations of the environmental impact of their activities and of their equal employment practices, and the avenues open to interested investors to eliminate corporate practices inimical to the environment and equal employment opportunity. We have serious reservations as to whether Commission rulemaking can be premised upon an attempt to quantify investor interest, but we have attempted to comply with the spirit of the court's suggestion.[47]

A. The Extent of Investor Interest. Taking the representations of the participants in the proceeding at face value, the least subjective indications of investor interest in social information are the stated views of the approximately 100 participants identifying themselves as investors who consider social information important. These persons constitute, however, an insignificant percentage of the estimated 30 million U.S. shareholders.[48] Furthermore, although many did not identify their investment portfolios, the holdings of those who did [49] constitute approximately 2/3 of 1% of the estimated aggregate value of the common and preferred stock and corporate bonds held in this country at the end of 1974.[50]

A second indication of the extent to which social concerns enter into the investment decisions of presumably small, individual investors may be found in the experience of the mutual funds which have been formed with specific social objectives. In 1971, four such funds were created: Dreyfus Third Century Fund, Pax World Fund, First Spectrum Fund, and Social Dimensions Fund. Of these, Dreyfus and Pax have assets of approximately $18 million and $.6 million, respectively.[51] First Spectrum, which reported net assets of $13,840 on June 30, 1974, and described itself as "inactive," was deregistered on September 24, 1974 (Investment Company Act Release No. 8517). Social Dimensions Fund filed a registration statement with the Commission in 1971, but that statement never became effective. Although the Fund has not been deregistered, it is currently reporting no assets. Significantly, the total assets of these funds represent an insignificant portion of the estimated total value of open-end investment company shares held in this country at the end of 1974, approximately $35 billion.[52]

Unfortunately there was no broad participation by financial institutions in the proceeding. There are indirect indications, however, that the social policies of corporations are considered as "investment issues" by some institutional investors. The policy statements of committees of the Investment Company Institute [53] and the American Bankers

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quired statements, in the light of the circumstances under which they are made, not misleading.

Rule 12b–20 under the Securities Exchange Act of 1934 is worded substantially the same as Rule 408 above.

Rule 14a–9(a) provides: No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

[47] The Commission has provided, for the court's convenience, a copy of certain analyses of the proceeding prepared by the staff to assist us in reviewing the various submissions. We point out, however, that the actual submissions received in the proceeding, and not these staff analyses, form the basis of the Commission's conclusion described herein.

[48] See testimony of the National Investor Relations Institute, May 13, 1975, Transcript at 2454.

[49] The holdings represented investments of approximately seven foundations, 22 religious institutions, 11 educational institutions, two mutual funds, five environmental groups, 37 individual investors, and one state, Minnesota, which holds primarily short-term notes.

[50] See Division of Research and Statistics, Federal Reserve System, "Flow of Funds, Assets and Liabilities Outstanding 1974," (May, 1975). Based upon that study, at year end 1974 approximately $660 billion in common and preferred stock (exclusive of open-end investment company shares) and approximately $290 billion in corporate bonds were held in the United States.

[51] Both participated in the proceeding.

[52] "Flow of Funds, Assets and Liabilities," *supra* note 50.

[53] Investment Company Institute, "Corporate Responsibility and Mutual Funds" (undated), submitted as an exhibit during the testimony of Central Presbyterian Church, New York; File S7–551–1A at tab 20.

Association, Trust Division," as well as the written comment of the Financial Analysts Federation,[56] are to this effect. Of similar import are the responses of banks and mutual funds to the survey reported in the "Ford Report," and an even greater degree of interest was expressed in the responses of religious and educational institutions.[57] In addition, at least six organizations have been formed to provide social information to a wide range of institutional investors.[58]

As discussed below, most participants in the proceeding who expressed interest as investors in social disclosure stated that they would use such information in determining how to vote their proxies or otherwise to act to influence management policies, rather than to make investment decisions. In this regard, we note that certain social shareholder proposals that appear to have social implications have received an average of from 2 to 3% of the vote in recent years and that corporations have apparently not received a significant number of social inquiries from their shareholders. We also note that 76% of the large corporations which responded to a survey published by the Committee for Economic Development indicated that they had undertaken some type of social audit.[59]

Finally, while the social views expressed by public interest groups and religious institutions might be indicative of the views of some portion of their membership, and while national social policies, as reflected in federal or uniform state legislation, might also be indicative of the views of United States citizens, whether these views are or would be reflected in decisions to purchase, hold, or sell securities is highly speculative and a conclusory leap we are not prepared to make on the basis of this proceeding.

While the proceeding was given considerable publicity,[60] no one was required to respond and the number who did so was relatively small, considering the fact that investors number in the millions. Presumably only those with a strong interest took the trouble to respond, although there are probably many more with some interest. On the other hand, many, presumably, had little or no interest in these particular matters. This does not appear to be a matter which could be resolved by any feasible statistical survey. Investors, like other Americans, have a great variety of interests and concerns, which are held with varying degrees of intensity and in accordance with a variety of personal priorities. Moreover, the results of any such survey might rapidly become outdated in light of the shifting and fluctuating nature of public opinion and the focus of popular attention from time to time.

Although there appears to be a degree of interest among some investors in matters of social concern, any conclusions we might draw from the proceeding would be largely based upon inferences, previously discussed. The reliability of these inferences as indicative of actual investor interest in social matters is uncertain. For example, the motivations underlying policy statements and limited financial support for social research organizations are not always clear. It is also apparent that shareholder support for social proposals is in part a result of the specific wording involved. Finally, a number of participants in this proceeding have cautioned the Commission against measuring the extent of investor interest without giving some weight to the possibility that once social information becomes available, investors will realize its importance and become interested. That is, of course, no less speculative than any of the foregoing.

The Commission's experience over the years in proposing and framing disclosure requirements has not led it to question the basic decision of the Congress that, insofar as investing is concerned, the primary interest of investors is economic. After all, the principal, if not the only, reason why people invest their money in securities is to obtain a return. A variety of other motives are probably present in the investment decisions of numerous investors but the only common thread is the hope for a satisfactory return, and it is to this that a disclosure scheme intended to be useful to all must be primarily addressed.

B. The Nature of Investor Interest. Those investor-participants who supported social disclosure were virtually unanimous in stating that, contrary to implications in Release No. 5569, environmental, equal employment, or other social information is in fact economically significant. These persons suggested a variety of rationales, including: (1) noncompliance with environmental, equal employment, and similar laws could lead to extensive corporate costs or liabilities; (2) the ability to avoid such problems provides an index to management's overall quality; and (3) in the long run, corporate social responsibility determines the public relations and regulatory framework in which a company operates.[61] Relatively few investor-participants expressed on noneconomic grounds.

To the extent that other indications suggest the basis of investor interest in social disclosure, they seem of similar import. The policy statements of committees of the Investment Company Institute and the American Bankers Association, Trust Division, and the comment of the Financial Analysts Federation, are grounded in these concerns.[62] The results of the survey reported in the "Ford Report" reflect similar concerns on the part of banks, insurance companies and mutual funds.[63] And although some religious and educational institutions may have noneconomic concerns as well, serious questions exist as to whether other institutions which act essentially in a fiduciary capacity may attempt to promote particular social views without specific authorization from the beneficiaries whom they serve. Further, it seems probable that corporate interest in social responsibility is primarily grounded in long-term economic well being.

C. The use of social information by investors. The majority of those investor-participants who explained the use to which they might put social information indicated that such information might play a role in voting on shareholder proposals. A lesser number indicated that such data would be taken into account in determining what securities to purchase, hold or sell. Many of the religious institutions stated that such information would be used in deciding whether to commence correspondence or negotiations with management to persuade it to change some policy.

Some of the other indications of investor interest referred to above suggest that social disclosures would be used both for investment and voting purposes.[64] Of some import, however, is the fact that Investor Responsibility Research Center, apparently one of the more established social research organizations, devotes a substantial amount of its efforts to anal-

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[56] Executive Committee of the Trust Division of the American Bankers Association, "Statement of Principles for the Guidance of Bank Fiduciaries in Dealing With Issues of Corporate Social Responsibility," (February 4, 1973); File S7-551-1 at 1775.

[57] Letter dated May 13, 1975 from Theodore R. Dilley, President of Financial Analysts Federation, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission; File S7-551-1 at 3173.

[58] B. Longstreth & H. Rosenbloom, "Corporate Social Responsibility and the Institutional Investor—A Report to the Ford Foundation" (1973) [hereinafter the "Ford Report"]. Many participants in the proceeding cited the result of the Ford Foundation survey as evidence that there was substantial interest in obtaining and using social information among institutional investors.

J. Simon, C. Powers & J. Gunneman, "The Ethical Investor, Universities and Corporate Responsibility" (1972), was also relied on by disclosure proponents as evidence of investor interest. It should be noted, however, that that work reports primarily the opinions of its authors and is not based on any survey or study of investors.

[59] They include Catholic Church Investment for Corporate Social Responsibility; Council on Economic Priorities; New York Forum for Investment Responsibility; Inform; Interfaith Center for Corporate Responsibility; and Investor Responsibility Research Center, Inc.

[60] J. Corson & G. Steiner, "Measuring Business's Social Performance: The Corporate Social Audit" at 24 (1974). Comment received from a number of participants also revealed that the accounting profession is devoting substantial efforts to development of techniques for measurement of social factors.

[61] See Notes 5–10 *supra* and accompanying text.

[62] In "National Association for the Advancement of Colored People v. Federal Power Commission," P. 2d No. 75–1959 (C.A.D.C., 1975), the court acknowledged:

> In the long run, after all, the most efficient, lowest-cost production and distribution of electricity and natural gas will be that which is conducted in compliance with the laws, employment discrimination laws and other laws alike.

Slip Op. at 26.

[63] See notes 53–55 *supra*.

[64] See note 56 *supra*.

[65] See *e.g.*, "Corporate Responsibility and Mutual Funds," *supra* note 53 and "Statement of Principles for the Guidance of Bank Fiduciaries," *supra* note 54.

ysis of shareholder proposals. In addition, the views of public interest groups and religious institutions and national social policies seem more likely to be reflected generally in voting decisions since any economic consequences are only indirect.

At this time, therefore, it appears that those investors who are interested in social disclosure would use the information more in making voting rather than investment decisions.

D. Avenues available to interested investors to affect corporate social practices. Participants in the proceeding suggested a variety of course through which shareholders may influence corporate social behavior, including shareholder proposals, political action, discussions with management, refusals to purchase securities, and publicity. It was pointed out, however, that the effectiveness of discussions with management often depends on the number of shares owned, and that refusals to purchase are generally ineffective without publicity and support of a significant number of investors. The effectiveness of such tactics appears to depend on the particular circumstances involved and does not readily lend itself to generalization.

Many participants in the proceeding suggested, however, that environmental disclosures would have no impact on corporate behavior because existing environmental statutes already provide a sufficient incentive to avoid environmental injury, because companies are already required to monitor many aspects of their environmental practices and to file public compliance reports with various state and federal environmental agencies, and because instances of significant environmental degradation already are widely publicized. Certain participants even suggested that Commission disclosure requirements would detract from the goal of environmental protection by requiring firms to divert resources from environmental protection to environmental disclosure.

Nonetheless, it appears that disclosure to investors of information reflecting corporate compliance with existing environmental standards might have some indirect effect on corporate practices to the benefit of the environment. It seems clear that investors do not at present have ready access to objective information concerning the environmental practices of corporations. And although the relevant compliance reports are reasonably accessible to inhabitants of the localities most directly affected by such practices, there is presently no single governmental source to which an investor can look for the environmental reports filed by a company.

Given the fact that there is a degree of interest among some investors in information regarding corporate environmental practices, we conclude that the availability of such information may result in some investor or shareholder action. Participants in the proceeding pointed out that the submission of and voting on socially-oriented shareholder proposals has often caused a corporation to alter its behavior even though the proposals are defeated by a wide margin. Many participants also believe that disclosure requirements would serve to focus management attention on environmental issues and result in clearer recognition of the future costs and legal problems associated with environmental degradation.[64] Further, the Wheat Report, a comprehensive study of the disclosure process administered by the Commission, states in this regard:

> Although basically intended to inform, the disclosure provisions of the early Acts were expected to accomplish more. Their principal architects were disciples of Justice Brandeis who, in 1913, made the famous observation in "Other People's Money" that: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants. . . ."
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> The fact that there is a significant degree of truth in such observations is attested by all who have worked with the disclosure provisions of the '33 and '34 Acts. The registration process has sometimes been referred to as a housecleaning: one of its most valuable consequences is the elimination of conflicts of interest and questionable business practices which, exposed to public view, have what Justice Frankfurter once termed "a shrinking quality."[65]

Having thus attempted fully to meet the expressed concerns of Judge Richey in these regards, we proceed to reconsideration of our previous denial of the equal employment portion of the petition of the Natural Resources Defense Council.

V. Disclosure of Information Relevant to Equal Employment Opportunity and Other Matters of Social Concern

By petition dated June 7, 1971, the Natural Resources Defense Council and the Project on Corporate Responsibility requested the Commission to modify its forms for the registration of securities under the Securities Exchange Act to require: (1) That certain registrants disclose "a breakdown, in conformity with Consolidated Employer Information Reports EEO–1, showing the figures and percentages of minority or female employment in each of [nine specified job categories]";[66] and (2) that all registrants disclose information concerning any proceedings in any court or before any agency challenging compliance by registrant or any subsidiary with the federal Equal Employment Opportunity Act or raising questions as to registrants compliance with Executive Order 11246 relating to discriminatory hiring practices by employers contracting with the federal government.[67]

It was also proposed that registrants subject to the second requirement disclose the EEO–1 statistics bearing on the legal proceedings in question.

On December 22, 1971, after evaluating the proposals contained in the rulemaking petition, the Commission informed the petitioners that it had declined to take the action requested in their petition. The notification of that decision stated:

> Shortly after your petition was filed, the Commission issued, on July 19, 1971, Securities Act Release No. 5170 concerning material disclosure of environmental and civil rights matters. For your information, enclosed is a copy of that release. Since that time, the Commission and its staff have been continually reviewing the types of disclosure being made as a result thereof. Before determining whether to amend the disclosure requirements contained in the various forms filed with the Commission, the Commission believes that it should evaluate the results of the guidelines for a longer period of time. On the basis of that review, the Commission will actively consider amendments to the forms in the near future.[68]

Pursuant to Judge Richey's order, described *supra*, Section I, we have reconsidered the equal employment portion of the petition. In its release announcing the proceeding, the Commission also invited comment on two "Possible Additional Disclosure Requirements" which were substantially similar to those proposed by petitioners, as well as on "any other matters of social concern to members of the investing public."[69]

At the outset, it should be noted that the Commission's present disclosure requirements call for disclosure of certain equal employment matters. Rules adopted pursuant to the Securities Act and the Securities Exchange Act provide generally that in addition to the information expressly required to be included in registration statements and in reports, further material information, if any, must be included as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.[70] In Securities Act Release No. 5170 (July 19, 1971), the Commission publicly announced that existing requirements for describing registrant's business in filings under the securities laws require disclosure of material legal proceedings

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[64] Significantly, the Council on Environmental Quality is among those who advance this proposition.

[65] "Disclosure to Investors, A Reappraisal of Administrative Policy Under the 1933 and 1934 Acts" (1969) at 50–51 (footnotes omitted).

[66] Petition at 5; File No. 4–179. The petition would make this requirement applicable only to registrants which must file form EEO–1 with the Equal Employment Opportunity Commission, and which "make disclosures in reports to stockholders or employees or other public announcements . . . as to their hiring of minority group or female employees." Petition at 5. However, in its Statement of April 10, 1975, at 6A–7A (File No. S7–551–1A at tab 1), in this proceeding, the Natural Resources Defense Council restated its proposal in a form which would require all registrants obligated to file EEO–1 Employer Information reports with the EEOC to disclose the EEO–1 statistics in Securities Act and Securities Exchange Act filings.

[67] Petition at 6–7.

[68] Letter dated December 22, 1971, from Ronald F. Hunt, Secretary, Securities and Exchange Commission, to the Project on Corporate Responsibility and the Natural Resources Defense Council. The letter has been placed in File 4–179.

[69] Securities Act Release No. 5569 (February 11, 1975) at 5–6.

[70] Rule 408 under the Securities Act, 17 CFR 230.408; and Rules 12b–20 and 14a–9(a) under the Securities Exchange Act, 17 CFR 240.12b–20 and 240.14a–9(a).

related to civil rights, any material sanctions imposed for violation of the nondiscrimination rules of any federal agency, and certain other material matters relating to equal employment.

The petition states that the disclosure proposals therein "are designated to reflect increased investor concern that corporate and other investor-owned business should be conducted in a socially responsible manner."[11] In the proceeding, as discussed *supra*, Section IV, those investor-participants who supported social disclosure were virtually unanimous in stating that such information is economically significant. They argue that non-compliance with environmental, equal employment, or similar laws could lead to extensive corporate costs and liabilities; that the ability to avoid such problems provides an index to management's overall quality; and that in the long run, corporate social responsibility determines the public relations and regulatory framework within which a company operates. Relatively few investor-participants expressed interest on noneconomic grounds. To the extent that other indications suggest the basis of investor interest, they seem of similar import. These considerations, however valid, do not persuade us that disclosure requirements regarding such matters should be judged by a different standard than is applied to other matters of economic concern to investors.

In the instant proceeding, over 100 different "social matters" were submitted in which "ethical" investors were said to be interested.[12] As against this bewildering array of special causes, it has been suggested that investors are at least entitled to information regarding matters which embody fundamental national social principles as reflected in federal legislation or court decisions. We believe that persuasive arguments can be made, however, substantial amount of federal legislation to some extent embodies fundamental national social principles and, accordingly, many topics of social concern would remain. Thus, there is no distinguishing feature which would justify the singling out of equal employment from among the myriad of other social matters in which investors may be interested in the absence of a specific mandate comparable to that of NEPA. Disclosure of comparable non-material information regarding each of these would in the aggregate make disclosure documents wholly unmanageable and would significantly increase the costs to all involved without, in our view, corresponding benefits to investors generally.

In particular, we do not believe that any of the suggestions advanced as to disclosure concerning non-material equal employment proceedings would provide a useful reliable method by which to screen out actions which are without merit or to ascertain whether any damages sought have been substantially inflated. In any event, we believe that our present materiality standards regarding legal proceedings provide adequate information to meet the needs of investors generally in this regard.

It has been suggested, however, that the existence of imbalance in employment statistics, such as would be revealed in Forms EEO–1 filed by registrants, itself constitutes some evidence of unlawful discrimniation and is thus economically material. The significance of this information in some cases does not persuade us that all registrants should be required to disclose employment statistics, particularly since their meaningful interpretation is dependent upon sophisticated analysis and other information such as the makeup of the available labor pools and existing hiring and promotion practices.[13]

The petition expressed a concern that corporations might mislead stockholders and others by making public statements in regard to "minority group or female employment practices, without [revealing a] numerical or percentage breakdown by job categories."[14] We are not persuaded that the possibility of such misleading statements by a few justifies a broad requirement for detailed disclosure by all. To the extent that there are employment conditions that are materially adverse to the business of the registrant, disclosure would be called for under present requirements.[15] In specific cases, the failure to make appropriate disclosures could be actionable by the Commission, depending upon the appropriate exercise of the Commission's prosecutorial discretion. In addition, if petitioners, or others, believe that in a particular instance these requirements are being violated, they may seek equitable relief or damages in court. Private civil actions based upon violations of the federal securities laws are a "necessary supplement" to the Commission's own enforcement actions, "J. I. Case Co. v. Boark," 377 U.S. 426, 432 (1964).

In view of the foregoing, the Commission has determined to deny again that portion of the petition which proposes that certain forms prescribed by the Commission be modified to require disclosure of certain specific equal employment information. We have also considered, and determined not to adopt, other equal employment disclosure alternatives brought to our attention in this proceeding and have determined not

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[11] Petition at 2–3.

[12] These include: advertising practices; all advertising costs; "false" advertising; contract disputes; patent disputes; compliance with antitrust laws; limitations on competition; concentration in an industry; consumer protection activities and consumer affairs posture; any activities likely to lead to litigation; all litigation (issues, disposition); all litigation but for that settled or dismissed without conformance of corporate activities to the substance of the complaint; degree of compliance with applicable regulations; all government hearings; all agency actions; a textual summary of agency actions; charitable contributions; company activities undertaken without a goal of profit maximization; community activities; commitment to the "human community"; corporate external relations; "good things a company has done"; financial practices; energy conservation; distribution of resources; investment practices; marketing practices; pricing practices; expenditures in the land grant college system; receipt of federal subsidies; corporate practices that are damaging to "interests of other investors," the "overall economy," or to "property"; biographical information, including race and sex, regarding directors; interlocking directorates; the existence of a corporate environmental department; control within a corporation; the role of the board of directors; all subsidiaries; all benefits received by directors; "commerciogenic" malnutrition; food production; in-house nutritional research; registrant's impact on the world food crisis; contractual commitments to purchase crops; a division-by-division breakdown of the number of employees in agri-business companies; foreign investments; nature of operations in South Africa; U.S.-Soviet trade; marketing efforts of drug companies outside the U.S.; employment practices in foreign facilities; registrant's participation in the "flight of companies making hazardous goods to foreign countries"; registrant's participation in the Arab boycott; exports; products made in foreign countries; foreign military goods contracts; foreign beneficial ownership; purchases from, and sales to, communist countries; activities which would be illegal in the U.S. but which are conducted abroad; registrant's impact on unemployment; compliance with the Fair Labor Standards, the Occupational Safety and Health, and the National Labor Relations Acts; health hazards in plants; health standards; effects on the unionized work force of company policies and technology; employee relations other than wages, hours, and working conditions; the psychological work environment; pension and health protection; management opportunities for women and minorities; the costs of giving "preferential treatment" to blacks and females; safety records; employee training and education; employee benefits, relations and satisfactions; discrimination against persons less than six feet tall; lobbying efforts; political influence; political contributions; all products by brand name; all product lines; product-by-product financial statements; product purity (recalls, reasons for corrective action); toxic substances produced; product reliability; customer complaints; tobacco products manufactured; alcoholic beverages produced; gambling equipment manufactured; strip mining; defense contracts and military goods produced; nuclear energy production; banking operations; with respect to agricultural machinery companies, manpower displacement research; tax loophole savings; tax law compliance; all state and federal t x returns; all tax disputes; beneficial ownership; racial justice; prospective legislation; and the willingness to disclose corporate information to shareholders.

[13] Substantial questions have been raised in the proceeding regarding the propriety of the Commission's requiring disclosure of Forms EEO–1 filed by registrants with the Equal Employment Opportunity Commission. Officers and employees of that Commission are specifically prohibited by statute from making any information obtained under its statutory authority public prior to the institution of a proceeding involving such information. 42 U.S.C. 2000e–8(e). In addition, it is claimed that disclosure of this information would reveal trade secrets or otherwise confidential commercial or financial information. In light of our views, generally, we have not found it necessary to consider these issues.

[14] Petition at 4.

[15] See Rule 408 under the Securities Act, 17 CFR 230.408 and Rules 12b–20 and 14a–9(a) under the Securities Exchange Act, 17 CFR 240.12b–20 and 240.14a–9(a).

to propose at this time specific disclosure requirements regarding the other areas of social concern. We will, of course, continue to reevaluate the need for such requirements from time to time.

VI. RULEMAKING PROPOSALS

The amendments today proposed relate to certain registration forms under the Securities Act of 1933 ("Securities Act") and certain registration and reporting forms and rules 14a–3 and 14c–3 under the Securities Exchange Act of 1934 ("Exchange Act") relating to the disclosure of environmental matters. Their explanation follows.

A. General purpose. If adopted, the proposed amendments would, where applicable, require a registrant to provide as an exhibit to certain documents filed with the Commission a list of the registrant's most recently filed environmental compliance reports which indicate that the registrant has not met, at any time within the previous twelve months, any applicable environmental standard established pursuant to a federal statute. In addition, the proposed amendments would, except for purposes of Forms 10 and 12 under the Exchange Act, require the registrant to undertake to provide promptly copies of the reports listed, upon written request and the payment of a reasonable fee for furnishing such reports.

In addition, amendments are proposed to the description of business items contained in certain registration and reporting forms which would require disclosure, if applicable, of material estimated capital expenditiures for environmental control facilities for at least the remaining portion of the registrant's current fiscal year and its succeeding fiscal year and such further periods as the registrant may deem material.

This release contains a brief synopsis of the proposals to assist in a better understanding of their provisions. However, attention is directed to the proposals themselves for a more complete understanding.

B. Synopsis of proposals. Proposed Amendment of Instructions As to Exhibits of Forms S–1, S–2, S–7, and S–9 Under the Securities Act and Forms 10, 10–K, 12, and 12–K Under the Exchange Act.

The Commission has concluded that information regarding the effects a company's operations have on the environment may be important to some investors if the information can be made available in a manageable form without substantial costs which outweigh the benefits to investors. The Commission therefore proposes to amend the Instructions as to Exhibits of the various registration and reporting forms to include an additional instruction (referred to for purposes of this release as Instruction A) which would require the disclosure of certain environmental compliance information. The Commission is publishing Instruction A as a model, rather than publish each specific instruction, since the substance of the Instruction should provide an adequate basis for comment from interested persons.

Instruction A requires a list of the registrant's most recently filed environmental compliance reports which indicate that the registrant has not met, at any time within the previous 12 months, any applicable environmental standard established pursuant to any Federal statute. Authority to enforce certain federal statutes relating to the protection of the environment is delegated to State or local regulatory agencies. Reports filed with State or local agencies pursuant to such federal authority are included in the scope of Instruction A. Also, Instruction A contemplates the disclosure of the most recent periodic compliance report whether filed on an annual basis, quarterly basis, or otherwise; and any special compliance report.

In order to make the information presented more meaningful, Instruction A requires disclosure as to each report listed indicating the general nature of he standard exceeded (*e.g.*, air quality or water quality), the date of the report, and the name and address of the agency where the report was filed. In addition, other information necessary to sufficiently identify the report to enable an interested person to inspect or acquire such report from the respective agency is required. Such information would include any special file or reference numbers used by a particular agency, if known to the registrant.

Proposed Amendments to Rules 14a–3 and 14c–3 Under the Exchange Act

In view of the Commission's opinion that the information contained in the reports required to be listed by instruction A may be important to some investors, it believes that such reports should be made reasonably available. The proposed amendments to Rules 14a–3 and 14c–3 would require that there be included in management's proxy statement, information statement, or in the annual report to stockholders, an undertaking which indicates that the issuer has filed with the Commission as an exhibit to its annual report on Form 10–K or 12–K the information required by Instruction A and also states that the issuer will provide promptly copies of the reports listed pursuant to the Instruction to each person solicited or furnished an information statement upon written request and the payment of a reasonable fee. A note to the proposed amendments to Rules 14a–3 and 14c–3 indicates that the issuer shall also provide promptly copies of the reports listed to any beneficial owner of its securities upon written request and the payment of a reasonable fee.

Proposed Undertaking to Forms S–1, S–2, S–7 and S–9 Under the Securities Act

The Commission also proposes to amend Forms S–1, S–2, S–7 and S–9 to include an additional undertaking (referred to for purposes of this release as Undertaking B) which would be required in the registration statement if the registrant is required to furnish the exhibit called for by Instruction A.

Undertaking B would, in language essentially the same as that in the proposed amendment to Rules 14a–3 and 14c–3, obligate the registrant to furnish promptly copies of those environmental compliance reports listed pursuant to Instruction A upon written request and the payment of a reasonable fee. The undertaking also provides that the obligation to furnish copies is applicable to all requests received not later than 40 days after the effective date of the registration statement.

Proposed Amendment to Forms S–1, S–2, S–7 and S–9 Under the Securities Act and Forms 10, 10–K, 12 and 12–K Under the Exchange Act to Require a Statement of the Nature and Availability of the Reports Listed Pursuant to Instruction A

In order to bring to the attention of investors the information made available by the proposed amendments, the Commission proposes to adopt Instruction C which would require a statement in the various registration forms and reports specified above indicating that the registrant has filed as an exhibit with the Commission the information required by Instruction A.

The statement required by Instruction C as proposed for Forms S–1, S–2, S–7, and S–9 would also indicate that the registrant will provide promptly copies of those environmental compliance reports listed pursuant to Instruction A to any interested person upon written request received not later than 40 days after the effective date of the registration statement and the payment of a reasonable fee. A statement regarding the availability of the reports listed pursuant to the Instruction for Forms 10–K and 12–K is not necessary since adequate notice will be provided by the statement called for by the proposed amendments to Rules 14a–3 and 14c–3.

Proposed Amendment to Forms S–1, S–2, S–7, and S–9 Under the Securities Act and Forms 10 and 10–K, Under the Exchange Act to Require Disclosure Relating to the Material Effects of Environmental Compliance

The proposed amendment to the appropriate Items and Instructions relating to environmental information is designed to provide more meaningful disclosure with respect to the material effects of compliance with Federal, state or local environmental standards on the registrant's business and to make such disclosure more uniform among registrants. Specifically, the proposed amendment (referred to for purposes of this release as Item D) would require as part of the description of the registrant's business disclosure as to material estimated capital expenditures for environmental control facilities for at least the remainder of the registrant's current fiscal year and its succeeding fiscal year and such further periods as the registrant may deem material.

It should be noted that the description of business in Form S–2 does not currently require disclosure of the effect of environmental compliance on the business conducted but is proposed to be amended to include such information. The Commission is only publishing Item D as a model since the language of the amendment will be identical in each form or report.

C. *Operation of proposals.* The Commission is mindful of the cost to registrants and others of its proposals and it recognizes its responsibilities to weigh with care the costs and benefits which result from its rules. Accordingly, the Commission specifically invites comments on the cost to registrants and others of the proposals published in this release, if adopted.

Pursuant to Section 23(a)(2) of the Exchange Act, the Commission has considered the impact that these proposals would have on competition and is not aware, at this time, of any burden that such rules, if adopted, would impose on competition not necessary or appropriate in furtherance of the purposes of that Act. However, the Commission specifically invites comment as to the competitive impact of these proposals, if adopted.

The Commission hereby proposes for comment (1) proposed amendments to Forms S–1 (17 CFR 239.11), S–2 (17 CFR 239.12), S–7 (17 CFR 239.26), and S–9 (17 CFR 239.22) pursuant to Sections 7, 10 and 19(a) of the Securities Act and (2) proposed amendments to Rules 14a–3 (17 CFR 240.14a–3) and 14c–3 (17 CFR 240.14c–3) and Forms 10 (17 CFR 249.–210), 10–K (17 CFR 249.310), 12 (17 CFR 249.212) and 12–K (17 CFR 249.312) pursuant to Sections 12, 13, 14, 15(d) and 23(a) of the Exchange Act.

All interested persons are invited to submit their views and comments on the foregoing proposals, in writing to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 on or before January 12, 1976. Such communications should refer to File No. S7–593 and will be available for public inspection. The text of the proposed amendments to rules, forms and reports is set forth below.

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 205, 209, 48 Stat. 906, 908; secs. 203(a), 49 Stat. 704; secs. 1, 8, 49 Stat. 1375, 1379; secs. 201, 202, 68 Stat. 685, 686; secs. 3–6, 78 Stat. 565–574; secs. 1–3, 82 Stat. 454, 455; sec. 28(c), 84 Stat. 1435; secs. 1–5, 84 Stat. 1497 (15 U.S.C. 77g, 77k, 77s(a), 78l, 78m, 78n, 78o(d), 78w(a)))

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 14, 1975.

It is proposed to amend 17 CFR Chapter II as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

By adding Instruction "A", Undertaking "B", Instruction "C" and Item "D" as to Exhibits in §§ 239.11, 12, 22 and 26 as follows:

§ 239.11 Form S–1, registration statement under the Securities Act of 1933.

Instruction "A" as to Exhibits.—A list of the registrant's most recently filed environmental compliance reports which indicate that the registrant has not met, at any time within the past 12 months, any applicable environmental standard established pursuant to any Federal statute and setting forth as to each such report (1) the general nature of the environmental standard involved (*e.g., air quality or water quality*); (2) the identity and address of the person with whom the report was filed; (3) the date of the report; and (4) any other information necessary to sufficiently identify the report to enable an interested party to inspect or acquire the report from the recipient agency.

Undertaking "B".—The following undertaking shall be included in the registration statement if the registrant is required to furnish the list called for by Instruction A of Instructions As To Exhibits:

The undersigned registrant hereby undertakes upon written request received not later than 40 days after the effective date of the registration statement to provide promptly copies of those environmental reports listed as an exhibit pursuant to Instruction A of Instructions As To Exhibits, upon the payment of a reasonable fee which shall be limited to the registrant's reasonable expense in furnishing such reports.

Instruction "C".—If the registrant has filed an exhibit to the registration statement pursuant to Instruction A, a statement shall be provided in the prospectus indicating that the registrant has filed as an exhibit to the registration statement a list of the issuer's most recently filed environmental compliance reports which indicate that the issuer has not met, at any time within the past 12 months, any applicable environmental standard established pursuant to any Federal statute. The statement shall also indicate that the registrant will provide promptly copies of the reports listed to any interested person, upon written request, received not later than 40 days after the effective date of the registration statement and the payment of a reasonable fee which is limited to the registrant's reasonable expense in furnishing such reports.

Item "D".—Appropriate disclosure shall also be made as to the material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries. Registrant shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and its succeeding fiscal years; and such further periods as the registrant may deem material.

§ 239.12 Form S–2, for shares of certain corporations in the development stage.

Instruction "A" as to exhibits.—A list of the registrants most recently filed environmental compliance reports which indicate that the registrant has not met, at any time within the past 12 months, any applicable environmental standard established pursuant to any Federal statute and setting forth as to each such report (1) the general nature of the environmental standard involved (*e.g.*, air quality or water quality); (2) the identity and address of the person with whom the report was filed; (3) the date of the report; and (4) any other information necessary to sufficiently identify the report to enable an interested party to inspect or acquire the report from the recipient agency.

Undertaking "B".—The following undertaking shall be included in the registration statement if the registrant is required to furnish the list called for by Instruction A of Instructions As To Exhibits:

The undersigned registrant hereby undertakes upon written request received not later than 40 days after the effective date of the registration statement to provide promptly copies of those environmental reports listed as an exhibit pursuant to Instruction A of Instructions As To Exhibits, upon the payment of a reasonable fee which shall be limited to the registrant's reasonable expense in furnishing such reports.

Instruction "C".—If the registrant has filed an exhibit to the registration statement pursuant to Instruction A, a statement shall be provided in the prospectus indicating that the registrant has filed as an exhibit to the registration statement a list of the issuer's most recently filed environmental compliance reports which indicate that the issuer has not met, at any time within the past 12 months, any applicable environmental standard established pursuant to any Federal statute. The statement shall also indicate that the registrant will provide promptly copies of the reports listed to any interested person, upon written request, received not later than 40 days after the effective date of the registration statement and the payment of a reasonable fee which is limited to the registrant's reasonable expense in furnishing such reports.

Item "D".—Appropriate disclosure shall also be made as to the material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries. Registrant shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and its succeeding fiscal years; and such further periods as the registrant may deem material.

§ 239.22 Form S–9, for the registration of certain debt securities.

Instruction "A" as to exhibits.—A list of the registrant's most recently filed environmental compliance reports which indicate that the registrant has not met, at any time within the past 12 months, any applicable environmental standard established pursuant to any Federal statute and setting forth as to each such report (1) the general nature of the environmental standard involved (*e.g.*, air quality or water quality); (2) the identity and address of the person with whom the report was filed; (3) the date of the report; and (4) any other information necessary to sufficiently identify the report to enable an interested party to inspect or acquire the report from the recipient agency.

Undertaking "B".—The following undertaking shall be included in the registration statement if the registrant is required to furnish the list called for by Instruction A of Instructions As To Exhibits:

The undersigned registrant hereby undertakes upon written request received not later than 40 days after the effective date of the registration statement to provide promptly copies of those environmental reports listed as an exhibit pursuant to Instruction A of Instructions As To Exhibits, upon the payment of a reasonable fee which shall be limited to the registrant's reasonable expense in furnishing such reports.

Instruction "C".—If the registrant has filed an exhibit to the registration statement pursuant to Instruction A, a statement shall be provided in the prospectus indicating

that the registrant has filed as an exhibit to the registration statement a list of the issuer's most recently filed environmental compliance reports which indicate that the issuer has not met, at any time within the past 12 months, any applicable environmental standard established pursuant to any Federal statute. The statement shall also indicate that the registrant will provide promptly copies of the reports listed to any interested person, upon written request, received not later than 40 days after the effective date of the registration statement and the payment of a reasonable fee which is limited to the registrant's reasonable expense in furnishing such reports.

Item "D".— Appropriate disclosure shall also be made as to the material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries. Registrant shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and its succeeding fiscal year; and such further periods as the registrant may deem material.

§ 239.26 Form S–7, for registration under the Securities Act of 1933 of securities of certain issuers to be offered for cash.

Instruction "A" as to Exhibits.—A list of the registrant's most recently filed environmental compliance reports which indicate that the registrant has not met, at any time within the past 12 months, any applicable environmental standard established pursuant to any Federal statute and setting forth as to each such report (1) the general nature of the environmental standard involved (*e.g.*, air quality or water quality); (2) the identity and address of the person with whom the report was filed; (3) the date of the report; and (4) any other information necessary to sufficiently identify the report to enable an interested party to inspect or acquire the report from the recipient agency.

Undertaking "B".—The following undertaking shall be included in the registration statement if the registrant is required to furnish the list called for by Instruction A of Instructions As To Exhibits:

The undersigned registrant hereby undertakes upon written request received not later than 40 days after the effective date of the registration statement to provide promptly copies of those environmental reports listed as an exhibit pursuant to Instruction A of Instructions As To Exhibits, upon the payment of a reasonable fee which shall be limited to the registrant's reasonable expense in furnishing such reports.

Instruction "C".—If the registrant has filed an exhibit to the registration statement pursuant to Instruction A, a statement shall be provided in the prospectus indicating that the registrant has filed as an exhibit to the registration statement a list of the issuer's most recently filed environmental compliance reports which indicate that the issuer has not met, at any time within the past 12 months, any applicable environmental standard established pursuant to any Federal statute. The statement shall also indicate that the registrant will provide promptly copies of the reports listed to any interested person, upon written request, received not later than 40 days after the effective date of the registration statement and the payment of a reasonable fee which is limited to the registrant's reasonable expense in furnishing such reports.

Item "D".—Appropriate disclosure shall also be made as to the material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries. Registrant shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and its succeeding fiscal year; and such further periods as the registrant may deem material.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By redesignating paragraph (b)(9) of § 240.14a–3 as (b)(9)(i) and adding paragraph (b)(9)(ii) as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) * * *

(9)(i) * * *

(ii) If applicable, Management's proxy statement, or the report, shall contain an undertaking in bold face or otherwise reasonably prominent type stating that the issuer has filed with the Commission as an exhibit to its current annual report on Form 10–K or 12–K a list of the issuer's most recently filed environmental compliance reports which indicate that the issuer has not met, at any time within the past 12 months, any environmental standard established pursuant to any Federal statute; and also stating that the issuer will provide promptly, upon written request, copies of the reports so listed to each person solicited upon the payment of a reasonable fee which shall be limited to the issuer's reasonable expenses in furnishing such reports. Such undertaking shall indicate the name and address of the person to whom such a written request is to be directed.

NOTE.—Pursuant to the undertaking required by the above subparagraph, the issuer shall furnish promptly copies of the reports listed to a beneficial owner of its securities upon receipt of written request and payment of the specified fee from such person. Each request must set forth a good-faith representation that, as of the record date for the annual meeting of the issuer's security holders, the person making the request was a beneficial owner of securities entitled to vote at such meeting.

2. By redesignating paragraph (a)(9) of § 240.14c–3 as (a)(9)(i) and adding paragraph (a)(9)(ii) as follows:

§ 240.14c–3 Annual Report to be furnished security holders.

(a) * * *

(9)(i) * * *

(ii) If applicable, the information statement, or the report, shall contain an undertaking in bold face or otherwise reasonably prominent type stating that the issuer has filed with the Commission as an exhibit to its current annual report on Form 10–K or 12–K a list of the issuer's most recently filed environmental compliance reports which indicate that the issuer has not met, at any time within the past 12 months, any environmental standard established pursuant to any Federal statute and also stating that the issuer will provide promptly, upon written request, copies of the reports listed to each person furnished an information statement upon the payment of a reasonable fee which shall be limited to the issuer's reasonable expenses in furnishing such reports. Such undertaking shall indicate the name and address of the person to whom such a written request is to be directed.

NOTE.—Pursuant to the undertaking required by the above subparagraph, the issuer shall furnish promptly copies of the reports listed to a beneficial owner of its securities upon receipt of written request and payment of the specified fee from such person. Each request must set forth a good-faith representation that, as of the record date for the annual meeting of the issuer's security holders, the person making the request was a beneficial owner of securities entitled to vote at such meeting.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. By adding Instruction "A", Instruction "C" and Item "D" as to Exhibits in § 249.210 as follows:

§ 249.210 Form 10, general form for registration of securities pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934.

Instruction "C".—If the registrant has the registrant's most recently filed environmental compliance reports which indicate that the registrant has not met, at any time within the past 12 months, any applicable environmental standard established pursuant to any Federal statute and setting forth as to each such report (1) the general nature of the environmental standard involved (*e.g.*, air quality or water quality); (2) the identity and address of the person with whom the report was filed; (3) the date of the report; and (4) any other information necessary to sufficiently identify the report to enable an interested party to inspect or acquire the report from the recipient agency.

Instruction "C".—If the registrant has filed an exhibit to this report pursuant to Instruction A, a statement shall be provided in the report indicating that the registrant has filed as an exhibit to the report a list of the issuer's most recently filed environmental compliance reports which indicate that the issuer has not met, at any time within the past 12 months, any applicable environmental standard established pursuant to any Federal statute.

Item "D".—Appropriate disclosure shall also be made as to the material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of material into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries. Registrant shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and its succeeding fiscal year; and such further periods as the registrant may deem material.

2. By adding Instruction "A" and Instruction "C" as to Exhibits in § 249.212 as follows:

§ 249.212 Form 12, for issuers which file reports with certain other federal agencies.

Instruction "A" as to Exhibits.—A list of the registrant's most recently filed environ-

mental compliance reports which indicate that the registrant has not met, at any time within the past 12 months, any applicable environmental standard established pursuant to any Federal statute and setting forth as to each such report (1) the general nature of the environmental standard involved (*e.g.*, air quality or water quality); (2) the identity and address of the person with whom the report was filed; (3) the date of the report; and (4) any other information necessary to sufficiently identify the report to enable an interested party to inspect or acquire the report from the recipient agency.

Instruction "C".—If the registrant has filed an exhibit to this report pursuant to Instruction A, a statement shall be provided in the report indicating that the registrant has filed as an exhibit to the report a list of the issuer's most recently filed environmental compliance reports which indicate that the issuer has not met, at any time within the past 12 months, any applicable environmental standard established pursuant to any Federal statute.

3. By adding Instruction "A", Instruction "C" and Item "D" as to Exhibits in § 249.310 as follows:

§ 249.310 Form 10–K, annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

Instruction "A" as to Exhibits.—A list of the registrant's most recently filed environmental compliance reports which indicate that the registrant has not met, at any time within the past 12 months, any applicable environmental standard established pursuant to any Federal statue and setting forth as to each such report (1) the general nature of the environmental standard involved (*e.g.*, air quality or water quality); (2) the identity and address of the person with whom the report was filed; (3) the date of the report; and (4) any other information necessary to sufficiently identify the report to enable an interested party to inspect or acquire the report from the recipient agency.

Instruction "C".—If the registrant has filed an exhibit to this report pursuant to Instruction A, a statement shall be provided in the report indicating that the registrant has filed as an exhibit to the report a list of the issuer's most recently filed environmental compliance reports which indicate that the issuer has not met, at any time within the past 12 months, any applicable environmental standard established pursuant to any Federal statute.

Item "D".—Appropriate disclosure shall also be made as to the material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of material into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries. Registrant shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and its succeeding fiscal year; and such further periods as the registrant may deem material.

4. By adding Instruction "A" and Instruction "C" as to Exhibits in § 249.312 as follows:

§ 249.312 Form 12–K, annual report for issuers which file reports with certain other federal agencies.

Instruction "A" as to Exhibits.—A list of the registrant's most recently filed environmental compliance reports which indicate that the registrant has not met, at any time within the past 12 months, any applicable environmental standard established pursuant to any Federal statute and setting forth as to each such report (1) the general nature of the environmental standard involved (*e.g.*, air quality or water quality); (2) the identity and address of the person with whom the report was filed; (3) the date of the report; and (4) any other information necessary to sufficiently identify the report to enable an interested party to inspect or acquire the report from the recipient agency.

Instruction "C".—If the registrant has filed an exhibit to this report pursuant to Instruction A, a statement shall be provided in the report indicating that the registrant has filed as an exhibit to the report a list of the issuer's most recently filed environmental compliance reports which indicate that the issuer has not met, at any time within the past 12 months, any applicable environmental standard established pursuant to any Federal statute.

[FR Doc.75-29902 Filed 11-5-75;8:45 am]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 113]

NONDISCRIMINATION IN FINANCIAL ASSISTANCE PROGRAMS

Proposed Inclusion of a Prohibition Against Discrimination in Credit by Recipient Creditors by Reason of Marital Status

Notice is hereby given that the Small Business Administration proposes to amend its nondiscrimination requirements in 13 CFR Part 113. Interested parties may on or before December 8, 1975, submit written comments, suggestions or objections regarding the proposed amendment. Please send comments to the Compliance Division, Room 326, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

This amendment prohibits discrimination based on marital status by recipients of Federal financial assistance. Such discrimination is contrary to Federal Law and policy.

Accordingly, Part 113 of Chapter I of Title 13 CFR is hereby amended by:

§ 113.1 [Amended]

1. Amending § 113.1(a) by inserting on line 16 after the word "sex" the words "marital status."

2. Adding § 113.3(d)

§ 113.3 Discrimination prohibited.

* * * * *

(d) With regard to all recipients offering credit, such as Small Business Investment Companies and Community Development Companies, to discriminate against debtors on the basis of race, color, religion, sex, marital status or national origin.

§ 113.3–1 [Amended]

3. Amending § 113.3–1(a) by inserting on lines 3, 10, and 13 after the word "sex" the words "marital status."

§ 113.5 [Amended]

4. Amending § 113.5(d)(2) by inserting on line 8 after the word "sex" the words "marital status."

Dated: October 16, 1975.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.75-29824 Filed 11-5-75;8:45 am]