

but the section 902 taxes are not, Company A may deduct that portion of the total taxes denied creditability under section 908(a) that the total section 901 taxes (before application of section 908(a)) bear to the total section 901 and 902 taxes (before application of section 908(a)).

O. SUBPART F INCOME

O-1. Q. In determining the amount of subpart F income included in gross income by reason of section 952(a)(3), may any deductions be taken into account?

A. Yes. In computing subpart F income included in gross income under section 952(a)(3), a reasonable allowance may be made for deductions (including foreign taxes) properly allocable to that income. See Regs. sections 1.861-8 and 1.954-1(c) for guidance in this regard.

Dated: January 20, 1978.

W. MICHAEL BLUMENTHAL,
Secretary.

[FR Doc. 78-2171 Filed 1-24-78; 8:45 am]

[4810-22]

NYLON YARN FROM FRANCE

Antidumping Proceeding Notice

AGENCY: U.S. Treasury Department.
ACTION: Initiation of Antidumping Investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether nylon yarn is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. Sales at less than fair value generally occur when the prices of the merchandise sold for exportation to the United States are less than the prices in the home market or to third countries.

EFFECTIVE DATE: January 25, 1978.

FOR FURTHER INFORMATION CONTACT:

David P. Mueller, Operations Officer, United States Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTARY INFORMATION: On December 15, 1977, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from E. I. duPont de Nemours & Company, Inc., Wilmington, Del., indicating the possibility that the subject merchandise from France is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

For purposes of this investigation, the term "nylon yarn" means nylon

yarn and grouped nylon filaments, not textured, provided for in items 309.3030, 309.3130, 310.0149, and 310.0249, Tariff Schedules of the United States, Annotated.

Pricing information thus far obtained indicates that imports of nylon yarn from France may be sold up to 40 percent below French home market prices for such or similar merchandise.

There is evidence on record concerning injury to, or likelihood of injury to, or prevention of establishment of an industry in the United States. This information indicates that imports of nylon yarn from France are underselling prices of domestic nylon yarn by approximately 10 percent. This underselling is fully accounted for by the alleged dumping margins. In addition, petitioner's production of nylon yarn which had previously been returning profits has now declined to a loss position. Employment in petitioner's plants producing nylon yarn have declined approximately 21 percent between 1975 and 1977, accompanied by a decline in production of similar proportions. Capacity utilization and capital investment have also declined.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29) and having determined as a result thereof that there are grounds for so doing, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

This notice is being published pursuant to § 153.30 of the Customs Regulations (19 CFR 153.30).

HENRY C. STOCKELL, Jr.,
Acting General Counsel of
the Treasury.

JANUARY 19, 1978.

[FR Doc. 78-2102 Filed 1-24-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 241, Rule 19; 35th Rev.
Exemption No. 901]

50-FT. PLAIN BOXCARS

Exemption Under Mandatory Car Service Rules

To all railroads:
It appearing, that the railroads named below own numerous 50-ft. plain boxcars; that under present conditions there are substantial surpluses of these cars on their lines; that return of these cars to the owners would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote

from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, 50-ft. plain boxcars described in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 405 issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM", and bearing reporting marks assigned to the railroads named below, shall be exempt from provisions of Car Service Rules 1, 2(a), and 2(b).

Apalachicola Northern Railroad Co., reporting marks: AN.
Camino, Placerville & Lake Tahoe Railroad Co., reporting marks: CPLT.
City of Prineville, reporting marks: COP.
The Clarendon and Pittsford Railroad Co., reporting marks: CLP.
Duluth, Missabe and Iron Range Railway Co., reporting marks: DMIR.
Greenville and Northern Railway Co., reporting marks: GRN.
Greenwich & Johnsonville Railway Co., reporting marks: GJ.
Lake Erie, Franklin & Clarion Railroad Co., reporting marks: LEF.
Louisville and Wadley Railway Co., reporting marks: LW.
Louisville, New Albany & Corydon Railroad Co., reporting marks: LNAC.
McCloud River Railroad Co., reporting marks: MR.
Middletown and New Jersey Railway Co., Inc., reporting marks: MNJ.
Minneapolis, Northfield and Southern Railway, reporting marks: MNS.
Missouri-Kansas-Texas Railroad Co., reporting marks: BKT-MKT.
Municipality of East Troy, Wisconsin, reporting marks: METW.
New Orleans Public Belt Railroad, reporting marks: NOPB.
North Louisiana & Gulf Railroad Co., reporting marks: NLG.
Pearl River Valley Railroad Co., reporting marks: PRV.
The Pittsburgh and Lake Erie Railroad Co., reporting marks: P&LE.
Providence and Worcester Co., reporting marks: PW.
Raritan River Rail Road Co., reporting marks: RR.
Sacramento Northern Railway, reporting marks: SN.
St. Johnsbury & Lamoille County Railroad, reporting marks: SJL.
St. Lawrence Railroad, reporting marks: NSL.
Sierra Railroad Co., reporting marks: SERA.
Terminal Railway, Alabama State Docks, reporting marks: T ASD.
Tidewater Southern Railway Co., reporting marks: TS.
Toledo, Peoria & Western Railroad Co., reporting marks: TPW.
Vermont Railway, Inc., reporting marks: VTR.
WCTU Railway Co., reporting marks: WCTR.
Yreka Western Railroad Co., reporting marks: YW.

* Addition.

Effective January 15, 1978, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., January 10, 1978.

For the Interstate Commerce Commission.

JOEL E. BURNS,
Agent.

[FR Doc. 78-2146 Filed 1-24-78; 8:45 am]

[7035-01]

FOURTH SECTION APPLICATIONS FOR RELIEF

JANUARY 20, 1978.

These applications for long-and-short-haul relief have been filed with the ICC.

Protests are due at the ICC on or before February 9, 1978.

FSA No. 43492, The East Asiatic Company's No. 102, on intermodal rates on general commodities, from ports in Japan and Korea, to rail terminals on the U.S. Atlantic and Gulf Coasts by way of U.S. Pacific Coast interchanges, in Trans-Pacific Freight Conference of Japan/Korea, Agent, tariff No. 1, ICC No. 1, to become effective February 16, 1978. Grounds for relief—water competition.

FSA No. 43493, Seaspeed Services' No. 4, on intermodal rates on general commodities, from rail terminals at U.S. Pacific Coast ports, by way of Houston, Tex., to ports in the Middle East, in its tariff No. 1, ICC No. 1, to become effective February 17, 1978. Grounds for relief—water competition.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-2147 Filed 1-24-78; 8:45 am]

[7035-01]

[Notice No. 6]

SPECIAL PROPERTY BROKERS

JANUARY 19, 1978.

The following applicants seek to participate in the property broker special licensing procedure under 49 CFR 1045A authorizing operations as a broker at any location, in arranging for the transportation by motor vehicle, in interstate or foreign commerce, of property (except household goods), between all points in the United States including Alaska and Hawaii. Any interested person shall file an original and (1) copy of a verified statement in opposition limited in scope to matters regarding applicant's fitness on or before February 24, 1978. Statements must be mailed to:

Broker Entry Staff, Room 2379, Interstate Commerce Commission, Washington, D.C. 20423.

Opposing parties shall serve (1) copy of the statement in opposition concurrently upon applicant's representative, or applicant if no representative is named.

If an applicant is not otherwise informed by the Commission, it may commence operation March 13, 1978.

REPUBLICATION

B-77-10, filed October 20, 1977. Applicant: BEKINS DISTRIBUTION SERVICES CO., a California corporation, 910 Grand Central, Glendale, Calif. 91201. Applicant's representative: Norman S. Marshall, 1335 South Figueroa Street, Los Angeles, Calif. 90015.

B-77-14, filed October 30, 1977. Applicant: BEKINS MOVING & STORAGE CO. OF HAWAII, INC., a California corporation, 777 Flower Street, Glendale, Calif. 91202. Applicant's representative: Norman S. Marshall, 1335 South Figueroa Street, Los Angeles, Calif. 90015.

B-77-16, filed October 30, 1977. Applicant: BEKINS MOVING & STORAGE CO. OF MARYLAND, INC., a Maryland corporation, 777 Flower Street, Glendale, Calif. 91202. Applicant's representative: Norman S. Marshall, 1335 South Figueroa Street, Los Angeles, Calif. 90015.

B-77-17, filed October 30, 1977. Applicant: BEKINS MOVING & STORAGE CO., INC., a Massachusetts corporation, 777 Flower Street, Glendale, Calif. 91202. Applicant's representative: Norman S. Marshall, 1335 South Figueroa Street, Los Angeles, Calif. 90015.

B-77-22, filed October 30, 1977. Applicant: BEKINS MOVING & STORAGE CO., INC., a New Mexico corporation, 777 Flower Street, Glendale, Calif. 91202. Applicant's representative: Norman S. Marshall, 1335 South Figueroa Street, Los Angeles, Calif. 90015.

B-77-23, filed October 30, 1977. Applicant: BEKINS MOVING & STORAGE CO., INC., a New York corporation, 777 Flower Street, Glendale, Calif. 91202. Applicant's representative: Norman S. Marshall, 1335 South Figueroa Street, Los Angeles, Calif. 90015.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-2145 Filed 1-24-78; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

CONTENTS

	Item	
Federal Home Loan Bank Board	1	Building. Discussion of Loan-to-Value Ratio on Refinance Loans.
Federal Home Loan Mortgage Corporation	2	Announcement is being made at the earliest practicable time.
Federal Maritime Commission	3	RONALD A. SNIDER, Assistant Secretary.
Federal Reserve System (Board of Governors)	4	[S-169-78 Filed 1-23-78; 9:36 am]
Federal Trade Commission	5, 6	[6730-01]
National Mediation Board	7	3
Nuclear Regulatory Commission	8	FEDERAL MARITIME COMMISSION.
Renegotiation Board	9, 10	FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: January 12, 1978, 43 FR 1883.

[6720-01]

1

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 43, No. 14, Pg. 3010, Friday, January 20, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. January 25, 1978.

PLACE: 1700 G. Street NW., Sixth Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Robert Marshall, 202-377-6679.

CHANGES IN THE MEETING: The following item has been added to the open portion of the meeting: Appointment of Director, Office of Community Investment, No. 129, January 20, 1978.

[S-177-78 Filed 1-23-78; 3:57 pm]

[6720-02]

2

FEDERAL HOME LOAN MORTGAGE CORPORATION.

TIME AND DATE: 2:30 p.m., January 26, 1978.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Henry Judy, 202-624-7107.

MATTERS TO BE CONSIDERED: Consideration of Status Report on FHLMC moved to the New FHLBB

Building. Discussion of Loan-to-Value Ratio on Refinance Loans.

Announcement is being made at the earliest practicable time.

RONALD A. SNIDER,
Assistant Secretary.

[S-169-78 Filed 1-23-78; 9:36 am]

[6730-01]

3

FEDERAL MARITIME COMMISSION.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: January 12, 1978, 43 FR 1883.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: January 18, 1978, 10 a.m.

CHANGES IN THE MEETING: Addition of the following item to the open session:

9. Docket No. 77-22—Action to Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States with Guatemala—Petition for Postponement of Effective Date.

[S-170-78 Filed 1-23-78; 2:14 pm]

[6210-01]

4

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Monday, January 30, 1978:

The closed portion of the meeting will commence at the conclusion of the open discussion.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Part of the meeting will be open; part will be closed.

MATTERS TO BE CONSIDERED:

Open portion: (1) Proposed guide to conduct for directors of Federal Reserve Banks and regulation to be issued, pursuant to 18 U.S.C. 208, regarding specific actions by such directors.

(2) Possible amendments to Regulation H (Membership of State Banking Institutions in the Federal Reserve System) to require that State member banks that effect certain transactions for customers provide confirmations of and maintain certain records with respect to such transactions. Consider-

ation will also be given to seeking comments on the need for regulations involving obtaining the best execution of securities transactions and the establishment of competency and testing requirements for bank employees.

(3) Any agenda items carried forward from a previously announced meeting.

Closed portion: (1) Appointment of new members to the Consumer Advisory Council.

(2) Proposed negotiation of a competitive purchase of computer equipment at the Federal Reserve Bank of Cleveland.

(3) Request by the Federal Reserve Bank of Dallas for approval of a refurbishment program, many aspects of which will involve competitive purchases.

(4) Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

GRIFFITH L. GARWOOD,
Deputy Secretary of
the Board.

JANUARY 20, 1978.

[S-168-78 Filed 1-23-78; 9:36 am]

[6750-01]

5

FEDERAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Friday, January 27, 1978.

PLACE: Room 432, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Review of first quarter fiscal year 1978 budget and consideration of fiscal year 1979 budget request to Congress for the following three missions: Maintaining Competition, Consumer Protection, and Economic Activities.

CONTACT PERSON FOR MORE INFORMATION:

Wibur T. Weaver, Office of Public Information, 202-523-3830; recorded message, 202-523-3806.

[S-175-78 Filed 1-23-78; 3:29 pm]

[6750-01]

6

FEDERAL TRADE COMMISSION.

TIME AND DATE: 10 and 11:30 a.m., and 2 p.m., Thursday, January 26, 1978.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Closed/open.

MATTERS TO BE CONSIDERED:

Closed Session: 10 a.m. and 2 p.m.: Monthly policy review session.

(a) (10 a.m.) Discussion of current Commission activities concerning energy, including non-public Part II matters, energy surveys, ad substantiation and Section 205 (Magnuson-Moss) enforcement programs.

(b) (2 p.m.) Discussion of certain future Commission activities relating to energy, including initiation of non-public investigations and intervention in civil proceedings.

Open Session: 11:30 a.m.

Monthly policy review session—Focus on energy; discussion of general Commission responsibilities under the Energy Policy and Conservation Act and proposed National Energy Act, and of the proposed trade regulation rule on labeling and advertising of thermal insulation materials.

CONTACT PERSON FOR MORE INFORMATION:

Wilbur T. Weaver, Office of Public Information, 202-523-3830; recorded message, 202-523-3808.

[S-176-78 Filed 1-23-78; 3:29 pm]

[7550-01]

7

NATIONAL MEDIATION BOARD.

TIME AND DATE: 2 p.m., Wednesday, February 1, 1978.

PLACE: Board Hearing Room, 8th floor, 1425 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) Ratification of Board actions taken by notation voting during the month of January 1978.

(2) Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Rowland K. Quinn, Jr., Execu-

tive Secretary, telephone, 202-523-5920.

(Date of Notice: January 23, 1978.)

[S-173-78 Filed 1-23-78; 3:24 pm]

[7590-01]

8

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Week of January 23, 1978 (Changes).

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open/Closed.

MATTERS TO BE CONSIDERED:

Schedule of Meetings for the week has been changed to the following:

Monday, January 23

(11 a.m.)

1.—Proposals for Settlement of Sheffield Waste Disposal Case. Approximately ½ hour, public meeting, as announced.

(1:30 p.m.)

1.—Discussion of Appellate Review in Midland. Approximately 1 hour, closed—Exemptions 6 and 10. Replaces Briefing on Safeguards Contingencies, which is cancelled.

2.—Discussion of Notification of Congress with Regard to International Safeguards Matters. As announced, approximately 1 hour, public meeting.

3.—Briefing on MBO on Decommissioning. As announced, approximately 1 hour, public meeting.

Tuesday, January 24

(9:30 a.m.)

1.—Oral Arguments in St. Lucie (ALAB-420). As announced, approximately 1 hour, public meeting.

2.—Discussion of St. Lucie (ALAB-420). As announced, approximately 1 hour, public meeting.

(1:30 p.m.)

1.—Briefing by Department of State Representatives on Export Matters. As announced, approximately 1 hour, closed—Exemption 1.

2.—Staff Notification to Boards of Relevant and Material New Information. Previously announced as "Briefing on NRC Policy on Notifying Boards and Panels"; rescheduled from January 23, 1978.

3.—Affirmations Items, approximately 5 minutes, public meeting, as announced.

Wednesday, January 25

(2 p.m.)

Briefing on Supergrade Study. Approximately 1 hour, public meeting, portions may be closed. Postponed from January 24, 1978.

Thursday, January 26

(11 a.m.)

Discussion of FOIA Appeal for EICSB Report. Approximately 1 hour, postponed from January 24, 1978, public meeting, portions may be closed.

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

WALTER MAGEE, -
Office of the Secretary.

JANUARY 20, 1978.

[S-171-78 Filed 1-23-78; 3:24 pm]

[7910-01]

9

RENEGOTIATION BOARD.

DATE AND TIME: Tuesday, January 31, 1978; 10 a.m.

PLACE: Conference Room, 4th Floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Matters 1 through 5 are open to the public. Matter 6 is closed to the public. Status is not applicable to matters 7 and 8.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of meeting held January 24, 1978 and other Board meetings, if any.

2. Claim for Partial Mandatory Exemption of New Durable Productive Equipment:

Leeds & Northrup Co. fiscal year ended May 30, 1976.

3. Special Accounting Agreement:

A. Security Pacific National Bank, fiscal years ended December 31, 1971 through 1975.

B. Security Pacific Leasing Co., fiscal year ended December 31, 1975.

C. Security Pacific National Leasing, Inc., fiscal years ended December 31, 1973, 1974 and 1975.

4. Recommendation for Clearance:

Timex Corp. fiscal year ended December 31, 1971.

5. Recommended Clearances Without Assignment (List No. 1893):

A. Foster Wheeler Corp., fiscal year ended December 31, 1974.

A-1 Forney Engineering Co., fiscal year ended December 31, 1974.

A-2 Glitsch, Inc., fiscal year ended December 31, 1974.

A-3 Atwood & Morrill Co., Inc., fiscal year ended December 31, 1974.

A-4 Foster Wheeler Energy Corp., fiscal year ended December 31, 1974.

B. Foster Wheeler Energy Corp., fiscal year ended December 31, 1975.

B-1 Glitsch, Inc., fiscal year ended December 31, 1975.

B-2 Forney Engineering Co., fiscal year ended December 31, 1975.

SUNSHINE ACT MEETINGS

B-3 Atwood & Morrill Co., Inc., fiscal year ended December 31, 1975. [7910-01]

C. Adams-Russell Co., Inc., fiscal year ended September 30, 1976. 10

D. Cooper Industries Inc., fiscal year ended December 31, 1974.

E. Cooper Airmotive Inc., fiscal year ended December 22, 1974.

6. Special Accounting Agreement:

AMF Inc., fiscal years ended December 31, 1969 and 1970.

7. Approval of Agenda for meeting to be held February 14, 1978.

8. Approval of Agenda for other meetings, if any.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, Washington, D.C. 20446, 202-254-8277.

Dated: January 20, 1978.

GOODWIN CHASE,
Chairman.

[S-172-78 Filed 1-23-78; 3:24 pm]

THE RENEGOTIATION BOARD.

DATE AND TIME: Friday, February 3, 1978; 10 a.m.

PLACE: Conference Room, 4th Floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Open to public observation.

MATTER TO BE CONSIDERED: Special board meeting concerning: MB Associates, fiscal year ended April 1, 1973.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated January 20, 1978.

GOODWIN CHASE,
Chairman.

[S-174-78 Filed 1-23-78; 3:24 pm]

Register
of
Federal
Privacy

WEDNESDAY, JANUARY 25, 1978
PART II



**ENVIRONMENTAL
PROTECTION
AGENCY**

PRIVACY ACT OF 1974

**Systems of Records;
Annual Publication**

[6560-01]

U.S. ENVIRONMENTAL PROTECTION AGENCY

[FRL 845-2]

PRIVACY ACT OF 1974

Systems of Records; Annual Compilation

Pursuant to 5 U.S.C. 522a(e)(4), the U.S. Environmental Protection Agency hereby publishes the systems of records as currently maintained by the Agency. EPA has added four systems of records to the compilation since the previous annual publication in *FEDERAL REGISTER* Vol. 41, No. 180, pages 39689-39692, Wednesday, September 15, 1976. Additionally corrections have been made at reference EPA-2 (addresses for system locations in the regions) and at EPA-4 (authority citation for maintenance of the system).

Dated: January 8, 1978.

WILLIAM DRAYTON, Jr.,
Assistant Administrator
for Planning and Management.

EPA-1 Payroll System (Departmental Integrated Payroll System; Payroll Accounting Master File; and Detail History File).

EPA-2 General Personnel Records.

EPA-3 Health Unit and Stress Lab Medical Records.

EPA-4 Inspection Branch Reports.

EPA-5 Personnel Security File System.

EPA-6 Security Computer Program System.

EPA-7 Travel Voucher Folders.

EPA-8 Confidential Statement of Employment and Financial Interest Files.

EPA-9 Freedom of Information Act Record.

EPA-10 Parking Permits File System.

EPA-11 Professional Expertise Inventory.

EPA-1

System name: Payroll System (Departmental Integrated Payroll System; Payroll Accounting Master File; and Detail History File)—EPA

System location: U.S. Geological Survey Computer Facility, Reston, Virginia, 20244; HSMA Computer Facility, DHEW, Parklawn Bldg., Rockville, Maryland, 20203; Financial Management Division, EPA, 401 M Street, S.W., Washington, D.C. 20460.

Categories of individuals covered by the system: EPA employees.

Categories of records in the system: Salary and related payroll cost data and reports.

Authority for maintenance of the system: 5 U.S.C. 301; 44 U.S.C. 3301; Title 6, GAO Policy and Procedures Manual, pursuant to 31 U.S.C. 66(a) and sections of 112(a) and 113 of Budget and Accounting Procedures Act of 1950.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: To conduct all necessary and appropriate intra-agency payroll activities. To furnish information U.S. Treasury requires to issue paychecks and distribute pay according to employees' directions. To report tax withholding to IRS and appropriate State and local taxing authorities; FICA deductions to SSA; dues deductions to labor unions; withholdings for health and life insurance to insurance carriers and U.S. C.S.C.; charity contribution deductions to agents of charitable institutions; annual W-2 statements to taxing authorities and the individual. Also see routine use paragraphs in Prefatory Statement.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Computer records maintained on tape, others on paper.

Retrievability: Name and employee number.

Safeguards: Paper records in locked metal file cabinets and automated filing banks within locked room.

Retention and disposal: Retained and disposed of according to (proposed) EPA Records Control Schedules, Appendix B, Records Management Manual.

System manager(s) and address: Chief, Payroll Accounts Office, EPA, 401 M St., S.W., Washington, D.C. 20460.

Notification procedure: Inquiries may be addressed to system manager.

Record access procedures: Requests should be addressed to system manager.

Contesting record procedures: Requests should be addressed to system manager.

Record source categories: Individuals, supervisors, timekeepers, official personnel records, IRS.

EPA-2

System name: General Personnel Records—EPA

System location: (a) Personnel Management Division, EPA, 401 M St., S.W., Washington, D.C. 20460.

(b) EPA, Rm. 2211, John F. Kennedy Federal Bldg., Boston, MA 02203

(c) EPA, Rm. 1032, 26 Federal Plaza, New York, NY 10007

(d) EPA, Curtis Bldg., 6th and Walnut Sts., Philadelphia, PA 19106

(e) 345 Courtland Street N.W., Atlanta, Georgia 30308

(f) EPA, 230 S. Dearborn, Chicago, IL, 60604

(g) 1201 Elm Street, First International Building, Dallas, Texas 75270

(h) EPA, 1735 Baltimore Ave., Kansas City, MO 64108

(i) EPA, Lincoln Tower Bldg., 1860 Lincoln St., Denver CO 80203

(j) EPA, 100 California St., San Francisco, CA 94111

(k) EPA, 1200 Sixth St., Seattle, WA 98101

(l) EPA Laboratory, P.O. Box 15027, Las Vegas, NV 89114

(m) EPA Laboratory, 26 West St. Clair Street, Cincinnati, Ohio 45268

(n) EPA, Research Triangle Park, NC 27711

(o) EPA, Office of Mobile Source Air Pollution Control, 2565 Plymouth Rd., Ann Arbor, MI 48105

Categories of individuals covered by the system: Employees of EPA and applicants for EPA employment.

Categories of records in the system: Nonpermanent personnel records not required to be maintained by the CSC.

Authority for maintenance of the system: 5 U.S.C. 301, implemented by 5 CFR Parts 293 and 297.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: These records and the information in the records are used to carry out authorized personnel programs. Routine uses include: Review of employment histories of employees and applicants. Identification of high potential employees designated under the Agency executive development program. Review of developmental needs of high potential employees and current managers GS-15 and above. Review of status of employees participating in special counseling or developmental programs. Identification of candidates for job vacancies.

The records system may include files covering employee relations, individual development plans for high potential employees, individual development plans for current managers GS-15 and above, ACCENT program, Academic Career Advancement program, counseling programs, exit interviews, and voluntary applications. All of the above files are not maintained at each Headquarters/field location. Also see routine use paragraphs of Prefatory Statement.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: These records are maintained in file folders and generally, in locked cabinets.

Retrievability: Indexed by name.

Safeguards: Access to and use of is limited to those persons whose official duties require such access.

Retention and disposal: Records of employees are kept manually and are generally maintained until the individual terminates his employment with EPA. Records of applicants are kept manually and are destroyed or returned after one year.

System manager(s) and address: For records at location (a)—Director, personnel Management Division, (address as given in Systems location above). For records located at (b) to (o)—Personnel Officers (address as given in Systems location above).

Notification procedure: Inquiries may be addressed to system manager.

Record access procedures: Requests should be addressed to system manager.

Contesting record procedures: Requests should be addressed to system manager.

Record source categories: Information in this system comes from the individual to whom it applies or is derived from information provided by Agency officials.

Systems exempted from certain provisions of the act: Pursuant to 5 U.S.C. 522a(k)(5), all information and material in the record which meets the criteria of these subsections are or may be exempted from the notice, access, and contest requirements.

EPA-3

System name: Health Unit and Stress Lab Medical Records—EPA

System location: EPA Health Unit, Room 3228, WSM, and EPA Stress Lab, Room 2915, WSM, 401 M Street, S.W., Washington, D.C. 20460.

Categories of individuals covered by the system: EPA employees, contract employees, and EPA visitors requiring or requesting medical attention and full-time EPA employees participating in Stress Lab.

Categories of records in the system: Medical histories and treatment records.

Authority for maintenance of the system: OMB Circular No. A-78, EPA Contract for Health Care.

Routine uses of records maintained in the system including categories of users and the purposes of such uses: To document single incidences of walk-in patients, symptoms and treatment, and to maintain a continuing history file on each patient. To document the treatment of those patients requiring the recurring administration of allergy shots and other shots, such as travel immunizations. To document physicals, complete with histories and lab reports, of those 500 employees so examined annually. (Physicals limited to those in grades 14 and above and those over age 40 in grades 11, 12, and 13.) To document requested screenings of patients for various illnesses and conditions through the use of diagnostic tools and tests. For referral of patients to private doctors for treatment, as indicated. To evaluate cardiac status of exercise program participants and the individual desirability of such a program. To detail for patient and personnel specifics and exercise treatment program.

Users of the system are restricted to contracted health personnel, patients, and, upon patient approval, to the patient's private doctor. Also see routine use paragraphs in Prefatory Statement.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: The records, primarily handwritten or typed cards, forms, files, and EKG graphs, are stored in locked file cabinets.

Retrievability: Indexed by name.

Safeguards: Access to and use of system is limited to Health Unit and Stress Lab personnel, patients, and, upon patient approval, the patient's doctor. All materials are under lock and key. (Records relating to psychiatric matters may not be made available to a patient, if the physician deems it imprudent, but may be released upon patient approval to the patient's designated physician.)

Retention and disposal: Records maintained until employee leaves Agency, when employee may take permanent possession of same. Should employee not take possession, sealed records are sent to Personnel Office for inclusion in official personnel folder, which is sent to Federal Records Center in St. Louis for retention or to new Federal employer, as appropriate.

System manager(s) and address: Assistant Director for Operations, Personnel Management Division, EPA, 401 M St., S.W., Washington, D.C. 20460.

Notification procedure: Inquiries may be addressed to system manager.

Record access procedures: Requests should be addressed to system manager.

Contesting record procedures: Requests should be addressed to system manager.

Record source categories: Patients, patient's doctors, on approval of patient, accident/incidence of illness witnesses, family members of patients, and past Federal employer medical records.

EPA-4

System name: Inspection Branch Reports—EPA

System location: Security and Inspection division, EPA, 401 M St., S.W., Washington, D.C. 20460.

Categories of individuals covered by the system: EPA employees, or persons or firms under contract to EPA or receiving grants from EPA, suspected of having committed illegal or unethical acts.

Categories of records in the system: Contains investigative case file of any person or firm suspected of having committed illegal or unethical acts.

Authority for maintenance of the system: Title 28, U.S. Code, Section 535(b), and EPA Order 3120.1A, dated November 29, 1976.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Records reviewed and cases investigated within EPA for illegal or unethical acts. Also see routine use paragraphs of Prefatory Statement.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: In individual case files.

Retrievability: Indexed by name or type of violation.

Safeguards: Records are maintained in a vault room secured by a Class 6 manipulation proof three-way combination lock on the vault door, an ultrasonic space alarm, and contact points on the door.

Retention and disposal: Held 10 years after investigation is completed and then destroyed by fire.

System manager(s) and address: Chief, Inspection Branch, Security and Inspection Division, EPA, 401 M St., S.W., Washington, D.C. 20460.

Notification procedure: Inquiries may be addressed to system manager.

Record access procedures: Requests should be addressed to system manager.

Contesting record procedures: Requests should be addressed to system manager.

Record source categories: Individual on whom the record is maintained, fellow workers, acquaintances, concerned citizens, phone calls, letters, law enforcement agencies.

Systems exempted from certain provisions of the act: Pursuant to 5 U.S.C. 522a(k)(5), all information and material in the record which meets the criteria of these subsections are or may be exempted from the notice, access, and contest requirements.

EPA-5

System name: Personnel Security File System—EPA

System location: Security and Inspection Division, EPA, 401 M St., S.W., Washington, D.C. 20460.

Categories of individuals covered by the system: EPA employees and consultants in sensitive and nonsensitive positions and applicants for sensitive positions within EPA.

Categories of records in the system: Full field investigations, national agency checks and inquiries from prior employers, credit checks, and local police checks on the individual and any other checks necessary to further develop questionable suitability/security information. May contain copies of the SF-85, SF-86, and the SF-171, furnished by the individual depending on the sensitivity of the position the individual occupies or will occupy.

Authority for maintenance of the system: E.O. 10450, E.O. 11652, and Atomic Energy Act of 1954, as amended.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Information used with E.O. 11652, E.O. 10450, Civil Service Regulations, and the Federal Personnel Manual to issue a security clearance and/or to make suitability determinations on hiring or retention of EPA employees. Also see routine use paragraphs of Prefatory Statement.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Paper records in file folders.

Retrievability: By name.

Safeguards: When not in use, within a vault room which has a three-way combination locked door with a contact alarm and an ultrasonic alarm system. Within the vault room, the files are also stored within either a key-locked or three-way combination power file or security cabinet. Access to this vault room is limited to EPA Security and Inspection Division personnel.

Retention and disposal: Procedures require a one-year retention after the employee terminates employment with EPA. Upon termination,

the Civil Service Commission investigative reports are destroyed by shredding as is the remainder of the file unless the personnel security file contains derogatory information. If the file contains derogatory information, it is forwarded to the Federal Record Center for retention for 20 years.

System manager(s) and address: Director, Security and Inspection Division, EPA, 401 M St., S.W., Washington, D.C. 20460.

Notification procedure: Inquiries may be addressed to system manager.

Record access procedures: Direct written requests to the system manager. The request should include requester's full name, date and place of birth, and social security number and signature to preclude erroneous identification. A comparison of the signature of the requester and those in the record will be made to determine identity prior to any release.

Contesting record procedures: Requests should be addressed to system manager.

Record source categories: Sources vary, but normally could include information furnished by the subject, background data furnished through investigations by authorized Federal investigatory agencies; local police department checks; former employers' inquiries; credit inquiries; and educational institutions inquiries.

Systems exempted from certain provisions of the act: Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), all information and material in the record which meets the criteria of these subsections are or may be exempted from the notice, access, and contest requirements.

EPA-6

System name: Security Computer Program System—EPA

System location: Security and Inspection Division, EPA, 401 M St., S.W., Washington, D.C. 20460.

Categories of individuals covered by the system: Security clearance status of EPA employees or consultants and terminated employees who have been processed through the Security and Inspection Division.

Categories of records in the system: Security computer programs are a subsystem of the Personnel Computer System. Security data is entered into the system as follows: social security number, type of investigation requested, position sensitivity, type security clearance requested, place of birth, type of clearance granted, date of clearance, agency conducting investigation, ERDA clearance, date of ERDA clearance and ERDA file number. Only security clearance information applicable to the individual in his EPA position is lifted. Other data listed on the Personnel Computer System is retrievable under the security computer programs, such as name, date of birth, organization, geographical location, etc., and is retrievable through matching of the social security number.

Authority for maintenance of the system: E.O. 10450 and E.O. 11652.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Internal use is limited to exchanges between EPA offices requiring clearance data prior to release of classified information. Records of this system of records may be disclosed as 'routine use' to security representatives of Federal, State, or local agencies or to Government contractors performing classified work where security clearance information is required under a statute, or by regulation, rule or order issued pursuant thereto, to permit EPA employees access to classified national security information.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Disc-pack on line with the computer contractor with a backup file stored off line.

Retrievability: By Security and Inspection Division personnel via a low-speed remote terminal utilizing IRS Alpha computer language and is printed out on a remote printer. Access to security computer program is gained by using account names, initials, and key words known only to personnel working directly with the system.

Safeguards: Printouts obtained from the system are stored, when not in use, within a vault room which has a three-way combination locked door and an ultrasonic alarm system. Access to the printout information is limited to EPA Security and Inspection Division Personnel.

Retention and disposal: Clearance information is maintained in an active file until the employee terminates. Subsequent to the employee's termination, the clearance information is removed from the active file,

placed in a terminated file, and maintained for archival purposes.

System manager(s) and address: Director, Security and Inspection Division, EPA, 401 M St., S.W., Washington, D.C. 20460.

Notification procedure: Inquiries should be addressed to system manager as above.

Record access procedures: Direct written requests to system manager. Request should include subject's full name, date and place of birth, and social security number to preclude erroneous identification. A comparison of the signature of the requester and those of record will be made to determine identity prior to any release.

Contesting record procedures: Requests should be addressed to the system manager as above.

Record source categories: Sources for this information are obtained from the Personnel Security File and the Personnel Computer System maintained on subject.

EPA-7

System name: Travel Voucher Folders, Advance Cards, and Payee Files—EPA

System location: Financial Management Division, EPA, 401 M St., S.W., Washington, D.C. 20460.

Categories of individuals covered by the system: Employees of EPA, consultants, and private citizens who travel or perform services for EPA.

Categories of records in the system: Travel vouchers with reimbursable details for specific trips. Travel advance cards with details of advances received and trip expenses applied. Payee files with itemized invoices.

Authority for maintenance of the system: Travel Expense Amendments Act of 1975 (P.L. 94-22); Budget and Accounting Act of 1921; Accounting and Auditing Act of 1950; Federal Claim Collection Act of 1966.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Subgroups of files are used to determine amounts due an individual for authorized and official travel for EPA, and conduct other payee-related activities. Transmittal to U.S. Treasury for payment. Also see routine use paragraphs of Prefatory Statement.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Manual

Retrievability: Name

Safeguards: Voucher files are kept in locked room. Advance cards in lockable metal file cabinets. Payee files in locked cabinets.

Retention and disposal: Retained and disposed of according to (proposed) EPA Records Control Schedules, Appendix B, Records Management Manual.

System manager(s) and address: Accountant-In-Charge, Financial Management Division, EPA, 401 M St., S.W., Washington, D.C. 20460.

Notification procedure: Inquiries may be addressed to system manager.

Record access procedures: Requests should be addressed to system manager.

Contesting record procedures: Requests should be addressed to system manager.

Record source categories: Individual, supervisors, and finance (or accounting) office standard references.

EPA-8

System name: Confidential Statements of Employment and Financial Interest Files

System location: (a) Agency Counselor and Deputy Counselors; EPA, 401 M St., S.W., Washington, DC 20460.

(b) EPA, John F. Kennedy Federal Bldg., Boston, MA 02203

(c) EPA, 26 Federal Plaza, New York, NY 10007

(d) EPA, 6th & Walnut Sts., Philadelphia, PA 19106

(e) EPA, 345 Courtland Street, N.W., Atlanta, GA 30308

(f) EPA, 230 S. Dearborn, Chicago, IL 60604

(g) EPA, 1201 Elm Street, First International Bldg., Dallas, TX 75270

(h) EPA, 1735 Baltimore Avenue, Kansas City, MO 64108

(i) EPA, Lincoln Tower Bldg., 1860 Lincoln Street, Denver, CO 80203

- (j) EPA, 215 Fremont St., San Francisco, CA 94105
- (k) EPA, 1200 Sixth Street, Seattle, WA 98101
- (l) EPA, Research Triangle Park, NC 27711
- (m) EPA Laboratory, 26 West St. Clair Street, Cincinnati, OH 45268

Categories of individuals covered in the system: EPA employees at the GS-13 and above grade level or receiving equivalent pay, consultants and experts, Public Health Commissioned Officers.

Categories of records covered in the system: Contains EPA Form 1320.1.

Authority for maintenance of the system: 40 CFR 3, Section 3.304, EPA Conduct and Discipline Manual, Chapter 4, dated 10/18/76, and E.O. 11222.

Routine uses of records maintained in the system; including categories of users and the purpose of such use: Records are evaluated for possible conflict of interest in accordance with law 18 U.S.C. 208 prohibiting Federal employees participation in official activities where there is conflicting interest and Agency regulation in 40 CFR Part 3.

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Storage: Paper records in file folders.

Retrievability: By name.

Safeguards: Records are maintained in locked limited access file cabinets.

Retention and disposal: Records maintained until employee leaves the Agency then destroyed.

System manager(s) and address: For records at (a) Agency Counselor and Deputy Counselors (address as given in system location above). For records located at (b) to (m) Regional Administrators (address as given in system location above).

Notification procedure: Inquiries may be addressed to system manager.

Record access procedures: Requests should be addressed to system manager.

Contesting record procedures: Requests should be addressed to system manager.

Record source categories: Information in this system comes from the individual to whom it applies.

Systems exempted from certain provisions of the Act: Pursuant to 5 U.S.C. 522a(k)(5), all information and material which meets the criteria of these subsections are or may be exempted from notice, access, and contest requirements.

EPA-9

System name: Freedom of Information Act Requests File

System location:

- (a) Freedom of Information Section, Office of the Administrator, EPA, 401 M St., S.W., Washington, DC 20460.
- (b) EPA, Region I, Room 2303, John F. Kennedy Federal Building, Boston, MA 02203
- (c) EPA, Region II, Room 1005, 26 Federal Plaza, New York, NY 10007
- (d) EPA, Region III, Curtis Building, 6th & Walnut Sts., Philadelphia, PA 19106
- (e) EPA, Region IV, 345 Courtland Street, N.E., Atlanta, GA 30308
- (f) EPA, Region V, 230 S. Dearborn St., Chicago, IL 60604
- (g) EPA, Region VI, First International Building, 1201 Elm St., Dallas, TX 75201
- (h) EPA, Region VII, 1735 Baltimore Ave., Kansas City, MO 64108
- (i) EPA, Region VIII, Suite 900, 1860 Lincoln Street, Denver, CO 80203
- (j) EPA, Region IX, 215 Fremont St., San Francisco, CA 94105
- (k) EPA, Region X, 1200 Sixth Ave., Seattle, WA 98101
- (l) EPA, Office of General Counsel, 401 M St., S.W., Washington, DC 20460

Categories of individuals covered by the system: All persons requesting information under the Freedom of Information Act.

Categories of records in the system: Copy of each Freedom of Information Act request received and a copy of the Agency's response and other pertinent correspondence and records.

Authority for maintenance of the system: EPA Order 1550.1B, dated 5/31/75 and 40 CFR Part dated September 1, 1976.

Routine uses of records maintained in the system; including categories of users and the purposes of such uses: To conduct all necessary and

appropriate intra-agency Freedom of Information activities. To compile the reports required by 5 U.S.C. 522(d).

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Storage: These records are maintained in file folders and in locked cabinets (Duplicate copies of FOI requests and agency responses are filed in binders and are available for public inspection).

Retrievability: Name and request identification control number.

Retention: Records are maintained in accordance with EPA Record Control Schedules.

System manager(s) and address: For records at (a) through (k) Freedom of Information Office (address as given in system location). For records at (l) Contracts and General Administration Branch (address as given in system location above).

Notification procedure: Inquiries may be addressed to system manager.

Record access procedures: Requests should be addressed to system manager.

Contesting record procedures: Requests should be addressed to system manager.

Record source categories: Information in this system comes from the individual to whom it applies.

System exempted from certain provisions of the Act: Pursuant to 5 U.S.C. 522a(k)(5), all information and material which meets the criteria of these subsections are or may be exempted from notice, access, and contest requirements.

EPA-10

System name: EPA Parking Control Office File

System location: General Services Branch, Facilities and Support Division, EPA, 401 M St., S.W., Washington, DC 20460.

Categories of individuals covered by the system: Persons in existing carpool with principal member being an EPA employee other members may be employed by other Federal agencies or private industry.

Categories of records in the system: Permit applications, EPA Form 5160.1.

Authority for maintenance of the system: EPA Administrative Services Manual, Chapter 11, dated April 23, 1975.

Routine uses of records maintained: To maintain control of numbers of vehicles authorized to use EPA Waterside Mall Garage.

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Storage: These files are maintained in file folder.

Retrievability: Filed by name and permit number.

Retention: Records are maintained until carpool is disbanded or employee leaves the Agency.

System manager(s) and address: Parking Control Office, General Services Branch, address same as given in system location.

Notification procedure: Inquiries may be addressed to system manager.

Record access procedures: Requests should be addressed to system manager.

Contesting record procedures: Requests should be addressed to system manager.

Record source categories: Information in this system comes from the individual to whom it applies.

EPA-11

System name: Professional Expertise Inventory

System location:

- (a) Office of Research and Development; EPA, 401 M St., S.W. Washington, DC 20460
- (b) EPA, Office of Administration, 26 West St. Clair Street, Cincinnati, OH 45268
- (c) EPA Laboratories, Research Triangle Park, NC 27711
- (d) EPA Laboratories, 26 West St. Clair Street, Cincinnati, OH 45268
- (e) EPA, P.O. Box 15027, Las Vegas, NV 89114
- (f) EPA, College Station Road, Athens, GA 30605
- (g) EPA, P.O. Box 1198, Ada, OK 74820
- (h) EPA, 200 S.W. 35th St., Corvallis, OR 97330
- (i) EPA, 6201 Congdon Blvd., Duluth, MN 55804
- (j) EPA, P.O. Box 277, Narragansett, RI
- (k) EPA, Sabine Island, Gulf Breeze, FL 32561

Categories of records covered in the system: Name of individual, current organization, title, educational background, disciplines, specialty areas, specific subject knowledge, specific chemical substance experience, names of government organizations with which the individual has worked with or for, names of countries with which the individual has a technical or environmental awareness, specific language skills, membership in professional societies and working group affiliations, publication references, and professional history (includes period of employment, name of employer, position title, and description of significant projects).

Authority for maintenance of the system: 5 U.S.C. 301.

Routine uses of records maintained in the system: Information will be used internally by EPA to identify individuals with appropriate expertise for appointment or nomination to working groups and task forces, provision of consultation support on projects, and contact on collaborative studies.

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Storage: Maintained in file folders in cabinets and on computer disk.

Retrievability: By any data item included in a record.

Safeguards: Access and use of information is limited to those persons whose official duties require access.

Retention and disposal: Records maintained until employee leaves the Agency, then destroyed.

System manager(s) and addresses: For records at (a) Assistant Administrator for Research and Development (address as given in system location in (a) and (b) above). For records located at (b) Laboratory Directors (address as given in system location for (c) through (k) above).

Notification procedure: Inquiries may be addressed to system manager.

Record access procedures: Requests should be addressed to system manager.

Contesting record procedures: Requests should be addressed to system manager.

Record source categories: Information in this system comes from the individual to whom it applies.

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Register
of
Procedures

WEDNESDAY, JANUARY 25, 1978
PART III



DEPARTMENT OF
COMMERCE

Industry and Trade
Administration



RESTRICTIVE
TRADE PRACTICES
OR BOYCOTTS

[3510-25]

Title 15—Commerce and Foreign Trade

CHAPTER III—INDUSTRY AND TRADE ADMINISTRATION, BUREAU OF TRADE REGULATION, DEPARTMENT OF COMMERCE

PART 369—RESTRICTIVE TRADE PRACTICES OR BOYCOTTS

AGENCY: Industry and Trade Administration (formerly Domestic and International Business Administration), Bureau of Trade Regulation, Department of Commerce.

ACTION: Final Rules.

SUMMARY: The agency is amending the Restrictive Trade Practices or Boycotts part of the Export Administration Regulations (Part 369, Title 15, Code of Federal Regulations). The changes are being made to implement Title II of the Export Administration Amendments of 1977 (Pub. L. 95-52), signed into law on June 22, 1977. In general, these regulations prohibit United States persons from complying with specified foreign boycott requirements, including the furnishing of boycott-related information.

DATE: These rules are effective January 18, 1978, as required by Pub. L. 95-52, upon filing with the Federal Register. The promulgation of these boycott regulations is exempt from Administrative Procedure Act rulemaking procedures.

FOR ADDITIONAL INFORMATION CONTACT: Vincent J. Rocque (telephone 202-377-5491) or Kent N. Knowles (telephone 202-377-2512).

SUPPLEMENTARY INFORMATION: Pursuant to Section 4A(a)(5) of the Export Administration Act of 1969, as amended (the "Act") (50 U.S.C. App. 2403-1a(a)(5)), the Department of Commerce published proposed rules concerning restrictive trade practices or boycotts in the FEDERAL REGISTER dated September 23, 1977 (42 FR 48556).

More than 7,000 copies of the proposed rules were mailed to members of Congress, state government officials, exporters, business and trade associations, special interest groups, law firms, and all persons requesting a copy. Interested parties were invited to provide comments on or before noon, November 21, 1977. Department officials have carefully considered all comments received and revised the proposed regulations as appropriate.

DISCUSSION OF COMMENTS

On September 20, 1977 the Department invited interested persons to submit comments on its proposed regulations to implement Title II of the Export Administration Amendments of 1977. Comments were to be deliv-

ered by noon, November 21, 1977. In response, the Department received 178 submissions containing comments and suggestions totalling over 1,000 pages. Earlier, in response to its July 13, 1977 advance notice of proposed rulemaking in this matter, the Department received 152 submissions containing comments totalling over 1,750 pages. Included in these totals are written summaries of meetings between officials of the Department and numerous persons who requested such meetings in order to make comments and suggestions on the regulations to implement the Act. All these comments are on the public record and have been carefully considered by the Department.

The principal issues raised by the comments and the Department's response to them are described below.

"CONTROLLED IN FACT"

Title II of the Export Administration Amendments of 1977 applies only to United States persons. The statute defines "United States person" to include any domestic concern's foreign subsidiary or affiliate which is controlled in fact by such domestic concern as determined by the regulations.

Under the proposed regulations, the presence of certain factors (such as ownership or control of more than 50 percent of a subsidiary's voting stock) would have created a conclusive presumption that a foreign subsidiary was controlled in fact by its domestic parent. Other factors (such as ownership or control of more than 25 percent of a subsidiary's voting stock) would have created a rebuttable presumption of control. In addition, a presumption of control would have existed where a United States person had authority to appoint both a majority of the members of the board of directors and the chief operating officer of its foreign subsidiary or affiliate.

A number of those commenting argued that there should be no *conclusive* presumptions of control and that the presumptions set forth as rebuttable presumptions were invalid presumptions. They further argued that a foreign subsidiary or affiliate should be presumed not to be controlled by its domestic parent where the parent owns or controls 50 percent or less of the subsidiary's or affiliate's voting securities.

Others contended that the regulations should not require that the authority to appoint both a majority of the subsidiary's board and its chief operating officer be present in order to raise a presumption of control. Either authority, it was argued, should be sufficient.

The final regulations provide that all presumptions of control are rebuttable; none are conclusive. Conclusive presumptions leave no scope for the

wide variety of factors which bear on the question of control. It is possible, for example, to own well over 50% of a foreign subsidiary's voting securities and not possess effective control. Under the regulations as modified, presumptions of control still exist; however, they may be rebutted by competent evidence showing that despite the existence of certain factors evidencing control, control does not in fact exist.

The final regulations establish a rebuttable presumption of control where the domestic concern owns or controls more than 50 percent of the voting securities of the foreign subsidiary of affiliate. In addition, they establish a rebuttable presumption of control where the domestic concern owns or controls more than 25 percent of the voting securities of the foreign subsidiary or affiliate and no other person owns or controls an equal or larger percentage.

Finally, the final regulations provide for a presumption of control if the domestic concern has the authority to appoint either a majority of the board of directors or the chief operating officer of the foreign subsidiary of affiliate. The first power presumes the authority or ability to establish the general policies of the subsidiary or affiliate. The second power presumes the authority or ability to control the subsidiary's or affiliate's day-to-day operations.

All these presumptions of control may be rebutted by competent evidence showing that control does not in fact exist.

The final regulations establish no presumptions regarding the absence of control. Control in fact consists of the authority or ability to establish a subsidiary's or affiliate's general policies or control its day-to-day operations. Control in practice does not necessarily require ownership of a particular proportion of a subsidiary's voting securities, nor does it necessarily require any other particular relationship between parent and subsidiary to the exclusion of all others. Hence, it would be illogical to presume that any particular factor indicated the absence of control.

ACTIVITIES IN THE INTERSTATE AND FOREIGN COMMERCE OF THE UNITED STATES

Disposition of U.S.-origin goods by controlled foreign subsidiaries or affiliates. The proposed regulations provided that a controlled foreign subsidiary's or affiliate's activities with respect to U.S.-origin goods are in United States commerce if the goods are acquired for incorporation into or manufacture of another product for purposes of filling an order from or completing a transaction with a boycotting country. They further provided that the activities of such sub-

subsidiary or affiliate with respect to U.S.-origin goods are in United States commerce if the goods are ultimately used, without substantial alteration or modification, in filling an order from or completing a transaction with a boycotting country.

The final regulations remain essentially unchanged.

Several persons argued for adoption of a "come to rest" theory whereby United States commerce would end at the point where U.S.-origin goods reach the foreign subsidiary. Under that theory, the subsidiary's subsequent disposition of the goods would not constitute an activity in United States commerce.

The final regulations do not adopt this "come to rest" theory. The legislative history makes it clear that Congress intended the Act to apply to dispositions by a controlled foreign subsidiary of U.S.-origin goods and services. Under the "come to rest" theory, such dispositions would not be subject to this Part.

The regulations give the term "activities in the interstate or foreign commerce of the United States" a scope sufficiently broad to accomplish the Congressional purpose without unduly interfering in the interest of foreign countries in regulating the conduct of persons subject to their jurisdiction.

Ancillary services. The proposed regulations provided that if any part of a transaction were in U.S. commerce, the entire transaction would be in U.S. commerce. For example, a U.S. bank's financing (other than through a letter of credit) of a U.S.-controlled foreign subsidiary's transaction with a boycotting country would bring the subsidiary's transaction into U.S. commerce even though the transaction was otherwise wholly outside U.S. commerce.

A number of persons commented that a foreign subsidiary's receipt from the United States of ancillary services such as financial assistance, insurance, or legal counsel should not, in and of itself, bring the subsidiary's transaction with a third party into U.S. commerce.

The final regulations provide that the furnishing of such U.S.-source "ancillary" services is itself an activity in U.S. commerce. However, they further provide that a foreign subsidiary's receipt of such services does not, in and of itself, bring the subsidiary's otherwise foreign transaction into U.S. commerce.

Ancillary services are provided primarily for the subsidiary's own use rather than that of a third person. They include financial, accounting, legal, transportation or other services (whether provided by the subsidiary's parent or an unrelated entity).

Such ancillary services are typically interchangeable with those furnished

by non-U.S. persons and could be obtained from non-U.S. sources with relative ease. A rule which discourages the use of U.S.-source ancillary services would have little if any positive anti-boycott effect. Indeed it could have adverse anti-boycott consequences by driving U.S.-controlled foreign subsidiaries into the hands of foreign companies which have little if any compunction about complying with foreign boycotts opposed by the United States.

Thus, the provision of project financing by a U.S. bank or legal services by a U.S. law firm to a U.S.-controlled foreign subsidiary is an ancillary service which, in and of itself, will not cause the subsidiary's transaction to be in U.S. commerce. By contrast, where a domestic concern, on behalf of its controlled foreign subsidiary, gives a guaranty of performance to a boycotting country customer, that is a service provided to the customer, and, as such, brings the subsidiary's transaction with the customer into U.S. commerce. Similarly, architectural or engineering services provided by a U.S. company in connection with a U.S.-controlled foreign subsidiary's construction project in a third country are typically passed through to the subsidiary's customers and, as such, bring the subsidiary's transaction in the third country into U.S. commerce.

Direction to a Foreign Subsidiary. The proposed regulations provided that the activities of a U.S. parent corporation in specifically directing the activities of its controlled foreign subsidiary or affiliate are activities in U.S. commerce. The proposed regulations further provided that such activities brought the foreign subsidiary's otherwise wholly foreign transaction into U.S. commerce.

Several of those who commented argued that it is an impermissible extension of the concept of U.S. commerce to bring within its framework otherwise wholly foreign activities simply because they were taken at the direction of a U.S. person. Furthermore, it was pointed out that jurisdiction over the person making the specific direction is sufficient to accomplish the anti-boycott objectives of the statute.

The final regulations agree with this view. The activities of a U.S. parent corporation in specifically directing prohibited boycott compliance by its controlled foreign subsidiary or affiliate are activities in U.S. commerce. In and of themselves they do not bring into U.S. commerce activities which are otherwise wholly outside U.S. commerce. From the point of view of U.S. anti-boycott policy, this distinction is immaterial. From the point of view of conformity with permissible notions of U.S. commerce, this distinction is essential.

FURNISHING PUBLICLY AVAILABLE BOYCOTT-RELATED INFORMATION

The statute prohibits a U.S. person from furnishing or knowingly agreeing to furnish information relating to its own or any other person's past, present or proposed business relationships with a boycotted country or any person who is known or believed to be blacklisted. However, the law permits the furnishing of normal business information in a commercial context.

The proposed regulations provided that no information could be furnished in response to a boycott request even if the information is publicly available—such as through a company's annual report.

A number of persons submitted comments arguing that the regulations permit a subtle form of "international blackmail." They expressed the fear that competitors would prompt boycotting countries to send American companies boycott questionnaires to which a law-abiding company will refuse to respond and, thus, result in the company being blacklisted. They contend, therefore, that this potential harm should be mitigated by permitting companies to respond to boycott requests with information which is publicly available.

The final regulations carry forward the provision in the proposed regulations. No information about business relationships with blacklisted persons or boycotted countries may be furnished—with intent to comply with, further, or support a foreign boycott. It makes no difference whether the information is publicly available. The statute creates no exception for such circumstances. So long as the necessary intent exists, the furnishing of such information is a violation of the law.

"INTENT"

In order for there to be a violation of the law, the statute requires that a person take action with intent to comply with, further or support an unsanctioned foreign boycott.

The proposed regulations provided a definition of intent under which a person would be presumed to have the necessary intent when the boycott was "a motivating factor" in its decision.

Some persons urged that no regulations on intent be issued and that the matter of intent be left entirely to the courts to decide. Others argued that a person must specifically intend to comply with, further, or support a boycott before a violation can be proven. Still others took the position that the use of the term "motivating factor" in defining intent created an unnecessary and difficult standard for the Government in proving the requisite intent.

The final regulations provide that a person has the necessary intent when

compliance with, furthering, or supporting an unsanctioned foreign boycott is at least one of the reasons for his action. So long as that is at least one of the reasons for his action, a violation occurs regardless of whether the action is also taken for non-boycott reasons. Stated differently, the fact that an action is taken for legitimate business reasons does not remove that action from the scope of these regulations if compliance with a boycott is also a reason for the action.

So far as the meaning of intent is concerned, the statute makes it clear that intent is a necessary element of any violation. It is not sufficient that one take action that is specifically prohibited under the statute. It is essential that one take such action with intent to comply with, further, or support a foreign boycott. Intent in that context means the reason or purpose for one's behavior. It does not mean that one has to agree with the boycott in question or desire that it succeed or that it be furthered or supported. But it does mean that the reason why a particular action was taken must be established.

Reason or purpose can be proved by circumstantial evidence. For example, if a person receives a request to supply certain boycott information which the statute proscribes and he knowingly supplies that information in response, he clearly intends to comply with that boycott request. It is irrelevant that he may disagree with or object to the boycott itself. On the other hand, if he refuses to do business with someone who happens to be blacklisted, but the reason is because that person produces an inferior product, the requisite intent does not exist.

This view of intent is consistent with the Congressional intent, as evidenced by the statute and its legislative history, to require that action be punishable only if its reason or purpose was to comply with, further, or support an unsanctioned foreign boycott.

UNILATERAL SELECTION

The statute allows an exception for compliance with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurers, suppliers of services to be performed within the boycotting country or suppliers of specifically identifiable goods to be imported into a boycotting country.

Pre-selection services. Under the proposed regulations, a person's selection of goods or services is "unilateral" even if he has been provided pre-selection services so long as such services are not in any way boycott based.

Pre-selection services might consist of a general contractor supplying his client with a list of qualified architects or competent engineers from which the customer may make his selection.

Under the proposed regulations, so long as such services are provided wholly without reference to boycott considerations (e.g., so long as the contractor does not exclude an architect from his list of qualified architects because he is blacklisted), they do not destroy the unilateral character of the customer's or client's subsequent selection.

Some of those who commented took the position that the provision of any pre-selection services destroys the "unilateral" character of the selection subsequently made by the client, and, thus, no such selection may be compelled with by a person subject to the Act where pre-selection services have been provided.

As in the proposed regulations, the final regulations provide that the provision of so-called "pre-selection" services does not, in and of itself, destroy the unilateral character of another person's selection so long as such services are not boycott-based. However, the final regulations also require that such services be of a type customarily provided in similar transactions by the firm (or industry of which the firm is a part) as measured by the practice in non-boycotting as well as boycotting countries. If such services are not customarily provided in similar transactions or are provided in such a way as to exclude blacklisted persons from participating in a transaction or diminish their opportunity for such participation, then they may not be provided without destroying the unilateral character of any subsequent selection.

These additional constraints are imposed in the final regulations in order to ensure that pre-selection services are not used as a device to facilitate boycott-based decisions by boycotting country buyers. But pre-selection services, in and of themselves, do not destroy the unilateral character of another person's selection so long as that other person in fact is the one that makes the selection and so long as those services are not provided in order to help that other person make a boycott-based selection.

To conclude otherwise would effectively bar U.S. persons, principally those engaged in general contracting, from providing in boycotting countries services which they customarily provide elsewhere, and there is no evidence of Congressional intent to do so. Indeed, such an absolute bar would be counter-productive from the point of view of U.S. anti-boycott policy, since it would drive boycotting country buyers into the hands of foreign suppliers of pre-selection services who might have no compunction about excluding blacklisted suppliers from lists of qualified suppliers or otherwise discriminating against blacklisted persons. By permitting U.S. persons to

supply pre-selection services and by insisting that they be provided wholly without reference to any boycott, the opportunity for blacklisted persons to participate in boycotting-country transactions is likely to be enhanced.

Services to be performed within the boycotting country. The proposed regulations permitted a person to comply with a unilateral selection of a supplier of services so long as some portion of the services were to be performed within the boycotting country.

Several persons urged the Department to permit use of the exception for the selection of services only if the services are to be performed exclusively or almost exclusively within the boycotting country. Others took the position that the exception should be permitted only if most of the services are to be performed within the boycotting country. Many urged that the provision be retained as proposed.

Neither the statute nor its legislative history restrict the availability of this exception to services which are performed totally or primarily within the boycotting country. However, in order to prevent use of this exception as a device for complying with foreign boycotts in circumstances where it was not intended, the final regulations provide that services are "to be performed within the boycotting country" for the purposes of this exception only if they are of a type which would customarily be performed within the boycotting country and the part performed within the country is a necessary and not insignificant part of the total service performed.

What is "customary" and "necessary" for these purposes depends on the practice of the supplier of the service or the industry of which it is a part as measured by the practice in non-boycotting as well as boycotting countries insofar as the practice in boycotting countries is not the result of accommodation to these regulations.

These constraints will permit use of the exception for the selection of suppliers of services which in good faith must be performed within the boycotting country while ensuring that it is not used as a mechanism for unrestrained compliance with foreign boycotts in the selection of suppliers of services.

Specifically identifiable goods. The statute contains two exceptions—for "unilateral selections" and compliance with local law—which, under certain conditions, permit the boycott-based importation of products into a boycotting country. In order for the exceptions to be available, the statute requires that the origin of the products be specifically identifiable at the time of their entry into the boycotting country.

Under the proposed regulations, identifiability is measured by the ability

ty to identify the source of the product either by physical inspection of the goods themselves or their packaging.

Several persons who commented argued that the proposed regulations construe the exceptions too narrowly and that identifiability should also be measurable by what an inspection of the import or shipping documents accompanying the goods would disclose. Others took the position that the proposed regulations construe this exception too broadly and that identifiability must be measured only by what a physical inspection of the items themselves would disclose and not by what an inspection of their packaging would disclose.

The final regulations adopt neither view and are retained as proposed. The legislative history of the statute makes it clear that the test for "identifiability" is whether it is generally possible, in the normal course of business, for the buyer or customs agent or similar official to identify the supplier or manufacturer of a particular product or component by inspection of the product itself. The "product" necessarily includes both the items and their packaging. For example, a product such as ready-to-eat breakfast cereal clearly consists of both the cereal itself as well as the box in which it is contained. On the other hand, to permit identifiability to be measured by what the shipping documents would disclose would vitiate virtually all limitations on the notion of specific identifiability.

Regardless of whether an inspection is in fact made, the test is whether an inspection of the items, including their packaging but excluding their shipping documentation, would disclose the source of the product. If so, it is "specifically identifiable" for purposes of these exceptions; if not, it does not qualify. This view is consistent with legislative purpose and intent.

COMPLIANCE WITH LOCAL LAW

The statute contains an exception to the prohibitions to permit a U.S. person resident in a boycotting country to comply with that country's boycott laws with respect to his activities exclusively within the country and with respect to the importation of products "for his own use, including the performance of contractual services."

"For his own use, including the performance of contractual services." The proposed regulations interpreted the phrase "for his own use, including the performance of contractual services," to include goods imported for turnkey and general retail merchandising operations.

Several of those who commented took the position that the phrase was construed too broadly. They argued

that the exception should be available only with respect to goods intended for a person's own use in the sense of consumption or permanent possession and not where the goods might subsequently be transferred directly or indirectly to another person's possession. Under that view, the exception would not be available for goods imported for resale in a retail operation or for goods, such as cement, nails, steel, etc., which were incorporated into a building being constructed for another.

Under the final regulations, the importation of goods that are to be placed in inventory for subsequent resale without further manufacture or incorporation into another product are excluded from the coverage of this exception. In addition, the final regulations restrict the availability of the exception to situations where goods are imported for further manufacture or incorporation into a project, such as a construction project, whether on a turnkey basis or otherwise. Moreover, under the final regulations, goods imported for such purposes are not for one's own use if they are not customarily incorporated into, or do not customarily become permanently affixed as a functional part of, the project.

These limitations are intended to ensure that this exception is not utilized for import transactions which are akin to import for resale operations. The legislative history of this exception makes it clear that it was not intended to be used for simple resale operations or where the person making the imports acts as a procurement agent for another. By limiting its availability to circumstances where the goods are incorporated as a functional part of another product or project, the final regulations will help ensure that the exception is not used in a manner unintended by the Congress.

Importation of services. The exception which permits a U.S. person who is a bona fide resident of another country to comply with the import laws of that country with respect to the importation of products for his own use, makes no mention of services.

A number of persons who commented contended that the exception should be available for compliance with laws or regulations relating to the import of services as well as goods. A principal party to the negotiations that led to the drafting of the statutory language has characterized the omission of an express reference to services in this exception as "an inadvertent error in draftsmanship."

The final regulations have not been modified to bring services within this exception. However, forceful the arguments the other way, the language of the statute is simply not susceptible of such a construction. In other provisions of the statute (e.g. the excep-

tions for unilateral selection and compliance with import requirements) the Congress made express reference to services. It could have done so under this provision as well but did not.

Scope of the exception. The proposed regulations provide that the exception governing compliance with local import law would be available for all United States persons qualifying as bona fide residents of a foreign country in order to avoid serious adverse economic and political consequences for the United States.

Some of those who commented took the position that the exception should be available not through regulations, but only through individual applications for case-by-case waivers. Others urged that the exception should be available only in limited circumstances, but they did not specify which circumstances.

The final regulations governing the scope of this exception have not been substantively changed. The legislative history of the Act clearly demonstrates Congressional intent that this exception be available through regulations and not through a case-by-case waiver system advocated in some of the comments. Under such a system, the exception would be available for a company only after its waiver application was approved by the Department. The result would be inherent unfairness for those whose applications awaited approval. In addition, it would impose on the Department an administrative burden which it could not possibly meet.

Congress intended this exception not as an avenue for general boycott compliance but rather as a means to permit limited boycott compliance by U.S. persons resident in a boycotting country. Accordingly, the final regulations place careful limits on its scope.

A resident must be a bona fide resident before the exception is available. Nine criteria are set out for determining whether a United States person is a bona fide resident. In addition, the regulations limit the exception's coverage to products that are both "specifically identifiable" and for the importing person's own use with stringent tests of what constitutes "own use."

Use of this exception will be monitored and continually reviewed to determine whether its continued availability is consistent with the national interest. Its availability may be limited or withdrawn as appropriate.

"RISK OF LOSS" CONTRACTUAL PROVISIONS

The statute prohibits boycott-based refusals to do business. Under the proposed regulations, use of a contractual clause requiring a person to assume the risk of loss for non-delivery of his products in a boycotting country would not, in and of itself, constitute a

refusal to do business. The rationale for that position is that a person insisting on such a provision stands ready to do business with anyone. His insistence that the supplier of goods bear any loss arising from the inability of the goods to gain entry into a boycotting country is not a refusal to do business with anyone who will not agree to such a provision.

Some of those commenting took the position that use of the "risk of loss" provision constitutes a refusal to do business, because it would inhibit anyone on a blacklist from bidding to supply a product destined for a boycotting country. At the very least, they argued, its use should constitute evasion. Others who commented agreed with the proposed regulations on this point.

The final regulations recognize that various devices, including risk of loss provisions, may be employed in such a way as to place a person at a commercial disadvantage because he is blacklisted and thereby effect discrimination against him because of his blacklisted status. Accordingly, use of any artifice, device, or scheme which is intended to place a person at a commercial disadvantage or imposes on him special burdens because he is blacklisted or otherwise restricted from having a business relationship with or in a boycotting country will be regarded as evidence of evasion for purposes of these regulations. Among the factors which will be considered in determining whether a particular arrangement is employed for purposes of evasion are customary practice and usage.

Unless permitted under one of the exceptions, use of risk of loss provisions which expressly impose a financial risk on another because of the import laws of a boycotting country may constitute evasion. If they are introduced after the effective date of these regulations, there is a rebuttable presumption that they are used for purposes of evasion. If used by a U.S. person prior to the effective date of these regulations, there is a presumption that his use does not constitute evasion.

The Department recognizes that it is not possible to deal categorically with the variety of contractual or other arrangements that may be employed in transactions with boycotting countries. But unusual arrangements which have the effect of limiting the economic opportunities of blacklisted persons because of their blacklisted status will be carefully scrutinized to determine whether they are employed for purposes of evading these regulations.

EVASION

The anti-evasion section of the statute provides that the law applies to any transaction or activity undertaken

with intent to evade the provisions of the law.

The proposed regulations gave some examples of what constitutes evasion and also expressly stated that repeated use of the exceptions would not constitute or give rise to an inference of evasion.

Some persons commented that repeated use of the exceptions should be evidence of, or should raise a presumption of, an intent to evade the Act. They urged that the regulations spell out the type of activity that will constitute evidence of intent to evade.

Others took the position that the interpretation of evasion should be limited to the use of contrivances or artifices to accomplish what would otherwise be an unlawful act.

Still others argued that the matter of evasion should be left to the courts. However, they suggested that the regulations clarify that restructuring one's business relationships in an effort to comply with the Act should not be considered evasion.

The final regulations on evasion make it clear that the exceptions do not permit activities or agreements (express or implied by a course of conduct, including a pattern of responses) which are otherwise prohibited and which are not within the intent of the exceptions. However, activities within the coverage and intent of the exceptions do not constitute evasion regardless of how often the exceptions are utilized. The rationale for this position is that repeated lawful actions cannot be treated as violations of the law just because they are repeated. The creation of these exceptions would have been a futile gesture by the Congress if their use were itself a violation of the law.

Under the final regulations, use of any artifice, device or scheme which is intended to place a person at a commercial disadvantage or impose on him special burdens because he is blacklisted will be regarded as evasion unless permitted by one of the exceptions. In addition, unless permitted under one of the exceptions, use of risk of loss provisions which expressly impose a financial risk on another because of the import laws of a boycotting country may constitute evasion. If they are introduced after the effective date of these regulations, there will be a rebuttable presumption that they are used for purposes of evasion. If used by a U.S. person prior to the effective date of these regulations, there is a presumption that such use does not constitute evasion. Furthermore, use of dummy corporations or other devices to mask prohibited activity will also be regarded as evasion. Similarly, it is evasion to divert specific boycotting country orders from United States parent companies to their foreign subsidiaries for purposes of complying

with prohibited boycott requirements. However, alteration of a person's structure or method of doing business will not constitute a violation of this section so long as the alteration is based on legitimate business considerations and is not undertaken solely to avoid the application of the prohibitions of this Part.

In all potential cases of evasion, the facts and circumstances of an arrangement or transaction will be carefully scrutinized to see whether appearances conform to reality.

DRAFTING INFORMATION: The principal authors of these rules were Stanley J. Marcuss, Deputy Assistant Secretary for Trade Regulation; Homer E. Moyer, Jr., Deputy General Counsel; Kent N. Knowles, Deputy Assistant General Counsel for Industry and Trade; Vincent J. Rocque, Special Assistant to the Director, Bureau of Trade Regulation; and Pamela P. Breed, Office of General Counsel.

The old sections 369.1, 369.2, and 369.3 of Part 369 of Title 15 of the Code of Federal Regulations are revoked, and new sections 369.1, 369.2, 369.3, 369.4 and 369.5 of this Part 369 are issued as set forth below. The old section 369.4 of this Part is redesignated as section 369.6, to remain in effect until later revised. (Proposed regulations to revise old section 369.4 were published for comment in the *FEDERAL REGISTER* on December 30, 1977 (42 FR 65592).)

Issued in Washington, D.C., on January 18, 1978.

STANLEY J. MARCUSS,
Deputy Assistant Secretary
for Trade Regulation.

§ 369.1 Definitions.

(a) *Definition of "Person".* For purposes of this Part, the term "person" means any individual, or any association or organization, public or private, which is organized, permanently established, resident, or registered to do business, in the United States or any foreign country. This definition of "person" includes both the singular and plural and, in addition, includes:

(1) any partnership, corporation, company, branch, or other form of association or organization, whether organized for profit or non-profit purposes;

(2) any government, or any department, agency, or commission of any government;

(3) any trade association, chamber of commerce, or labor union;

(4) any charitable or fraternal organization; and

(5) any other association or organization not specifically listed above.

(b) *Definition of "United States Person".* (1) Part 369 applies to United States person. For purposes of this Part, the term "United States person"

means any person who is a United States resident or national, including individuals, domestic concerns, and controlled in fact foreign subsidiaries, affiliates, or other permanent foreign establishments of domestic concerns. This definition of "United States person" includes both the singular and plural and, in addition, includes:

(i) the government of the United States or any department, agency, or commission thereof;

(ii) the government of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any subdivision, department, agency, or commission of any such government;

(iii) any partnership, corporation, company, association, or other entity organized under the laws of (i) or (ii) above;

(iv) any foreign concern's subsidiary, partnership, affiliate, branch, office, or other permanent establishment in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; and

(v) any domestic concern's foreign subsidiary, partnership, affiliate, branch, office, or other permanent foreign establishment which is controlled in fact by such domestic concern. (See section 369.1(c) on "Definition of 'Controlled in Fact'.")

(2) The term "domestic concern" means any partnership, corporation, company, association, or other entity of, or organized under the laws of, any jurisdiction named in (i) or (ii) above, or any permanent domestic establishment of a foreign concern.

(3) The term "foreign concern" means any partnership, corporation, company, association, or other entity of, or organized under the laws of, any jurisdiction other than those named in (i) or (ii) above.

(4) The term "United States person" does not include an individual United States national who is resident outside the United States and who is either (a) employed permanently or temporarily by a non-United States person or (b) assigned to work as an employee for, and under the direction and control of, a non-United States person.

EXAMPLES OF "UNITED STATES PERSON"

The following examples are intended to give guidance in determining whether a person is a "United States person". They are illustrative, not comprehensive.

(i) U.S. bank A has a branch office in foreign country P.

Such branch office is a United States person, because it is a permanent foreign establishment of a domestic concern.

(ii) Ten foreign nationals establish a manufacturing plant, A, in the United States, incorporating the plant under New York law.

A is a United States person, because it is a corporation organized under the laws of one of the states of the United States.

(iii) A, a foreign corporation, opens an office in the United States for purposes of soliciting U.S. orders. The office is not separately incorporated.

A's U.S. office is a United States person, because it is a permanent establishment, in the United States, of a foreign concern.

(iv) A, a U.S. individual, owns stock in foreign corporation B.

A is a United States person. However, A is not a "domestic concern", because the term "domestic concern" does not include individuals.

(v) A, a foreign national resident in the United States, is employed by B, a foreign corporation.

A is a United States person, because he is resident in the United States.

(vi) A, a foreign national, who is resident in a foreign country and is employed by a foreign corporation, makes occasional visits to the United States, for purposes of exploring business opportunities.

A is not a United States person, because he is not a United States resident or national.

(vii) A is an association of U.S. firms organized under the laws of Pennsylvania for the purpose of expanding trade.

A is a United States person, because it is an association organized under the laws of one of the states of the United States.

(viii) At the request of country Y, A, an individual employed by U.S. company B, is transferred to company C as an employee. C is a foreign company owned and controlled by country Y. A, a U.S. national who will reside in Y, has agreed to the transfer provided he is able to retain his insurance, pension, and other benefits. Accordingly, company B has agreed to keep A as an employee in order to protect his employee benefits, and company C has agreed to pay for A's salary. At all times while he works for C, A will be under C's direction and control.

A is not a United States person while under C's direction and control, because he will be resident outside the United States and assigned as an employee to a non-United States person. The arrangement designed to protect A's insurance, pension, and other benefits does not destroy his status as an employee of C so long as he is under the direction and control of C.

(ix) A, a U.S. citizen, has resided in Europe for three years, where he is a self-employed consultant for United States and foreign companies in the communications industry.

A is a United States person, because he is a U.S. national and because he is not a resident outside the United States who is employed by other than a United States person.

(c) *Definition of "Controlled in Fact".* (1) Part 369 applies to any domestic concern's foreign subsidiary, partnership, affiliate, branch, office, or other permanent foreign establishment which is "controlled in fact" by such domestic concern. "Control in fact" consists of the authority or ability of a domestic concern to establish the general policies or to control day-to-day operations of its foreign subsidiary, partnership, affiliate, branch, office, or other permanent foreign establishment.

(2) A foreign subsidiary or affiliate of a domestic concern will be presumed to be controlled in fact by that

domestic concern, subject to rebuttal by competent evidence, when:

(i) the domestic concern beneficially owns or controls (whether directly or indirectly) more than 50 percent of the outstanding voting securities of the foreign subsidiary or affiliate;

(ii) the domestic concern beneficially owns or controls (whether directly or indirectly) 25 percent or more of the voting securities of the foreign subsidiary or affiliate, if no other person owns or controls (whether directly or indirectly) an equal or larger percentage;

(iii) the foreign subsidiary or affiliate is operated by the domestic concern pursuant to the provisions of an exclusive management contract;

(iv) a majority of the members of the board of directors of the foreign subsidiary or affiliate are also members of the comparable governing body of the domestic concern;

(v) the domestic concern has authority to appoint the majority of the members of the board of directors of the foreign subsidiary or affiliate; or

(vi) the domestic concern has authority to appoint the chief operating officer of the foreign subsidiary or affiliate.

(3) A brokerage firm or other person which holds simple record ownership of securities for the convenience of clients will not be deemed to control the securities.

(4) A domestic concern which owns, directly or indirectly, securities that are immediately convertible at the option of the holder or owner into voting securities is presumed to own or control those voting securities.

(5) A domestic concern's foreign branch office or other unincorporated permanent foreign establishment is deemed to be controlled in fact by such domestic concern under all circumstances.

EXAMPLES OF "CONTROLLED IN FACT"

The following examples are intended to give guidance in determining the circumstances in which a foreign subsidiary, affiliate, or other permanent foreign establishment of a domestic concern is "controlled in fact". They are illustrative, not comprehensive.

(i) Company A is incorporated in a foreign country. Fifty-one percent of the voting stock of A is owned by U.S. company B.

A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(ii) Company A is incorporated in a foreign country. Ten percent of the voting stock of A is owned by U.S. company B. A has an exclusive management contract with B pursuant to which A is operated by B.

As long as such contract is in effect, A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(iii) Company A is incorporated in a foreign country. Ten percent of the voting

stock of A is owned by U.S. company B. A has 10 persons on its board of directors. Six of those persons are also members of the board of directors of U.S. company B.

A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(iv) Company A is incorporated in a foreign country. Thirty percent of the voting securities of A is owned by U.S. company B and no other person owns or controls an equal or larger share.

A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(v) Company A is incorporated in a foreign country. In A's articles of incorporation, U.S. company B has been given authority to appoint A's board of directors.

A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(vi) Company A is a joint venture established in a foreign country, with equal participation by U.S. company B and foreign company C. U.S. company B has authority to appoint A's chief operating officer.

A is presumed to be controlled in fact by B. This presumption may be rebutted by competent evidence showing that control does not, in fact, lie with B.

(vii) Same as (vi), except that B has no authority to appoint A's chief operating officer.

B is not presumed to control A, absent other facts giving rise to a presumption of control.

(viii) Company A is incorporated in a foreign country. U.S. companies B, C, and D each own 20 percent of A's voting securities and regularly cast their votes in concert.

A is presumed to be controlled in fact by B, C, and D, because these companies are acting in concert to control A.

(ix) U.S. bank B located in the United States has a branch office, A, in a foreign country. A is not separately incorporated.

A is deemed to be controlled in fact by B, because A is a branch office of a domestic concern.

(x) Company A is incorporated in a foreign country. Fifty-one percent of the voting stock of A is owned by company B, which is incorporated in another foreign country. Fifty-one percent of the voting stock of B is owned by C, a U.S. company.

Both A and B are presumed to be controlled in fact by C. The presumption of C's control over B may be rebutted by competent evidence showing that control over B does not, in fact, lie with C. The presumption of B's control over A (and thus C's control over A) may be rebutted by competent evidence showing that control over A does not, in fact, lie with B.

(xi) B, a U.S. individual, owns 51 percent of the voting securities of A, a manufacturing company incorporated and located in a foreign country.

A is not "controlled in fact" under this Part, because it is not controlled by a "domestic concern."

(d) *Definition of "Activities in the Interstate or Foreign Commerce of the United States".*

ACTIVITIES INVOLVING UNITED STATES PERSONS LOCATED IN THE UNITED STATES

(1) For purposes of this Part, the activities of a United States person located in the United States are in the interstate or foreign commerce of the United States if they involve the sale, purchase, or transfer of goods or services (including information) between:

(i) two or more of the several States (including the District of Columbia);

(ii) any State (including the District of Columbia) and any territory or possession of the United States;

(iii) two or more of the territories or possessions of the United States; or

(iv) a State (including the District of Columbia), territory or possession of the United States and any foreign country.

(2) For purposes of this Part, the export of goods or services from the United States and the import of goods or services into the United States are activities in United States commerce. In addition, the action of a domestic concern in specifically directing the activities of its controlled in fact foreign subsidiary, affiliate, or other permanent foreign establishment is an activity in United States commerce.

(3) Activities of a United States person located in the United States may be in United States commerce even if they are part of or ancillary to activities outside United States commerce. However, the fact that an ancillary activity is in United States commerce does not, in and of itself, mean that the underlying or related activity is in United States commerce.

(4) Hence, the action of a United States bank located in the United States in providing financing from the United States for a foreign transaction that is not in United States commerce is nonetheless itself in United States commerce. However, the fact that the financing is in United States commerce does not, in and of itself, make the underlying foreign transaction an activity in United States commerce, even if the underlying transaction involves a foreign company that is a "United States person" within the meaning of this Part.

(5) Similarly, the action of a United States person located in the United States in providing financial, accounting, legal, transportation, or other ancillary services to its controlled in fact foreign subsidiary, affiliate, or other permanent foreign establishment in connection with a foreign transaction is in United States commerce. But the provision of such ancillary services will not, in and of itself, bring the foreign transaction of such subsidiary, affiliate, or permanent foreign establishment into United States commerce.

ACTIVITIES OF CONTROLLED IN FACT FOREIGN SUBSIDIARIES, AFFILIATES, AND OTHER PERMANENT FOREIGN ESTABLISHMENTS

(6) Any transaction between a controlled in fact foreign subsidiary, affiliate, or other permanent foreign establishment of a domestic concern and a person located in the United States is an activity in United States commerce.

(7) Whether a transaction between such a foreign subsidiary, affiliate, or other permanent foreign establishment and a person located outside the United States is an activity in United States commerce is governed by the following rules.

ACTIVITIES IN UNITED STATES COMMERCE

(8) A transaction between a domestic concern's controlled in fact foreign subsidiary, affiliate, or other permanent foreign establishment and a person outside the United States, involving goods or services (including information but not including ancillary services) acquired from a person in the United States is in United States commerce under any of the following circumstances:

(i) if the goods or services were acquired for the purpose of filling an order from a person outside the United States;

(ii) if the goods or services were acquired for incorporation into, refining into, reprocessing into, or manufacture of another product for the purpose of filling an order from a person outside the United States;

(iii) if the goods or services were acquired for the purpose of fulfilling or engaging in any other transaction with a person outside the United States; or

(iv) if the goods were acquired and are ultimately used, without substantial alteration or modification, in filling an order from, or fulfilling or engaging in any other transaction with, a person outside the United States (whether or not the goods were originally acquired for that purpose). If the goods are indistinguishable as to origin from similar foreign-origin goods with which they have been mingled in a stockpile or inventory, the subsequent transaction involving the goods is presumed to be in United States commerce unless, at the time of filling the order, the foreign-origin inventory on hand was sufficient to fill the order.

(9) For purposes of this section, goods or services are considered to be acquired for the purpose of filling an order from or engaging in any other transaction with a person outside the United States where:

(i) they are purchased by the foreign subsidiary, affiliate, or other permanent foreign establishment upon the

receipt of an order from or on behalf of a customer with the intention that the goods or services are to go to the customer;

(ii) they are purchased by the foreign subsidiary, affiliate, or other permanent foreign establishment to meet the needs of specified customers pursuant to understandings with those customers, although not for immediate delivery; or

(iii) They are purchased by the foreign subsidiary, affiliate, or other permanent foreign establishment based on the anticipated needs of specified customers.

(10) If any non-ancillary part of a transaction between a domestic concern's controlled foreign subsidiary, affiliate, or other permanent foreign establishment and a person outside the United States is in United States commerce, the entire transaction is in United States commerce. For example, if such a foreign subsidiary is engaged in filling an order from a non-United States customer both with goods acquired from the United States and with goods acquired elsewhere, the entire transaction with that customer is in United States commerce.

ACTIVITIES OUTSIDE UNITED STATES COMMERCE

(11) A transaction between a domestic concern's controlled foreign subsidiary, affiliate, or other permanent foreign establishment and a person outside the United States, not involving the purchase, sale, or transfer of goods or services (including information) to or from a person in the United States, is not an activity in United States commerce.

(12) The activities of a domestic concern's controlled foreign subsidiary, affiliate, or other permanent foreign establishment with respect to goods acquired from a person in the United States are not in United States commerce where:

(i) they were acquired without reference to a specific order from or transaction with a person outside the United States; and

(ii) they were further manufactured, incorporated, into, refined into, or reprocessed into another product.

(13) The activities of a domestic concern's controlled foreign subsidiary, affiliate, or other permanent foreign establishment with respect to services acquired from a person in the United States are not in United States commerce where:

(i) they were acquired without reference to a specific order from or transaction with a person outside the United States; or

(ii) they are ancillary to the transaction with the person outside the United States.

(14) For purposes of this section, services are "ancillary services" if they

are provided to a controlled foreign subsidiary, affiliate, or other permanent foreign establishment primarily for its own use rather than for the use of a third person. These typically include financial, accounting, legal, transportation, and other services, whether provided by a domestic concern or an unrelated entity.

(15) Thus, the provision of project financing by a United States bank located in the United States to a controlled foreign subsidiary unrelated to the bank is an ancillary service which will not cause the underlying transaction to be in United States commerce. By contrast, where a domestic concern, on behalf of its controlled foreign subsidiary, gives a guaranty of performance to a foreign country customer, that is a service provided to the customer and, as such, brings that subsidiary's transaction with the customer into United States commerce. Similarly, architectural or engineering services provided by a domestic concern in connection with its controlled foreign subsidiary's construction project in a third country are services passed through to that subsidiary's customer and, as such, bring that subsidiary's foreign transaction into United States commerce.

GENERAL

(16) Regardless of whether the subsequent disposition of goods or services from the United States is in United States commerce, the original acquisition of goods or services from a person in the United States is an activity in United States commerce subject to this Part. Thus, if a domestic concern's controlled foreign subsidiary engages in a prohibited refusal to do business in stocking its inventory with goods from the United States, that action is subject to this Part whether or not subsequent sales from that inventory are.

(17) In all the above, goods and services will be considered to have been acquired from a person in the United States whether they were acquired directly or indirectly through a third party, where the person acquiring the goods or services knows or expects, at the time he places the order, that they will be delivered from the United States.

LETTERS OF CREDIT

(18) Implementation of a letter of credit in the United States by a United States person located in the United States, including a permanent United States establishment of a foreign concern, is an activity in United States commerce.

(19) Implementation of a letter of credit outside the United States by a United States person located outside the United States is in United States commerce where the letter of credit

(a) specifies a United States address for the beneficiary, (b) calls for documents indicating shipment from the United States, or (c) calls for documents indicating that the goods are of United States origin.

(20) See Section 369.2(f) on "Letters of Credit" to determine the circumstances in which paying, honoring, confirming, or otherwise implementing a letter of credit is covered by this Part.

EXAMPLES OF ACTIVITIES IN THE INTERSTATE OR FOREIGN COMMERCE OF THE UNITED STATES

The following examples are intended to give guidance in determining the circumstances in which an activity is in the interstate or foreign commerce of the United States. They are illustrative, not comprehensive.

UNITED STATES PERSON LOCATED IN THE UNITED STATES

(i) U.S. company A exports goods from the United States to a foreign country.

A's activity is in U.S. commerce, because A is exporting goods from the United States.

(ii) U.S. company A imports goods into the United States from a foreign country.

A's activity is in U.S. commerce, because A is importing goods into the United States.

(iii) U.S. engineering company A supplies consulting services to its controlled foreign subsidiary, B.

A's activity is in U.S. commerce, because A is exporting services from the United States.

(iv) U.S. company A supplies consulting services to foreign company B. B is unrelated to A or any other U.S. person.

A's activity is in U.S. commerce even though B, a foreign-owned company located outside the United States, is not subject to this Part, because A is exporting services from the United States.

(v) Same as (iv), except A is a bank located in the United States and provides a construction loan to B.

A's activity is in U.S. commerce even though B is not subject to this Part, because A is exporting financial services from the United States.

(vi) U.S. company A issues policy directives from time to time to its controlled foreign subsidiary, B, governing the conduct of B's activities with boycotting countries.

A's activity in directing the activities of its foreign subsidiary, B, is an activity in U.S. commerce.

FOREIGN SUBSIDIARIES, AFFILIATES, AND OTHER PERMANENT FOREIGN ESTABLISHMENTS OF DOMESTIC CONCERNS

(i) A, a controlled foreign subsidiary of U.S. company B, purchases goods from the United States.

A's purchase of goods from the United States is in U.S. commerce, because A is importing goods from the United States. Whether A's subsequent disposition of these goods is in U.S. commerce is irrelevant. Similarly, the fact that A purchased goods from the United States does not, in and of itself, make any subsequent disposition of those goods an activity in U.S. commerce.

(ii) A, a controlled foreign subsidiary of U.S. company B, receives an order from boycotting country Y for construction materials. A places an order with U.S. company B for the materials.

A's transaction with Y is an activity in U.S. commerce, because the materials are purchased from the United States for the purpose of filling the order from Y.

(iii) A, a controlled foreign subsidiary of U.S. company B, receives an order from boycotting country Y for construction materials. A places an order with U.S. company B for some of the materials, and with U.S. company C, an unrelated company, for the rest of the materials.

A's transaction with Y is an activity in U.S. commerce, because the materials are purchased from the United States for the purpose of filling the order from Y. It makes no difference whether the materials are ordered from B or C.

(iv) A, a controlled foreign subsidiary of U.S. company B, is in the wholesale and retail appliance sales business. A purchases finished air conditioning units from the United States from time to time in order to stock its inventory. A's inventory is also stocked with air conditioning units purchased outside the United States. A receives an order for air conditioning units from Y, a boycotting country. The order is filled with U.S.-origin units in A's inventory.

A's transaction with Y is in U.S. commerce, because its U.S.-origin goods are resold without substantial alteration.

(v) Same as (iv), except that A is in the chemicals distribution business. Its U.S.-origin goods are mingled in inventory with foreign-origin goods.

A's sale to Y of unaltered goods from its general inventory is presumed to be in U.S. commerce unless A can show that at the time of the sale the foreign-origin inventory on hand was sufficient to cover the shipment to Y.

(vi) A, a foreign subsidiary of U.S. company B, receives an order from boycotting country Y for computers. A places an order with U.S. company B for some of the components; with U.S. company C, an unrelated company, for other components; and with foreign company D for the rest of the components. A then assembles the computers and ships them to Y.

A's transaction with Y is an activity in U.S. commerce, because some of the components are acquired from the United States for purposes of filling an order from Y.

(vii) Same as (vi), except A purchases all the components from non-U.S. sources.

A's transaction with Y is not an activity in U.S. commerce, because it involves no export of goods from the United States. It makes no difference whether the technology A uses to manufacture computers was originally acquired from its U.S. parent.

(viii) A, a controlled foreign subsidiary of U.S. company B, manufactures computers. A stocks its general components and parts inventory with purchases made at times from the United States and at times from foreign sources. A receives an order from Y, a boycotting country, for computers. A fills that order by manufacturing the computers using materials from its general inventory.

A's transaction with Y is not in U.S. commerce, because the U.S.-origin components are not acquired for the purpose of meeting the anticipated needs of specified customers in Y. It is irrelevant that A's operations may be based on U.S.-origin technology.

(ix) Same as (viii), except that in anticipation of the order from Y, A orders and receives the necessary materials from the United States.

A's transaction with Y is in U.S. commerce, because the U.S.-origin goods were

acquired for the purpose of filling an anticipated order from Y.

(x) A, a controlled foreign subsidiary of U.S. company B, manufactures typewriters. It buys typewriter components both from the United States and from foreign sources. A sells its output in various places throughout the world, including boycotting country Y. Its sales to Y vary from year to year, but have averaged approximately 20 percent of sales for the past five years. A expects that its sales to Y will remain at approximately that level in the years ahead although it has no contracts or orders from Y on hand.

A's sales of typewriters to Y are not in U.S. commerce, because the U.S. components are not acquired for the purpose of filling an order from Y. A general expectancy of future sales is not an "order" within the meaning of this section.

(xi) U.S. company A's corporate counsel provides legal advice to B, its controlled foreign subsidiary, on the applicability of this Part to B's transactions.

While provision of this legal advice is itself an activity in U.S. commerce, it does not, in and of itself, bring B's activities into U.S. commerce.

(xii) A, a controlled foreign subsidiary of U.S. company B, is in the general construction business. A enters into a contract with boycotting country Y to construct a power plant in Y. In preparing engineering drawings and specifications, A uses the advice and assistance of B.

A's transaction with Y is in U.S. commerce, because B's services are used for purposes of fulfilling the contract with Y. B's services are not ancillary services, because the engineering services in connection with construction of the power plant are part of the services ultimately provided to Y by A.

(xiii) Same as (xii), except that A gets no engineering advice or assistance from B. However, B's corporate counsel provides legal advice to A regarding the structure of the transaction. In addition, B's corporate counsel draws up the contract documents.

A's transaction with Y is not in U.S. commerce. The legal services provided to A are ancillary services, because they are not part of the services provided to Y by A in fulfillment of its contract with Y.

(xiv) A, a controlled foreign subsidiary of U.S. company B, enters into a contract to construct an apartment complex in boycotting country Y. A will fulfill its contract completely with goods and services from outside the United States. Pursuant to a provision in the contract, B guarantees A's performance of the contract.

A's transaction with Y is in U.S. commerce, because B's guaranty of A's performance involves the acquisition of services from the United States for purposes of fulfilling the transaction with Y, and those services are part of the services ultimately provided to Y.

(xv) Same as (xiv), except that the guaranty of A's performance is supplied by C, a non-U.S. person located outside the United States. However, unrelated to any particular transaction, B from time to time provides general financial, legal, and technical services to A.

A's transaction with Y is not in U.S. commerce, because the services acquired from the United States are not acquired for purposes of fulfilling the contract with Y.

(xvi) A, a foreign subsidiary of U.S. company B, has a contract with boycotting country Y to conduct oil drilling operations in that country. In conducting these oper-

ations, A from time to time seeks certain technical advice from B regarding the operation of the drilling rigs.

A's contract with Y is in U.S. commerce, because B's services are sought for purposes of fulfilling the contract with Y and are part of the services ultimately provided to Y.

(xvii) A, a controlled foreign subsidiary of U.S. company B, enters into a contract to sell typewriters to boycotting country Y. A is located in non-boycotting country P. None of the components are acquired from the United States. A engages C, a U.S. shipping company, to transport the typewriters from P to Y.

A's sales to Y are not in U.S. commerce, because in carrying A's goods, C is providing an ancillary service to A and not a service to Y.

(xviii) Same as (xvii), except that A's contract with Y calls for title to pass to Y in P. In addition, the contract calls for A to engage a carrier to make delivery to Y.

A's sales to Y are in U.S. commerce, because in carrying Y's goods, C is providing a service to A which is ultimately provided to Y.

(xix) A, a controlled foreign subsidiary of U.S. company B, has general product liability insurance with U.S. company C. Foreign-origin goods sold from time to time by A to boycotting country Y are covered by the insurance policy.

A's sales to Y are not in U.S. commerce, because the insurance provided by C is an ancillary service provided to A which is not ultimately provided to Y.

(xx) A, a controlled foreign subsidiary of U.S. company B, manufactures automobiles abroad under a license agreement with B. From time to time, A sells such goods to boycotting country Y.

A's sales to Y are not in U.S. commerce, because the rights conveyed by the license are not acquired for the specific purpose of engaging in transactions with Y.

(e) "Intent". (1) Part 369 prohibits a United States person from taking or knowingly agreeing to take certain specified actions with intent to comply with, further, or support an unsanctioned foreign boycott.

(2) A United States person has the intent to comply with, further, or support an unsanctioned foreign boycott when such a boycott is at least one of the reasons for that person's decision whether to take a particular prohibited action. So long as that is at least one of the reasons for his action, a violation occurs regardless of whether the prohibited action is also taken for non-boycott reasons. Stated differently, the fact that such action was taken for legitimate business reasons does not remove that action from the scope of this Part if compliance with an unsanctioned foreign boycott was also a reason for the action.

(3) Intent is a necessary element of any violation of this Part. It is not sufficient that one take action that is specifically prohibited by this Part. It is essential that one take such action with intent to comply with, further, or support an unsanctioned foreign boycott. Accordingly, a person who inadvertently, without boycott intent, takes a prohibited action, does not commit any violation of this Part.

(4) Intent in this context means the reason or purpose for one's behavior. It does not mean that one has to agree with the boycott in question or desire that it succeed or that it be furthered or supported. But it does mean that the reason why a particular

prohibited action was taken must be established.

(5) Reason or purpose can be proved by circumstantial evidence. For example, if a person receives a request to supply certain boycott information, the furnishing of which is prohibited by this Part, and he knowingly supplies that information in response, he clearly intends to comply with that boycott request. It is irrelevant that he may disagree with or object to the boycott itself. Information will be deemed to be furnished with the requisite intent if the person furnishing the information knows that it was sought for boycott purposes. On the other hand, if a person refuses to do business with someone who happens to be blacklisted, but the reason is because that person produces an inferior product, the requisite intent does not exist.

(6) Actions will be deemed to be taken with intent to comply with an unsanctioned foreign boycott if the person taking such action knew that such action was required or requested for boycott reasons. On the other hand, the mere absence of a business relationship with a blacklisted person or with or in a boycotted country does not indicate the existence of the requisite intent.

(7) In seeking to determine whether the requisite intent exists, all available evidence will be examined.

EXAMPLES OF "INTENT"

The following examples are intended to illustrate the factors which will be considered in determining whether the required intent exists. They are illustrative, not comprehensive.

(i) U.S. person A does business in boycotting country Y. In selecting firms to supply goods for shipment to Y, A chooses supplier B because B's products are less expensive and of higher quality than the comparable products of supplier C. A knows that C is blacklisted, but that is not a reason for A's selection of B.

A's choice of B rather than C is not action with intent to comply with Y's boycott, because C's blacklist status is not a reason for A's action.

(ii) Same as (i), except that A chooses B rather than C in part because C is blacklisted by Y.

Since C's blacklist status is a reason for A's choice, A's action is taken with intent to comply with Y's boycott.

(iii) U.S. person A bids on a tender issued by boycotting country Y. A inadvertently fails to notice a prohibited certification which appears in the tender document. A's bid is accepted.

A's action in bidding was not taken with intent to comply with Y's boycott, because the boycott was not a reason for A's action.

(iv) U.S. bank A engages in letter of credit transactions, in favor of U.S. beneficiaries, involving the shipment of U.S. goods to boycotting country Y. As A knows, such letters of credit routinely contain conditions requiring prohibited certifications. A fails to take reasonable steps to prevent the implementation of such letters of credit. A receives for implementation a letter of credit which in fact contains a prohibited condition but does not examine the letter of credit to determine whether it contains such a condition.

Although Y's boycott may not be a specific reason for A's action in implementing the letter of credit with a prohibited condition, all available evidence shows that A's action was taken with intent to comply with the boycott, because A knows or should know that its procedures result in compliance with the boycott.

(v) U.S. bank A engages in letter of credit transactions, in favor of U.S. beneficiaries, involving the shipment of U.S. goods to boycotting country Y. As A knows, the documentation accompanying such letters of credit sometimes contains prohibited certifications. In accordance with standard banking practices applicable to A, it does not examine such accompanying documentation. A receives a letter of credit in favor of a U.S. beneficiary. The letter of credit itself contains no prohibited conditions. However, the accompanying documentation, which A does not examine, does contain such a condition.

All available evidence shows that A's action in implementing the letter of credit was not taken with intent to comply with the boycott, because A has no affirmative obligation to go beyond applicable standard banking practices in implementing letters of credit.

(vi) A, a U.S. company, is considering opening a manufacturing facility in boycotted country X. A already has such a facility in boycotting country Y. After exploring the possibilities in X, A concludes that the market does not justify the move. A is aware that if it did open a plant in X, Y might object because of Y's boycott of X. However Y's possible objection is not a reason for A's decision not to open a plant in X.

A's decision not to proceed with the plant in X is not action with intent to comply with Y's boycott, because Y's boycott of X is not a reason for A's decision.

(vii) Same as (vi), except that after exploring the business possibilities in X, A concludes that the market does justify the

move to X. However, A does not open the plant because of Y's possible objections due to Y's boycott of X.

A's decision not to proceed with the plant in X is action taken with intent to comply with Y's boycott, because Y's boycott is a reason for A's decision.

(viii) A, a U.S. chemical manufacturer, receives a "boycott questionnaire" from boycotting country Y asking, among other things, whether A has any plants located in boycotted country X. A, which has never supported Y's boycott of X, responds to Y's questionnaire, indicating affirmatively that it does have plants in X and that it intends to continue to have plants in X.

A's responding to Y's questionnaire is deemed to be action with intent to comply with Y's boycott, because A knows that the questionnaire is boycott-related. It is irrelevant that A does not also wish to support Y's boycott.

(ix) U.S. company A is on boycotting country Y's blacklist. In an attempt to secure its removal from the blacklist, A wishes to supply to Y information which demonstrates that A does at least as much business in Y and other countries engaged in a boycott of X as it does in X. A intends to continue its business in X undiminished and in fact is exploring and intends to continue exploring an expansion of its activities in X without regard to Y's boycott.

A may furnish the information, because in doing so it has no intent to comply with, further, or support Y's boycott.

(x) U.S. company A has a manufacturing facility in boycotted country X. A receives an invitation to bid on a construction project in boycotting country Y. The invitation states that all bidders must complete a boycott questionnaire and send it in with the bid. The questionnaire asks for information about A's business relationships with X. Regardless of whether A's bid is successful, A intends to continue its business in X undiminished and in fact is exploring and intends to continue exploring an expansion of its activities in X without regard to Y's boycott.

A may not answer the questionnaire, because, despite A's intentions with regard to its business operations in X, Y's request for completion of the questionnaire is for boycott purposes and by responding, A's action would be taken with intent to comply with Y's boycott.

(NOTE.—Example (ix) is distinguishable from (x), because in (ix) A is not responding to any boycott request or requirement. Instead, on its own initiative, it is supplying information to demonstrate non-discriminatory conduct as between X and Y without any intent to comply with, further, or support Y's boycott.)

§ 369.2 Prohibitions.

(a) Refusals to do business.

PROHIBITION AGAINST REFUSALS TO DO BUSINESS

(1) No United States person may:	to do business	when such refusal is pursuant to
refuse, knowingly agree to refuse, require any other person to refuse, or knowingly agree to require any other person to refuse,	with or in a boycotted country, with any business concern organized under the laws of a boycotted country, with any national or resident of a boycotted country, or with any other person,	an agreement with the boycotting country, a requirement of the boycotting country, or a request from or on behalf of the boycotting country.

(2) Generally, a refusal to do business under this section consists of action that excludes a person or country from a transaction for boycott reasons. This includes a situation in which a United States person chooses or selects one person over another on a boycott basis or takes action to carry out another person's boycott-based selection when he knows or has reason to know that the other person's selection is boycott-based.

(3) Refusals to do business which are prohibited by this section include not only specific refusals, but also refusals implied by a course or pattern of conduct. There need not be a specific offer and refusal to constitute a refusal to do business; a refusal may occur when a United States person has a financial or commercial opportunity and declines for boycott reasons to consider or accept it.

(4) A United States person's use of either a boycott-based list of persons with whom he will not deal (a so-called "blacklist") or a boycott-based list of persons with whom he will deal (a so-called "whitelist") constitutes a refusal to do business.

(5) An agreement by a United States person to comply generally with the laws of the boycotting country with which it is doing business or an agreement that local laws of the boycotting country shall apply or govern is not, in and of itself, a refusal to do business. Nor, in and of itself, is use of a contractual clause explicitly requiring a person to assume the risk of loss of non-delivery of his products a refusal to do business with any person who will not or cannot comply with such a clause. (But see section 369.4 on "Evasion".)

(6) If, for boycott reasons, a United States general manager chooses one supplier over another, or enters into a contract with one supplier over another, or advises its client to do so, then the general manager's actions constitute a refusal to do business under this section. However, it is not a refusal to do business under this section for a United States person to provide management, procurement, or other pre-award services for another person so long as (i) the provision of such pre-award services is customary for that firm (or industry of which the firm is a part), without regard to the boycotting or non-boycotting character of the countries in which they are performed, and (ii) the United States person, in providing such services, does not act to exclude a person or country from the transaction for boycott reasons, or otherwise take actions that are boycott-based. For example, a United States person under contract to provide general management services in connection with a construction

project in a boycotting country may compile lists of qualified bidders for the client if that service is a customary one and if persons who are qualified are not excluded from that list because they are blacklisted.

(7) With respect to post-award services, if a client makes a boycott-based selection, actions taken by the United States general manager or contractor to carry out the client's choice are themselves refusals to do business if the United States contractor knows or has reason to know that the client's choice was boycott-based. (It is irrelevant whether the United States contractor also provided pre-award services.) Such actions include entering into a contract with the selected supplier, notifying the supplier of the client's choice, executing a contract on behalf of the client, arranging for inspection and shipment of the supplier's goods, or taking any other action to effect the client's choice. (But see section 369.3(c) on "Compliance with Unilateral Selection" as it may apply to post-award services.)

(8) An agreement is not a prerequisite to a violation of this section since the prohibition extends to actions taken pursuant not only to agreements but also to requirements of, and requests from or on behalf of, a boycotting country.

(9) Agreements under this section may be either express or implied by a course or pattern of conduct. There need not be a direct request from a boycotting country for action by a United States person to have been taken pursuant to an agreement with or requirement of a boycotting country.

(10) This prohibition, like all others, applies only with respect to a United States person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott. The mere absence of a business relationship with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with national(s) or resident(s) of the boycotted country, or with any other person does not indicate the existence of the required intent.

EXAMPLES OF REFUSALS AND AGREEMENTS TO REFUSE TO DO BUSINESS

The following examples are intended to give guidance in determining the circumstances in which, in a boycott situation, a refusal to do business or an agreement to refuse to do business is prohibited. They are illustrative, not comprehensive.

REFUSALS TO DO BUSINESS

(i) A, a U.S. manufacturer, receives an order for its products from boycotting coun-

try Y. To fill that order, A solicits bids from U.S. companies B and C, manufacturers of components used in A's products. A does not, however, solicit bids from U.S. companies D or E, which also manufacture such components, because it knows that D and E are restricted from doing business in Y and that their products are, therefore, not importable into that country.

Company A may not refuse to solicit bids from D and E for boycott reasons, because to do so would constitute a refusal to do business with those persons.

(ii) A, a U.S. exporter, uses company B, a U.S. insurer, to insure the shipment of its goods to all its overseas customers. For the first time, A receives an order for its products from boycotting country Y. Knowing that B is on the blacklist of Y, A arranges with company C, a non-blacklisted U.S. insurer, to insure the shipment of its goods to Y.

A's action constitutes a refusal to do business with B.

(iii) A, a U.S. exporter, purchases all its liability insurance from company B, a U.S. company that does business in boycotted country X. A wishes to expand its operations into country Y, the boycotting country. Before doing so, A decides to switch from insurer B to insurer C in anticipation of a request from Y that A sever its relations with B as a condition of doing business in Y.

A may not switch insurers for this reason, because doing so would constitute a refusal to do business with B.

(iv) U.S. company A exports goods to boycotting country Y. In selecting vessels to transport the goods to Y, A chooses only from among carriers which call at ports in Y.

A's action is not a refusal to do business with carriers which do not call at ports in Y.

(v) A, a U.S. bank with a branch office in boycotting country Y, sends representatives to boycotted country X to discuss plans for opening a branch office in X. Upon learning of these discussions, an official of the local boycott office in Y advises A's local branch manager that if A opens an office in X it will no longer be allowed to do business in Y. As a result of this notification, A decides to abandon its plans to open a branch in X.

Bank A may not abandon its plans to open a branch in X as a result of Y's notification, because doing so would constitute a refusal to do business in boycotted country X.

(vi) A, a U.S. company that manufactures office equipment, has been restricted from doing business in boycotting country Y because of its business dealings with boycotted country X. In an effort to have itself removed from Y's blacklist, A ceases its business in X.

A's action constitutes a refusal to do business in boycotted country X.

(vii) A, a U.S. computer company, does business in boycotting country Y. A decides to explore business opportunities in boycotted country X. After careful analysis of possible business opportunities in X, A decides, solely for business reasons, not to market its products in X.

A's decision not to proceed is not a refusal to do business, because it is not based on boycott considerations. A has no affirmative obligation to do business in X.

(viii) A, a U.S. oil company with operations in boycotting country Y, has regular-

ly purchased equipment from U.S. petroleum equipment suppliers B, C, and D, none of whom is on the blacklist of Y. Because of its satisfactory relationship with B, C, and D, A has not dealt with other suppliers, including supplier E, who is blacklisted by Y.

A's failure affirmatively to seek or secure business with blacklisted supplier E is not a refusal to do business with E.

(ix) Same as (viii), except U.S. petroleum equipment supplier E, a company on boycotting country Y's blacklist, offers to supply U.S. oil company A with goods comparable to those provided by U.S. suppliers B, C, and D, because it has satisfactory, established relationships with suppliers B, C, and D, does not accept supplier E's offer.

A's refusal of supplier E's offer is not a refusal to do business, because it is based solely on non-boycott considerations. A has no affirmative obligation to do business with E.

(x) A, a U.S. construction company, enters into a contract to build an office complex in boycotting country Y. A receives bids from B and C, U.S. companies that are equally qualified suppliers of electrical cable for the project. A knows that B is blacklisted by Y and that C is not. A accepts C's bid, in part because C is as qualified as the other potential supplier and in part because C is not blacklisted.

A's decision to select supplier C instead of blacklisted supplier B is a refusal to do business, because the boycott was one of the reasons for A's decision.

(xi) A, a U.S. general contractor, has been retained to construct a highway in boycotting country Y. A circulates an invitation to bid to U.S. manufacturers of road-building equipment. One of the conditions listed in the invitation to bid is that, in order for A to obtain prompt service, suppliers will be required to maintain a supply of spare parts and a service facility in Y. A includes this condition solely for commercial reasons unrelated to the boycott. Because of this condition, however, those suppliers on Y's blacklist do not bid since they would be unable to satisfy the parts and services requirements.

A's action is not a refusal to do business, because the contractual condition was included solely for legitimate business reasons and was not boycott-based.

(xii) Company A, a U.S. oil company, purchases drill bits from U.S. suppliers for export to boycotting country Y. In its purchase orders, A includes a provision requiring the supplier to make delivery to A's facilities in Y and providing that title to the goods does not pass until delivery has been made. As is customary under such an arrangement, the supplier bears all risks of loss, including loss from fire, theft, perils of the sea, and inability to clear customs, until title passes.

Insistence on such an arrangement does not constitute a refusal to do business, because this requirement is imposed on all suppliers whether they are blacklisted or not. (But see section 369.4 on "Evasion".)

(xiii) A, a U.S. engineering and construction company, contracts with a government agency in boycotting country Y to perform a variety of services in connection with the construction of a large industrial facility in Y. Pursuant to this contract, A analyzes the market of prospective suppliers, compiles a suggested bidders list, analyzes the bids received, and makes recommendations to the client. The client independently selects and awards the contract to supplier C for boy-

cott reasons. All of A's services are performed without regard to Y's blacklist or any other boycott considerations, and are the type of services A provides clients in both boycotting and non-boycotting countries.

A's actions do not constitute a refusal to do business, because, in the provision of pre-award services, A has not excluded the other bidders and because A customarily provides such services to its clients.

(xiv) Same as (xiii), except that in compiling a list of prospective suppliers, A deletes suppliers he knows his client will refuse to select because they are blacklisted. A knows that including the names of blacklisted suppliers will neither enhance their chances of being selected nor provide his client with a useful service, the function for which he has been retained.

A's actions, which amount to furnishing a so-called "whitelist," constitute refusals to do business, because A's pre-award services have not been furnished without regard to boycott considerations.

(xv) A, a U.S. construction firm, provides its boycotting country client with a permissible list of prospective suppliers, B, C, D, and E. The client independently selects and awards the contract to C, for boycott reasons, and then requests A to advise C of his selection, negotiate the contract with C, arrange for the shipment, and inspect the goods upon arrival. A knows that C was chosen by the client for boycott reasons.

A's action in complying with his client's direction is a refusal to do business, because A's post-award actions carry out his client's boycott-based decision. (Note: Whether A's action comes within the unilateral selection exception depends upon factors discussed in section 369.3(c).)

(xvi) Same as (xv), except that A is building the project on a turnkey basis and will retain title until completion. The client instructs A to contract only with C.

A's action in contracting with C constitutes a refusal to do business, because it is action that excludes blacklisted persons from the transaction for boycott reasons. (Note: Whether A's action comes within the unilateral selection exception depends upon factors discussed in section 369.3(c).)

(xvii) A, a U.S. exporter of machine tools, receives an order for drill presses from boycotting country Y. The cover letter from Y's procurement official states that A was selected over other U.S. manufacturers in part because A is not on Y's blacklist.

A's action in filling this order is not a refusal to do business, because A has not excluded anyone from the transaction.

(xviii) A, a U.S. engineering firm under contract to construct a dam in boycotting country Y, compiles, on a non-boycott basis, a list of potential heavy equipment suppliers, including information on their qualifications and prior experience. A then solicits bids from the top three firms on its list—B, C, and D—because they are the best qualified. None of them happens to be blacklisted. A does not solicit bids from E, F, or G, the next three firms on the list, one of whom is on Y's blacklist.

A's decision to solicit bids from only B, C, and D, is not a refusal to do business with any person, because the solicited bidders were not selected for boycott reasons.

AGREEMENTS TO REFUSE TO DO BUSINESS

(i) A, a U.S. construction firm, is retained by an agency of boycotting country Y to build a primary school. The proposed con-

tract contains a clause stating that A "may not use goods or services in the project that are produced or provided by any person restricted from having a business relationship with country Y by reason of Y's boycott against country X".

A's action in entering into such a contract would constitute an agreement to refuse to do business, because it is an agreement to exclude blacklisted persons from the transaction. A may, however, renegotiate this clause so that it does not contain terms prohibited by this Part.

(ii) A, a U.S. manufacturer of commercial refrigerators and freezers, receives an invitation to bid from boycotting country Y. The tender states that the bidder must agree not to deal with companies on Y's blacklist. A does not know which companies are on the blacklist, and A's bid makes no commitment regarding not dealing with certain companies. A's bid in response to the tender is accepted.

At the point when A's bid is accepted, A has agreed to refuse to do business with blacklisted persons, because the terms of Y's tender are part of the contract between Y and A.

(iii) A, a U.S. construction firm, is offered a contract to perform engineering and construction services in connection with a project located in boycotting country Y. The contract contains a clause stating that, in the event of a contract dispute, the laws of Y will apply.

A may enter into the contract. Agreement that the laws of boycotting country Y will control in resolving a contract dispute is not an agreement to refuse to do business.

(iv) Same as (iii), except that the contract contains a clause that A and its employees will comply with the laws of boycotting country Y. A knows that Y has a number of boycott laws.

Such an agreement is not, in and of itself, an agreement to refuse to do business. If, however, A subsequently refuses to do business with someone because of the laws of Y, A's action would be a refusal to do business.

(v) Same as (iv) except that the contract contains a clause that A and its employees will comply with the laws of boycotting country Y, "including boycott laws".

A's agreeing, without qualification, to comply with local boycott laws constitutes an agreement to refuse to do business.

(vi) Same as (v), except that A inserts a proviso "except insofar as Y's laws conflict with U.S. laws", or words to that effect.

Such an agreement is not an agreement to refuse to do business.

(vii) A, a U.S. general contractor, is retained to construct a pipeline in boycotting country Y. A provision in the proposed contract stipulates that in purchasing equipment, supplies, and services A must give preference to companies located in host country Y.

A may agree to this contract provision. Agreeing to a "buy local" contract provision is not an agreement to refuse to do business, because A's agreement is not made for boycott reasons.

(viii) A, a U.S. exporter planning to sell retail goods to customers in boycotting country Y, enters into a contract to purchase goods wholesale from B, a U.S. appliance manufacturer. A's contract with B includes a provision stipulating that B may not use components or services of blacklisted companies in the manufacture of its appliances.

A's contract constitutes a refusal to do business, because it would require another

person, B to refuse to do business with other persons for boycott reasons. B may not agree to such a contract, because it would be agreeing to refuse to do business with other persons for boycott reasons.

(ix) Same as (viii), except that A and B reach an implicit understanding that B will not use components or services of blacklisted companies in the manufacture of goods to be exported to Y. In the manufacture of appliances to be sold to A for export to non-boycotting countries B uses components manufactured by blacklisted companies.

The actions of both A and B constitute agreement to refuse to do business. The agreement is implied by their pattern of conduct.

(b) Discriminatory Actions.

PROHIBITION AGAINST TAKING DISCRIMINATORY ACTIONS

(1) No United States person may:

(i) refuse to employ or otherwise discriminate against any individual who is a United States person on the basis of race, religion, sex, or national origin;

(ii) discriminate against any corporation or other organization which is a United States person on the basis of the race, religion, sex, or national origin of any owner, officer, director, or employee of such corporation or organization;

(iii) knowingly agree to take any of the actions described in (i) and (ii) above; or

(iv) require or knowingly agree to require any other person to take any of the actions described in (i) and (ii) above.

(2) This prohibition shall apply whether the discriminatory action is taken by a United States person on its own or in response to an agreement with, request from, or requirement of a boycotting country. This prohibition, like all others, applies only with respect to a United States person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott.

(3) The section does not supersede or limit the operation of the civil rights laws of the United States.

EXAMPLES OF DISCRIMINATORY ACTIONS

The following examples are intended to give guidance in determining the circumstances in which the taking of particular discriminatory actions is prohibited. They are illustrative, not comprehensive.

(i) U.S. construction company A is awarded a contract to build an office complex in boycotting country Y. A, believing that employees of a particular religion will not be permitted to work in Y because of Y's boycott against country X, excludes U.S. persons of that religion from consideration for employment on the project.

A's refusal to consider qualified U.S. persons of a particular religion for work on the project in Y constitutes a prohibited boycott-based discriminatory action against U.S. persons on the basis of religion.

(ii) Same as (i), except that a clause in the contract provides that "no persons of country X origin are to work on this project".

A's agreement constitutes a prohibited boycott-based agreement to discriminate against U.S. persons, among others, on the basis of national origin.

(iii) Same as (i), except that a clause in the contract provides that "no persons who are citizens, residents, or nationals of country X are to work on this project".

A's agreement does not constitute a boycott-based agreement to discriminate against U.S. persons on the basis of race, religion, sex, or national origin, because the clause requires exclusion on the basis of citizenship, residency, and nationality only.

(iv) U.S. construction company A enters into a contract to build a school in boycotting country Y. Y's representative orally tells A that no persons of country X origin are to work on the project.

A may not comply, because to do so would constitute discrimination on the basis of national origin. It makes no difference that A learned of Y's requirement orally. It makes no difference how A learns about Y's discriminatory requirement.

(v) Boycotting country Y tenders an invitation to bid on a construction project in Y. The tender requires that the successful bidder's personnel will be interviewed and that persons of a particular religious faith will not be permitted to work on the project. Y's requirement is based on its boycott of country X, the majority of whose citizens are of that particular faith.

Agreement to this provision in the tender document by a U.S. person would constitute a prohibited agreement to engage in boycott-based discrimination against U.S. persons of a particular religion.

(vi) Same as (v), except that the tender specifies that "women will not be allowed to work on this project".

Agreement to this provision in the tender by a U.S. person does not constitute a prohibited agreement to engage in boycott-based discrimination, because the restriction against employment of women is not boycott-based. Such an agreement may, however, constitute a violation of U.S. civil rights laws.

(vii) A is a U.S. investment banking firm. As a condition of participating in an underwriting of securities to be issued by boycotting country Y, A is required to exclude investment banks owned by persons of a particular faith from participation in the underwriting. Y's requirement is based on its boycott of country X, the majority of whose citizens are of that particular faith.

A's agreement to such a provision constitutes a prohibited agreement to engage in boycott-based discrimination against U.S. persons on the basis of religion. Further, if A requires others to agree to such a condition, A would be acting to require another person to engage in such discrimination.

(viii) U.S. company A is asked by boycotting country Y to certify that A will not use a six-pointed star on the packaging of its products to be imported into Y. The requirement is part of the enforcement effort by Y of its boycott against country X.

A may not so certify. The six-pointed star is a religious symbol, and the certification by A that it will not use such a symbol constitutes a statement that A will not ship products made or handled by persons of that religion.

(ix) Same as (viii), except that A is asked to certify that no symbol of boycotted coun-

try X will appear on the packaging of its products imported into Y.

Such a certification conveys no statement about any person's religion and, thus, does not come within this prohibition.

(c) Furnishing Information About Race, Religion, Sex, or National Origin.

PROHIBITION AGAINST FURNISHING INFORMATION ABOUT RACE, RELIGION, SEX, OR NATIONAL ORIGIN

(1) No United States person may:

(i) furnish information about the race, religion, sex, or national origin of any United States person;

(ii) furnish information about the race, religion, sex, or national origin of any owner, officer, director, or employee of any corporation or other organization which is a United States person;

(iii) knowingly agree to furnish information about the race, religion, sex, or national origin of any United States person; or

(iv) knowingly agree to furnish information about the race, religion, sex, or national origin of any owner, officer, director, or employee of any corporation or other organization which is a United States person.

(2) This prohibition shall apply whether the information is specifically requested or is offered voluntarily by the United States person. It shall also apply whether the information requested or volunteered is stated in the affirmative or the negative.

(3) Information about the place of birth of or the nationality of the parents of a United States person comes within this prohibition, as does information in the form of code words or symbols which could identify a United States person's race, religion, sex, or national origin.

(4) This prohibition, like all others, applies only with respect to a United States person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott.

EXAMPLES OF THE PROHIBITION AGAINST FURNISHING DISCRIMINATORY INFORMATION

The following examples are intended to give guidance in determining the circumstances in which the furnishing of discriminatory information is prohibited. They are illustrative, not comprehensive.

(i) U.S. company A receives a boycott questionnaire from boycotting country Y asking whether it is owned or controlled by persons of a particular faith, whether it has any persons on its board of directors who are of that faith, and what the national origin of its president is. The information is sought for purposes of enforcing Y's boycott against country X, and A knows or has reason to know that the information is sought for that reason.

A may not answer the questionnaire, because A would be furnishing information

about the religion and national origin of U.S. persons for purposes of complying with or supporting Y's boycott against X.

(ii) U.S. company A, located in the United States, is asked by boycotting country Y to certify that A has no persons of a particular national origin on its board of directors. A knows that Y's purpose in asking for the certification is to enforce its boycott against country X.

A may not make such a certification, because A would be furnishing information about the national origin of U.S. persons for purposes of complying with or supporting Y's boycott against X.

(iii) U.S. company A believes that boycotting country Y will select A's bid over those of other bidders if A volunteers that it has no shareholders, officers, or directors of a particular national origin. A's belief is based on its knowledge that Y generally refuses, as part of its boycott against country X, to do business with companies owned, controlled, or managed by persons of this particular national origin.

A may not volunteer this information, because it would be furnishing information about the national origin of U.S. persons for purposes of complying with or supporting Y's boycott against X.

(iv) U.S. company A has a contract to construct an airport in boycotting country Y. Before A begins work, A is asked by Y to identify the national origin of its employees who will work on the site. A knows or has reason to know that Y is seeking this information in order to enforce its boycott against X.

A may not furnish this information, because A would be providing information about the national origin of U.S. persons for purposes of complying with or supporting Y's boycott against X.

(v) Same as (iv), except that in order to assemble its work force on site in Y, A sends visa forms to its employees and asks that the forms be returned to A for transmittal to Y's consulate or embassy. A, itself, furnishes no information about its employees, but merely transmits the visa forms back and forth.

In performing the ministerial function of transmitting visa forms, A is not furnishing information about any U.S. person's race, religion, sex, or national origin.

(vi) Same as (iv), except that A is asked by Y to certify that none of its employees in Y will be women, because Y's laws prohibit women from working.

Such a certification does not constitute a prohibited furnishing of information about any U.S. person's sex, since the reason the information is sought has nothing to do with Y's boycott of X.

(vii) U.S. company A is considering establishing an office in boycotting country Y. In order to register to do business in Y, A is asked to furnish information concerning the nationalities of its corporate officers and board of directors.

A may furnish the information about the nationalities of its officers and directors, because in so doing A would not be furnishing information about the race, religion, sex, or national origin of any U.S. person.

(d) Furnishing Information About Business Relationships with Boycotted Countries or Blacklisted Persons.

PROHIBITION AGAINST FURNISHING INFORMATION ABOUT BUSINESS RELATIONSHIPS WITH BOYCOTTED COUNTRIES OR BLACKLISTED PERSONS

(1) No United States person may furnish or knowingly agree to furnish information concerning his or any other person's past, present or proposed business relationships:

(i) with or in a boycotted country;

(ii) with any business concern organized under the laws of a boycotted country;

(iii) with any national or resident of a boycotted country; or

(iv) with any other person who is known or believed to be restricted from having any business relationship with or in a boycotting country.

(2) This prohibition shall apply:

(i) whether the information pertains to a business relationship involving a sale, purchase, or supply transaction; legal or commercial representation; shipping or other transportation transaction; insurance; investment; or any other type of business transaction or relationship; and

(ii) whether the information is directly or indirectly requested or is furnished on the initiative of the United States person.

(3) This prohibition does not apply to the furnishing of normal business information in a commercial context. Normal business information may relate to factors such as financial fitness, technical competence, or professional experience, and may be found in documents normally available to the public such as annual reports, disclosure statements concerning securities, catalogues, promotional brochures, and trade and business handbooks. Such information may also appear in specifications or statements of experience and qualifications.

(4) Normal business information furnished in a commercial context does not cease to be such simply because the party soliciting the information may be such simply because the party soliciting the information may be a boycotting country or a national or resident thereof. If the information is of a type which is generally sought for a legitimate business purpose (such as determining financial fitness, technical competence, or professional experience), the information may be furnished even if the information could be used, or without the knowledge of the person supplying the information is intended to be used, for boycott purposes. However, no information about business relationships with blacklisted persons or boycotted countries, their residents or nationals, may be furnished in response to a boycott request, even if the information is publicly available. Requests for such information from a boycott office will be presumed to be boycott-based.

(5) This prohibition, like all others, applies only with respect to a United

States person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott.

EXAMPLES CONCERNING FURNISHING OF INFORMATION

The following examples are intended to give guidance in determining the circumstances in which the furnishing of information is prohibited. They are illustrative, not comprehensive.

(i) U.S. contractor A is considering bidding for a contract to build a dam in boycotting country Y. The invitation to bid, which appears in a trade journal, specifies that each bidder must state that he does not have any offices in boycotted country X. A knows or has reason to know that the requirement is boycott-based.

A may not make this statement, because it constitutes information about A's business relationships with X.

(ii) U.S. contractor A is considering bidding for a contract to construct a school in boycotting country Y. Each bidder is required to submit copies of its annual report with its bid. Since A's annual report describes A's worldwide operations, including the countries in which it does business, it necessarily discloses whether A has business relations with boycotted country X. A has no reason to know that its report is being sought for boycott purposes.

A, in furnishing its annual report, is supplying ordinary business information in a commercial context.

(iii) Same as (ii), except that accompanying the invitation to bid is a questionnaire from country Y's boycott office asking each bidder to supply a copy of its annual report.

A may not furnish the annual report despite its public availability, because it would be furnishing information in response to a questionnaire from a boycott office.

(iv) U.S. company A is on boycotting country Y's blacklist. For reasons unrelated to the boycott, A terminates its business relationships with boycotted country X. In exploring other marketing areas, A determines that boycotting country Y offers great potential. A is requested to complete a questionnaire from a central boycott office which inquires about A's business relations with X.

A may not furnish the information, because it is information about A's business relationships with a boycotted country.

(v) U.S. exporter A is seeking to sell its products to boycotting country Y. A is informed by Y that, as a condition of sale, A must certify that it has no salesmen in boycotted country X. A knows or has reason to know that the condition is boycott-based.

A may not furnish the certification, because it is information about A's business relationships in a boycotted country.

(vi) U.S. engineering company A receives an invitation to bid on the construction of a dam in boycotting country Y. As a condition of the bid, A is asked to certify that it does not have any offices in boycotted country X. A is also asked to furnish plans for other dams it has designed.

A may not certify that it has no office in X, because this is information about its business relationships in a boycotted country. A may submit plans for other dams it has designed, because this is furnishing normal business information, in a commercial context.

cial context, relating to A's technical competence and professional experience.

(vii) U.S. company A, in seeking to expand its exports to boycotting country Y, sends a sales representative to Y for a one week trip. During a meeting in Y with trade association representatives, A's representative desires to explain that neither A nor any companies with which A deals has any business relationship with boycotted country X. The purpose of supplying such information is to ensure that A does not get blacklisted.

A's representative may not volunteer this information even though A, for reasons unrelated to the boycott, does not deal with X, because A's representative would be volunteering information about A's business relationships with X for boycott reasons.

(viii) U.S. company A is asked by boycotting country Y to furnish information concerning its business relationships with boycotted country X. A, knowing that Y is seeking the information for boycott purposes, refuses to furnish the information asked for directly, but proposes to respond by supplying a copy of its annual report which lists the countries with which A is presently doing business. A does not happen to be doing business with X.

A may not respond to Y's request by supplying its annual report, because A knows that it would be responding to a boycott-based request for information about its business relationships with X.

(ix) U.S. company A receives a letter from a central boycott office asking A to "clarify" A's operations in boycotted country X. A intends to continue its operations in X, but fears that not responding to the request will result in its being placed on boycotting country Y's blacklist. A knows or has reason to know that the information is sought for boycott reasons.

A may not respond to this request, because the information concerns its business relationships with a boycotted country.

(x) U.S. company A, in the course of negotiating a sale of its goods to a buyer in boycotting country Y, is asked to certify that its supplier is not on Y's blacklist.

A may not furnish the information about its supplier's blacklist status, because this is information about A's business relationships with another person who is believed to be restricted from having any business relationship with or in a boycotting country.

(xi) U.S. company A has a manufacturing plant in boycotted country X and is on boycotting country Y's blacklist. A is seeking to establish operations in Y, while expanding its operations in X. A applies to Y to be removed from Y's blacklist. A is asked, in response, to indicate whether it has manufacturing facilities in X.

A may not supply the requested information, because A would be furnishing information about its business relationships in a boycotted country.

(xii) U.S. bank A plans to open a branch office in boycotting country Y. In order to do so, A is required to furnish certain information about its business operations, including the location of its other branch offices. Such information is normally sought in other countries where A has opened a branch office, and A does not have reason to know that Y is seeking the information for boycott reasons.

A may furnish this information, even though in furnishing it A would disclose information about its business relationships in a boycotted country, because it is being furnished in a normal business context and A

does not have reason to know that it is sought for boycott reasons.

(xiii) U.S. architectural firm A responds to an invitation to submit designs for an office complex in boycotting country Y. The invitation states that all bidders must include information concerning similar types of buildings they have designed. A has not designed such buildings in boycotted country X. Clients frequently seek information of this type before engaging an architect.

A may furnish this information, because this is furnishing normal business information, in a commercial context, relating to A's technical competence and professional experience.

(xiv) U.S. oil company A distributes to potential customers promotional brochures and catalogues which give background information on A's past projects. A does not have business dealings with boycotted country X. The brochures, which are identical to those which A uses throughout the world, list those countries in which A does or has done business. In soliciting potential customers in boycotting country Y, A desires to distribute copies of its brochures.

A may do so, because this is furnishing normal business information, in a commercial context, relating to professional experience.

(xv) U.S. company A is interested in doing business with boycotting country Y. A wants to ask Y's Ministry of Trade whether, and is so why, A is on Y's blacklist or is otherwise restricted for boycott reasons from doing business with Y.

A may take this limited inquiry, because it does not constitute furnishing information.

(xvi) U.S. company A is asked by boycotting country Y to certify that it is not owned by subjects or nationals of boycotted country X and that it is not resident in boycotted country X.

A may not furnish the certification about its residency in X, because it is information about A's business relationships with or in a boycotted country. However, A may furnish the information about the nationality of its owners, because it is not information about A's business relationships.

(xvii) U.S. company A, a manufacturer of certain patented products, desires to register its patents in boycotting country Y. A receives a power of attorney form required to register its patents. The form contains a question regarding A's business relationships with or in boycotted country X. A has no business relationships with X and knows or has reason to know that the information is sought for boycott reasons.

A may not answer the question, because A would be furnishing information about its business relationships with or in a boycotted country.

(e) Information Concerning Association with Charitable and Fraternal Organizations.

PROHIBITION AGAINST FURNISHING INFORMATION ABOUT ASSOCIATIONS WITH CHARITABLE AND FRATERNAL ORGANIZATIONS

(1) No United States person may furnish or knowingly agree to furnish information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports a boycotted country.

(2) This prohibition shall apply whether:

(i) the information concerns association with or involvement in any charitable or fraternal organization which (a) has, as one of its stated purposes, the support of a boycotted country through financial contributions or other means, or (b) undertakes, as a major organizational activity, to offer financial or other support to a boycotted country;

(ii) the information is directly or indirectly requested or is furnished on the initiative of the United States person; or

(iii) the information requested or volunteered concerns membership in, financial contributions to, or any other type of association with or involvement in the activities of such charitable or fraternal organization.

(3) This prohibition does not prohibit the furnishing of normal business information in a commercial context as defined in section 369.2(d) of this Part.

(4) This prohibition, like all others, applies only with respect to a United States person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott.

EXAMPLES OF PROHIBITION AGAINST FURNISHING INFORMATION ABOUT ASSOCIATIONS WITH CHARITABLE OR FRATERNAL ORGANIZATIONS

The following examples are intended to give guidance in determining the circumstances in which the furnishing of information concerning associations with charitable or fraternal organizations is prohibited. They are illustrative, not comprehensive.

(i) U.S. engineering firm A receives an invitation to bid from boycotting country Y. The invitation includes a request to supply information concerning any association which A's officers have with charitable organization B, an organization which is known by A to contribute financial support to boycotted country X. A knows or has reason to know that the information is sought for boycott reasons.

A may not furnish the information.

(ii) U.S. construction company A, in an effort to establish business dealings with boycotting country Y, proposes to furnish information to Y showing that no members of its board of directors are in any way associated with charitable organizations which support boycotted country X. A's purpose is to avoid any possibility of its being blacklisted by Y.

A may not furnish the information, because A's purpose in doing so is boycott-based. It makes no difference that no specific request for the information has been made by Y.

(iii) A, a citizen of the United States, is applying for a teaching position in a school in boycotting country Y. In connection with his application, A furnishes a resume which happens to disclose his affiliation with charitable organizations. A does so completely without reference to Y's boycott and without knowledge of any boycott requirement of Y that pertains to A's application for employment.

The furnishing of a resume by A is not a boycott-related furnishing of information about his association with charitable organizations which support boycotted country X.

(f) *Letters of Credit.*

PROHIBITION AGAINST IMPLEMENTING LETTERS OF CREDIT CONTAINING PROHIBITED CONDITIONS OR REQUIREMENTS

(1) No United States person may pay, honor, confirm, or otherwise implement a letter of credit which contains a condition or requirement compliance with which is prohibited by this Part, nor shall any United States person, as a result of the application of this section, be obligated to pay, honor or otherwise implement such a letter of credit.

(2) For purposes of this section, "implementing" a letter of credit includes:

(i) issuing or opening a letter of credit at the request of a customer;

(ii) honoring, by accepting as being a valid instrument of credit, any letter of credit;

(iii) paying, under a letter of credit, a draft or other demand for payment by the beneficiary;

(iv) confirming a letter of credit by agreeing to be responsible for payment to the beneficiary in response to a request by the issuer;

(v) negotiating a letter of credit by voluntarily purchasing a draft from a beneficiary and presenting such draft for reimbursement to the issuer or the confirmer of the letter of credit; and

(vi) taking any other action to implement a letter of credit.

(3) In the standard international letter of credit transaction facilitating payment for the export of goods from the United States, a bank in a foreign country may be requested by its customer to issue a revocable or irrevocable letter of credit in favor of the United States exporter. The customer usually requires, and the letter of credit provides, that the issuing (or a confirming) bank will make payment to the beneficiary against the bank's receipt of the documentation specified in the letter of credit. Such documentation usually includes commercial and consular invoices, a bill of lading, and evidence of insurance, but it may also include other required certifications or documentary assurances such as the origin of the goods and information relating to the carrier or insurer of the shipment. Banks usually will not accept drafts for payment unless the documents submitted therewith comply with the terms and conditions of the letter of credit.

(4) A United States person is not prohibited under this section from advising a beneficiary of the existence of a letter of credit in his favor, or from taking ministerial actions to dispose of a letter of credit which it is prohibited from implementing.

(5) Compliance with this section shall provide an absolute defense in any action brought to compel payment of, honoring of, or other implementation of a letter of credit, or for damages resulting from failure to pay or otherwise honor or implement the letter of credit. This section shall not otherwise relieve any person from any obligations or other liabilities he may incur under other laws or regulations, except as may be explicitly provided in this section.

LETTERS OF CREDIT TO WHICH THIS SECTION APPLIES

(6) This prohibition, like all others, applies only with respect to a United States person's activities taken with intent to comply with, further, or support an unsanctioned foreign boycott. In addition, it applies only when the transaction to which the letter of credit applies is in United States commerce and the beneficiary is a United States person.

IMPLEMENTATION OF LETTERS OF CREDIT IN THE UNITED STATES

(7) A letter of credit implemented in the United States by a United States person located in the United States, including a permanent United States establishment of a foreign bank, will be presumed to apply to a transaction in United States commerce and to be in favor of a United States beneficiary where the letter of credit specifies a United States address for the beneficiary. These presumptions may be rebutted by facts which could reasonably lead the bank to conclude that the beneficiary is not a United States person or that the underlying transaction is not in United States commerce.

(8) Where a letter of credit implemented in the United States by a United States person located in the United States does not specify a United States address for the beneficiary, the beneficiary will be presumed to be other than a United States person. This presumption may be rebutted by facts which could reasonably lead the bank to conclude that the beneficiary is a United States person despite the foreign address.

IMPLEMENTATION OF LETTERS OF CREDIT OUTSIDE THE UNITED STATES

(9) A letter of credit implemented outside the United States by a United States person located outside the United States will be presumed to apply to a transaction in United States commerce and to be in favor of a United States beneficiary where the letter of credit (a) specifies a United States address for the beneficiary and (b) calls for documents indicating shipment from the United States or otherwise indicating that the goods are of United States origin. These pre-

sumptions may be rebutted by facts which could reasonably lead the bank to conclude that the beneficiary is not a United States person or that the underlying transaction is not in United States commerce.

(10) Where a letter of credit implemented outside the United States by a United States person located outside the United States does not specify a United States address for the beneficiary, the beneficiary will be presumed to be other than a United States person. In addition, where such a letter of credit does not call for documents indicating shipment from the United States or otherwise indicating that the goods are of United States origin, the transaction to which it applies will be presumed to be outside United States commerce. The presumption that the beneficiary is other than a United States person may be rebutted by facts which could reasonably lead the bank to conclude that the beneficiary is a United States person. The presumption that the transaction to which the letter of credit applies is outside United States commerce may be rebutted by facts which could reasonably lead the bank to conclude that the underlying transaction is in United States commerce.

GRACE PERIOD

(11) If the underlying transaction to which the letter of credit relates is entitled to grace period treatment under this Part, implementation of the letter of credit is also entitled to such grace period treatment. A letter of credit may be implemented at any time after the end of a grace period regarding the underlying transaction so long as all the prohibited boycott certifications have been given or other boycott-related acts carried out prior to the expiration of a grace period. Similarly, an implementing United States bank may complete implementation of a letter of credit containing prohibited boycott terms after the effective date of this Part provided the beneficiary has complied with all such boycott terms prior to the effective date.

EXAMPLES OF THE PROHIBITION AGAINST IMPLEMENTING LETTERS OF CREDIT

The following examples are intended to give guidance in determining the circumstances in which this section applies to the implementation of a letter of credit and in which such implementation is prohibited. They are illustrative not comprehensive.

IMPLEMENTATION OF LETTERS OF CREDIT IN UNITED STATES COMMERCE

(1) A, a U.S. bank located in the United States, opens a letter of credit in the United States in favor of B, a foreign company located outside the United States. The letter of credit specifies a non-U.S. address for the beneficiary.

The beneficiary is presumed to be other than a U.S. person, because it does not have a U.S. address. The presumption may be re-

butted by facts showing that A could reasonably conclude that the beneficiary is a U.S. person despite the foreign address.

(ii) A, a branch of a foreign bank located in the United States, opens a letter of credit in favor of B, a foreign company located outside the United States. The letter of credit specifies a non-U.S. address for the beneficiary.

The beneficiary is presumed to be other than a U.S. person, because it does not have a U.S. address. The presumption may be rebutted by facts showing that A could reasonably conclude that the beneficiary is a U.S. person despite the foreign address.

(iii) A, a U.S. bank branch located outside the United States, opens a letter of credit in favor of B, a person with a U.S. address. The letter of credit calls for documents indicating shipment of goods from the United States.

The letter of credit is presumed to apply to a transaction in U.S. commerce and to be in favor of a U.S. beneficiary because the letter of credit specifies a U.S. address for the beneficiary and calls for documents indicating that the goods will be shipped from the United States. These presumptions may be rebutted by facts showing that A could reasonably conclude that the beneficiary is not a U.S. person or that the underlying transaction is not in U.S. commerce.

(iv) A, a U.S. bank branch located outside the United States, opens a letter of credit which specifies a beneficiary, B, with an address outside the United States and calls for documents indicating that the goods are of U.S.-origin. A knows or has reason to know that although B has an address outside the United States, B is a U.S. person.

The letter of credit is presumed to apply to a transaction in U.S. commerce, because the letter of credit calls for shipment of U.S.-origin goods. In addition, the letter of credit is presumed to be in favor of a beneficiary who is a U.S. person, because A knows or has reason to know that the beneficiary is a U.S. person despite the foreign address.

(v) A, a U.S. bank branch located outside the United States, opens a letter of credit which specifies a beneficiary with a U.S. address. The letter of credit calls for documents indicating shipment of foreign-origin goods.

The letter of credit is presumed to be in favor of a U.S. beneficiary but to apply to a transaction outside U.S. commerce, because it calls for documents indicating shipment of foreign-origin goods. The presumption of non-U.S. commerce may be rebutted by facts showing that A could reasonably conclude that the underlying transaction involves shipment of U.S.-origin goods or goods from the U.S.

PROHIBITION AGAINST IMPLEMENTING LETTERS OF CREDIT

(i) Boycotting country Y orders goods from U.S. company B. Y opens a letter of credit with foreign bank C in favor of B. The letter of credit specifies as a condition of payment that B certify that it does not do business with boycotted country X. Foreign bank C forwards the letter of credit it has opened to U.S. bank A for confirmation.

A may not confirm or otherwise implement this letter of credit, because it contains a condition with which a U.S. person may not comply.

(ii) Same as (i), except U.S. bank A desires to advise the beneficiary, U.S. company B, of the letter of credit.

A may do so, because advising the beneficiary of the letter of credit (including the

term which prevents A from implementing it) is not implementation of the letter of credit.

(iii) Same as (i), except foreign bank C sends a telegram to U.S. bank A stating the major terms and conditions of the letter of credit. The telegram does not reflect the boycott provision. Subsequently, C mails to A documents setting forth the terms and conditions of the letter of credit, including the prohibited boycott condition.

A may not further implement the letter of credit after it receives the documents, because they reflect the prohibited boycott condition in the letter of credit. A may advise the beneficiary and C of the existence of the letter of credit (including the boycott term), and may perform any essentially ministerial acts necessary to dispose of the letter of credit.

(iv) Same as (iii), except that U.S. company B, based in part on information received from U.S. bank A, desires to obtain an amendment to the letter of credit which would eliminate or nullify the language in the letter of credit which prevents A from paying or otherwise implementing it.

Either company B or bank A may undertake, and the other may cooperate and assist in, this endeavor. A could then pay or otherwise implement the revised letter of credit, so long as the original prohibited language is of no force or effect.

(v) Boycotting country Y requests a foreign bank in Y to open a letter of credit to effect payment for goods to be shipped by U.S. supplier B, the beneficiary of the letter of credit. The letter of credit contains prohibited boycott clauses. The foreign bank forwards a copy of the letter of credit to its branch office, A, in the United States.

A may advise the beneficiary but may not implement the letter of credit, because it contains prohibited boycott conditions.

(vi) On November 1, 1977, boycotting country Y orders goods from U.S. company B. U.S. bank A is asked to implement, for the benefit of B, a letter of credit which contains a clause requiring documentation that the goods shipped are not of boycotted country X origin.

A may implement the letter of credit, but after June 21, 1978, may accept only a positive certificate of origin as satisfactory documentation. (See section 369.3(b) on "Import and Shipping Document Requirements".)

(vii) Same as (vi), except that U.S. company B has a contract with Y to supply a certain quantity of goods each month over a two-year period. B's contract was entered into on May 15, 1977, and thus qualifies for grace period treatment until December 31, 1978. Each month, Y causes a letter of credit to be opened in favor of B in order to effect payment. Such letters of credit call for negative certificates of origin.

A may accept negative certificates of origin in fulfillment of the terms of the letter of credit through December 31, 1978, because the underlying contract is entitled to a grace period through that date. (See section 369.5 on "Grace Period".)

(viii) B is a foreign bank located outside the United States. B maintains an account with U.S. bank A, located in the United States. A letter of credit issued by B in favor of a U.S. beneficiary provides that any negotiating bank may obtain reimbursement from A by certifying that all the terms and conditions of the letter of credit have been met and then drawing against B's account. B notifies A by cable of the issuance of a

letter of credit and the existence of reimbursement authorization; A does not receive a copy of the letter of credit.

A may reimburse any negotiating bank, even when the underlying letter of credit contains a prohibited boycott condition, because A does not know or have reason to know that the letter of credit contains a prohibited boycott condition.

(ix) Same as (viii), except that foreign bank B forwards a copy of the letter of credit to U.S. bank A, which then becomes aware of the prohibited boycott clause.

A may not thereafter reimburse a negotiating bank or in any way further implement the letter of credit, because it knows of the prohibited boycott condition.

(x) Boycotting country Y orders goods from U.S. exporter B and requests a foreign bank in Y to open a letter of credit in favor of B to cover the cost. The letter of credit contains a prohibited boycott clause. The foreign bank asks U.S. bank A to advise and confirm the letter of credit. Through inadvertence, A does not notice the prohibited clause and confirms the letter of credit. A thereafter notices the clause and then refuses to honor B's draft against the letter of credit. B sues bank A for payment.

A has an absolute defense against the obligation to make payment under this letter of credit. (NOTE: This section does not alter any other obligations or liabilities of the parties under appropriate law.)

(xi) U.S. bank A has confirmed and is in the midst of implementing a letter of credit in favor of a U.S. beneficiary when the rules and regulations of this Part are issued in final form and become effective. Upon examination of this Part, A determines that the letter of credit contains a prohibited boycott clause calling for a negative certificate of origin.

A may accept a negative certificate of origin in fulfillment of the terms of the letter of credit until June 21, 1978, one year from the date of enactment of the Export Administration Amendments of 1977, because negative certificates of origin are not prohibited through that date.

(xii) Boycotting country Y orders goods from U.S. company B. A letter of credit which contains a prohibited boycott clause is opened in favor of B by a foreign bank in Y. The foreign bank asks U.S. bank A to advise and confirm the letter of credit, which it forwards to A.

A may advise B that it has received the letter of credit (including the boycott term), but may not confirm the letter of credit with the prohibited clause.

(xiii) Same as (xii), except U.S. bank A fails to tell B that it cannot process the letter of credit. B requests payment.

A may not pay. If the prohibited language is eliminated or nullified as the result of renegotiation, A may then pay or otherwise implement the revised letter of credit.

(xiv) U.S. bank A receives a letter of credit in favor of U.S. beneficiary B. The letter of credit requires B to certify that he is not blacklisted.

A may implement such a letter of credit, but it may not insist that the certification be furnished, because by so insisting it would be refusing to do business with a blacklisted person in compliance with a boycott.

(xv) A, a U.S. bank located in the U.S., opens a letter of credit in favor of U.S. beneficiary B for B's sale of goods to boycotting country Y. The letter of credit contains no boycott conditions, but A knows that Y cus-

tomarily requires the seller of goods to certify that it has dealt with no blacklisted supplier. A, therefore, instructs B that it will not make payment under the letter of credit unless B makes such a certification.

A's action in requiring the certification from B constitutes action to require another person to refuse to do business with blacklisted persons.

(xvi) A, a U.S. bank located in the U.S., opens a letter of credit in favor of U.S. beneficiary B for B's sale of goods to boycotting country Y. The letter of credit contains no boycott conditions, but A has actual knowledge that B has agreed to supply a certification to Y that it has not dealt with blacklisted firms, as a condition of receiving the letter of credit in its favor.

A may not implement the letter of credit, because it knows that an implicit condition of the credit is a condition with which B may not legally comply.

§ 369.3 Exceptions to Prohibitions.

(a-1) Import Requirements of a Boycotting Country.

COMPLIANCE WITH IMPORT REQUIREMENTS OF A BOYCOTTING COUNTRY

(1) A United States person, in supplying goods or services to a boycotting country, or to a national or resident of a boycotting country, may comply or agree to comply with requirements of such boycotting country which prohibit the import of:

(i) goods or services from the boycotted country;

(ii) goods produced or services provided by any business concern organized under the laws of the boycotted country; or

(iii) goods produced or services provided by nationals or residents of the boycotted country.

(2) A United States person may comply or agree to comply with such import requirements whether or not he has received a specific request to comply. By its terms, this exception applies only to transactions involving imports into a boycotting country. A United States person may not, under this exception, refuse on an across-the-board basis to do business with a boycotted country or a national or resident of a boycotted country.

(3) In taking action within the scope of this exception, a United States person is limited in the types of boycott-related information he can supply. (See section 369.2(d) on "Furnishing Information About Business Relationships with Boycotted Countries or Blacklisted Persons" and section 369.3(b) on "Import and Shipping Document Requirements".)

EXAMPLES OF COMPLIANCE WITH IMPORT REQUIREMENTS OF A BOYCOTTING COUNTRY

The following examples are intended to give guidance in determining the circumstances in which compliance with the import requirements of a boycotting country is permissible. They are illustrative, not comprehensive.

(i) A, a U.S. manufacturer, receives an order from boycotting country Y for its

products. Country X is boycotted by country Y, and the import laws of Y prohibit the importation of goods produced or manufactured in X. In filling this type of order, A would usually include some component parts produced in X.

For the purpose of filling this order, A may substitute comparable component parts in place of parts produced in X, because the import laws of Y prohibit the importation of goods manufactured in X.

(ii) Same as (i), except that A's contract with Y expressly provides that in fulfilling the contract A "may not include parts or components produced or manufactured in boycotted country X."

A may agree to and comply with this contract provision, because Y prohibits the importation of goods from X. (NOTE: After June 21, 1978, A may not furnish negative certifications regarding the origin of components in response to import and shipping document requirements.)

(iii) A, a U.S. building contractor, is awarded a contract to construct a plant in boycotting country Y. A accepts bids on goods required under the contract, and the lowest bid is made by B, a business concern organized under the laws of X, a country boycotted by Y. Y prohibits the import of goods produced by companies organized under the laws of X.

For purposes of this contract, A may reject B's bid and accept another, because B's goods would be refused entry into Y because of Y's boycott against X.

(iv) Same as (iii), except that A also rejects the low bid by B for work on a construction project in country M, a country not boycotted by Y.

This exception does not apply, because A's action is not taken in order to comply with Y's requirements prohibiting the import of products from boycotted country X.

(v) A, a U.S. management consulting firm, contracts to provide services to boycotting country Y. Y requests that A not employ residents or nationals of boycotted country X to provide those services.

A may agree, as a condition of the contract, not to have services furnished by nationals or residents of X, because importation of such services is prohibited by Y.

(vi) A, a U.S. company, is negotiating a contract to supply machine tools to boycotting country Y. Y insists that the contract contain a provision whereby A agrees that none of the machine tools will be produced by any business concern owned by nationals of boycotted country X, even if the business concern is organized under the laws of a non-boycotted country.

A may not agree to this provision, because it is a restriction on the import of goods produced by business concerns owned by nationals of a boycotted country even if the business concerns themselves are organized under the laws of a non-boycotted country.

(a-2) Shipment of Goods to a Boycotting Country.

COMPLIANCE WITH REQUIREMENTS REGARDING THE SHIPMENT OF GOODS TO A BOYCOTTING COUNTRY

(1) A United States person, in shipping goods to a boycotting country, may comply or agree to comply with requirements of that country which prohibit the shipment of goods:

(i) on a carrier of the boycotted country; or

(ii) by a route other than that prescribed by the boycotting country or the recipient of the shipment.

(2) A specific request that a United States person comply or agree to comply with requirements concerning the use of carriers of a boycotted country is not necessary if the United States person knows, or has reason to know, that the use of such carriers for shipping goods to the boycotting country is prohibited by requirements of the boycotting country. This exception applies whether a boycotting country or the purchaser of the shipment:

(i) explicitly states that the shipment should not pass through a port of the boycotted country; or

(ii) affirmatively describes a route of shipment that does not include a port in the boycotted country.

(3) For purposes of this exception, the term "carrier of a boycotted country" means a carrier which flies the flag of a boycotted country or which is owned, chartered, leased, or operated by a boycotted country or by nationals or residents of a boycotted country.

EXAMPLES OF COMPLIANCE WITH THE SHIPPING REQUIREMENTS OF A BOYCOTTING COUNTRY

The following examples are intended to give guidance in determining the circumstances in which compliance with requirements regarding shipment of goods to a boycotting country is permissible. They are illustrative, not comprehensive.

(i) A is a U.S. exporter from whom boycotting country Y is importing goods. Y directs that the goods not pass through a port of boycotted country X.

A may comply with Y's shipping instructions, because they pertain to the route of shipment of goods being shipped to Y.

(ii) A, a U.S. fertilizer manufacturer, receives an order from boycotting country Y for fertilizer. Y specifies in the order that A may not ship the fertilizer on a carrier of boycotted country X.

A may comply with this request, because it pertains to the carrier of a boycotted country.

(iii) B, a resident of boycotting country Y, orders textile goods from A, a U.S. distributor, specifying that the shipment must not be made on a carrier owned or leased by nationals of boycotted country X and that the carrier must not pass through a port of country X enroute to Y.

A may comply or agree to comply with these requests, because they pertain to the shipment of goods to Y on a carrier of a boycotted country and the route such shipment will take.

(iv) Boycotting country Y orders goods from A, a U.S. retail merchant. The order specifies that the goods shipped by A "may not be shipped on a carrier registered in or owned by boycotted country X."

A may agree to this contract provision, because it pertains to the carrier of a boycotted country.

(v) Boycotting country Y orders goods from A, a U.S. pharmaceutical company, and requests that the shipment not pass through a port of country P, which is not a country boycotted by Y.

This exception does not apply in a non-boycotting situation. A may comply with

the shipping instructions of Y, because in doing so he would not violate any prohibition of this Part.

(b) Import and Shipping Document Requirements.

COMPLIANCE WITH IMPORT AND SHIPPING DOCUMENT REQUIREMENTS OF A BOYCOTTING COUNTRY

(1) A United States person, in shipping goods to a boycotting country, may comply or agree to comply with import and shipping document requirements of that country, with respect to:

- (i) the country of origin of the goods;
- (ii) the name of the carrier;
- (iii) the route of the shipment;
- (iv) the name of the supplier of the shipment; and
- (v) the name of the provider of other services.

(2) After June 21, 1978, all such information must be stated in positive, non-blacklisting, non-exclusionary terms except for information with respect to the names of carriers or routes of shipment, which may continue to be stated in negative terms in conjunction with shipments to a boycotting country, in order to comply with precautionary requirements protecting against war risks or confiscation. The purpose of this delayed effective date, which is provided by Section 4A(a)(2)(B) of the Export Administration Act of 1969, as amended, is to allow time for persons to adjust their practices to the use of import and shipping documentation stated in positive rather than negative terms.

EXAMPLES OF COMPLIANCE WITH IMPORT AND SHIPPING DOCUMENT REQUIREMENTS

The following examples are intended to give guidance in determining the circumstances in which compliance with import and shipping document requirements of a boycotting country is permissible. They are illustrative, not comprehensive.

(i) Boycotting country Y contracts with A, a U.S. petroleum equipment manufacturer, for certain equipment. Y requires that goods being imported into Y must be accompanied by a certification that the goods

being supplied did not originate in boycotted country X.

Until June 21, 1978, A may comply with such import requirements in the terms requested. After June 21, 1978, A may not supply such a certification in negative terms but may identify instead the country of origin of the goods in positive terms only.

(ii) Same as (i), except that Y requires that the shipping documentation accompanying the goods specify the country of origin of the goods.

A may furnish the information.

(iii) On February 1, 1978, A, a U.S. distributor, enters into a two-year contract with boycotting country Y to make monthly shipments of goods to Y. A clause in the contract requires that all shipments into the country must be accompanied by a certification that the goods did not originate in X, a country boycotted by Y.

A may supply such a negative certification until June 21, 1978. After that date, A may state the origin of the goods on the shipping or import documents in positive terms only.

(iv) A, a U.S. apparel manufacturer, has contracted to sell certain of its products to B, a national of boycotting country Y. The form that must be submitted to customs officials of Y requires the shipper to certify that the goods contained in the shipment have not been supplied by "blacklisted" persons.

Until June 21, 1978, A may furnish the information required in the terms requested. After June 21, 1978, A may not furnish the information in negative terms but may certify, in positive terms only, the name of the supplier of the goods.

(v) Same as (iv), except the customs form requires certification that the insurer and freight forwarder used are not "blacklisted".

Until June 21, 1978, A may furnish the information required in the terms requested. After June 21, 1978, A may not comply with the request but may supply a certification stating, in positive terms only, the names of the insurer and freight forwarder.

(vi) A, a U.S. petrochemical manufacturer, executes a sales contract with B, a resident of boycotting country Y. A provision of A's contract with B requires that the bill of lading and other shipping documents contain certifications that the goods have not been shipped on a "blacklisted" carrier.

Until June 21, 1978, A may furnish the information required in the terms requested. After June 21, 1978, A may not agree to supply a certification that the carrier is not "blacklisted" but may certify the name of the carrier in positive terms only.

(vii) Same as (vi), except that the contract requires certification that the goods will not be shipped on a carrier which flies the flag of, or is owned, chartered, leased, or operated by boycotted country X, or by nationals or residents of X.

Such a certification, which is a reasonable requirement to protect against war risks or confiscation, may be furnished at any time.

(viii) Same as (vi), except that the contract requires that the shipping documents certify the name of the carrier being used.

A may, at any time, supply or agree to supply the requested documentation regarding the name of the carrier, either in negative or positive terms.

(ix) Same as (vi), except the contract requires a certification that the carrier will not call at a port in boycotted country X before making delivery in Y.

Such a certification, which is a reasonable requirement to protect against war risks or confiscation, may be furnished at any time.

(x) Same as (vi), except that the contract requires that the shipping documents indicate the name of the insurer and freight forwarder.

A may comply at any time, because the statement is not required to be made in negative or blacklisting terms.

(xi) A, a U.S. exporter, is negotiating a contract to sell bicycles to boycotting country Y. Y insists that A agree to certify that the goods will not be shipped on a vessel which has ever called at a port in boycotted country X.

As distinguished from a certification that goods will not be shipped on a vessel which will call enroute a port of boycotted country X, such a certification is not a reasonable requirement to protect against war risks or confiscation, and hence, may not be supplied.

(xii) Same as (xi), except that Y insists that A agree to certify that the goods will not be shipped on a carrier that is ineligible to enter Y's waters.

Such a certification, which is not a reasonable requirement to protect against war risks or confiscation may not be supplied.

(xiii) A, a U.S. exporter, sells some of its products to boycotting country Y. A foreign bank located in Y opens a letter of credit to pay for the goods. The letter of credit requires that A supply documentation certifying that "the goods are not manufactured in boycotted country X."

A may make the required certification until June 21, 1978, because import and shipping document requirements of a boycotting country may be reflected in letters of credit.

(c) Compliance with Unilateral Selection.

COMPLIANCE WITH UNILATERAL AND SPECIFIC SELECTION

(1) A United States person may comply or agree to comply in the normal course of business with the unilateral and specific selection by	of	provided that:
a boycotting country, a national of a boycotting country, or a resident of a boycotting country (including a United States person who is a bona fide resident of a boycotting country)	carriers, insurers, suppliers of services to be performed within the boycotting country, or specific goods,	with respect to services, it is necessary and customary that a not insignificant part of the services be performed within the boycotting country, and with respect to goods, the items, in the normal course of business, are identifiable as to their source or origin at the time of their entry into the boycotting country by (a) uniqueness of design or appearance; or (b) trademark, trade name, or other identification normally on the items themselves, including their packaging.

(2) This exception pertains to what is permissible for a United States person who is the recipient of a unilateral and specific selection of goods or services to be furnished by a third person. It does not pertain to whether the act of making such a selection is permitted; that question is covered, with respect to United States persons, in section 369.3(f) on "Compliance with Local Law". Nor does it pertain to the United States person who is the recipient of an order to supply its own goods or services. Nothing in this Part prohibits or restricts a United States person from filling an order himself, even if he is selected by the buyer on a boycott basis (e.g., because he is not blacklisted), so long as he does not himself take any action prohibited by this Part.

UNILATERAL AND SPECIFIC CHARACTER OF THE SELECTION

(3) In order for this exception to apply, the selection with which a United States person wishes to comply must be unilateral and specific.

(4) A "specific" selection is one which is stated in the affirmative and which specifies a particular supplier of goods or services.

(5) A "unilateral" selection is one in which the discretion in making the selection is exercised by the boycotting country buyer. If the United States person who receives a unilateral selection has provided the buyer with any boycott-based assistance (including information for purposes of helping the buyer select someone on a boycott basis), then the buyer's selection is not unilateral, and compliance with that selection by a United States person does not come within this exception.

(6) The provision of so-called "pre-selection" or "pre-award" services, such as providing lists of qualified suppliers, subcontractors, or bidders, does not, in and of itself, destroy the unilateral character of a selection, provided such services are not boycott-based. Lists of qualified suppliers, for example, must not exclude anyone because he is blacklisted. Moreover, such services must be of the type customarily provided in similar transactions by the firm (or industry of which the firm is a part) as measured by the practice in non-boycotting as well as boycotting countries. If such services are not customarily provided in similar transac-

tions or such services are provided in such a way as to exclude blacklisted persons from participating in a transaction or diminish their opportunity for such participation, then the services may not be provided without destroying the unilateral character of any subsequent selection.

SELECTION TO BE MADE BY BOYCOTTING COUNTRY RESIDENT

(7) In order for this exception to be available, the unilateral and specific selection must have been made by a boycotting country, or by a national or resident of a boycotting country. Such a resident may be a United States person. For purposes of this exception, a United States person will be considered a resident of a boycotting country only if he is a bona fide resident. A United States person may be a bona fide resident of a boycotting country even if such person's residency is temporary.

(8) Factors that will be considered in determining whether a United States person is a bona fide resident of a boycotting country include:

- (i) physical presence in the country;
- (ii) whether residence is needed for legitimate business reasons;
- (iii) continuity of the residency;
- (iv) intent to maintain the residency;
- (v) prior residence in the country;
- (vi) size and nature of presence in the country;
- (vii) whether the person is registered to do business or incorporated in the country;
- (viii) whether the person has a valid work visa; and
- (ix) whether the person has a similar presence in both boycotting and non-boycotting foreign countries in connection with similar business activities.

No one of these factors is dispositive. All the circumstances will be examined closely to ascertain whether there is, in fact, a bona fide residency. Residency established solely for purposes of avoidance of the application of this Part, unrelated to legitimate business needs, does not constitute bona fide residency.

(9) The boycotting country resident must be the one actually making the selection. If a selection is made by a non-resident agent, parent, subsidiary, affiliate, home office or branch office of a boycotting country resident, it is

not a selection by a resident within the meaning of this exception.

(10) A selection made solely by a bona fide resident and merely transmitted by another person to a United States person for execution is a selection by bona fide resident within the meaning of this exception.

DUTY OF INQUIRY

(11) If a United States person receives, from another person located in the United States, what may be a unilateral selection by a boycotting country customer, and knows or has reason to know that the selection is made for boycott reasons, he has a duty to inquire of the transmitting person to determine who actually made the selection. If he knows or has reason to know that the selection was made by other than a boycotting country, or a national or resident of boycotting country, he may not comply. A course or pattern of conduct which a United States person recognizes or should recognize as consistent with boycott restrictions will create a duty to inquire.

(12) If the United States person does not know or have reason to know that the selection it receives is boycott-based, its compliance with such a selection does not offend any prohibition and this exception is not needed.

SELECTION OF SERVICES

(13) This exception applies only to compliance with selections of certain types of suppliers of services—carriers, insurers, and suppliers of services to be performed "within the boycotting country". Services to be performed wholly within the United States or wholly within any country other than the boycotting country are not covered.

(14) For purposes of this Part, services are to be performed "within the boycotting country" only if they are of a type which would customarily be performed by suppliers of those services within the country of the recipient of those services, and if the part of the services performed within the boycotting country is a necessary and not insignificant part of the total services performed.

(15) What is "customary and necessary" for these purposes depends on the usual practice of the supplier of the services (or the industry of which he is a part) as measured by the practice in non-boycotting as well as boy-

cotting countries, except where such practices are instituted to accommodate this Part.

SELECTION OF GOODS

(16) This exception applies only to compliance with selections of certain types of goods—goods that, in the normal course of business, are identifiable as to their source or origin at the time of their entry into the boycotting country. The definition of "specifically identifiable goods" is the same under this section as it is in section 369.3(f) on "Compliance with Local Law".

(17) Goods "specifically identifiable" in the normal course of business are those items which at the time of their entry into a boycotting country are identifiable as to source or origin by (a) uniqueness of design or appearance; or (b) trademark, trade name, or other identification normally on the items themselves, including their packaging. Goods are "specifically identifiable" in the normal course of business if their source or origin is ascertainable by inspection of the items themselves, including their packaging, regardless of whether inspection takes place. Goods are not considered to be "specifically identifiable" in the normal course of business if a trademark, trade name, or other form of identification not normally present is added to the items themselves, including their packaging, to accommodate this Part.

GENERAL

(18) If a unilateral selection meets the conditions described above, the United States person receiving the unilateral selection may comply or agree to comply, even if he knows or has reason to know that the selection was boycott-based. However, no United States person may comply or agree to comply with any unilateral selection if he knows or has reason to know that the purpose of the selection is to effect discrimination against any United States person on the basis of race, religion, sex, or national origin.

EXAMPLES OF COMPLIANCE WITH A UNILATERAL SELECTION

The following examples are intended to give guidance in determining what constitutes a unilateral selection and the circumstances in which compliance with such a selection is permissible. They are illustrative, not comprehensive.

SPECIFIC AND UNILATERAL SELECTION

(i) A, a U.S. manufacturer of road-grading equipment, is asked by boycotting country Y to ship goods to Y on U.S. vessel B, a carrier which is not blacklisted by Y. A knows or has reason to know that Y's selection of B is boycott-based.

A may comply with Y's request, or may agree to comply as a condition of the contract, because the selection is specific and unilateral.

(ii) A, a U.S. contractor building an industrial facility in boycotting country Y is asked by B, a resident of Y, to use C as the supplier of air conditioning equipment to be used in the facility. C is not blacklisted by country Y. A knows or has reason to know that B's request is boycott-based.

A may comply with B's request, or may agree to comply as a condition of the contract, because the selection of C is specific and unilateral.

(iii) A, a U.S. manufacturer of automotive equipment, is asked by boycotting country Y not to ship its goods to Y on U.S. carriers, B, C, or D. Carriers B, C, and D are blacklisted by boycotting country Y. A knows or has reason to know that Y's request is boycott-based.

A may not comply or agree to comply with Y's request, because no specific selection of any particular carrier has been made.

(iv) A, a U.S. exporter shipping goods ordered by boycotting country Y, is provided by Y with a list of eligible U.S. insurers from which A may choose in insuring the shipment of its goods. A knows or has reason to know that the list was compiled on a boycott basis.

A may not comply or agree to comply with Y's request that A choose from among the eligible insurers, because no specific selection of any particular insurer has been made.

(v) A, a U.S. aircraft manufacturer, is negotiating to sell aircraft to boycotting country Y. During the negotiations, Y asks A to identify the company which normally manufactures the engines for the aircraft. A responds that they are normally manufactured by U.S. engine manufacturer B. B is blacklisted by Y. In making the purchase, Y specifies that the engines for the aircraft should be supplied by U.S. engine manufacturer C.

A may comply or agree to comply with Y's selection of C, because Y's selection is unilateral and specific.

(vi) A, a U.S. construction firm, is retained by an agency of boycotting country Y to build a pipeline. Y requests A to suggest qualified engineering firms to be used on-site in the construction of the pipeline. It is customary for A, regardless of where it conducts its operations, to identify qualified engineering firms to its customers so that its customers may make their own selection of the firm to be engaged. Choice of engineering firm is customarily a prerogative of the customer. A provides a list of five engineering firms, B-F, excluding no firm because it may be blacklisted, and then confers with and gives it recommendations to Y. A recommends C, because C is the best qualified. Y then selects B, because C is blacklisted.

A may comply with Y's selection of B, because the boycott-based decision is made by Y and is unilateral and specific. Since A's pre-award services are of the kind customarily provided in these situations, and since they are provided without reference to the boycott, they do not destroy the unilateral character of Y's selection.

(vii) A, a U.S. aircraft manufacturer, has an order to supply a certain number of planes to boycotting country Y. In connection with the order, Y asks A to supply it with a list of qualified aircraft tire manufacturers so that Y can select the tires to be placed on the planes. This is a highly unusual request, since, in A's worldwide business operations, choice of tires is customarily made by the manufacturer, not the customer. Nonetheless, A supplies a list of tire

manufacturers, B, C, D, and E. Y chooses tire manufacturer B because B is not blacklisted. Had A, as is customary, selected the tires, company C would have been chosen. C happens to be blacklisted, and A knows that C's blacklist status was the reason for Y's selection of B.

A's provision of a list of tire manufacturers for Y to choose from destroys the unilateral character of Y's selection, because such a pre-selection service is not customary in A's worldwide business operations.

(viii) A, a U.S. aircraft manufacturer, receives an order from U.S. company C, which is located in the United States, for the sale of aircraft to company D, a U.S. affiliate of C. D is a bona fide resident of boycotting country Y. C instructs A that "in order to avoid boycott problems," A must use engines that are manufactured by company B, a company that is not blacklisted by Y. Engines built by B are unique in design and also bear B's trade name.

Since A has reason to know that the selection is boycott-based, he must inquire of C whether the selection was in fact made by D. If C informs A that the selection was made by D, A may comply.

(ix) Same as (viii), except that C initially states that the designation was unilaterally and specifically made by D.

A may accept C's statement without further investigation and may comply with the selection, because C merely transmitted D's unilateral and specific selection.

(x) Same as (ix), except that C informs A that it, C, has selected B on behalf of or as an agent of its affiliated company resident in the boycotting country.

A may not comply with this selection, because the decision was not made by a resident of the boycotting country.

(xi) A, a U.S. management consulting firm, is advising boycotting country Y on the selection of a contracting firm to construct a plant for the manufacture of agricultural chemicals. As is customary in its business, A compiles a list of potential contractors on the basis of its evaluation of the capabilities of the respective candidates to perform the job. A has knowledge that company B is blacklisted, but provides Y with the names of companies B, C, D, and E, listing them in order of their qualifications. Y instructs A to negotiate with C.

A may comply with Y's instruction, because Y's selection is unilateral and specific.

(xii) A, a U.S. exporter, is asked by boycotting country Y not to ship goods on carriers B, C, or D, which are owned by nationals of and are registered in country P, a country not boycotted by Y.

A may comply or agree to comply with Y's request even though the selection is not specific, because A does not know or have reason to know that the request is boycott-based. (NOTE: In example (xii), A has violated no prohibition, because it does not know or have reason to know that Y's instruction is boycott-based. Therefore, A could not act with the requisite intent to comply with the boycott.)

(xiii) A, a U.S. construction company, receives a contract to construct a hotel in boycotting country Y. As part of the contract, A is required to furnish Y with lists of qualified suppliers of various specifically identifiable items. A compiles lists of various qualified suppliers wholly without reference to the boycott, and thereafter Y instructs A to negotiate with, enter into contracts with, and arrange for delivery from each of the suppliers which Y designates. A knows that Y's choices are made on a boycott basis.

A may comply with Y's selections and carry out these post-award services for Y, because Y's selections were unilateral and specific and A's pre-award services were provided without reference to Y's boycott.

EXAMPLES OF BOYCOTTING COUNTRY BUYER

(The factors in determining whether a United States person is a "bona fide resident" of a boycotting country are the same as in section 369.3(f) on "Compliance with Local Law." See also the examples in that section.)

(i) A, a U.S. exporter, is asked by B, a U.S. person who is a bona fide resident of boycotting country Y, to ship goods on U.S. carrier C. C is not blacklisted by Y, and A knows that B has chosen on a boycott basis in order to comply with Y's boycott laws.

A may comply or agree to comply with B's request, because B is a bona fide resident of Y.

(ii) A is a U.S. computer company whose subsidiary, B, is a bona fide resident of boycotting country Y. A receives an order from B for specific, identifiable products manufactured by company C in connection with a computer which B is installing in Y.

A may comply or agree to comply with B's unilateral and specific selection, so long as the discretion was in fact exercised by B, not A. (NOTE: Unilateral selection transactions involving related United States persons will be scrutinized carefully to ensure that the selection was in fact made by the bona fide resident of the boycotting country.)

(iii) A, a U.S. engineering firm, has chief engineer B as its resident engineer on a dam construction site in boycotting country Y. B's presence at the site is necessary in order to ensure proper supervision of the project. In order to comply with local law, B selects equipment supplier C rather than D, who is blacklisted, and directs A to purchase certain specific equipment from C for use in the project.

A may comply with this unilateral selection, because the decision was made by a bona fide resident of Y. (As noted above, unilateral selections involving related United States persons will be scrutinized carefully to ensure that the selection was in fact made by the bona fide resident of the boycotting country.)

(iv) B, a branch of U.S. bank A, is located in boycotting country Y. B is in need of office supplies and asks the home office in New York to make the necessary purchases. A contacts C, a U.S. company in the office supply business, and instructs C to purchase various items from certain specific companies and ship them directly to B. In order to avoid any difficulties for B with respect to Y's boycott laws, A is careful to specify only non-blacklisted companies or suppliers. C knows that that was A's purpose.

C may not comply with A's instruction, because the selection of suppliers was not made by a resident of a boycotting country.

(v) Same as (iv), except that A has given standing instructions to B that whenever it needs office supplies, it should specify certain suppliers designated by A. To avoid running afoul of Y's boycott laws, A's designations consist exclusively of non-blacklisted firms. A receives an order from B with the suppliers designated in accordance with A's instructions.

A may not comply with B's selection, because the selection was not in fact made by a bona fide resident of the boycotting country, but by a person located in the United States.

EXAMPLES OF SUPPLIERS OF SERVICES

(i) A, a U.S. manufacturer, is asked by boycotting country Y to ship goods to Y on U.S. vessel B, a carrier which is not blacklisted by Y.

A may comply or agree to comply with Y's request, because compliance with the unilateral and specific selection of carriers is expressly permitted under this exception.

(ii) A, a U.S. exporter shipping goods ordered by C, a national of boycotting country Y, is asked by C to insure the shipment through U.S. insurer B.

A may comply or agree to comply with C's request, because compliance with the unilateral and specific selection of an insurer is expressly permitted under this exception.

(iii) A, a U.S. construction company, is hired by C, an agency of the government of boycotting country Y, to build a power plant in Y. C specifies that A should subcontract the foundation work to U.S. contractor B. Part of the foundation design work will be done by B in the United States.

A may comply or agree to comply with Y's designation, because a necessary and not insignificant part of B's services are to be performed within the boycotting country, and such services are customarily performed on-site.

(iv) A, a U.S. contractor, is engaged by boycotting country Y to build a power plant. Y specifies that U.S. architectural firm B should be retained by A to design the plant. In order to design the plant, it is essential that B's personnel visit and become familiar with the site, although the bulk of the design and drawing work will be done in the United States.

A may comply or agree to comply with Y's unilateral and specific selection of architectural firm B, because a necessary and not insignificant part of B's services are to be performed within Y, and such on-site work is customarily involved in the provision of architectural services. The fact that the bulk of the actual work may be performed in the United States is irrelevant since the part to be performed within Y is necessary to B's effective performance.

(v) Same as (iv), except that Y specifies that the turbine for the power plant should be designed by U.S. engineer C. It is neither customary nor necessary for C to visit the site in order to do any of his work, but C has informed A that he would probably want to visit the site in Y if he were selected for the job.

A may not comply or agree to comply with Y's request, because, in the normal course of business, it is neither customary nor necessary for engineer C's services to be performed in Y.

(vi) A, a U.S. aircraft manufacturer, receives a contract from boycotting country Y to manufacture jet engines for Y's use. Y specifies that the engines should be designed by U.S. industrial engineering firm B.

A may not comply or agree to comply with Y's request, because, in the normal course of business, the services will not be performed in Y.

(vii) U.S. company A has a contract to supply specially designed road graders to boycotting country Y. Y has instructed A that it should engage engineering firm B in the design work rather than engineering firm C, which A normally uses, because C is blacklisted. When A contacts B, B informs A that one of B's personnel customarily visits the location in which any equipment B designs is used after it is in use, in order to determine how good a design job B has done.

Such visits are necessary from B's point of view to provide a check on the quality of its work, and they are necessary from Y's point of view because they make it possible for Y to discuss possible design changes should deficiencies be detected.

A may not comply with Y's selection of B, because the services which B would perform in Y are an insignificant part of the total services to be performed by B.

EXAMPLES OF SPECIFICALLY IDENTIFIABLE GOODS

(The test of what constitutes "specifically identifiable goods" under this exception also applies to the term "specifically identifiable goods" as used in section 369.3(f) of "Compliance with Local Law.")

(i) A, a U.S. contractor, is constructing an apartment complex, on a turnkey basis, for boycotting country Y. Y instructs A to use only kitchen appliances manufactured by U.S. company B in completing the project. The appliances normally bear the manufacturer's name and trademark.

A may comply with Y's selection of B, because Y's unilateral and specific selection is of goods identifiable as to source or origin in the normal course of business at the time of their entry into Y.

(ii) Same as (i), except that Y directs A to use lumber manufactured only by U.S. company C. In the normal course of business, C neither stamps its name on the lumber nor identifies itself as the manufacturer on the packaging. In addition, normal export packaging does not identify the manufacturer.

A may not comply with Y's selection, because the goods selected are not identifiable by source or origin in the normal course of business at the time of their entry into Y.

(iii) B, a U.S. contractor who is a bona fide resident of boycotting country Y, is engaged in building roads. B retains the services of A, a U.S. engineering firm, to assist in procuring construction equipment. B directs A to purchase road graders only from manufacturer C because other road grader manufacturers which A might use are blacklisted. C's road graders normally bear C's insignia.

A may comply with B's selection of C, because the goods selected are identifiable by source or origin in the normal course of business at the time of their entry into Y.

(iv) A, a U.S. company, manufactures computer-operated machine tools. The computers are mounted on a separate bracket on the side of the equipment and are readily identifiable by brand name imprinted on the equipment. There are five or six U.S. manufacturers of such computers which will function interchangeably to operate the machine tools manufactured by A. B, a resident of boycotting country Y, contracts to buy the machine tools manufactured by A on the condition that A incorporate, as the computer drive, a computer manufactured by U.S. company C. B's designation of C is made to avoid boycott problems which could be caused if computers manufactured by some other company were used.

A may comply with B's designation of C, because the goods selected are identifiable by source or origin in the normal course of business at the time of their entry into Y.

(v) A, a U.S. wholesaler of electronic equipment, receives an order from B, a U.S. manufacturer of radio equipment, who is a bona fide resident of boycotting country Y. B orders a variety of electrical components and specifies that all transistors must be purchased from company C, which is not blacklisted by Y. The transistors requested by B do not normally bear the name of the

manufacturer; however, they are typically shipped in cartons, and C's name and logo appear on the cartons.

A may comply with B's selection, because the goods selected by B are identifiable as to source or origin in the normal course of business at the time of their entry into Y by virtue of the containers or packaging used.

(vi) A, a U.S. computer manufacturer, receives an order for a computer from B, a university in boycotting country Y. B specifies that certain integrated circuits incorporated in the computer must be supplied by U.S. electronics company C. These circuits are incorporated into the computer and are not visible without disassembling the computer.

A may not comply or agree to comply with B's specific selection of these components, because they are not identifiable as to their source or origin in the normal course of business at the time of their entry into Y.

(vii) A, a U.S. clothing manufacturer, receives an order for shirts from B, a retailer resident in boycotting country Y. B specifies that the shirts are to be manufactured from cotton produced by U.S. farming cooperative C. Such shirts will not identify C or the source of the cotton.

A may not comply or agree to comply with B's designation, because the cotton is not identifiable as to source or origin in the normal course of business at the time of entry into Y.

(viii) A, a U.S. contractor, is retained by B, a construction firm located in and wholly owned by boycotting country Y, to assist B in procuring construction materials. B directs A to purchase a range of materials, including hardware, tools, and trucks, all of which bear the name of the manufacturer stamped on the item. In addition, B directs A to purchase steel beams manufactured by U.S. company C. The name of manufacturer C normally does not appear on the steel itself or on its export packaging.

A may comply with B's selection of the hardware, tools, and trucks, because they are identifiable as to source or origin in the normal course of business at the time of entry into Y. A may not comply with B's selection of steel beams, because the goods are not identifiable as to source or origin by trade name, trademark, uniqueness or packaging at the time of their entry into Y.

EXAMPLES OF DISCRIMINATION ON BASIS OF RACE, RELIGION, SEX, OR NATIONAL ORIGIN

(i) A, a U.S. paper manufacturer, is asked by boycotting country Y to ship goods to Y on U.S. vessel B. Y states that the reason for its choice of B is that, unlike U.S. vessel C, B is not owned by persons of a particular faith.

A may not comply or agree to comply with Y's request, because A has reason to know that the purpose of the selection is to effect religious discrimination against a United States person.

(d) Shipment and Transshipment of Exports Pursuant to a Boycotting Country's Requirements

COMPLIANCE WITH A BOYCOTTING COUNTRY'S REQUIREMENTS REGARDING SHIPMENT AND TRANSSHIPMENT OF EXPORTS

(1) A United States person may comply or agree to comply with the export requirements of a boycotting country with respect to shipments or transshipments of exports to:

- (i) a boycotted country;
- (ii) any business concern of a boycotted country;
- (iii) any business concern organized under the laws of a boycotted country; or
- (iv) any national or resident of a boycotted country.

(2) This exception permits compliance with restrictions which a boycotting country may place on direct exports to a boycotted country; on indirect exports to a boycotted country (i.e., those that pass via third parties); and on exports to residents, nationals, or business concerns of, or organized under the laws of, a boycotted country, including those located in third countries.

EXAMPLES OF COMPLIANCE WITH A BOYCOTTING COUNTRY'S REQUIREMENTS REGARDING SHIPMENT OR TRANSSHIPMENT OF EXPORTS

The following examples are intended to give guidance in determining the circumstances in which compliance with the export requirements of a boycotting country is permissible. They are illustrative, not comprehensive.

(i) A, a U.S. petroleum company, exports petroleum products to 20 countries from boycotting country Y. Country Y's export regulations require that products not be exported from Y to boycotted country X.

A may agree to and comply with Y's regulations with respect to the export of goods from Y to X.

(ii) Same as (i), except that Y's export regulations require that goods not be exported from boycotting country Y to any business concern organized under the laws of boycotted country X.

A may agree to and comply with Y's regulations with respect to the export of goods from Y to a business concern organized under the laws of X, even if such concern is located in a country not involved in Y's boycott of X.

(iii) B, the operator of a storage facility in country M, contracts with A, a U.S. carrier, for the shipment of certain goods manufactured in boycotting country Y. A's contract with B contains a provision stating that the goods to be transported may not be shipped or transshipped to boycotted country X. B informs A that this provision is a requirement of C, the manufacturer of the goods who is a resident of boycotting country Y. Country M is not boycotted by Y.

A may agree to and comply with this provision, because such a provision is required by the export regulations of boycotting country Y in order to prevent shipment of Y-origin goods to a country boycotted by Y.

(iv) A, a U.S. petroleum refiner located in the United States, purchases crude oil from boycotting country Y. A has a branch operation in boycotted country X. Y requires, as a condition of sale, that A agree not to ship or transship the crude oil or products refined in Y to A's branch in X.

A may agree to and comply with these requirements, because they are export requirements of Y designed to prevent Y-origin products from being shipped to a boycotted country.

(v) A, a U.S. company, has a petrochemical plant in boycotting country Y. As a condition of securing an export license from Y, A must agree that it will not ship or permit transshipment of any of its output from the

plant in Y to any companies which Y lists as being owned by nationals of boycotted country X.

A may agree to this condition, because it is a restriction designed to prevent Y-origin products from being exported to a business concern of boycotted country X or to nationals of boycotted country X.

(vi) Same as (v), except that the condition imposed on A is that Y-origin goods may not be shipped or permitted to be transshipped to any companies which Y lists as being owned by persons whose national origin is X.

A may not agree to this condition, because it is a restriction designed to prevent Y-origin goods from being exported to persons of a particular national origin rather than to residents or nationals of a particular boycotted country.

(e) Immigration, Passport, Visa, or Employment Requirements of a Boycotting Country

COMPLIANCE WITH IMMIGRATION, PASSPORT, VISA, OR EMPLOYMENT REQUIREMENTS OF A BOYCOTTING COUNTRY

(1) A United States individual may comply or agree to comply with the immigration, passport, visa, or employment requirements of a boycotting country, and with requests for information from a boycotting country made to ascertain whether such individual meets requirements for employment within the boycotting country, provided that he furnishes information only about himself or a member of his family, and not about any other United States individual, including his employees, employers, or co-workers.

(2) For purposes of this section, a "United States individual" means a person who is a resident or national of the United States. "Family" means immediate family members, including parents, siblings, spouse, children, and other dependents living in the individual's home.

(3) A United States person may not furnish information about its employees or executives, but may allow any individual to respond on his own to any request for information relating to immigration, passport, visa, or employment requirements. A United States person may also perform any ministerial acts to expedite processing of applications by individuals. These include informing employees of boycotting country visa requirements at an appropriate time; typing, translation, messenger and similar services; and assisting in or arranging for the expeditious processing of applications. All such actions must be undertaken on a non-discriminatory basis.

(4) A United States person may proceed with a project in a boycotting country even if certain of its employees or other prospective participants in a transaction are denied entry for boycott reasons. But no employees or other participants may be selected in advance in a manner designed to comply with a boycott.

EXAMPLES OF COMPLIANCE WITH IMMIGRATION, PASSPORT, VISA, OR EMPLOYMENT REQUIREMENTS OF A BOYCOTTING COUNTRY

The following examples are intended to give guidance in determining the circumstances in which compliance with immigration, passport, visa, or employment requirements is permissible. They are illustrative, not comprehensive.

(i) A, a U.S. individual employed by B, a U.S. manufacturer of sporting goods with a plant in boycotting country Y, wishes to obtain a work visa so that he may transfer to the plant in Y. Country Y's immigration laws specify that anyone wishing to enter the country or obtain a visa to work in the country must supply information about his religion. This information is required for boycott purposes.

A may furnish such information, because it is required by Y's immigration laws.

(ii) Same as (i), except that A is asked to supply such information about other employees of B.

A may not supply this information, because it is not information about himself or his family.

(iii) A, a U.S. building contractor, has been awarded a construction contract to be performed in boycotting country Y. Y's immigration laws require that individuals applying for visas must indicate race, religion, and place of birth. The information is sought for boycott purposes. To avoid repeated rejections of applications for work visas by A's employees, A desires to furnish to country Y a list of its prospective and current employees and required information about each so that Y can make an initial screening.

A may not furnish such a list, because A would be furnishing information about the race, religion, and national origin of its employees.

(iv) Same as (iii), except that A selects for work on the project those of its current employees whom it believes will be granted work visas from boycotting country Y.

A may not make a selection from among its employees in a manner designed to comply with the boycott-based visa requirements of Y, but must allow all eligible employees to apply for visas. A may later substitute an employee who obtains the necessary visa for one who has had his application rejected.

(v) Same as (iii), except that A selects employees for the project and then allows each employee individually to apply for his own visa. Two employees' applications are rejected, and A then substitutes two other employees who, in turn, submit their own visa applications.

A may take such action, because in so doing A is not acting in contravention of any prohibition of this Part.

(vi) Same as (v), except that A arranges for the translation, typing and processing of its employees' applications, and transmits all the applications to the consulate of boycotting country Y.

A may take such ministerial actions, because in so doing A is not itself furnishing information with respect to race, religion, sex, or national origin, but is merely transmitting information furnished by its individual employees.

(vii) A, a U.S. contractor, selects U.S. Subcontractor B to perform certain engineering services in connection with A's project in boycotting country Y. The work visa application submitted by the employee B has proposed as chief engineer of this project is

rejected by Y because his national origin is of boycotted country X. Subcontractor B thereupon withdraws.

A may continue with the project and select another subcontractor, because A is not acting in contravention of any prohibition of this Part.

(f) *Compliance with Local Law.* (1) This exception contains two parts. The first covers compliance with local law with respect to a United States person's activities exclusively within a foreign country; the second covers compliance with local import laws by United States persons resident in a foreign country. Under both parts of this exception, local laws are laws of the host country, whether derived from statutes, regulations, decrees, or other official sources having the effect of law in the host country. This exception is not available for compliance with presumed policies or understandings of policies unless those policies are reflected in official sources having the effect of law.

(2) Both parts of this exception apply only to United States persons resident in a foreign country. For purposes of this exception, a United States person will be considered to be a resident of a foreign country only if he is a bona fide resident. A United States person may be a bona fide resident of a foreign country even if such person's residency is temporary.

(3) Factors that will be considered in determining whether a United States person is a bona fide resident of a foreign country include:

- (i) physical presence in the country;
- (ii) whether residence is needed for legitimate business reasons;
- (iii) continuity of the residency;
- (iv) intent to maintain the residency;
- (v) prior residence in the country;
- (vi) size and nature of presence in the country;
- (vii) whether the person is registered to do business or incorporated in the country;
- (viii) whether the person has a valid work visa; and
- (ix) whether the person has a similar presence in both boycotting and non-boycotting foreign countries in connection with similar business activities.

No one of these factors is dispositive. All the circumstances involved will be closely examined to ascertain whether there is, in fact, bona fide residency. Residency established solely for purposes of avoidance of the application of this Part, unrelated to legitimate business needs, does not constitute bona fide residency.

EXAMPLES OF BONA FIDE RESIDENCY

The following examples are intended to give guidance in determining the circumstances in which a United States person may be a bona fide resident of a foreign country. For purposes of illustration, each example discusses only one or two factors,

instead of all relevant factors. They are illustrative, not comprehensive.

(i) A, a U.S. radio manufacturer located in the United States, receives a tender to bid on a contract to supply radios for a hotel to be built in boycotting country Y. After examining the proposal, A sends a bid from its New York office to Y.

A is not a resident of Y, because it is not physically present in Y.

(ii) Same as (i), except that after receiving the tender, A sends its sales representative to Y. A does not usually have sales representatives in countries when it bids from the United States, and this particular person's presence in Y is not necessary to enable A to make the bid.

A is not a bona fide resident of Y, because it has no legitimate business reasons for having its sales representative resident in Y.

(iii) A, a U.S. bank, wishes to establish a branch office in boycotting country Y. In pursuit of that objective, A's personnel visit Y to make the necessary arrangements. A intends to establish a permanent branch office in Y after the necessary arrangements are made.

A's personnel in Y are not bona fide residents of Y, because A does not yet have a permanent business operation in Y.

(iv) Same as (iii), except A's personnel are required by Y's laws to furnish certain non-discriminatory boycott information in order to establish a branch in Y.

In these limited circumstances, A's personnel may furnish the non-discriminatory boycott information necessary to establish residency to the same extent a U.S. person who is a bona fide resident in that country could. If this information could not be furnished in such limited circumstances, the exception would be available only to firms resident in a boycotting country before the effective date of this Part.

(v) A, a U.S. construction company, receives an invitation to build a power plant in boycotting country Y. After receipt of the invitation, A's personnel visit Y in order to survey the site and make necessary analyses in preparation for submitting a bid. The invitation requires that otherwise prohibited boycott information be furnished with the bid.

A's personnel in Y are not bona fide residents of Y, because A has no permanent business operation in Y. Therefore, A's personnel may not furnish the prohibited information.

(vi) Same as (v), except that A is considering establishing an office in boycotting country Y. A's personnel visit Y in order to register A to do business in that country. A intends to establish ongoing construction operations in Y. A's personnel are required by Y's laws to furnish certain non-discriminatory boycott information in order to register A to do business or incorporate a subsidiary in Y.

In these limited circumstances, A's personnel may furnish non-discriminatory boycott information necessary to establish residency to the same extent a U.S. person who is a bona fide resident in that country could. If this information could not be furnished in such limited circumstances, the exception would be available only to firms resident in a boycotting country before the effective date of this Part.

(vii) A, a subsidiary of U.S. oil company B, is located in boycotting country Y. A has been engaged in oil explorations in Y for a number of years.

A is a bona fide resident of Y, because of its pre-existing continuous presence in Y for legitimate business reasons.

(viii) Same as (vii), except that A has just been established in Y and has not yet begun operations.

A is a bona fide resident of Y, because it is present in Y for legitimate business reasons and it intends to reside continuously.

(ix) U.S. company A is a manufacturer of prefabricated homes. A builds a plant in boycotting country Y for purposes of assembling components made by A in the United States and shipped to Y.

A's personnel in Y are bona fide residents of Y, because A's plant in Y is established for legitimate business reasons, and it intends to reside continuously.

(x) U.S. company A has its principal place of business in the United States. A's sales agent visits boycotting country Y from time to time for purposes of soliciting orders.

A's sales agent is not a bona fide resident of Y, because such periodic visits to Y are insufficient to establish a bona fide residency.

(xi) A, a branch office of U.S. construction company B, is located in boycotting country Y. The branch office has been in existence for a number of years and has been performing various management services in connection with B's construction operations in Y.

A is a bona fide resident of Y, because of its longstanding presence in Y and its conduct of ongoing operations in Y.

(xii) U.S. construction company A has never done any business in boycotting country Y. It is awarded a contract to construct a hospital in Y, and preparatory to beginning construction, sends its personnel to Y to set up operations.

A's personnel are bona fide residents of Y, because they are present in Y for the purpose of carrying out A's legitimate business purposes; they intend to reside continuously; and residency is necessary to conduct their business.

(xiii) U.S. company A manufactures furniture. All its sales in foreign countries are conducted from its offices in the United States. From time to time A has considered opening sales offices abroad, but it has concluded that it is more efficient to conduct sales operations from the United States. Shortly after the effective date of this Part, A sends a sales representative to boycotting country Y to open an office in and solicit orders from Y. It is more costly to conduct operations from that office than to sell directly from the United States, but A believes that if it establishes a residence in Y, it will be in a better position to avoid conflicts with U.S. law in its sales to Y.

A's sales representative is not a bona fide resident of Y, because the residency was established to avoid the application of this Part and not for legitimate business reasons.

(xiv) Same as (xiii), except that it is in fact more efficient to have a sales office in Y. In fact, without a sales office in Y, A would find it difficult to explore business opportunities in Y. A is aware, however, that residency in Y would permit its sales representative to comply with Y's boycott laws.

A's sales representative is a bona fide resident of Y, because A has a legitimate business reason for establishing a sales office in Y.

(xv) U.S. company B is a computer manufacturer. B sells computers and related pro-

gramming services tailored to the needs of individual clients. Because of the complex nature of the product, B must have sales representatives in any country where sales are made. B has a sales representative, A, in boycotting country Y. A spends two months of the year in Y, and the rest of the year in other countries. B has a permanent sales office from which A operates while in Y, and the sales office is stocked with brochures and other sales materials.

A is a bona fide resident of Y, because his presence in Y is necessary to carry out B's legitimate business purposes; B maintains a permanent office in Y; and B intends to continue doing business in Y in the future.

(xvi) A, a U.S. construction engineering company, is engaged by B, a U.S. general contracting company, to provide services in connection with B's contract to construct a hospital complex in boycotting country Y. In order to perform those services, A's engineers set up a temporary office in a trailer on the construction site in Y. A's work is expected to be completed within six months.

A's personnel in Y are bona fide residents of Y, because A's on-site office is necessary to the performance of its services for B, and because A's personnel are continuously there.

(xvii) A, a U.S. company, sends one of its representatives to boycotting country Y to explore new sales possibilities for its line of transistor radios. After spending several weeks in Y, A's representative rents a post office box in Y, to which all persons interested in A's products are directed to make inquiry.

A is not a bona fide resident of Y, because rental of a post office box is not a sufficient presence in Y to constitute residency.

(xviii) A, a U.S. computer company, has a patent and trademark registered in the United States. In order to obtain registration of its patent and trademark in boycotting country Y, A is required to furnish certain non-discriminatory boycott information.

A may not furnish the information, because A is not a bona fide resident of Y.

(f-1) *Activities Exclusively Within a Foreign Country.* (1) Any United States person who is a bona fide resident of a foreign country, including a boycotting country, may comply or agree to comply with the laws of that country with respect to his activities exclusively within that country. These activities include:

(i) entering into contracts which provide that local law applies or governs, or that the parties will comply with such laws;

(ii) employing residents of the host country;

(iii) retaining local contractors to perform work within the host country;

(iv) purchasing or selling goods or services from or to residents of the host country; and

(v) furnishing information within the host country.

(2) Activities exclusively within the country do not include importing goods or services from outside the host country, and, therefore, this part of the exception does not apply to compliance with import laws in connection with importing goods or services.

EXAMPLES OF PERMISSIBLE COMPLIANCE WITH LOCAL LAW WITH RESPECT TO ACTIVITIES EXCLUSIVELY WITHIN A FOREIGN COUNTRY

The following examples are intended to give guidance in determining the circumstances in which compliance with local law is permissible. They are illustrative, not comprehensive.

ACTIVITIES EXCLUSIVELY WITHIN A FOREIGN COUNTRY

(i) U.S. construction company A, a bona fide resident of boycotting country Y, has a contract to build a school complex in Y. Pursuant to Y's boycott laws, the contract requires A to refuse to purchase supplies from certain local merchants. While Y permits such merchants to operate within Y, their freedom of action in Y is constrained because of their relationship with boycotted country X.

A may enter into the contract, because dealings with local merchants are activities exclusively within Y.

(ii) A, a banking subsidiary of U.S. bank B, is a bona fide resident of boycotting country Y. From time to time, A purchases office supplies from the United States.

A's purchase of office supplies is not an activity exclusively within Y, because it involves the import of goods from abroad.

(iii) A, a branch of U.S. bank B, is a bona fide resident of boycotting country Y. Under Y's boycott laws, A is required to supply information about whether A has any dealings with boycotted country X. A complies and furnishes the information within Y and does so of its own knowledge.

A may comply with that requirement, because in compiling and furnishing the information within Y, based on its own knowledge, A is engaging in an activity exclusively within Y.

(iv) Same as (iii), except that A is required to supply information about B's dealings with X. From its own knowledge and without making any inquiry of B, A complies and furnishes the information.

A may comply with that requirement, because in compiling and furnishing the information within Y, based on its own knowledge, A is engaging in an activity exclusively within Y.

(v) Same as (iv), except that in making its responses, A asks B to compile some of the information.

A may not comply, because the gathering of the necessary information takes place partially outside Y.

(vi) U.S. company A has applied for a license to establish a permanent manufacturing facility in boycotting country Y. Under Y's boycott law, A must agree, as a condition of the license, that it will not sell any of its output to blacklisted foreign firms.

A may not comply, because the agreement would govern activities of A which are not exclusively within Y.

DISCRIMINATION AGAINST UNITED STATES PERSONS

(i) A, a subsidiary of U.S. company B, is a bona fide resident of boycotting country Y. A manufactures air conditioners in its plant in Y. Under Y's boycott laws, A must agree not to hire nationals of boycotted country X.

A may agree to the restriction and may abide by it with respect to its recruitment of individuals within Y, because the recruitment of such individuals is an activity exclusively within Y. However, A cannot abide by this restriction with respect to its recruit-

ment of individuals outside Y, because this is not an activity exclusively within Y.

(ii) Same as (i), except that pursuant to Y's boycott laws A must agree not to hire anyone who is of a designated religion.

A may not agree to this restriction, because the agreement calls for discrimination against U.S. persons on the basis of religion. It makes no difference whether the recruitment of the U.S. persons occurs within or without Y. (NOTE: The exception for compliance with local law does not apply to boycott-based refusals to employ U.S. persons on the basis of race, religion, sex, or national origin even if the activity is exclusively within the boycotting country.)

(f-2) *Compliance with Local Import Law.* (1) Any United States person who is a bona fide resident of a foreign country, including a boycotting country, may, in importing goods, materials or components into that country, comply or agree to comply with the import laws of that country, provided that:

(i) the items are for his own use or for his use in performing contractual services within that country; and

(ii) in the normal course of business, the items are identifiable as to their source or origin at the time of their entry into the foreign country by (a) uniqueness of design or appearance; or (b) trademark, trade name, or other identification normally on the items themselves, including their packaging.

(2) The factors that will be considered in determining whether a United States person is a bona fide resident of a foreign country are those set forth in section 369.3(f) above. Bona fide residence of a United States company's subsidiary, affiliate, or other permanent establishment in a foreign country does not confer such residence on such United States company. Likewise, bona fide residence of a United States company's employee in a foreign country does not confer such residence on the entire company.

(3) A United States person who is a bona fide resident of a foreign country may take action under this exception through an agent outside the country, but the agent must act at the direction of the resident and not exercise his own discretion. Therefore, if a United States person resident in a boycotting country takes action to comply with a boycotting country's import law with respect to the importation of qualified goods, he may direct his agent in the United States on the action to be taken, but the United States agent himself may not exercise any discretion.

(4) For purposes of this exception, the test that governs whether goods or components of goods are specifically identifiable is identical to the test applied in section 369.3(c) on "Compliance With Unilateral Selection" to determine whether they are identifiable as to their source or origin in the normal course of business.

(5) The availability of this exception for the import of goods depends on whether the goods are intended for the United States person's own use at the time they are imported. It does not depend upon who has title to the goods at the time of importation into a foreign country.

(6) Goods are for the United States person's own use (including the performance of contractual services within the foreign country) if:

(i) they are to be consumed by the United States person;

(ii) they are to remain in the United States person's possession and to be used by that person;

(iii) they are to be used by the United States person in performing contractual services for another;

(iv) they are to be further manufactured, incorporated into, refined into, or reprocessed into another product to be manufactured for another; or

(v) they are to be incorporated into, or permanently affixed as a functional part of, a project to be constructed for another.

(7) Goods acquired to fill an order for such goods from another are not for the United States person's own use. Goods procured for another are not for one's own use, even if the furnishing of procurement services is the business in which the United States person is customarily engaged. Nor are goods obtained for simple resale acquired for one's own use, even if the United States person is engaged in the retail business. Likewise, goods obtained for inclusion in a turnkey project are not for one's own use if they are not customarily incorporated into, or do not customarily become permanently affixed as a functional part of, the project.

(8) This part of the local law exception does not apply to the import of services, even when the United States person importing such services is a bona fide resident of a boycotting country and is importing them for his own use. In addition, this exception is available for a United States person who is a bona fide resident of a foreign country only when the individual or entity actually present within that country takes action through the exercise of his own discretion.

(9) Use of this exception will be monitored and continually reviewed to determine whether its continued availability is consistent with the national interest. Its availability may be limited or withdrawn as appropriate. In reviewing the continued availability of this exception, the effect that the inability to comply with local import laws would have on the economic and other relations of the United States with boycotting countries will be considered.

(10) A United States person who is a bona fide resident of a foreign country

may comply or agree to comply with the host country's import laws even if he knows or has reason to know that particular laws are boycott-related. However, no United States person may comply or agree to comply with any host country law which would require him to discriminate against any United States person on the basis of race, religion, sex, or national origin, or to supply information about any United States person's race, religion, sex, or national origin.

EXAMPLES OF PERMISSIBLE COMPLIANCE WITH LOCAL IMPORT LAW

The following examples are intended to give guidance in determining the circumstances in which compliance with local import law is permissible. They are illustrative, not comprehensive.

COMPLIANCE BY A BONA FIDE RESIDENT

(i) A, a subsidiary of U.S. company B, is a bona fide resident of boycotting country Y and is engaged in oil drilling operations in Y. In acquiring certain large, specifically identifiable products for carrying out its operations in Y, A chooses only from non-blacklisted firms because Y's import laws prohibit the importation of goods from blacklisted firms. However, with respect to smaller items, B makes the selection on behalf of A and sends them to A in Y.

A may choose from non-blacklisted firms, because it is a U.S. person who is a bona fide resident in Y. However, because B is not resident in Y, B cannot make boycott-based selections to conform with Y's import laws prohibiting the importation of goods from blacklisted firms.

(ii) Same as (i), except that after making its choices on the larger items, A directs B to carry out its instructions by entering into appropriate contracts and making necessary shipping arrangements.

B may carry out A's instructions provided that A, a bona fide resident of Y, has in fact made the choice and B is exercising no discretion, but is acting only as A's agent. (NOTE: Such transactions between related companies will be scrutinized carefully. A must in fact exercise the discretion and make the selections. If the discretion is exercised by B, B would be in violation of this Part.)

(iii) U.S. construction company A has a contract to build a school in boycotting country Y. A's employees set up operations in Y for purposes of commencing construction. A's employees in Y advise A's headquarters in the United States that Y's import laws prohibit importation of goods manufactured by blacklisted firms. A's headquarters then issues invitations to bid only to non-blacklisted firms for certain specifically identifiable goods.

A's headquarters' choice of non-blacklisted suppliers is not a choice made by a U.S. person who is a bona fide resident of Y, because the discretion in issuing the bids was exercised in the United States, not in Y.

(iv) Same as (iii), except that A's employees in Y actually make the decision regarding to whom the bids should be issued.

The choices made by A's employees are choices made by U.S. persons who are bona fide residents of Y, because the discretion in choosing was exercised solely in Y. (NOTE: Choices purportedly made by employees of U.S. companies who are resident in boycott-

ing countries will be carefully scrutinized to ensure that the discretion was exercised entirely in the boycotting country.)

SPECIFICALLY IDENTIFIABLE GOODS

The test and examples as to what constitutes specifically identifiable goods are identical to those applicable under section 369.3(c) on "Compliance With Unilateral Selection".

IMPORTS FOR U.S. PERSON'S OWN USE

(i) A, a subsidiary of U.S. company B, is a bona fide resident of boycotting country Y. A plans to import computer operated machine tools to be installed in its automobile plant in boycotting country Y. The computers are mounted on a separate bracket on the side of the equipment and are readily identifiable by brand name. A orders the tools from U.S. supplier C and specifies that C must incorporate computers manufactured by D, a non-blacklisted company. A would have chosen computers manufactured by E, except that E is blacklisted, and Y's import laws prohibit the importation of goods manufactured by blacklisted firms.

A may refuse to purchase E's computers, because A is importing the computers for its own use in its manufacturing operations in Y.

(ii) A, a subsidiary of U.S. company B, is a bona fide resident of boycotting country Y. To meet the needs of its employees in Y, A imports certain specifically identifiable commissary items for sale, such as cosmetics, and canteen items, such as candy. In selecting such items for importation into Y, A chooses items made only by non-blacklisted firms, because Y's import laws prohibit importation of goods from blacklisted firms.

A may import these items only from non-blacklisted firms, because the importation of goods for consumption by A's employees is an importation for A's own use.

(iii) A, a U.S. construction company which is a bona fide resident of boycotting country Y, has a contract to build a hospital complex for the Ministry of Health in Y. Under the contract, A will be general manager of the project with discretion to choose all sub-contractors and suppliers. The complex is to be built on a turnkey basis, with A retaining title to the property and bearing all financial risk until the complex is conveyed to Y. In choosing specifically identifiable goods for import, such as central air conditioning units and plate glass, A excludes blacklisted suppliers in order to comply with Y's import laws. These goods are customarily incorporated into, or permanently affixed as a functional part of, the project.

A may refuse to deal with blacklisted suppliers of specifically identifiable goods, because importation of goods by a general contractor to be incorporated into a construction project in Y is an importation of goods for A's own use.

(iv) Same as (iii), except that, in addition, in choosing U.S. architects and engineers to work on the project, A excludes blacklisted firms, because Y's import laws prohibit the use of services rendered by blacklisted persons.

A may not refuse to deal with blacklisted architectural or engineering firms, because this exception does not apply to the import of services. It is irrelevant that, at some stage, the architectural or engineering drawings or plans may be brought to the site in Y. This factor is insufficient to transform such services into "goods" for purposes of this exception.

(v) Same as (iii), except that the project is to be completed on a "cost plus" basis, with Y making progress payments to A at various stages of completion.

A may refuse to deal with blacklisted suppliers of specifically identifiable goods, because the importation of goods by A to be incorporated in a project A is under contract to complete is an importation of goods for its own use. The terms of payment are irrelevant.

(vi) A, a U.S. construction company which is a bona fide resident of boycotting country Y, has a contract for the construction of an office building in Y on a turnkey basis. In choosing goods to be used or included in the office complex, A orders wallboard, office partitions, and lighting fixtures from non-blacklisted manufacturers. A likewise orders desks, office chairs, typewriters, and office supplies from non-blacklisted manufacturers.

Because they are customarily incorporated into or permanently affixed as a functional part of an office building, the wallboard, office partitions, and lighting fixtures are for A's own use, and A may select non-blacklisted suppliers of these goods in order to comply with Y's import laws. Because they are not customarily incorporated into or permanently affixed to the project, the desks, office chairs, typewriters, and office supplies are not for A's own use, and A may not make boycott-based selections of the suppliers of these goods.

(vii) A, a U.S. company engaged in the business of selling automobiles, is a bona fide resident of boycotting country Y. In ordering automobiles from time to time for purposes of stocking its inventory, A purchases from U.S. manufacturer B, but not U.S. manufacturer C, because C is blacklisted. Retail sales are subsequently made from this inventory.

A's import of automobiles from B is not an import for A's own use, because the importation of items for general inventory in a retail sales operation is not an importation for one's own use.

(viii) A, a U.S. company engaged in the manufacture of pharmaceutical products, is a bona fide resident of boycotting country Y. In importing chemicals for incorporation into the pharmaceutical products, A purchases from U.S. supplier B, but not U.S. supplier C, because C is blacklisted.

A may import chemicals from B rather than C, because the importation of specifically identifiable items for incorporation into another product is an importation for one's own use.

(ix) A, a U.S. management company which is a bona fide resident of boycotting country Y, has a contract with the Ministry of Education in Y to purchase supplies for Y's school system. From time to time, A purchases goods from abroad for delivery to various schools in Y.

A's purchase of goods for Y's school system does not constitute an importation of goods for A's own use, because A is acting as a procurement agent for another. A, therefore, cannot make boycott-based selections of suppliers of such school supplies.

(x) A, a U.S. company which is a bona fide resident of boycotting country Y, has a contract to make purchases for Y in connection with a construction project in Y. A is not engaged in the construction of, or in any other activity in connection with, the project. A's role is merely to purchase goods for Y and arrange for their delivery to Y.

A is not purchasing goods for its own use, because A is acting as a procurement agent

for Y. A, therefore, cannot make boycott selections of suppliers of such goods.

(xi) A, a U.S. company which is a bona fide resident of boycotting country Y, imports specifically identifiable goods into Y for exhibit by A at a trade fair in Y. In selecting goods for exhibit, A excludes items made by blacklisted firms.

A's import of goods for its exhibit at a trade fair constitutes an import for A's own use. However, A may not sell in Y those goods it imported for exhibit.

FOR USE WITHIN BOYCOTTING COUNTRY

(i) A is a bona fide resident of boycotting countries Y and Z. In compliance with Y's boycott laws, A chooses specifically identifiable goods for its oil drilling operations in Y and Z by excluding blacklisted suppliers. The goods are first imported into Y. Those purchased for A's use in Z are then transshipped to Z.

In selecting those goods for importation into Y, A is making an import selection for its own use, even though A may use some of the imported goods in Z. Further, the subsequent shipment from Y to Z of those goods purchased for use in Z is an import into Z for A's own use.

§ 369.4 Evasion.

(a) No United States person may engage in any transaction or take any other action, either independently or through any other person, with intent to evade the provisions of this Part. Nor may any United States person assist another United States person to violate or evade the provisions of this Part.

(b) The exceptions set forth in Sections 369.3 (a) through (f) of this Part do not permit activities or agreements (express or implied by a course of conduct, including a pattern of responses) which are otherwise prohibited by this Part and which are not within the intent of such exceptions. However, activities within the coverage and intent of the exceptions set forth in this Part do not constitute evasion regardless of how often such exceptions are utilized.

(c) Use of any artifice, device or scheme which is intended to place a person at a commercial disadvantage or impose on him special burdens because he is blacklisted or otherwise restricted for boycott reasons from having a business relationship with or in a boycotting country will be regarded as evasion for purposes of this Part.

(d) Unless permitted under one of the exceptions, use of risk of loss provisions that expressly impose a financial risk on another because of the import laws of a boycotting country may constitute evasion. If they are introduced after the effective date of this Part, their use will be presumed to constitute evasion. This presumption may be rebutted by a showing that such a provision is in customary usage without distinction between boycotting and non-boycotting countries and that there is a legitimate non-boycott reason for its use. On the

other hand, use of such a provision by a United States person subsequent to the effective date of this Part is presumed not to constitute evasion if the provision had been customarily used by that person prior to the effective date of this Part.

(e) Use of dummy corporations or other devices to mask prohibited activity will also be regarded as evasion. Similarly, it is evasion under this Part to divert specific boycotting country orders from a United States parent to a foreign subsidiary for purposes of complying with prohibited boycott requirements. However, alteration of a person's structure or method of doing business will not constitute evasion so long as the alteration is based on legitimate business considerations and is not undertaken solely to avoid the application of the prohibitions of this Part. The facts and circumstances of an arrangement or transaction will be carefully scrutinized to see whether appearances conform to reality.

EXAMPLES

The following examples are intended to give guidance to persons in determining circumstances in which this section will apply. They are illustrative, not comprehensive.

(i) A, a U.S. insurance company, receives a request from boycotting country Y asking whether it does business in boycotted country X. Because furnishing such information is prohibited, A declines to answer and as a result is placed on Y's blacklist. The following year, A's annual report contains new information about A's worldwide operations, including a list of all countries in which A does business. A then mails a copy of its annual report, which has never before contained such information, to officials of the government of country Y.

Absent some business justification unrelated to the boycott for changing the annual report in this fashion, A's action constitutes evasion of this Part.

(ii) A, a U.S. construction firm resident in boycotting country Y, orders lumber from U.S. company B. A unilaterally selects B in part because U.S. lumber producer C is blacklisted by Y and C's products are therefore not importable. In placing its order with B, A requests that B stamp its name or logo on the lumber so that A "can be certain that it is, in fact, receiving B's products." B does not normally so stamp its lumber, and A's purpose in making the request is to appear to fit within the unilateral selection exception of this Part.

Absent additional facts justifying A's action, A's action constitutes evasion of this Part.

(iii) A, a U.S. company, has been selling sewing machines to boycotting country Y for a number of years and routinely supplying negative certificates of origin. A is aware that the furnishing of negative certificates of origin will be prohibited after June 21, 1978 and, therefore, arranges to have all future shipments run through a foreign corporation in a third country which will affix the necessary certification before forwarding the machines on to Y.

A's action constitutes evasion of this Part, because it is a device to mask prohibited activity carried out on A's behalf.

(iv) A, a U.S. company, has been selling hand calculators to boycotting country Y

for a number of years and routinely supplies negative certificates of origin. A is aware that the furnishing of such negative certificates will be prohibited after June 21, 1978. A thereupon ceases all direct sales to Y, and instead arranges to make all future sales to distributor B in a third country. A knows B will step in and make the sales to Y which A would otherwise have made directly. B will make the necessary negative certifications. A's warranty, which it will continue to honor, runs to the purchaser in Y.

A's action constitutes evasion, because the diverting of orders to B is a device to mask prohibited activity carried out on A's behalf.

(v) A, a U.S. company, is negotiating a long-term contract with boycotting country Y to meet all Y's medical supply needs. Y informs A that before such a contract can be concluded, A must complete Y's boycott questionnaire. A knows that it is prohibited from answering the questionnaire so it arranges for a local agent in Y to supply the necessary information.

A's action constitutes evasion of this Part, because it is a device to mask prohibited activity carried out on A's behalf.

(vi) A, a U.S. contractor which has not previously dealt with boycotting country Y, is awarded a construction contract by Y. Because it is customary in the construction industry for a contractor to establish an on-site facility for the duration of the project, A establishes such an office, which satisfies the requirements for bona fide residency. Thereafter, A's office in Y takes a number of actions permitted under the compliance with local law exception.

A's actions do not constitute evasion, because A's facility in Y was established for legitimate business reasons.

(vii) A, a controlled foreign subsidiary of U.S. company B, is located in non-boycotting country M. A and B both make machine tools for sale in their respective marketing regions. B's marketing region includes boycotting country Y. After assessing the requirements of this Part, B decides that it can no longer make machines for sale in Y. Instead, A decides to expand its facilities in M in order to service the Y market.

The actions of A and B do not constitute evasion, because there is a legitimate business reason for their actions. It is irrelevant that the effect may be to place sales which would otherwise have been subject to this Part beyond the reach of this Part.

(viii) A, a U.S. manufacturer, from time to time receives purchase orders from boycotting country Y which A fills from its plant in the United States. A knows that it is about to receive an order from Y which contains a request for a certification which A is prohibited from furnishing under this Part. In order to permit the certification to be made, A diverts the purchase order to its foreign subsidiary.

A's diversion of the purchase order constitutes evasion of this Part, because it is a device to mask prohibited activity carried out on A's behalf.

(ix) A, a U.S. company, is engaged in assembling drilling rigs for shipment to boycotting country Y. Because of potential difficulties in securing entry into Y of materials supplied by blacklisted firms, A insists that blacklisted firms take a 15 percent discount on all materials which they supply to A. As a result, no blacklisted firms are willing to transact with A.

A's insistence on the discount for materials supplied by blacklisted firms constitutes evasion of this Part, because it is a device or

scheme which is intended to place a special burden on blacklisted firms because of Y's boycott.

(x) Same as (ix), except that shortly after the effective date of this Part, A insists that its suppliers sign contracts which provide that even after title passes from the supplier to A, the supplier will bear the risk of loss and indemnify A if goods which the supplier has furnished are denied entry into Y for boycott reasons.

A's action constitutes evasion of this Part, because it is a device or scheme which is intended to place a special burden on blacklisted persons because of Y's boycott.

(xi) Same as (x), except that A customarily insisted on such an arrangement with its suppliers prior to the effective date of this Part.

A's action is presumed not to constitute evasion, because use of this contractual arrangement was customary for A prior to the effective date of this Part.

(xii) A, a U.S. company, has a contract to supply automobile sub-assembly units to boycotting country Y. Shortly after the effective date of this Part, A insists that its suppliers sign contracts which provide that even after title passes to A, the supplier will bear the risk of loss and indemnify A if goods which the supplier has furnished are denied entry into boycotting country Y for whatever reason.

A's insistence on this arrangement is presumed to constitute evasion, because it is a device which is intended to place a special burden on blacklisted firms because of Y's boycott. The presumption may be rebutted by competent evidence showing that use of such an arrangement is customary without regard to the boycotting or non-boycotting character of the country to which it relates and that there is a legitimate non-boycott business reason for its use.

(xiii) Same as (xii), except that A requires that all suppliers make in-country delivery.

A's action does not constitute evasion, because it is an ordinary commercial practice to require in-country delivery of goods.

(xiv) Same as (xii), except that A requires that title remain with the supplier until delivery in Y has been made.

A's action does not constitute evasion, because it is ordinary commercial practice to require that title remain with the supplier until delivery has been made. This example is distinguishable from example (xii), because in example (xii) A had insisted on an extraordinary arrangement designed to require that the risk of loss remain with the supplier even after title had passed to A.

(xv) U.S. bank A is contacted by U.S. company B to finance B's transaction with boycotting country Y. Payment will be effected through a letter of credit in favor of B at its U.S. address. A knows that the letter of credit will contain restrictive boycott conditions which would bar its implementation by A if the beneficiary were a U.S. person. A suggests to B that the beneficiary should be changed to C, a shell corporation in non-boycotting country M. The beneficiary is changed accordingly.

A's action constitutes evasion of this Part, because the arrangement is a device to mask prohibited activity on A's part.

(xvi) Same as (xv), except that U.S. company B, the beneficiary of the letter of credit, arranges to change the beneficiary to B's foreign subsidiary so that A can implement the letter of credit. A knows that this has been done.

A's implementation of the letter of credit in the face of its knowledge of B's action

constitutes evasion of this Part, because its action is part of a device to mark prohibited activity on A's part.

(xvii) U.S. bank A, located in the United States, is contacted by foreign company B to finance B's transaction with boycotting country Y. B is a controlled subsidiary of a U.S. company. The transaction which is to be financed with a letter of credit payable to B at its foreign address, requires B to certify that none of its board members are of a particular religious faith. Since B cannot legally furnish the certificate, it asks A to convey the necessary information to Y through A's bank branch in Y. Such information would be furnished wholly outside the letter of credit transaction.

A's action constitutes evasion of this Part, because it is undertaken to assist B's violation of this Part.

(xviii) U.S. bank A is asked by foreign corporation B to implement a letter of credit in favor of B so that B might perform under its long-term contract with boycotting country Y. Under the terms of the letter of credit, B is required to certify that none of its suppliers is blacklisted. A knows that it cannot implement a letter of credit with this condition, so it tells B to negotiate the elimination of this requirement from the letter of credit and instead supply the certification to Y directly.

A's suggestion to B that it provide the negative certification to Y directly constitutes evasion of this Part, because A is taking an action through another person to mask prohibited activity on A's part.

§ 369.5 Grace Period.

GRACE PERIOD MECHANISM

(a) For written contracts or other agreements entered into by any United States person on or before May 16, 1977, the application of the rules and regulations issued pursuant to this Part shall be delayed until December 31, 1978. Hence, actions otherwise prohibited by this Part may be taken in compliance with the requirements of such agreements until the expiration of the grace period.

(b) This grace period may be extended on a case-by-case basis for a period or periods totaling not longer than one year (to December 31, 1979) provided that:

(1) good faith efforts are being made to renegotiate the contract or agreement to eliminate provisions which are inconsistent with the rules and regulations of this Part; and

(2) application for any extension is made, in writing, to the Deputy Assistant Secretary for Trade Regulation, United States Department of Commerce, Washington, D.C. 20230.

Each application must contain a complete statement of all the facts and circumstances related to the application, as well as a full and precise statement of why the applicant believes his extension should be granted. Any additional evidence or documentation which the applicant believes will support his position should be submitted.

(c) The decision of the Deputy Assistant Secretary for Trade Regulation

will be the final decision for the Department, and will be issued to the applicant in writing. In reaching such decision, the Deputy Assistant Secretary may consult with representatives of government agencies and members of the public as he deems appropriate.

(d) For purposes of this section, good faith efforts may include:

(1) ongoing negotiations, even if no actual agreement has been reached, if it appears that the parties are striving for such agreement;

(2) compliance in fact by the United States person with the rules and regulations of this Part, even if the language of the contract or agreement has not yet been changed; or

(3) documentation that efforts are being made to bring the contract or agreement into compliance with the rules and regulations of this Part.

(e) No extensions may be granted past December 31, 1979.

(f) The mere existence of an agreement containing provisions which are prohibited under this Part is not a violation of this Part if entered into on or before the effective date of this Part. However, actions taken pursuant to such provisions after such effective date are in violation of this Part unless the agreement is subject to the grace period. In that event, such actions are in violation of this Part if taken after the expiration of the grace period.

EXAMPLES OF THE GRACE PERIOD MECHANISM

The following examples are intended to give guidance in determining the applicability of the grace period mechanism. They are illustrative, not comprehensive.

(i) A, a U.S. manufacturer, entered into a contract on March 13, 1977, to supply medical equipment not later than June 20, 1978, to B, a state-owned hospital of boycotting country Y. Under the terms of the contract, A is not permitted to purchase electrical components for the equipment from supplier C, who is blacklisted by Y.

A may comply with the terms of the contract after the effective date of this Part, because the contract was entered into on or before May 16, 1977, and the otherwise prohibited action would take place during the grace period.

(ii) Same as (i), except that the contract requires annual purchases and deliveries of medical equipment on June 20, 1978, June 20, 1979, and June 20, 1980.

If A has made good faith efforts to renegotiate the contract to eliminate the provisions inconsistent with this Part, A may apply for and the Deputy Assistant Secretary for Trade Regulation may grant an appropriate extension of the grace period up to December 31, 1979. However, in no event may the grace period be extended to cover purchases and deliveries made after that date.

(iii) Same as (ii), except that A has been granted an extension of the grace period through December 31, 1979.

A may not receive any further extensions and may not take any action after December 31, 1979, which is inconsistent with this Part.

(iv) A, a U.S. management firm, entered into a services contract on May 1, 1977, with B, a retail chain in boycotting country Y. Subsequent to May 16, 1977, but before December 31, 1978, the payment schedule and other provisions of the contract unrelated to the boycott are amended by the parties.

The applicability of the grace period is not altered by amendments to the contract or agreement which are made for business reasons after May 16, 1977.

(v) Same as (iv), except that subsequent to May 16, 1977, but before December 31, 1978, the parties amend the contract so as to require A to engage in certain boycott activities prohibited by this Part.

Grace period treatment is not applicable to prohibited boycott conditions agreed to after May 16, 1977.

(vi) A, a U.S. aircraft manufacturer, entered into an agreement with boycotting country Y on September 15, 1977, after the May 16, 1977 date for qualifying for the grace period but before the effective date of this Part.

A's contract does not qualify for grace period treatment, and A may not take any action pursuant to the September 15, 1977 contract after the effective date of this Part if such action would be inconsistent with this Part.

(vii) A, a U.S. computer manufacturer, entered into a licensing agreement with boycotting country Y in 1974. Pursuant to that agreement, A agreed not to open a manufacturing plant in boycotting country X for a period of 10 years.

Absent an extension of the grace period, A may not act in compliance with this contract provision after December 31, 1978. Although A has no affirmative obligation to open a plant in X, any decision after December 31, 1978, not to open a plant in X because of A's agreement with Y would constitute a refusal to deal with X.

(viii) A, a U.S. manufacturer of bicycles, has a contract to supply bicycles to boycotting country Y. The contract was entered into on June 1, 1977, and calls for deliveries on June 1, 1978, and June 1, 1979. In the contract, A has agreed that none of the parts of the bicycles will be supplied by blacklisted firms.

The contract, which was entered into after May 16, 1977, is not entitled to grace period treatment. However, the mere existence of the contract on the effective date of this Part is not a violation of this Part, and no violation occurs unless and until A takes action to exclude blacklisted firms from purchases for shipments to Y.

(ix) A, a U.S. distributor, has been negotiating with boycotting country Y since April 1977, over terms of a proposed contract. Final agreement is not reached and a contract is not signed until May 31, 1977.

The contract does not qualify for grace period treatment, and A may not backdate the contract to May 16, 1977, to take advantage of the grace period.

(x) Same as (ix), but although the final agreement is concluded on May 10, 1977, the written instrument is not signed until May 20. The agreement was legally enforceable on May 10.

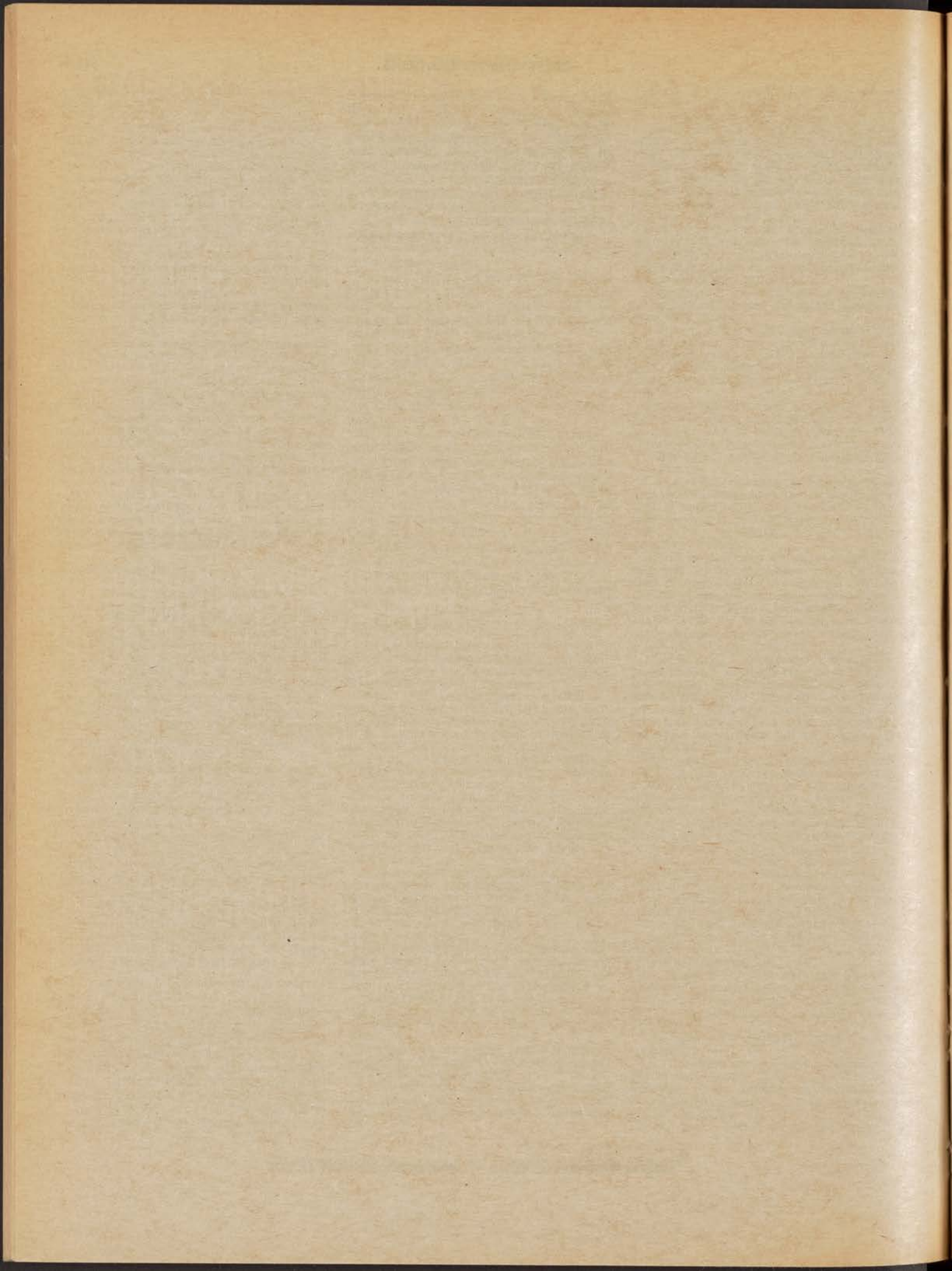
The agreement qualifies for grace period treatment.

(xi) U.S. company B has a contract with boycotting country Y to supply a certain quantity of air conditioners each month over a two-year period. B's contract was entered into on May 15, 1977, and thus qualifies for grace period treatment. The con-

tract specifies that each shipment be accompanied by a certification that none of the components of the air conditioners were supplied by any company blacklisted by Y. B has asked U.S. freight forwarder A to handle the shipments and make any necessary certifications.

A may make the monthly certifications as long as B's contract with Y qualifies for grace period treatment.

[FR Doc. 78-1921 Filed 1-18-78; 4:39 pm]



Registered Project

WEDNESDAY, JANUARY 25, 1978
PART IV



DEPARTMENT OF
THE INTERIOR
Office of the Secretary

DEPARTMENT OF
ENERGY
Federal Energy
Regulatory Commission



ANG COAL
GASIFICATION CO. ET AL.
Final Environmental Statement

[4310-09]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

(INT FES 78-1)

ANG COAL GASIFICATION COMPANY; NORTH DAKOTA PROJECT

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement on a coal gasification project proposed by ANG Coal Gasification Company for Mercer County, N. Dak. The statement covers impacts of construction and operation of the gasification plant and its associated facilities (i.e., coal mine, railroad spur, water intake and pipeline, and product delivery pipeline). It also addresses major cumulative impacts of construction and operation of an 880-MW coal-fired electric generating plant proposed for construction adjacent to the gasification plant.

Copies are available for inspection at the following locations:

Office of Assistant to the Commissioner, Ecology, Room 7620, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240, Telephone 202-343-4991.

Division of Engineering Support, Technical Services Branch, E&R Center, Denver Federal Center, Denver, Colo. 80225.

Office of the Regional Director, Bureau of Reclamation, P.O. Box 2553, Federal Building, Billings, Mont. 59103, Telephone 406-657-6214.

Missouri-Souris Projects Office, Bureau of Reclamation, P.O. Box 1017, Bismarck, N. Dak. 58501, Telephone 701-255-4011.

Single copies of the final environmental statement may be obtained upon request to the Commissioner of Reclamation or the Regional Director. Please refer to the statement number above.

Dated: January 20, 1978.

LARRY E. MEIEROTTO,
Deputy Assistant
Secretary of the Interior.

(FR Doc. 78-2120 Filed 1-24-78; 8:45 am)

[6740-2]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

(Docket Nos. CP75-278, et al.)

ANG COAL GASIFICATION CO., NORTH DAKOTA PROJECT

Intent To Partially Adopt the Department of the Interior's Final Environmental Impact Statement

JANUARY 19, 1978.

In the matter of Michigan Wisconsin Pipe Line Co., ANG Coal Gasification

Co., Great Lakes Gas Transmission Co., PGC Coal Gasification Co. and Natural Gas Pipeline Company of America.

Notice is hereby given in the above docket that on January 19, 1978, a Final Environmental Impact Statement (FEIS), "ANG Coal Gasification Company (ANGCGC), North Dakota Project," prepared by the Department of the Interior, Bureau of Reclamation (Interior), was made available. Since Interior has the responsibility for permitting ANGCGC to use the 17,000 acre-feet of water required annually from Garrison Reservoir for coal gasification needs through a 40-year water service contract, the Federal Energy Regulatory Commission (FERC) has recognized Interior as the lead agency for the preparation of this environmental impact statement (EIS).

The application by ANGCGC and Michigan Wisconsin Pipe Line Co. (Michigan Wisconsin), filed originally with the Federal Power Commission (now FERC) on March 26, 1975, in Docket No. CP75-278, pursuant to section 7(c) of the Natural Gas Act, requested authorization for the sale by ANGCGC to Michigan Wisconsin of synthetic natural gas (SNG) produced from coal commingled with natural gas and for construction and operation by Michigan Wisconsin of pipeline and compressor facilities to enable it to receive and transport such gas to its existing customers. Great Lakes Gas Transmission Co. (Great Lakes) filed an application on March 31, 1975, with the Federal Power Commission (FPC) in Docket No. CP75-283 requesting authorization for transportation of SNG produced from coal commingled with natural gas for the account of ANGCGC and for construction, modification, and operation of facilities to enable it to receive and transport such gas. On August 8, 1977, Peoples Gas Co., through its subsidiaries PGC Coal Gasification Co. (PGC) and Natural Gas Pipeline Company of America (Natural), filed an application with the FPC in Docket No. CP77-556 requesting authorization for the sale by PGC to Natural of SNG commingled with natural gas, pursuant to a co-ownership arrangement between PGC and ANR Gasification Properties Company. Under that agreement, ANGCGC would become the project administrator. The three applications have been consolidated for hearing in Docket Nos. CP75-278, et al.

The overall proposal by ANGCGC, et al., would involve construction of a gasification complex with attendant water intake, railroad, and mining facilities; approximately 365 miles of new 20-inch diameter SNG pipeline to be installed in existing railroad rights-of-way (with a few minor exceptions); two new 7,600-horsepower (hp) SNG

compressor stations; an interconnection between the SNG facilities and existing interstate natural gas transportation facilities; approximately 245 miles of 36-inch and 30-inch diameter pipeline looping; and 20,000 horsepower of additional compressor facilities at existing compressor stations. Except for the interconnection, the 36-inch and 30-inch diameter pipeline looping, and the 20,000 horsepower of additional compressor facilities which will be discussed in the FERC hearings, the proposal is described and the environmental impact identified and evaluated in the Interior FEIS.

In order to fulfill the requirements of § 2.82(b) of the Commission's General Policy and Interpretations (18 CFR 2.82(b)) which complies with the National Environmental Policy Act of 1969, it is the intention of the FERC staff to adopt parts of the Interior FEIS in lieu of preparing a separate EIS. Interior's FEIS will be incorporated into the record developed in the FERC proceedings in Docket Nos. CP75-278, et al.

The following parts of Interior's FEIS will be adopted by the FERC staff:

(i) *Chapter 1.—Description of proposed project.* (Except the last paragraph of Section 1.5.2 on Pages 1-18, "Land Requirements," which discusses the 36-inch and 30-inch diameter pipeline looping and the 20,000 horsepower of additional compressor facilities.)

The last paragraph of section 1.5.2, "Land Requirements," states that the 217 miles of 36-inch and 28 miles of 30-inch diameter pipeline looping and the 20,000 horsepower of additional compression mentioned earlier (for which construction authorization has been requested to enable Great Lakes and Michigan Wisconsin to transport SNG commingled with natural gas) "may be required" and that "the impacts of these additional facilities are beyond the scope of this EIS." The analysis is therefore incomplete in that it only assesses the impact of facilities and operations up to the interconnection (gas commingling point), without regard to facilities which would be required to transport the commingled gas to the market area. For this reason, the FERC staff does not adopt this portion of the FEIS.

(ii) *Chapters 2 to 8.—Description of existing environment; environmental impacts of proposed action; mitigating measures and air and water quality aspects; unavoidable adverse effects; the relationship between local short-term uses of man's environment and the maintenance and enhancement of*

¹ Note that only those facilities required to receive the SNG (i.e., the interconnection) and to transport the commingled gas are presently under the jurisdiction of the FERC.