each inspector assigned on less than a year-round basis.

(4) *Holiday pay.* * * *

(5) *Night differential.* * * *

(6) *Overtime.* All overtime hours will be charged at the regular rates specified in (c) (1) and (2) of this section.

(d) Charges for less than year-round inplant inspection services on a contract basis will be billed to the applicant at least monthly for all hours with a minimum of 40 hours per week, holiday pay and night differential for each inspector assigned to perform the inspection services in accordance with the following schedule: (1) Each inspector—$23.

* * * * *

Notice of proposed rulemaking, public procedure thereon, and the postponement of the effective time of this action later than October 8, 1978 (5 U.S.C. 553), are impractical, unnecessary, and contrary to the public interest in that: (1) The Agricultural Marketing Act of 1946 provides that the fees charged be reasonable and, as nearly as possible, cover the cost of the service rendered, (2) The increase in fee rates set forth herein are necessary to more nearly cover such cost including, but not limited to, Federal employee salary adjustments, and (3) Additional time is not required by the users of the inspection service to comply with the amendment.

(Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624).)

NOTE.—The Food Safety and Quality Service has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107.

Dated to become effective at 12:01 a.m., October 8, 1978.

Done at Washington, D.C. on October 4, 1978.

SYDNEY J. BUTLER,
Acting Administrator, Food Safety and Quality Service.

[FR Doc. 78-28526 Filed 10-5-78; 8:45 am]

[7590-01]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

PART 51—LICENSING AND REGULATORY POLICY AND PROCEDURES FOR ENVIRONMENTAL PROTECTION

Distribution of Applications and Environmental Statements to Local Officials

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to provide for notice to the chief executives of the appropriate alternative municipalities or counties which have been identified in the application or environmental report as alternative sites for nuclear facilities or activities. The notice will include a brief description of, and other pertinent information regarding, the site and facility proposed or alternatively listed. The notice will include a statement that if a request is received from the appropriate chief executive of the alternative site, a copy of the application or environmental report, and any changes to such documents which affect the alternative site location, will be transmitted to the executive who makes the request. This amendment will assure that local officials of communities which are preferred or alternative sites for nuclear facilities are notified at the same time the initial application or environmental report is submitted to the Commission.

EFFECTIVE DATE: November 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Gerald L. Hutton, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301-492-7086.

SUPPLEMENTARY INFORMATION: By letter dated July 7, 1976, the township of Lower Alloways Creek, N.J., filed with the Nuclear Regulatory Commission a petition for rulemaking to amend 10 CFR 2.101 and 10 CFR 51.24 of the Commission's regulations.

In response to the petition for rulemaking PRM-51-2 the Commission published a notice of proposed rulemaking in the FEDERAL REGISTER on January 17, 1977 (42 FR 3178) to amend 10 CFR Parts 2 and 51.

The proposed amendment of § 2.101 set out in the January 17, 1977 notice would add a provision to paragraph (a)(3)(ii) that the applicant will also be requested to serve a copy of the tendered application and/or environmental report on the chief executives of the appropriate municipalities or counties which have been identified in the application or environmental report as alternative sites.

The proposed amendment of § 2.101 would add a provision to paragraph (b) which pertains to applications for licenses for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, that the applicant will also serve a copy of the application and environmental report, as appropriate, on the chief executives of the appropriate alternative municipalities or counties which have been identified in the application or environmental report as alternative sites.

The proposed amendment of § 51.24 would revise paragraph (c)(4) to provide that if the draft environmental impact statement is for a licensing action, copies of the draft statement and the applicant's environmental report will be provided to all parties to the licensing proceeding and the chief executives of all municipalities or counties which are identified in the draft statement as either preferred or alternative sites for the proposed facility or activity.

Six letters of comment were received on the petition for rulemaking and the notice of proposed rulemaking.

One commenter opposed the proposed rule, contending that jurisdictional officials and the public are aware of proposed projects even before the filing of an application; that the filing of applications with jurisdictional officials at alternative sites could have adverse impacts on local planning and land values; and that filing of the application would only serve to cause infighting between jurisdictions, possibly resulting in delays in the licensing process.

Although officials and the public may be aware of preferred sites before the filing of an application there is no assurance under present procedures that all officials with jurisdiction over alternative sites will know that a site in their area is under consideration or that the relative merits of such a site may have been the subject of dispute at hearings held in a different locale. The Commission is not convinced that furnishing such information to officials over alternative sites would have adverse impacts on local planning and land values, or cause jurisdictional conflicts resulting in licensing delays.

Three commenters opposed the proposed amendments on the grounds that they would require the service of voluminous and expensive documents upon individuals who have no real interest in receiving them, thereby placing an unjustified burden on applicants and municipal and county officials, without corresponding benefits to the public, the licensing process, or the municipalities or counties considered as alternative sites. These commenters suggested, however, that if some action is desired in this area, a more reasonable approach would be to notify the chief executives of municipalities or counties which have been designated as an alternative site in the application or environmental report of the availability of the documents. To the extent that such officials are interested, they could request copies of the documents.

It is the Commission's view that local officials of all of the communites or counties involved should be informed of the plans for a facility or a commercial waste disposal service or activity at the time the application or environmental report is submitted to the Commission. The Commission has concluded, however, that this objective can be accomplished in accordance with the alternative approach suggested by the three commenters noted in the preceding paragraph. Accordingly, the amendments set forth below have been revised to provide for notice to the chief executives of sites which have been identified in the application or environmental report as alternative sites. The notice will include a brief description of the proposed site and facility, the location of the site and facility proposed or alternatively listed, and will include a statement that if a request is received from the appropriate chief executive of the alternative site, a copy of the application or environmental report, and any changes to such documents which affect the alternative site location, will be transmitted to the executive who makes the request. A sentence has been added to §§ 2.101(a)(3)(ii) and 2.101(b) that an applicant in complying with those paragraphs should not make public distribution of those parts of the application subject to § 2.790(d); that is, information which identifies a licensee's or applicant's procedures for safeguarding licensed special nuclear material or detailed security measures for the physical protection of a licensed facility or plant in which licensed special nuclear material is possessed or used. A sentence has been added also that the applicant shall submit to the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, an affidavit that service of the notice of availability of the application and environmental report has been completed along with a list of names and addresses of those executives upon whom the notice was served.

One firm commented favorably upon the proposed rule and suggested that local public document rooms be set up in the region of the alternative sites for displaying to the public the environmental report, draft environmental impact statement, and any other documents affecting the alternate sites. The Commission agrees that it may be desirable to establish a local public document room, or a mini-LPDR, in the region of the alternative sites in some cases. The Commission does not consider, however, that this should be done routinely. A determination will be made on a case-by-case basis after a survey of the public interest in the area of the alternative site.

One commenter encouraged the adoption of the proposed rule, but suggested that applications for amendments to existing licenses as well as new nuclear facilities and waste management facilities shoud be included, and notification and service of an application upon the appropriate governor or designated State government official should be included as well as municipal and county government. The suggestion regarding applications for amendments to existing licenses is outside the scope of this amendment inasmuch as the site would have been determined when the license was issued. The Commission's regulations already provide for distribution of applications and environmental reports to appropriate State officials.

The commenter also suggested that a provision for an early notice of intent to file and application be considered. It is the Commission's view that the present regulation, as amended below, provides for early notice to officials of alternative sites and notice of intent to file and application would not serve a useful purpose.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Parts 2 and 51 are published as a document subject to codification.

1. Section 2.101 of 10 CFR Part 2 is amended by revising § 2.101(a)(3)(ii) and § 2.101(b) to read as follows:

§ 2.101 Filing of application.

(a) * * *

(3) * * *

(ii) Serve a copy on the chief executive of the municipality in which the facility is to be located or, if the facility is not to be located within a municipality, on the chief executive of the county, and serve a notice of availability of the application or environmental report on the chief executives of the municipalities or counties which have been identified in the application or environmental report as the location of all or part of the alternative sites, containing the following information: Docket number of the application, a brief description of the proposed site and facility; the location of the site and facility as primarily proposed and alternatively listed; the name, address, and telephone number of the applicant's representative who may be contacted for further information; notification that a draft environmental impact statement will be issued by the Commission and will be made available upon request to the Commission; and notification that if a request is received from the appropriate chief executive, the applicant will transmit a copy of the application and environmental report, and any changes to such documents which affect the alternative site location, to the executive who makes the request. In complying with the requirements of this paragraph (a)(3)(ii) the applicant should not make public distribution of those parts of the application subject to § 2.790(d). The applicant shall submit to the Director of Nuclear Reactor Regulation an affidavit that service of the notice of availability of the application or environmental report has been completed along with a list of names and addresses of those executives upon whom the notice was served.

* * * * *

(b) After the application has been docketed, each applicant for a license for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee shall serve a copy of the application and environmental report, as appropriate, on the chief executive of the municipality in which the activity is to be conducted or, if the activity is not to be conducted within a municipality on the chief executive of the county, and serve a notice of availability of the application or environmental report on the chief executives of the municipalities or counties which have been identified in the application or environmental report as the location of all or part of the alternative sites, containing the following information: Docket number of the application; a brief description of the proposed site and facility; the location of the site and facility as primarily proposed and alternatively listed; the name, address, and telephone number of the applicant's representative who may be contacted for further information; notification that a draft environmental impact statement will be issued by the Commission and will be made available upon request to the Commission; and notification that if a request is received from the appropriate chief executive, the applicant will transmit a copy of the application and environmental report, and any changes to such documents which affect the alternative site location, to the executive who makes the request. In complying with the requirements of this paragraph (b) the applicant should not make public distribution of those parts of the application subject to § 2.790(d). The applicant shall submit to the Director of Nuclear Material Safety and Safeguards an affidavit that service of the notice of availability of the application or environmental report has been completed along with a list of names and addresses of those executives upon whom the notice was served.

2. Section 51.24 is amended by revising paragraph (c)(4) to read as follows:

§ 51.24 Distribution of draft environmental impact statement; news releases.

* * * * *

(c) * * *

(4) If the draft environmental impact statement is for a licensing action, (i) all parties to the licensing proceeding and the chief executive of the municipality or county identified in the draft environmental impact statement as the preferred site for the proposed facility or activity and (ii) the chief executives of municipalities or counties identified in the draft environmental impact statement as alternative sites who have requested a copy of the application.

(Secs. 53, 62, 81, 103, 104, 161i, Pub. L. 83-703, as amended; 68 Stat. 930, 932, 935, 936, 937, 948 (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201(i)); Sec. 201, Pub. L. 93-438, as amended; 88 Stat. 1242, 89 Stat. 413 (42 U.S.C. 5841); Sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332).)

Dated at Washington, D.C. this 2d day of October, 1978.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 78-28147 Filed 10-5-78; 8:45 am]

[6320-01]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-1076; Amdt. No. 33]

PART 241—UNIFORM SYSTEMS OF ACCOUNTS AND REPORTS FOR CERTIFICATED AIR CARRIERS

Accounting for Troubled Debt Restructurings, Prior Period Adjustments, and Forward Exchange Contracts

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule would update the accounting and reporting provisions of the Uniform System of Accounts and Reports for Certificated Air Carriers (USAR) to reflect generally accepted accounting principles relating to troubled debt restructurings, prior period adjustments, and forward exchange contracts. This would be accomplished by: (1) Incorporating new sections in the USAR dealing with accounting and reporting for troubled debt restructurings and (2) revising the sections in the USAR relating to prior period adjustments and forward exchange contracts. This rule was developed at the initiative of the Board.

DATES: Adopted: September 29, 1978. Effective: November 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Raymond Kurlander, Director, Bureau of Accounts and Statistics, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C., 20428, 202-673-5270.

SUPPLEMENTARY INFORMATION:

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., October 2, 1978.

In EDR-357, dated June 1, 1978 (43 FR 25138, June 9, 1978) the Board gave notice of its intention to update the USAR to reflect three recent statements by the Financial Accounting Standards Board relating to troubled debt restructurings, prior period adjustments, and forward exchange contracts. It has been the Board's practice to revise the USAR periodically to include relevant pronouncements by authoritative bodies responsible for molding accounting principles and disclosure standards for American Business. This has been done to sustain the conformity of the Board's accounting regulations with generally accepted accounting principles. This conformity is important because it assists in maintaining the comparability of accounting practice throughout the air transportation industry and enables carriers to operate accounting systems which yield information acceptible for financial and governmental reporting purposes.

Comments were received in response to the rulemaking notice from American Airlines, Inc., and Hughes Airwest. Both were in support of the proposed rule. Hughes Airwest offered some suggestions of an editorial nature which have been considered and incorporated into the final rule where necessary to clarify the regulations. These changes involved adding cross-references in section 2-21 "Accounting for troubled debt restructurings."

Only one additional change was made to the specific language of the proposed rule, and it concerned the accounting instructions for forward exchange contracts. These contracts are agreements to exchange at a specified future date the currencies of different countries at a specified rate.

As discussed in EDR-357, this rulemaking proposed to amend the Board's accounting regulations to reflect the position of the Financial Accounting Standards Board (FASB) on accounting for forward exchange contracts in two ways: Setting the denomination of the forward contract and in corporation the FASB standard concerning the accounting for forward contracts when the amount of the contract exceeds the amount of the related commitment. The final rule adds a paragraph to section 2-3, specifying the FASB limitation that allows gains or losses to be deferred only on the amount in excess of the related commitment which is intended to be a hedge on an after-tax basis, as explained in EDR-357 (p. 5).

EFFECTIVE DATE

Although this amendment will be made effective after the normal 30-day period from publication in the FEDERAL REGISTER, this effective date should not be viewed as prohibiting earlier implementation of the following accounting requirements. Carriers are encouraged to apply these regulations to transactions occurring during calendar year 1978.

Accordingly, the Board amends part 241 of the Economic Regulations (14 CFR Part 241) as follows:

1. Amend the Table of Contents of the Uniform System of Accounts and Reports by adding a new section 2-21 identified as follows:

Sec.

* * * * *

* * * * *

2. Revise paragraph (g)(2)(ii) of section 2-3 to read as follows:

Sec. 2-3 Transactions in foreign currencies.

* * * * *

(g) * * *

(2) * * *

(ii) The forward contract is denominated in the same currency as the foreign currency commitment,

* * * * *

3. Add a new paragraph (i) to section 2-3 to read as follows:

Sec. 2-3 Transactions in foreign currencies.

* * * * *

(i) The portion of a forward contract that shall be accounted for in accordance with paragraph (h) of this section is limited to the amount of the related commitment. If a forward contract that meets all of the conditions described in paragraphs (g)(2) (i) through (iii) of this section exceeds the amount of the related commitment, the gain or loss pertaining to a portion of the forward contract in excess of the commitment shall be deferred to the extent that the forward contract is intended to provide a hedge on an after tax-basis. A deferred gain or loss shall be offset against the related tax effects in the period the tax effects are recognized. A gain or loss pertaining to the portion of a forward contract in excess of the amount that provides a hedge on an after-tax basis shall not be deferred.

* * * * *

4. Revise paragraph (f) of section 2-7 to read as follows:

Sec. 2-7 Extraordinary items, discontinued operations, prior period adjustments, and accounting changes.

* * * * *

(f) Prior period adjustments are classified as those affecting previous fiscal years and those affecting previous interim periods of the current fiscal year.

(1) Corrections of errors in earlier financial statements and adjustments resulting from the tax benefits of preacquisition loss carryforwards of purchased subsidiaries may be treated as prior period adjustments of previous fiscal years. They are reflected as adjustments to the opening balance of retained earnings.

(2) Adjustments which are related to previous interim periods of the current fiscal year are adjustments or settlements of litigation or similar claims, of income taxes or of renegotiation proceedings. The total adjustment shall be included in the determination of net income for the current interim period. If the interim period is a period in which monthly reports are filed, a statement showing the effects of the adjustment on the current quarter and previous quarters should be attached to the submission. When the quarterly schedules are filed, these effects should again be stated on Schedule P-2, Notes to CAB Form 41 Report.

* * * * *

5. Add a new section 2-21 to read as follows:

Sec. 2-21 Accounting for troubled debt restructurings.

(a) *Accounting by debtors.* (1) A gain on the restructuring of debt shall be recognized in accordance with paragraph (a)(6) of this section when the debtor transfers assets to the creditor in full settlement of the debt. The gain shall equal the difference between the carrying amount of the payable and the fair value of the assets transferred. A gain or loss on the transfer of assets measured by the difference between the fair value and the book value of the assets transferred shall be recognized and recorded in account 88.6 Capital Gains and Losses—Other.

(2) A gain on the restructuring of debt shall be recognized in accordance with paragraph (a)(6) of this section when the debtor transfers an equity interest to the creditor in full settlement of the debt. The gain shall be equal to the amount that the carrying amount of the payable exceeds the fair value of the equity interest transferred.

(3) The modification of the terms of the debt in a troubled debt restructuring may take any or a combination of the following forms: (i) Reduction of the stated interest rate or accrued interest; (ii) reduction of the face amount or the maturity amount of the debt; or (iii) extension of the maturity date at a stated interest rate which is lower than the current market rate for new debt with similar risk. When the terms of the debt are modified so that the total future principal and interest payments are not less than the recorded amount of the payable, the effects of the restructuring shall be accounted for prospectively from the time of the restructuring by adjusting the effective interest rate so that it equates the present value of the future cash payments specified by the new terms with the carrying amount of the payable. If the total future principal and interest payments are less than the recorded amount of the payable, the amount of the payable shall be reduced so that it equals the total future principal and interest payments specified by the new terms and a gain shall be recognized in accordance with paragraph (a)(6) of this section which equals the amount of the reduction. In this case, all future principal and interest payments shall be treated as reductions of the payable and none shall be designated as interest. If the restructuring of the payable involves indeterminate future cash payments, no gain on the restructuring of the debt shall be recognized as long as the maximum total future cash payments may exceed the carrying amount of the payable.

(4) When there is a combination involving both the transfer of assets or equity interests and the modification of the terms of the debt, the carrying amount of the payable shall be reduced by the total fair value of those assets or equity interests. The difference between the fair value and the carrying amount of the assets transferred shall be recognized as a gain or loss on the transfer of assets and recorded in account 88.6 Capital Gains and Losses—Other. The remaining balance of the payable shall be accounted for as discussed in paragraph (a)(3) of this section.

(5) All legal fees and other direct costs incurred to effect a troubled debt restructuring shall be deducted when measuring the gain on restructuring, or, if no gain is recognized, they shall be included in expense for the period.

(6) Gains recognized on the restructuring of debt shall be aggregated and included in measuring net income for the period. If material, the aggregate amount, net of any tax effect, should be recorded in account 96 Extraordinary Items. If not, it should be recorded in account 88.9 Other Miscellaneous Nonoperating Credits.

(7) The following information shall be disclosed on Schedule P-2 Notes to CAB Form 41 Report for all troubled debt restructurings occurring during the current period:

(i) A description of the principal changes in terms and/or the major features of settlement for each restructuring;

(ii) The aggregate gain on restructuring of payables and the related income tax effect;

(iii) The aggregate net gain or loss on the transfer of assets;

(iv) The extent to which amounts contingently payable are included in the carrying amount of restructured payables; and

(v) The total amount contingently payable on restructured payables and the conditions under which the amounts would be payable or forgiven.

(b) *Accounting by creditors.* (1) A loss on the restructuring of debt shall be recognized in accordance with paragraph (b)(6) of this section when the debtor transfers assets to the creditor in full settlement of the debt to the extent that his recorded investment in the receivable exceeds the fair value of the assets received. The assets shall be recorded in the books of account as if they had been acquired for cash.

(2) A loss on the restructuring of debt shall be recognized in accordance with paragraph (b)(6) of this section when the debtor transfers an equity interest to the creditor in full settlement of the debt to the extent that the recorded investment in the receivable exceeds the fair value of the equity interest. The equity interest shall be recorded in the books of account as if it had been acquired for cash.

(3) The modification of the terms of the debt in a troubled debt restructuring may take any or a combination of the following forms: (i) Reduction of the stated interest rate or accrued interest; (ii) reduction of the face amount or the maturity amount of the debt; or (iii) extension of the maturity date at a stated interest rate which is lower than the current market rate for new debt with similar risk. When the terms of the debt are modified so that the total future principal and interest receipts are not less than the recorded investment in the receivable, the effects of the restructuring shall be accounted for prospectively from the time of restructuring by adjusting the effective interest rate to equate the present value of the future cash receipts specified by the new terms with the recorded investment in the receivable. When the terms of the debt are modified such that the total future principal and interest receipts are less than the recorded investment in the receivable, the amount of the receivable shall be reduced so that it equals the total future principal and interest receipts specified by the new terms and a loss shall be recognized in accordance with paragraph (b)(6) of this section which is determined by the amount of the reduction. In this case, all future principal and interest receipts shall be treated as reductions of the receivable and none shall be designated as interest. A loss shall not be recognized on a restructuring involving indeterminate future cash receipts as long as the minimum future cash receipts specified by the new terms at least equal the recorded investment in the receivable.

(4) When the troubled debt restructuring involves both the transfer of assets or equity interests and the modification of the terms of the debt, the recorded investment in the receivable shall first be reduced by the fair value of the assets or equity interests received. The remaining portion of the receivable shall be accounted for as discussed in paragraph (b)(3) of this section.

(5) All legal fees and other direct costs incurred to effect a troubled debt restructuring shall be expensed when incurred.

(6) Losses recognized on the restructuring of debt shall be included in account 89.9 Other Miscellaneous Nonoperating Debits to the extent that they are not offset against valuation accounts, such as account 1290 Allowance for Uncollectible Accounts.

(7) The following information shall be disclosed on Schedule P-2 Notes to CAB Form 41 Report for each major category of receivables whose terms were modified in the current period such that the effective interest rate is less than the rate that the creditor would be willing to accept for a new receivable with comparable risk. The first three disclosure requirements listed below need not be followed if the effective interest rate for the modified receivable is greater than or equal to the rate that the creditor would be willing to accept for a new receivable with comparable risk:

(i) The aggregate recorded investment;

(ii) The gross interest income that would have been recorded in the period if the restructured receivables had been current according to their original terms;

(iii) The amount of interest income on the affected receivables included in the net income for the period; and

(iv) The amount of any commitments to lend additional funds to debtors owing receivables whose terms have been modified in a troubled debt restructuring.

6. Amend Section 14 by revising paragraphs 88.6, 88.9 and 89.9 to read as follows:

* * * * *

§ 88.6 Capital Gains and Losses—Other.

Record here gains or losses not required to be reported in accounts 88.3, 88.4 and 88.5 such as gains or losses on retirement of nonoperating property and equipment, investments in other than marketable equity securities, and the transfer of assets in a troubled debt restructuring.

* * * * *

88.9 Other Miscellaneous Nonoperating Credits.

Record here all credits of a nonoperating character not provided for otherwise, such as royalities from patents, gains from reacquisition and retirement or resale of debt securities issued by the air carrier, and gains resulting from troubled debt restructurings.

* * * * *

§ 89.9 Other Miscellaneous Nonoperating Debits.

Record here all debits of a nonoperating character not provided for otherwise, such as fines or penalties imposed by governmental authorities, amortization expense attributable to capital leases recorded in balance sheet account 1795 Leased Property under Capital Leases; costs related to property held for future use; donations for charitable, social or community welfare purposes; losses on reacquired and retired or resold debt securities of the air carrier; losses resulting from troubled debt restructurings; losses on uncollectible nonoperating receivables; or accruals to allowance for uncollectible nonoperating receivables. This account shall be charged with the amortization of amounts carried in balance sheet account 1870 Property Acquisition Adjustment, unless otherwise approved or directed by the Civil Aeronautics Board.

(Secs. 204(a), 407, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766, as amended (49 U.S.C. 1324(a), 1377).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-28276 Filed 10-5-78; 8:45 am]

[6750-01]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

PART 456—ADVERTISING OF OPHTHALMIC GOODS AND SERVICES

Interpretation of Trade Regulation Rule and Reply to Request for Exemption from Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Interpretation of Trade Regulation Rule; Reply to Request for Exemption from Trade Regulation Rule.

SUMMARY: The Federal Trade Commission has issued two interpretations of its trade regulation rule concerning the Advertising of Ophthalmic Goods and Services (16 CFR 456). One interpretation states that a refusal by a newspaper, or other advertising medium, to accept or publish an ophthalmic advertisement does not violate the provisions of the rule. The other interpretation states that a refractionist may deliver to his or her patients a written statement which says that the refractionist believes that the seller of the ophthalmic goods dispensed pursuant to the refractionist's prescrip-

tion is responsible for the accuracy of those goods.

The Commission also answered a request by the Virginia State Board of Examiners in Optometry for an exemption from this trade regulation rule for certain disclosure requirements which were recently adopted by the Board. The Commission found that some of those requirements conflict with the trade regulation rule while others do not, and the Commission granted no exemption for those requirements that do conflict.

EFFECTIVE DATE: September 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Gary D. Hailey or Scott P. Klurfeld, Room 279, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, D.C. 20580, 202-523-3427.

SUPPLEMENTARY INFORMATION: The Federal Trade Commission has issued two interpretations of its final trade regulation rule on the Advertising of Ophthalmic Goods and Services, 16 CFR Part 456. The first interpretation concerns the rule's proscription of conduct which prohibits, limits or burdens the dissemination of information. The Commission has determined that the refusal of a newspaper, or any other media, to accept or publish an ophthalmic advertisement does not constitute a prohibition, limitation or burden on the dissemination of information as those terms are used in 16 CFR Part 456.

The second interpretation concerns the meaning of § 456.7(d) of the rule which prohibits refractionists from "warning or disclaiming" responsibility for the accuracy of ophthalmic goods sold by another seller. The restriction does not cover statements by the refractionist as to whom the refractionist believes is liable or responsible. Thus, the Commission has interpreted its rule to permit refractionists to inform their patients as to whom they believe is responsible for the accuracy of goods dispensed, as long as the statement is not coupled with a waiver or disclaimer of the refractionist's liability. The complete interpretations are set out below:

FEDERAL TRADE COMMISSION INTERPRETATIONS OF 16 CFR PART 456

In § 456.1 of the Commission's trade regulation rule on the Advertising of Ophthalmic Goods and Services, 16 CFR Part 456, the term "dissemination of information" is defined to include the use of any media to provide to the public information concerning ophthalmic goods, services, and eye examinations. In §§ 456.2, 456.3, 456.4, and 456.6 of the rule, prohibitions, limitations and burdens on the dissemination of information are proscribed.

The question has arisen as to whether the refusal of a newspaper or any other media to accept an ophthalmic advertisment consistitutes a prohibition, limitation or burden on the dissemination of information. The Commission has determined that the refusal of a newspaper, or any other media, to accept or publish an ophthalmic advertisement does not constitute a prohibition, limitation or burden on the dissemination of information as those terms are used in 16 CFR Part 456.

The Commission's intent in adopting the rule was to permit, not to require, persons to provide information to the public. The issue of whether the media should be compelled to accept advertisements was not considered in the course of the rulemaking proceeding in this matter nor was its inclusion as an issue in this proceeding ever contemplated by the Commission. Other situations exist in which the refusal by an individual to "permit" an advertisement would not be considered a "prohibition, limitation or burden." For example, the refusal of a property owner to permit a seller or refractionist to post a sign or billboard advertising ophthalmic goods or services on the land of the property owner would similarly not violate the rule.

A second interpretive question has arisen concerning the meaning of § 456.7(d) of the rule which prohibits refractionists from "waiving or disclaiming" responsibility for the accuracy of ophthalmic goods sold by another seller. By its terms, the rule proscribes only "waivers or disclaimers" of responsibility. This restriction does not encompass statements by the refractionist as to whom the refractionist believes is liable or responsible.

The Commission has interpreted its rule to permit affirmative statements concerning responsibility. For example, a statement "the person who dispenses your eyeglasses is responsible for their accuracy" would not violate § 456.7(d) even if delivered in writing.

Thus, any refractionist may, without violating § 456.7(d), include on the prescription or deliver to the patient a written statement stating the refractionist's belief that the seller of the ophthalmic goods dispensed pursuant to the refractionist's prescription is responsible for the accuracy of those goods. However, this cannot be coupled with a waiver or disclaimer of the refractionist's liability.

In adopting § 456.7(d), the Commission was concerned that negative statements disclaiming liability served to confuse consumers on the issue of responsibility. The Commission has been unable to find any legal precedent under which a refractionist has been held liable for the accuracy of ophthalmic goods dispensed by another seller (absent a contractual relationship between the refractionist and the seller).

The Commission expresses no opinion as to the desirability of making affirmative statements on the issue of liability. Nor does the Commission express any opinion as to where liability properly rests in any dispute between a refractionist and a person who dispenses ophthalmic goods pursuant to that refractionist's prescription. Rather, the Commission is simply permitting refractionists to inform their patients as to whom they believe is responsible for the accuracy of goods dispensed.

VIRGINIA'S REQUEST FOR EXEMPTION FROM 16 CFR PART 456

On August 2, 1978, the Commonwealth of Virginia, through its Board of Examiners in Optometry, requested an exemption from the Federal Trade Commission's trade regulation rule on the Advertising of Ophthalmic Goods and Services, 16 CFR Part 456, for certain disclosure requirements mandated by Virginia law. The Commission determined that some of the Virginia requirements do not conflict with the rule, and are therefore permissible. Other Virginia requirements were found to conflict with the Commission's rule and no exemption from the rule was granted.

The letter from the Virginia Board is set out below as Appendix A. The Federal Trade Commission's reply is set out below as Appendix B.

By direction of the Commission.

CAROL M. THOMAS,
Secretary.

APPENDIX A

The Federal Trade Commission
6th and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

GENTLEMEN: I am herewith submitting application for exemption to the Federal Trade Commission's regulations governing the price advertising of ophthalmic goods and services. This exemption is being sought under § 456.5(c).

The rules and regulations of the Virginia State Board of Examiners in Optometry containing permissive advertising practices for which we seek exemptions are as follows:

"3. *Advertising disclosure requirements.* The following regulations are promulgated pursuant to section 54-396(9) of the Code of Virginia (1950) which permits the advertising of prices, or discounts from such prices of eyeglasses, spectacles, lenses, frames, mountings and prosthetic devices under the condition that such advertising include and specify the kind, type, and quality of the advertised item in accordance with these regulations. Under section 54-397 of the Code of Virginia (1950), a violation of these regulations is a criminal offense punishable by up to six (6) months in jail and a five hundred dollar ($500.00) fine. Each separate advertisement in violation of these regulations published in any media shall be considered a separate offense.

(a) *Kind, type, and quality of ophthalmic frames.* All advertisements of ophthalmic frames or temples shall specify (1) the name of the manufacturer, (2) the manufacturer's identifying name or number of the frame, (3) the country of manufacture and (4) material as plastic, metal, or combination plastic and metal unless the frame is illustrated. This information may not be abbreviated, except that the United States of America may be identified as "U.S.A.".

(b) *Kinds and types of ophthalmic lenses.* Where applicable advertisements for ophthalmic lenses must indicate that prices are variable depending on the individual's specific prescription. All lenses shall be described as clear, tinted, or photochromic and as glass or plastic, single vision, bifocal, trifocal, occupational and aphakic lenses shall be identified as such. Advertisements for bifocal lenses, except for executive/dualens types, shall state segment size. Advertisements for trifocal lenses, except for executive/dualens and variable focus types, shall state segment size. Occupational lenses shall be further described as double bifocal or quadrifocal. Aphakic lenses shall be further described as lenticular aspheric, lenticular non-aspheric, full field aspheric, or full field non-aspheric. All advertisements of ophthalmic lenses shall specify (1) the name of the manufacturer, (2) the manufacturer's identifying name or number of the lens, and (3) the country of manufacture.

(c) *Kinds and types of contact lenses.* All advertisements of contact lenses must specify: (1) name of manufacturer, (2) country of manufacturer, and (3) type as "hard" or "soft". Bifocal contact lenses must be identified as such.

(d) *Quality of ophthalmic and contact lenses.* The advertisements of any lens which is (1) not purchased from a munufacturer or wholesaler who warrants that the lens meet American National Standards Institute (ANSI) specifications, or (2) does not in fact meet ANSI specifications, shall contain the statement "Does Not Meet ANSI Standards".

(e) *Kinds and types of prosthetic devices.* Artificial eyes must be identified as stock, modified stock, or custom.

(f) All advertisements quoting prices or discounts from prices of eyeglasses, spectacles, lenses, frames, mounting or prosthetic devices shall contain the statement—"Does Not Include Eye Examination".

(g) All disclosure items must be in type no smaller than ten (10) point type.

(h) If discounts are advertised, they must include the regular price of items to be "discounted."

The Virginia Board of Examiners in Optometry seeks the exemption in whole or in part to the aforementioned regulations which were lawfully promulgated in this State in the public's interest.

Your immediate attention and early response to this application will be greatly appreciated.

Sincerely,

BERNARD STIER,
President.

APPENDIX B

Re Application for Exemption from Trade Regulation Rule on the Advertising of Ophthalmic Goods and Services (16 CFR Part 456).

BERNARD STIER, O.D.,
President, State Board of Examiners in Optometry, Commonwealth of Virginia, Seaboard Building, Room 457, 3600 West Broad Street, Richmond, Va. 23230.

DEAR DR. STIER: We are writing this letter in response to your request dated July 21, 1978 (which was received by the Commission on August 2, 1978), for an exemption from the Commission's trade regulation rule on the Advertising of Ophthalmic Goods and Services, 16 CFR Part 456, for certain disclosure requirements applicable to the advertising of ophthalmic goods and prosthetic devices adopted by the Virginia State Board of Examiners in Optometry pursuant to its statutory authority.

As you are aware, prior to the promulgation of this trade regulation rule by the Commission, many States specifically proscribed all ophthalmic advertising. During the course of the Commission's rulemaking proceedings on this matter, many persons testified that the imposition of disclosure requirements that were not necessary to curb unfairness or deception would serve to burden advertising unduly.

Our response to your exemption application will address, first, those disclosure requirements contained in your regulations which are specifically permitted under the Commission's rule.

1. Section 456.5(a)(1) of the Commission's rule specifically authorizes the States to require that ophthalmic advertisements state "whether an advertised price includes single vision and/or multifocal lenses." The Commission did not thereby limit the permissible wording of disclosure requirements in this area. Rather, the Commission set forth the subject matter on which disclosures could be imposed by the States. Thus, the Commission determined that Virginia's Rule 3(b), which requires that advertisements state whether "single vision, bifocal, trifocal, occupational and aphakic lenses" are included within an advertised price does not contravene 16 CFR 456.5.

2.Virginia's Rule 3(c), which requires that advertisements for contact lenses specify whether the price applies to hard or soft contact lenses, or bifocal contact lenses, is authorized by § 456.5(a) (1) and (2).

3. Virginia's Rule 3(e), concerning prosthetic devices, does not conflict with the Commission's rule. The Commission's rule applies only to advertisements of ophthalmic goods, services, and eye examinations. The rule does not extend to artificial eyes. Thus, Virginia's rule 3(e) is not affected by the Commission's rule.

4. Virginia's rule 3(g) is not inconsistent with the Commission's rule. The trade regulation rule adopted by the Commission places no limitation on the manner in which the States require information to be disclosed, so long as the subject matter of the disclosure does not conflict with the trade regulation rule. Accordingly, Virginia's requirement that all disclosures be in 10-point type is not inconsistent with the Commission's rule.

5. Rule 3(f) of the Virginia rule is, to a degree, inconsistent with the Commission's rule and the Commission has determined than an exemption would be inappropriate. The Commission's rule authorizes refractionists to advertise their eye examination services. Section 456.5(a)(3) authorizes the States to require that price advertisements state whether an eye examination is included in the stated price. Thus, Virginia remains totally free to require that advertisements state whether or not an eye examination is included. However, it would be inconsistent with the Commission's rule for Virginia to require that all sellers state that an eye examination is not included in an advertised price.

6. Section 456.5(b) of the Commission's rule permits the States to impose on advertising for ophthalmic goods and services any disclosure requirements that the State applies across-the-board to all advertising for consumer goods and services. However, Virginia's rules 3 (a), (b) (insofar as it requires the disclosure of the "name of the manufacturer * * * the manufacturer's identifying name or number of the lens * * * and, the country of manufacturer"), (c) (1) and (2), and (h) apply to ophthalmic advertising burdensome disclosure requirements which apparently are not required in all advertisements for consumer goods or services. While this information may be of interest to some consumers, it does not appear to be necessary to prevent deception. Moreover, the Commission can find no justification, and you have suggested none, for limiting such disclosures to ophthalmic advertising.

Accordingly, the Commission has determined that Virginia's rules 3 (a), (b) (in part, as set forth above), (c) (1) and (2), and (h) are inconsistent with the Commission's rule and that no exemption should be granted. As noted above, if the Commonwealth of Virginia should require such disclosures in advertising for all consumer products and services, rather than singling out ophthalmic advertising, the Commission's rule will permit their application to advertising for ophthalmic goods.

7. Virginia's rule 3(d) also conflicts with the Commission's rule, and the Commission has determined that an exemption should not be granted. The Commission fully supports the concept of maintaining high quality in the provision of vision care products and services, and Virginia remains free to, for example, require that all lenses meet ANSI specifications. However, Virginia apparently has no such rules. Nor, apparently, is a seller who chooses not to advertise prohibited from providing consumers with lenses not satisfying the ANSI Z80 standards without disclosing that fact. Some recent empirical research indicates that the lenses produced by manufacturers and wholesale laboratories which claim to meet the ANSI standard frequently do not.[1] The testimony offered at the public hearings on the TRR indicates that it is very unlikely that an optometrist would verify each lens sold against each and every parameter of the ANSI standard, when that lens is warranted to meet the standard by the supplier. Accordingly, most, if not all, sellers who advertise would be required to state that their products do not meet the ANSI standard. The Commission finds that this would constitute an unwarranted burden on advertising.

8. Finally, the disclosure requirements embodied in Virginia rule 3(b) (except those discussed above) conflict with the Commission's rule, and the Commission has deter-

[1]"An Examination of Ophthalmic Prescription Spectacle Quality Relative to American National Standard Z80.1-1972," George A. Chase, Ph. D., and Ben E. Lynch, Optical Index, vol. 53, No. 3, March 1978, pp. 17-52.

mined that an exemption should not be granted. The Commission has concluded that detailed information on segment size in multifocal lenses, the types of occupational lenses and aphakic lenses, and whether glasses include tint or are composed of glass or plastic, are not necessary to prevent deception. The Commission has not determined that this information is not of interest to consumers, rather, it has simply determined that an advertisement, absent this information, is not deceptive.

Thus, to summarize the Commission's response, rule 3(b), insofar as it requires the disclosure of "(whether a lens is) single vision, bifocal, trifocal, occupational (or) aphakic", 3(c)(3), 3(e), and 3(g) are deemed not to conflict with the Commission's trade regulation rule.

All of the other disclosure requirements promulgated by the Virginia Board of Examiners in Optometry are deemed to be inconsistent with the Commission's rule. It is determined that no exemption should be granted for these requirements.

We would like to reiterate our position that any disclosure requirements imposed on all advertising for consumer goods and services by the Commonwealth of Virginia are automatically excluded from the coverage of the Commission's rule.

By direction of the Commission.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-28216 Filed 10-5-78; 8:45 am]

[8010-01]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15195; File No. S7-757]

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Annual Assessment Form for SECO Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of form.

SUMMARY: The Securities Exchange Act of 1934 authorizes the Commission to collect such reasonable fees and charges as may be necessary to defray the costs of additional regulatory duties required to be performed with respect to broker-dealers who are not members of a registered national securities association ("nonmember" or "SECO" broker-dealers). This form sets forth the annual schedule under which SECO broker-dealers are to be assessed for fiscal year 1978.

EFFECTIVE DATE: October 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Daniel Bateman, Division of Market Regulation, Room 501, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, 202-755-1300.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission announced today that it has adopted form SECO-4-78 which sets forth the annual assessment payable to the Commission for fiscal year 1978 by registered broker-dealers who are not members of a registered national securities association. Form SECO-4-78 was proposed and published for public comment on August 25, 1978 (43 FR 38026) (Securities Exchange Act Release No. 34-15074, August 18, 1978).

In adopting form SECO-4-78, for this year, the Commission has determined to modify the annual SECO assessment schedule by reducing the gross income assessment from 0.2 percent to 0.17 percent for municipal securities transactions and from 0.25 percent to 0.21 percent for other OTC securities transactions. These assessments are being reduced to adjust the anticipated revenues to more closely approximate the expected regulatory costs of the SECO program and to continue the Commission's policy over the years of maintaining general comparability with the fees and assessments charged by the National Association of Securities Dealers, Inc. (NASD). The annual base member assessment and the annual personnel assessment ($250 and $5 respectively) will remain unchanged.

NOTICE OF DUE DATE FOR FILING FORM SECO-4-78

SECO broker-dealers filing form SECO-4-78 should note that they are required to file the form and remit any assessments payable to the Commission by October 31, 1978.

STATUTORY BASIS

The modifications of 1978 assessments for SECO broker-dealers are adopted pursuant to the Securities Exchange Act of 1934 and particularly sections 15(b)(7), 15(b)(8), and 23(a) thereof. The Commission finds that any burden imposed upon competition by the amendments is necessary and appropriate in furtherance of the purposes of the Act, particularly to implement the Commission's continuing mandate under section 15(b)(8) to collect such reasonable fees and charges as may be necessary to defray the costs of the specified regulatory duties required to be performed with respect to nonmember broker-dealers. The Securities and Exchange Commission, pursuant to its authority under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq., as amended by Pub. L. 94-29 (June 4, 1975)) and particularly sections 15(b)(7), 15(b)(8), and 23(a) thereof, amends part 249 of title 17 of the Code of Federal Regulations by adopting § 249.504*l* as follows:

§ 249.504*l* Form SECO-4-78, 1978 assessment and information form for registered brokers and dealers not members of a registered national securities association.

This form shall be filed on or before October 31, 1978, pursuant to § 240.15b9-2 of this chapter, accompanied by the annual assessment fee required thereunder, for the fiscal year ended September 30, 1978, by every registered broker and dealer not a member of a registered national securities association. Those broker-dealers which are exempt from the payment of any assessment or fee pursuant to the provisions of § 240.15b9-2(e) must still file the form.

Copies of the form have been filed with the Office of the Federal Register, and additional copies are available on request from the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

SEPTEMBER 28, 1978.

[FR Doc. 78-28242 Filed 10-5-78; 8:45 am]

[4110-03]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER A—GENERAL

[Docket No. 78N-0118]

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

Subpart B—Redelegations of Authority From the Commissioner of Food and Drugs

CERTIFICATION OF TRUE COPIES; CORRECTION

AGENCY: Food and Drug Administration.

ACTION: Correction.

SUMMARY: In FR Doc, 78-18559 appearing at page 29286 in the FEDERAL REGISTER of July 7, 1978, § 5.22 Certification of true copies and use of the Department Seal (21 CFR 5.22) is corrected in paragraph (a)(ii) by changing "the Associate Director for Regulatory Policy" to read "the Assistant Director for Regulations Policy."

EFFECTIVE DATE: July 7, 1978.