consumer can save by installing said insulation.

It is further ordered, That respondent Owens-Corning Fiberglas Corporation, a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with consumer advertising, offering for sale, sale or distribution of fibrous glass insulation for residential buildings, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to maintain and produce accurate records which may be inspected by Commission staff members upon reasonable notice:

(a) Which consist of documentation in support of any claims included in advertising or sales promotion material, insofar as the text of such material is prepared or is authorized and approved by any person who is an officer or employee of respondent Owens-Corning Fiberglas Corporation, or of any division or subdivision of respondent, or by any advertising agency engaged by respondent or by any such division or subsidiary, which concern the insulating characteristics of said insulation or the savings which consumers can realize from the installation of said insulation; and

(b) Which provided the basis upon which respondent relied as of the time those claims were made; and

(c) Which shall be maintained by respondent for a period of three (3) years from the date such advertising or sales promotion material was last disseminated.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions selling or distributing said insulation.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent which may affect compliance obligations arising out of the order, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries engaged in the domestic sale or distribution of fibrous glass insulation for residential buildings.

It is further ordered, That respondent herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Commissioner Dole not participating by reason of absence.

The Decision and Order was issued by the Commission September 30, 1976.

JAMES A. TOBIN,
Acting Secretary.

[FR Doc.76-34078 Filed 11-17-76;8:45 am]

[Docket C-2839]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Tri-State Driver Training, Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.15 Business status, advantages, or connections; § 13.15–20 Business methods and policies; § 13.15–30 Connections or arrangements with others; § 13.15–70 Financing activities; § 13.15–195 Nature; § 13.15–225 Personnel or staff; § 13.15–265 Service; § 13.42 Connection of others with goods; § 13.50 Dealer or seller assistance; § 13.55 Demand, business or other opportunities; § 13.60 Earnings and profits; § 13.71 Financing; § 13.115 Jobs and employment service; § 13.143 Opportunities; § 13.155 Prices; § 13.-155–5 Additional charges unmentioned; § 13.160 Promotional sales plans; § 13.-175 Quality of product or service; § 13.185 Refunds, repairs, and replacements; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.225 Services; § 13.250 Success, use or standing; § 13.260 Terms and conditions. Subpart—Corrective actions and/or requirements: § 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–25 Displays, in-house; § 13.533–45 Maintain records; § 13.533-45(c) Complaints; § 13.533–55 Refunds, rebates, and/or credits.

Subpart—Delaying or withholding corrections, adjustments or action owed: § 13.677 Delaying or failing to deliver goods or provide services or facilities. Subpart—Failing to maintain records: § 13.1051 Failing to maintain records; § 13.1051–20 Adequate. Subpart—Furnishing means and instrumentalities of misrepresentation or deception: § 13.1055 Furnishing means and instrumentalities of misrepresentation or deception. Subpart—Misrepresenting oneself and goods—Business status, advantages or connections: § 13.1370 Business methods, policies, and practices; § 13.1395 Connections and arrangements with others; § 13.1417 Financing activities; § 13.1520 Personnel or staff; § 13.1535 Qualifications; § 13.1553 Services.—Goods: § 13.1608 Dealer or seller assistance; § 13.1610 Demand for or business opportunities; § 13.1615 Earnings and profits; § 13.1670 Jobs and employment; § 13.1697 Opportunities in product or service; § 13.1725 Refunds; § 13.1730 Results; § 13.1740 Scientific or other relevant facts; § 13.1755 Success, use, or standing; § 13.1760 Terms and conditions; § 13.1760–50 Sales contract.—Prices: § 13.1778 Additional costs unmentioned; § 13.1823 Terms and conditions—Promotional Sales Plans: § 13.-1830 Promotional sales plans.

Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1863 Limitations of product; § 13.1870 Nature; § 13.1882 Prices; § 13.1882–10 Additional prices unmentioned; § 13.1892 Sales contract, right-to-cancel provision; § 13.1895 Scientific or relevant facts; § 13.1905 Terms and conditions; § 13.1905–50 Sales contract. Subpart—Offering unfair, improper and deceptive inducements to purchase or deal: § 13.1935 Earnings and profits; § 13.1960 Free service; § 13.1995 Job guarantee and employment; § 13.2015 Opportunities in product or service; § 13.2063 Scientific or other relevant facts; § 13.2080 Terms and conditions; § 13.2085 Tuition.

(Sec. 6, 38 Stat. 21; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

In the Matter of Tri-State Driver Training, Inc., a corporation, and Robert L. Wise, and Robert J. Kuhn, individually and as officers of said corporation.

Consent order requiring a Middletown, Ohio, truck driver training school, among other things to cease misrepresenting the role of salespersons, industry affiliations, job demand, earnings, placement services, and financing arrangements; failing to disclose prior to sale, names of firms currently hiring graduates, the placement rate and salary range for graduates; failing to disclose purchaser's right to cancellation and refund within ten days; and failing to honor valid cancellations. Additionally, respondents are required to institute and enforce a monitoring program and maintain pertinent records.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:[1]

ORDER

It is ordered, That respondents Tri-State Driver Training, Inc., a corporation, its successors and assigns, and officers, and Robert L. Wise and Robert J. Kuhn, individually and as officers of said corporation, and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of courses of study and instruction in truck driving or any other subject, trade or vocation, or in connection with any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

I. 1. Representing, directly or by implication, orally or in writing, that:

(a) Employment is being offered when the real purpose of such offer is to obtain leads to prospective purchasers of such training courses.

(b) There is a need or demand of any size, proportion or magnitude for persons completing any of the courses offered by the respondents in the field of truck driving or any other field, or other-

[1] Copies of the Complaint, Appendices, and Decision and Order filed with the original document.

wise representing that opportunities for employment, or opportunities of any size, figure or number are available to such persons or that persons completing said courses will or may earn any specific amount of money, or otherwise representing by any means the prospective earnings of such persons except as hereafter provided in Paragraph 9 of the Order.

(c) Respondents have been requested by trucking companies or any other business or organization to train persons for specific jobs; or misrepresenting, in any manner, respondents' connection or affiliation with any industry or any member thereof.

(d) Graduates of respondents' courses will be qualified thereby for employment as truck drivers without further training or experience.

(e) Any payments made by prospective enrollees prior to the undertaking of a formal obligation to respondents may be refunded to such enrollees upon request; or misrepresenting in any manner the nature of any payments made by such enrollees.

(f) After payment of the initial or registration fee, enrollees will be permitted to defer the payment of any balance remaining for tuition until after they have graduated and commenced employment as truck drivers; or misrepresenting in any manner the terms and conditions under which tuition payments are to be made.

(g) Respondents will finance the balance of tuition remaining after the payment of the initial or registration fee or will arrange for such financing by others, unless such financing is in fact provided by respondents or by others that are specifically named to enrollees.

(h) Respondents or others provide a placement service which will assure jobs for graduates of their courses.

(i) Graduates of said courses are assured of placement in the positions for which they have been trained; or representing that graduates of said courses will easily attain employment.

(j) Respondents' courses provide any stated minimum number of hours of road-driving instruction, when such representations do not accurately disclose the actual number of hours of behind-the-wheel road-driving instruction furnished to enrollees; or misrepresenting, in any manner, the number of actual hours of behind-the-wheel road-driving instruction furnished to enrollees.

(k) Any person engaged in the promotion, offering for sale, sale, distribution or other use of respondents' courses is a trained admissions counselor or vocational counselor; or misrepresenting the training, experience, title, qualifications or status of such person or the import or meaning of any advice given by or any other statement made by any such person.

(l) Respondents accept only qualified candidates for enrollment in their courses.

2. Placing advertisements in "Help Wanted" columns, or failing to specify, clearly and conspicuously, as a condition to the publication of classified advertisements seeking leads to prospective purchasers, that such advertisements be published only in the education, instruction or similar columns of classified advertising.

3. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any truck driver training course offered by respondents, the following information:

(a) The title "Important Information" printed in ten (10) point bold face type across the top of the form.

(b) Paragraphs providing the following information:

(1) Many employers of truck drivers prescribe a minimum age of twenty-one (21) years of age for drivers.

(2) Many employers of truck drivers give preferential consideration in hiring to driver-applicants who are twenty-five (25) years of age.

(3) Many employers of truck drivers give preferential consideration in hiring to driver applicants with actual truck-driving experience.

4. Failing to disclose, clearly and conspicuously, in advertisements, in catalogs, brochures and on letterheads that respondents' business is a private school.

5. Utilizing the services of, brokers, or solicitors who engage in any of the acts or practices prohibited by this Order, or who otherwise misrepresent in any way the training program offered by respondents, the type of training equipment utilized by respondents, the tuition-financing arrangements, the assistance furnished to graduates in obtaining employment and the availability of employment opportunities, and other matters.

6. Failing to place the title "Contract" or "Agreement" in bold face type, on any document which evidences an agreement between an enrollee and respondents for the purchase of any of the courses offered by respondents.

7. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any course offered by respondents, the full cost of such course including the fee for any residential training.

8. Failing to keep adequate records which may be inspected by Commission staff members upon reasonable notice which substantiate the data and information required to be disclosed by Paragraph 9 of this Order and prescribed in Appendix A.[2]

9. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any course of instruction offered by respondents, the following information in the format prescribed in Appendix A[2] and for a base period designated as described in Appendix B:[2]

(a) The number and percentage of enrollees who have failed to complete their course of instruction, such percentage to be computed separately for each course of instruction offered by respondents at each school, location or facility;

(b) The placement rate, ratio or percentage for enrollees and graduates, and also the numbers upon which such rates, ratios or percentage to be computed separately for each course of instruction offered by respondents at each school, location or facility;

(c) The salary range of respondents' graduates as to the same graduates used to compute the placement percentage in (b) above;

(d) A list of firms or employers which are currently hiring graduates of said courses in substantial numbers and in the positions for which such graduates have been trained, and the number of such graduates hired, as to the same graduates used to compute the placement percentage in (b) above.

Provided, however, this Paragraph shall be inapplicable to any school newly establish by respondents in a metropolitan area or county, whichever is larger, where they previously did not operate a school, or to any course newly introduced by respondents, until such time as the new school or course has been in operation for the base period established pursuant to Appendix B as prescribed in this Paragraph. However, during such period, the following statement, and no other, shall be made in lieu of the Appendix A Disclosure Form required by this Paragraph:

DISCLOSURE NOTICE

This school [or course, as the case may be] has not been in operation long enough to indicate what, if any, actual employment or salary may result upon graduation from this school [course].

10. (a) Contracting for the sale of any course of instruction in the form of a sales contract or any other agreement which does not contain in immediate proximity to the space reserved in the contract for the signature of the prospective enrollee in bold face type of a minimum size of ten (10) points, a statement in the following form:

You, the prospective enrollee, may cancel this transaction at any time prior to midnight of the tenth business day after the date of this transaction. See attached notice of cancellation form for an explanation of this right.

(b) Failing to furnish each prospective enrollee, at the time he signs the sales contract or otherwise agrees to enroll in a course of instruction offered by respondents, a complete form in duplicate, which shall be attached to the contract or agreement, and easily detachable, and which shall contain in ten (10) point bold face type the following information and statements:

NOTICE OF CANCELLATION

(Enter date of transaction.)

You may cancel this transaction, without any penalty or obligation, within ten (10) business days from the above date.

If you cancel, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten (10) business days following receipt by the seller of your cancellation

[2] Filed as part of the original document.

notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale: Or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the sellers' expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within twenty (20) days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for payment for said goods.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to: (Name of seller), at: (address of seller's place of business) not later than midnight of ____________
date

I hereby cancel this transaction.

____________ ____________________
Date Buyer's signature

(c) Failing to orally inform each prospective enrollee of his right to cancel at the time he signs a contract or agreement for the sale of any course of instruction.

(d) Misrepresenting in any manner the prospective enrollee's right to cancel.

(e) Failing or refusing to honor any valid notice of cancellation by a prospective enrollee and within ten (10) business days after the receipt of such notice, to: (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by respondent; (iii) cancel and return any negotiable instrument executed by the prospective enrollee in connection with the contract or sale.

(f) During the cancellation period described herein, respondents shall not initiate contacts with such contracting persons other than contacts permitted by this paragraph.

11. Making any representations of any kind whatsoever, which are not already proscribed by other provisions of this Order, in connection with the advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in the field of truck driver training or any other course offered to the public in any field in commerce, for which respondents have no reasonable basis prior to the making or dissemination thereof.

12. Furnishing or otherwise placing in the hands of others the means and instrumentalities by and through which the public may be misled or deceived in the manner, or by the acts and practices prohibited by the Order.

1. *It is further ordered*, That: (a) Respondents herein deliver, by registered mail, a copy of this Decision and Order to each of their present and future franchisees, licensees, employees, sales representatives, agents, solicitors, brokers, independent contractors or to any other person who promotes, offers for sale, sells or distributes any course of instruction included within the scope of this Order;

(b) Respondents herein provide each person or entity so described in subparagraph (a) of this Paragraph with a form returnable to the respondents clearly stating his or her intention to be bound by and to conform his or her business practices to the requirements of this Order; retain said statement during the period said person or entity is so engaged; and make said statement available to the Commission's staff for inspection and copying upon request;

(c) Respondents herein inform each person or entity described in subparagraph (a) of this paragraph that the respondents will not use or engage or will terminate the use or engagement of any such party, unless such party agrees to and does file notice with the respondents that he or she will be bound by the provisions contained in this Order;

(d) If such party as described in subparagraph (a) of this paragraph will not agree to file the notice set forth in subparagraph (b) above with the respondents and be bound by the provisions of this Order, the respondents shall not use or engage or continue the use or engagement of such party to promote, offer for sale, sell or distribute any course of instruction included within the scope of this Order;

(e) Respondents herein inform the persons or entities described in subparagraph (a) above that the respondents are obligated by this Order to discontinue dealing with or to terminate the use or engagement of persons or entities who continue on their own the deceptive acts or practices prohibited by this Order;

(f) Respondents herein institute a program of continuing surveillance adequate to reveal whether the business practices of each said person or entity described in subparagraph (a) above conform to the requirements of this Order;

(g) Respondents herein discontinue dealing with or terminate the use or engagement of any person described in subparagraph (a) above, who continues on his or her own any act or practice prohibited by this Order as revealed by the aforesaid program of surveillance.

(h) Respondents herein maintain files containing all inquiries or complaints from any source relating to acts or practices prohibited by this Order, for a period of two years after their receipt, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondents' business for inspection and copying.

2. *It is further ordered*, That respondents herein present to each interested applicant or prospective student immediately prior to the commencement of any interview or sales presentation conducted at any location other than respondents' offices during which the purchase of or enrollment in any course of instruction offered by respondents herein is discussed or solicited, a 5″×7″ card containing only the following language:

YOU WILL BE TALKING TO A SALESPERSON

3. *It is further ordered*, That respondent corporation shall forthwith distribute a copy of this Order to each of its operating divisions.

4. *It is further ordered*, That the respondent Tri-State Driver Training, Inc., shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the respondents which may affect compliance obligations arising out of this Order.

5. *It is further ordered*, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business or employment in which they are engaged as well as a description of their duties and responsibilities.

6. *It is further ordered*, That the respondents herein shall within sixty (60) days after service upon them of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Commissioner Dole did not participate by reason of absence.

The Decision and Order was issued by the Commission September 20, 1976.

CHARLES A. TOBIN,
Secretary.

[FR Doc.76-34099 Filed 11-17-76;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release SAB-12]

PART 211—INTERPRETIVE RELEASES RELATING TO ACCOUNTING MATTERS

Subpart B—Staff Accounting Bulletins

PUBLICATION OF STAFF ACCOUNTING BULLETIN NO. 12

The Division of Corporation Finance and the Office of the Chief Accountant today announced the publication of Staff Accounting Bulletin No. 12. The statements in the Bulletin are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval; they represent interpretations and practices followed by the Division and the Chief Accountant in administering the disclosure requirements of the federal securities laws.

Staff Accounting Bulletin No. 12 provides interpretations of Accounting Series Release No. 190 (41 FR 13596) and four illustrative disclosures. Accounting Series Release No. 190 (the adoption of Rule 3-17[1] of Regulation S-X (17 CFR 210.3-17)) requires the disclosure of replacement cost data by certain registrants effective for years ending on or after December 25, 1976.

[1] The term "rule" has been replaced by the appropriate section number of the Code of Federal Regulations. Accordingly, Rule 3-17 is referred to as § 210.3-17.

Dated: November 10, 1976.

GEORGE A. FITZSIMMONS,
Secretary.

CHANGES TO STAFF ACCOUNTING BULLETIN NO. 10

In SAB No. 10 (41 FR 35163) (which also interpreted ASR No. 190) the following was included regarding the use of indices:

2. GENERAL

* * * * *

F. USE OF INDICES

FACTS

Many companies plan to use indices and other publicly available data in the determination of the replacement cost of productive capacity.

QUESTION

Is the use of indices an acceptable approach to the determination of replacement cost?

INTERPRETIVE RESPONSE

If the use of the indices results in a reasonable approximation of replacement cost computed on an item-by-item basis (or other appropriate method), the use of such indices will be acceptable. It is important to note, however, that in many instances the use of indices will result in reproduction cost which may not be a reasonable approximation of replacement cost.

The above "Question" and "Interpretive Response" are replaced with the following:

QUESTION 1

Is the use of indices an acceptable approach to the determination of replacement cost?

INTERPRETIVE RESPONSE

Any logical approach to the estimation of replacement cost is acceptable provided it results in a conclusion which reasonably approximates the replacement cost of productive capacity.

The estimation of the replacement cost of productive capacity is basically a two-step process. Management must first decide if existing capacity would be replaced with assets similar to those presently owned or if different assets would be required because of technology advances, new governmental regulations, or other current economic and operating considerations. The second step is the selection of appropriate methods to price the replacement assets. In many cases, a combination of direct pricing methods and indexing will be required.

Typically, indices do not reflect technological changes to any appreciable extent. Adjusting the original cost of presently owned assets by appropriate indices results in the current cost to reproduce those assets. Reproduction cost may be equivalent to replacement cost if existing productive capacity would be replaced using assets similar to those presently owned. However, if replacement cost is to be estimated on the basis of using assets different from those presently owned, because of technological changes or other factors, measurement techniques other than indexing are usually required.

QUESTION 2

When facilities have undergone technological change, particularly when existing facilities are no longer manufactured or would not be replaced in the same form, is the use of indices feasible?

INTERPRETIVE RESPONSE

For those assets which would not be replaced through reproduction, normally some repricing will be required to reflect the replacement cost of productive capacity.

For structures which will be replaced in a different form, unit pricing is one acceptable method of estimating replacement cost. If the structures are an integral part of the manufacturing process, as in a brewery or chemical facility, the functional pricing method may be appropriate.

As with structures, machinery and equipment which has been affected by technological change usually requires specific identification of the replacement or substitute facilities to serve as a basis for estimating replacement costs using a direct, unit, or functional pricing technique. However, because a large number of assets may be involved, this procedure may be costly and time consuming. Sampling techniques may be used in these situations to minimize the number of items requiring direct pricing. The cost of estimating replacement costs of property, plant, and equipment which have undergone technological change can be reduced accordingly.

Using one sampling technique, the estimated replacement cost, based on direct pricing, of the items in the sample divided by the items' indexed original cost results in a factor which approximates the effect of the technological change. If the sample is representative of the total group of assets from which it was taken, the technological change factor computed for the sample may be applied to the indexed historical costs of other items in the group to adjust for the effects of technological change for the entire group.

* * * * *

The heading b. Construction Contracts under 5. Limited Use Assets is changed to read b. Items Produced Under Contract.

* * * * *

NEW INTERPRETATIONS

* * * * *

5. LIMITED USE ASSETS

* * * * *

b. ITEMS PRODUCED UNDER CONTRACT

* * * * *

FACTS

Many companies build products to customer specification after negotiating a binding contract for the purchase of the particular product.

QUESTION

Are the replacement cost disclosures specified in § 210.3-17(a) and (b) required for such inventories and cost of sales?

INTERPRETIVE RESPONSE

One of the principal reasons the disclosures under § 210.3-17(a) and (b) are required is that during periods of changing prices significant distortions can occur in financial statements employing historical cost inventory accounting techniques. This is particularly true in the income statement where operating results can be significantly affected by "inventory profits." Inventory profits result from holding inventories during a period of rising inventory costs and are measured by the difference between the replacement cost of an item and its historical cost at the date the item becomes specific to the requirements of a particular customer (frequently the date of sale). Different methods of accounting for inventories can affect the degree to which inventory profits are included and identifiable in current income, but no method based upon historical cost always eliminates or discloses this profit explicitly.

Such profits do not reflect an increase in the economic earning power of a business and they are not normally repeatable in the absence of continued price increases. Accordingly, the staff considers disclosure of the impact of material inventory profits on reported earnings and the trend of reported earnings important information for investors in assessing the quality of earnings and understanding the relationship between cost changes and changes in selling prices.

Many companies build products to customers' specifications and do not acquire materials or expend efforts to any consequential degree until the customer signs a binding contract for the purchase of the particular product. In such instances, inventory profits of the nature described in the preceding paragraph do not occur. Further, many believe that costs incurred pursuant to such contracts differ in nature from other types of inventories. Such costs are believed to be more the nature of an account receivable and for this reason should be excluded from replacement cost disclosures.

Notwithstanding the above, a form of inventory profit (or loss) may arise where a binding purchase contract for an item being built to customer specification exists. If the acquisition prices of materials and labor are greater or less than that originally estimated, the ultimate profit or loss on the item produced will be affected. (The staff acknowledges that price changes are not the only factors that impact profit levels in the production of inventories to customer specification and encourages the disclosure of other factors which assist financial statement readers in understanding the results achieved on the contracts.) Some contracts contain escalation provisions which allow some or all unanticipated cost increases to be passed on to customers (and some contain provisions which require that a reduction in the purchase price be granted the customer if anticipated cost levels do not occur); however, many contracts do not contain such provisions and the gains or losses resulting from unanticipated price movements (which may not be repeated in future periods) accrue to the contractor.

The staff does not believe that the specific disclosures required by § 210.3-17 (a) and (b) are necessary for products built to specification under binding contracts. Nonetheless, the staff does believe that readers of financial statements should be provided with data as to the general magnitude of price increases for items customarily built by the contractor (for example, airplanes by aircraft manufacturers or ships by ship builders) and the contractor's ability to pass such price increases on to its customers. The staff believes that during the initial years of implementing § 210.3-17 (a) and (b) companies should be allowed flexibility in these disclosures.

The following is a possible disclosure for a ship builder whose contracts do not contain escalation clauses:

The company constructs ships under fixed price contracts. In arriving at the contract price of a ship, the company prepares detailed cost estimates based on forecasts of the timing and extent of future increases in the cost of labor, materials and overhead. To the extent the company's estimates differ from actual price increases, an increased or decreased profit on the contract will result. It is not practicable for the company to calculate for all contracts the extent to which prices have increased differently from that forecast at the time the original cost estimates were prepared. However, with the exception of the contract with the Venezuelan government, management is not aware of any contract where price increases have both differed materially from that originally estimated and materially affected operating profits. On the Venezuelan government contract, costs have increased by approximately $10,000,000 in excess of those forecast, thereby reducing operating profit by a like amount.

Based upon a sampling of recurring costs to construct ships the company estimates the cost of ships has increased in 1976 by approximately 18% to 25% dependent upon the characteristics of the ship. In bidding upon future ship construction contracts the prices bid by the company will reflect these cost increases and a margin of profit generally consistent with the levels bid and achieved by the company in the past.

FACTS

Some companies that build products to customer specification carry inventories of basic materials and subassemblies which are commonly used in manufacturing the company's products. These inventories are held in anticipation of the receipt of orders.

QUESTION 1

Should replacement cost of such inventories be disclosed?

INTERPRETIVE RESPONSE

Yes.

QUESTION 2

Should the "inventory profits" related to such inventories be disclosed and if so how should they be measured?

INTERPRETIVE RESPONSE

The impact of inventory profits should be disclosed (generally as an upward adjustment to historical cost of sales) and should be based on the difference between the historical cost of the inventory and the replacement cost of the inventory at the date the inventory becomes specific to the requirements of a particular customer (which will generally be the date of use or allocation).

FACTS

Some companies enter into binding contracts for the future delivery of products (e.g., the delivery of one thousand units of inventory for a fixed price for each of the next twelve months) that are substantially the same as those manufactured in anticipation of non-contract customer orders.

QUESTION

Are the replacement cost disclosures specified in § 210.3–17(a) and (b) required in such circumstances?

INTERPRETIVE RESPONSE

Yes; such products are not manufactured specific to the requirements of a particular customer (i.e., they may be used to fulfill the requirements of alternative customers) and therefore should be treated consistent with other inventories which are available to fulfill the requirements of various customers.

* * * * *

6. REPLACEMENT COST OF PRODUCTIVE CAPACITY

K. REPLACEMENT OF EXISTING ASSETS WITH ASSETS HAVING GREATER PRODUCTIVE CAPACITY

FACTS

Frequently managements will have the intention of replacing existing productive capacity with assets having greater capacity.

QUESTION 1

In these situations, how should the replacement cost of existing productive capacity be determined?

INTERPRETIVE RESPONSE

In most instances, if management intends to replace existing capacity with different assets, that intent should be recognized in the replacement cost data. The results will then indicate to the extent possible the direction of the company.

Whenever replacement with a new asset configuration is assumed, there are at least two types of situations that can be distinguished:

(a) If management could reasonably assume that it would replace with greater capacity and that such capacity could be utilized, then only the portion of total costs attributable to existing capacity should be disclosed as the replacement cost of existing productive capacity. This allocation would be appropriate even though a replacement opportunity exists with capacity equivalent to that presently owned.

(b) If management expects to produce in the future at the same level as it currently produces but would be required to replace with higher capacity because equivalent capacity replacements were not available, then replacement cost would be the total costs of the higher capacity.

QUESTION 2

If management can reasonably assume that it will replace with greater capacity and that such capacity can be utilized (see (a) in the Interpretive Response to Question 1 above), should the allocation of total cost to existing capacity be made upon a linear basis (i.e., if the capacity of the replacement asset is twice that of the existing assets, the replacement cost of the existing assets would be one-half of the cost of the replacement assets) or is some other approach more appropriate?

INTERPRETIVE RESPONSE

A linear approach may not be appropriate in all situations. Technical engineering writings provide considerable evidence that costs in many situations tend to change exponentially rather than linearly. Replacement cost computations, which are designed to measure costs attributable to existing capacity, should incorporate methods of attribution that are as realistic as possible if the resulting information is to be useful. Accordingly, the fact that the relationship between cost and capacity may be linear, exponential, etc., should be recognized. The following situations may be distinguished:

(a) When the assumed replacement configuration capacity must be scaled down to existing capacity, engineers frequently employ the following exponential function, called the "six-tenths" rule, as a rough approximation of the cost of a different capacity level:

$$RCE = RCN \times \left[\frac{PCE}{PCN}\right] 0.6$$

where

RCE=Replacement cost of existing assets;
RCN=Replacement cost of larger, more efficient assets;
PCE=Productive capacity of existing assets; and
PCN=Productive capacity of larger, more efficient assets.

Frequently, the estimate resulting from the use of the above formula will be sufficient for compliance with § 210.3–17. However, the engineering literature also notes that, while this approach in many cases is a significant improvement over use of a linear relationship, mechanical application may result in inaccurate results. Accordingly, consideration must be given to factors such as the following:

(1) Costs for certain types of equipment may follow a different exponential cost curve.

(2) Breaks in cost curves may occur when some specific capacity size is passed.

(3) Different exponents may be applicable to different capacity levels for the same type of equipment.

(b) In other cases, a linear relationship may be appropriate. For example, if a company intends to replace existing capacity by acquiring new capacity that represents 25 percent of a new facility built in conjunction with other users, then 25 percent of the total cost of the new facility would likely be the appropriate measurement. Another instance in which linear computations may suffice is a situation involving a relatively small increase in capacity level—say less than 10 percent to 20 percent. In such instances, dependent upon the exponent, the differences between an expotential computation and a linear compuation are frequently not material.

In conclusion, an exponential relationship such as the "six-tenths" rule is generally an improvement over linear extrapolation whenever fairly substantial changes in capacity are involved. As a practical matter, this means that some involvement of knowledgeable engineers or others familiar with the measurement of cost behavior will typically be advisable if significant changes in the scale of capacity are part of replacement cost computations. At the same time, it should be noted that any method of rescaling capacity is typically facilitated by using a cost-per-unit-of-output approach.

L. FEE TIMBER

FACTS

Many companies in the forest resources industry meet a portion of their fiber needs through the ownership and management of fee (i.e., owned) timberlands. Many such companies attempt to perpetuate the production of timber from fee lands by employing a "sustained yield" concept whereby annual timber volume removals are planned not to exceed, on average, the timber volume expected to be grown annually. Thus, the fiber potential of a company's timberlands normally will not decrease from its present level, and the underlying lands will never need to be replaced.

QUESTION 1

If a company is following the sustained yield concept, is it acceptable to calculate (1) the replacement cost of fee timber on the basis of reforestation costs and the forest management expenditures that would be required to bring a harvested area to a state of maturity equal to that of the company's presently existing fee timber holdings and (2) the effects on income on a replacement cost basis using the annual cost of reforestation and forest management with appropriate adjustments for significant departures from a sustained yield harvest?

INTERPRETIVE RESPONSE

Yes. Such an approach would be consistent with an "entity's normal approach to replacement of capacity."

QUESTION 2

If the approach suggested above is followed, how should replacement cost disclosures be made?

INTERPRETIVE RESPONSE

The disclosure of the replacement cost of fee timber should identify separately the expenditures required for reforestation, and also the amount of forest management expenditures that would be required to bring a company's fee timberlands from a harvested state to the state of maturity of today's timber holdings.

It is important to note that the disclosure relating to the replacement cost of fee timber pertains to expenditures incurred in the replacement process, not to the accounting treatment of such expenditures. Capitalization practices with respect to reforestation and timber management expenditures vary within the industry. Therefore, care should be exercised in preparing the disclosure so that no inference can be drawn that these expenditures, when made, would necessarily be capitalized. For this reason, it is suggested that the aggregate amount of expenditures related to replacing standing fee timber not be included in any overall tabular summary of replacement costs. It is appropriate, however, for individual companies to discuss, in narrative form, the nature of and reasons for the difference (1) between the historical cost of standing fee timber, as disclosed in the company's historical balance sheet, and the expenditures required to replace such timber and (2) between amounts charged to historical cost of sales for fee timber harvested, as shown in the historical cost income statement presented by the company, and the amount disclosed as replacement cost of sales for such timber.

7. Depreciation on Replacement Cost Basis

* * * * *

d. DEPRECIATION WHEN COMPOSITE METHOD IS USED

FACTS

Many companies plan to use a composite method, such as functional pricing, to estimate the replacement cost of productive capacity. Such methods result in groups of replacement assets differing in composition from existing assets because of technological changes, new environmental requirements, and various other factors.

QUESTION

How should replacement cost depreciation and the current depreciated replacement cost of productive capacity be estimated in these situations?

INTERPRETATIVE RESPONSE

A number of acceptable approaches have been brought to the staff's attention, and none appear to warrant designation as being appropriate in all circumstances. Generally, replacement cost depreciation expense may be computed by using the appropriate composite life of the existing group of assets.

The determination of accumulated replacement cost depreciation may present a special problem. Because of the interaction of changes in prices, composition of assets, and timing of aquisitions, the ratio of total accumulated depreciation to total cost on a historical cost basis may differ from that on a replacement cost basis.

For example, the following tabulation summarizes a group of assets with replacement cost data estimated on an individual asset basis:

Year acquired	Historical				Replacement		
	Cost	Life in years	Depreciation[1]		Cost	Depreciation	
			Provision for 1976	Accumulated at Dec. 31, 1976		Provision for 1976[2]	Accumulated at Dec. 31, 1976
1961	$1,000	20	$50	$800	$3,000	$150	$2,400
1968	2,000	10	200	1,800	5,000	500	4,500
1969	3,000	10	300	2,400	6,000	600	4,800
1971	5,000	25	200	1,200	7,000	280	1,680
1975	4,000	16	250	500	4,000	250	500
1976	5,000	5	1,000	1,000	5,000	1,000	1,000
Total	20,000		2,000	7,700	30,000	2,780	14,880

[1] Based on a full year's depreciation provision in the year acquired.
[2] Assumed no changes in prices during 1976.

If, instead, replacement cost were estimated at $30,000 on a composite basis (e.g., functional pricing), the following illustrates the difference in the accumulated depreciation ratios:

Estimated replacement of the group	$30,000
Historical ratio of accumulated depreciation to cost ($7,700÷$20,000) (pct.)	38½
Indicated replacement cost accumulated depreciation	$11,550
Replacement cost accumulated depreciation computed on an asset-by-asset basis, per above	$14,880

One approach to the computation of replacement cost accumulated depreciation is to make a detailed analysis of the assets for which replacement cost was estimated on a group basis and, to the extent possible, match the replacement assets with the historical assets. The staff, however, believes that in most cases alternative techniques can be applied to reduce clerical effort in making the computations.

For instance, using the data from the example above, a weighted-average life of the historical assets could be computed, as follows:

Year acquired	Historical cost	Age in years	Age extension
1961	$1,000	16	$16,000
1968	2,000	9	18,000
1969	3,000	8	24,000
1971	5,000	6	30,000
1975	4,000	2	8,000
1976	5,000	1	5,000
Total	20,000		101,000

Divided by total historical cost	$20,000
Weighted-average age (yrs)	5.05
Estimated replacement cost of productive capacity	$30,000
Composite historical depreciation rate ($2,000÷$20,000) (pct)	10
Estimated replacement cost depreciation	$3,000
Weighted-average age (yrs)	5.05
Approximate accumulated replacement cost depreciation	$15,150

The staff considers this approach acceptable in the circumstances described above. Other approaches for computing accumulated replacement cost depreciation in specific circumstances suggested to the staff include the following:

1. Classifying replacement cost assets to the lowest functional level for which historical cost depreciation records are maintained and then applying to the replacement cost amounts the historical ratios of accumulated depreciation to cost

2. Applying a general or specific index to year-end historical cost balances for cost and accumulated depreciation and then recomputing a ratio of accumulated depreciation to historical cost. This adjusted ratio may be more representative than the unadjusted ratio for purposes of application to the estimated replacement cost of productive capacity.

3. Using the historical ratio of accumulated depreciation to cost. In many cases, this approach would be acceptable. When used, registrants should be aware of the potential problem described in "Facts" above and make adjustments, if necessary.

* * * * *

11. Examples of Replacement Cost Disclosures

FACTS

It would be helpful to many registrants which are required to report replacement cost data to see examples of replacement cost disclosures.

QUESTION

Are any examples of replacement cost disclosures available?

INTERPRETIVE RESPONSE

At the September 16 and 17, 1976 meetings of the Disclosure Subcommittee of the Replacement Cost Advisory Committee, the staff of the Commission and the members of the subcommittee prepared four examples of replacement cost disclosures.

These examples are published here to serve as a guide to registrants. They do not represent the staff's or the subcommittee's view of what constitutes minimum or maximum disclosure. An important omission from these examples is the many supplemental disclosures that are possible (e.g., gain or loss from holding monetary assets and liabilities, economic value or net realizable value of properties, etc.).

These examples also contain disclosures of the methods employed in computing the replacement cost data. The fact that a particular method has been described does not imply that it is the only method that can or should be used in developing the data; nor does it imply that the method described is appropriate in all circumstances.

The dollar amounts contained in the examples are hypothetical; they do not relate to any known company and the relationship of one amount to another (for example, the relationship of gross and net property, plant and equipment on a historical cost basis to the same amounts on a replacement cost basis) may not be indicative of the relationships various registrants experience.

EXAMPLE 1: A PUBLIC UTILITY

Note X.—Replacement Cost Data (Unaudited).

The following data compare utility plant investment and related accumulated depreciation as shown on the balance sheet for the Company and its consolidated subsidiaries at December 31, 1976 with the approximate cost to replace such plant at that date, at prices in effect in late 1976. They also compare the accumulated depreciation that would have been provided had past depreciation accruals contemplated such replacement costs.

	As stated at Dec. 31, 1976	At replacement cost	Difference
Utility plant investment:			
Subject to replacement cost disclosure	$10,000	$16,000	$6,000
Included at historic cost	2,000	2,000	
Total	12,000	18,000	6,000
Accumulated depreciation	2,000	3,000	1,000
Net utility plant investment	10,000	15,000	5,000

In developing the replacement cost approximations, it was assumed that (identify significant technological improvements available and planned, such as nuclear power generators or electronic switching systems) and that latest known technological developments would be used in replacing other plant in accordance with present replacement practices. Replacement cost of buildings assumes a reduced (increased) amount of space because of (state the reason if applicable). Land, plant under construction, and plant held for future use are included at historic cost.

The following figures compare depreciation expense as shown on the income statement for the Company and its consolidated subsidiaries for the year ended December 31, 1976, with the depreciation expense that would have been computed, on the basis of the estimated average replacement cost of depreciable plant.

	As stated for Dec. 31, 1976	At replacement cost	Difference
Depreciation expense	$450	$675	$225

The Company cautions that replacement of plant will take place over many years. The newer technological developments applicable to such plant will enable the Company and its operating subsidiaries to reduce maintenance and operating expenses by as much as 50% based on 1976 expense levels. Additionally, the newer technological developments associated with (nuclear power or electronic switching systems) provide features which will allow the Company and its subsidiaries to offer new and additional revenue generating services at minimal supplemental cost.

The Company also cautions that replacement cost is not the current value of existing utility plant; it is only an estimate of the cost that would be incurred if such assets were replaced at December 31, 1976. The difference between historic and replacement cost of net utility plant investment does not represent additional book value for the Company's common stock; instead, it indicates the capital funds (in excess of booked depreciation and other prior capital provisions) that may have to be provided to replace existing service capacity of the plant of the Company and its subsidiaries. Such capital funds will be provided by (a) reinvestment through depreciation expense, (b) retained earnings after payment of dividends, (c) probable ongoing Federal income tax provisions for accelerated depreciation and investment credit, (d) additional equity investments occurring from the Company's dividend reinvestment and employee savings plan programs, and (e) long, intermediate and short-term debt and other new issues of equity securities. To achieve an assumed ultimate capital structure of 40% equity capital, and assuming no change in the December 31, 1976 balance for deferred taxes and unamortized investment credits, the difference between historic and replacement cost of net utility plant should be funded $2,000 by equity capital and $3,000 by debt.

The Company believes that the difference between depreciation based on historic cost and depreciation based on estimated replacement cost, which difference is not deductible in determining income tax expense, is not truly an additional amount of depreciation expense. Rather it is a measure of the extent to which the Company should be making provision for replacement of its existing utility plant in the current year, assuming no growth in demands for service and no further inflation in costs. Assuming that such provisions are expressive of the capital structure assumed to be achieved at ultimate replacement of the plant, $90 of the additional amount is related to equity capital requirements, and $135 to requirements for debt capital. Presumably the equity capital requirements will be met by the addition to retained earnings after payment of dividends; to the extent that remaining earnings are inadequate, the Company believes it indicates the amount of its needs for increased earnings and thus increased rates for its services. If such increased rates are not achieved, then this differential amount will need to be furnished by additional new equity investments beyond that required for growth.

EXAMPLE 2: A WORLDWIDE MANUFACTURER UTILIZING INDEXES

Supplemental Information on Replacement Cost (unaudited).

In compliance with rules of the Securities and Exchange Commission, the Corporation has estimated certain replacement cost information for worldwide inventories, property, cost of sales, depreciation of real estate, plant and equipment, and amortization of special tools. The amounts reported are the result of the calculations described below and are not necessarily indicative of either the amounts for which the assets could be sold or management's intentions for replacement of such assets nor are they necessarily representative of costs that might be incurred in a future period.

For purposes of calculating the replacement cost for inventories, the first-in, first-out method or average method of costing ending inventories was applied. Foreign content in inventories was translated into U.S. dollars at exchange rates in effect at year end. Replacement cost for cost of sales (exclusive of depreciation and amortization) was based on applying the last-in, first-out method of costing ending inventories. Amounts related to foreign cost of sales were translated into U.S. dollars using annual average exchange rates. No attempt has been made to measure improved efficiency or reduced operating cost which might occur if manufacturing facilities were replaced. It is believed that the amounts resulting from these calculations reasonably approximate the amount of inventories, stated at cost levels experienced near year end, and of cost of sales, determined at cost levels experienced during the periods in which the products were sold.

For purposes of calculating the replacement cost of real estate, plant and equipment, indexes published by governmental and private organizations, adjusted for technological change where applicable, were applied to the historical cost of the assets. It is believed that the resulting indexes are reasonably representative of changes in prices for the assets and are reasonably adjusted for changes in technology. However, the Corporation disclaims any responsibility for the accuracy, consistency, weighting or other factors which may affect such indexes.

Accumulated depreciation at the end of the year and the provision for depreciation for the year related to the replacement cost of such assets were calculated using straight-line depreciation rates based on the estimated service lives used for financial accounting purposes. All amounts related to foreign assets were translated into U.S. dollars at exchange rates in effect at year end; amounts related to foreign depreciation expense were translated to U.S. dollars using annual average exchange rates.

For purposes of calculating replacement cost of special tools and related amortization, indexes, as described above, were applied to the historical cost of such tools and the resulting replacement cost was amortized employing amortization rates and estimated service lives that are used for financial accounting purposes.

Although the replacement cost data disclosed herein have, in the Corporation's view, been reasonably estimated, the estimating procedures do require that certain subjective decisions be made. Moreover, the data are based upon costs at December 31, 1976; assuming that costs to replace the Corporation's productive capacity continue to rise, the actual cost of replacement in the future may differ significantly from the amounts reported herein.

The data required by the SEC exclude the effect of price level changes on assets other than inventory and certain properties during a period of inflation. Accordingly, it is management's view that the replacement cost data presented herein cannot be used alone to impute the total effect of inflation on net income as reported.

However, subject to the above, the following represents the Corporation's estimates of the required replacement cost:

[In millions of dollars]

	Historical cost at Dec. 31, 1976	Estimated replacement cost at Dec. 31, 1976 (Range [2])
Inventories:		
Raw materials	$647	$744-$801
In process	504	599-675
Finished goods	1,150	1,403-1,599
Total	2,301	2,746-3,075
Real estate, plant and equipment (excluding land and construction in progress):		
Land improvements	1,006	1,494-1,661
Buildings	5,901	8,818-9,571
Machinery and equipment	9,317	14,867-16,002
Other	595	844-898
Total	16,819	26,023-28,182
Accumulated depreciation	4,076	7,450-8,078
Total	12,743	18,573-20,054
Special tools	4,338	4,795-5,101
Less, amortization	2,222	2,484-2,616
Total	2,116	2,311-2,485
Cost of sales, exclusive of amounts listed below	11,508	12,969-14,041
Depreciation of real estate, plant and equipment	948	1,605-1,757
Amortization of special tools	586	643-691

[2] Management believes that the most probable replacement cost would fall within this range; nonetheless, it is possible that the replacement cost would be outside this range. The range should not be viewed as management's estimate of the minimum and maximum replacement cost.

EXAMPLE 3: A MANUFACTURER PRIMARILY UTILIZING FUNCTIONAL COSTING AND INCORPORATING COST SAVINGS IN THE BASIC DATA

Data Describing Replacement Cost of Inventories and Productive Capacity and Related Replacement Cost Basis Cost of Products Sold and Depreciation and Depletion (Unaudited).

Set forth in Exhibit I below is an analysis of management's estimates of the replacement cost of certain inventories and productive capacity of the Company and its consolidated subsidiaries as of December 31, 1976, together with estimates of cost of products sold and depreciation on the basis of replacement cost for the year then ended.

Replacement cost data have not been provided for the Company's operations located outside North America and the European Economic Community because such data are not required.

Also excluded is replacement cost information related to elements of productive capacity that, in management's present opinion, will not be replaced at the end of their useful lives. However, if market conditions change, management may modify its present opinion and elect to continue operations for such products or product lines and, accordingly, may have to replace such productive capacity at that time.

All replacement cost amounts related to foreign assets were translated into U.S. dollars at exchange rates in effect at year end; amounts related to the foreign cost of products sold and depreciation expense were translated into U.S. dollars using annual average exchange rates.

EXHIBIT I—REPLACEMENT COST DATA

[In thousands of dollars]

	Estimated replacement cost	Comparable reported amounts
Inventories—as of Dec. 31, 1976:		
Raw materials	$55,000	$43,000
Work in process	33,000	29,000
Finished goods	76,000	53,000
Total	164,000	125,000
Property, plant and equipment—as of Dec. 31, 1976:		
Machinery and equipment	164,000	118,000
Buildings	41,000	28,000
	205,000	146,000
Less accumulated depreciation and depletion	70,000	43,000
Total	135,000	103,000
Cost of products sold—for the year ended Dec. 31, 1976	375,000	346,000
Depreciation—for the year ended Dec. 31, 1976:		
Included in cost of products sold	22,000	10,000
Included in other operating costs	4,000	1,000
Total	26,000	11,000

Exhibit II sets forth the comparable related historical cost amounts for these categories as included in the consolidated balance sheet and income statement, and indicates the historical amounts for which replacement cost data have and have not been provided. The totals in Exhibit II are the same as the "Comparable Reported Amounts" column of Exhibit I.

EXHIBIT II.—*Historical cost amounts for which replacement cost data have been provided*

[In thousands of dollars]

	Inventories	Property, plant and equipment	Accumulated depreciation	Cost of products sold	Depreciation and depletion
Totals as shown in the accompanying consolidated financial statements	$166,000	$217,000	$64,000	$433,000	$17,000
Less amounts for which replacement cost data have not been provided:					
Operations located outside North America and the European economic community	39,000	50,000	16,000	84,000	6,000
Operations which will not be replaced at the end of their current economic lives	2,000	5,000	5,000	3,000	
Land at cost		16,000			
Historical amounts for which replacement cost data have been provided	125,000	146,000	43,000	346,000	11,000

The replacement cost information set forth in Exhibit I should not be interpreted to indicate that the Company has present plans to replace such assets or that future replacement would take place in the form and manner assumed in developing these estimates. The company cautions that the replacement cost data presented are not necessarily the current market values of existing property, plant and equipment and inventories. Rather they represent management's estimate of the cost of replacement that would be incurred at December 31, 1976 if such assets were replaced at that time. Accordingly, the difference between historical and replacement cost does not represent additional book value of the Company's common stock. In addition, it must be recognized that, by their nature, the replacement cost data are estimates and predicated upon certain assumptions and subjective judgments of management, some of which are described below.

METHODS USED IN ESTIMATING CURRENT REPLACEMENT COST OF PRODUCTIVE CAPACITY (PROPERTY, PLANT AND EQUIPMENT)

The estimated replacement cost of the Company's major plant facilities (representing approximately 73 percent of the property, plant and equipment set forth in Exhibit I) was developed by using engineering estimates for the cost of replacing selected representative productive facilities (after they have been upgraded for technological improvements) in each of the major product classes and deriving a cost per unit of productive capacity therefrom. Based on the overall existing productive capacity for those products and product lines of which management currently anticipates continuation, the cost per unit of productive capacity was used to compute the estimated cost of total existing productive capacity. The method of calculating replacement cost described above assumes replacement of existing facilities based on the size and configuration of the selected currently existing facilities; accordingly, replacement accomplished in such a manner would require consolidation of certain existing productive facilities into larger, more economical productive units. However, no attempt was made to reengineer the entire productive and distributive capacity into units larger than those currently in existence.

Also, the replacement cost estimates described above, do not take into account the manifold problems of relocating and consolidating existing productive facilities, including availability of labor supply, raw material sources, and proximity to customers, all of which would necessarily have to be considered in depth before undertaking actual replacement. The results of such additional studies might significantly alter the costs of productive capacity replacement or the Company's manner of replacement as assumed in developing these estimates.

The engineering estimates used in the replacement cost computation were based on the Company's current costs of plant construction and vendor quotations or published prices for larger machinery units.

The estimated current replacement costs for administrative offices was developed using historical costs of assets appropriately indexed to reflect current, higher, costs of construction.

The estimated current replacement cost for the balance of the Company's productive capacity, representing primarily transportation equipment, small machines, and office furniture and fixtures, was statistically derived based on vendor quotations or published price lists for current replacement of sample items compared to their historical costs.

OPERATING EFFICIENCIES

The manner in which the Company has chosen to estimate replacement cost of existing productive capacity, as described above, would, if replacement were effected, alter its current level of operating costs. Management believes that the change in operating cost level is reasonably assured and quantifiable based on replacement assumptions used. So that the replacement cost estimates would not be materially misleading, the Company's current operating costs were adjusted to reflect those of facilities on which the replacement estimates were based. The latter costs were further adjusted for anticipated cost reductions that would result from existing technological improvements. Accordingly, while cost of products sold and depreciation and depletion expense for 1976 as shown in Exhibit I would increase $41,000,000 and $12,000,000 respectively, as a result of using replacement cost data, other costs included in cost of products sold are expected to decrease approximately $24,000,000 as a result of lower direct labor costs, utility expense, and other direct and indirect costs resulting from the assumed replacement. The net result is an overall increase of $29,000,000 in costs of products sold for 1976.

OTHER EFFECTS

If the replacement of productive capacity were effected, interest costs might substantially increase as a result of additional borrowings to finance each replacement. However, the effect of increased interest costs has not been calculated because of the Company's inability to determine how much additional borrowing would be required and how much of the replacement would be financed by additional equity offerings. In addition, none of the cost effects thus far described have been adjusted for income tax effects, including the substantial investment tax credits that would result from the replacement of productive capacity.

ACCUMULATED DEPRECIATION AND DEPLETION

Accumulated depreciation and depletion related to replacement cost of existing productive capacity as set forth in Exhibit I was estimated by the relationship of expired service lives to total service lives of existing facilities assumed to be replaced, applied to the estimated replacement cost of such productive capacity. No additions to the asset lives used for historical cost depreciation purposes as a result of technological improvements were included in the replacement cost depreciation calculations.

DEPRECIATION AND DEPLETION EXPENSE

Replacement cost depreciation and depletion expense was calculated on the straight-line method using the historical depreciation and depletion rates for existing facilities, applied to the average estimated replacement cost of productive capacity.

INVENTORIES

The estimated replacement cost of work-in-process and finished goods inventories at the end of 1976 was calculated by using revised standard costs reflecting estimated replacement cost depreciation, net of estimated decreased direct and indirect operating costs, as more fully explained under "Operating Efficiencies" above. Accordingly, the estimated replacement cost for such inventories represents their costs as if produced by the replaced productive capacity; such costs may not compare to the costs that will actually be incurred by the Company in subsequent replacement (after sale) of the inventories under its existing plant configuration. Nevertheless, management believes that the estimated replacement cost of inventories set forth above is a reasonable approximation of the cost of replacing inventory under the assumed replacement productive capacity previously described.

The estimated replacement cost of raw material inventories was based on latest invoice prices.

COST OF PRODUCTS SOLD

Cost of products sold calculated on the basis of replacement cost of inventories was estimated by reference to revised standard product costs that reflect replacement cost depreciation expense, net of estimated decreased direct and indirect operating costs. Accordingly, the estimated replacement cost for products sold represents the cost of manufacturing inventories as if produced by the replaced productive capacity. The revised standard costs described above do not reflect actual costs incurred (under the Company's existing productive capacity) in the current production of inventories or their subsequent inclusion in costs of products sold. However, management believes that the estimates for cost of products sold set forth above represent a reasonable approximation of cost of products sold calculated on the basis of replacement of existing productive capacity.

ASSUMPTIONS AND ESTIMATES

The replacement cost data herein described have been compiled to comply with the disclosures required by the Securities and Exchange Commission and represent, in the Company's view, a reasonable aggregation of such information. However, the replacement cost data have inherent limitations because of the need for substantial subjective judgments in the estimating process. Accordingly, they should not be construed to represent management's intent to replace existing productive capacity; moreover, even if replacement is effected in the manner described, replacement cost may not represent, because of possible future increases in cost levels, the actual future costs of replacement or the subsequent operating costs that would be incurred in the production of products.

Additionally, other inflationary effects on the Company have not been presented in the replacement cost data set forth above. These additional effects include holding gains experienced by a borrower and holding losses resulting from holding monetary assets, such as cash, receivables, etc., in times of inflation.

In management's view, the above replacement cost information cannot be used to impute the effects of inflation on the Company's net income as reported without considering other factors, including the impact of general price level changes and of statutory taxing policies as they affect the Company. Accordingly, a revised net income amount is not disclosed because of the substantial difficulties that exist in determining a quantifiable income effect. Furthermore, because of the subjective judgments required and the errors inherent in estimation, the above replacement cost data may not be fully comparable among companies with which the Company competes.

EXAMPLE 4: A MANUFACTURER EMPLOYING A VARIETY OF COSTING METHODS AND NOT INCORPORATING COST SAVINGS IN THE BASIC DATA

Unaudited Replacement Cost Information. The replacement cost information presented in this section of the financial statements is furnished pursuant to § 210.3–17 of Regulation S–X, which was announced in the Securities and Exchange Commission's Accounting Series Release No. 190. In that Release, the SEC cautioned investors and analysts against "simplistic use" of replacement cost information. In issuing that warning, the SEC stated:

"* * * (The Commission) intentionally determined not to require the disclosure of the effect on net income of calculating cost of sales and depreciation on a current replacement cost basis, both because there are substantial theoretical problems in determining an income effect and because it did not believe that users should be encouraged to convert the data into a single revised net income figure. The data are not designed to be a simple road map to the determination of 'true income.' In addition, investors must understand that due to the subjective judgments and the many different specific factual circumstances involved, the data will not be fully comparable among companies and will be subject to errors of estimation."

The Company believes that the limitations due to estimations requiring the subjective judgments and assumptions of management as discussed in the foregoing excerpt from ASR 190 apply specifically to the Company's replacement cost information presented in this section of the financial statements. For example, the technology currently available to the Company and the related environmental factors are undergoing significant change and the effect thereof on the Company's replacement decisions cannot be predicted with precision. The Company's resultant inability to reflect the costs related to such unidentifiable difficulties is illustrative of the inherent imprecision of the information required by § 210.3–17.

The replacement cost information is based on the hypothetical assumption that the Company would replace its entire inventory and productive capacity at the end of its fiscal year, whether or not the funds to do so were available or such "instant" replacement were physically possible. This assumption requires that management contemplate many actions at the end of each year that ordinarily would not be addressed all at one time. Accordingly, the information should not be interpreted to indicate that the Company actually has present plans to replace its productive capacity or that actual replacement would or could take place in the manner assumed in estimating the information. In the normal course of business, the Company will replace its productive capacity over an extended period of time. Decisions concerning replacement will be made in the light of economic, regulatory and competitive conditions existing on the dates such determinations are made and could differ substantially from the assumptions on which the data included herein are based.

The replacement cost data presented herein are not necessarily representative of the "current value" of existing inventory and productive capacity. Further, the difference between the replacement cost and the historical cost of inventory and productive capacity does not represent additional book value for the Company's common stockholders. The funds for the eventual replacement of the Company's productive capacity may be provided not only by earnings retained in the business but also by investment tax credits, debt, or issues of equity securities. The determination of the source of funds will be made at the time the funds are required in light of the circumstances at that time.

The replacement cost of approximately 60% of raw materials and supplies has been computed based upon catalog and other published prices for the quality, quantity, and terms at which the Company generally purchases these items. Replacement cost for the remainder of such items was estimated by applying an index of relevant purchase prices to the historical cost of such items.

Finished goods and work in process have been estimated on the basis of standard costs adjusted to reflect current material, labor, and overhead variances as well as replacement cost depreciation of buildings, and machinery and equipment determined on a straight-line basis.

Where practicable, the replacement cost of machinery and equipment was estimated on the basis of current quoted market prices (approximately 70% of such assets in the United States and 40% elsewhere) for new machinery of equivalent capacity. With one exception, the replacement cost of remaining machinery and equipment was estimated by applying index numbers which were derived from recent cost data for items of similar productive capacity. The exception consists of production and materials handling equipment in one plant which is scheduled to be phased out of use in 1978 and replaced by fully automated facilities with a 30% greater capacity. The current quoted acquisition prices of the new equipment have been reduced by the portion estimated to be applicable to the additional capacity.

The replacement cost of buildings acquired within the last five years was estimated by applying published construction cost indexes to the acquisition prices of the buildings. For older buildings, current estimated construction cost to obtain equivalent floor space was used.

Replacement cost of sales was estimated through adjustment of historical costs for the approximate three-month time lag between incurring inventory costs and their subsequent conversion into sales revenues. Average production costs increased by approximately 1 percent a month during 1976.

Depreciation based on the replacement cost of productive capacity has been estimated on a straight-line basis using the same estimates of useful life and salvage value utilized in preparing the historical cost financial statements. Average replacement cost of productive capacity during the year, exclusive of 1976 additions, was the basis upon which depreciation expense was computed; depreciation for current year additions is stated at historical cost.

All replacement cost amounts related to foreign assets have been initially calculated in the relevant foreign currency and then translated to U.S. dollars using year end rates of exchange. Replacement cost amounts related to foreign cost of sales and depreciation expense have been translated using average annual rates of exchange.

Replacement cost information required by § 210.3–17 is as follows:

[Dollars in thousands]

	Replacement cost (unaudited)	Historical cost
At Dec. 31, 1976:		
Inventories:		
Raw materials and supplies	$40,000	$35,904
Work in process	9,000	9,118
Finished goods	20,000	18,904
Total	69,000	63,926
Property, plant and equipment (excluding land):		
Buildings	60,000	43,226
Machinery and equipment	119,000	76,336
Leasehold improvements	2,000	1,539
	181,000	121,101
Accumulated depreciation	88,000	56,596
Total	93,000	64,505
For the year ended Dec. 31, 1976:		
Cost of sales, including $22,000 replacement cost depreciation and $10,404 of historical cost depreciation	424,000	383,946
Other depreciation expense	12,000	5,946

The basic replacement cost data presented above do not reflect any operating cost savings which may result from the replacement of existing assets with assets of improved technology. If the Company's productive capacity were to be replaced in the manner assumed in the calculation of replacement cost of existing productive capacity, many costs other than depreciation (e.g., direct labor costs, repairs and maintenance, utility and other indirect costs) would be altered. Although these expected cost changes cannot be quantified with any precision, the current level of operating costs other than depreciation would be reduced as a result of the technological improvements assumed in the hypothetical replacement. In the opinion of management, such operating cost efficiencies (add one of the following):

(a) Would be significant.

(b) Would not be significant.

(c) Would substantially offset the additional depreciation on a replacement cost basis.

(d) Would more than offset the additional depreciation on a replacement cost basis.

The replacement cost information presented above does not reflect all of the effects of inflation and other economic factors on the Company's current costs of operating the business. § 210.3–17 does not require consideration of these effects on assets and liabilities other than inventories and productive capacity. The Company has not attempted to quantify the total impact of inflation and changes in other economic factors on its business because of the many unresolved conceptual problems involved in doing so. Further, the above replacement cost information standing alone does not recognize the customary relationships between cost changes and changes in selling prices. (Add one of the following):

(a) The Company has demonstrated over the years an ability to adjust selling prices to maintain profit margins. The Company is not aware of any economic factors that would prevent it from maintaining its historical customary relationships between cost changes and changes in selling prices.

(b) The Company has attempted over the years to adjust selling prices to maintain profit margins. Competitive conditions permitting, the Company expects to modify its selling prices to recognize future cost changes.

(c) Competitive and regulatory conditions over the years have prevented the Company from fully recognizing the effects of cost changes in its selling prices. Competitive and regulatory conditions permitting, the Company will attempt in the future to modify its selling prices to recognize cost changes.

(d) Although the Company will attempt to modify its selling prices to recognize future cost changes, competitive and regulatory conditions may preclude its ability to do so.

The following table reconciles the historical cost amounts for which replacement cost data are provided to the related totals shown in the consolidated financial statements:

[Dollars in thousands]

	Inventories	Property, plant and equipment (exclusive of land)	Accumulated depreciation
At Dec. 31, 1976:			
Amounts for which replacement cost data are provided	$63,926	$121,101	$56,596
Present value of future rentals for noncapitalized financing leases as determined at inception of the leases (deduction)		(7,405)	(1,666)
Assets and operations outside the North American continent and the European economic community, at cost	56,434	73,515	14,815
Total as shown on the accompanying consolidated balance sheet	120,360	187,211	69,745

[Dollars in thousands]

	Cost of Sales		Other depreciation Expense
	Other than depreciation	Depreciation	
For the year ended Dec. 31, 1976:			
Amounts for which replacement cost data are provided	$373,542	$10,404	$5,946
Substitution of depreciation expense on noncapitalized financing leases for rental expense	3,076	(1,950)	(687)
Amounts related to assets and operations outside the North American continent and the European Economic Community	101,900	6,991	2,777
Total as shown in the accompanying consolidated income statement	478,518	15,445	8,036

[FR Doc.76–33902 Filed 11–17–76;8:45 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 76–324]

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

PART 113—CUSTOMS BONDS

License and Termination of Bonds

On April 7, 1975, a notice of proposed rulemaking was published in the Federal Register (40 FR 15389) which proposed to amend § 112.26 of the Customs Regulations (19 CFR 112.26) pertaining to the duration of the license of a customhouse cartman or lighterman, and to add a new provision, § 113.56 (19 CFR 113.56), pertaining to the termination of the bond required as a condition of the customhouse cartage or lighterage license, the Bond of Customs Cartman or Lighterman, Customs Form 3855.

The purpose of the changes is to provide a procedure by which the Bond of Customs Cartman or Lighterman, Customs Form 3855, may be terminated and to provide for the notification of the cartman or lighterman when the termination is requested by the surety without the consent of the principal (the cartman or lighterman). The changes emphasize that the Bond of Customs Cartman or Lighterman, Customs Form 3855, is a requirement for maintaining a customhouse cartman's or lighterman's license.

Interested persons were given 30 days from the date of publication of the notice to submit relevant written data, views, or arguments regarding the proposal. After consideration of the comments received, § 113.56(b) has been revised (1) to permit the surety to set the termination date, and (2) to provide a specific procedure for notifying the principal and the district director of the intent of the surety to terminate. Section 113.56(a) has been modified by the addition of a sentence to emphasize that the voluntary termination by a cartman or lighterman of his bond will result in the concurrent termination of his license. In addition, to facilitate the relicensing of cartmen and lightermen whose licenses were terminated because of the termination of their bonds, a new paragraph (c) has been added to section 112.22 to provide for the waiver by the district director in such cases of certain of the requirements that would otherwise apply to applicants for a license.

Accordingly, the proposed amendments, with the changes described above, are adopted as set forth below.

Effective date: These amendments shall become effective December 20, 1976.

G. R. DICKERSON,
Acting Commissioner of Customs.

Approved: November 9, 1976.

JERRY THOMAS,
Under Secretary of the Treasury.

Section 112.22 is amended by adding a new paragraph (c) to read as follows:

§ 112.22 Application for license.

* * * * *

(c) *Reapplication by certain terminated licensees.* Where the applicant for a customhouse cartage or lighterage license has previously been issued such a license and the license has been terminated pursuant to § 113.56 of this chapter, the district director may waive the filing of the items described in paragraphs (a)(2) and (a)(3) of this section, as well as the investigation described in § 112.23, provided the application is made within 30 days of the effective date of the termination of the previous license. Any requirements waived by the district director under this paragraph will be deemed to have been complied with for purposes of § 112.24(b).

Section 112.26 is revised to read as follows:

§ 112.26 Duration of license.

A license issued in accordance with this subpart shall remain in force and effect until the license is suspended or revoked pursuant to § 112.30 or until the required bond is terminated pursuant to § 113.56 of this chapter.

(R.S. 251, as amended, secs. 551, 565, 624, 46 Stat. 742, as amended, 747, as amended, 759 (19 U.S.C. 66, 1551, 1565, 1624).)

Part 113 is amended by amending the heading for Subpart F which appears before § 113.51 and by adding a new § 113.56, to read as follows:

Subpart F—Assessment of Damages and Cancellation or Termination of Bond

* * * * *

§ 113.56 Termination of Bond of Customs Cartman or Lighterman.

(a) *Termination by cartman or lighterman.* A customhouse cartman or lighterman may terminate the Bond of Customs Cartman or Lighterman, Customs Form 3855, by filing with the district director by whose office the bond was approved a request for termination. The termination shall take effect on the date requested if the date is subsequent to the date of receipt of the request. If no termination date is requested or the termination date requested is prior to the date of receipt of the request, the termination shall take effect on the date of receipt of the request by the district director. If a new bond with good and sufficient sureties is not furnished by the cartman or lighterman prior to the effective date of the termination of the previous bond, the customhouse cartman's or lighterman's license will terminate concurrently with the bond.

(b) *Termination by surety.* A surety may, with or without the consent of the principal, terminate the Bond of Customs Cartman or Lighterman, Customs Form 3855, on which it is obligated. The surety shall provide reasonable notice to both the district director by whose office the bond was approved and the principal of his intent to terminate. Such notice shall contain the date on which the termination shall be effective and shall be sent by certified mail, with a return receipt requested. If a new bond with good and sufficient sureties is not furnished by the cartman or lighterman prior to the effective date of the termination of the previous bond, the customhouse cartman's or lighterman's license will terminate concurrently with the bond.

(R.S. 251, as amended, secs. 551, 565, 623, 624, 46 Stat. 742, as amended, 747, as amended, 759, as amended (19 U.S.C. 66, 1551, 1665, 1623, 1624).)

[FR Doc.76-34113 Filed 11-17-76;8:45 am]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

PART 19—REGULATIONS RELATING TO THE LEAA IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

Preparation of Environmental Impact Statement

Notice is hereby given of the following amendments to LEAA's regulations implementing the National Environmental Policy Act (N.E.P.A.) found at 28 CFR Part 19. The proposed amendments were first published in the FEDERAL REGISTER on December 3, 1975. LEAA received comments and the proposed amendments were then circulated through the A-85 clearance process.

The amendments which bring the regulations into accordance with statutory amendments of N.E.P.A. read as follows:

§ 19.10 [Amended]

1. In § 19.10(b) after the sentence "In some cases draft Environmental Impact Statements will be prepared by private consultants" insert the following:

* * * * *

(b) * * * Ordinarily, with programs or projects funded under Part C and E block grant awards, draft Environmental Impact Statements will be prepared by a State agency or official. For programs or projects which are funded by discretionary grant awards, the State agency or official may be requested by LEAA to prepare the draft environmental impact statement. Such State agency or official should have statewide jurisdiction and responsibility for the program or project. In such cases the responsible LEAA official will furnish guidance, participate in the preparation of the statement, and will independently evaluate the statement prior to its approval and adoption. On statements prepared after January 1, 1976, the responsible LEAA official will provide early notification to, and solicit the views of, any other State or any Federal land management entity of any program or project which may have a significant impact upon such State or affected Federal land management entity. If there is any disagreement on the impact of the program or project, the responsible LEAA official will prepare a written assessment of such impact and views for incorporation into the final statement. * * *

2. Revise the last sentence of § 19.10 (b) as follows:

(b) * * * In all cases LEAA will make its own evaluation of the environmental issues and take responsibility for the scope, objectivity, and content of the draft and final Environmental Impact Statements.

A technical amendment is also being submitted. In 28 CFR 19.8, Designation of Responsible Officials, paragraph (d) dealing with designation of a responsible official in the Office of National Priority Programs should be omitted. Due to administrative reorganization, the Office of National Priority Programs is no longer in existence.

RICHARD W. VELDE,
Administrator.

[FR Doc.76-34107 Filed 11-17-76;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 643-1]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revision to New Jersey State Implementation Plan

This notice announces approval by the Environmental Protection Agency (EPA) of a revision to the New Jersey State Implementation Plan. The revision incorporates into the plan modifications and additions to section 7:27-8.1 et seq., "Permits and Certificates," of the New Jersey Administrative Code.

The revision was proposed by New Jersey on June 8, 1976 and announced in the FEDERAL REGISTER on August 19, 1976 (41 FR 35095). In the August 19, 1976 notice, EPA described in detail the proposed revision and also established a 30-day period for receipt of comments from the public on whether or not this revision should be approved. No comments were received.

In general, the proposed revision accomplishes the following:

1. It slightly modifies the definition of "particles" and "stack or chimney" as found in Subsection 8.1, "Definitions."

2. It adds definitions for "alteration," "equivalent stack diameter" and "stack diameter" to Subsection 8.1.

3. It modifies the wording found at subparagraph (a)(5)(ii) of Subsection 8.2, "Permits and Certificates Required."

4. It modifies the wording found at subparagraph (e) of Subsection 8.3, "General Provisions."

EPA has found no reason to change its preliminary determination that this revision should be included as part of the New Jersey State Implementation Plan.

Effective date: This revision to the New Jersey State Implementation Plan becomes effective on December 20, 1976.

(42 U.S.C. 1857c-5 and g.)

Dated: November 12, 1976.

JOHN QUARLES,
Acting Administrator,
Environmental Protection Agency.

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart FF—New Jersey

1. In § 52.1570, paragraph (c) is amended by adding a new subparagraph (14) as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) Supplemental information was submitted on:

* * * * *

(14) Revision to the Permits and Certificates regulation of the New Jersey Air Pollution Control Code, N.J.A.C. 7:27-8.1 et seq., submitted on June 8, 1976 by the New Jersey Department of Environmental Protection.

[FR Doc.76-33965 Filed 11-17-76;8:45 am]

[FRL 645-5]

PART 406—GRAIN MILLS POINT SOURCE CATEGORY

Subpart A—Corn Wet Milling Subcategory

NEW SOURCE PERFORMANCE STANDARDS

Notice is hereby given that the Environmental Protection Agency (EPA) is amending 40 CFR 406.15, the new source performance standards for the corn wet milling subcategory (Subpart A) of the Grain Mills Point Source Category, 40 CFR Part 406.

40 CFR Part 406 was promulgated on March 20, 1974, (39 FR 10515) pursuant to section 306(b) of the Federal Water Pollution Control Act as amended, 33 U.S.C. 1316(b), 86 Stat. 816 et seq., Pub. L. 92-500.

The change being made is to the limitation on the discharge of total suspended solids (TSS) found in § 406.15.

This amendment of the new source standards follows the decision issued by the Court of Appeals for the Eighth Circuit on August 18, 1976, in the case of *CPC International Inc., et al.* v. *Russell E. Train, et al.*, No. 74-1448. In the opinion, the Eighth Circuit affirmed EPA's new source performance standards in all respects save one. The Court, after reviewing available operating data from the biological and multimedia filter system at the Clinton Corn Processing Company in Clinton, Iowa, among other sources of information, determined that although BOD5 could be removed to the 20 pounds per day level set by EPA, total suspended solids (TSS) could not be removed to attain a more stringent level of 10 pounds per day. The Court made its own assessment of the data and determined that the appropriate limit should be 25 pounds per day of total suspended solids on a monthly average. That assessment is set forth below:

> On remand therefore, the EPA may adopt a new source standard of a maximum average of daily effluent levels for thirty consecutive days of 20 pounds of BOD5 and 25 pounds of TSS per MSBu and a maximum daily effluent level of 60 pounds of BOD5 and 75 pounds of TSS per MSBu. We urge it to do so.
>
> We remand to the EPA with directions to it to revise the TSS standard to 25 pounds per MSBu or to compile additional evidence to support a lower standard. If the EPA decides to present a lower TSS standard we retain jurisdiction and direct the administrative process be completed in sixty days.

The issue of the appropriate suspended solids standards has been subjected to protracted controversy and litigation. Rather than gather additional evidence which might support a more stringent standard than the 25 pounds standard and thereby protract the rulemaking even more, the Agency has determined that the 25 pounds supported by the present record is an appropriate standard. It is therefore in the public interest to proceed with this alternative indicated in the 8th Circuit Court's opinion.

In view of the sixty day period for action set by the Court and in view of the fact that no additional data are being assessed as the basis for this amendment, the Agency is dispensing with a notice of proposed rulemaking prior to this amendment.

In accordance with the above opinion, the new source standards for the corn wet milling subcategory of the grain mills point source category (40 CFR 406.15) (Subpart A), are amended as set forth below and are effective on November 18, 1976.

Dated: November 12, 1976.

JOHN QUARLES,
Acting Administrator.

40 CFR Part 406 is amended by revising Subpart A, § 406.15 to read as follows:

§ 406.15 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations (Metric units—kilograms per 1,000 kg of corn)	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
BOD5	1.08	0.36
TSS	1.35	.45
pH	(1)	(1)
	(English units—pounds per 1,000 stdbu of corn)	
BOD5	60	20
TSS	75	25
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

[FR Doc.76-33967 Filed 11-17-76;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 9—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

[ERDA-PR TEMPORARY REGULATION NO. 23]

PART 9-3—PROCUREMENT BY NEGOTIATION

Cost Accounting Standards, Filing of Disclosure Statements

NOVEMBER 10, 1976.

1. *Purpose.* This regulation supersedes ERDA-PR Temporary Regulation No. 14, dated January 12, 1976, same subject and provides a new Cost Accounting Standards Solicitation Notice.

The Cost Accounting Standards Board revised its regulations to provide for the filing of a Disclosure Statement by any company which, together with its subsidiaries:

(a) received net awards of negotiated national defense prime contracts subject to cost accounting standards totaling more than $10 million in either fiscal year 1974 or 1975. Effective January 1, 1976, contracts subject to cost accounting standards requirements may not be awarded to companies meeting this revised requirement unless they have filed a Disclosure Statement or a post-award submission has been authorized in accordance with FPR 1-3.1203(d).

(b) received net awards of negotiated national defense prime contracts and subcontracts subject to cost accounting standards totaling more than $10 million in Federal Fiscal Year 1976, or which receives such awards in any subsequent Federal Fiscal Year. A completed Disclosure Statement must be submitted by March 31, of the year following the Federal Fiscal Year in which the threshold was met. Effective March 31 of the year following the Federal Fiscal Year in which the threshold was met, contracts subject to cost accounting standards requirements may not be awarded to companies meeting this revised requirement unless they have filed a Disclosure Statement or a post award submission has been authorized in accordance with FPR 1-3.1203(d).

These revised filing requirements supplement those previously established. However, the Cost Accounting Standards Board has provided that any company which either has submitted or, by reason of having received a covered award, is obligated to submit a Disclosure Statement under previously effective filing requirements shall remain subject to the disclosure requirement so long as the company has any contracts subject to cost accounting standards. For convenience, the following tabulation summarizes the various CASB actions regarding these requirements.

Federal fiscal period	Government contracts to be included in computation	Threshold Amount (millions)	Effective date
Fiscal years:			
1971	Net negotiated prime defense contracts	$30	Oct. 1, 1972.
1972, 1973	Defense prime contracts of the type subject to CAS	10	Jan. 1, 1974.
1974, 1975	Defense prime contracts subject to CAS	10	Jan. 1, 1976.
1976	Defense prime contracts and subcontracts subject to CAS.	10	Mar. 31, 1977.
Following years	Defense prime contracts and subcontracts subject to CAS.	10	March 31 following fiscal year.

(c) In view of this revision of disclosure filing requirements, the Cost Accounting Standards Board also has amended paragraph 403.70(a) of Standard 403 to state the applicable exemption explicitly rather than by cross reference to disclosure filing requirements. This is an editorial change only, with no substantive effect on the exemption.

2. *Effective date:* This regulation is effective November 18, 1976.

3. *Expiration date:* This regulation will remain in effect until the Federal Procurement Regulations are updated to incorporate the referenced changes to the Cost Accounting Standards Board regulations.

4. In § 9-3.1203, add paragraphs (a)(3) and (b), as follows:

§ 9-3.1203 Applicability of cost accounting standards and prime contractor disclosure statement(s).

(a) *Solicitation notice.* * * *

(3) *Notice for solicitations.* Insert the following notice in all solicitations which are likely to result in a negotiated contract exceeding $100,000 unless the procurement is exempted under FPR 1-3.1203 (a)(1) or (a)(2):

DISCLOSURE STATEMENT—COST ACCOUNTING PRACTICES AND CERTIFICATION

Any contract in excess of $100,000 resulting from this solicitation except (1) when the price negotiated is based on (a) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (b) prices set by law or regulation or (2) contracts which are otherwise exempt (see 4 CFR 331.30(b) and FPR § 1-3.1203(a)(2)) shall be subject to the requirements of the Cost Accounting Standards Board. Any offeror submitting a proposal, which, if accepted, will result in a contract subject to the requirements of the Cost Accounting Standards Board must, as a condition of contracting, submit a Disclosure Statement as required by regulations of the Board. The Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation (see (I) below) unless (i) the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards exceeding the monetary exemption for disclosure as established by the Cost Accounting Standards Board (see (II) below); (ii) the offeror exceeded the monetary exemption in the Federal Fiscal Year immediately preceding the year in which this proposal was submitted but, in accordance with the regulations of the Cost Accounting Standards Board, is not yet required to submit a Disclosure Statement (see (III) below); (iii) the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal (see (IV) below); or (iv) post award submission has been authorized by the Contracting Officer. See 4 CFR 351.70 for submission of a copy of the Disclosure Statement to the Cost Accounting Standards Board.

CAUTION: A practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed to practice for pricing proposals or accumulating and reporting contract performance cost data.

Check the appropriate box below:

☐ I. CERTIFICATE OF CONCURRENT SUBMISSION OF DISCLOSURE STATEMENT(S)

The offeror hereby certifies that he has submitted, as a part of his proposal under this solicitation, copies of the Disclosure Statement(s) as follows: (i) original and one copy to the cognizant Contracting Officer; and (ii) one copy to the cognizant contract auditor.

Date of Disclosure Statement(s):

Name(s) and Address(es) of Cognizant Contracting Officer(s) where filed:

The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement(s).

☐ II. CERTIFICATE OF MONETARY EXEMPTION

The offeror hereby certifies that he, together with all divisions, subsidiaries and affiliates under common control did not receive net awards of negotiated national defense prime contracts totaling $30 million or more during Federal fiscal year 1971; and did not receive net awards of negotiated national defense prime contracts subject to Cost Accounting Standards totaling more than $10 million in any of the Federal fiscal years 1972, 1973, 1974, or 1975; and net awards of negotiated national defense prime contracts and subcontracts subject to Cost Accounting Standards totalling more than $10 million in Federal fiscal year 1976, or in any subsequent Federal fiscal year preceding the year in which this proposal was submitted.

CAUTION: Offerors who submitted or who currently are obligated to submit a Disclosure Statement under the filing threshold established by the Cost Accounting Standards Board for a Federal fiscal year prior to the one immediately preceding the year in which this proposal was submitted may be eligible to claim this exemption if they have received notification of final acceptance of all deliverable items on all their prime contracts and subcontracts containing the Cost Accounting Standards clause.

☐ III. CERTIFICATE OF INTERIM EXEMPTION

The offeror hereby certifies that (i) he first exceeded the monetary exemption for disclosure, as defined in (II) above, in the Federal Fiscal Year immediately preceding the year in which this proposal was submitted, and (ii) in accordance with the regulations of the Cost Accounting Standards Board (4 CFR 351.40(f)), he is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made by March 31 of the current Federal Fiscal Year, he will immediately submit a revised certificate to the Contracting Officer, in the form specified under (I) above or (IV) below, as appropriate, to verify his submission of a completed Disclosure Statement.

CAUTION: Offerors may not claim this exemption if they are currently required to disclose because they exceeded monetary thresholds in Federal Fiscal Years prior to fiscal year 1976. Further, the exemption applies only in connection with proposals submitted prior to March 31 of the year immediately following the Federal Fiscal Year in which the monetary exemption was exceeded.

IV. CERTIFICATE OF PREVIOUSLY SUBMITTED DISCLOSURE STATEMENT(S)

The offeror hereby certifies that the Disclosure Statement(s) were filed as follows:

Date of Disclosure Statement(s):

Name(s) and Address(es) of Cognizant Contracting Officer(s) where filed:

The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement(s).

(b) *Preaward submission of Disclosure Statement(s).* Unless the procurement is exempted under § 1-3.1203(a) (1) or (2), each offeror submitting an offer which could result in a negotiated contract exceeding $100,000 shall furnish copies of his Disclosure Statements to the offices listed in § 1-3.1203(c) concurrently with the submission of his proposal to the contracting officer, except when the offeror has executed the Certificate of Monetary Exemption Certificate of Interim Exemption, or the Certificate of Previously Submitted Disclosure Statement (see § 9-3.1203(a)(3)). More than one Disclosure Statement may be required in connection with the award of a contract (see 4 CFR 351.40(a)). Award of a contract shall not be made until a determination has been made by the contracting officer or his authorized representative that a Disclosure Statement is adequate (see § 1-3.1205(b)), unless, in order to protect the interests of the Government the contracting officer waives this requirement. In this event, a determination shall be made as soon after award as possible.

(Sec. 105, Energy Reorganization Act of 1974 (Pub. L. 93-438).)

M. J. TASHJIAN,
Director of Procurement.

[FR Doc.76-33928 Filed 11-17-76;8:45 am]