

persons, firms, and corporations engaged therein, to the same extent and in the same manner as if such operations and transactions were conducted in or for "commerce", within the meaning of the Poultry Products Inspection Act, and any establishment in the State of South Carolina which conducts any slaughtering or processing of poultry or poultry products must have Federal inspection or cease its operations, unless it qualifies for an exemption under section 15 or 15(c)(2) of the Poultry Products Inspection Act.

Therefore, the operator of each such establishment who desires to continue any such operations after February 21, 1982, should immediately communicate with the Regional Director for Meat and Poultry Inspection Operations as listed below, for information concerning the requirements and exemptions under the Acts and application for inspection and survey of the establishment: Dr. J. D. Willis, Director, Meat and Poultry Inspection Operations, Southeastern Regional Office, U.S. Department of Agriculture, Room 218, 1718 Peachtree Street NW., Atlanta, GA 30309 (404) 881-3911.

PART 331—SPECIAL PROVISIONS FOR DESIGNATED STATES AND TERRITORIES; AND FOR DESIGNATION OF ESTABLISHMENTS WHICH ENDANGER PUBLIC HEALTH AND FOR SUCH DESIGNATED ESTABLISHMENTS

Accordingly, Part 331 of the Federal meat inspection regulations (9 CFR 331) is amended as follows:

1. The authority citation for Part 331 reads as follows:

Authority: Secs. 21 and 301, 81 Stat. 584, 588, 592, 593, 595 (21 U.S.C. 621, 661).

§ 331.2 [Amended]

2. The table in § 331.2 of the Federal meat inspection regulations (9 CFR 331.2) is amended as follows:

In the "State" column, "South Carolina" is added immediately below "Rhode Island."

In the "Effective date of application of Federal provisions" column, "February 22, 1982," is added on the line with "South Carolina."

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

Further, Part 381 of the poultry products inspection regulations (9 CFR 381.221) is amended as follows:

1. The authority citation for Part 381 reads as follows:

Authority: Sec. 5(c) and 14, 71 Stat. 441, as amended (21 U.S.C. 454(c), 463).

§ 381.221 [Amended]

2. The table in § 381.221 of the poultry products inspection regulations (9 CFR 381.221) is amended as follows:

In the "State" column, "South Carolina" is added immediately below "Rhode Island."

In the "Effective date of application of Federal provisions" column, "February 22, 1982" is added on the line with "South Carolina."

Dr. Donald L. Houston, Administrator, FSIS, has determined that it is necessary to designate the State of South Carolina immediately in accordance with section 301(c) of the Federal Meat Inspection Act and section 5(c)(3) of the Poultry Products Inspection Act, in order to carry out the Secretary's responsibilities under the Acts.

Therefore, it does not appear that any additional relevant information would be made available to the Secretary by public participation in this rulemaking proceeding. Accordingly, under the administrative procedures provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedures are impracticable and contrary to the public interest.

Done at Washington, D.C., on January 15, 1982.

Donald L. Houston,
Administrator, Food Safety and Inspection Service.

[FR Doc. 82-1582 Filed 1-21-82; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL HOME LOAN BANK BOARD

[No. 82-11]

12 CFR Parts 563, 563c

Amortization Periods for Premiums, Discounts and Credits, and Treatment of Gains and Losses on the Sale of Real Estate, for Fiscal Years Ending on or After December 31, 1981

Dated: January 8, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board has authorized institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation ("insured institutions") to amortize premiums, discounts, and deferred acquisition credits relating to certain loans over a period not shorter than the lesser of the loans' contractual lives or ten years, and to recognize currently any profit on certain sales of real estate financed by loans by such institutions. The Board also has

prescribed identical accounting treatment for sales of real estate by an insured institution's subsidiary service corporation(s). Finally, the Board has eliminated the regulatory provisions pertaining to amortization of discounts, charges, and credits recorded prior to January 1, 1972, since such regulatory provisions no longer have any application. The amendments will enable insured institutions and their subsidiary service corporations to reflect in their financial statements the results of real estate sales activities on a more realistic basis and on an equal footing with other entities engaging in similar activities.

EFFECTIVE DATE: December 31, 1981.

FOR FURTHER INFORMATION CONTACT:

Michael S. Joseph (202-377-6994) or Robert J. Pomeranz (202-377-6537), Office of Examinations and Supervision, or David J. Bristol (202-377-6461) or Kenneth F. Hall (202-377-6466), Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On October 20, 1981, the Board proposed to amend § 563.23-1 of its regulations (12 CFR 563.23-1) to permit the amortization of premiums, discounts and credits on certain loans over a period not shorter than the loans' contractual lives or ten years, whichever is less, and to permit greater recognition of profit from the sale of real estate (FHLBB Res. No. 81-641; 46 FR 54567 (November 3, 1981)). The proposed amendments would have prescribed this accounting treatment for institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") ("insured institutions") and for their service corporations. Comments were accepted from the public through November 27, 1981.

The Board received thirty-two comments on the proposed rule. Of these, fourteen were from federally-chartered savings and loan associations, ten were from state-chartered savings and loans, six were from savings and loan trade associations, and the remaining two were from an accounting firm and a law firm. All of the commenters favored the proposal as being less restrictive, but approximately two-thirds of the commenters expressed concern with certain provisions. These expressions of concern are discussed below.

Amortization Periods for Premiums, Discounts and Credits

As proposed, the Board has amended paragraphs (a), (b) and (d) of § 563.23-1

to provide that discounts resulting from the purchase of a loan or acquisition credits subject to deferral (defined in subparagraph (g)(3) as certain consideration, other than the average interest provided by the loan contract, received by an insured institution for making a commitment or acquiring, making, refinancing or modifying a loan) shall be deferred and amortized to income over a period of not less than the remaining term to maturity of the loan or ten years, whichever is less. Previously, paragraphs (a), (b) and (d) provided for a minimum amortization period of ten years.

Deferral of these amounts is required because the Board views them as adjustments to the amount of interest directly provided for in the loan contract. Accordingly, the amounts are required to be amortized to income over a period that approximates the estimated actual average life of the mortgage loan portfolio, which, in the Board's view, is ten years.

However, because the Board has adopted regulations permitting federal institutions to increase substantially their investments in real estate loans secured by other than first mortgages and their investments in other types of loans, including balloon-payment loans, the contractual terms of these loans in many cases are or will be less than the ten-year minimum amortization period. Therefore, although the Board continues to view these deferred amounts as additional interest to be earned by the institution, the Board has reduced the minimum amortization period for premiums, credits and discounts on such loans to reflect its view that the actual lives of these loans will approximate their contractual lives. This approach was supported by the great majority of commenters.

The proposed regulation also would have prohibited the use of an amortization period of less than ten years if an institution, within six months of the date of a loan, made or acquired any additional loan to the same borrower with a remaining term to maturity exceeding ten years. The Board has retained this provision with one change—the six-month rule will apply only to loans secured by the same property. This change generally was supported by the commenters. The provision reflects the Board's view that loans secured by the same property made within six months of each other should be considered one loan for purposes of determining the appropriate amortization period for discounts and credits.

Finally, the proposed regulation would have provided that any premiums,

credits and discounts should be included in the computation of a gain or loss upon the sale or payoff of a loan, provided that the institution had not made or acquired an additional loan(s) to the same borrower within six months of the origination date of the loan sold or paid off. The Board has adopted this provision, but has applied it only where the additional loan(s) is secured by the same property as is the loan sold or paid off. In this manner, the regulation excludes from consideration loans that clearly are not related to the loan sold or paid off by virtue of being secured by separate properties.

Simplification

When the accounting rules establishing the minimum amortization period were modified in 1972, the amendments retained the minimum amortization period applicable to loans originated, purchased, or sold prior to January 1, 1972. All amounts originated prior to January 1, 1972, were required to be amortized over a period of not less than seven years. Since all amounts deferred prior to 1972 have now been fully credited to income, the Board has eliminated the pre-1972 amortization provisions from the regulation.

Sale of Real Estate

The Board has amended § 563.23-1(f) to permit the recognition of profit from the sale of real estate owned by an insured institution, where the institution finances acquisition of the real estate, if the sole purpose of the loan is to finance the acquisition, the loan is secured by a first lien and conforms to the Board's lending regulations, and the institution has not made or acquired any other loan to the purchaser that is unsecured or secured by the real estate sold. Where the loan contains preferential terms, the regulation requires that the sales price be reduced to reflect the present value of the preferential terms. Section 563c.13 (12 CFR 563c.13) is also amended to prescribe similar accounting treatment for sales by a service corporation of an insured institution where such sales are financed either by the insured institution or by the subsidiary service corporation.

The proposed regulation would have differentiated between "permanent" and "non-permanent" investors. A "permanent" investor was characterized as someone who purchases real estate in anticipation of holding the real estate for an indefinite period of time either for personal use, in anticipation of realizing a profit from its operations, or for long-term tax benefits and appreciation of the real estate's value. On the other hand, a "non-permanent" investor was characterized as someone who

purchases real estate in anticipation of a profit from its resale in a relatively short period of time. This profit could be derived from the construction of a building on the real estate or from substantial renovation of an existing structure.

The rationale for this distinction was that purchases of real estate by "non-permanent" investors inherently possess an element of speculation. Therefore, the likelihood of an institution reacquiring a property sold to a "non-permanent" investor was felt to be greater because of the possibility that the real estate would prove to be unsalable in the short term or that costs of carrying the property might be overly-burdensome for the investor. Many commenters, however, felt that establishing such a distinction would not provide a clear-cut standard for institutions to use in determining whether full recognition of profits was permissible, thus resulting in second-guessing by the Board's examination and supervisory staff. In addition, they felt the distinction would be unnecessary because lenders generally impose stricter underwriting standards for higher-risk loans and because generally accepted methods exist for accounting for such loans.

Although the Board does not believe that the distinction between "permanent" and "non-permanent" investors would require institutions to engage in analysis of a purchaser's intent, the Board has determined to replace the distinction with the conforming-loan standard described above. While this standard is somewhat more liberal than existing authoritative accounting literature, specifically the American Institute of Certified Public Accountants' Statement of Position #75-6 ("Questions Concerning Profit Recognition on Sales of Real Estate"), the Board notes that these principles are not consistently applied in accounting for profits from the sale of real estate by financial institutions. The Board also notes that the Financial Accounting Standards Board ("FASB") currently is reviewing the Statements of Position relating to real estate. The Board will review its regulation governing the appropriate treatment of profit from the sale of real estate when the FASB publishes its conclusions.

The final amendment eliminates the provisions of § 563.23-1(f) which provided that an insured institution may recognize profit from the sale of real estate only to the extent cash is received from the purchaser. These accounting rules have effectively prevented the full recognition of profit in any sale that is

financed by the insured institution. The rules were adopted at a time when the only typical real estate sales by an institution or its service corporation(s) were of real estate acquired as a result of foreclosure or otherwise in settlement of loans. They were based on the concept that it is unlikely that the sale of distressed properties can result in a profit and, therefore, to preclude artificial inflation of an institution's income, any profit realized should not be recognized until collected in cash.

However, many state-chartered institutions possess the power to purchase, develop and sell real estate in anticipation of profit. In addition, federal associations have been granted expanded authority to invest in service corporations that purchase, develop and sell real estate for profit (FHLBB Res. No. 80-488; 45 Fed. Reg. 56029 (1980)). Finally, it is not impossible to realize a profit on the sale of real estate acquired through foreclosure or other settlement of a loan. Since an institution's principal business activity is providing financing for the purchase and sale of real estate, the Board believes it is inconsistent to prevent an institution or its service corporation from recognizing the profit earned from the sale of real estate merely because the institution provides the financing for the sale.

Preferential Loan Terms

The final regulation, as proposed, also provides that, if loan terms more favorable than those available under an institution's established lending policies at the time of sale are granted in connection with the sale of real estate by either an institution or its subsidiary service corporation, the sale price must be reduced by the present value of such favorable terms in determining the amount of profit or loss resulting from the sale. The reduction must then be treated as a discount on the financing provided in connection with the sale and accounted for as such. In this manner, the regulation, while recognizing that financing provided by the seller of real estate plays an important role in consummating a sale and in establishing the resulting sales price, nevertheless distinguishes between an institution's real estate and financing activities. This codifies accounting treatment currently required by Memorandum R 23, published by the Board's Office of Examinations and Supervision.

Accounting for Profits on Past Sales of Real Estate

The final regulation expressly permits insured institutions to take into income, in the current accounting period, profits

that previously had been deferred pursuant to § 563.23-1(f). Although the preamble to the proposed regulation noted this would be permitted, several commenters suggested this fact be stated in the body of the regulation. The Board notes that generally accepted accounting principles provide an adequate framework for institutions to follow in changing from one method of accounting for a particular type of transaction to another that is considered more appropriate. Thus, institutions will be permitted to show in current income the cumulative effect of applying the proposed rules to past transactions on which income is deferred pursuant to the former rules.

Final Regulatory Flexibility Analysis

The Board's objective in amending its accounting regulations is to enable FSLIC-insured institutions and their subsidiary service corporations to reflect the results of real estate sales activities in their financial statements on a more realistic basis and on an equal footing with other entities engaging in similar activities. The amendments also substantially reduce an existing difference between regulatory accounting principles and generally accepted accounting principles and the related duplicate bookkeeping burden currently imposed on these institutions.

These amendments are promulgated pursuant to the Board's authority under 402, 403 and 407 of the National Housing Act (12 U.S.C. 1725, 1726, 1730). The regulations apply to all institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, regardless of size, and impose no new reporting, recordkeeping or other compliance requirements. The amendments do not duplicate, overlap or conflict with any existing federal regulations.

Retroactive Application

The Board has determined to make the amendments effective as of December 31, 1981. This will permit institutions that have fiscal years ending on or after December 31, 1981, to use the new rules in accounting for sales of real estate that occurred or that will occur in those fiscal years. The Board believes that delay of the effective date of this regulatory action for 30 days after publication pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary and against the public interest because (1) this action relieves restriction, and (2) institutions should be permitted at the earliest possible time to obtain the benefits of accounting for sales of real estate in a manner that conforms more

closely to generally accepted accounting principles.

Accordingly, the Federal Home Loan Bank Board hereby amends Parts 563 and 563c, Subchapter D, Chapter V of Title XII, *Code of Federal Regulations*, as set forth below

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. Revise § 563.23-1 to read as follows:

§ 563.23-1 Premiums, discounts charges, and credits with respect to loans; sale of real estate; and related items.

(a) *Purchase at a premium.* A premium paid by an insured institution in connection with acquisition of a loan may be charged off when paid or may be capitalized. If the premium is capitalized, it shall be amortized by charges to expense, at least semiannually and using any approved method of amortization, over a period not in excess of the remaining term of the loan or ten years, whichever is less, in the case of a single loan, or over a period not in excess of the weighted average of the remaining terms to maturity of the loans or ten years, whichever is less, in the case of a group of loans.

(b) *Purchase at a discount.* If an insured institution purchases a loan at a discount, the discount shall be deferred by a credit to an account descriptive of deferred income and shall thereafter be credited to income, at least semiannually and using any approved method, over a period of not less than ten years. However, if an insured institution purchases a loan and has not within six months of the date of purchase of the loan made or acquired any other loan to the same borrower secured by the same property and with a remaining term to maturity in excess of ten years, the discount may be credited to income, at least semiannually and using any approved method, over a period not shorter than the remaining term to maturity of the loan or ten years, whichever is less. In applying the provisions of this paragraph to the purchase of a group of loans, the amortization period shall not be shorter than the weighted average of the remaining terms to maturity of the loans or ten years, whichever is less. For purposes of this section, a loan shall be deemed to have been purchased at a discount if the price paid by the institution for the loan is less than the amount of the loan balance. Any charges by the purchaser in connection with the purchase of a loan shall be

deducted from the purchase price to determine the amount of the discount.

(c) *Charges.* All acquisition charges, as defined in paragraph (g) of this section, in connection with the making or acquisition of a loan by an insured institution, shall be charged to such institution's expense for the accounting period in which such charges are incurred and shall not be deferred beyond the end of such accounting period.

(d) *Credits deferred.* Each acquisition credit subject to deferral, as defined in paragraph (g) of this section, shall be deferred by a credit to an account descriptive of deferred income and shall thereafter be credited to income, at least semiannually and using any approved method, over a period of not less than ten years. However, if the remaining term to maturity of the loan is less than ten years and the institution has not within six months of the date of purchase of the loan made or acquired any other loan to the same borrower secured by the same property and with a remaining term to maturity in excess of ten years, the acquisition credit may be credited to income, at least semiannually and using any approved method, over a period not shorter than the remaining term of the loan. In applying the provisions of this paragraph to a group of loans, the amortization period shall not be shorter than the weighted average of the remaining terms to maturity of the loans.

(e) *Sale or payoff of loans.* If a loan has been sold or paid in full, the remaining balance of any capitalized premium, deferred acquisition credit or discount applicable to the loan and may be added to or deducted from (as appropriate) the book value of the loan and the profit or loss thereon shall be computed based on such adjusted amount, provided that the institution did not make or acquire any other loan secured by the same property to the borrower within six months of the date of origination of the loan sold or paid off. The resulting profit or loss shall then be accounted for in accordance with the applicable accounting principles.

(f) *Sale of real estate owned.* When an insured institution sells real estate, the institution's records shall disclose the book value of the real estate at the time of the sale and the price at which it was sold.

(1) If the sale results in a loss, the loss shall be charged to expense, or to an allowance account previously established for the loss, during the accounting period in which the loss was sustained.

(2) If the sale results in a profit and the institution has not made, acquired,

or committed to make or acquire a loan for any purpose, to the purchaser, the profit may be recognized as income during the accounting period in which the sale occurs.

(3) If the sale results in a profit and the institution has made, acquired, or committed to make or acquire a loan the sole purpose of which is to finance the purchase of the real estate, the profit may be recognized during the accounting period in which the sale occurs only if (i) the loan is secured by a first lien on the real estate and conforms to the Board's regulations as to maturity, loan-to-value ratios, and other restrictions (12 CFR 545.6-2, 545.6-6) or to the regulations as to loans insured for guaranteed by a federal, state or local public entity (e.g., 12 CFR 545.6-1, 545.6-11), and (ii) the institution has not made, acquired, or committed to make or acquire any other loan to the purchaser of the real estate that is unsecured or that is secured by that real estate. If the sale is financed with a loan and the institution has not met the requirements of this paragraph (f)(3), then the profit shall be deferred and credited to an account descriptive of unearned profit on the sale of real estate until the requirements are met.

(4) When preferential loan terms are granted in connection with the sale of real estate, the sales price shall be reduced to reflect the present value of such preferential terms, and the profit or loss shall be computed based on the reduced amount.

(5) An institution may take into income, in any fiscal year ending on or after December 31, 1981, profits that previously were deferred pursuant to the provisions of this paragraph as they existed prior to December 31, 1981.

(g) *Definitions.* For purposes of this section:

(1) The term "amount of the loan" means the face amount of the obligation executed by the primary obligor on a loan, except that with respect to a loan acquired by an insured institution such term means the principal balance of such loan at the time of its acquisition by such institution.

(2) The term "acquisition credit" means any consideration, other than the average interest provided by the loan contract, received by an insured institution for or in connection with the acquisition, making, refinancing, or modification of a loan plus any consideration received for making a loan commitment, whether or not an actual loan follows such commitment; the term does not include any amounts received and paid out by an insured institution to a third party (not an affiliate) for itemized initial charges in

connection with the loan transaction, or any escrow fee received by an insured institution in connection with a sale which involves a related loan made by it, if the following requirements are met:

(i) The fee is based on the escrow services actually performed and is comparable in amount to the fee charged by other escrow agents located in the institution's normal lending territory for performing similar escrow services;

(ii) The borrower is informed of his freedom of choice in selecting a competent escrow agent to perform the escrow services; and

(iii) The related loan is not a refinancing or modification of an existing loan held by the institution and made to the same borrower or to an affiliate of such borrower.

(3) The term "acquisition credit subject to deferral" means, for loans closed on or after January 1, 1979, the amount of an acquisition credit in excess of

(i) The greater of: (A) fifty dollars, or

(B) Two and one-half percent of the amount of the loan, if the loan or commitment is for the purpose of construction, or

(C) Two percent of the amount of the loan, if the loan or commitment is for any other purpose; plus

(ii) Four hundred dollars, if, with respect to the loan, the insured institution uses its own employees to perform appraisal services or to perform attorney or closing functions, for which no escrow fee is received. In addition to the amounts which may be taken into current income under the foregoing provisions of this paragraph (g)(3), a nonrefundable fee received in cash in consideration for and at the time of execution of a bona fide forward loan commitment contract may be taken into current income, at the time of its receipt, in the following amount: one percent of such a loan commitment that will be outstanding for a six- to twelve-month term prior to the closing of the loan; one and one-half percent of a loan commitment that will be outstanding for a twelve- to eighteen-month term prior to the closing of the loan; or two percent of a loan commitment that will be outstanding for a term exceeding eighteen months prior to the closing of the loan. If a loan upon which there is such a loan commitment contract is closed prior to the expiration of the contract term, the institution by appropriate accounting entries shall remove from current income and credit to an account descriptive of deferred income an appropriate amount (based on the foregoing formula) of the fee

previously received and recorded as provided in the preceding sentence. Insured institutions shall keep records of forward loan commitment contracts and fees for such commitments that are received by it and are taken into current income or credited to deferred income.

(4) The term "acquisition charges" includes finders' fees, buying commissions, attorneys' fees, and brokerage fees paid by an insured institution in connection with the making or acquisition of a loan or commitment, but does not include a premium paid by such institution in connection with the purchase of a loan.

(5) The term "affiliate" means any person or company which controls, is controlled by, or is under common control with an insured institution within the meaning of subsection (a)(3) of section 408 of the National Housing Act, as amended.

(6) The term "book value" means the total amount invested in real estate less any related depreciation allowances or valuation reserves.

(7) The term "loss" means the amount by which the unpaid principal balance of the loan (net of unamortized premiums, discounts, or deferred acquisition credits) or the book value of the real estate exceeds, at the time such loan or real estate is sold, the sales price of such loan or real estate.

(8) The term "profit" means the amount by which the sales price of the loan or real estate exceeds, at the time such loan or real estate is sold, the unpaid principal balance of such loan (net of unamortized premiums, discounts, or deferred acquisition credits) or the book value of such real estate.

(9) The term "approved method" means any one of the following methods for computing amortization of a capitalized premium or for recognizing deferred income:

(i) "Straight-line" method, as described in § 1.167(b)-1 of the Federal income tax regulations (26 CFR 1.167(b)-1);

(ii) "Sum-of-the-years-digits" method, as described in § 1.167(b)-3 of the Federal income tax regulations (26 CFR 1.167(b)-3); and

(iii) "Level-yield" or "interest" method, by which income is debited or credited so as to yield, throughout the amortization period, a uniform rate of return on the investment after discount or premium.

PART 563c—ACCOUNTING REQUIREMENTS

2. Revise paragraph (b) of § 563c.13, to read as follows:

§ 563c.13 Accounting for investment in service corporation.

(b) For purposes of this section, when applying the provisions of § 563.23-1 of this Chapter, any loans made or committed to be made to the purchaser of the real estate, or any such loan acquired or committed to be acquired by the insured institution or any affiliate, as defined in § 563.23-1(g)(5), shall be considered as if they were made directly by the service corporation: *Provided*, that this paragraph shall not apply if not more than ten percent of the stock of the service corporation is owned by the insured institution that is providing the financing or that has subsequently acquired the mortgage or security property.

(Secs. 402, 403, 407 (12 U.S.C. 1725, 1726, 1730; 48 Stat. 1256, 1257, 1260), as amended. Reorg. Plan No. 3 of 1947, 12 FR 4891, 3 CFR, 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

James J. McCarthy,
Acting Secretary.

[FR Doc. 82-1667 Filed 1-21-82; 8:45 am]

BILLING CODE 6720-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

Space Transportation System; the Authority of the Space Transportation System (STS) Commander

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: National Aeronautics and Space Administration (NASA) is revising its final rule, 14 CFR Part 1214, Subpart 7, "Space Transportation System; The Authority of the Space Transportation System (STS) Commander," by adding a new paragraph (d) to § 1214.703 which states that if the Director of the Johnson Space Center determines that the Commander is unable to carry out command responsibilities, the Director shall relieve the Commander from command, and designate the pilot or another flight crew member as Commander.

DATES: January 22, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. O'Neil, 202-755-2424.

SUPPLEMENTARY INFORMATION: On March 7, 1980, NASA published its final rule 14 CFR Part 1214, Subpart 7 (45 FR 14845-14846), setting forth the Authority of the Space Transportation System (STS) Commander. At a hearing of the Committee on Science and Technology

(which was held after the final rule was published), Congressman Fuqua expressed his concern about who would make the determination to relieve the Commander if the Commander was found to be psychologically or physically unable to make reentry or to complete the assigned mission. As a result of this hearing, NASA decided to amend the rules and make the Director of the Johnson Space Center responsible for relieving the Commander. Since this action is administrative and editorial in nature, notice and comment procedures are not required.

PART 1214—SPACE TRANSPORTATION SYSTEM

14 CFR Part 1214, Subpart 7, is amended by adding a new paragraph (d) to § 1214.703 reading as follows:

§ 1214.703 Chain of command.

(d) The determinations, if any, that a crew member in the chain of command is not able to carry out his or her command duties and is therefore to be relieved of command, and that another crew member in the chain of command is to succeed to the responsibilities and authority of the Commander, will be made by the Director of the Johnson Space Center.

(Pub. L. 85-568; 72 Stat. 426; 42 U.S.C. 2473, 2455; 18 U.S.C. 799; Art. VIII, TIAS 6347 (18 U.S.T. 2410))

Dated: December 24, 1981.

James M. Beggs,
Administrator.

[FR Doc. 82-1612 Filed 1-21-82; 8:45 am]

BILLING CODE 7510-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 1

Procedures for Implementation of the National Environmental Policy Act of 1969

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission is adopting new rules for implementing the procedural provisions of the National Environmental Policy Act. The rules provide that it is the Commission's policy to comply with the Council on Environmental Quality regulations (40 CFR Parts 1500-1508). The rules set forth supplementary definitions and procedures to be applied in conjunction with the Council's regulations.

EFFECTIVE DATE: February 22, 1982.

FOR FURTHER INFORMATION CONTACT:

Jerold D. Cummins, Deputy Assistant General Counsel, Office of the General Counsel, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580 (202-523-1928).

SUPPLEMENTARY INFORMATION: The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, requires all federal agencies to give appropriate consideration to the environmental effects of their proposed actions in their decisionmaking and to prepare detailed environmental statements on proposals for legislation significantly affecting the quality of the human environment and on other major federal actions significantly affecting the quality of the human environment. The Council on Environmental Quality (CEQ) issued regulations to implement the procedural provisions of NEPA (codified at 40 CFR Part 1500-1508) under the direction of Executive Order No. 11991. These regulations require all agencies to prepare supplemental procedures as necessary to implement the regulations (§ 1507.3). Although it is the Commission's position that these regulations are not binding on it, the Commission's policy is to comply fully with the CEQ regulations unless it determines in a particular instance or for a category of actions that compliance would not be consistent with the requirements of law.

In the *Federal Register* of July 20, 1979 (45 FR 42712-14), the Commission proposed procedures to implement and supplement CEQ's regulations. Only one substantive comment was received. The commenter challenged that part of proposed rule § 1.82(a) which, like its counterpart in existing 16 CFR 1.82(d), construes the environmental impact provision of NEPA (42 U.S.C. 102(2)(C)) as not applying to law enforcement proceedings. The Commission in the past has rejected arguments that the impact statement requirements are applicable at any stage of a law enforcement proceeding. *Coca-Cola Co.*, 91 F.T.C. 517, 666-67 (1978), *order vacated and case remanded on other grounds*, 642 F.2d 1387 (D.C. Cir. 1981); *Jim Walter Corp.*, 91 F.T.C. 514, 516 (1970), *order vacated and case remanded on other grounds*, 625 F.2d 676 (5th Cir. 1980). The issue has been raised but not decided in other court proceedings. See, e.g., *Gifford-Hill & Co. v. FTC*, 523 F.2d 730 (D.C. Cir. 1975); *Mobil Oil Corp. v. FTC*, 562 F.2d 170 (2d Cir. 1977). As provided in the rules issued today, the Commission adheres to its view that Congress did not intend that the environmental impact statement

requirement of section 102(2)(C) of NEPA be applicable to the bringing of law enforcement proceedings. This position is also set forth in CEQ Regulation § 1508.18(a). Ordinarily, final disposition of such matters, whether by adjudication or consent order proceedings, will not significantly affect the quality of the human environment. In the rare event that the Commission in such proceedings might actively contemplate final relief, or the promulgation of standards, which may have a significant environmental effect, the rules provide (§ 1.82(a)) that the Commission will, when consistent with the requirements of law, provide for the preparation of an environmental assessment or an environmental impact statement or such other action as will permit the Commission to assess alternatives with a view toward avoiding or minimizing any adverse effect upon the environment.

Text of the Rules: Part 1 of 16 CFR Chapter I, Subpart I, is revised to read in its entirety as follows:

PART 1—GENERAL PROCEDURES

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Subpart I—Procedures for Implementation of the National Environmental Policy Act of 1969**Sec.**

- 1.81 Authority and incorporation of CEQ regulations.
- 1.82 Declaration of policy.
- 1.83 Whether to commence the process for an Environmental Impact Statement.
- 1.84 Draft Environmental Impact Statements: Availability and comment.
- 1.85 Final Environmental Impact Statements.
- 1.86 Supplemental statements.
- 1.87 NEPA and agency decisionmaking.
- 1.88 Implementation procedures.
- 1.89 Effect on prior actions.

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Subpart I—Procedures for Implementation of the National Environmental Policy Act of 1969

Authority: 15 U.S.C. 46(g), 42 U.S.C. 4371 *et seq.*

§ 1.81 Authority and Incorporation of CEQ Regulations.

This subpart is issued pursuant to 102(2) of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4371 *et seq.*). Pursuant to Executive Order 11514 (March 5, 1970, as amended by Executive Order 11991, May 24, 1977) the Council on Environmental Quality (CEQ) has issued comprehensive regulations for implementing the procedural provisions of NEPA (43 FR 55978-56007) ("CEQ

Regulations"). Although it is the Commission's position that these regulations are not binding on it, the Commission's policy is to comply fully with the CEQ Regulations unless it determines in a particular instance or for a category of actions that compliance would not be consistent with the requirements of law. With this caveat, the Commission incorporates into this subpart the CEQ Regulations. The following are supplementary definitions and procedures to be applied in conjunction with the CEQ Regulations.

§ 1.82 Declaration of policy.

(a) Except for actions which are not subject to the requirements of section 102(2)(C) of NEPA, no Commission proposal for a major action significantly affecting the quality of the human environment will be instituted unless an environmental impact statement has been prepared for consideration in the decisionmaking. All relevant environmental documents, comments, and responses as provided in this subpart shall accompany such proposal through all review processes. "Major actions, significantly affecting the quality of the human environment" referred to in this subpart "do not include bringing judicial or administrative civil or criminal enforcement actions" CEQ Regulation (40 CFR 1508.18(a)). In the event that the Commission in an administrative enforcement proceeding actively contemplates the adoption of standards or a form of relief which it determines may have a significant effect on the environment, the Commission will, when consistent with the requirements of law, provide for the preparation of an environmental assessment or an environmental impact statement or such other action as will permit the Commission to assess alternatives with a view toward avoiding or minimizing any adverse effect upon the environment.

(b) No Commission proposal for legislation significantly affecting the quality of the human environment and concerning a subject matter in which the Commission has primary responsibility will be submitted to Congress without an accompanying environmental impact statement.

(c) When the Commission finds that emergency action is necessary and an environmental impact statement cannot be prepared in conformance with the CEQ Regulations, the Commission will consult with CEQ about alternative arrangements in accordance with CEQ Regulation (40 CFR 1506.11).

§ 1.83 Whether to commence the process for an Environmental Impact Statement.

(a) The Bureau responsible for submitting a proposed rule, guide, or proposal for legislation to the Commission for agency action shall, after consultation with the Office of the General Counsel, initially determine whether or not the proposal is one which requires an environmental impact statement. Except for matters where the environmental effects, if any, would appear to be either (1) clearly significant and therefore the decision is made to prepare an environmental impact statement, or (2) so uncertain that environmental analysis would be based on speculation, the Bureau should normally prepare an "environmental assessment" CEQ Regulation (40 CFR 1508.9) for purposes of providing sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact. The Bureau should involve environmental agencies to the extent practicable in preparing an assessment. An environmental assessment shall be made available to the public when the proposed action is made public along with any ensuing environmental impact statement or finding of no significant impact.

(b) If the Bureau determines that the proposal is one which requires an environmental impact statement, it shall commence the "scoping process" CEQ Regulation (40 CFR 1501.7) except that the impact statement which is part of a proposal for legislation need not go through a scoping process but shall conform to CEQ Regulation (40 CFR 1506.8). As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process, the Bureau shall publish a notice of intent as provided in CEQ Regulations (40 CFR 1501.7 and 1508.22).

(c) If, on the basis of an environmental assessment, the determination is made not to prepare a statement, a finding of "no significant impact" shall be made in accordance with CEQ Regulation (40 CFR 1508.3) and shall be made available to the public as specified in CEQ Regulation (40 CFR 1506.6).

§ 1.84 Draft environmental impact statements: Availability and comment.

Except for proposals for legislation, environmental impact statements shall be prepared in two stages: Draft statement and final statement.

(a) *Proposed rules or guides.* (1) An environmental impact statement, if deemed necessary, shall be in draft form at the time a proposed rule or guide is published in the **Federal Register** and

shall accompany the proposal throughout the decisionmaking process.

(2) The major decision points with respect to rules and guides are:

(i) Preliminary formulation of a staff proposal;

(ii) The time the proposal is initially published in the **Federal Register** as a Commission proposal;

(iii) Presiding officer's report (in trade regulation rule proceedings);

(iv) Submission to the Commission of the staff report or recommendation for final action on the proposed guide or rule;

(v) Final decision by the Commission. The decision on whether or not to prepare an environmental impact statement should occur at point (i). The publication of any draft impact statement should occur at point (ii). The publication of the final environmental impact statement should occur at point (iv).

(b) *Legislative proposals.* In legislative matters, a legislative environmental impact statement shall be prepared in accordance with CEQ Regulation (40 CFR 1506.8).

(c) In rule or guide proceedings the draft environmental impact statement shall be prepared in accordance with CEQ Regulation (40 CFR 1502.9) and shall be placed in the public record to which it pertains; in legislative matters, the legislative impact statement shall be placed in a public record to be established, containing the legislative report to which it pertains; these will be available to the public through the Office of the Secretary and will be published in full with the appropriate proposed rule, guide, or legislative report; such statements shall also be filed with the Environmental Protection Agency's (EPA) Office of Environmental Review (CEQ Regulation (40 CFR 1506.9) for listing in the weekly **Federal Register** Notice of draft environmental impact statements, and shall be circulated, in accordance with CEQ Regulations (40 CFR 1502.19, 1506.6) to appropriate federal, state and local agencies.

(d) Forty-five (45) days will be allowed for comment on the draft environmental impact statement, calculated from the date of publication in the EPA's weekly **Federal Register** list of draft environmental impact statements. The Commission may in its discretion grant such longer period as the complexity of the issues may warrant.

§ 1.85 Final environmental impact statements.

(a) After the close of the comment period, the Bureau responsible for the matter will consider the comments

received on the draft environmental impact statement and will put the draft statement into final form in accordance with the requirements of CEQ Regulation (40 CFR 1502.9(b)), attaching the comments received (or summaries if response was exceptionally voluminous).

(b) Upon Bureau approval of the final environmental impact statement the final statement will be

(1) Filed with the EPA;

(2) Forwarded to all parties which commented on the draft environmental impact statement and to other interested parties, if practicable;

(3) Placed in the public record of the proposed rule or guide proceeding or legislative matter to which it pertains;

(4) Distributed in any other way which the Bureau in consultation with CEQ deems appropriate.

(c) In rule and guide proceedings, at least thirty (30) days will be allowed for comment on the final environmental impact statement, calculated from the date of publication in the EPA's weekly **Federal Register** list of final environmental impact statements. In no event will a final rule or guide be promulgated prior to ninety (90) days after notice of the draft environmental impact statement, except where emergency action makes such time period impossible.

§ 1.86 Supplemental statements.

Except for proposals for legislation, as provided in CEQ Regulation (40 CFR 1502.9(c)), the Commission shall publish supplements to either draft or final environmental statements if: (a) The Commission makes substantial changes in the proposed action that are relevant to environmental concerns; or (b) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action and its impacts. In the course of a trade regulation rule proceeding, the supplement will be placed in the rulemaking record.

§ 1.87 NEPA and agency decisionmaking.

In its final decision on the proposed action or, if appropriate, in its recommendation to Congress, the Commission shall consider all the alternatives in the environmental impact statement and other relevant environmental documents and shall prepare a concise statement which, in accordance with CEQ Regulation § 1505.2, shall

(a) Identify all alternatives considered by the Commission in reaching its decision or recommendation, specifying the alternatives which were considered to be environmentally preferable;

(b) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not.

§ 1.88 Implementing procedures.

(a) The General Counsel is designated the official responsible for coordinating the Commission's efforts to improve environmental quality. He will provide assistance to the staff in determining when an environmental impact statement is needed and in its preparation.

(b) The Commission will determine finally whether an action complies with NEPA.

(c) The Directors of the Bureaus of Consumer Protection and Competition will supplement these procedures for their Bureaus to assure that every proposed rule and guide is reviewed to assess the need for an environmental impact statement and that, where need exists, an environmental impact statement is developed to assure timely consideration of environmental factors.

(d) The General Counsel will establish procedures to assure that every legislative proposal on a matter for which the Commission has primary responsibility is reviewed to assess the need for an environmental impact statement and that, where need exists, and environmental impact statement is developed to assure timely consideration of environmental factors.

(e) Parties seeking information or status reports on environmental impact statements and other elements of the NEPA process, should contact the Assistant General Counsel for Litigation and Environmental Policy.

§ 1.89 Effect on prior actions.

It is the policy of the Commission to apply these procedures to the fullest extent possible to proceedings which are already in progress.

By direction of the Commission dated January 5, 1982.

Carol M. Thomas,
Secretary.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6375, File No. S7-890]

Automatic Effectiveness of Post-Effective Amendments Filed by Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of amendments to rule.

SUMMARY: The Securities and Exchange Commission is adopting today amendments to the rule governing automatic effectiveness of post-effective amendments to registration statements filed by registered open-end management investment companies and unit investment trusts, other than insurance company separate accounts. The amendments provide that, under certain conditions, the filing of a post-effective amendment containing a prospectus during the pendency of a prior post-effective amendment relating to the same prospectus would not prevent the prior amendment from becoming effective automatically. The Commission is adopting these amendments primarily to facilitate the process by which an open-end investment company updates its prospectus in order to use the prospectus as the equivalent of an annual report to shareholders.

EFFECTIVE DATE: January 22, 1982.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Jackson, Special Counsel, (202) 272-2115 or Susan P. Hart, Attorney, (202) 272-2098, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On July 14, 1981 the Commission published for comment amendments to paragraphs (b) and (d) of rule 465 [17 CFR 230.465] under the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77a et seq.].¹ The Commission received two comment letters relating to the proposal. Both commentators supported the proposed amendments, however, each suggested additional changes to the rule. The additional revisions suggested by the commentators have been addressed by the Commission in a release proposing a new rule, 466, under the 1933 Act and additional amendments to rule 465.² The

Commission today is adopting the proposed amendments without change.

The amendments to rule 465(d) provide that the filing of a post-effective amendment containing a prospectus during the pendency of a prior post-effective amendment relating to the same prospectus would not suspend the sixty-day waiting period initiated by the filing of the prior amendment, provided that the subsequent amendment is filed pursuant to paragraph (b) of rule 465 and that it designates as its effective date the same day as the anticipated effective date of the prior filing. Paragraph (b) of rule 465, as amended, makes the subsequent amendment eligible for filing under that provision.

The amendments to rule 465 permit an investment company to file a post-effective amendment under paragraph (a) which contains an updated narrative portion of its prospectus but no updated financial statements, and then, before such amendment has become effective, to file a subsequent post-effective amendment pursuant to paragraph (b) containing updated financial statements in addition to the updated narrative. The two amendments would become effective simultaneously, the same day as the anticipated effective date of the amendment filed under paragraph (a). These changes are intended to facilitate the process by which an investment company brings its prospectus up to date when it has experienced a material event requiring disclosure under paragraph (a) but does not have complete or updated financial statements sixty days prior to the desired date of effectiveness.

Any subsequent amendment filed pursuant to paragraph (b) of rule 465, of course, must meet the criteria set forth in the amended rule for filing pursuant to that section. When a post-effective amendment is filed under paragraph (a) and the registrant intends to file an amendment under paragraph (b) to update the financial statements in the prospectus while the filing under paragraph (a) is still pending, the registrant should state in a cover letter that a post-effective amendment to update the financial statements will be filed pursuant to paragraph (b) and on what approximate date the registrant anticipates that such amendment will be filed. In addition, to facilitate the review process, the registrant should state in a cover letter accompanying the subsequent filing under paragraph (b) that it is filed for the purpose of updating the financial statements of a prospectus for which a post-effective amendment is pending under paragraph (a), and the date on which the post-

¹ Securities Act Release No. 8327 (July 8, 1981) [46 FR 36195, July 14, 1981].

² Securities Act Release No. 6376 published under rules and regulations in this issue.