

# Rules and Regulations

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 303

#### Applications, Requests, Submittals, Delegations of Authority and Notices of Acquisition of Control

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** FDIC is amending its regulations to announce existing agency procedure for reconsideration of a denied request for relief from the requirement for making reimbursements for violations of the Truth in Lending Act or any other requests, applications or petitions where authority to act has been delegated to the Board of Review.

**EFFECTIVE DATE:** March 9, 1983.

#### FOR FURTHER INFORMATION CONTACT:

James L. Meador, Senior Attorney, Legal Division, Federal Deposit Insurance Corporation, 550-17th Street, NW., Washington, D.C. 20429; (202) 389-4171.

**SUPPLEMENTARY INFORMATION:** On March 8, 1982, the Board of Directors of the FDIC delegated authority to the FDIC's Board of Review to act on requests for relief from the requirement for making reimbursements for violations of the Truth in Lending Act. (12 CFR 303.11(f)) (47 FR 9811 (March 8, 1982)). The authority to act includes the authority to deny such requests. It also includes the authority and responsibility to consider any petition for reconsideration of denial of such requests.

The amendments provide that any petition for reconsideration of a denied request, application, or petition must be addressed to the Board of Review where the initial request, application, or

petition has been denied by the Board of Review acting pursuant to authority delegated by the Board of Directors. The amendments also provide that action by the Board of Review on any enforcement matter brought under section 8 of the Federal Deposit Insurance Act shall be subject to review by the Board of Directors in accordance with section 303.13(o)(7) of FDIC's rules and regulations.

#### Regulatory Factors

The requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are inoperative here because the amendments do not affect the recordkeeping or reporting burdens on any insured bank or other person.

The amendments are rules of FDIC practice and procedure. They inform the public of existing agency procedure for processing petitions for reconsideration of requests, applications, or petitions denied by the Board of Review under authority delegated by the Board of Directors. Therefore, in accordance with the Administrative Procedure Act (5 U.S.C. 553), the Board of Directors suspends the requirements for notice of proposed rulemaking and public comment and delayed effective date.

#### List of Subjects in 12 CFR Part 303

Administrative practice and procedure, Authority delegations, Banks, banking, Insurance.

#### PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

Part 303 of Chapter III of title 12 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 303 reads as follows:

Authority: Secs. 2(5), 2(6), 2(7)(j), 2(8), 2(9), "Seventh" and "Tenth", 2(18), 2(19), Pub. L. 797, 64 Stat. 876, 881, 891, 893 as amended by Pub. L. No. 88-463, 74 Stat. 129; sec. 2, Pub. L. No. 87-827, 76 Stat. 953; Pub. L. No. 88-593, 78 Stat. 940; Pub. L. No. 89-79, 79 Stat. 244; sec. 1, Pub. L. No. 89-356, 80 Stat. 7; sec. 12(c), Pub. L. No. 89-485, 80 Stat. 242; sec. 3, Pub. L. No. 89-597, 80 Stat. 824; title II, secs. 201, 205, Pub. L. No. 89-695, 80 Stat. 1055; sec. 2(b), Pub. L. No. 90-505, 82 Stat. 846; secs. 6(c)(7), (12), (13), Pub. L. No. 95-369, 92 Stat. 616-620; Title III, secs. 306, 309 and title VI, sec. 602, Pub. L. No. 95-630, 92 Stat. 3677, 3683 (12

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U.S.C. 1815, 1816, 1817(j), 1818, 1819 "Seventh" and "Tenth", 1828, 1829; title I, sec. 108, Pub. L. No. 90-321, 82 Stat. 150 as amended by title IV, sec. 403, Pub. L. No. 93-495, 88 Stat. 1517 and title VI, sec. 608, Pub. L. No. 98-221, 94 Stat. 171 (15 U.S.C. 1607).

2. Section 303.10 is amended by revising paragraph (d) to read as follows:

#### § 303.10 Procedure on applications.

(d) *Opportunity to petition for reconsideration of a denied application, petition, or request.* Within 15 days of its receipt of notice that its application, petition, or other request has been denied, any applicant may petition the Board of Directors, or the Board of Review where such application, petition, or request has been denied by the Board of Review acting pursuant to delegated authority, for reconsideration of such application, petition, or request (except an application, petition, or request already previously denied upon reconsideration) and, in connection therewith, may request an opportunity to amend its application, petition, or request or to submit information in rebuttal of the denial, either in writing or in the form of an oral presentation before one or more representatives of the FDIC designated for that purpose. Upon the filing of such petition for reconsideration, the applicant shall be given 60 days in which to amend its application, petition, or request or to make its presentation to the FDIC. If the applicant requests an opportunity to make oral presentation, it shall be advised of the date, time, place, and person or persons before whom such presentation shall be made.

Notwithstanding the first sentence of this paragraph, any action taken by the Board of Review pursuant to § 303.13(o) shall be subject to review by the Board of Directors in accordance with § 303.13(o)(7).

By order of the Board of Directors on February 28, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 83-5791 Filed 3-8-83; 8:45 am]

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**FEDERAL HOME LOAN BANK BOARD****12 CFR Part 509a**

[No. 83-128]

**Removals, Suspensions, and Prohibitions Where a Crime Is Charged or Proven**

March 3, 1983.

**AGENCY:** Federal Home Loan Bank Board.**ACTION:** Final rule.

**SUMMARY:** The Federal Home Loan Bank Board ("Board") is adopting amendments to its rules of practice and procedure concerning expedited hearings to administratively challenge a suspension notice or removal order affecting participation in the conduct of the affairs of an insured institution by a director, officer, or other person charged with or convicted of certain crimes. The amended rules of practice and procedure (1) clarify the powers and duties of the hearing officer, (2) clarify that the person subject to the notice or order has the burden of proving that grounds exist for the termination or modification thereof, (3) clarify that the nature of the publicity concerning the individual's indictment is a consideration that is relevant to the decision of whether the notice or order should be terminated or modified, and (4) formally incorporate certain of the Board's adjudicative rules. The amended rules are intended to improve processing and eliminate uncertainty in the conduct of these hearings.

**EFFECTIVE DATE:** April 8, 1983.**FOR FURTHER INFORMATION CONTACT:**

Steven A. Rosenberg, Attorney, Office of General Counsel, (202) 377-6958, Federal Home Loan Bank Board, 1700 G Street, NW, Washington, D.C. 20552.

**SUPPLEMENTARY INFORMATION:** Where a director, officer, or person participating in the conduct of the affairs of an insured institution or affiliate thereof is a defendant in certain criminal lawsuits and continued service or participation by the individual in the conduct of the affairs of the institution may pose a threat to the interests of the institution's depositors or may threaten to impair public confidence in the institution, the Board may suspend the individual from office or prohibit the individual's further participation in any manner in the conduct of the affairs of the institution; that suspension or prohibition is effective only until the criminal action is finally disposed of. Thereafter, if the individual has been found guilty and the judgment is not subject to further

appellate review, the Board may upon certain findings permanently remove the individual from office or prohibit him from further participation in any manner in the conduct of the affairs of the institution, except with the prior consent of the Board. Such Board action is pursuant to the authority of Section 5(d)(5) of the Home Owners' Loan Act, as amended ("HOLA"), and Section 407(h) of the National Housing Act, as amended ("NHA") (12 U.S.C. 1464(d)(5), 1730(h) (1976, Supp. IV 1980)). The affected individual may administratively appeal the Board's action in the manner provided by Section 5(d)(5)(C) of the HOLA and Section 407(h)(2) of the NHA.

On November 4, 1982, the Board proposed to amend Part 509a of the Board's General Regulations to clarify the procedures concerning (1) the Board's issuance of temporary notices of suspension or prohibition and permanent orders of removal or prohibition, and (2) the conduct of administrative appellate hearings allowed. (See Board Resolution No. 82-727, 47 FR 50918, published on November 10, 1982.) A public comment period was provided through January 10, 1983. Based on the comments received and other available information, the Board has determined to adopt the amendments substantially as proposed.

**Discussion of Comments**

The Board received a total of six comment letters in response to Resolution No. 82-727. Three were from federally chartered savings and loan associations; one was from a state-chartered savings and loan association the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"); the remaining two were from savings and loan trade associations. Five of the commenters recommended adoption of the proposed amendments, although three of them recommended some substantive changes, which are discussed below. One commenter recommended against adoption of the proposals on the ground that the existing rules are adequate.

One commenters suggested that a provision be added providing that the affected individual be reinstated to his position if that individual is acquitted or the conviction is reversed on appeal. Pursuant to Section 5(d)(5)(A) of the HOLA and Section 407(h)(1) of the NHA, a notice of suspension or prohibition is effective only until the criminal case is finally disposed of or until terminated by the Board; an order or removal or prohibition, which may be issued following conviction not subject to further appellate review, is permanent

unless the Board determines otherwise. Accordingly, where the individual is acquitted or a conviction is reversed the notice of suspension or prohibition has no further effect. Although the statutes set this forth, for purposes of clarification the Board has modified proposed § 509a.3(a) by adding to the end thereof the following sentence: "The Notice shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Board."

Another commenter recommended that proposed § 509a.3(a) have deleted therefrom the word "information" in the phrase stating "where the individual is charged in any information, indictment, or complaint authorized by a United States attorney." An information is a document formally initiating criminal prosecution that is filed by a competent public official rather than by a grand jury. See *Black's Law Dictionary* 918 (rev. 4th ed. 1968). Because the proposed language of the rule follows the statutory language, the recommended change will not be adopted.

Another commenter proposed changing the phrase in proposed § 509a.3 (a) and (b) from the "the Board is of the opinion" to "the Board, upon due deliberation, has determined." Because the Board will make a determination that the grounds exist for these suspensions, removals, and prohibitions, before it takes action requiring compliance, the Board is adopting this recommendation.

It was also recommended that proposed § 509a.7(b) be revised to require disclosure of the names of rebuttal witnesses and a summary of their proposed testimony if a party intends to call such witnesses. Because it is the Board's view that the difficulty in complying with such a requirement upon short notice exceeds the potential for surprise where rebuttal witnesses are concerned, this recommendation has not been adopted.

A further recommendation was that proposed § 509a.7(e) be modified to provide that any of the parties may move for the correction of the administrative record. The recommendation is well-considered and has been adopted.

A commenter recommended that proposed § 509a.9 provide that the Federal Rules of Evidence apply in these proceedings. Those rules apply in Federal court proceedings, but generally are not applicable to administrative proceedings. See Section 7(d) of the Administrative Procedure Act, 5 U.S.C. 556(d). It is well established that the Due

Process Clause of the Fifth Amendment to the Constitution does not require administrative proceedings to follow the formal rules of evidence. *Calhoun v. Bailar*, 626 F. 2d 145 (9th Cir. 1980), *cert. denied*, 452 U.S. 906 (1981). The relevant statutory provisions provide that these proceedings are to be informal and expedited in nature. Moreover, the petitioner has the burden of persuasion, and the Federal Rules of Evidence provide for the exclusion of evidence that otherwise would be admissible. Accordingly, the Board is of the view that requiring the adoption of such evidentiary rules would unnecessarily impair the ability of the petitioner to prove his case. Therefore, the Board has not adopted this recommendation.

Finally, it was recommended that proposed § 509.13(b) be revised by requiring a statement for the basis of all decisions concerning these removal, suspension, and prohibition proceedings, rather than limiting such statements to decisions adverse to the petitioner. The proposed rule would have followed the language of Section 5(d)(5)(C) of the HOLA and Section 407(h)(2) of the NHA, but those sections do not preclude the Board from providing a statement in all cases. The Board believes that it would be beneficial to set forth its reasoning in these matters so as to provide a permanent record of the bases for its decisions for the future guidance of the Board, the savings and loan industry, and the bar. Therefore, the Board has adopted this recommendation.

#### Regulatory Flexibility

The Board certifies that the rules will not have a substantial economic impact on a substantial number of small entities. The rules do not have general effect, as they only apply to individuals who have been served with a suspension notice or removal order where such individuals have been charged with certain crimes. Accordingly, no final regulatory flexibility analysis is required as provided by 5 U.S.C. 605(b).

#### List of Subjects in 12 CFR Part 509a

Savings and loan associations, Administrative practice and procedure.

Accordingly, the Board hereby amends Subchapter A, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

#### SUBCHAPTER A—FEDERAL HOME LOAN BANK BOARD

Revise Part 509a as follows:

### PART 509a—REMOVALS, SUSPENSIONS, AND PROHIBITIONS WHERE A CRIME IS CHARGED OR PROVEN

#### Sec.

- 509a.1 Scope.
- 509a.2 Definitions.
- 509a.3 Issuance of notice or order.
- 509a.4 Contents and service of the notice or order.
- 509a.5 Petition for hearing.
- 509a.6 Initiation of hearing.
- 509a.7 Conduct of hearings.
- 509a.8 Default.
- 509a.9 Rules of evidence.
- 509a.10 Burden of persuasion.
- 509a.11 Relevant considerations.
- 509a.12 Proposed findings and conclusions and recommended decisions.
- 509a.13 Decision of the Board.
- 509a.14 Miscellaneous.

Authority: 12 U.S.C. 1437, 1464, 1725, 1726, 1730, 1731; Reorganization Plan No. 3 of 1947, 12 CFR 4981, 3 CFR, 1943-48 Comp., p. 1071.

#### § 509a.1 Scope.

The rules in this part apply to hearings, which are exempt from the adjudicative provisions of the Administrative Procedure Act, afforded to any officer, director, or other person participating in the conduct of the affairs of an insured institution, affiliate service corporation, savings and loan holding company, or subsidiary of such a holding company, where such person has been suspended or removed from office or prohibited from further participation in the conduct of the affairs of one of the aforementioned entities by a Notice or Order served by the Board upon the grounds set forth in Section 5(d)(5) of the Home Owners' Loan Act (12 U.S.C. 1464(d)(5)) or Section 407(h) of the National Housing Act (12 U.S.C. 1730(h)).

#### § 509a.2 Definitions.

As used in this part—

(a) The term "Board" means the Federal Home Loan Bank Board, or, where appropriate, the Federal Saving and Loan Insurance Corporation.

(b) The term "Secretary" means the Secretary to the Federal Home Loan Bank Board and any Assistant or Acting Secretary to the Board.

(c) The term "Notice" means a Notice of Suspension or Notice of Prohibition issued by the Board pursuant to Section 5(d)(5) of the Home Owners' Loan Act or Section 407(h) of the National Housing Act.

(d) The term "Order" means an Order of Removal or Order of Prohibition issued by the Board pursuant to Section 5(d)(5) of the Home Owners' Loan Act or Section 407(h) of the National Housing Act.

(e) The term "institution" means a Federally-chartered association within the meaning of Section 2(d) of the Home Owners' Loan Act, an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation ("insured institution") within the meaning of Section 401(a) of the National Housing Act, an affiliate service corporation within the meaning of Section 5(d)(2)(C) of the Home Owners' Loan Act and Section 407(e)(3) of the National Housing Act, a savings and loan holding company within the meaning of Section 408(a)(1)(D) of the National Housing Act, and a subsidiary of a savings and loan holding company (other than an insured institution) within the meaning of Section 408(a)(1)(H) of the National Housing Act.

(f) The term "subject individual" means a person served with a Notice or Order.

(g) The term "petitioner" means a subject individual who has filed a petition for informal hearing under this Part.

#### § 509a.3 Issuance of Notice or Order.

(a) The Board may issue and serve a Notice upon an officer, director, or other person participating in the conduct of the affairs of an institution, where the individual is charged in any information, indictment, or complaint authorized by a United States Attorney with the commission of or participation in a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year under State or Federal law, if the Board, upon due deliberation, determines that continued service or participation by the individual may pose a threat to the interests of the institution's depositors or may threaten to impair public confidence in the institution. The Notice shall remain in effect until the information, indictment, or complaint is finally disposed of or until terminated by the Board.

(b) The Board may issue and serve an Order upon a subject individual against whom a judgment of conviction, with respect to the aforementioned crime, has been rendered, where such judgment is not subject to further appellate review, and the Board, upon due deliberation, has determined that continued service or participation by the subject individual may pose a threat to the interests of the institution's depositors or may threaten to impair public confidence in the institution.

**§ 509a.4 Contents and service of the Notice or Order.**

(a) The Notice or Order shall set forth the basis and facts in support of the Board's issuance of such Notice or Order, and shall inform the subject individual of his right to a hearing, in accordance with this part, for the purpose of determining whether the Notice or Order should be continued, terminated, or otherwise modified.

(b) The Secretary shall serve a copy of the Notice or Order upon the subject individual and the related institution in the manner set forth in § 509.18 of this subchapter.

(c) Upon receipt of the Notice or Order, the subject individual shall immediately comply with the requirements thereof.

**§ 509a.5 Petition for hearing.**

(a) To obtain a hearing, the subject individual must file two copies of a petition with the Secretary within 30 days of being served with the Notice or Order.

(b) The petition filed under this section shall admit or deny specifically each allegation in the Notice or Order, unless the petitioner is without knowledge or information, in which case the petition shall so state and the statement shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. When a petitioner intends in good faith to deny only a part of or to qualify an allegation, he shall specify so much of it as is true and shall deny only the remainder.

(c) The petition shall state whether the petitioner is requesting termination or modification of the Notice or Order, and shall state with particularity how the petitioner intends to show that his continued service to or participation in the conduct of the affairs of the institution would not, or is not likely to, pose a threat to the interests of the institution's depositors or to impair public confidence in the institution.

**§ 509a.6 Initiation of hearing.**

(a) Within 10 days of the filing of a petition for hearing, the Board shall notify the petitioner of the time and place fixed for hearing, and it shall designate one or more agency employees to serve as presiding officer.

(b) The hearing shall be scheduled to be held no later than 30 days from the date the petition was filed, unless the time is extended at the request of the petitioner.

(c) A petitioner may appear personally or through counsel, but if represented by counsel, said counsel is required to comply with § 509.3 of this subchapter.

(d) A representative(s) of the Board's Office of General Counsel also may attend the hearing and participate therein as a party.

**§ 509a.7 Conduct of hearings.**

(a) Hearings provided by this section are not subject to the adjudicative provisions of the Administrative Procedure Act (5 U.S.C. 554-557). The presiding officer is, however, authorized to exercise all of the powers enumerated in § 509.6 of this subchapter.

(b) Witnesses may be presented, within time limits specified by the presiding officer, provided that at least 10 days prior to the hearing date, the party presenting the witnesses furnishes the presiding officer and the opposing party with a list of such witnesses and a summary of the proposed testimony. However, the requirement for furnishing such a witness list and summary of testimony shall not apply to the presentation of rebuttal witnesses. The presiding officer may ask questions of any witness, and each party shall have an opportunity to cross-examine any witness presented by an opposing party.

(c) Upon the request of either the petitioner or a representative of the Office of General Counsel, the record shall remain open for a period of 5 business days following the hearing, during which time the parties may make any additional submissions for the record. Thereafter, the record shall be closed.

(d) Following the introduction of all evidence, the petitioner and the representative of the Office of General Counsel shall have an opportunity for oral argument; however, the parties may jointly waive the right to oral argument, and, in lieu thereof, elect to submit written argument.

(e) All oral testimony and oral argument shall be recorded, and transcripts made available to the petitioner upon payment of the cost thereof. A copy of the transcript shall be sent directly to the presiding officer, who shall have authority to correct the record *sua sponte* or upon the motion of any party.

(f) The parties may, in writing, jointly waive an oral hearing and instead elect a hearing upon a written record in which all evidence and argument would be submitted to the presiding officer in documentary form and statements of individuals would be made by affidavit.

**§ 509a.8 Default.**

If the subject individual fails to file a petition for a hearing, or fails to appear at a hearing, either in person or by attorney, or fails to submit a written argument where oral argument has been

waived pursuant to § 509a.7(d) or (f) of this part, the Notice shall remain in effect until the information, indictment, or complaint is finally disposed of and the Order shall remain in effect until terminated by the Board.

**§ 509a.9 Rules of evidence.**

(a) Formal rules of evidence shall not apply to hearing, but the presiding officer may limit the introduction of irrelevant, immaterial, or unduly repetitious evidence.

(b) All matters officially noticed by the presiding officer shall appear on the record.

**§ 509a.10 Burden of persuasion.**

The petitioner has the burden of showing, by a preponderance of the evidence, that his or her continued service to or participation in the conduct of the affairs of the institution does not, or is not likely to, pose a threat to the interests of the institution's depositors or threaten to impair public confidence in the institution.

**§ 509a.11 Relevant considerations.**

(a) In determining whether the petitioner has shown that his or her continued service to or participation in the conduct of the affairs of the institution would not, or is not likely to, pose a threat to the interests of the institution's depositors or threaten to impair public confidence in the institution, in order to decide whether the Notice or Order should be continued, terminated, or otherwise modified, the Board will consider: (1) The nature and extent of the petitioner's participation in the affairs of the institution; (2) the nature of the offense with which the petitioner has been charged; (3) the extent of the publicity accorded the indictment and trial; and (4) such other relevant factors as may be entered on the record.

(b) When considering a request for the termination or modification of a Notice, the Board will not consider the ultimate guilt or innocence of the petitioner with respect to the criminal charge that is outstanding.

(c) When considering a request for the termination or modification of an Order which has been issued following a final judgment of conviction against a subject individual, the Board will not collaterally review such final judgment of conviction.

**§ 509a.12 Proposed findings and conclusions and recommended decision.**

(a) Within 30 days after completion of oral argument or the submission of written argument where oral argument has been waived, the presiding officer

shall file with the Secretary and certify to the Board for decision the entire record of the hearing, which shall include a recommended decision, the Notice or Order, and all other documents filed in connection with the hearing.

(b) The recommended decision shall contain:

(1) A statement of the issue(s) presented,

(2) A statement of findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record, and

(3) An appropriate recommendation as to whether the suspension, removal, or prohibition should be continued, modified, or terminated.

#### § 509a.13 Decision of the Board.

(a) Within 30 days after the recommended decision has been certified to the Board, the Board shall issue a final decision.

(b) The Board's final decision shall contain a statement of the basis therefor. The Board may satisfy this requirement where it adopts the recommended decision of the presiding officer upon finding that the recommended decision satisfies the requirements of § 509.12(b).

(c) The Secretary shall serve upon the petitioner and the representative of the Office of General Counsel a copy of the Board's final decision and the related recommended decision.

#### § 509a.14 Miscellaneous.

The provisions of §§ 509.17, 509.18, 509.20, 509.21, and 509.22 of this subchapter shall apply to proceedings under this part.

By the Federal Home Loan Bank Board.

J. J. Finn,  
Secretary.

[FR Doc. 83-6000 Filed 3-8-83; 6:45 am]

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 14 CFR Part 1215

### Tracking and Data Relay Satellite System (TDRSS); Use and Reimbursement Policy for Non-U.S. Government Users

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule establishes an equitable basis for use of and reimbursement for Tracking and Data

Relay Satellite System (TDRSS) and service by non-U.S. Government users. The tracking, telemetry, and command services provided by the TDRSS will represent a significant growth in the capability of presently available services provided via the ground tracking station network. Once the TDRSS is declared operational by NASA, TDRSS services will be made available to non-U.S. Government users.

**EFFECTIVE DATE:** March 9, 1983.

**FOR FURTHER INFORMATION CONTACT:** Robert O. Aller, 202-755-2340.

**SUPPLEMENTARY INFORMATION:** The TDRSS space segment consists of two satellites in geostationary orbit. A third satellite is in geostationary orbit to be operated as a spare for additional service as required. The ground segment consists of a single ground terminal and the necessary operational control and interface devices and interconnecting communications circuit services located at White Sands, New Mexico. NASA published its proposed rule in 47 FR 35228-35232, August 13, 1982. One comment was received but was not adopted. The Chief Counsel for Advocacy of the U.S. Small Business Administration indicated the proposed rule failed to comply with Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). By letter dated November 19, 1982, the Chief Counsel for Advocacy was informed that the proposed rule was being established to set rates, prices and practices relating to the use of TDRSS and was therefore excluded from compliance with the RFA by 5 U.S.C. 801(2).

Appendix A has been updated to reflect CY 1984 reimbursement rates for use of TDRSS service.

#### List of Subjects in 14 CFR Part 1215

Satellites, Tracking and data relay satellite, Communications equipment, Government contract.

14 CFR Chapter V is amended by adding a new Part 1215 reading as follows:

### PART 1215—TRACKING AND DATA RELAY SATELLITE SYSTEM (TDRSS)

#### Subpart 1215.1—Use and Reimbursement Policy for Non-U.S. Government Users

Sec.

1215.100 General.

1215.101 Scope.

1215.102 Definitions.

1215.103 Services.

1215.104 Apportionment and assignment of services.

1215.105 Delivery of user data.

1215.106 User command and tracking data.

1215.107 User data security.

1215.108 Defining user services

requirements.

Sec.

1215.109 Scheduling user service.

1215.110 User cancellation of all services.

1215.111 User postponement of all services.

1215.112 User/NASA contractual arrangement.

1215.113 User charges.

1215.114 Service rates.

1215.115 Payment and billing.

Appendix A—Estimated Service Rates in 1984 Dollars for TDRSS Standard Services (Based on NASA Escalation Estimate).

Appendix B—Factors Affecting Standard Charges.

Appendix C—Typical User Activity Timeline.

Authority: Sec. 203, Pub. L. 85-568, 72 Stat. 429, as amended: 42 U.S.C. 2473.

#### Subpart 1215.1—Use and Reimbursement Policy for Non-U.S. Government Users

##### § 1215.100 General.

The Tracking and Data Relay Satellite System represents a major investment by the U.S. Government with the primary goal of providing improved tracking and data acquisition services to spacecraft in low earth orbit or to terrestrial users. It is the objective of NASA to operate as efficiently as possible with the TDRSS. This is to the mutual benefit of all users. Such user consideration will permit NASA and non-NASA services to be delivered without compromising the mission objectives of any individual user. To encourage users toward achieving efficient TDRSS usage, a reimbursement policy has been established which is designed to influence users to operate in the most efficient and orderly manner possible. Additionally, the reimbursement policy is designed to comply with the Bureau of the Budget Circular A-25 on User Charges, dated September 23, 1959, which requires that a reasonable charge should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which a special benefit is derived.

##### § 1215.101 Scope.

This Subpart sets forth the policy governing TDRSS services provided to non-U.S. Government users and the reimbursement for rendering such services. It excludes TDRSS services provided as standard or optional services to Space Transportation System (STS) users under existing policy for Shuttle and Spacelab (14 CFR 1214.1 and 1214.2); that is user command and telemetry support which utilizes and is a part of the Shuttle or Spacelab communications system is a Shuttle/Spacelab service. Cooperative missions are also not under the purview of this Subpart. The arrangements for TDRSS

services for cooperative missions will be covered in a Memorandum of Understanding (MOU), as a consequence of negotiations between NASA and the other concerned parties. Any MOU which includes provision for any TDRSS service will require signatory concurrence by the Associate Administrator for Space Tracking and Data Systems prior to dedicating Office of Space Tracking and Data Systems resources for support of a cooperative mission.

#### § 1215.102 Definitions.

(a) *User*. Any non-U.S. Government representative or entity who contracts with NASA to use TDRSS services.

(b) *TDRSS*. The Tracking and Data Relay Satellite System including Tracking and Data Relay Satellites (TDRS), the White Sands Ground Terminal (WSGT), and the necessary TDRSS operational areas, interface devices and NASA communication circuits to unify the above into a functioning system. It specifically excludes the user ground system/TDRSS interface.

(c) *Bit Stream*. The digital electronic signals acquired by TDRSS from the user craft or the user generated input commands for transmission to the user craft.

(d) *Flexible Support*. Support requests which permit NASA, at its option, to schedule service at any time during the period of a single orbit of the user mission. Missions requiring multiple support periods during a single orbit may be classified as constrained support.

(e) *Constrained Support*. Support requests which specify the exact times NASA is to provide service, or conditions of support which can be translated into exact times for service, such as sub-satellite positions, apogee/perigee position, etc., for which support is needed.

(f) *Scheduling Service Period*. One scheduled contact utilizing a single TDRS whereby the user by requesting service is allotted a block of time for operations between the user satellite and TDRSS.

#### § 1215.103 Services.

(a) *Standard Services*. These are services which the TDRSS is capable of providing to low-earth orbital user spacecraft or other terrestrial users.

(1) Tracking services.

(2) Data acquisition service.

(3) Command transmission service.

(4) Emergency line outage recording in the event of a communications failure between White Sands, Goddard Space

Flight Center (GSFC), and Johnson Space Center (JSC).

(5) A weekly user spacecraft orbit determination in NASA standard orbital elements as determined by NASA for TDRSS target acquisition purposes.

(6) Delivery of user data at the NASA Ground Terminal (NGT) located at White Sands.

(7) Pre-launch support for data flow test and related activities which require use of a TDRS.

(8) Pre-launch support planning and documentation.

(9) Scheduling user services via TDRSS.

(10) Access to tracking data to enable users to perform orbit determination at their option.

(b) *Mission Unique Services*. Other tracking and data services desired by the user beyond the standard service and the charges therefor, will be identified and assessed on a case-by-case basis.

#### § 1215.104 Apportionment and assignment of services.

No user may apportion, assign, or otherwise convey to any third party its TDRSS service. Each user may obtain service only through contractual agreement with NASA.

#### § 1215.105 Delivery of user data.

(a) As a standard service, NASA will provide to the user its data from the TDRSS as determined by NASA in the form of one or more digital or analog bit streams synchronized to associated clock streams at the NGT.

(b) User data handling requirements beyond the NGT interface may be provided as a service without charge to the user, to the extent that NASA determines that it does not exceed NASA's standard communications system. Any additional data transport or handling requirements exceeding NASA's capability will be dealt with as a mission-unique service.

(c) No storage of the user data is provided in the standard service. NASA will provide short-term temporary recording of data at White Sands, only in event of a NASA Communications Network (NASCOM) link outage.

(d) NASA will provide TDRSS service on a "best efforts" basis and does not assume the risk of liability for damage to the user or third parties for failure to provide contracted-for services because of damage to the user's payload or other damage to the user or to third parties. The price for TDRSS service does not include a contingency or premium for this potential damage. The user will assume this risk of damage or obtain insurance to protect against that risk.

#### § 1215.106 User command and tracking data.

(a) User command data may enter the TDRSS via the NASCOM interface at one of three locations:

(1) For Shuttle payloads which utilize the Shuttle commanding system, command data must enter the system via the Johnson Space Center (JSC) and is governed by the policies established for STS services (see § 1215.101).

(2) For free flyers and other payloads, command data must enter the system at the Goddard Space Flight Center (GSFC) if it is to be a standard service.

(3) The use of other command data entry points [e.g., the NASA Ground Terminal (NGT) at White Sands, NM, or Johnson Space Center (JSC), for payloads using an independent direct link from TDRS to the user payload] is considered to be a mission unique service.

(b) NASA is required to maintain the user satellite orbital elements to sufficient accuracy to permit the TDRS system to establish and maintain acquisition. This can be accomplished in two ways:

(1) The user can provide the orbital elements in a NASA format to GSFC to meet TDRSS operational requirements.

(2) The user shall insure that a sufficient quantity of tracking data is received at GSFC to permit the determination of the user satellite orbital elements. The charges for this service will be determined by using the on-orbit service rates.

#### § 1215.107 User data security.

User data security is not provided by the TDRSS. Responsibility for data security resides solely with the user. User desiring data safeguards shall provide and operate, external to the TDRSS, the necessary equipment or systems to accomplish data security. Any such user provisions must be compatible with data flow through TDRSS and not interfere with other users.

#### § 1215.108 Defining user service requirements.

Potential users should become familiar with TDRSS capabilities and constraints, which are detailed in the TDRSS User's Guide (GSFC document, STDN No. 101.2), as early as possible. This action allows the user to evaluate the trade-offs available among various TDRSS services, spacecraft design, operations planning, and other significant mission parameters. When these user evaluations have been completed, and the user desires to use

TDRSS, the user should initiate a request for TDRSS service.

(a) Initial requests for TDRSS service from non-U.S. Government users should be addressed to NASA Headquarters, Code TX, TDRSS Program, Washington, D.C. 20546. Upon review and preliminary acceptance of the service requirements by NASA Headquarters, the appropriate areas of GSFC will be assigned to the project to produce the detailed requirements, plans and documentation necessary for support of the mission. Changes to user requirements shall be made as far in advance as possible and shall be submitted in writing to both NASA Headquarters, Code TX, TDRSS Program, and GSFC, Code 804, Greenbelt, Maryland 20771.

(b) Acceptance of user requests for TDRSS service is the sole prerogative of NASA. Although TDRSS represents a significant increase to current support capabilities, service capacity is finite, and service will be provided in accordance with operational priorities established by NASA. Request for services within priority groups shall be negotiated with non-NASA users on a first come, first service basis for inclusion into the TDRSS mission model.

#### § 1215.109 Scheduling user service.

(a) User service shall be scheduled only by NASA. Scheduling refers to that activity occurring after the user has been accepted and placed in the TDRSS mission model as specified in § 1215.108(b). See Appendix C for a description of a typical user activity timeline.

(b) Schedule conflict will be resolved in general by application of principles of priority to user service requirements. Services shall be provided either as normally scheduled service or as emergency/disruptive update service. Priorities will be different for emergency/disruptive updates than for normal services.

(1) Normally scheduled service is service which is planned and ordered under normal operational conditions and is subject to schedule conflict resolution under normal service priorities. Priorities are established by the NASA Administrator or his/her designee. Requests for normally scheduled service must be received by the schedulers at the GSFC Network Control Center (NCC) no later than 45 minutes prior to requested support time.

(2) Normal scheduling principles of priority are generally ordered as follows beginning with the highest priority:

(i) Launch, reentry, landing of the STS Shuttle or launch of a NASA expendable launch vehicle.

(ii) NASA payloads/spacecraft.  
(iii) Other payloads/spacecraft of interest to the United States.

(iv) Other payloads/spacecraft launched by a NASA launch vehicle.  
(v) Other payloads/spacecraft.  
(vi) Support of other launches.

(3) Exceptions to these priorities may be determined on a case-by-case basis with the NASA Administrator or his/her designee as the priorities stated in paragraph (b)(2) of this section are indicative of general rather than specific cases.

(4) Emergency service conditions are those requiring rapid response to changing user service requirements. Emergency service may be instituted under the following conditions:

(i) Circumstances which pose a threat to the security of the United States.

(ii) Circumstances which threaten human life.

(iii) Circumstances which threaten user mission loss.

(iv) Other circumstances of such a nature which make it necessary to preempt normally scheduled services.

(5) At times, emergency service requirements will override normal schedule priority. Under emergency service conditions, disruptions to schedule service will occur. As a consequence, users requiring emergency service shall be charged for emergency service at rate factors set forth in Appendix B.

(6) Disruptive updates are scheduled updates which by virtue of priorities, causes previously scheduled user's services to be rescheduled or deleted or are requested by the user less than 45 minutes prior to the scheduled support period.

(i) Disruptive updates will be charged at the same rates as emergency service. User initiated schedule requests which are received less than 45 minutes prior to the requested schedule support time will be considered a disruptive update.

(ii) User initiated schedule requests which are received more than 45 minutes and less than 12 hours prior to the scheduled support period will be acted upon as a routine input provided other users are unaffected. If other users are affected, the scheduling input will be considered a disruptive update and the appropriate charge factor will be applied.

(iii) The Network Control Center (NCC) at GSFC reserves the sole right to schedule, reschedule or cancel TDRSS service. Schedule changes brought about through no fault of the user are not charged the factor for a disruptive update.

(7) While the priority listing remains the general guide for establishing

support availability, the NASA schedulers will exercise judgment and endeavor to see that lower priority users are not excluded from a substantial portion of their contracted-for service due to the requirements of higher priority users.

(8) When a user contracts for TDRSS service for an "operational satellite" which interfaces with a significant number of national and world-wide users on a regularly scheduled basis as opposed to a "research and development satellite," NASA will place special emphasis on the operational requirement when planning schedules. This should reduce the probability of losing perishable operational data such as meteorological, climate, or earth resources information.

(c) General user service requirements, which will be used for preliminary planning and mission modeling, should include as a minimum, the following:

(1) Date of service initiation.

(2) Expected date of service termination.

(3) The type of TDRSS services desired [e.g., multiple access, tracking, etc.]

(4) The frequency and duration of each service, including orbital position or time constraints on service delivery from a given spacecraft where appropriate.

(5) Orbital or trajectory parameters and tracking data requirements.

(6) Spacecraft events affecting tracking, telemetry or command requirements.

(7) Signal parameters and data rates by type of service, type and location of antennas and other related information dealing with user tracking, command, and data systems.

(8) Special test requirements, compatibility testing, data flows, simulations, etc.

(9) Identification of type and quantity of user information necessary for control functions, location of user control facility, and identification of communications requirements.

(10) Identification of ground communications requirements and interface points, including the level of support to be requested from NASCOM.

(d) To provide for effective planning, general service requirements should be provided at least 3 years before initiation of service. With these data NASA will determine whether the requested services can be provided.

(e) Detailed requirements for user services must be provided 18 months before the initiation of service. These data will be the basis for the technical definition of the Interface Control

Document (ICD). If requirements are received late, necessitating extraordinary NASA activities [e.g., overtime, special printing of documents], such activities will be considered to be mission unique and their cost charged to the user.

**§ 1215.110 User cancellation of all services.**

The user has the right to terminate its service contract with NASA at any time. A user who exercises this right after contracting for service shall pay the charge agreed upon for services previously rendered, and the cost incurred by the Government for support of pre-launch activities, services, and mission documentation not included in that charge. The user will remain responsible for the charges for any services actually provided.

**§ 1215.111 User postponement of service.**

The user may postpone the initiation of contract service (user launch date) by delivery of written notification to NASA Headquarters, Code TX. If NASA's written approval is not obtained for postponements which delay the initial contract start of service date by more than 6 months, the quantity of service provided may be affected due to changes in other support requirements. Therefore, the validity of previous estimates of predicted support availability may no longer be applicable.

**§ 1215.112 User/NASA contractual arrangement.**

(a) The NASA Administrator reserves the right to waive any portion of the reimbursement due to NASA under the provisions of the reimbursement policy.

(b) When NASA has determined that a potential user has not made sufficient progress toward concluding a contractual arrangement for service, after being placed in a mission model, NASA shall have the unilateral right to remove that user from the mission model.

(c) NASA shall have the right to determine unilaterally that the potential user has failed to make progress toward concluding a contractual arrangement.

**§ 1215.113 User charges.**

(a) The user shall reimburse NASA the sum of the charges for standard and mission unique services. Charges will be based on the service rates determined at the beginning of each calendar year and the service time scheduled for the user.

(b) For standard services the user shall be charged only for services rendered, except that if a total

cancellation of service occurs, the users shall be charged in accordance with the provisions of § 1215.110.

(1) Standard services which are scheduled, and then cancelled by the user less than 12 hours prior to the start of that scheduled service period, will be charged as if the scheduled service actually occurred.

(2) The time scheduled by the user project shall include the slew time, set up and/or configuration time, TDRSS contact time, and all other conditions for which TDRSS services were allocated to the user.

(3) Charges will be accumulated by the minute, based on the computerized schedule/configuration messages which physically set up the TDRSS equipment at the start of a support period and free the equipment for other users at the end of a support period.

(c) The user shall reimburse NASA for the costs of any mission unique services provided by NASA for the user's benefit unless NASA obtains full cost reimbursement from another user for these mission unique services.

(d) Any person or entity which pays to NASA the initial administrative charge (see § 1215.115) does so with the understanding that it is not refundable whether or not an agreement is entered into with NASA for TDRSS services.

**§ 1215.114 Service rates.**

(a) Non-U.S. Government user rates will reflect TDRSS total operational and maintenance costs prorated to a per-minute basis.

(b) Rates for TDRSS services will be set by NASA Headquarters each October for the following year, January through December. Rate variations will reflect changes in operating costs, loading formulas and escalation.

(c) Projected estimates will include escalation bases on the Bureau of Labor Statistics Index for compensation per hour—total private.

(d) Appendix A is provided for preliminary planning purposes only. It delineates the rate per minute by service and type of user. These rates are subject to change.

(e) The per minute charge for TDRSS service is computed by multiplying the charge per minute for the appropriate service by the number of minutes scheduled and the appropriate factor (for flexible, constrained or disruptive/emergency service).

**§ 1215.115 Payment and billing.**

(a) To each user there will be an initial non-refundable administrative

charge of \$25,000 which is applicable toward TDRSS operational services.

(b) The procedure for billing and payment of standard TDRSS services is as follows:

(1) The calendar year is divided into two service periods, January through June and July through December. The charge for TDRSS service will be determined in October for the succeeding calendar year.

(2) The estimated cost of service, January through June period, will be due the previous July 1, and will be billed 60 days prior to the payment due date.

(3) The estimated cost of service, July through December period, will be due the previous January 1, and will be billed 60 days prior to the payment due date.

(4) Adjustments to the amounts prepaid will be made to the succeeding billings as the actual service time is tabulated. Amounts due to the user will be credited to the next service period or refunded to the user if no more service is to be provided.

(5) The total estimated cost of all standard pre-launch services such as mission planning, documentation, link analysis, testing, computer, human resources, etc., with the exception of TDRSS operational services, will be paid to the Government prior to NASA rendering such services. This advance payment will be applied as a credit to the charges billed for post-launch TDRSS operational services as specified in paragraphs (b) (1) through (4) of this section.

(c) Payment schedules for mission unique services will be mutually developed between NASA and the user on a case-by-case basis, dependent upon level of engineering effort, long-lead items, special communication services or other considerations. Payment will generally be made prior to NASA incurring a cost for mission unique service.

(d) Late payments by the user will require the user to pay a late payment charge equal to 1½% per month of the unpaid balance calculated daily from the date the payment was due until the date payment is made.

**Appendix A—Estimated Service Rates in 1984 Dollars for TDRSS Standard Services (Based on NASA Escalation Estimate)**

TDRSS user service rates for services rendered in CY-84 based on current projections in 1984 dollars are as follows:

*Single Access Service*—forward command, return telemetry, or tracking, or any combination of these, the base rate is \$110.00 per minute for non-U.S. Government users.

**Multiple Access Forward Service**—Base rate is \$24.00 per minute for non-U.S. Government users.

**Multiple Access Return Service**—Base rate is \$8.00 per minute for non-U.S. Government users.

#### Appendix B—Factors Affecting Standard Charges

Charges for services shall be determined by multiplying the factors below by the base rates for standard services set forth in Appendix A.

	Flexible	Time or position constrained	Emergency service, disruptive updates
Single access service	.5	1	2
Multiple access forward (command) service	.67	1	2

	Normally scheduled support	Emergency service, disruptive updates
Multiple access return (telemetry) service	1	2

#### Appendix C—Typical User Activity Timeline

Time (approximate)	Activity
Project conceptualization (At least 3 years before launch; Ref. § 1215.108(a)).	Request NASA Headquarters perform study to determine availability of TDRSS. \$25,000 non-refundable charge for this service. Placement into mission model if accepted.
3 years before launch (Ref. § 1215.109(c)).	Submit general user requirements to permit preliminary planning. Begin payment for pre-mission activities. (Ref. § 1215.115(b)(5)).
18 months before launch (earlier if interfacing is expected).	Provide detailed requirements for technical definition and development of operational documents and ICD's. (Ref. § 1215.109(e)).
3 weeks prior to a scheduled support period (SSP).	Submit scheduling request to GSFC covering a weekly period.
2 weeks prior to an SSP.	Receive schedule from GSFC based on principles of priority (§ 1215.109(b)(2)). Acknowledgment to GSFC required. Can cancel an SSP without charge. (Ref. § 1215.113(a)(1)).
Up to 12 hours prior to an SSP.	Can schedule an SSP if a time slot is available without impacting another user.
Up to 45 minutes prior to an SSP.	Schedule requests will be charged at the disruptive update rate (Ref. § 1215.109(b)(5)).
Between SSP minus 45 minutes and the SSP.	Emergency service requests will be responded to per the priority system (Ref. § 1215.109(b)(3)) and assessed the emergency service rate.
Real Time	

James M. Beggs,  
Administrator.

[FR Doc. 83-6041 Filed 3-8-83; 8:45 am]  
BILLING CODE 7510-01-M

#### UNITED STATES METRIC BOARD

##### 15 CFR Ch. V

###### Removal of Chapter

In a letter to the Chairman, United States Metric Board dated February 25, 1982, the Deputy Director of the Office of Management and Budget assigned responsibility for metric policy and coordination to the Secretary of Commerce upon the phase out of the Board.

As of October 1, 1982, responsibility for metric policy was transferred to the Secretary of Commerce, and the regulations of the U.S. Metric Board, appearing in Chapter V of the Code of Federal Regulations became obsolete. The regulations in 15 CFR Chapter V are being removed based on a letter to the Office of the Federal Register from the Director, Office of Administration, U.S. Department of Commerce.

###### CHAPTER V—[REMOVED]

Accordingly, in Title 15, Code of Federal Regulations, Parts 500-504 appearing in Chapter V—United States Metric Board, are removed and the chapter is removed.

BILLING CODE 1505-01-M

Issued in Washington, D.C. on March 3, 1983.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 83-5962 Filed 3-6-83; 8:45 am]

BILLING CODE 6351-01-M

#### DEPARTMENT OF ENERGY

##### Federal Energy Regulatory Commission

###### 18 CFR Part 34

[Docket No. RM81-18-000]

###### Order Denying Application for Rehearing and Clarifying Regulatory Provision

Issued March 3, 1983.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Order Denying Application for Rehearing and Clarifying Regulatory Provision.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) denies an application for rehearing or reconsideration of the final rule which revised the Commission's regulations regarding applications for authorization of the issuance of securities or the assumption of liabilities. The final rule was issued October 7, 1981 (Order No. 182, 46 FR 50511, October 14, 1981), and clarified and simplified those regulations as part of the Commission's ongoing program to reevaluate its information requirements. The rehearing request is denied because it does not raise any issues nor present any new data that were not fully considered by the Commission during this rulemaking, or which now having been considered, warrant any modification of the final rule with respect to that request.

The Commission also amends its regulations in § 34.1(c)(1) in order to insert text previously omitted in that provision.

**EFFECTIVE DATE:** March 3, 1983.

**FOR FURTHER INFORMATION CONTACT:** Cathy Ciaglo, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426 (202) 357-8033.

###### SUPPLEMENTARY INFORMATION:

###### A. Background

The Federal Energy Regulatory Commission issued a final rule on October 7, 1981, to revise its regulations at 18 CFR Part 34, "Application for Authorization of the Issuance of

#### COMMODITY FUTURES TRADING COMMISSION

##### 17 CFR Part 145

###### Commission Headquarters Office and Western and Southwestern Offices; Change and Address; Correction

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules, correction.

**SUMMARY:** This document corrects telephone numbers for the Division of Economics and Education in New York and the Division of Trading and Markets in Chicago, which were published on January 21, 1983 (48 FR 2735).

**FOR FURTHER INFORMATION CONTACT:** Donald L. Tendick, Acting Executive Director, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-7556.

The Commodity Futures Trading Commission is correcting the following telephone numbers in § 145.8:

On page 2735, column 1, line 55, the telephone number for the Division of Economics and Education in New York is (212) 466-2061. On page 2735, column 1, line 60, the telephone number for the Division of Trading and Markets in Chicago is (312) 353-5990.